

BOARD OF MAYOR AND ALDERMEN

April 27, 2020

The regular meeting of the Board of Mayor and Aldermen was held on Monday, April 27, at 6 p.m. via live streaming. Meeting electronically was necessary to protect public health, safety and welfare in light of the COVID-19 pandemic.

Mayor Mike Palazzolo was present and presiding.

The following aldermen were present: Scott Sanders, Mary Anne Gibson, Dean Massey, Forrest Owens and Rocky Janda. Staff present: Michele Betty, Tony Fisher, Patrick Lawton, Mac McCarroll, Robert McLean and Cameron Ross.

Call to Order

The Mayor called the meeting to order.

Invocation

The invocation was led by City Administrator Patrick Lawton.

Statement from Mayor Palazzolo

All local governing bodies in the State of Tennessee have been impacted by the COVID-19 pandemic. Germantown is no exception. In an effort to carry out its governance and operational responsibilities lawfully, and effectively, while also considering the protection of public health, safety and welfare, the Germantown City Administration has taken steps to conduct Board of Mayor and Aldermen and other public meetings electronically. These actions were taken in response to Governor Bill Lee's Executive Order 16 which suspended the requirements of the Tennessee Open Meetings Act to the extent necessary to allow governing bodies subject to the act to meet and conduct essential business by electronic means.

The Board of Mayor and Aldermen has determined that meeting electronically is necessary to protect the health, safety and welfare of its citizens in light of the COVID-19 pandemic.

Further, notice of such electronic meetings has been, and will continue to be, published in the same manner as is currently used for regular meetings. The public is also, and will continue to be, able to view the agenda and have live access to the actual meetings by electronic means, by logging in to Germantown's website, and by clicking the appropriate link. Video recordings of the meetings will be made available as soon as practicable after each meeting on the City's website at www.germantown-tn.gov.

These measures are temporary, and are due to expire on May 18, 2020, unless further action is taken by Governor Lee.

Set Agenda

The Board was asked to set the agenda for the meeting.

Motion by Mr. Janda, seconded by Ms. Gibson, to approve the April 27, 2020 agenda as written.

Motion by Mr. Sanders to postpone item #9 Development Contract No. 1228 and Final Site Plan Approval – Dogwood Elementary School (New Cell Tower) until the Board of Mayor and Aldermen meet in person at City Hall. Due to a lack of second, the motion failed.

ROLL CALL: On original Motion by Mr. Janda, seconded by Ms. Gibson, to approve the April 27, 2020 agenda as written.

Sanders-yes, Gibson-yes, Massey-technical problems, unable to vote, Owens-yes, Janda-yes. Motion approved.

Approval of Minutes

Approval was requested of the minutes of the regular meeting held April 13, 2020.

Motion by Mr. Janda, seconded by Ms. Gibson, to approve the minutes of the Board of Mayor and Aldermen regular meeting held April 13, 2020.

ROLL CALL: Sanders-yes, Gibson-yes, Massey-technical problems, unable to vote, Owens-yes, Janda-yes. Motion approved.

Citizens to be Heard

Due to the COVID-19 pandemic and virtual public meetings by electronic means, citizens were invited to participate in Citizens to be Heard by submitting their comments via email to CTBH@germantown-tn.gov. All emails submitted were delivered to the Board prior to the 6 p.m. Board meeting. These emails are kept in the City Clerk's office as a permanent record.

The following came forward in favor of the proposed Dogwood Elementary School cell tower site:

Ed Jacobs, 2262 Kilbirnie Drive	Hayden Towne, 7894 Cloverbrook Lane
Lori Cox, 2042 Whispering Pines Drive	Andrew Fondaw, 2549 Horsham Drive
Jeanne Sisneros (address not provided)	Bryan Darr, EVP – Smart Cities
Manish Shrivastava, 1965 Arden Landing Cove	John Ueleke, 1792 Wellsley Drive
Margaret Ueleke, 1792 Wellsley Drive	Gayle Verneuille, 8185 Hampton Grove Lane
Gregory M. Blumenthal (address not provided)	Matthew Fischer, 8221 Beaufort Cove
Whitney Lane, 1971 E. Arden Oaks Drive	Mindy Fischer, 8221 Beaufort Cove
Meg Fischer, 8221 Beaufort Cove	Lou Katzerman, 1975 Arden Landing
Shawn Lane, 1971 E. Arden Oaks Drive	Belinda Watkins (address not provided)
Andrew Stark, 8980 Arden Meadows Drive	Joel Ashner, 2026 Arden Landing Drive
Johnny & Carol Justice, 1967 E. Arden Oaks Drive	Chun Luo, 1976 E. Arden Oaks Drive
Michelle Liu, 1976 E. Arden Oaks Drive	Beth Rowlett (address not provided)
Cynthia Eurich, 2064 Arden Landing Cove N.	Terry Fischer, 8221 Beaufort Cove
Barbara Patton, 1975 E. Arden Oaks Drive	John Kauffman, 7982 Sunny Creek Drive
Richard & Carrie Hardy, 1949 Arden Landing Cv. S.	Thomas Price, 8985 Acorn Landing Drive
Natalie Williams, 8049 Neshoba Road	Joanna Young, 7126 Paddock Cove
Kristin New, 1859 Glenbuck Cove North	Kathy & Gary Veazey, 1969 Arden Landing Cv. S.
Wes Burrow, 2044 Arden Landing Cove N.	Carter Towne, 7868 Edmonton Park Lane
Lee Goodman, 1990 Arden Landing Drive	Nancy & Bernie Fechter, 9004 Arden Meadows Dr.
Lisa Blake, 8993 Acorn Landing Drive	Rick Towne, 1953 Arden Landing Cove S.
Amanda Kesner, 1940 Chelsea Park Drive	

The following came forward in opposition to the proposed Dogwood Elementary School cell tower site:

Karen Rehkopf (address not provided)	Blake & Kristen Waddell, 8345 Glen Meadow Ln.
Clyde Johnson, 8480 Hunters Forest Cove	Hasmukh Prajapati (address not provided)
Chris and Carie Alley, 2553 Rooksworth Cove	Laura Turner, 8944 Winding Way
Wallace Bell, 2111 Prestwick Drive	Toni Nygren, 1824 Johnson Road
Jennifer Bell, 2111 Prestwick Drive	Debbie Brown, 1765 Enclave Green Cove
Lauren Pardue, 9600 Spring Meade Lane	Katie Laird, 8955 Grovelawn Cove W.
Elizabeth O'Connell, 2264 Dogwood Oaks Drive	Lauren Wildrick, 8988 Winding Way
Larry and Sandy Mansel, 2243 Kilbirnie Drive	Kapil Dalsania (address not provided)
Ida Annuziata, 2383 Bracton Avenue	Antonio Monaco, 2383 Bracton Avenue
Seema Patel, 2271 W. Glenalden Drive	Ann Parker, 8388 Dell Oak Cove
Jamie & John Paul Carpenter, 9456 Johnson Road Ext.	Travis and Katherine Flee, 2657 Sweet Maple Cove
Stephanie Thomas, 8959 Winding Way	Valeria Vasquez & Julio Cordero, 9312 Hawthorn Hill
Sophia and David Cole, 9196 Sycamore Creek Cove	Shelly Gaul, 2466 Redbud Trail Drive
Bess Warren, 2489 Netherhall Drive	Kathryn Hickey, 8812 Rock Maple Cove

Elizabeth Sabau (address not provided)

Nabiha Huda, 2526 Calkins Road

Two citizens came forward to express their concern regarding the reopening of the Germantown Community Library during this stage of the pandemic.

Annie Howard, Germantown Community Library

Dani Sposato, 8250 Beaufort Cove

Two citizens came forward regarding budget cuts concerning the Germantown Municipal School District.

Jon-Paul Hickey, 8812 Rock Maple Cove

Mandy Vezina, 2534 Turpins Glen Drive

Alderman Massey's technical problems resolved.

PRELIMINARY AGENDA

Appointment – Financial Advisory Commission

There are currently 23 members on the Financial Advisory Commission due to the resignation of Ashley Hopper. This commission may have a total of 24 members.

MOTION: To appoint Mr. Frank Monteleone to the Financial Advisory Commission with a term ending December 31, 2020.

Donations - Education Commission

The Germantown Education Commission continues to work to supplement budgeted funds. Their efforts have, once again, been met with generous support from the community. Ben and Riann Fisher, Tower Ventures and Trustmark Bank each donated \$1,500.00; Stephen and Brooke Toarmina and SunTrust Bank each donated \$1,000.00; Grove Park Homeowners Association donated \$200.00; Brian and Sue Carney, Laura Clark, Patricia Toarmina, Frank Uhlhorn, Adam and Kalyn Underwood and Titan Pallet each donated \$100.00. The donations will be used to fund awards for Teacher of the Month, Teacher of the Year, and the Battle of the Brains math and science competition.

MOTION: To accept donations to the Germantown Education Commission in the amount of \$7,300.00, and to approve Budget Adjustment No. 20-107.

Donations – Germantown Community Library

The Library works in partnership with many local organizations and individuals to provide top quality services to its patrons. The donations from Amy Bryer - \$15.00, Calligraphy 101 Group - \$240.00, and the Shelby County Republican Women's Club - \$100 were all designated for the enhancement of Library programs. The Indian Community Fund of Greater Memphis donated \$100.00 for additional materials for our new World Peace Collection. The contributions made by Friends of the Germantown Community Library - \$2,008.00, the Kiwanis Club of Germantown - \$2,008.00, and Library Systems & Services - \$5,000.00 were donated so that the library may acquire furniture and equipment for the new conference room.

MOTION: To approve donations to the Germantown Community Library in the amount of \$9,471.00, and approve Budget Adjustment No. 20-102.

Grant – Big Read

The City is a 2019/20 recipient of a grant for \$12,800.00 to host The Big Read. This is the fourth time in five years that the City has received this prestigious grant. A program of the National Endowment for the Arts, The Big Read broadens understanding of our world, our communities and ourselves through the joy of sharing a good book. Managed by Arts Midwest, this initiative offers grants to support innovative community reading

programs designed around a single book. The Big Read in Germantown focused on “Station Eleven” by Emily St. John Mandel. Activities took place in September and October.

MOTION: To accept the 2019/2020 Big Read grant in the amount of \$12,800.00, and to approve Budget Adjustment No. 20-103.

Reimbursement – Overtime Police

The Police Department has an officer assigned to the Federal Bureau of Investigation Joint Safe Streets Task Force, the Drug Enforcement Administration Task Force, the Terrorism Task Force, the Secret Service Task Force and the Alcohol Tobacco and Firearms Project Safe Neighborhoods Task Force. The officer usually works overtime in the performance of his duties. The Task Forces reimburse any overtime that the officer receives while carrying out his/her duties.

MOTION: To recognize overtime reimbursement from the Federal Department of Justice and the Department of Homeland Security in the amount of \$10,030.00; recognize the overtime reimbursement from Safety and Security Solutions, LLC in the amount of \$896.00; recognize the overtime reimbursement from Temple Israel in the amount of \$812.00; and approve Budget Adjustment No. 20-98 for a total adjustment of \$11,738.00.

Rejections – Multiple Bids & Proposals

In light of the unforeseen circumstances surrounding the corona virus pandemic, staff recommends the formal rejection of several bids and proposals.

MOTION: To formally reject all of the submitted bids and proposals from the following solicitations: Neshoba Lake Asphalt Recreation Trail; Community and Employee Survey; Annexation Water Main PHII; WRB/Germantown Road Intersection Improvements; and WRB/Germantown Road Intersection Improvements CEI Services.

Development Contract No. 1229 and Final Plan Approval – The Learning Experience

The proposed project, the Learning Experience, is a day care center. Per Sec. 23-402(2) of the Zoning Ordinance, child care facilities are permitted in the “C-2” General Commercial zoning district. The request also conforms to the conditions of the approved outline plan for the Forest Hill Heights Amended PD.

MOTION: To approve Development Contract No. 1229 and the final plan (Phase 18C of the Forest Hill Heights Planned Development Third Amendment) for The Learning Experience.

Development Contract No. 1230 – Evangelical Christian School

The property is a private elementary school. The proposed project is for an 11,655 s.f. building expansion to accommodate the school’s early education program. As part of the expansion, the applicant is proposing a revised landscape plan for the affected areas, as well as a tree mitigation approach in the form of a private arboretum for the school.

MOTION: To approve Development Contract No. 1230 for a building expansion at Evangelical Christian School (1920 Forest Hill-Irene Rd.).

Motion by Mr. Janda, seconded by Ms. Gibson, to approve the preliminary agenda as read.

ROLL CALL: Sanders-yes, Gibson-yes, Massey-yes, Owens-abstain, Janda-yes. Motion approved.

REGULAR AGENDA

Ordinance 2020-05 - Rezoning of 9695 Poplar Ave. (“O” Office to “RE” Residential Estate) – Third and Final Reading

The existing single-family house was built in 1953 under the “AG” Agricultural zoning in Shelby County. In 2000, this property was annexed into the City of Germantown and the zoning designation “O” Office was placed on this property, as well as on the other single-family parcels to the east. This property, as well as the other parcels to the east, which are zoned “O” Office, have remained single-family residential and have not redeveloped since being annexed into the City of Germantown.

The applicant, Centennial Homes, LLC, is requesting approval for the rezoning of one parcel of land containing 7.46 acres, from “O” Office to “RE” Residential Estate. The property is developed with a single-family house, which is considered a legal non-conforming structure under the current “O” Office zoning designation. The property is bordered to the north by the railroad tracks, to the west and south by Memphis Light Gas and Water (MLGW) property with utilities, and to the east by a single-family residence (also zoned “O” Office). The applicant wishes to improve the property as a single-family house, either as an addition to the existing house or demolition of the existing house and construction of one new house. In order to allow such single-family residential improvements, the property must have a zoning designation that allows this use. Under the “O” Office zoning designation, single-family residential is not an allowable use. A zoning designation of “RE” Residential Estate would allow the applicant to improve the property as single-family residential with the related allowable accessory uses.

Motion by Mr. Owens, seconded by Mr. Sanders, to approve on third and final reading Ordinance 2020-05, the rezoning of 9695 Poplar Ave. from “O” Office to “RE” Residential Estate.

ROLL CALL: Sanders-yes, Gibson-yes, Massey-yes, Owens-yes, Janda-yes. Motion approved.

Development Contract No. 1228 and Final Site Plan Approval – Dogwood Elementary School (New Cell Tower)

City Attorney Mac McCarroll recused himself from discussion on this item. His employer, Burch Porter & Johnson, represents Tower Ventures, the development contract cell tower company. Attorney Robert McClean, with Farris Bobango & Branan, is the legal counsel for the City’s Design Review Commission and will serve as legal counsel for this agenda item.

Alderman Owens recused himself from discussion on this item. His daughter is a student at Dogwood Elementary School.

Request for Information: Alderman Sanders is not familiar with Mr. McClean. Mr. McClean introduced himself.

Request for Information by Alderman Massey: Mr. McClean provided additional information regarding attorney conflicts of interest.

On September 25, 2018, the Board of Education for the Germantown Municipal School District (GMSD) approved the option and land lease agreement with Tower Ventures for a new cell tower at the school. Per Section 23-86(c)(2), wireless transmission facilities are allowed within residential districts, with the approval of a use on appeal approved by the Board of Zoning Appeals (BZA). On December 11, 2018, the BZA granted a use on appeal to allow a cell tower at Dogwood Elementary School. Both the Planning Commission and Design Review Commission granted approval of the new cell tower in the originally requested location on

February 2, 2019, and on March 28, 2019, respectively. The request did not advance to the Board of Mayor and Aldermen for review and approval.

On May 22, 2019, the Planning Commission Subcommittee reviewed a revised location for the proposed cell tower, still located on the Dogwood Elementary School property, but within the limits of Dogwood Park. The applicant withdrew this request.

On January 13, 2020, the GMSD Board of Education approved an amended option and land lease agreement with Tower Ventures for a third revised location of the cell tower that is now being requested. The Planning Commission and the Design Review Commission recommended approval of this request on February 4, 2020, and February 25, 2020, respectively.

Motion by Mr. Janda, seconded by Ms. Gibson, to approve Development Contract No. 1228 and the final site plan for a new cell tower on the Dogwood Elementary School property (8945 Dogwood Rd.).

Motion by Mr. Sanders, seconded by Mr. Massey, to postpone this agenda item until the July 13, 2020 meeting of the Board of Mayor and Aldermen in hope that the Board meeting will be held in person.

ROLL CALL: Sanders-yes, Gibson-no, Massey-yes, Owens-abstain, Janda-no. Motion fails.

Point of Order by Alderman Massey: In the event of a tie, the motion does not fail. In response, Attorney McClean confirmed that a tie does not result in approval.

Point of Order by Alderman Massey: The Mayor should vote to break a tie. The Mayor responded that the point was well taken and called for the City Clerk to request the Mayor's vote. The Mayor voted to abstain. The motion to postpone fails.

Point of Inquiry by Alderman Massey: Why did the motion fail? Mayor Palazzolo confirmed that the motion did not receive a majority vote.

Request for information by Alderman Janda: Has the site of the cell tower been given to Tower Ventures by the City? Mayor Palazzolo confirmed it has not.

Point of Order by Alderman Massey: Debate has ended and the City Attorney is giving an opinion. Mayor Palazzolo stated the point was not well taken. The City Attorney is allowed to state facts.

Point of Order by Alderman Massey: The City Attorney is allowed to continue to talk. The Board should be able to rebut. In response by Mayor Palazzolo, this is not a debate. It is information for the Board.

ROLL CALL: On original Motion by Mr. Janda, seconded by Ms. Gibson, to approve Development Contract No. 1228 and the final site plan for a new cell tower on the Dogwood Elementary School property (8945 Dogwood Rd.).

Sanders-yes, Gibson-yes, Massey-no, Owens-abstain, Janda-yes. Motion Approved.

Meeting adjourned.