

BOARD OF MAYOR AND ALDERMEN

July 14, 2008

A regular meeting of the Board of Mayor and Aldermen was held on July 14, 2008 at 7:00 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. Mayor Goldsworthy was absent. Staff present: Patrick Lawton, Andy Pouncey, George Brogdon, Kristen Geiger, Tom Cates, Pam Beasley, Jerry Cook, Chief Richard Hall, Pat McConnell, Bo Mills, Michael Stoll, Michael Saddler, Butch Eder, Tim Gwaltney, Melody Pittman, Lauren Johnson, Josh Whitehead, and Dotty Johnson.

Mayor Goldsworthy noted that there was one item on the consent agenda that had been deferred.

Invocation

City Administrator Patrick Lawton gave the invocation.

Pledge of Allegiance

Alderman Drinnon led the Pledge.

Approval of Minutes

Approval was requested of the minutes as amended of the executive and regular session held June 23, 2008.

Motion by Mr. Drinnon, seconded by Ms. Hinely, to approve the minutes of the Executive Session and Regular Meeting held June 23, 2008 as corrected in the Executive Session.

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

Citizens to be Heard

Mr. David Spann of 2135 Briarbrook Road stated he felt that not being able to speak on items that were on the agenda defied logic. He asked the Board to reconsider and open all items to public comment.

Officer Recognition

Chief Hall recognized the following officers that were involved in capturing the fugitives of the home invasion robbery on June 12, 2008: Dispatchers Taylor, Childress and Coleman, Officers Hester, Molina, Stemmler, Heath, Davis, Hatley, Jefferson, Schultz, Keller, McGee, Kemp, Gammill, LaRiviere, Wallace, Hollin, Lovelace, Clark, Overall and Fisher. They were given Employee Commendations and recognized for their performance, responsibility and dedication in serving the citizens of Germantown.

Chief Hall stated it was truly a collaborative team effort between the Shelby County Sheriff's Department and the Memphis, Collierville and Germantown Police Department's.

Presentation by Sheriff Mark Luttrell

Mayor Goldsworthy introduced Sheriff Mark Luttrell who gave a short briefing on the major crime areas in the county. He stated that Germantown was in the middle between the worst crime areas being south of our boundaries and the lowest crime area being north of our boundaries.

Mayor Goldsworthy thanked Sheriff Luttrell for his leadership and for the teamwork and support of the Sheriff's department.

Sheriff Luttrell introduced two people from his staff Mr. Harbin Kennedy, the Chief Administrative Officer, and Mr. Steve Schular, the Public Affairs Officer.

Presentation by Police Academy Alumni Association

Mr. Jeff Wilson, chairman of the Police Academy Alumni Association, and Mr. Nick Browndyke presented a plaque to the Police Department to engrave and place the name of the Officer of the Month. There will also be a picture placed next to the plaque each month to recognize that officer.

Ordinance 2008-7 – Amendment to Chapter 23 of the Code of Ordinances (Zoning) – Amendment to List of Zoning Districts – First Reading/Set Public Hearing Date

Josh Whitehead explained that this was some housecleaning to the list of zoning districts. The list did not include the O-C Office Campus Zoning District, R-H Retirement Housing Zoning District or the three Smart Growth Zoning Districts. It will delete “Planned unit development (PUD)” and “Flood district (F and FW)” from the list because they are overlay districts rather than zoning districts.

Motion by Mr. Drinnon, seconded by Mr. Uhlhorn, to approve Ordinance 2008-7 on First Reading and set August 11, 2008, as the public hearing date.

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

Ordinance 2008-8 – Amendment to Chapter 14 of the Code of Ordinances (Signs) – Amendment to Temporary Sign Regulations – First Reading/Set Public Hearing Date

Mr. Whitehead stated the DRC had expressed a concern over signage both for lease and for sale of sections of buildings that were less than the full building. This primarily concerned empty bays in shopping centers and strip malls. The proposal would require the DRC approval in 90 day increments for these types of signs. It would also require by the landlord or property manager some documentation that stated the shopping center was less than 85% occupied. Subsequent renewals must be justified further.

In response to a question from Alderman Palazzolo, Mr. Whitehead stated each time there was the initial 90 day period that would require DRC approval, the second 90 day would require DRC approval and any subsequent approval would also require DRC approval.

Motion by Mr. Palazzolo, seconded by Mr. Uhlhorn, to approve the amendment on first reading and set a public hearing date of August 11, 2008.

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

PUBLIC HEARING – Saddle Creek Planned Development – Southwest corner of Poplar Ave. and West Street – Outline Plan/Warrant Approval

Andy Pouncey stated that staff and Poag and McEwen had worked as a team and had met often times weekly to expedite the process. This specific request is an Outline Plan approval of the Saddle Creek Planned Development, which also included requests for five warrants. The Planning Commission had approved the Outline Plan and five Warrants at its June 3, 2008 meeting.

With this development, an applicant first must submit an Outline Plan, which is followed by a Final Plan or Plans. Simply put, an Outline Plan is akin to the subdivision approval process and the Final Plan is akin to the site plan approval process.

He stated that the applicant had submitted five site-related warrants with its Outline Plan. The applicant had also submitted a Concept Plan to indicate the location of the buildings for which the warrants were requested.

Mr. Pouncey showed the Concept Plan that indicated the location of the buildings for which the warrants were requested. Two of the warrants concerned eight-story buildings, one a hotel and the other an office building. These two buildings will be LEED-certified which may be 6 stories.

If approved by the Board, the applicant anticipates final site plan approval in September with contract approval sometime in October.

Mr. Pouncey applauded the staff in Economic and Community Development for their efforts as they had worked very hard through the process with Poag and McEwen.

Tim Gwaltney came forward and spoke on the issue of traffic. He explained what a traffic analysis is and why it was necessary. He gave the access locations, the access routes, discussed the existing conditions and the proposed conditions. Staff had thoroughly reviewed the applicant's Traffic Impact Statement and agreed with its conclusions and recommendations. Those recommendations are the improvements to Poplar Avenue and the West Farmington Blvd/Germantown Road intersection, non-signalized Driveway "A" constructed to prohibit left-turns out onto Poplar and improvements to the North Street access onto West Street to allow full traffic movement. These improvements would enable the roadway level of service to be maintained at its current level without appreciable added travel time.

A discussion followed on how the numbers had changed over the years and what impact several of the roads would have on the traffic counts.

Alderman Drinnon stated that he had been on the Planning Commission for several years. Not only the Planning Commission but also the Board of Mayor and Aldermen had always relied heavily on the staff for direction and information on traffic analysis as well as drainage.

In response to a question from Alderman Drinnon, Mr. Cook stated he felt that with the improvements that were to be made along Poplar Avenue and the projected amount of traffic coming from this project onto Poplar Ave. he was very comfortable with the improvements that were being made to handle the projected traffic.

Mr. Cook responded to a question from Alderman Palazzolo that the Technical Advisory Committee (TAC) had also met several times and reviewed the project and the traffic analysis. He explained that the TAC consisted of staff representatives from all the departments that meet approximately once a month to review all new applications made to the City for Planning Commission or Design Review Commission review. Technical input is received from all the departments, such as fire, police, public works, parks, etc. which helps to formulate a staff recommendation to the respective board or commission. All aspects of the project are reviewed, all the infrastructure requirements and the recommendation is made accordingly.

Mr. Roy Vice, Senior Vice President of Development for Poag and McEwen at 6410 Poplar Ave., Memphis came forward representing the developer and gave a dimensional power point presentation. The presentation showed what the area might look like with the different buildings, how the different heights of the buildings would look from different areas and how they would transition across the different areas.

He gave an overview of the project and talked about the warrants. The presentation involved a movie that allowed one to drive through the project and showed the buildings at different perspectives. It was an

artist's rendition of what the project would look like once it is complete. The slide show involved images that showed details of the different areas.

Mr. Vice went into detail on the placement of the buildings, the size of the buildings, whether they were office, retail, or restaurant, the height of the buildings and the placement of the park and rest areas, and the landscaping.

Mr. Vice introduced Mr. Dan Poag who thanked the Board. He stated that Saddle Creek was very special to Poag and McEwen and this was their first lifestyle center project. He felt that Germantown was one of the very special places in the country to be and they were very pleased to have the opportunity to bring some new concepts into the community.

In response to a question from Alderman Palazzolo, Mr. Pouncey stated the final request would be around September or October. The attorney for Poag and McEwen had reached out to all levels of the railroad and were looking for an exchange of private crossings. Mr. Pouncey stated he was getting ready to talk with various people regarding the east-west connectivity and the access points.

In response to a question from Alderman Uhlhorn, Mr. Pouncey and Mr. Gwaltney stated they were comfortable that the traffic impact statements with the volumes that were projected with the land uses, the square footages, and to the best of his knowledge that of the professional industry is correct. He was comfortable with the existing traffic, in the field counts as well as TDOT official counts.

Alderman Uhlhorn stated he had heard a lot of different counts and lot of different numbers and it was one of his primary concerns and if Mr. Gwaltney and Mr. Pouncey were comfortable with the numbers he would go with that.

The Mayor called for a ten minute recess.

After ten minutes the Mayor called the meeting back to order and opened the Public Hearing.

Alderman Palazzolo asked if when stating their name, they would also state what neighborhood they live in to help the Board understand the problem or request.

Sarah Wilkerson Freeman of 7684 Apahon Lane requested the Board postpone the vote or deny the warrants. She stated the area she lives in would be affected by crossover traffic once New Riverdale is opened and people would try to avoid the traffic on Poplar and cut down New Riverdale to Neshoba to get to Germantown. She felt the traffic studies used to project the impact of the development severely undercounted the amount of traffic that Phase I Saddle Creek Four would generate at full build-out. She stated the traffic study was misrepresented and understated.

Hershel Freeman of 7684 Apahon Lane, Neshoba North neighborhood, continued Mrs. Freeman's remarks regarding the misrepresentation of the traffic study. He asked for further explanation of the traffic study and the possible conflict of interest revealed in e-mails between a Planning Commissioner and an administrator. He stated that the commissioner failed to recuse himself even though he was warned he should do so. Mr. Freeman requested that the vote be postponed and the City place the development on hold until there is full disclosure of the facts.

David Spann of 2135 Briarbrook, Farmington South neighborhood, came forward and stated within the Smart Growth Code there was a specific list of items for which warrants would be granted. Eight-story buildings were not among those things nor anything less than a two story building or encroaching on the 150 foot easement. He said these things had been talked about in Smart Growth as though they were in

violation. Now the Planning Commission had already approved two eight story buildings and an encroachment on the easement of 150 foot and violating the two-story requirement.

Mr. Spann felt the hearing was a violation of the procedure set-out in Smart Growth because it says that whenever a warrant was declined by the Planning Commission that it must be appealed to the State Courts. He stated that Warrant A was declined by the Planning Commission.

Mr. Spann was also concerned about the special equipping of the Fire Stations for the tall buildings.

Vince Alfonso, Jr. of 1798 Hayden, Germantown Heights Subdivision, stated there was a no vote cast by one of the Planning Commission members and the reasons were the traffic issue and the sewage issue relevant to the capacity of the Germantown sewer system as it stands today and how it would be impacted by this development. He stated he was very much for the development but was concerned about the sewer and fire considerations and future developments. He asked that this issue be addressed.

Mayor Goldsworthy assured Mr. Alfonso that staff would be contacting him with the answers to his concerns.

Jim Jacobs of 7684 Apple Valley Road, Germantown Gardens, stated he did not see this development as Smart Growth because this was developing a separate goal, an isolated island. There was no provision in the plan for allowing pedestrian traffic from the rest of the community into this new development.

Howard Spector of 7513 Parker Circle, Germantown Heights, came forward and stated that when Poag and McEwen had come forward with the visionary project of Saddle Creek several years ago, it was not accepted by the entire community but they had handled it in an admirable fashion and it has become an important commercial development for Germantown. He felt this development would be another way the City could grow as we run out of space and maintain the level of professionalism architecturally.

Richard Marsh of 7359 Poplar Pike was very supportive of the project. He said that most of his concerns had been answered either by staff or Poag and McEwen. He stated he still had some concerns regarding area "E" which in all the drawings and renderings was a green space. However on the plan, it shows a perspective approval for a potential office use of 140 square feet. He was concerned because there was very little landscape type buffers for this area. His other concern was that if there is another railroad crossing added, the trains would have to blow their horn all the way down the track because of the distance between the crossings. This would increase the noise pollution as well as impact the people in the development and the people who live across from the area.

Kip Butts of 7333 Magnolia Ridge Dr., the Timbers Subdivision, stated he had not been in favor of the eight story building mainly because of the Smart Growth Code. It was his understanding that the Planning Commission had initially rejected the eight-story building but had other ideas at a later date. He was opposed to driveway A. He also asked for the warrants for the one story to stay because of the setback change. The people on Overlook had agreed to the change because of the one story buildings. He felt that most of the people from The Timbers Subdivision were in favor of the development with very little reservations.

Having no other citizen come forward to address the Board, the public hearing was closed.

Alderman Palazzolo stated the City would address the questions from the citizens.

In response to a question from Alderman Palazzolo, Patrick Lawton stated that part of the public and private partnership policy the Aldermen had approved called for a Fiscal Impact Analysis. One of the key issues was the question "what is the cost of development and growth on the City". He stated we were

already in the process of trying to determine what those extra costs were that might be associated with this type of development including the impact on the Fire and Police Departments. The City was already in the process of studying the need for another fire station and looking at the issue of moving Fire Station #4.

Mr. Lawton stated the Board of Mayor and Aldermen had the wisdom several months ago to authorize a study of the entire area in terms of the sewer capacity. Not just because of this project but looking at the entire Smart Growth area. Projections were made in terms of how those areas will be built out. The City is ahead of things in terms of what we can and cannot handle. The Fiscal Impact Analysis will help point out what additional charges will be impacting the City and this will be brought back to the Board.

In response to a question from Alderman Palazzolo regarding a warrant being turned down and reconsidered, Tom Cates stated that just being turned down does not mean you have to go through court if there is no court issue on reapplying. This is what happened in this case. The only time a person is prohibited from asking for refileing or reapplication is in a zoning matter. When a zoning matter is turned down you have to wait one year before you can bring it back. One always has the option if turned down on a zoning matter to immediately go to court. He stated he knew of no conflict of interest. Mr. Cates stated he had seen the e-mail from Mr. Pouncey to the Planning Commission member but had not seen his response and Mr. Cates did not know if his company was involved, but he stated the member's vote was not critical because it passed with one negative vote.

Tom Cates called for a matter of personal privilege about this matter and asked to address the Board. Mayor Goldsworthy responded in a yes response.

Mr. Cates stated he was upset because of what had been said about the Planning staff, the City Engineer, the Traffic Engineer and the Independent Consultants who have been retained over the years by the City to give advice and who were retained in this case. He stated that Mrs. Wilkerson-Freeman had accused those people of misrepresentation to the Planning Commission, to the public, and now to the Board. Her husband accused them of malfeasance. Mrs. Freeman had made a statement at the Planning Commission along the same line.

Mr. Cates stated when he heard of her accusations, he had carefully reviewed all the minutes, notes, and correspondence including e-mails. After looking at over 100 pages of questions posed by Mr. Gwaltney and by Mr. Collins and other members of their staff to Fisher and Arnold asking them about different things and considerations, that is the full picture. No one ever misrepresented anything to the Planning Commission or to this Board about the traffic study. In his view, those gentlemen exercised their professional judgment very appropriately as to this traffic study. Any traffic study is an estimation into the future. To fairly look at the work, he felt anyone would come to that conclusion. Because of free speech, any citizen can come to this meeting and say about anything they want but as long as he had the principle available to him of free speech, when he sees people who he has worked with for years, and knows their character, accused of malfeasance and misrepresentation, he will answer those charges on their behalf. He submitted that Jerry Cook, Josh Whitehead, Tim Gwaltney, and James Collins are honorable, and some of the best public servants that we could possibly have. They had not misrepresented one thing to this Board or anyone else in context of this consideration. He felt the City of Germantown should be proud that all the staff is working for the citizens of Germantown.

Alderman Drinnon stated that it had been stated that some of the Board was initially opposed to the project because of the height which was true. After carefully studying the project and having the Commission and the staff and with the model that was provided, it became obvious that the difference in height was not a significant factor in the overall project. He felt the traffic analysis had been reviewed by Jerry Cook, Tim Gwaltney, and Tom Cates and they were comfortable with it, and he felt the City was

fortunate to have a project of this nature to be developed in Germantown and were grateful to Poag and McEwen for considering Germantown.

Motion by Mr. Drinnon, seconded by Ms. Hinely, to accept the Outline Plan and Warrants.

Mayor Goldsworthy read the following motion:

To grant Outline Plan approval to Saddle Creek Planned Development, including the following Warrants:

1. A height warrant for an eight-story hotel in the location as identified in the Concept Plan submitted with the Outline Plan, of the quality as described in the Outline Plan Conditions and not to exceed 123 feet as measured from the floor of the first floor to the ceiling of the eight floor in accordance with the SmartCode;
2. A height warrant for an eight-story office building in the location as identified in the Concept Plan submitted with the Outline Plan, of the quality as described in the Outline Plan Conditions and not to exceed 123 feet as measured from the floor of the first floor to the ceiling of the eight floor in accordance with the SmartCode;
3. A use setback warrant for retail buildings in the location as identified in the Concept Plan submitted with the Outline Plan to be no closer than 125 feet from Lots 24 and 33 of The Timbers Subdivision with the stipulation that a 50-foot landscape screen is provided;
4. A use setback warrant for retail buildings in the location as identified in the Concept Plan submitted with the Outline Plan to be no closer than 116 feet from Lots 37, 38 and 39 of the Timbers Subdivision with the stipulation that a 62-foot landscape screen is provided; and
5. A height warrant for one-story retail buildings in the locations as identified in the Concept Plan submitted with the Outline Plan;

subject to the removal of all references, narrative and graphic, of both a traffic signal at Driveway "A" and Poplar Avenue and a left-turn out of Driveway "A" at Poplar Avenue and

subject to all other staff comments included in the Planning commission staff report for the Saddle Creek Planned Development, dated June 3, 2008.

The approvals and grants encompassed in this motion are specific to the applications considered at this meeting and, therefore, specific to the improvements, and their respective locations, as shown on the Outline and Concept Plans considered by the Board of Mayor and Aldermen.

Mayor Goldsworthy asked if this was the motion as read that Alderman Drinnon made. Mayor Goldsworthy then handed the City Administrator a copy of the motion as read to be added to the minutes. Alderman Drinnon stated this was the motion he asked to be considered and Alderman Hinely stated that she seconded the motion. The motion was made a part of the minutes.

Alderman Uhlhorn stated that the Board would not be able to make the decisions they do if they could not rely on the reliable professional opinions of the Germantown staff and he commended them and their work.

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

Mr. Spann stepped forward and announced that he had filed a petition in Chancery Court this afternoon for an injunction against the City of Germantown in proceeding with the Warrants and should be served by tomorrow with a hearing set for July 28.

Mayor Goldsworthy asked that this information be conveyed to the City Attorney.

Professional Services Agreement – The Lawrence Group

Andy Pouncey stated this item was for additional 2008 planning and design services for the City. This will assist in the planning and design coordination and implementation of the Municipal Square in the Germantown Smart Growth area.

Motion by Mr. Palazzolo, seconded by Ms. Hinely, to approve a professional services agreement with The Lawrence Group Architects, Inc. for 2008 planning and design services for the City of Germantown, to assist in planning, design coordination and implementation of Municipal Square in the Germantown Smart Growth area, in an amount not to exceed \$25,000.

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

Professional Services Agreement – Public Services Building

Bo Mills stated this contract was for the design and construction oversight of a pitched metal roof on the Public Services Administration Building. This is the third and final phase of the construction.

Motion by Ms. Hinely, seconded by Mr. Drinnon, to approve a Professional Services Agreement with Askew, Hargraves, Harcourt & Associates, for the design of the roof on the Public Services Administration Building, in the amount of \$41,700.00.

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

Mayor Goldsworthy stated during the Executive Session a Board member had expressed a desire to pull one of the items from the Consent Agenda. Alderman Palazzolo stated that for the sake of time, he withdrew the request.

CONSENT AGENDA

Project Development Contract Number 1169 – The Brownstone (Roberts Subdivision, Lot 1)

The property is located on the southwest corner of Poplar Pike and Moore Road. The Brownstone is an 11,800 +/- square foot building with up to three tenants and 32 parking spaces.

MOTION: To approve Project Development Contract No. 1169 for The Brownstone (Roberts Subdivision, Lot 1).

Appointment to Germantown Centre Advisory Commission - DEFERRED

Tennessee Shakespeare Company Grant

The Board amended the budget on the third and final reading to include funding a grant in the amount of \$25,000.00 for the Tennessee Shakespeare Company. The Tennessee Shakespeare Company is now requesting a grant from the City in the amount of \$25,000.00 to subsidize their pilot program this year.

MOTION: To authorize the payment of a \$25,000.00 grant to the Tennessee Shakespeare Company for their FY08-09 season.

Recognition of Donation – Germantown Police Dept. – Germantown Women’s Club

The Germantown Women’s Club has donated \$325.00 to the Police Services Division to help purchase any needed supplies or equipment for the Division and will be used to assist in the purchase of training materials that will further enhance the abilities of the Police Department and its Officers.

MOTION: To recognize a donation from the Germantown Women’s Club in the amount of \$325.00 and approve Budget Adjustment No. 09-01.

High School Drug Testing Program

Germantown High School and Houston High School are requesting the City fund the program up to an amount of \$24,000.00 to screen student athletes for the use of alcohol and/or drugs. Last year the City funded \$8,360.00. Funds from the Federal Asset Drug Fund and/or the State Asset Drug Fund will pay these bills as we receive them for the alcohol and/or drug screening that have been completed at the schools between the period of July 1, 2008 – June 30, 2009.

MOTION: To authorize a grant in the amount not to exceed \$24,000.00 from the Federal Asset Drug Fund and/or the State Asset Drug Fund for Germantown and Houston High School to support the schools' mandatory alcohol and/or drug screening of all student athletes for the 2008-2009 school year.

Ammunition for Police Department

This purchase is for ammunition for the Police Department for State required firearm qualifications, duty ammunition and training ammunition from the Tennessee Statewide Contract.

MOTION: To purchase ammunition for qualifications, duty ammunition and training ammunition for the Police Department.

Approval of Emergency Purchase – Germantown Athletic Club - Electrical

When the new physical fitness equipment was installed in the Germantown Athletic Club, most of the cardio machines (the elliptical, treadmills, stair climbers) require their own power outlet and separate cable for operations and individual nine-inch flat screen televisions.

MOTION: To authorize the Mayor to execute a contract with Haines Electric Company, Inc. in the amount of \$88,077.00 for the installation of electrical circuitry and components necessary for the new fitness equipment at the Germantown Athletic Club.

Recognition of Donations – Germantown Community Library

Donations of \$550.00 have been made to the Germantown Community Library.

MOTION: To recognize the donations made to the Germantown Community Library totaling \$550.00 and to approve Budget Adjustment No. 09-02.

Motion by Mr. Drinnon, seconded by Ms. Hinely, to accept the Consent Agenda as presented.

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