

BOARD OF MAYOR AND ALDERMEN

September 27, 2010

A regular meeting of the Board of Mayor and Aldermen was held on September 27, 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, Ernest Chism, John Drinnon, Carole Hinely, and Mike Palazzolo. Staff present: Patrick Lawton, Tom Cates, Chief Richard Hall, Pam Beasley, Jerry Cook, Bo Mills, Ralph Gabb, Butch Eder, Tim Gwaltney, Joe Nunes, and Dotty Johnson.

Call to Order

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

Invocation

City Administrator Patrick Lawton gave the invocation.

Pledge of Allegiance

Boy Scout Troop 270 from Germantown Presbyterian Church presented the Colors and led the Pledge of Allegiance.

Approval of Agenda

Agenda was approved as set.

Motion by Mr. Drinnon, seconded by Ms. Hinely, to adopt the agenda as printed.

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

Approval of Minutes

There were no corrections or additions to the minutes.

Motion by Mr. Drinnon, seconded by Ms. Hinely, to approve the minutes of the Board of Mayor and Aldermen meeting held September 13, 2010.

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

Beautification Commission Business Award

Alderman Palazzolo presented the award to Dianne Fry, Senior Vice President of Private Banking with Landmark Community Bank. The bank is located at 2241 S. Germantown. The bank was selected for its extensive plantings incorporating color, size, texture and variety.

Citizens to be Heard

Mr. Steve Fracchia of 8992 Latimer Dr. and representing Our Lady of Perpetual Help Catholic School and Church. He asked for immediate action to address their request for a variance to the sign ordinance which had been held at an impasse over the authority of the DRC to grant certain variances.

Motion by Mr. Billingsley, seconded by Mr. Drinnon to direct staff to pull out whatever respective variances for OLPH for consideration so the Board could vote to accept or deny the variance or any variance that had been considered so the request would not be held up because of the lack of action from the Board.

Alderman Billingsley asked if a vote could be taken on each of the separate issues on the variances within the amendment.

City Attorney Tom Cates stated the Board must amend the ordinance. The DRC or the Board of Mayor and Aldermen has no authority to grant variances. Some months ago, a modified ordinance came before the Board applicable to the DRC that would have amended the ordinance to grant variances in numerous instances and there was modification to the sign portion of it where what the church has asked for would not require a variance. We cannot deal with issues separately without amending the ordinance. His earlier recommendation was to amend the ordinance to allow the DRC to grant variances in certain instances and other instances they would have no such authority and it has ended at that point. While we have some very worthwhile cases to justify a variance, it is stymied. Mr. Cates stated the Board should make up their minds as to whether to allow the DRC to grant variances or if not the Board of Mayor and Aldermen would be the only ones with that authority.

Mayor Goldsworthy stated that the motion as made would not accomplish bringing it forward an ordinance for the Board to consider.

Alderman Billingsley stated that he would withdraw his original motion.

Mayor Goldsworthy stated at the next Board meeting staff would bring two actions for the Board to consider and would identify if there was a way in which to move the process ahead.

Mr. Jim Schmiedick of 3085 Poplar Grove Lane came forward and stated there were several residents present who were here and in favor of the subject of the Street and Infrastructure Conversion Policy. He gave his personal thank you to the Board for its consideration of the policy and the courtesy that had been shown to him over the months this item was studied.

Resolution 10R17 – A Resolution Approving the Street and Infrastructure Conversion Policy

Director of Development Jerry Cook stated the Planning Commission had recommended the adoption of this policy. The policy describes in detail the process of the criterion the information required and approval is required in order for the streets, water lines, sanitary sewers and storm drains by the developer to be transferred from private development to public responsibility and vice versa. The review process would require both preliminary and final approval of the Planning Commission and then to the Board of Mayor and Aldermen for their final approval.

Approval of the resolution will allow homeowner associations and landowners to apply for the City to take over ownership and maintenance of their private streets and infrastructure and will also allow landowners within a subdivision of public streets to apply for permission to own and maintain those streets.

A discussion followed on the policy and the number of subdivisions that would actually request that their streets become public.

RESOLUTION 10R17 A Resolution to Approve a Street and Infrastructure Conversion Policy

WHEREAS, there are several residential subdivisions within Germantown with private streets and infrastructure, some of which have indicated an interest in converting those streets into public streets; and

WHEREAS, there are also some subdivisions with public streets whose lot owners have indicated an interest in converting those streets into private streets; and

WHEREAS, the City of Germantown Planning Commission and the Department of Economic and Community Development have proposed the attached *Street and Infrastructure Conversion Policy* to address the processes and criteria needed to address such situations; and

NOW, THEREFORE, BE IT RESOLVED by the City of Germantown Board of Mayor and Aldermen that the *Street and Infrastructure Conversion Policy* is approved.

Motion by Mr. Palazzolo, seconded by Ms. Hinely, to approve Resolution 10R17 and the Street and Infrastructure Conversion Policy.

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

Ordinance 2010-7 – Amendment to the Stormwater Management and Pollution Control Ordinance – Third and Final Reading

Mr. Lawton explained that this amendment would change two things, it would move the Stormwater Ordinance from the zoning section of the Code of Ordinances and place it in the utility section of the Code; and it would establish a stormwater hearing board to hear appeals related to damage assessments, civil penalties and/or stormwater user fees in connection with the City's stormwater management ordinance.

Motion by Ms. Hinely, seconded by Mr. Drinnon, to approve on third reading Ordinance No. 2010-7, an ordinance to amend Chapter 21 (Utilities) and Chapter 23 (Zoning) of the Code of Ordinances of the City of Germantown to adopt certain provisions related to stormwater management.

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

Appointments to Local Stormwater Hearing Board

Mr. Lawton stated the purpose of the hearing board would be to act as an appeals board regarding damage assessments, civil penalties regarding the City's stormwater management program including challenges to the calculation of the City's stormwater management fee.

Staff had identified three individuals to represent the engineering and land use architect interests that are required by the ordinance.

RESOLUTION 10R18 – A Resolution Creating a Local Stormwater Hearing Board

WHEREAS, the purpose of this resolution is to create a local hearing board for the purposes of hearing appeals (i) by any person incurring a damage assessment or civil penalty pursuant to the enforcement of the City's ordinances relating to stormwater management; or (ii) by any person who disagrees with the calculation of the stormwater user's fee or the determination related to a stormwater user's fee credit. The board shall consist of five members, including the director and one alderman designated by the board of mayor and aldermen. The other three members shall be appointed by the board of mayor and aldermen. Such appointed members shall be professionally qualified in the fields of engineering or landscape design. The director shall serve as the chair of the local hearing board. The local hearing board shall meet and organize to select a vice-chair and a secretary.

WHEREAS, the terms of the three members appointed to the local hearing board shall be for such length as the board of mayor and aldermen shall specify; provided, however, that the terms shall be arranged so that the term of one appointed member shall expire each year. Terms shall expire in staggered terms, but each member shall serve until their successor is appointed. Any vacancy of an appointive membership shall be filled for the unexpired term by appointment of the mayor. Any

member of the local hearing board may be removed at any time without cause by the board of mayor and aldermen.

WHEREAS, board meetings shall be held at least monthly and scheduled by the chairman of the local hearing board to coordinate with the time frames for appeals as set forth in this Article and Article VIII of Chapter 21 of the City's Ordinances. A majority of the members shall constitute a quorum, and a quorum shall be required to transact board business. The board shall keep minutes of the proceedings showing the vote of each member upon each question, or if a member is absent or fails to vote, indicating such fact. Copies of these minutes shall be transmitted to the board of mayor and aldermen monthly. The local hearing board, by majority vote, may adopt rules governing its procedures.

NOW, THEREFORE, BE IT RESOLVED that the Board of Mayor and Aldermen of the City of Germantown establish a local stormwater hearing board in the City of Germantown.

ADOPTED this 27 day of September, 2010.

Motion by Mr. Billingsley, seconded by Ms. Hinely, to adopt Resolution No. 10R18 authorizing the creation of the Local Stormwater Hearing Board and to appoint the director of community development, landscape architect Jay Easter, R.L. A., appointment to end 12/31/10, engineers James Simpson, P.E. with Allen & Hoshall, appointment to end 12/31/11, and Doug Dietz, P.E. with the Pickering Firm, appointment to end 12/31/12, and Alderman Drinnon to serve as the members of this hearing board.

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

Consulting Services – Board of Mayor and Aldermen Retreat

Mr. Lawton stated that over the past several years the Board had been involved in some form of annual retreat to establish long-range goals and objectives for the City. This level of strategic planning had served the City well and had allowed the Board to address the long-term growth of the City and to refocus the goals and objectives on an annual basis. It is especially helpful to the development of the budget and the City's five-year financial plan.

Alderman Billingsley stated he would recuse himself because of Convergent HRS involvement with Methodist/LeBonheur Healthcare with which he is employed.

Motion by Ms. Hinely, seconded by Mr. Drinnon, to authorize the mayor to enter into a contract with Convergent HRS, LLC to conduct a planning session and retreat with the Board of Mayor and Aldermen in an amount not to exceed \$23,000.00 and to approve Budget Adjustment No. 11-29.

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

Ordinance 2010-8 – Amendment to Chapter 6 – Buildings and Building Regulations – Second Reading

Neighborhood Services Manager Joe Nunes stated this amendment would adopt the building and other related codes that are in effect for Shelby County. The current language in the City's ordinance was not up to date and this amendment would bring the City's code in line with the County's building codes. This amendment will also bring the City's code into compliance with state law.

Motion by Mr. Drinnon, seconded by Ms. Hinely, to approve the amendments to Chapter 6 of the Code of Ordinances on second reading.

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

Street Sweeping Contract

The Director of Public Services Bo Mills stated this will be the first year of a three-year contract with two one-year extension options which will provide contract sweeping services until October 2015. There were bids from two bidders and this is the low bid.

The three-year contract will be: FY11-\$125,000, FY12-\$187,031, FY13-\$194,661, options: FY14-\$196,981, FY15-\$203,106.

Motion by Mr. Drinnon, seconded by Ms. Hinely, to enter into a three-year contract with two one-year options with Simmons Sweeping Company for contract sweeping services and to approve the first fiscal year in the amount of \$125,000.00.

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

Professional Services Agreement – Farmington Blvd. Reconstruction Phase II (Allenby Road to Germantown Road)

City Engineer Tim Gwaltney explained this was for engineering services related to the Farmington Blvd. Reconstruction Phase II project. Phase II will include Farmington Blvd. Reconstruction from Allenby Road to Germantown Rd. and will be funded through the Local Surface Transportation Program (LSTP). Local STP funded projects are 80% reimbursable to the local jurisdiction.

The Pickering Firm was chosen by the selection committee as the best qualified firm to perform the tasks necessary to complete this project. Upon completion of the design phase approximately December of 2010, Pickering will provide the City with a cost proposal for Construction Engineering and Inspection services. Construction is anticipated to begin approximately May of 2011 and be completed within six months.

Motion by Mr. Drinnon, seconded by Ms. Hinely, to authorize the approval of a Professional Services Agreement with the Pickering Firm, Inc. in the amount of \$182,655.00 for design services related to Farmington Boulevard Reconstruction Phase II.

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

Alderman Drinnon stated there had been a forum on Consolidation of Governments in which there were two people who spoke in favor of consolidation and two who spoke against it and another forum was scheduled to be held at GPAC.

Mr. Lawton stated the Board had a Special Called Meeting several weeks ago where the Board identified several things they wanted to do and one of which was to have a Town Hall Meeting on consolidation and to invite the proponents. In August, Administration contacted the Rebuild Government Organization which is taking the calls for the proponents of consolidation and invited them to participate in our Town Hall Meeting in October. He heard back from them and they declined to participate in the event.

Aldermen Drinnon stated he had read that letter and noted parts of the letter that stated....”We think it is poor, if not illegal, public policy for the City of Germantown and other towns to use public resources and buildings to support the political position of your Mayor and Board of Aldermen and to engage in the political campaign” The letter went on to say that our Mayor had knowingly spread misinformation and untruths about the new charter. Alderman Drinnon stated he found that very offensive. He asked the City Attorney to comment in regard to the public buildings statement.

City Attorney Tom Cates stated that public buildings may certainly be used for matters of this nature. What could be more important than educating citizens not only of Germantown but of Shelby County about the momentous political situation that is facing them on November 2 whether to merge the governments. He stated and this chamber and other facilities of the City had been used previously to educate and inform and provide the public the opportunity to meet and discuss issues. He asked where the Charter Commission met for its meetings and how Shelby County dedicated two attorneys and the City of Memphis dedicated one or more attorneys to the effort to assist in drafting the charter.

Mr. Cates stated he found himself in the position of whoever wrote the letter that there was something inherently wrong in avoiding a meeting place to discuss this political situation was ludicrous.

Alderman Drinnon stated it was wrong to criticize the Mayor who had spent a lot of time on this issue. She had kept the Board briefed on the issue and had formed a speakers group that she is working with to speak to the different groups in our City.

Motion by Mr. Drinnon, seconded by Ms. Hinely, to support the efforts of Mayor Goldsworthy in her activities that she deems necessary in order to speak to this issue.

Mayor Goldsworthy stated that all realize that as elected officials we are all “fair game” for criticism, particularly if it is an action that the community may not agree with. She stated she did take very personally an assault on our personal integrity and our performance particularly when someone calls you a liar. It is interesting that in all discussions that we have been to and participated in, she had not had this organization Reform Government, refute a single word of anything that we have said in opposition to this referendum. She stated she appreciated the Board’s perspective on this letter and she felt the community needed to understand that the Board of Mayor and Aldermen is in the business of doing their very best to inform everyone of the issues and how it will impact our citizens as well as our city and its future.

Mayor Goldsworthy expressed her gratitude to the Board in their support and agreement on this issue and the fact that we are working as a team to make certain our community is well informed.

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

Alderman Palazzolo stated that he would be recusing himself from voting on Consent Agenda Item 15b – (Approval of Subdivision Development Contract No. 497 – Garner Woods Subdivision).

CONSENT AGENDA

Recognition of Donation – Germantown Animal Shelter

The 15th Annual Weenie Race was held at C.O. Franklin Park in conjunction with the Germantown Festival. The net revenue includes the sale of caps, tee shirts, bandanas and individual donations to the Shelter. The total net proceeds of \$1,747.16 will be used to purchase food and veterinary supplies to medically treat the shelter animals.

MOTION: To recognize and accept proceeds presented to the Germantown Animal Shelter from the 2010 “Running of the Weenies” in the amount of \$4,625.60.

Approval of Subdivision Development Contract No. 497 – Garner Woods Subdivision

The property is located on the west side of Johnson Road, south of Dogwood Road. The subdivision was approved in 2004 but has returned with a new developer for the project. Since purchasing the subdivision in foreclosure, the new developer has requested to return to public streets in the subdivision without entrance gates.

MOTION: To approve the Subdivision Development Contract No. 497 for Garner Woods Subdivision.

Recognition of Overtime Reimbursement – Police Department

The Germantown Police Department has an officer assigned to the FBI Joint Safe Streets Task Force and the Secret Service Task Force. The officer usually works overtime in the performance of his duties. The FBI SSTF and the Secret Service TF reimburses any overtime that the officers receive while carrying out his duties.

MOTION: To recognize overtime reimbursement from the Federal Department of Justice and the Department of Homeland Security and to approve Budget Adjustment #11-27.

Approval of Consulting Contract for Solid Waste Collection and Disposal Proposal

The City's current solid waste and disposal contracts expire at the end of FY11. The City is in the process of preparing a competitive sealed proposal to identify alternatives for the collection and disposal of residential solid waste. The budget for solid waste collection and disposal this fiscal year is over \$3.8M. Due to the significant budget and reevaluation of the services provided, funds were allocated in the FY11 budget for the use of a consultant in this process.

MOTION: To authorize the Mayor to enter into a consulting services contract with Environmental Business Services in the amount of \$16,500.00 for the preparation and analysis of the FY12 solid waste collection and disposal proposals.

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

ROLL CALL: Chism – yes, Billingsley–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.

Sharon Goldsworthy, Mayor

Dotty Johnson, City Clerk/Recorder