

## **BOARD OF MAYOR AND ALDERMEN**

**January 11, 2010**

A regular meeting of the Board of Mayor and Aldermen was held on January 11, 2010 at 6:00 p.m. in the Council Chambers of the Municipal Center.

Mayor Sharon Goldsworthy was present and presiding.

The following Aldermen were present: Mark Billingsley, John Drinnon, Carole Hinely and Mike Palazzolo. Alderman Chism was absent. Staff present: Patrick Lawton, Andy Pouncey, Kristen Geiger, George Brogdon, Tom Cates, Jerry Cook, Chief Richard Hall, Pat McConnell, Bo Mills, Deputy Chief John Selberg, Joe Nunes, Pam Beasley, Tim Gwaltney, Josh Whitehead, Ralph Gabb, and Dotty Johnson.

### **Invocation**

City Administrator Patrick Lawton gave the invocation.

### **Pledge of Allegiance**

Alderman Hinely led the Pledge of Allegiance.

### **Approval of Agenda**

Mayor Goldsworthy stated that Administration had asked to add to the agenda the nomination of Sidney Kuehn to the Neighborhood Preservation Commission. It would be under the Consent Agenda.

Administration had also asked to move item 19c – Grant for Firehouse Subs from the Consent Agenda to the Regular Agenda so the Fire Department could elaborate on the value and merit of the grant.

Alderman Palazzolo asked item 19e – Civic Support Grant to Chamber of Commerce so that he might recuse himself from the vote.

Motion by Mr. Drinnon, seconded by Ms. Hinely, to approve the agenda as modified.

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

### **Approval of Minutes**

Alderman Palazzolo stated on page 4 of the regular meeting minutes, the fifth paragraph should read “....to ensure there *would be* enough time..... “

Motion by Mr. Drinnon, seconded by Mr. Palazzolo, to approve the minutes of the Regular Meeting held December 14, 2009 and the Special Called Meeting held December 16, 2009.

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

### **Youth Excellence Award**

Mayor Goldsworthy and Alderman Hinely presented Ms. Kendra Powers, a senior at Hutchison School with the Youth Excellence Award for the month of December. Her plaque was sponsored by Traditions.

### **Teacher of the Month**

Mayor Goldsworthy and Alderman Hinely presented Ms. Martha Gunn-Poole a biology teacher at Houston High School with the award for December. Mr. and Mrs. Ken Fluke and family sponsored the award.

### **Citizens to be Heard**

No citizens came forward.

**Acceptance of Grant from Firehouse Subs – Public Safety Foundation**

Deputy Chief John Selberg stated this was a grant awarded from Firehouse Subs Public Safety Foundation. The Foundation is dedicated to improving the life-saving capabilities of emergency services in communities served by Firehouse Subs by providing funding, resources, and support to public safety entities. The Foundation provided this grant to the Germantown Fire Department in the amount of \$11,507.90 for the purchase of training items and uniforms for the reserve firefighter training class.

Motion by Ms. Hinely, seconded by Mr. Drinnon, to accept a grant of \$11,507.90 from Firehouse Subs Public Safety Foundation for the purchase of training items and uniforms for the reserve fire fighter training class and approve Budget Adjustment 10-65.

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

**Civic Support – Germantown Chamber of Commerce**

Alderman Palazzolo asked to be recused because he had served on the Board of the Chamber and served as chairman, treasurer and currently served on the Board, and felt it would be a conflict of interest for him to vote on this item. Alderman Palazzolo left the dais.

Assistant City Administrator George Brogdon stated this item is to award a sponsorship in the amount of \$15,000.00 to the Germantown Chamber of Commerce. This sponsorship puts the City in a prominent position at all Chamber events and a partnership for the annual report calendar and the Chamber's Germantown magazine.

Chamber President and Chief Executive Office Pat Scroggs came forward and stated how much they appreciated the community sponsorship. She stated the Chamber's primary goal was to promote the community in every possible way.

Motion by Mr. Drinnon, seconded by Ms. Hinely, to award a grant to the Germantown Chamber of Commerce in the amount of \$15,000.00.

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

Alderman Palazzolo returned to the dais.

**BEER BOARD**

**PUBLIC HEARING – Beer Permit Application – Walgreen Co. - 9325 Poplar Ave.**

City Administrator Patrick Lawton stated the owners of Walgreen Co. at 9325 Poplar Ave. had requested a beer permit for off-premise consumption. Walgreen Co. is a publicly held corporation with no one person or corporation owning as much as 5% corporate stock. A background check had been done by the Police Department on the manager Brenda O'Daniel and based on the review; the application was in compliance with the City's Beer Ordinance.

Mr. Calvin Allen, the District Manager of Walgreen's came forward and thanked the Board for allowing them to pursue a beer permit.

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

Motion by Mr. Palazzolo, seconded by Mr. Billingsley, to approve the request from Walgreen Co., located at 93235 Poplar Avenue for a beer permit for off-premise consumption.

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

**PUBLIC HEARING – Beer Permit Application – Walgreen Co. – 7790 Wolf River Blvd.**

Mr. Lawton stated the owners of Walgreen Co. at 7790 Wolf River Blvd. requested a beer permit for off-premise consumption. Walgreen Co. is a publicly held corporation with no one person or corporation owning as much as 5% corporate stock. A background check had been done by the Police Department on the manager Steven McNamara and based on the review; the application was in compliance with the Beer Ordinance.

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

Motion by Ms. Hinely, seconded by Mr. Palazzolo, to approve the request from Walgreen Co., located at 7790 Wolf River Blvd. for a beer permit for off-premise consumption.

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

**PUBLIC HEARING – Beer Permit Application – Tao Too – 2072 West Street**

Mr. Lawton stated the owner of Tao Too, Ms. Jasmine Lin, had requested a beer permit for on-premise consumption. The background check had been done by the Police Department and based on this review the application was in compliance with the Beer Ordinance.

Ms. Lin came forward and stated she was requesting a beer permit for her restaurant.

In response to a question from Alderman Drinnon regarding the length of time she had been in business, Ms. Lin responded she had been in the United States for 20 + years but in the restaurant business for about 20 years.

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

Motion by Mr. Billingsley, seconded by Mr. Palazzolo, to approve the request from Ms. Jasmine Lin the owner of Tao Too, located at 2072 West Street for a beer permit for on-premise consumption.

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

**BOARD OF MAYOR AND ALDERMEN**

**PUBLIC HEARING – Final Plan Approval and Approval of Subdivision Development Contract No. 496 – Qureshi & Malik Homes PUD**

Planning Division Director Josh Whitehead stated this was a final plan approval for a Planned Development by Qureshi & Malik Homes PUD. The site is located on the west side of Kimbrough Rd. at Beekman place. It is a 1.14-acre site to be subdivided into two lots of approximately .6 acres each. Mr. Whitehead noted that on this section of Kimbrough there was no sanitary sewer or water service since most of the lots are double frontage and the services are on the adjacent streets rather than Kimbrough. The applicant's proposal is to bore from the site under Kimbrough and under Beekman Place to the stub for water and sewer.

The grading will be limited to lot 2, the northernmost lot. There will be a pipe that will collect the stormwater and drainage from the property to the west over to the inlet.

The proposal is to include a subdivision fence to the two-lot subdivision. The DRC had approved the plans that called for a six-foot brick/wrought-iron fence and it be located five feet behind the back of the sidewalk to allow a landscape easement. Since the DRC had approved, Administration had expressed some dissatisfaction with the height of the fencing along Kimbrough.

Mr. Harvey Marcum of 2064 Arden Landing Cove came forward to discuss the development. He represented Dr. Qureshi and Dr. Malik in the development. He stated there had been a lot of challenges to the lot because of the topography, the drainage that enters the site, and the utilities that have to be brought to the site. The landscape easement along the west property line they are trying to address. The rear yard setback of the two lots is currently 25 feet. The drainage easement would be a 10 foot drainage easement and as it goes to the north it widens and goes to the east so that it is not right against the property line for a good distance. He stated as they came from the drainage that entered from Caylor's Woods, the property easement they could slide down to provide a 5-foot landscape easement until it starts to widen as it goes to the north in order to get some landscaping adjacent to the fence. The 5 feet and the 7 feet on the Caylor's Woods Drive would give a total of 12 feet of landscaping which would provide a nice screen.

In response to a question from Alderman Hinely, Mr. Marcum stated that due to the grading of the property it was going to be very hard to save many of the trees.

Mayor Goldsworthy opened the public hearing.

Dr. Carter Towne of 2245 Caylor's Woods Cove came forward and stated his property was located directly west of lot 2, Dr. Quishi's home. He stated the Caylor's Woods Neighborhood Association had met many times with Community Development and the developers trying work out some agreement but nothing was never worked out where the development could become part of Caylor's Woods Cove so they had to backup to Caylor's Woods. Dr. Towne's home would be looking directly into the back of Dr. Quishi's home. He asked if there was any way to protect property values for him and the two neighbors, whose homes will directly look into the backs of these homes, such as screening or landscaping, he asked it be done.

Motion by Mr. Drinnon, seconded by Ms. Hinely, to approve the Final Plan and Subdivision Development Contract No. 496 for Qureshi & Malik Homes PUD.

Mayor Goldsworthy again stated to the Board the concerns of Administration that had been identified and with all great respect to the bodies that had reached this decision, the concern about the height of the front yard fence and the suggestion that it comply with regular subdivision regulations, which is the limitation of 30 inches.

Mr. Whitehead noted the City Attorney suggested the motion include the five-foot landscaping easement and installation along with the easement described by the applicant.

Motion by Mr. Billingsley, seconded by Ms. Hinely to amend the motion to include the references to the 5-foot landscaping easement and installation.

Vote on Amendment:

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

Vote on motion as amended:

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

**PUBLIC HEARING – Ordinance No. 2009-19 – Amendment to Chapter 2, Administration; Chapter 6, Building and Building Regulations and Chapter 14, Signs – Authority of Design Review Commission to Grant Exceptions – Second Reading**

Mr. Whitehead stated this ordinance amendment was brought forward by the City Attorney who advised staff that the Code of Ordinances should be clarified on the procedure by which it grants variances to the sign ordinance before the Commission grants any further variances. The chapters that are proposed to be amended reflect Mr. Cates' request.

Mr. Whitehead explained that the changes to be made are classified into two groups, those related to exceptions and those that are housekeeping items related to the granting of exceptions. One of the changes in particular would affect the digital fuel price signs.

Mayor Goldsworthy opened the public hearing.

Mr. Roger Taylor, store manager for Schnuck Markets 3150 Village Shops came forward and read excerpts from a letter to the Board from the Mike Juergensmeyer, the Vice President of the Schnucks Fuel Centers. He stated the two signs had cost approximately \$69,250 installed. The signs allow them to display the current price for fuel. At the request of the City, they had changed the color of the lights from red to green.

Mr. Sidney Kuehn 8779 Chimney's Drive West spoke in opposition to the changes in the sign ordinance as proposed. He was concerned with the internally illuminated price signs at the gas stations. He stated the ordinance was far too liberal concerning exceptions. He felt being liberal will lead to areas like Winchester and Germantown Road. The Ordinance needs clarification concerning exceptions.

Mr. Keith Saunders of 1895 Grovecrest who had served on the DRC for eleven years and had been chairman for five years, stated the DRC had taken a lot of careful consideration to review and looked at it in numerous ways to make sure as an appointed body they were serving all that was appropriate and in the best interest of the City. He took exception to the fact that when you drive into Germantown you are not Germantown Road or Winchester. He felt the DRC had done an outstanding job in making sure the signs met the requirements of the citizens and the businesses. The DRC wanted to always be able to look at cutting edge in technology for the businesses and felt the gas signs were compatible with the ordinance and the new technology. They did feel that the color red would be very intrusive and asked them to change the color. They also looked at the intensity of the LED and make sure they were subtle enough that they did not glare but could be seen at a distance. The sign, density and area in which they were used was looked at and signage is important to the business citizens and the DRC tried to take that into consideration. He asked the Board to view the amendment with an open mind and approve it and allow it to be done in a matter in which it will be set in stone in regard to density, size, and location.

Lisa Parker of 1649 Kimbrough served on the DRC. She felt this was a housekeeping provision to give back to the DRC the ability to grant exceptions.

City Attorney Tom Cates asked to be heard. He wanted to be sure the Board understood the context of what was being considered. He stated that one of the reasons Germantown looks like it does is because of the fight that had been fought by the Board's predecessors that established an idea that Germantown was not going to be overwhelmed by signage and by things that were not generally accepted by the public but were the desires of the people in business to draw attention to their particular business. The two signs which are the offenders that brought this to the attention of this Board through Mr. Kuehn were improvidently and illegally granted.

The DRC Board had an ordinance before it when it allowed those two signs to be approved that said service station fuel price signs could not be lighted. They were lighted. The signs, at no fault of the owner of Schnucks or BP were granted by our government.

The Board must decide whether it will allow lighted gas signs is one issue. The DRC had developed a culture over the many years where exceptions were granted which were not authorized by the statute. Since this was brought to everyone's attention, an informal audit had been done and he felt that the Board would not find that the good people on the DRC did anything that was really objectionable with regard to those particular exceptions. He felt the Board should give the DRC the explicit authority to make exceptions to some of the rules and if they overstep, the Board has the right to remove those members and put people who better agree with the philosophy of the Board.

Mr. Cates stated he personally is opposed to the LED lighted signs. If the Board votes to not allow the LED signs in the future, then the decision will have to be made what to do about the ones that are already there. He stated he did not think we needed to start a process of having lighted signs of this nature.

He stated it was not a legal opinion but his personal opinion that the Board not allow the DRC to have any authority to permit these lighted gas fuel signs. Unless the Board takes the authority away to grant the exception from the DRC the City will have to let anyone who wants one to have it.

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

Motion by Mr. Drinnon, seconded by Ms. Hinely, to table consideration of the ordinance on second reading.

Alderman Palazzolo asked to have a worksession to discuss this item and made this as a friendly amendment to the motion.

The motion was to table consideration of the ordinance on second reading until after the Board had met in a worksession for further discussion of the ordinance amendment.

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

Mr. Whitehead requested that staff should meet as soon as possible for the worksession as there were many applicants that this would affect that had been waiting since mid October.

Alderman Billingsley asked staff to bring back to the Board, a detailed response to the recommendations Mr. Kuehn had made.

### **Sewer Pipeline Rehabilitation**

Public Services Director Bo Mills explained that the scope of this contract included the interior lining of approximately 3,000 linear feet of twelve-inch sanitary sewer main and 2,175 linear feet of eighteen-inch sanitary sewer main. Three bids had been received.

Motion by Mr. Drinnon, seconded by Mr. Palazzolo, to approve funding for a contract with Reynolds Inliner, LLC, for the annual pipeline rehabilitation project, in an amount not to exceed \$250,000.00.

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

### **Bob Hailey Athletic Fields Renovations**

Assistant City Administrator George Brogdon stated this item was to approve a contract to reconfigure fields #2 and #4 at the Bob Hailey Athletic Complex to accommodate a wider range of age and skilled teams. Originally the fields were designed to accommodate larger dimensions and older teams. As a result, the fields were underused and had not been useful for recreation practice games or tournaments. With these improvements, approximately 225 games and practices can be provided for the youth baseball players this year. This reconfiguration will also provide a buffer for baseball between the new outfield fence and the soon to be constructed Wolf River Blvd. Additional funding was also requested for the planned improvements to the Houston Levee softball fields.

Motion by Mr. Drinnon, seconded by Mr. Palazzolo, to contract with Donald G. Austin – General Contractor for the fencing improvements at the Bob Hailey Athletic Complex in the amount of \$44,490.00, and to approve the use of the Recreation Fund Fund Balance.

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

**Solid Waste Collection Agreement Extension through FY2011**

Neighborhood Services Manager Joe Nunes stated that staff was recommending the City exercise its option to extend the term of the Contract between the City and All Star Waste Systems for an additional twelve month period. This contract includes the collection of household trash, recyclables and bulky and excess trash, containers at City facilities and temporary containers for special events.

All Star Systems, LLC was acquired by a newly formed limited liability company, Advanced Disposal Services ASW, LLC, a subsidiary of Advanced Disposal Services Inc. a privately held firm headquartered in Jacksonville, FL on December 1, 2009.

Mr. Nunes introduced representatives of Advanced Disposal, General Manager Hunter Carruthers, District Manager Johnny Goodspeed and Derek Dale the Municipal Market Developer.

In response to a question from Alderman Hinely regarding the availability of recycling for apartment complexes, Mr. Nunes stated they had looked at these services and there was another firm in town that offered this type of service for a fee and this is something that is available to apartment complexes and condominiums. Currently the City does not collect trash at all these complexes. If they are serviced by a City collection container, we do not provide that service and that is at the discretion of the apartment complex as to which firm they would like to use.

Motion by Mr. Drinnon, seconded by Mr. Palazzolo, to authorize the Mayor to exercise the City's option to extend the term of the existing solid waste collection agreement with All Star Waste Systems, LLC for an additional period of twelve months from July 1, 2010 through June 30, 2011 at the pricing levels submitted in the original agreement.

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

**Yard Debris Collection & Disposal Agreement Extension through FY2011**

Mr. Nunes stated staff was recommending the City exercise its option to extend the term of the Contract between the City and Michael's Tree and Loader Service, LLC for an additional twelve month period.

Motion by Mr. Palazzolo, seconded by Ms. Hinely, to authorize the Mayor to exercise the City's option to extend the term of the existing yard debris collection and disposal agreement with Michael's Tree & Loader Service, LLC for an additional period of twelve months from July 1, 2010 through June 30, 2011 at the pricing levels submitted in the original agreement.

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

**2009 Recovery Justice Assistance Grant and purchase of computers and mounts for police vehicles**

Police Chief Richard Hall stated this item was to recognize a grant from the 2009 Recovery Justice Grant (JAG) in the amount of \$17,200.00 and to approve Budget Adjustment No. 10-67. The grant will be used to purchase four Panasonic Toughbook in-car computers and computer mounts for the School Resource Officers' vehicles in the amount of \$16,765.68.

The computers will be placed in the School Resource Officers vehicles and will be the last of the marked units to have computers. These computers are essential in keeping the School Resource Officer on the school campus to complete reports.

Motion by Ms. Hinely, seconded by Mr. Palazzolo, to recognize a grant from the 2009 Recovery Justice Assistance Grant in the amount of \$17,200.00 for the purchase of equipment for the police department to approve Budget Adjustment Number 10-67 and approve the purchase of four (4) Panasonic in-car computers and mounts in the amount of \$16,765.68.

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

**Wolf River Blvd. Engineering Design Contract – Supplemental Agreement**

Director of Community Development Jerry Cook explained that this supplement will provide for the completion of the final right-of-way plans and the final construction plans/bid specifications. The original contract was approved in 1999. Since that time there had been a number of options met in development of the plans and the construction plans.

The first supplement in 2005 dealt with upgrading and revising the preliminary plans. The second supplement in 2007 provided for engineering design work for the two traffic signals that would be part of the contract at Kimbrough and Wolf River and Farmington and Wolf River Blvd. The third supplement concerned reworking some of the environmental documents that had been worked on prior to regulation changes. There were regulations changes that caused us to go back and make revisions to the study.

This supplement will complete the preparation of the final construction plans. The engineering design firm will also provide consulting services. The current proposal is to put the project out for bids in March. The proposal to add this \$72,000.00 to the engineering design contract will bring the total to about \$792,000.00 which is about 3.2% of the estimated construction costs for the project.

Motion by Ms. Hinely, seconded by Mr. Drinnon, to approve Supplemental Agreement No. 4 in the amount of \$72,000.00 for the Wolf River Blvd. Engineering Design Contract with W.H. Porter Consultants, PLLC and to approve Budget Adjustment No. 10-70.

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

**CONSENT AGENDA**

**Purchase – Bulk De-icing Salt**

This bulk purchase is necessary as a preventive measure for melting accelerator for street surface maintenance during inclement weather. Shelby County has been the sole provider for salt mix for many years. The Roads and Bridges Department has a storage facility at Shelby Farms and they have a verbal agreement with several local municipalities to provide de-icing material for the winter months.

MOTION: To purchase de-icing salt from Shelby County Government in the amount of \$12,600.00.

**Purchase – Concrete Treated Base Mix**

Concrete treated base mix is used for street, drainage and utility maintenance repairs. This is an annual purchase to be picked up at the production plant by City crews as needed.

Three bids were received and staff chose to divide the purchase between Standard Construction and Metro Materials. Standard Construction was chosen to utilize the proximity to the eastern city limits for material pick up, savings in fuel costs, labor costs and wear and tear on City vehicles. Metro Materials was selected for the lower price per ton and location for maintenance on the west side of the City. Each vendor can be an alternate source if the other plant is not operating due to holiday schedules or plant failures.

MOTION: To authorize the purchase of 2,000 tons of concrete treated base mix from Standard Construction Co., Inc. and Metro Materials, Inc in the amount of \$44,125.00.

**Recognition of Donations – Parks & Recreation**

The following businesses and organizations recently donated funds to sponsor two events coordinated by the Parks and Recreation Department: Holiday Tree Lighting – Germantown Charity Horse Show -



\$500.00, Journey to the North Pole – Lil’ Angels Photography - \$250.00, and Special Events Recreation Program – The Malasri Family - \$100.00.

MOTION: To recognize donations made to the Parks and Recreation Department for special events and programs totaling \$850 and to approve Budget Adjustment No. 10-71.

**Approval of Budget Adjustment #10-66**

The Germantown Police Department is purchasing equipment to be placed in the new police vehicles. They will include a radio, lights, siren, transport insert, push bumper, etc. A transfer of \$818.00 is needed to complete the purchase.

MOTION: To approve budget adjustment 10-66.

**Appointment to Financial Advisory Commission**

Mr. Paul Bryan has expressed a desire to serve on and fill a vacancy on the Financial Advisory Commission.

MOTION: To approve the appointment of Mr. Paul Bryan to serve on the 2010 Financial Advisory Commission.

**ADD-ON – Appointment to Neighborhood Preservation Commission**

The appointment of Sidney E. Kuehn will fill a vacancy on the Neighborhood Preservation Commission.

MOTION: To approve the appointment of Mr. Sidney E. Kuehn to serve on the Neighborhood Preservation Commission until December 31, 2010.

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

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

**ADJOURNMENT**

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

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Sharon Goldsworthy, Mayor

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Dotty Johnson, City Clerk/Recorder