

BOARD OF MAYOR AND ALDERMEN
October 22, 2007

A regular meeting of the Board of Mayor and Aldermen was held on October 22, 2007 at 7:00 p.m. in the Council Chamber of the Municipal Center.

Mayor Goldsworthy was present and presiding.

The following Aldermen were present: Ernest Chism, John Drinnon, Carole Hinely, and Mike Palazzolo. Alderman Frank Uhlhorn was absent. Staff present: Patrick Lawton, Tom Cates, Andy Pouncey, George Brogdon, Kristen Geiger, Pam Beasley, Jerry Cook, Chief Richard Hall, Pat McConnell, Bo Mills, Chief Dennis Wolf, Michael Stoll, Ralph Gabb, Melody Pittman, Josh Whitehead, Joe Nunes and Dotty Johnson.

Mayor Goldsworthy brought the meeting to order. There was one item on the agenda that had been deferred and during the Executive Session, the Board agreed to two additional items to add to the agenda, one a payment to a developer regarding a refund to a development contract. The other item was a contract with the Germantown Community Theatre for children's theater programming. Item 14c on the consent agenda, which had to do with the telephone system, was moved to the regular agenda as 13b.

Invocation

Mr. Jack Gresham, minister of single adults from Germantown Baptist Church gave the invocation.

Pledge of Allegiance

Alderman Palazzolo led in the Pledge of Allegiance.

Approval of Minutes

There were corrections made during the executive session.

Motion by Mr. Drinnon, seconded by Ms. Hinely, to approve the minutes of the Executive Session and Regular Meeting held October 8, 2007 as amended.

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

Citizens to be Heard

Patrick Lawton stated there was one card from Mr. Lou Wardlaw, an attorney representing several residents, but the description of his presentation before the Board was regarding one of the items on the agenda and inconsistent with the Board's policy regarding citizens to be heard.

Mr. David Spann of 2135 Brierbrook, chairman of Farmington South Neighborhood Association, came forward and was briefed on what he could and could not discuss. He was concerned that anytime there were any changes in the major streets that there is not an appropriate planning process to consider the impact of the changes before they are incorporated into a code. A formal study should be made of how the traffic flow would affect the areas and reconsider any portions of the code that would address changes in any part of the city. He was also concerned about the traffic lights and how they should be set to help with the pollution. He also was concerned that citizens were not allowed to speak about things on the agenda and felt the Board should reconsider its policy about hearing feedback from the community.

Ms. Sally Hitchcock of 1707 Hapano Drive asked if it were possible to get the minutes from the meetings posted on the web site in a more timely manner. She stated she had sent numerous e-mails to the Board and had not received any response. She was also concerned that Alderman Palazzolo's phone number was wrong on the web site.

Alderman Palazzolo stated his phone number for the audience.

Beautification Business Award – DEFERRED

Having no one present from the Beautification Commission, this item was deferred.

Youth Excellence Awards

Mayor Goldsworthy and Alderman Hinely presented Ms. Blair Stewart, a senior at Germantown High School with the Youth Excellence Award for the month of August. Mayor Goldsworthy read her many accomplishments and Alderman Hinely presented her with a plaque courtesy of Traditions.

Mr. Brian Matthews, a senior at Germantown High School, was presented the award for the month of September. Mayor Goldsworthy read his many accomplishments and Alderman Hinely presented him with a plaque courtesy of Traditions.

Teacher of Month Awards

Ms. Courtney Smith a fine arts teacher at Germantown High School, was presented the Teacher of the Month award for the month of August. Mayor Goldsworthy read some of her accomplishments as a dedicated and involved teacher. She was presented with a trophy and Mr. Jeff Arnold of Fisher and Arnold presented her with a check for \$100.

The award for the month of September was presented to Ms. Melinda Keller, a biology teacher at Germantown High School. Mayor Goldsworthy explained that because of her dedication and commitment she was chosen for the award. She was presented a trophy and a check for \$100 from FedEx.

Alderman Chism introduced Mr. Mike Macintyre, the interim principal of Germantown High School.

Ordinance 2007-15 – Amendment to Smoking Ordinance – Second Reading

Mr. Lawton explained this was an amendment to the existing Smoking Ordinance based on the action taken by the General Assembly. In June of 2007, the governor signed a bill prohibiting smoking in all public places and where the public gathers. Germantown has had an ordinance since the 1980's that limited smoking in public places and had lobbied hard in the past decade to further limit smoking in public gathering places. This bill accomplishes that task.

The state law went into effect on October 1, 2007 and this amendment change will bring our ordinance into compliance with the state law. The public hearing is to take place on the third and final reading on November 12, 2007.

Motion by Mr. Chism, seconded by Mr. Palazzolo, to adopt on second reading Ordinance 2007-15 amending Article II, Chapter 9 of the Code of Ordinances of the City of Germantown.

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

Ordinance 2007-18 – Smart Growth Rezoning – Request Rezoning of approximately 383 acres and Adoption of the Regulating Plan for the Smart Code – Third and Final Reading

Mr. Josh Whitehead stated this ordinance was the rezoning of approximately 383 acres from the conventional zoning classifications of Residential that is "R" Low Density, "R-3" Two-Family, R-T Townhouse, of office designations of "O" and "O-C" office campus, the shopping center designation of "SC-1", and the commercial designations of "C-1" Neighborhood Commercial, and "C-2" General Commercial to the Smart Growth zoning classifications of "T-3" Suburban, "T-4" General Urban, and

Ordinance 2007-18 – Smart Growth Rezoning – Request Rezoning of approximately 383 acres and Adoption of the Regulating Plan for the Smart Code – Third and Final Reading – (cont’d)

“T-5” Urban Center. The rezoning is the final stage of the three step process that began in April of 2007 with the Planning Commissions adoption of the Smart Growth Plan which acted as the general land-use plan for the area. The next step was the Smart Code, which were the rules and regulations of the proposed zoning districts.

Mr. Whitehead gave an outline beginning in 2005 with Vision 2020 and how the plan progressed to the rezoning proposed.

Motion by Ms. Hinely, seconded by Mr. Chism, to approve Ordinance 2007-18 on Third and Final Reading.

One person spoke out and asked to be recognized to accept a motion from the floor and another person asked to be recognized to speak to the Board.

Mayor Goldsworthy answered that the Board would not recognize a motion from the floor because that was not within the Board’s policy and practices.

Another person spoke out and asked that for his clients that he be allowed to speak on the record.

The Mayor stated that during the Executive Session immediately preceding the Board meeting, the Board was asked if it was interested in suspending its policies and practices to allow any further public discussion of the ordinance as it is considered on third reading. Because the Board follows its practices of accepting public input on the second reading and public hearing, the Board at this time declines to open the meeting or this discussion to further public input.

Several people began to speak at once and was inaudible.

One person came forward and stated the decision was made by acclamation and not by a vote and he asked for a voice vote.

Mayor Goldsworthy stated it was proper for the Board at any time to make a motion. She asked the Board if there was a motion to consider opening the third reading to further public interest.

There was an outbreak of comments from the audience.

Mayor Goldsworthy asked the audience to be respectful of the Board and not to comment.

The Board did not make a motion to further the public input.

Alderman Chism commented that he was made aware of the problem shortly after he got on the Board and that one mall had been all but boarded up. He stated he took spending the taxpayer’s money with a lot of seriousness and lot of thought. After studying the Smart Growth for over a year and having it steadily discussed since April he did not know of a better plan to guarantee the future of the City of Germantown without huge personal taxes levied on property.

Alderman Palazzolo stated that the Board was exposed to a concept plan in a work session that the Board called to get further explanation and get further consideration and discussion on Smart Growth explicitly for the triangle.

Ordinance 2007-18 – Smart Growth Rezoning – Request Rezoning of approximately 383 acres and Adoption of the Regulating Plan for the Smart Code – Third and Final Reading – (cont'd)

In response to a question from Alderman Palazzolo, Mr. Whitehead explained that the Planning Commission application for both site plan approval and rezoning approval as they are currently in place, both call for traffic impact analysis. Typically a developer will first have a property rezoned because there is a concept plan in place and he would not have to have the traffic impact analysis at the site plan approval stage. As the City is the applicant in this case, and there are so many possibilities with a given zoning classification, we were unable to do a traffic study at this moment. With a site plan consideration, preceding its submittal to the Planning Commission, a traffic impact analysis will be done. Prior to the Planning Commission voting on a specific site plan, it is their policy to insure that the applicant has met with the neighbors.

In a response to a question from Alderman Palazzolo, Mr. Whitehead stated that if a traffic study came back adverse the developer would have to amend the site plan until the traffic impact analysis is satisfactory to the Planning Commission. The application would also address drainage, emergency services, height restrictions, and all those type of considerations that are in the existing Planning Commission application. The applications now include elevation of buildings, landscaping, and lighting. These are added features to the Planning Commission's review in the Smart Growth area.

If an applicant were not able to meet a site line elevation, they would have to request and receive a warrant from the Planning Commission after which they would have to also get a warrant approved by the Board of Mayor and Aldermen which is an additional step from the existing procedures.

Citizens would have input at both the Planning Commission and the Board of Mayor and Aldermen meeting.

Alderman Palazzolo stated he appreciated the phone calls and the comments made by neighbors and he felt Smart Growth was very important for the future of Germantown. He felt the best time to plan for the City's growth is during it's best times not when there is economic depression. It is very hard to embrace change and he appreciated the concerns of the citizens and wanted them to continue to echo those concerns.

The citizens in the audience rose and showed signs and asked to speak.

Mayor Goldsworthy interrupted and asked the citizens to sit down and let the Board finish the business.

A member of the audience asked to suspend the motion for lack of fair disclosure.

Mayor Goldsworthy gaveled the audience to bring order to the meeting.

Alderman Hinely asked Mr. Whitehead if the things the citizens were so upset about have been brought before the Planning Commission and had the developers sat down with the City and discussed what was going to be put on the property.

Mr. Whitehead stated no, that the procedure for a site plan review would be: Step 1, the developer would submit a sketch plan in which the technical attributes of the plan would be scrutinized by the staff, engineering, fire marshal, and planning division. After the sketch plans, the developer would go back to the drawing board and formally submit a site plan which is about 20 different types of plans from drainage to building elevations and go to the technical advisory committee, which is the formal application to the Planning Commission which is a month long process. The first meeting is with City staff, the next meeting is with a subcommittee, notices are then mailed to everyone within 300 feet of the

Ordinance 2007-18 – Smart Growth Rezoning – Request Rezoning of approximately 383 acres and Adoption of the Regulating Plan for the Smart Code – Third and Final Reading – (cont'd)

proposed area, notice is given in the newspaper. The Planning Commission meets on the first Tuesday of the month at which time they review the site plan.

Alderman Hinely asked if it would be possible to find out who the presidents of the neighborhood associations are and send them notification so they would know when the plan is coming in for planning and zoning. This way the citizens would have input on what is going on on that land.

There was an outburst from the citizens in the audience and the Mayor had to gavel the meeting back into order.

Alderman Hinely responded that she had listened to the citizens many phone calls and it was time they listen to her. She explained that over the years there had been different administrations and they had made decisions for the future of Germantown just like the present Board was trying to do. Not everyone was pleased with some of those decisions but they are the reason the citizens were living in Germantown today. These decisions were the reason Germantown looks so beautiful and is so well run. She felt this Board was just as vigilant about what goes on their property and in Smart Growth. She stated that nothing was going to go on that property without the majority of the Board agreeing that it should be built there and that nothing would go on that property that would depreciate property.

Alderman Drinnon stated that he had attended all the sessions that the public was invited to participate in the Smart Growth Plan and many citizens had been there and expressed their opinions and they were taken into consideration. In the past two weeks he had met with individual citizens in the Neshoba North and Farmington South subdivisions and heard their concerns. He felt he had not heard any new concerns that were not expressed two weeks ago but shared with Alderman Hinely that when the development plans come forth, this is the time that they are reviewed very carefully by the Planning Commission and prior to that the staff and then by the Board. He stated he had been on the Planning Commission since the early 80's and had served under five mayors and during that time some very good decisions had been made.

He praised the leadership of Mayor Goldsworthy and stated there was hardly anything that went on that she was not aware of. Patrick Lawton, the City Administrator, had done a marvelous job for Germantown. He stated we have a triple A bond rating which is one of the very few in the entire nation which means we are frugal. The Board always tries to do what is best for the citizens and for Germantown.

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

The Mayor called a short recess to allow some of the citizens to excuse themselves.

Ordinance 2007-20, Amendment to the R-H Retirement Housing Zoning District Regulations

Mr. Whitehead stated this was the first reading for an amendment to the R-H Retirement Housing Zoning District classifications. The R-H district was created in 1997 that included language regarding age and age restrictions on the housing. The City Attorney had instructed Planning staff that the age restriction section of the ordinance was unconstitutional. The Planning Commission approved an amendment on October 2, omitting all language pertaining to age restrictions. These age restrictions are still legally enforceable on private covenants, deed restrictions, etc.

Ordinance 2007-20, Amendment to the R-H Retirement Housing Zoning District Regulations – (cont'd)

Motion by Mr. Drinnon, seconded by Ms. Hinely, to approve the amendment on first reading and set a public hearing date of November 26, 2007.

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

Investment Policy

Michael Stoll explained this item was to approve the revised Investment Policy to be used by the City's Financial Services Group. It will give guidance and direction when investing the City's money. Recently Tennessee legislation was enacted that specifically required the City's Board to adopt a written enforceable investment policy to govern the investment of public funds. The new legislation states that the policy be no less restrictive than the policy established by the State Funding Board that governs state investments.

Motion by Mr. Chism, seconded by Mr. Palazzolo, to approve the revised Policy Letter 27, Investments, to be used by the City of Germantown for prudently investing public funds.

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

Appointment to Germantown Community Library Board

Patrick Lawton stated the Board was asked to reappoint Mr. John Drinnon and Mr. Tom Cates to a three-year term expiring in July 2010.

Motion by Ms. Hinely, seconded by Mr. Palazzolo, to approve the reappointments of Tom Cates and John Drinnon to three-year terms on the Germantown Community Library Board, expiring in July 2010.

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

Professional Service Agreement – Design Work – Germantown Centre - DEFERRED

Telephone System

Kristen Geiger stated the phone system currently being used was installed in 1998 and over the years upgrades were added as needed or as required. Currently the City has facilities whose voice mails do not operate and the City contracts out with private vendors for voice mail services. The system at City hall crashes daily and must be upgraded or we try and recharge the system. Because of the antiquated software, it can no longer be updated. What was being requested would upgrade the phone systems existing infrastructure downstairs. The basic core of the phone system is valid and it is the software that needs to be upgraded as well as providing new phone boxes to eight facilities including Public Services, Fire Stations 1, 2, and 4, GPAC, Germantown Centre, Parks & Recreation Department and Germantown Community Library.

Staying with the current digital system will provide the ability to move better technology with the software upgrade to the latest version as well as providing a reliable voicemail system throughout the City. Five vendors were mailed packets and one bid was received and two vendors submitted letters of "No Bid". The agreement with Southeastern Telecom, Inc. provides five years of maintenance, which is included in the first year, and the four years after includes the equipment maintenance on the InterTell system.

Telephone System – (cont'd)

Motion by Mr. Drinnon, seconded by Mr. Chism, to authorize the Mayor to enter into a contract with Southeastern Telecom, Inc. in the amount of \$139,431.00 to upgrade the City's phone and voice mail system.

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

CONSENT AGENDA

Project Development Contract No. 1164 –Thorp Construction

The property is located at 7608 Poplar Pike and is zoned "O-G" Old Germantown. The applicant proposes a one-story addition to the existing building bringing the total square footage to 2,252 square feet. On-site parking will be provided on the north side of the property.

MOTION: To approve Project Development Contract number 1165 for the development of the Thorp Construction Company.

Automated Enforcement Program

By this agreement, Nestor agrees to install, operate and assist the City in the administration of a traffic control system at the intersections of Germantown Road/Wolf River Blvd. (north/south), Poplar Ave. and West Street (east/west), and Poplar Ave. and Kirby Parkway (east/west/south). In total, seven approaches will be monitored. Services include equipment and software to be supplied and installed by Nestor, citation preparation processes that assist the City in complying with current applicable law, training of City personnel and other support services.

The integrity of the system is key to the success of this program. Processing will be the responsibility of the Germantown Police Department. The Request for Bids went to six vendors and three responded. Nestor was the low bidder by all three methods of citation revenue collection.

MOTION: To authorize the Mayor on behalf of the City of Germantown to enter into an agreement, as approved by the City Attorney, with Nestor Traffic Systems, Inc. for a three-year agreement with an option for two additional twelve month extensions, for an automated enforcement program.

Library Furniture

Presently the adult popular materials are displayed on low shelf-like displays that cause problems for patrons. The new display cases will allow the adult popular materials to be displayed alphabetically by author and remain available for up to four months. DVD shelving will allow placement of our entire DVD collection in the public area of the library.

Bids were received from two vendors that specialize in this type of library furniture. The funds to purchase the furniture was made available by the Friends of the Germantown Community Library.

MOTION: To approve the purchase for library furniture from Pan American Furniture Company in the amount of \$13,905.00.

Library Heating Boilers

The Germantown Library has five heating boilers that provide heating and humidity throughout the facility. The current heating boilers have served their useful life from 1996 and are now inoperable. The State of Tennessee Boiler Division has inspected these boilers and put the four inoperable ones out of service.

Six vendors were contacted and 5 bids were received.

MOTION: To approve the authorization for the Mayor to enter into a contract with National HVAC Service Company in the amount of \$50,762.00 to replace the heating boilers that serves the Germantown Community Library.

Recognition of Donation – Friends of Library

Donations were made by the Friends of the Germantown Community Library in the amount of \$10,000.00 and by Richard Glassman in the amount of \$1,448.00.

MOTION: To recognize donations to the Germantown Community Library totaling \$11,448.00 in cash donations, and to approve Budget Adjustment No. 08-30.

Germantown Baptist Church Tent Permit for Annual Nativity Program

Each year during the holiday season, Germantown Baptist Church has a “Living Nativity Scene” on the church property. The activity will be held this year from November 3, through December 10. The church is proposing one 60 foot by 130 foot tent and one 30 foot by 40 foot tent.

MOTION: To approve the request by Germantown Baptist Church for a special permit for two tents at Poplar Avenue and Johnson Road from November 13 2007, through December 10, 2007, in conjunction with the “Living Nativity Scene” display.

Subdivision Development Contract No. 446 – Germantown Manor, 1st Addition – Payment to developer for Moore Road improvements

A condition of approval of the development contract required that the developer widen and improve the east side of Moore Road, an off site improvement. The City obtained the right-of-way and easements necessary for the improvements. The City would reimburse the developer on the cost of the construction. The total cost of the roadway improvements was \$58,525 minus the cost of the paving of the streets within the subdivision, which was \$19,988.18, and minus current personal property taxes of \$1,237.57 resulting in the \$37,299.25 payment to the developer for the road improvements.

MOTION: To approve the payment of \$37,299.25 to GGAT Development for improvement to Moore Road, associated with Germantown Manor, 1st Addition, Subdivision Development Contract #446, and approve budget adjustment number 08-18.

Germantown Community Theatre Agreement

A \$45,000.00 grant was included in the GPAC budget for the Germantown Community Theatre to provide youth theater programming to the Germantown community. This is the third year the Germantown Community Theatre has offered programming to Germantown youth through funding from the City of Germantown.

MOTION: To authorize the Mayor to enter into an agreement with the Germantown Community Theatre in the amount of \$46,000.00 to provide theatre programming for Germantown youth, pending approval by the City Attorney.

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

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

Board of Mayor and Aldermen

October 22, 2007

Page 9

ADJOURNMENT

Alderman Palazzolo asked that Mr. Lawton follow up regarding the minutes being posted to the website.
Alderman Chism asked that the sound system be looked at because there had been several complaints.

There being no further business to be brought before the Board, the meeting was adjourned at 8:05 p.m.

Sharon Goldsworthy, Mayor

Dotty Johnson, City Clerk/Recorder