

BOARD OF MAYOR AND ALDERMEN

March 9, 2009

A regular meeting of the Board of Mayor and Aldermen was held on March 9, 2009 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: Mark Billingsley, Ernest Chism, John Drinnon, Carole Hinely, and Mike Palazzolo. Staff present: Patrick Lawton, Andy Pouncey, George Brogdon, Kristen Geiger, Tom Cates, Pam Beasley, Jerry Cook, Tim Gwaltney, Pat McConnell, Michael Saddler, Ralph Gabb, Deputy Chief Rodney Bright, Michael Stoll, Chief Dennis Wolf, Bo Mills, and Dotty Johnson.

Invocation

Assistant City Administrator George Brogdon gave the invocation.

Pledge of Allegiance

Boy Scout Troop 55 from Second Presbyterian Church presented the colors and led the Pledge.

Approval of Minutes

Motion by Mr. Billingsley, seconded by Ms. Hinely, to approve the minutes of the Executive Session and the Regular Meeting held February 23, 2009.

Corrections to the minutes:

Alderman Palazzolo noted on page 3 of the Executive Session, the third paragraph, the word *drive* should be *derived*, and on page 3 of the Regular Session, in the sixth paragraph, the word *stated* should be removed.

Mayor Goldsworthy noted on page 2 of the Executive Session, in the third line from the top, the sentence should read *and he felt was almost a preemptive move---*, on page 2 the second sentence should read *The other bill.....*, on page 2 of the regular minutes, under Citizens to be Heard, first paragraph, sixth line the sentence should read *all the relevant experts.....*, and on page 6 in the fifth paragraph, the sentence should read *It does not mandate and address that these are the rules.....*, and in the next paragraph, she asked the clerk to research and have the sentence refer to what *it* is.

Motion by Mr. Drinnon, seconded by Ms. Hinely, to approve the amendment.

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

Vote on original motion to approval of minutes as amended:

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

Citizens to be Heard

Alderman Hinely asked to be heard before allowing the citizens to come forward to be heard. She stated that there was an amendment to Senate Bill 1518 and House Bill 960 pertaining to the guns in our local parks. The amendment to the bill gives each municipality the right to prohibit the possession of fire arms in their local parks and trails with the required signage was passed by the majority and was filed.

Motion by Ms. Hinely, seconded by Mr. Billingsley to send a resolution in support of Senate Bill 1518 and House Bill 960 subject to the amendment giving the municipalities the right to prohibit the possession of firearms in our parks and on our trails.

Alderman Drinnon stated he was totally opposed to possession of guns in the parks and he did not know what was driving the bill at the state level, but he felt the approach that Alderman Hinely stated would protect local municipalities and he would support the motion.

Alderman Billingsley commented that he was not a pro-gun alderman, that he had been a reserve officer for the City of Germantown and considered himself a friend of law enforcement at the city and county levels. He wanted to go on record that he was not in favor of handguns in parks in Germantown. He stated he would vote for the amendment. He stated he did not want handguns in Germantown parks but he felt it was the right of other municipalities to chose.

Alderman Chism commented that he felt the best way to get things done was by talking about individual needs with the local representatives.

Alderman Palazzolo stated he too was in favor of not allowing guns in the parks. He went into detail why he had e-mailed some of the citizens regarding the issue of firearms in parks.

Alderman Palazzolo made a friendly amendment to the Board to put off the vote until the citizens could be heard.

Alderman Hinely stated there was a motion before the Board.

Mayor Goldsworthy noted that when this item was considered two weeks ago, that although legislative agenda proceeds with the recommendation from Boards direction, the Board has every privilege to amend any detail as it wishes and just as it was amended to delete two full sections, any portion of any session could likewise be amended at that time. If the fault was with making too broad a statement, it could certainly be narrowed and procedurally that could have happened at that time as well.

A discussion followed on the protocol by which the Board should follow.

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

Jim King of 2615 Heatherbrook Lane stated he was here to lobby against guns in parks and trails.

Gary Smith of 1770 Great Oaks Cove stated that during Arbor Day there was a tree give away for Germantown residents but while he was in line there were staff people in line to get trees. He stated the Mayor had given city employees permission to get the free trees. He felt the trees should have been just for Germantown residents.

He also stated he was pro-gun but not for guns in parks. He was in favor of carrying a gun.

William Gillon of 2111 Prestwick Dr. stated the Board was elected to speak out on issues that affect the safety of the citizens. The bills could have an immediate impact on the safety of our citizens. He stated he could not understand how the strong urgent desire to mix alcohol, guns, parks, and children had become a legislative guard in the State of Tennessee. He stated the message being sent from the Board is that citizens are on their own as far as being safe in the parks in Germantown. The City has always made public safety a priority.

Nick Dunn of 7484 Mill Run stated he was against guns in the parks and was glad the Board was standing up to do the right thing.

Elizabeth Boyd of 1524 Wolf Bend Road stated she was against the guns. It was her understanding that the majority of the Board was just neutral on the issue of guns rather than making a stance. She

applauded the Board for moving and passing the issue and understood that the restaurant issue was separate and asked the Board to do the same thing in terms of the restaurants.

Frank San Pietro of 1901 Kilbirnie Dr. praised Alderman Palazzolo for his strong political stand on the issue of guns and for all the Board's actions. He felt the need for citizens and leadership to aggressively assert our preferences to the county and state governments. He stated there may be differences on issues but he felt the Board had the best interest of the City and the deep commitment to our citizens. He encouraged elected officials and the citizens to speak up and take action to protect our interests. He also encouraged everyone to buy and shop Germantown.

Tom Kolano of 2268 Lansingwood Dr. was against the gun law and thanked the Board for their actions.

Michael Burnett of 2691 Sweet Oaks Circle thanked the Board for the direction they are now taking.

Stan Weinrich of 8359 Willow Oak Rd. said he was very gratified with what he had heard tonight and for the citizens who had stood up to be counted on this important decision.

Patrick Stegall of 8336 Mangrove Dr. stated he was an attorney specializing in criminal and firearms law. He understood the apprehension about allowing guns in city parks and places where children and families go. He felt that having legally armed citizens would deter criminals.

Mike Riggs of 7116 Paddock Cove stated he was pro-gun also.

Dino Palazzolo of 2053 Sunset Road commended Alderman Hinely. He felt the amendment was made because of the 200 or more people who had called and talked with their representative regarding the amendment.

Dr. Jimmy Murphy came forward and asked the Board to please move on to the next topic. The children present were here to honor their teacher and he would like to get the children home.

Alderman Billingsley thanked all who had taken their time to come and speak on the gun issue.

Teacher of the Month Award

Mayor Goldsworthy read the many accomplishments of Ms. Susan Hayden a third grade teacher at Dogwood Elementary School who was nominated by a fellow teacher. Alderman Hinely and representatives of the Education Commission presented Ms. Hayden with an award and Ms. Paige Michael of REMAX on Track presented her with a check.

Resolution 09R01 – Opposition to Collective Bargaining

City Administrator Patrick Lawton stated at the last meeting he had presented a lengthy report to the Board regarding administrations opposition to this particular bill. The Board had asked this item to be tabled and that is the reason it is on this agenda.

Mr. Lawton stated the Board was asked to approve a resolution in opposition to HR413, a bill before the House of Representatives that would oppose the use of power of federal government to mandate unionism and collective bargaining in the state and local public safety departments in city's with 5,000 in population. He reported that the City of Germantown has excellent police and fire departments with exceptional employees. Our municipality is recognized as an "Employer of Choice" and a very enjoyable place to work. We have always held strong to the belief that we do not need an outside third party, including the United States Congress, to facilitate an effective working relationship between our employees and our supervisors. The very fact that we do not have unionism in Tennessee for public sector employees has resulted in public officials, both elected and appointed, working as allies with all

employees rather than as adversaries. He stated this legislation posed serious issues in terms of severe and costly unfunded mandate for our community, a compromise to emergency action plans and a serious constitutional issue of the 10th Amendment.

Mr. Lawton asked the Board of Mayor and Aldermen to go on record in opposition of bill HR413.

Alderman Billingsley stated he would like to get more information from the Germantown Firefighters regarding their feelings toward this bill. He felt very confident that we do not have an adversarial relationship but he wanted to talk with them.

Motion by Mr. Billingsley, seconded by Mr. Chism, to defer this item until April 13 agenda.

Alderman Palazzolo asked a point of clarification, at the last Board meeting when the resolution came before the board, it was deferred, and also on the agenda was the collective bargaining portion of the Legislative Agenda which the Board voted to exclude.

In response to the question, Mayor Goldsworthy stated that was correct there was a motion at the last meeting to remove two items of the Legislative Agenda.

Alderman Billingsley called to question.

Alderman Drinnon stated that he had not had a chance to speak and he resented it.

Alderman Billingsley recalled the call to question.

Alderman Drinnon stated he had always supported the Germantown Police and Firefighters and the excellent job they had always done and he would continue to support them but he did not feel that any outside organization would have the interests of Germantown at heart. He opposed the decision to postpone this decision.

A discussion followed on the call to question and when it should be used.

In response to a question from Alderman Palazzolo, Mr. Lawton stated the historical position of the City had been in opposition to any form of collective bargaining or unionism. All of our action had been directed at the state level and our agenda reflected that. This bill had been circulating for the past three or four years and gained momentum last year at the federal level. Never before had the City seen this kind of intrusion from the federal government into municipal government mandating collective bargaining in cities over 5,000 in population.

In the late 90's the Germantown Fire Department joined with the International Association of Firefighters and at that time they asked to be recognized by the Administration and the reply was no. That followed with a resolution by the Board of Mayor and Aldermen saying that we would not recognize the Association of the AIFF and we would work against any other association that would mandate collective bargaining. This had been the position of the City in his tenure as City Administrator.

Alderman Chism left the dais-----

Mr. Lawton stated that both of our senators have indicated their support against the bill and they worked hard last year in opposition to the bill. Last year Congresswoman Blackburn did not vote in favor of the bill. If it passes the House now, both Senator Corker and Alexander had indicated they would be in opposition to this bill.

Mayor Goldsworthy stated today she had received a letter from Senator Corker reaffirming his opposition to any such bill as it comes into the Senate whether it is identical to the one that was previously considered or not.

Alderman Palazzolo stated that last year the Board that included the present Board members with the exception of Alderman Billingsley, approved the resolution against the bill that was sent to both Nashville and Washington and everyone signed the resolution in opposition. He stated this was a “right to work” state and he was perplexed as to why any type of decision would want to be deferred, and what had changed in the course of one year to make the alderman pro union. He asked if anyone on the Board had a relationship with the Firefighters Association, received their endorsement or received any contributions to their campaign.

Alderman Chism returned to the dais-----

Alderman Palazzolo, Alderman Drinnon, and Alderman Hinely stated they had not received anything from the Association. Alderman Chism and Alderman Billingsley stated they had.

Alderman Billingsley stated he had always been a firm supporter of the Firefighters and Police, the work that they do and the support they give to charitable causes. He stated that the reason he had asked for a deferment was not to make a judgment but to ask for further investigation. He had real questions about open positions in the City. The Firefighters have no voice in filling the positions. When Management Competition came into the City he felt that thoughtful reviews of some open safety positions were overlooked. He had a problem with the Management Competition Director, the Finance Director and maybe someone from Parks and Recreation making decisions on key police and firefighter positions.

Mr. Lawton stated that one of the valued principals of the Managed Competition Program is that it would not impact public safety. Every public safety position, rank and file that had come open had been filled with the exception of some administrative positions. If there was a firefighter position open, it would be filled. If it was a police officer position, it would be filled. There was one exception to that and Mr. Lawton took full responsibility and that was there were two Fire Marshalls offices and with the slow-down of the economy and the building permits he did not fill the position. When that position became vacant, the Personnel Review Team recommended that it be filled. Mr. Lawton stated he overruled the Personnel Review Team and said to look at what was taking place and so that position was not filled. In no way did that impact any of the public safety positions.

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

Alderman Palazzolo read a statement that he wanted as public record:

“Unionization of our public safety services takes away accountability from the citizens, reduces the voice of the people and creates a layer between the citizen, the public servant and the city employee. Public officials come and go due to elections, hence accountability. The same cannot be said of unions. The citizens are not represented and cannot exercise a vote for or against the unions during negotiations. Simply put, you cannot vote a union out of office like you can vote me out of office. It would be a shame for a small group of Germantown firefighters again, by and large, that do not live in Germantown, to have more voice and more input than our own citizens.”

Lease Agreement – Germantown Community Theatre

Assistant City Administrator Andy Pouncey gave a short history on the lease agreement with the GCT. Since the original agreement was made, there had been three amendments and the three amendments had been included in the new agreement.

There are a number of issues to be addressed concerning this property and the adjacent city property to the north (Fire House #4). The consultants have begun their design work on Fire House #4 and have developed an acceptable site plan. The property line drawn between the two will have a bearing on both the Fire House and GCT. If the City chooses to sell or lease the balance of the property to the GCT or other person or entity, arrangements will have to be made on behalf of the GCT for purchase or relocation of the theatre. The GCT is a cultural amenity that has provided entertainment in the form of community theatre for 37 years.

Alderman Drinnon asked if thought had been given to the expansion of the Fire Station into that site and had these facts been factored into the proposal.

Mr. Pouncey stated the site plans mentioned takes care of the needs of the Fire Department and the Fire Department offered the architect a manual on what they wanted in the design of the building. It will be used as a backup emergency operation center and would include all those necessary items. They had taken that into consideration using all the zoning regulations, the setbacks, green spaces, etc.

A discussion continued on the contract and how there were time limits in notifying the Theatre if the City does not want to continue the agreement, the 180 day opt out clause and the decision to divide the property.

Motion by Ms. Hinely, seconded by Mr. Drinnon, to approve a lease agreement between the City of Germantown and the Germantown Community Theatre.

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

PUBLIC HEARING – Ordinance 2009-9 – Amendment to Chapter 2, Article 5 of The Code of Ordinances – Appointment of Chairpersons to Commissions – Second Reading

Mr. Lawton stated this was the second hearing to change the current practice of having the Mayor select the individual members of a particular board to serve as chairperson after the Board and Commission appointments are made at the end of the calendar year. The appointments will begin in the calendar year 2010.

Alderman Drinnon stated there was some internal division on the Board. He felt Mayor Goldsworthy has appointed the chairmen of the commissions and she had done a good job. She had never let politics, in the final analysis, intervene in her decision to name a chairman. He felt this effort was nothing more than to strip from the Mayor the responsibility she had over the years and it was wrong.

The Mayor opened the public hearing.

Elizabeth Boyd of 1524 Wolf Bend Road and chairman of the BZA came forward and stated she could see the pros and cons of the amendment but was disturbed at what she had heard and read in the paper about two against three and it was very disturbing and distressful. She asked the Board to sit back and leave this issue alone. It had worked well in the past and after a year if the Board still felt strongly about it then bring it up again but for right now, let it go.

Alderman Drinnon stated Ms. Boyd had always served very capably on the BZA and the Planning Commission and had done an excellent job. He asked the Board to listen to her comments.

Dino Palazzolo came forward. He stated if the aldermen chose the members and the Mayor chose the chairs this not the separation of power but the checks and balances. The disfunction of the Board is a result of this and it was a shame. He asked the Board to leave it alone at this time. He stated to have the aldermen have the complete power and completely erase the mayor was not fair whoever the mayor might be.

Having no other citizen come forward, the public hearing was declared closed.

Motion by Mr. Chism, seconded by Mr. Billingsley, to approve Ordinance 2009-9 on second reading, an ordinance to amend Section 2-128(a) of Chapter 2, Article 5, Division 1 of the Code of Ordinances related to appointments of chairperson on boards and commissions of the City of Germantown.

Alderman Hinely stated she totally disagreed with what had been said that they all could not be on the same page and they all had their own ideas. She said this was not against the Mayor and to say this board was dysfunctional, she stated it was not anymore dysfunctional than any other Board that had been there previously since she had been on the Board or in the last 18 – 20 years. It was just that it had not been out like the present.

Alderman Palazzolo stated in the spirit of compromise, the Board presently picks the chairmen because they select the commission members and the Mayor picks from a slate that is presented by the Aldermen. She picks someone who can work with staff. In the spirit of compromise, he proposed to Mr. Chism to allow the actual commissions to select their own chairmen.

Each of the Aldermen spoke on their political positions.

Alderman Drinnon stated in the spirit of cooperation and knowing that the three-two vote was going to happen, he stated he was going to vote with the majority because in the final analysis, as long as it is democratic or that the Board is going to make a decision with the Mayor's input then he did not want to be in opposition in the decision.

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

Purchase of Six Kustom Signals In-car Video Systems

Deputy Chief Rodney Bright stated these video systems would allow the department to review probable cause for arrest, arrest procedures, evaluate officer performance, identify training needs, and either substantiate or exonerate officers accused of inappropriate conduct or behavior. The equipment would also be another component of officer safety.

The bid and contract between Murfreesboro and Kustom Signals, Inc. will be utilized to purchase these camera systems.

Motion by Mr. Billingsley, seconded by Mr. Palazzolo, to purchase six (6) Digital Eyewitness ION Eclipse digital in-car video surveillance systems from Kustom Signals Incorporated in the amount of \$29,700.00.

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

Subdivision Development Contract No. 458, Forest Hill-Irene Commercial Subdivision – Request time extension for contract - DEFERRED

Herbicide Application Contract – Athletic Field Addition

Bo Mills stated staff was recommending that the City enter into a fertilization pilot program with Herbi-Systems. In the Herbicide Application Contract approved in January, the contract specifically asked to include a unit bid price (per acre) for additional unspecified areas to be treated with either herbicide or fertilization upon request by the City. Herbi-Systems quoted the price of \$70 per acre for fertilization of additional acreage in the existing herbicide contract. Herbi-Systems has agreed to this contract increase at the rate included in the bid. An evaluation and soil sample will be performed in the fall to determine if the recommended program is successful.

Motion by Mr. Billingsley, seconded by Mr. Chism, to approve a contract addition in the amount of \$8,610.00 with Herbi-Systems for fertilization of all athletic fields totaling 41 acres.

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

Lake and Fountain Maintenance Contract

Mr. Mills stated staff was recommending the City enter into a three-year lake and fountain maintenance contract with Aqua Services Inc. Included in this contract are any necessary chemical applications, fertilization and any maintenance required on fountains, pumps and water features. Herbicide applications along with fertilizer/lime applications will be applied each month starting in March and ending in October. Unwanted weeds and algae will be eliminated to maintain an aesthetically pleasing appearance. Preventative maintenance services of all lake fountains, pumps and water features and removal of any debris from the lakes where fountains exists will be performed monthly.

Motion by Ms. Hinely, seconded by Mr. Drinnon, to enter into a three-year lake and fountain maintenance contract with Aqua Services, Inc. in the annual amount of \$25,069.20.

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

CONSENT AGENDA

Recognition of Overtime Reimbursement

The Germantown Police Department has an officer assigned to the Metro DUI Squad assisting in the apprehension, investigation and testing of impaired drivers within Shelby County and Germantown. The officer usually works overtime in the performance of his duties. Shelby County Government reimburses any overtime that the officer receives while carrying out his/her duties. The reimbursement will be placed back into the Police Department’s Overtime Wage line through the budget adjustment.

MOTION: To recognize overtime reimbursement from the Shelby County Government and to approve Budget Adjustment #09-92.

Purchase of Kustom Smart 600 Radar Trailer

The Germantown Police Department is requesting to purchase a portable radar trailer that can be placed on all roads within the City to monitor the speed of vehicles on the roadways. The trailer is being purchased with funds from the driver’s license reinstatement fee fund. The fees are sent to the police department and are to be used for enforcement of the state’s traffic laws.

MOTION: To purchase a Kustom Smart 600 radar trailer and to approve budget adjustment #09-91.

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

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

Alderman Chism asked to direct the Germantown Athletic Commission to undertake a study to separate the Great Hall and the Germantown Athletic Club. He stated that people come to the one entrance to enter into the Great Hall when people going out hot and sweaty and merge with the crowd coming in. He would like to start some dialogue with the GAC to make the athletic part more profitable than it had been and at the same time take the same attention and care to the Great Hall.

Motion by Mr. Chism, seconded by Ms. Hinely, to direct the GAC Commission to undertake a study or examination of some type of separation of entrances at the Great Hall business center in conjunction with the fitness area.

ROLL CALL: Billingsley–abstain, Chism–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