

BOARD OF MAYOR AND ALDERMEN

February 23, 2009

A regular meeting of the Board of Mayor and Aldermen was held on February 23, 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, Ernie Moretta, Michael Sadler, Ralph Gabb, Inspector Lee Covey, Michael Stoll, Chief Dennis Wolf, Bo Mills, Bo Mills, Lisa Piefer, Melody Pittman and Dotty Johnson.

Mayor Goldsworthy noted the changes in the agenda: The Lease Agreement – Germantown Community Theatre had been deferred. Also, under the consent agenda, Professional Services Agreement for Arthur-Riggs Road Neighborhood Improvements had been moved to the regular agenda at the request of Alderman Palazzolo.

Invocation

City Administrator Patrick Lawton gave the invocation.

Pledge of Allegiance

Alderman Mark Billingsley led the Pledge.

Approval of Minutes

Mayor Goldsworthy noted there had been some corrections noted during the Executive Session.

Motion by Mr. Palazzolo, seconded by Ms. Hinely, to approve the minutes of the Executive Session and the Regular Meeting held February 9, 2009 as amended during the Executive Session.

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

Alderman Palazzolo noted that during the Executive Session this item was discussed. Along with doing away with the Executive Session, he asked the Board to consider opening the Citizens to be Heard item to anything on the agenda as long as the three minute limit is maintained and the citizens can speak on any item whether or not it is on the agenda.

In response to a question from Alderman Hinely, City Attorney Tom Cates noted the Charter requires the public meeting and time be established by Ordinance. A policy now exists for Citizens to be Heard and every time the policy is changed there needs to be a motion and a vote. The existing policy was brought about in 1993 and it set the criteria that we now have.

Motion by Mr. Palazzolo, seconded by Mr. Billingsley, to allow citizens to be heard at the beginning of the meeting and allow the citizens of Germantown to speak on any agenda item for a maximum of three minutes.

Alderman Hinely thanked Alderman Palazzolo for making the motion and thanked Alderman Billingsley for raising the question.

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

Ordinance 2009-12 – An Ordinance to Amend Section 2-21 of the Code of Ordinances Regarding Board of Mayor and Aldermen Meeting time – First Reading/Set Public Hearing Date

Alderman Billingsley asked the Board to change the ordinance that regulates the Board's meeting time to have the meeting begin at 6:00 p.m. instead of 7:00 p.m. and to not have an Executive Session.

Tom Cates stated that the Executive Session was not a part of the ordinance.

Motion by Mr. Billingsley, seconded by Mr. Palazzolo, to amend the Code of Ordinances to change the time of the regular bi-monthly Board of Mayor and Aldermen meetings from 7:00 to 6:00 p.m. and set the public hearing date and second reading for March 23, 2009.

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

Alderman Drinnon stated that because of posturing, his vote was no.

Citizens to be Heard

Sarah Wilkerson Freeman of 7684 Apahon Lane thanked the Board for the decision to change the policy to let citizens speak on any agenda item. She said she was speaking as vice president of the Neshoba North Neighborhood Association. She had invited the Storm Water Engineer to speak about a problem they had along Lateral B. She stated the City Administrator would not allow the Storm Water Engineer to come and speak. She asked the Board to call a Town Hall meeting that would include all the relevant experts, including our Storm Water Engineer and anyone having to do with public safety, the attorney's (to speak regarding liability issues), and someone from FEMA (regarding the flood bays).

City Administrator Patrick Lawton stated that Tim Bierdz, the Storm Water Engineer, had only been with the City for a year and is the junior engineer. What he had offered to Neshoba North was to have our City Engineer Tim Gwaltney who is a Professional Engineer and Assistant City Administrator Andy Pouncey to come to the meeting and go over the history of the capital project describing from one end to the other. Ms. Freeman informed him that both Mr. Pouncey and Mr. Gwaltney were incompetent and could not represent the City of Germantown.

In response, Ms. Freeman stated Mr. Pouncey had come several times to speak with the association about this issue and there had been discrepancies which is why she wanted the Storm Water Engineer to come. She stated both Mr. Pouncey and Mr. Gwaltney had come and spoken to the association but there had not been much progress and it was progress they were wanting.

Proclamation – Development Disability Awareness Month

Mayor Goldsworthy proclaimed the month of March as Development Disability Awareness Month.

Proclamation – Arbor Day

The Mayor read a proclamation making March 6, 2009 as the 127th anniversary celebration of Arbor Day.

Pam Beasley stated the Germantown Tree Board in collaboration with the Beautification Commission invited the citizens to participate in a "free tree give-away" program to be held from 8:00 a.m. until noon March 6 at the Germantown Fire Station on Farmington Blvd.

Alderman Billingsley asked Ms. Beasley to go through the certifications of the Tree Board. He complimented the staff members and the Tree Board for participating in the training.

Ms. Beasley stated the Tree Board is made up of representatives from several commissions and this year they had the opportunity to participate in the Master Urban Forester Certification offered by the UT Extension Office. Five of the staff and Tree Board members completed that certification process which consisted of six hours per day for six weeks.

Beautification Business Award

Mayor Goldsworthy, Alderman Palazzolo and LeAnn Byrum from the Beautification Commission presented Jo Wright, the VP of Property Management of Loeb Properties with the Business Award. The Loeb Properties is located on the southeast corner of Farmington and Exeter Road. The landscape was designed and managed by Bill Simpson of Landscape Creations Inc.

Mr. Wright thanked Mr. Simpson for his work and the 16 tenants of Farmington Center.

Mr. Simpson stated it was a team project with Loeb Properties and he commended the City of Germantown and the efforts of the Planning and Code Enforcement departments for their efforts which set a good example of the standards set forth by the City.

Approval of Legislative Agenda

Mr. Lawton asked the Board to consider the legislative agenda for the City and to transmit this information to the senators and representatives who serve us in Nashville. Administration had identified the most pressing legislative items before the General Assembly and have the most impact on our community. The City will monitor all legislation that comes before the General Assembly through the assistance of the Tennessee Municipal League and through our lobbyist, Farris Mathews & Bobango.

The following are excerpts of the explanations why these items are to be included in the legislative agenda:

Most of the legislative items are items that in the past had been lobbied before either in favor of or against. Administration is concerned during this fiscal crisis about the state shared taxes that the State of Tennessee distributes to municipalities across the state. We are concerned that the state may resolve their fiscal crisis by reallocating or eliminating state shared taxes.

There are numerous bills dealing with handgun legislation. Administration is concerned that any reduction in the standards regarding the ability to carry a handgun within certain places, such as parks and where alcohol is served would be detrimental to residents of Germantown and statewide.

For the past several years, there had been numerous discussions regarding the creation of special school district legislation. The City wants to go on record in support of legislation that would create a special school district that would serve the constituency of Shelby County Schools.

The State of Tennessee is a right to work state and we are opposed to any legislation that would introduce the extension of unionization activities among municipal government employees. This collective bargaining legislation would undermine the political and representative nature of our local government.

The City recently amended its automated enforcement ordinance to comply with state law. Legislation has been introduced in Nashville that would eliminate automated enforcement cameras on state highways. We are opposed to any legislation that would negatively impact the use of automated enforcement cameras for traffic violations.

In these economic times the City does not support excessive increases in Tort limits and are opposed to the current legislation that would do so.

Legislation has been introduced that would require property tax rates to be fixed by the county or municipal legislative body unless the voters of the county have approved by referendum that all increases in property tax must be approved by a referendum. The City administration is opposed to having local government's abilities to raise revenue to support our defined levels of services limited by referendum.

The City will continue to monitor this legislation and other bills that come before the General Assembly and continue to be strong advocates for our residents.

Motion by Mr. Palazzolo, seconded by Mr. Drinnon, to adopt the recommendations as the City's legislative agenda and authorize the Mayor and administration to forward this information to our state representatives and senators.

Motion by Alderman Billingsley, seconded by Mr. Chism to amend the Legislative Agenda by removing the items on Handgun Legislation and the Collective Bargaining and Labor Bills.

Alderman Palazzolo stated he did not swear an oath to protect the people, he swore to represent the people, and he was against removing these two items. He felt it would be reckless to introduce firearms in public parks and where alcohol was being served. He put a lot of credence, faith and confidence in listening to professionals that are city employees such as the police chief and the police department. If Chief Hall and his officers are against this legislation, then he too was against it. The Tennessee State Police Chief's Association was also against it. He stated he was not against the right to bear arms which is a constitutional right.

In the matter of collective bargaining, Alderman Palazzolo stated the City departments had never been represented by any union, and administration had always made sure our police, fire, and ambulance had the utmost training, the best equipment, the best places to store their equipment, best fire houses, and he felt we should put our resources in training, equipment and salaries.

In response to a question from Alderman Palazzolo, Mr. Lawton stated we have not had a great turnover in police officers or firefighters. We are fully staffed in both fire and police. We are at or above the market in all our positions throughout the City.

Alderman Billingsley stated he was asking that these two items be removed from the agenda because he felt the citizens of Tennessee had a right and an obligation to speak with their legislators in Nashville. He would hope the Board, relative to these issues would allow the citizens of Germantown to speak by contacting their legislators. He was concerned and wanted to be sure the front line responders are able to discuss with their employers the best way to provide emergency services.

Pam Beasley, in a response to a question from Alderman Palazzolo, stated the Parks and Recreation Commission had not formally discussed this legislation. He felt it should be added to the agenda as an advisory commission to the Board.

Alderman Chism asked if he could call the question.

Mayor Goldsworthy stated she felt it appropriate that all aldermen who had a comment be allowed.

Alderman Hinely asked if there were any other parks throughout the nation that allowed one to bear arms.

Ms. Beasley stated she was not aware of any. She stated she was the President of the Tennessee Parks and Recreation Association and the professional association had gone on record in opposition to allowing handguns in the municipal and state parks. On a national level, the National Recreation and Parks Association had also taken that position as other states have engaged in discussion on this topic. Here in Germantown, the Parks Commission had not had any formal discussion on this issue.

In response to a question from Alderman Palazzolo, Ms. Beasley stated the state was against the legislation because it alludes to the fact that we don't believe guns should be present where children are.

Guns are not allowed on school campuses. There are playgrounds and sports fields in the municipal parks and we are concerned about safety and liability if handguns were present at these facilities.

Alderman Billingsley stated Alderman Chism had called the question. All agreed.

Motion to amend the language:

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

Motion to accept the Legislative agenda as amended.....

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

Resolution 09R01 – Opposition to Collective Bargaining

Mr. Lawton asked the Board to approve a resolution in opposition to HR413, a bill that is before the House of Representatives that would impose the power of the federal government to mandate unionism and collective bargaining with local public safety departments in cities over 5,000 in population. The City has in the past taken a strong stance against the spread of public sector unionism in our state. We strongly oppose HR413 because of its severe intrusion on state and local governments' sovereignty.

Many of our fire fighters have joined the International Association of Fire Fighters. This right of free assembly is protected by the first amendment to the Constitution of the United States. Beyond this, all of the so-called rights contained in this legislation regarding compulsory bargaining laws are union laws, not employee rights.

The bill talks in terms of equity and ensuring harmonious employer/employee relations. What the bill doesn't say and what they fail to point out to the public is that unionism and collective bargaining in the public sector are intended to give unions a disproportionate amount of influence in the decision making process and a loss of public control. This legislation will compel elected public officials to recognize and bargain with unions. This immediately deprives the representatives of the people of the power to determine whether such recognition and bargaining are in fact in the public interest. This legislation also calls for ways to resolve impasses involving mediation, fact finding and arbitration. Once again these systems, as identified in the bill, further serve to deprive the elected representatives of the people of their responsibility.

The legislation poses serious issues in terms of a severe and costly unfunded mandate, a compromise to emergency management plans and serious constitutional issues under the 10th Amendment. But just as important as these objections are, the bill also undermines our citizen's expectations of what is an effective public employee relationship.

Alderman Drinnon stated this bill was not in the best interest of Germantown and the Board would be ill advised to not oppose this bill. He hoped the Board would encourage our legislators to defeat the bill.

Alderman Billingsley stated it was his impression that this bill did not allow public safety officers to strike.

Mr. Lawton stated the bill did have that provision in it, but the nature of the fact that it addresses impasses and negotiations, that is not to say that a strike or a threat of a strike in removing those essential services is not present. It does mandate and address that these are the rules and policy by which we will negotiate all these areas including arbitration to solve any type of impasse.

In response to a question from Alderman Billingsley, Mr. Lawton stated the bill did require arbitration to dissolve disputes. It identifies the role of the federal labor relations authority to come in and make the determination.

Motion made by Mr. Billingsley, seconded by Mr. Drinnon to defer this item for further study.

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

Ordinance 2009-1 Amendment to Chapter 23 of the Code of Ordinances, Zoning – permitting Front Porches and 12-inch Encroachments – Third and Final Reading

Andy Pouncey stated this request would amend the Code to enable the Director of Development the ability to grant a twelve-inch variance to eligible required yard setbacks, and to enable front porches to encroach into required front yards by up to 10 feet. There had been no changes since the second reading.

Motion by Mr. Drinnon, seconded by Ms. Hinely, to approve Ordinance 2009-1 on third and final reading.

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

Ordinance 2009-2 – Amendment to Chapter 20, Article IV, Section 20-189 of the Code of Ordinances regarding Automated Enforcement – Third and Final Reading

Mr. Pouncey stated there had been no changes to the amendment since the second reading. This amendment would bring our ordinance regarding automated enforcement into alignment with the Tennessee State Ordinance.

In response to a question from Alderman Drinnon, Mr. Pouncey stated there was movement by a representative from middle Tennessee to introduce legislation to outlaw automated enforcement; Mr. Pouncey stated he had heard of some talk. Mr. Pouncey stated Germantown was a knowledgeable resource and would talk with the legislators regarding the good aspects of our ordinance.

Alderman Hinely noted that the revenue from this enforcement all goes to education in one form or another.

Motion by Ms. Hinely, seconded by Mr. Palazzolo, to approve Ordinance 2009-2 on third reading.

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

Ordinance 2009-10 – Amendment to Chapter 17, Subdivision Regulations – Alterations to Subdivision Lot Lines – First Reading/Set Public Hearing Date

Mr. Pouncey stated this would establish requirements for minor lot modifications by simplifying the formal subdivision plat approval process.

Motion by Mr. Hinely, seconded by Mr. Chism, to approve Ordinance 2009-10 on first reading and to set a public hearing date for March 23, 2009.

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

Ordinance 2009-11 – Amendment to Chapter 23, Zoning – Planned Unit Developments – First Reading/Set Public Hearing Date

Mr. Pouncey stated this amendment would allow for greater flexibility in the design of developments as opposed to a typical subdivision where it is divided into similar size lots. This will offer a little more creativity. It would bring the requirement of having three acres to one acre and allow it in the OG and OG-1 District.

Motion by Ms. Hinely, seconded by Mr. Palazzolo, to approve Ordinance 2009-11 on first reading and to set a public hearing date for March 23, 2009.

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

Library Services

Assistant City Administrator George Brogdon went through the history of the Germantown Library and how the Germantown Library Board was formed and the Germantown Community Library was established. LSSI was hired to operate the Library and the Germantown Regional History and Genealogy Center. The original contract was for three years with two option years. All options had been exercised and the current contract expires on June 30, 2009.

In January an RFP was sent to four vendors who provide library services. Only LSSI chose to submit a proposal. The RFP Review Committee met and after reviewing the proposal is recommending approval.

Mr. Tom Cates stated that the relationship with LSSI over the years has been exceptional and the contract was quite detailed. He gave credit for all the details to the Purchasing Director Lisa Piefer. He felt there was a clear understanding with LSSI and on behalf of the Library Board he recommended approval of the contract with LSSI.

Mr. Brogdon stated under the present situation with LSSI, the City, under the direction of the Germantown Community Library Board had been able to customize the hours of operation, the material acquisition, the programming and the customer service, to the level expected and appreciated by the citizens of Germantown. He stated that under the new contract, LSSI is proposing opening the GCL an additional three hours a week at no additional cost to the city. This will extend the hours of the GCL to 68 hours a week for the citizens of Germantown.

Alderman Drinnon commended the Board for the decision to run the library and commended Tom Cates for his outstanding leadership and participation on the Library Board.

Motion by Mr. Drinnon, seconded by Mr. Billingsley, to enter into a three-year agreement with LSSI to operate the Germantown Community Library and the Germantown Regional History and Genealogy Center beginning July 1, 2009 at a cost of \$1,107,966 for the first year with 3% increases per year thereafter.

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

Asphalt Paving and Milling Contract

Bo Mills explained that each year the Public Services Department has a preventative street maintenance program to annually grade, evaluate and schedule streets throughout the City for milling and/or asphalt resurfacing. It is projected that about 9 miles of streets will need maintenance.

Motion by Ms. Hinely, seconded by Mr. Drinnon, to contract with Standard Construction Company, Inc. for the annual FY09 Asphalt paving and Milling Contract, in an amount not to exceed \$1,005,915.30.

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

Professional Services Agreement – Arthur/Riggs Road – NPI Phase 3

This agenda item was removed from the Consent at the request of Alderman Palazzolo. Alderman Palazzolo recused himself from the dais since he lives in this neighborhood and is also president of the Neighborhood Association.

The agreement is with SSR Ellers, Inc. for the design of water/drainage improvements to the Arthur & Riggs Road area in the amount of \$35,078.00.

Motion by Ms. Hinely, seconded by Mr. Drinnon , to approve a \$35,078.00 Professional Services Agreement with SSR Ellers for the design of the Arthur/Riggs Road project, Neighborhood Preservation Initiative, Phase III.

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

CONSENT AGENDA

Amendment to Lease Agreement – Germantown Community Theatre - DEFERRED

Bulk Asphalt Mix

Asphalt mix is used for street maintenance repairs, utility cuts and drainage projects. Staff recommended the second lowest bid from Standard Construction Company. Standard Construction has two plants locally, accounting for a considerable reduction in fuel, equipment wear and labor costs. Additional travel time is a problem due to the twenty-mile distance to the asphalt plant at Lehman-Roberts.

MOTION: To contract with Standard Construction Company, Inc. for the purchase of 2,000 tons of 411D hot asphalt mix in the amount of \$124,000.00.

Fireworks Display – July Family Fourth Event

This is for the fireworks for the Annual Fourth of July celebration held at Municipal Square Park. One bid was received from a reputable Tennessee company having extensive experience in producing large municipal events.

MOTION: To authorize the Mayor to enter into a new contract agreement with Pyro Shows, Inc. for the July 4, 2009 fireworks display in the amount of \$15,000.00.

Parks and Open Space Security Cameras

Two security cameras are to be installed at greenway trailhead parking lots. Auto break-ins at remote locations supporting greenway use have become a problem over recent years. The purchase of the Q-Star system falls under the procurement guidelines for sole source products. Staff could not find any other camera system available that operates on solar power and that does not require any data cable support.

MOTION: To approve the purchase of two security cameras, necessary mounting brackets, warranties, software and digital memory card readers from Q-Star Technology in the amount of \$13,476.00.

Project Development Contract No. 1172 – Forest Hill-Irene Commercial Subdivision, Lot 1B

This property is located on the south side of Forest Centre Drive, west of Forest Hill-Irene Road. Eight of the ten lots have been approved by the Planning Commission and DRC for office development with seven of the approved lots under a development contract which has been approved by the Board of Mayor and Aldermen.

MOTION: To approve Project Development Contract No. 1172 for Forest Hill-Irene Commercial, Lot 1B.

Renewal of Stop Loss

Medical Stop Loss insurance is insurance that protects the City's self-funded medical plan from catastrophic medical costs. Without this insurance the City would be at extreme high risk and would have to absorb the liability of all claims. The City's agent, The Barnett Group, sought proposals to continue

the important coverage with four out of nine carriers responding. Four proposals were received including the current carrier OptumHealth, formerly Hartford. After thorough analysis of the City's medical plan activity this past year, staff and the City's insurance agent recommends acceptance of the quote from Swiss Re which will lower the City's present cost by 1.7% or approximately \$12,000 annually.

MOTION: To authorize the Mayor to execute a contract with Swiss Re Insurance Company to provide Stop Loss Insurance for the City of Germantown effective March 1, 2009.

Delinquent Accounts

The purpose of this item is to request authorization to write-off uncollectible/delinquent accounts. The principal delinquent accounts are personalty tax, utility billing (closed accounts) and employee COBRA fees.

MOTION: To approve the write-off of uncollectible/delinquent accounts totaling \$66,865.96.

Recognition of Funds

The Tennessee Task Force 1 Urban Search and Rescue Team deployed to Hurricanes Gustav and Ike earlier in the year and these are reimbursement fees from FEMA to the City of Germantown for the backfill overtime.

MOTION: To recognize the reimbursement funds received from FEBA via the City of Memphis for overtime expenses during two hurricane deployments and approve Budget Adjustment 09-84.

Appointment to Financial Advisory Commission

There was a vacancy on the FAC and Mr. Russell Johnson has expressed a desire to serve on the Commission.

MOTION: To approve the appointment of Mr. Russell Johnson to serve on the 2009 Financial Advisory Commission.

Right-of-way Mowing Contract

This is a one-year contract for right-of-way(R.O.W.) mowing in the amount of \$43,667.90. Eight vendors responded to the bid. Because of the significant variance in bid prices received, staff interviewed TLLM to ensure they were fully prepared to meet all requirements of the expected R.O.W. mowing contract. Staff is recommending the low bid with TTLM.

MOTION: To approve authorization to enter into contract with Total Landscape & Lawn Maintenance, for a one-year contract to perform right-of-way mowing services, for a total amount of \$43,667.90.

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.

Mayor Goldsworthy reminded the Board that the meeting time will continue until the final reading on the ordinance to change the Board of Mayor and Aldermen meeting time.

Alderman Billingsley asked to dispense with the Executive Session after tonight and all the business of the Board come before the Board at the regularly scheduled meeting. It was the consensus of the Board to do so.

ADJOURNMENT

There being no further business to be brought before the Board, the meeting was adjourned.

Sharon Goldsworthy, Mayor

Dotty Johnson, City Clerk/Recorder