



CITY OF GERMANTOWN TENNESSEE

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FINANCIAL ADVISORY COMMISSION MINUTES

Tuesday, December 8, 2009 at 6pm
Blue Room – 1920 S Germantown Rd

MEMBERS PRESENT: Chairman Julius Moody, Mike Agee, Paul Bryan, Eddie Cox, Bill Dudley, John Gregory, Clinton Hardin, Howard Lasley, Paul Mosteller, Lou Paris, Lynda Smith and Richard Wagoner

MEMBERS ABSENT: Ald. Ernest Chism, Robert Dallstream, John Gross, Russell Johnson, Mark Kooker, Frederick Miller, Frank SanPietro, and Harold Steinberg

STAFF PRESENT: Patrick Lawton, Kristen Geiger, Jerry Cook, Tim Gwaltney, Tim Bierdz, Ralph Gabb, Michael Stoll and Adrienne Royals.

CALL TO ORDER

Chairman Moody called the December 8, 2009 Financial Advisory Commission (FAC) meeting to order at 6:05 p.m. The meeting was held in the Blue Room at 1920 S Germantown Rd.

ROLL CALL

Chairman Moody called roll and announced a quorum was present.

APPROVAL OF MINUTES

Chairman Moody called for approval of the minutes from the November 4, 2009 FAC meeting.

****MOTION****

Lou Paris moved to approve the minutes from the November 4, 2009 FAC meeting as presented. Clinton Harding seconded and the motion passed unanimously.

STORMWATER FEE

Patrick Lawton started the meeting with a brief recap of the Stormwater Fee. He referred to all the material that had been presented at the earlier meeting, and stated that there was no question that a Stormwater Management Fee was clearly the way to go. He also stated that the City had tried to demonstrate to the FAC and BMA that managing and funding the Stormwater could best be handled as a utility, with a dedicated funding source. He stated that the user fee was based on the impervious methodology, and that our ordinances were written by legal staff in Administration were also based on that methodology.

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Patrick said that the first reading on the Ordinance had passed, and the reason that we have three readings and a public hearing is to allow the citizens of this Community, the commercial establishments and the other entities in our City the opportunity to come and talk to the Administration, talk with the Mayor and talk with the Board, express their concern about whatever public policy is being considered before its adoption. At the second reading and public hearing when this item came up before the Board, the Administration with a motion passed by the BMA recommended that we defer the second reading until January 25, 2010 and during that period of time the Administration will go back with staff and look at another alternative methodology that would support the user fee.

In the interim, since the FAC last met, there have been meetings with the BMA, and the City has put together a group of stakeholders in the community to get input from them on the user fee.

Patrick stated that what he wanted to present to the FAC was still the adoption and recommendation for a user fee. However, the methodology that we are recommending is different than previously presented. It is still legal and equitable, and there is a strong engineering foundation that supports this fee. The methodology that is being proposed is not used in Tennessee from what we can tell but it is a valid and sound approach to address our user fee.

Kristen Geiger stated that the budget funding total was \$1.3m and that was achieved by a combination of factors. She referred to the handouts and said that there was an itemized list that the City was asked to present and give out exactly what are the proposed expenses to be funded from this fee. All of the expenses are currently being provided, there is nothing new. All the expenses are being funded by the General fund. Street cleaning is actually paid out of State Street Aid, however, an operating transfer this last year was a \$1 m was sent from the General Fund to State Street Aid because the revenues that come from the state are not nearly enough to cover the expenses. The difference between just over \$900,000 budget versus the \$1.3 m basically that the \$1.3 m represented at least three to four years average, which included what was put in as assumptions as escalations, everything from cost of services, anticipation of building that will occur, which would increase the streets, which would increase your cleaning assumptions. It also included infrastructure replacement program news, Capital, which is major equipment or tools and vehicles that come up on a schedule to be replaced. This new budget also takes out any assumptions that the engineering dept felt were very reasonable in anticipating what could come down given the new permit that will be coming out soon and the regulations that that new permit will bring with it. Everything from testing on a regular consistent basis of the water, which averages about \$4,500 every time we test it to anything that we may have to do for fee permits as far as filtration systems or anything like that. This new budget basically the "bare bones" for funding. The reason that we are doing this is really because given the economic times that we are in we decided to fund that which we need, and then when we know definitely that which we will need in the future we will make adjustments going forward. That is the real great difference in what the original amount was and what is now being looked at under any way of being funded.

Tim Gwaltney stated that the City is now using a methodology based on the gross areas of parcels in the City versus the impervious surfaces. We are also taking into account a run off co-efficient which is based on the percentage of pervious and impervious areas on a particular site. We have not eliminated the impervious altogether from this. First of all, a runoff coefficient is basically just a measure of the percentage of precipitation that appears as run off (it doesn't soak into the ground) and that again is based on the surfaces that is on a particular parcel, so when we look at all of the residential sites in the City and note how it's developed through the years, the average gross area per lot is 0.34 acres. Tim referred to the example in the handout, and stated that the average run off coefficient is 0.4, the residential rate has been set to where 80% of the homes will fall in that range of \$3.25. He referred to the example and stated that it was showing a site of 2 acres so the first factor was the 2 acres divided by the average residential size of 0.34, the runoff coefficient for commercial is on the average of 0.9 multiply by the ERU (Equivalent Residential Unit) which equates to \$43 per month or \$516 annually.

Tim also expressed that the runoff coefficient of 0.4 for residential and 0.9 for commercial are industry accepted values based on land use. A particular site, a percentage of it is going to be parking lots, roof tops basically the impervious areas and also a portion of it is pervious. The weighted runoff coefficient based on land use, simply put, basically, shows that for heavily developed commercial type properties that the amount of runoff that's generated is expected to be two to two and a quarter times the amount of runoff compared to a residential site.

- Q. How this \$516 compared as per example, to the way we studied here a month ago and had the same discussion.
- A. This is a substantial reduction.
- Q. What makes up the difference? Because we're talking about \$2.50 to \$3.25 and now we're talking about \$3.25 as a basis.
- A. There would be a range for residential. On average the fee is higher for residential than the earlier methodology, and the other factor is that budget has been reduced. Reducing the budget would bring everything down by about 31% , and then this does shift, the ranges for residential under this methodology. \$3 would be to parcels between 0 and 10,000 sq ft, 10,000 to 22,000 sq ft would be \$3.25, anything above 22,000 sq ft would be \$3.50, that calculated generates \$560,000 on residential contributing to that \$900,000 budget.
- Q. So, Residential was now paying more than Commercial
- A. Kristen stated yes.
- Q. Commercial really creates the biggest problem?
- A. Patrick stated that the thing about this is that it is certainly grounded, to use this methodology in standard hydrology and engineering material that this represents the difference between residential and non residential property, not that what we were doing before, if we couldn't make that case for that, but in communities like Germantown, when you look at the small amount of non residential property that we do have, when you apply that factor to it, it made it a larger portion of the overall. Memphis uses the impervious surface but that have a larger than non residential base to spread that out to and still keep the rate low for their residential part.
- Q. So, then there are basically 4 excepted methodologies that are used throughout the Country.
- A. Patrick stated that these consist of the impervious, the gross area and then two other combinations.
- Q. Was this the one consensus that was decided at the meeting?
- A. Patrick stated that this was not brought up at the meeting, other than the fact that we were going to go back and look at a different methodology to calculate the fee.
- Q. You reduced the budget from \$1.3m to \$900,000 and we've increased the burden on property tax dollars in Germantown?

- A. Kristen said that what we got questioned on was the concept that there were two different rates being used, the rate for the residential development versus the rate for the non residential and the concept that why is commercial being charged four times that of residential. When we developed this, half of it was based on this relationship of the development and that higher developed property with greater impervious surfaces such as parking lots, that commercial 0.9 to 0.4 is two times more. The other two times was us saying is that reasonable to try to get quality included? There is no acceptable basis for measuring quality, there is nothing on the federal level or anything to say, in fact there is no where that we've been able to point to in any state to say; how can you quantify quality, we all know there is a difference but how can you prove that and we thought it seemed reasonable, it is an issue in terms of is it really fair. So we said take that out, and it does shift that over to the residential. We looked at what Memphis did and because they didn't use just a flat fee, they did the impervious like we were going to, but then what they did was say, ok if the average residential lot is this size, we're going to charge \$3 for that size lot and whatever the commercial is times that, so if this commercial site is 5 times that residential size, impervious surface, we'll charge them five times that rate, so instead of \$3 they would pay \$15. That sounds reasonable and fair, again, not touching quality but touching velocity or quantity of runoff. That doesn't work here, because we're so residential based, that you just won't get the revenue in terms of being able to sustain this program, and also our residential lots are bigger, their average for impervious sq ft is about 3,000 and ours is 5,600. We had to say, ok, that doesn't address our community needs going forward, so what would be fair and equitable and applying everything to the law and that's what this new methodology achieves. In answer to this 2 acre example, we used 2 acres as an example, we didn't pick out a company per say, but it is a reduction, part of it again at least 31% would be because of the fact that we've reduced the budget and the part is because there is this shifting.
- Q. There's one thing, the Memphis methodology you just said it wouldn't work and I think I disagree, it would work, but what it would mean is ERU would have to be close to \$7.
- A. That's true, I mean it would work, you can work it but it means that the residential monthly amount would have to be so high that it would be more beneficial to leave it on the property tax.
- A. There was no scientific method to the \$3.25 what we were going to call our equivalency unit rate but it was based on conversations I think we've had for months with this group and our conversations with the Mayor and the BMA, where is that pain threshold for residential. At one point we looked at the property tax, and so we tried to stay within that realm of not getting above \$3.50 on the residential rate and we think we've been able to do that but still generate enough revenues to support the rest. But again, it comes to the fact that we're a different looking community than those around us. This is fair, again, it's sound in terms of the engineering fundamentals and it does show the difference between residential and non residential. The Memphis example would have taken the flat equivalency rate unit and just the only factor that would be taken into consideration was that they had ten times as much square footage as I do, so that's the difference.
- Q. But that doesn't take into consideration the quality of the runoff. That's what is not fair.

- A. Kristen did a very good job in explaining that there's nothing more that we can quantify that, at some point down the road I'm sure we will, but this program here, what we're funding with these dollars certainly addresses a quality aspect of it and that's what we report back on to the state and to the feds in terms of meeting it, it's difficult to quantify who's paying for the quality of that, part of that's taken into consideration with the difference between the two ratios, there may be point in time there has to be some filtration systems placed upon site to help purely with the quality of the runoff if our engineers able to determine a particular non point source of pollution to trace that back to a site then there is fines and that can come into play, in terms of trying to correct the quality aspect of it.
- Q. Can you make them clean their parking lots?
- A. Yes, if we can trace it back, that's part of the challenge and that's what is difficult for us when we talked about the original clean water act. We've got to go back now, where we can and deal with probably half a dozen different sources of pollution, the difficulty in trying trace that back. At some point in the future there will be filtration systems somewhere in our laterals that will help protect our rivers.
- Q. We would then be the only locality who would be using this methodology?
- A. Yes, from what we've been able to determine, the City Attorney's Office has confirmed that this methodology is in compliance with the state statute.
- Q. Did you explore what the impact might be on the Fee's just based on reducing the budget using the old methodology; I'm afraid that if we use this methodology that if you look at this one year from right now, that what's going to happen is that some point in the future there will be a big escalation all of sudden, oops we've miscalculated or our costs went up etc then we have a real big human crisis; No-one likes the nasty three letter word, tax, I'm sitting here thinking of going, you know what, one way possibly to sell this is instead of making it a fee make it a tax because then you get to take your deduction on the tax, so it actually is a lower cost to them overall, than using the fee basis.
- A. We looked at what would the fee be if we used the first methodology and lowered the budget to \$900,000 and took out quality to try and shift it. We have that, so therefore, the non-residential being twice the residential to get that velocity and so we looked at that, but again it gets to some of the issues still as there would be a fee differential, that that 0.00056 for residential and 0.00126 for the non-residential which would be new to do it. They're different. The one year, that is a concern and it's a concern going forward and making sure that we track things but probably having looked at it given the economy and everybody, not just business's and whatnot under either methodology we have that concern going forward. We don't know what level to test for quality to pass and we don't know and that if we fail, what penalties or what systems would have to done in order to make us in compliance. So, that is an unknown regardless of what we do.
- A. Also the General fund still funds a lot of our stormwater activities, Kristen mentioned the infrastructure replacement rolling stock, now that's not covered in the fee, and certainly our long range major capital projects is not covered in the fee, it's still property taxes that covered that. This time next year when we're in the budget again, we will revisit the fee again and present to you a budget that supports our stormwater management activities and staff and FAC will determine if we need to make any adjustments, if we need to maybe shift some of these costs back to the General fund, depending on what the economy looks like and how things have turned around. We will know certainly by then if there are any new conditions on the permit that we have to address. Whatever those might be, you know, we may say, we can't raise the fee anymore, that's again, the General fund will continue to support.

- A. We actually toyed with that before we even met on the original methodology, to fund the \$1.3 m would be equivalent to \$0.10 of the property tax rate, taking into account appeals and everything we estimate about \$130,000 for every penny of the property tax, it would be \$0.10 and there's that argument that a lot of people would rather a – just pay it once, b – deduct it, c – ultimately the General fund has responsibility for all these funds. The challenge with that is that this really is utility service and it's hard for some individuals to understand that because you're not getting anything for it, you're giving the contribution because of your development, so it's not like water and sewer. Those are user fees, you're consuming something and based on your consumption you will pay, you get trash pickup, again based on if you're single or multi family, you will pay, whenever we do the trash we have the same issue. Do we charge by volume because clearly a family like mine generates a lot more trash than probably some of your homes, but yet I pay the same as you, etc. The law was written and I think the federal mandate allows for municipalities to an active fee versus a tax because it is a user, it can be broken down and applied and the attorney general has ruled that it is just that, that it is a fee and therefore tax exempt properties such as churches and non for profits are not excluded from this and they're the ones that also pay for water and sewer now in the City. They don't pay property taxes that go to fire, ambulance and police but they do pay for water and sewer. There is that balance and we're aware of that because we want to be conscious that that fee doesn't get so high that the residents would be paying less if it were on the property tax.
- B. In terms of our sources of revenue we're so limited with what we have to work with, a property tax increase, that's where most of our revenues come from and that would be a logical thing to do but we don't have many avenues for revenue growth and enhancement in the City and to use that for the stormwater management to recover where we are in our budget right now. The administrations recommendation would be to save that for further down the road perhaps next year, the year after that and we'll also have at that point a better handle on what the appeals look like, the appeals are coming in hot and heavy and they're eroding the few pennies we were able to put out on top of the tax base to begin with. This time next year we will have a much better idea of what our true tax base looks like. The last thing about the property tax in this economic climate is that we always tried to look at an adjustment tax increase that will take us out at least during our five year planning period; this doesn't do that, this is kind of a one shot thing and it kind of locks up some of our resources to be able to do other things.
- Q. The coefficients are an industry accepted standard? The 0.9 and the 0.4?
- A. Actually the way it's published is a range of values for residential its anywhere from 0.3 to 0.55 and the same on the commercial side, anywhere from 0.8 up to 0.98.
- Q. As far as the size of parcel fixed, it's contestable? The only other variable that you have is the ERU. If you use a 0.4 and a 0.9 the ERU is kind of like you're wagging the dog's tail and this multiplier right now is set at $2\frac{1}{4}$. Now I can see Patrick that you and staff going back and forth with the same people that the reason that we're here tonight is they're going to want you to doctor this coefficient that he said was in a range. If you win that battle the only other thing you can change is the ERU. The only reason this number works is because we have backed off from the \$1.3m in the budget, when I see an expanding gap as we're going forward. So you can for sure, get ready to see changes in these too. And there will be a lot of pressure to do that and I'm sure, because that's why we're here tonight. Now, we all know that as far as taxes, fees or anything else once initiated it will never go away and it will never come down. When you look at this and I read the minutes of the meeting, the last meeting, I spent this afternoon reading it, I call your attention to page 16, there's a discussion that was had and it was a comment by the Mayor Goldsworthy; "For those institutions or agencies that have not previously had to make a contribution of any kind towards City services", I agree with her, its time, the City of Germantown gets over 60% of its revenues from residential, coming in here about the straw that broke the camel's back, there are two camels in this race. My point is, I can understand what you and staff are going through since the last meeting, and it was odd just when we left here what was going to come down. But this Administration has done a fine job along with this Commission holding

the tax rates down at a time where the taxes spend mentality runs rampant. It's time to talk stop the tax spend. Looking out my office window on a rainy day, and I look at my little driveway, there's no cars parked in it, there's greasy spots but there is a small amount of water running off, on the way over here I just drove through the Schnucks parking lot and around, it's amazing, your figure of 4 that goes back to here and talking about the quality, quality is hard to make, but as I said to a few people who came in tonight, I don't understand why we're here tonight. I thought you did a fine job before so I am thoroughly convinced that the only reason for this would even look like it could work is because part of the expenses is still under the General fund and the actual expenses have been cut virtually in half. I doubt if your staff made that a big an error when you first calculated it.

Q. I just want to make a comment, first and foremost, I appreciate what y'all have done and I know your fee's isn't the right word but maybe it would leave some folks with a better taste in your mouth if we changed the way we do it. If I recall correctly, this passed unanimously the last time around, so when we presented it back to you and the BMA there was no equivocation and it would fund what you asked us to fund basically. If we go to what we're looking at tonight we're basically robbing Peter to pay Paul and we're going to have go around next year and revisit the rate again and I don't think anybody here wants to do that, personally.

Q. What is this doing to us with the rating; we've always anticipated stuff like this.

A. It's not going to hamper our AAA rating, what we're doing here. They look at large areas in terms of volume, financial stability, are we true to our financial policies, debt service and meeting all the requirements that we need to put forward. I think that they would look at this fee as whatever it looks like as an appropriate response to stormwater and say "nice job, you saw the problem and addressed it". Just a comment about what's happened over the past month. You know this public administration means these things aren't exact science and what we present to our elected officials, you're right, it has been an interesting past couple of weeks in dealing with this and what we've presented to this commission before in terms of budgets, recommendations, cuts we think that we've been solid and right on with our recommendations. I still feel that even with going back and looking at these adjustments that we really haven't deviated from that. That this is a different methodology, yes it doesn't produce as much revenue, but what it does do is take into consideration other voices if you will around the table and the community having an opinion about what this should look like, they're all still paying, we are not pulling back from the tax exempt properties and we're not saying commercial, you're not going to pay anything, we've tried to strike a balance here and keep the residential at a rate that we feel that our residents can afford, that's going to be that much different to what was there before and also take into consideration what we're hearing in our commercial establishments as well. But still have in place a stormwater management fee. We've had the authority to have that fee in place since 2003 and we've chosen not to that. I feel good if we can advance this ordinance forward with this methodology and what this generates. We are going to have to look at this every year, we are going to have to go back and look at the stormwater management budget because it will change and there will be new requirements that are placed upon us. I hope you don't have to adjust the rate dramatically but we will revisit it just like we do with every other utility fund in the City.

A. Kristen stated that there was one thing that she had forgotten to mention, and there is a chart that would be proposed under here of four areas, 0.9 being the runoff coefficient for commercial or that which strongly developed, 0.4 is residential, that's what's on the handout, 0.25 is parklands and cemetery and then 0.2 is vacant parcels, vacant meaning that it has been altered in some way as to change the natural flow of water runoff but it doesn't have impervious structures on it. So this for example would be like the Enclave which is residential development under construction along Wolfe River Blvd, they've been altered and everything but there's no houses built on some parcels. Pure virgin property or lots that have some farmland are like this, that have never been altered at all, there's no structures, never have been structures on them, they're exempt by law and I just wanted to bring that home to you. That shift, doing that 0.25 and that 0.2 did cause those parcels to go up slightly versus the first one, but again, it's fair. Also the other thing is that if a property comes in just like under the first methodology, there's an appeal with respects to true runoff at that 0.9 may not be correct for the property or if that 0.4, that is part of the process and also a credit manual accompanies both. Just like the original, for giving credits for education and certain other things that they do.

A discussion ensued regarding adding a quality factor of 1.0 and it was unanimously supported by FAC members.

Q. What if it goes back and says the FAC says goes with original, it's going to come back up for the second reading? It can be voted up or down?

A. Kristen stated that we will present the gross area methodology; we will let it be known that this Commission did not endorse that if that's what you all decide.

A. Patrick said that we had told the BMA that we would go back and look at another methodology to calculate the fee, and one that still accomplishes what we feel we have basically done. There are still a lot of positives with what this addresses; it puts a fee in place. It gives us some breathing rooming in going into FY11 and it's based on sound engineering logic. It's a good methodology and it will work for us. I can support this going forward.

A. Kristen stated that the methodology that was being presented is unique as nowhere in Tennessee have they done this and the lawyers are saying yes you can but no-one else has done it, well, this is Germantown. It is sound, it's defensible, it's certainly reasonable and I think your recommendation to put in a quality factor that at such time could that be measurable and defensible, it is already in place. Again it is being fair and allowing the property just by law that puts on this need for this service to be provided to pay their share. We could've ploughed ahead or not come back here but Patrick, Ralph and I, we wanted to come back because we respect all of your input and questions of what we do. The respect of what we do and what we get from you is so important that it should never be weakened.

Comments by FAC Members

1. One more comment, the BMA has got to do what the BMA has got to do, in that regard perhaps what we ought to do is move that the gross area methodology plan be forwarded to the BMA for consideration without recommendation.
2. I think the motion ought to be forwarded that we recommend it.
3. Well, then we've recommended a change from what we had before
4. That's correct. I think I would have voted for this proposal before. Had I had time to look at it.
5. But that's irrelevant.
6. We've got two recommendations on the table
7. There's a change

8. Patrick stated that it's a change and I can tell you again that I can recommend this to the BMA, this gives us the tools we need to work with, and it gives another approach to doing it. I still think we respect and address the homeowners concerns, and at the same time we are listening to the other constituents out there who are part of our community as well. This is a good plan, there's nothing wrong with this.
9. I do think that this is a fair plan, because on the other plan, what you would end up having is these non profits that you mentioned in order to get their budget they'd be coming to you saying, can you defer this for another year because we don't it in budget. I think it's a reasonable compromise under the circumstances. I see their point of view and as a citizen I'm very upset that there's one person on that Board who is employed by somebody that's leading the charge against this and I am outraged about it.
10. Michael Stoll stated that this is a more defensible calculation going from a 4.6 to 2.25 – the 4.6 was probably a little bit on the harder to defend.
11. If you leave the ordinance as it is now, I believe that it will fail on the second reading because there is too much opposition. So whether you think it's fair or not is immaterial, people are going to fight it because they have to fight it because they can't afford to pay. As a private citizen, I find that the new method is totally fair. I think it is defensible and would support the recommendation. I think the previous one was indefensible. Since you have made reference to one of our Alderman indicating that he was in opposition to it, I would confess that probably I would oppose it as well. I understand you've made a recommendation, but it's hard when it look like the Aldermen are simply manipulating what you put out there and coming back and changing it. This alternative is what, had you known, I think you would have bought it. Its fair and I would support it.
12. Chairman Moody stated that we have always done things on a five or ten year around her, and I have heard some things tonight, that I'm just concerned that, let's make it right this time, where we don't have to visit this next year and maybe that quality thing gives us flexibility to do that but if its right it should be enough money in the COFFERS to fund it for the foreseeable future, unless there is, obviously the EPA or whoever is going to put some more standards on this to make the cost go up but if there's anything that we think that's coming then we should budget for it now so we're not having to do this in twelve month time.
13. Patrick said that in normal circumstances I would agree with you 100% but I think given the state of the economy and the unknowns that are still out there facing communities, not in Germantown but across the Country. The philosophy that the staff is adopting is our long range outlook is gotten pretty short, in terms of you can't rely on those five year projections and what's coming around the corner. We have narrowed that to about one or two years in terms of what is realistic and what can we anticipate coming, so at least for the next couple of years till we get through this, that's the philosophy internally that we've adopted in terms of trying to make long range projections. We've had staff eliminations over the past couple of years that I feel certain that at some point in time that we're going to bring those folks back on. It's a different world, so I would suggest that until we come out of this recession that we keep our financial planning model to a very short window.

****MOTION****

Clinton Harding moved to proceed with implementing a Storm Water Fee based on gross area methodology with a quality factor of 1.0. Bill Dudley seconded, and the motion passed unanimously.

ADJOURNMENT

Chairman Moody called for a motion to adjourn.

****MOTION****

Richard Wagoner moved to adjourn, John Gregory seconded and the motion passed unanimously. The meeting adjourned at 8:50 p.m