

BOARD OF MAYOR AND ALDERMEN

February 26, 2007

A regular meeting of the Board of Mayor and Aldermen was held on February 26, 2007 at 7:15 p.m. in the Council Chamber of the Municipal Center.

Mayor Sharon Goldsworthy was present and presiding.

The following Aldermen were present: Ernest Chism, John Drinnon, Carole Hinely, Mike Palazzolo and Frank Uhlhorn. Staff present: Patrick Lawton, Tom Cates, George Brogdon, Kristen Geiger, Jerry Cook, John Dluhos, Chief Richard Hall, Pat McConnell, Bo Mills, Chief Dennis Wolf, Michael Stoll, Michael Saddler, Butch Eder, Josh Whitehead, Jim Jetton, Joe Nunes, Michael Stoll, Glen Campbell and Dotty Johnson.

INVOCATION

Rev. Rick Kirchoff from Germantown United Methodist Church gave the invocation.

PLEDGE OF ALLEGIANCE

Alderman Drinnon led the Pledge of Allegiance.

APPROVAL OF MINUTES

The minutes were approved as read.

Motion by Mr. Drinnon, seconded by Ms. Hinely, to approve the minutes of the Executive Session and Regular Meeting held February 12, 2007.

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

CITIZENS TO BE HEARD

Mr. Mark Field – 6019 Bent Creek Dr. – Mr. Field expressed his concern over the ongoing discussion about privatization of the Germantown Centre. After polling a number of members, the majority of members did not like the idea of privatization because it is perceived as something that would result in an increase in the dues. He felt the Centre was a great asset to the community even though the equipment is now dated. There are a number of community assets such as parks that lose money, but they are considered municipal assets even though expenses do not meet revenues.

He asked to set up an advisory council for the Centre to look at ways of maximizing revenues.

Mr. Mark Sharp – 8373 Meadow Run Cove – Mr. Sharp asked for the Board's support and action on the high school boundaries. He asked the Board to support Neighborhood Schools. Houston and Collierville high schools have 100% of all the students within a three-mile radius of their schools. Germantown High School has only 60% of the students within a three-mile radius. He asked the Board's help by passing a resolution stating that the City recognizes the benefits of neighborhood schools, that it supports the neighborhood school concept and that it desires all schools in Germantown to be true neighborhood schools with 100% of the students in our City attending the school closest to where they live.

Mr. Charles McCarver – 2411 Forest Hill-Irene – He asked for support to help get the yards in his area cleaned up. He had pictures of the problems. He asked for ordinances to help code enforcement to enforce the ordinances.

BEAUTIFICATION BUSINESS AWARD

Ms. Nikki Boyce from the Germantown Beautification Commission and Mr. Paul Benoit from the Apple Store came forward. Ms. Boyce presented Mr. Benoit with the Beautification Award because of the beautiful “cool” display in the windows.

Mr. Benoit stated he was very honored for being chosen especially because there is no landscaping, and to be recognized for the type of design in the windows that is very special.

RESOLUTION – COMPETITIVE CABLE AND VIDEO SERVICES ACT

Patrick Lawton stated this resolution would protect the interests of the City in regulating the use of our right-of-way and telecommunication services provided in the City. The recently introduced legislation at the state level entitled “The Competitive Cable and Video Services Act” causes us great concern for the future regarding the City’s ability to protect the public interest and use of our right-of-way. The effect of this legislation means that cities like Germantown will be unable to regulate the use of publicly owned property via a local franchise and stand to lose substantial revenues currently coming to the City under our existing local ordinance.

Mr. Lawton described several areas of the bill as currently written that concern the City. The resolution addresses these concerns and will be sent to our state representatives. The Board will work on direct marketing pieces to inform our residents and to better inform the consumer. The City will also look at conducting a town hall meeting to further build the public record on this issue.

**RESOLUTION
SB1933 / HB1421 the “Competitive Cable and Video Services Act”**

WHEREAS, the U.S. Congress established procedures and standards in order to foster competition and encourage the growth and development of cable systems, assure that cable systems are responsive to the needs and interests of the local community, assure that cable companies provide and are encouraged to provide the widest possible diversity of services to all, and provide for the orderly renewal of cable television franchises; and

WHEREAS, the U.S. Congress, having determined that local governments are best suited to decide what is in the best interest of the citizens of their respective city, town or county, granted cable franchising authority to local governments; and

WHEREAS, municipalities across America have the legal right to enter into non-exclusive cable and video franchise agreements with cable and telephone companies; and

WHEREAS, municipalities welcome competition in the cable industry and stand ready to negotiate franchise agreements with cable and video operators in a timely fashion; and

WHEREAS, the “Competitive Cable and Video Service Act” is premised on the erroneous and unsubstantiated assertion that local governments and the local cable franchising process impedes competition among cable and video providers; and

WHEREAS, the existence of more than 600 cable franchise agreements that cable and telephone companies have entered into with local governments in Tennessee provides clear and convincing evidence that such assertions are baseless; and

WHEREAS, this legislation, under the guise of increased consumer access and choice, is simply an attempt by a corporate giant to bypass the local cable franchise process and unjustly gain advantages in

RESOLUTION – COMPETITIVE CABLE AND VIDEO SERVICES ACT - (cont'd)

its competitive fight with other cable and telephone companies that have duly and lawfully adhered to the congressionally authorized local cable and video franchising process and entered into more than 600 local cable franchise agreements with local governments in the state; and

WHEREAS, the local franchising process in Tennessee has benefited consumers and municipalities by ensuring that cable and video operators respond to local needs and interests; and

WHEREAS, these benefits include, but are not limited to, locally imposed and enforceable customer service standards; build out requirements that ensure cable operators serve the entire community; provision of public, educational and governmental (“PEG”) access channels; complimentary cable and Internet service to public buildings and community facilities; municipal management of the public rights-of-way; and franchise fee revenues for use of the public rights-of-way; and

WHEREAS, the Tennessee General Assembly is considering legislation that would effectively eliminate the process by which local governments establish and enforce requirements that protect its citizens and ensure that all residents are assured access to cable or video service; prohibit the state and local governments from enacting any consumer quality and service protection standards; greatly minimize local governments’ enforcement of customer service standards; significantly reduce PEG channel obligations, including local control and PEG support; abolish the granting of complimentary services; and limit local authority over the public rights-of-way; and reduce franchise fees paid to local governments for use of the public rights-of-way; and

WHEREAS, such legislation would radically alter the regulatory framework for cable operators that has been in place for decades, allow cable and video providers to “cherry pick” the most profitable neighborhoods and customers, and impede local governments’ ability to protect their citizens and provide for the needs and interests of their communities; and

WHEREAS, the affect of such legislation would undermine congressional intent regarding the provision of cable and video service; and

WHEREAS, the U.S. Congress considered and rejected similar legislation last year;

NOW THEREFORE BE IT RESOLVED, that the City of Germantown hereby opposes the “Competitive Cable and Video Services Act” currently being considered by the Tennessee State Legislature and the United States Congress; and

BE IT FURTHER RESOLVED that the City of Germantown will send this resolution to all the members of the 105th Tennessee General Assembly, the Tennessee Congressional delegation, and the two U.S. Senators from Tennessee.

ADOPTED this 26th day of February 2007.

Signatures of all the aldermen and attested by City Clerk.

Motion by Mr. Drinnon, seconded by Mr. Uhlhorn, to approve the resolution in opposition to the Competitive Cable and Video Service Act.

Alderman Drinnon asked for ads to be taken out in the local papers informing the citizens of the City’s concerns over this bill and to include the names and phone numbers of the local legislators so citizens can contact the legislators and inform them of their positions.

RESOLUTION – COMPETITIVE CABLE AND VIDEO SERVICES ACT - (cont'd)

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

RESOLUTION – TENNESSEE RESPONSIBLE VENDOR ACT OF 2006

Mr. Lawton stated the state passed legislation entitled The Tennessee Responsible Vendor Act of 2006, which dramatically regulates the way local beer boards, may regulate and control the sale of beer for on and off premise consumption. The legislation is not to take affect until July 1, 2007. Last year the Mayor, prosecuting attorney and the administration reviewed the bill and were very concerned regarding the ability of local beer boards to control and administer sanctions against violators.

Alderman Drinnon commented that the most effective government is at the local level and yet the wisdom of our legislators seems to feel otherwise. In addition to the resolution, he asked a personal letter be sent to each of our elected legislators informing them of our opposition to this bill and remind them that the best government is at the local level and we do not need their involvement.

Mr. Lawton stated the resolution would be signed by the Mayor and all the Board members and George Brogdon would be taking it and handing it to our state representatives.

RESOLUTION

WHEREAS, the Tennessee General Assembly, in May of 2006, passed, and the Governor signed into law, the “Tennessee Responsible Vendor Act of 2006” to take effect July 1, 2007; and

WHEREAS, the Act as approved will restrict or reduce the sanctions that may be imposed by local beer boards on permit holders for violation of state beer sale statutes; and

WHEREAS, the Act as approved, places the responsibility for the imposition of sanctions against participants in the Responsible Vendor Program, as defined in the statute, with the Alcohol Beverage Commission; and

WHEREAS, the Alcohol Beverage Commission is charged with promulgating the rules and regulations to effectuate this act further eroding local enforcement of beer sale violations and the creation of a larger state bureaucracy to administer the Act;

NOW THEREFORE BE IT RESOLVED, that the Board of Mayor and Aldermen of the City of Germantown support and encourage the State of Tennessee General Assembly to reconsider the implementation of the “Tennessee Responsible Vendor Act of 2006” and amend specifically Section 3 and Section 9 of the Act;

AND, BE IT FUTHER RESOLVED, that the City is hereby directed to send a copy of this Resolution to each member of the Tennessee General Assembly representing the City of Germantown.

ADOPTED this 26th day of February 2007. Signed by Board of Mayor and Aldermen and attested by City Clerk.

Motion by Mr. Drinnon, seconded by Ms. Hinely, to approve the resolution in opposition to the enactment of Tennessee Responsible Vendor Act of 2006.

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

CONSIDERATION OF CITY SEAL AND BRAND - DEFERRED

SECURITY SERVICES CONTRACT

Glen Campbell stated this contract would provide security services for the Germantown Centre Complex. The low bid was substantially lower than what is presently contracted and they would maintain the same rate for two one-year extensions if desired. It is a well respected company and came highly recommended.

In response to a question from Aldermen Palazzolo, Mr. Campbell stated the contract provided for a 30-day notice if the contract was to be terminated.

Mr. Campbell responded to a question from Alderman Chism that the costs would be absorbed through the Centre and not the Performing Arts Center even though it was shared.

Motion by Mr. Palazzolo, seconded by Mr. Drinnon, to authorize a contract with Murray Guard, Inc. in the amount of \$10,307.44.

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

PUBLIC HEARING - ORDINANCE 2007-2 – FOREST HILL HEIGHTS REZONING: 8.95 ACRES FROM “O-C” OFFICE CAMPUS ZONING DISTRICT TO “C-2” COMMERCIAL ZONING DISTRICT, SECOND READING

Josh Whitehead stated the property is located just north of the Forest Hill Church of Christ and south of Crestwyn Hill Drive along Forest Hill-Irene. The site is about 9 acres and the proposal is to rezone from “O-51” Office to “C-2” Commercial. The applicant provided a concept plan with the rezoning request, which indicates the development of two retail buildings on the site.

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

Motion by Mr. Palazzolo, seconded by Ms. Hinely, to approve Ordinance 2007-2 on Second Reading.

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

RECOGNITION OF NEIGHBORHOOD DECORATIVE STREET SIGNPOST PAYMENTS

Mr. Lawton stated the City wanted to recognize the revenue that had come from the various neighborhood associations who had been participating in the decorative street sign program and to increase the budget so we could spend those dollars for the purchase of the signs.

Alderman Palazzolo stated the CIP included approximately \$100,000.00 was targeted to be spent each year over the next five years for the decorative street signposts and he suggested as the budget progressed for the next year perhaps more money should be allocated since it was drawing more interest and enthusiasm from the citizens.

Motion by Ms. Hinely, seconded by, Mr. Palazzolo, to recognize eleven neighborhood payments totaling \$31,525.00 for decorative street signposts and approve Budget Adjustment No. 07-45.

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

PROFESSIONAL SERVICES AGREEMENT – NPDES PHASE II

Jim Jetton stated this professional services agreement would allow professional engineering services for the City's National Pollution Discharge Elimination System (NPDES) Phase II Program. The Environmental Protection Agency (EPA) governs the Clean Water Act, which authorizes the NPDES. The Tennessee Department of Environmental Conservation (TDEC) Division of Water Pollution Control supports the EPA through the administration of the Tennessee Water Quality Control Act. The City is accountable for following these laws through the Storm Water Permit issued by TDEC. There are six required minimum control measures. Fisher & Arnold will lead the Engineering Division in the required implementation of these tasks.

Motion by Mr. Drinnon, seconded by Ms. Hinely, to approve a \$37,608.00 Professional Services Agreement (PSA) with Fisher & Arnold, Inc. to perform professional engineering services for the City's National Pollution Discharge Elimination System (NPDES) Phase II program.

In response to a question from Alderman Palazzolo, Mr. Jetton responded that Fisher and Arnold would be helping the City to prepare for an eventual audit from TDEC.

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

RENOVATIONS FOR GERMANTOWN COMMUNITY LIBRARY REGIONAL HISTORY AND GENEALOGY CENTER - CLOSEOUT

Mr. Jetton stated the original contract amount was \$449,263.00, but after three change orders and other required additional services, the final amount was \$437,006.32. The net reduction was \$12,256.68.

He stated he represented a project team consisting of Reynold Douglas, Jerry Stanfill and Bob Joralemon who worked very hard during the construction to make sure the quality project was produced.

Motion by Mr. Drinnon, seconded by Ms. Hinely, to approve the closeout of a construction contract with Barnes & Brower, Inc. for the improvements to the Germantown Community Library Regional History and Genealogy Center and to reduce the total project cost by \$12,256.68.

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

FLOORING REPLACEMENT - CLOSEOUT

Mr. Jetton stated the Germantown Community Library Regional History and Genealogy Center received new tile and carpet, the Germantown Centre received new carpet on the upper floor and the Police and Jail received new tile.

Motion by Mr. Palazzolo, seconded by Mr. Uhlhorn, to closeout the construction contract with Carpet Contractors for the construction of the Flooring Replacement project.

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

CONSENT AGENDA

First Amendment to Project Development Contract No. 1150, Salvaggio Office Park

This property is located on the north side of Poplar Pike, north of Germantown High School and is zoned "OG". The 1.32-acre subdivision will include three lots ranging in size from .39 to .46 acres. The applicant is requesting approval to amend Paragraph 31 (F) of the contract to allow payment in lieu of

improvements totaling \$15,300.00 because Poplar Pike is not fully improved on either side of the property and because utility poles would have to be relocated or shifted.

MOTION: To approve the First Amendment to Subdivision Development Contract Number 484 for Salvaggio Office Park.

Pavement Marking Contract

The contract will provide for pavement marking applications at the railroad crossing intersections on Southern Ave., Hacks Cross Road and West Street. The intersections at Forest Hill-Irene and Germantown Road will be done in-house by Public Services at a cost savings to the City. The remaining balance of the contract will be used to replace stop bars and existing worn pavement markings throughout the City as required.

MOTION: To contract with Traf-Mark, Inc. for the application of thermoplastic striping throughout the City, in an amount not to exceed \$49,700.00.

Recognition of Donation to Parks & Recreation

An anonymous donor recently donated funds to sponsor the cost of t-shirts for participants in the Parks and Recreation Department's special needs program.

MOTION: To recognize a donation made to the Parks and Recreation Department for the special needs recreation program totaling \$350.00 and to approve Budget Adjustment No. 07-43.

Project Graduation – Houston High School

In an effort to combat the problem of traffic accidents and fatalities that occur on high school graduation night, many schools and jurisdictions have started programs similar to Houston's Project Graduation. The program has proven to be a successful deterrent to much of the underage drinking and driving that often takes place on graduation night. The City provides a grant in the amount of \$5,000.00 to assist in this program.

MOTION: To award a grant to Houston High School in the amount of \$5,000.00 to assist in the Project Graduation program.

IRIS Agreement – ADD-ON

Under the terms of the agreement the IRIS Chamber Orchestra will play six concerts in each of the next two years in the Germantown Performing Arts Centre. The Orchestra will receive the revenue derived from ticket sales and GPAC will provide non-monetary in-kind support. Other key issues in the agreement concern the assignment of recording rights to IRIS and the use of the IRIS trademark. Under the terms of this agreement, Mr. Michael Stern will abandon the application he filed for the IRIS trademark in favor of the IRIS Orchestra, Inc. Foundation. If during the two-year initial term of this agreement the IRIS Orchestra, Inc. ceases to operate, the ownership of the trademark shall revert back to Germantown.

MOTION: To authorize the Mayor to execute the agreement between the IRIS Chamber Orchestra, Inc. and the Germantown Performing Arts Centre.

In response to a question from Alderman Palazzolo, Mr. Mills stated at the intersection of Forest Hill and Germantown Road, the pavement marking will be done in-house because it is just straight lines to make a connection over the railroad tracks and it will be done with the new striper.

Motion by Ms. Hinely, seconded by Mr. Drinnon, to accept the consent agenda in its entirety.

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

Mayor Goldsworthy acknowledged that this was the last meeting for the Finance Director John Dluhos.

Patrick Lawton stated John Dluhos had worked for the City for 16 years and had guided the City's financial resources and the direction of the community. He was instrumental in keeping the Triple A rating and the budgetary awards the City had received. He had been a good friend and a person everyone enjoyed working with.

Alderman Drinnon entered a motion on behalf of the Aldermen to express the Board's appreciation to John Dluhos for his many years of service to the City. Seconded by Ms. Hinely.

Mayor Goldsworthy stated it was a vote by acclamation. All voted aye.

ADJOURNMENT

There being no further business to be brought before the Board, the meeting was adjourned at 8:10 p.m.

Sharon Goldsworthy, Mayor

Dotty Johnson, City Clerk/Recorder