

BOARD OF MAYOR AND ALDERMEN
September 14, 2009

A regular meeting of the Board of Mayor and Aldermen was held on September 14, 2009 at 6:00 p.m. in the Council Chambers 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: Andy Pouncey, Kristen Geiger, George Brogdon, Tom Cates, Jerry Cook, Chief Richard Hall, Pat McConnell, Chief Dennis Wolf, Ralph Gabb, Melody Pittman, Michael Saddler, Michael Stoll, Tim Gwaltney, Josh Whitehead 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 Agenda

Mayor Goldsworthy stated staff had requested an add-on of an appointment to the Historic Commission.

Motion by Mr. Billingsley, seconded by Ms. Hinely, to accept the add-on of an appointment to the Historic Commission.

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

Alderman Chism asked to add on the agenda a discussion on the naming of the Ocean View property and the park.

Mayor Goldsworthy stated the procedure would be to discuss placing this discussion on a future agenda for discussion.

Motion by Mr. Drinnon, seconded by Mr. Billingsley, to add a discussion on the naming of the Ocean View property and the park area on the September 28 agenda.

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

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

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

Alderman Billingsley asked the Board if they would agree to cancel the Tuesday morning breakfast meeting until the City Administrator returns.

The Board by consensus agreed to postpone the Tuesday morning meeting for this month.

Approval of Minutes

The minutes were approved as printed.

Motion by Mr. Chism, seconded by Mr. Palazzolo, to approve the minutes of the Board of Mayor and Aldermen meeting held August 24, 2009.

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

Citizens to be Heard

Sidney Kuehn of 8779 Three Chimneys Drive West asked the Board to reverse their decision on the illuminating service station signs. There are presently two service stations in Germantown that have illuminating price signs in front of their stations that he felt were against the sign ordinance.

Alderman Palazzolo asked for a legal interpretation if there was an appeal process for signs that have been granted before the next DRC meeting on the 22nd.

Mary Ann Gibson of 8688 Pepper Bush Lane was opposed to the consolidation of governments and was concerned that the City of Germantown was not a party to the ad hoc committees that were formed. Her concern was that forming a metro consolidation was one step away from consolidation of the schools.

Frank San Pietro of 1901 Kilbirnie Dr. and Vice President of the Duntreath Neighborhood Association felt that Memphis Tomorrow was a not-for-profit organization and had a strong interest in the City of Memphis. Their primary tax exempt purpose is to identify and provide leadership on selected issues important to the prosperity of the Memphis community. He felt the only thing consolidation would do for the citizens of Germantown was to result in higher taxes, reduced services and diminished representation.

PUBLIC HEARING – Ordinance 2009-15 – Appeal of Decision by Planning Commission – Barzizza Property (7-acres) Rezoning from “R” Low Density Residential Zoning District to “R-H” Retirement Housing Zoning District – Second Reading

Planning Director Josh Whitehead stated this ordinance was to rezone a seven-acre parcel located on Poplar Ave. just east of the intersection of Kimbrough and is approximately one-half of the Barzizza tract. The proposal is to rezone from “R” residential to “R-H” retirement housing. This zoning district was created in response to a request from the Senior Citizen Advisory Commission felt that a zoning district was needed to allow for a variety of housing for different stages of retirement. A site plan had been submitted which was submitted with the rezoning. The site plan indicates a 184 unit building of which about 74% will be independent living units and about 26% health care units. The building is three stories tall and stands approximately 35 feet at the front grade of the building. The Planning Commission denied the application and now requires at least a four vote majority by the Board on all three readings.

Mr. Whitehead stated the Planning Commission and the Board had been concerned about some issues over traffic. The 184 unit building will generate some traffic and the two largest concerns were the access from Poplar and the impact on Scruggs, Shepherdwood, Dovie Lane and Hacks. A traffic study had been done by the applicant and corroborated by City staff on the increase in traffic on these roads.

Alderman Hinely stated that when Wolf River Parkway is opened she hoped it would take away some of the traffic on Poplar Avenue.

Mr. Whitehead stated it would either have a zero impact or a slightly reducing impact. The largest impact of opening Wolf River Blvd. would reflect on Farmington Blvd.

In response to a question from Alderman Hinely, Mr. Whitehead stated the financial impact on this rezoning, taking the existing unit numbers and acreage numbers on two of the existing retirement villages, Germantown Village and Germantown Plantation, and gleaning it to the 7 acres, it is thought it would be from \$52,000 to \$152,000 per year. This is based on the 247 units at the Village and the 184 units proposed here. These type of developments are assessed by the County at 40%. Residential houses are assessed at 25%. Commercial properties, retirement houses and office, that percentage are assessed at 40%.

Alderman Drinnon asked if in zoning matters the financial aspect comes into play in decisions.

City Attorney Tom Cates stated that in land planning that should be the principal guide to what is best. In rezoning matters and the use of the land as a benefit to the developer or a benefit to the City from the development, finances should not be taken into consideration.

The applicant Ms. Deborah Daws of Dalhoff, Thomas, Daws, extended a formal apology to residents Mr. and Mrs. Darr. At the last Planning Commission meeting she misrepresented the Darrs. She stated the Darrs has been gracious through this process and they looked forward to working with them throughout the remainder of the project.

Ms. Daws gave a short history of the project and how the project went from 14 to 7 acres. The property now has no views or site-lines from rear yards into the property and no drainage impact from the site. The property drains to Poplar Ave. The Long's are not opposed to the plan. They have asked for a fence and screening and the developers have agreed to appropriate screening with both the Long's, Ms. Darr and OLPH Church.

A traffic study was done by Dr. Lipinsky. The original study was required by the zoning ordinance and there were some issues and concerns about how Dr. Lipinsky had come to this standard of numbers and the ITE manual. An additional traffic study and actual traffic count was done at one of the retirement communities in Germantown and the findings from that traffic count helped to support the ITE manual to support the findings of Dr. Lipinsky's traffic report.

Mr. Mark Mayberry of the Formation Development Group in Alpharetta, Georgia stated this is a senior living group and he discussed the group, the partnership and the investors. He stated the staffing level is low and estimated it to be around 25-30 part-time employees on staggered shifts.

Mr. Mayberry apologized to Mr. and Mrs. Darr and to Father Creary, pastor of OLPH Church. He felt they had been characterized improperly and felt he had contributed to that. He felt this grew out of the issue of the potential driveway connection between this property and the church's driveway. Formation never wanted that driveway connection. The City had asked that they pursue the driveway and they put it on the plans and asked for a meeting with members of the parish, him and Mrs. Darr. They had a very cordial reception to the notion of the development and the intergenerational programs, spiritual and volunteer opportunities and being next to OLPH and across the street from St. George's. The driveway issue was not well received. The Church and the Darr's had not obstructed the plans in any way and had been very good to deal with and looked forward to being neighbors.

Mr. Mayberry stated that OLPH and St. George's were not opposed to the development. The development adjoins two single family homes, the Long's and the Darr's and neither had expressed opposition, nor had the two single family homes across the street. The opponents he felt came from the competition and a minority of neighbors in Dogwood Creek. The closest neighbor in Dogwood Creek would be 470 feet from the building. There had been a lot of concerns if the development did not work that it would be made into apartments for non-seniors. He stated it would be highly unlikely because the buildings will be very different from apartment buildings. The units are smaller with more common areas, providing less than one parking space per unit. More is invested to build these units because of the senior living codes and the elaborate common areas.

He felt there was a need for this type of development in Germantown and stated the median age in Germantown was 45 years old which is not very old but it is 25% older than Collierville, 27% older than the county, 20% older than the state and 22% older than the U.S. This seems to state the need for senior living in Germantown.

The real issue he felt was from traffic. He stated this was the first time they had ever had to commission a traffic study. He stated he was confident they would not generate much traffic, very nominal on Poplar and almost no traffic on Scruggs Road.

Dr. Martin Lipinsky, PE, PTOE, conducted the traffic study for this site and basically followed the procedures as outlined in the ITE Trip Generation Manual using the land use code for single living. The trip generation for this type of land use for single density land use compared to other land uses is far less than residential, apartment, etc.

Mayor Goldsworthy opened the public hearing.

The citizens who spoke were concerned with the value of their property, traffic, the height of the building and the possibility of the units being individual apartments. The following people spoke against the rezoning:

Ken Meador of 8231 Park Ridge Dr.

Tom Johnson of 8342 Glen Meadow Lane, President of Dogwood Creek Homeowners Assoc.

Art J. Benjamin of 2562 Meadow Run

Marilyn McVeigh of 8362 Briar Creek

Dan Corum of 2565 Heather Brook Lane

Sidney Kuehn of 8779 Three Chimneys Dr.

Mike Boeckmann of 8285 Poplar

Sarah Freeman of 7764 Apahon Lane

Eddie Herbert of 7820 Walking Horse Dr.

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

Rebuttal remarks were made by:

Mr. Mark Mayberry felt there would be very few residents in the 48 assisted living units with private cars. With the independent living which accounts for 136 apartments, he felt there would be half to three-fourths of the residents to have a car. They will have transportation service and two or three vehicles. He stated this will be rental housing and will give seniors and their families the flexibility to not have to make a big purchase and instead make a monthly purchase.

In response to a question from Alderman Palazzolo, Josh Whitehead stated there were four properties that abutted the property, Poplar Ave to the north, the Darr property, OLPH Church, the Long property and the remainder of the Barzizza property. Mr. Whitehead stated the Census Bureau does the census and periodically they do estimates. He felt the estimate of 29% of citizens over 45 was from an estimate done in 2006.

Mr. Whitehead stated there were three similar retirement villages in the City and the occupancy rates were as follows: Southerland Place 95%, Village of Germantown assisted living 98% and independent living 90% and Germantown Plantation is 100%. In addition to these retirement homes there are subdivisions with age restrictions; 72 units at Wicklow Way cluster homes and Poplar Grove with 60 homes. He stated there was also a 48 unit Alzheimer Center to be built on the backside of Target on Poplar Pike.

Tim Gwaltney, City Engineer, stated that staff was comfortable with the numbers in the traffic study. The study was conducted with the ITE Manual which are numbers from studies of similar types of developments nationwide. When the original study was performed it was reviewed by staff and they asked the applicant to perform another study on a similar development in Germantown and staff is comfortable with the numbers.

Alderman Palazzolo asked how or if the City could protect the citizens from a change in use in the future.

City Attorney Tom Cates stated the way you can be sure that what is being talked about will be built on the property. If the Board voted to rezone this property to the requested designation, then the owner of the property by right, will have the right to build anything that is presently permitted under that designation on this property. He stated he understood that includes things other than a retirement home as had been discussed and he understood that it did.

Mr. Whitehead stated that the ordinance focused on the type of housing, single family, two family property, congregate care, multi-family.

Mr. Cates stated that in answer to the question, he wanted to be precise, that whatever is within that zoning classification is a right.

Alderman Palazzolo asked if the property were rezoned, then a future developer would have to go through a process to ask for site plan approval for whatever may go on the property.

Mr. Whitehead stated yes.

Mr. Gwaltney stated that the traffic study that was done for this proposal was only valid for this type of development. If it were high density apartments, then the study would not be valid. Any other proposal will require another traffic study to match that proposal.

Mr. Whitehead stated the Technical Advisory Committee (TAC), which is made up of staff from different city departments had reviewed the rezoning and there were a few areas that will come under review from the Fire Marshall.

In response to a question from Alderman Billingsley as to how many stories were in the facility, Mr. Whitehead stated that the only BZA application that will be made will be for the Use-On-Appeal. There is a requirement for nursing homes to be granted a Use-On-Appeal by the BZA. It is not allowed by right in the "R-H" zoning district. The "R-H" district requirement is 35' height.

Motion by Ms. Hinely, seconded by Mr. Palazzolo, to approve the Request for Rezoning from "R" Low Density Residential Zoning District to "R-H" Retirement Housing Zoning District on second reading.

Alderman Drinnon stated he sat on the Planning Commission and had listened to the developer for a facility of this nature and he was opposed to the location and he would be voting no.

Alderman Hinely stated she understood the passion of the citizens. She stated she had been on the property several times at different times of the day and did not have any trouble making a left onto Poplar Ave. She felt the development would be good for the neighborhood and would not devalue the property and she would be voting yes.

Alderman Chism stated he felt there was a real need for affordable senior living and he would be voting yes.

Alderman Palazzolo stated he too had walked the property several times and driven around the neighborhood and felt there would not be a problem with traffic and he would be voting yes.

Alderman Billingsley stated he had studied the project, walked the property and spoken to many who live in the Dogwood Creek area and looking at the impact on the neighborhood he valued Dr. Lipinsky's

expertise and the expertise of the staff who have comprehensively presented this project and he would be voting for the overall benefit of Germantown and voting for the rezoning.

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

Consideration of Invitation to Memphis Tomorrow Representatives to Meet with Germantown Board of Mayor and Aldermen

Assistant City Administrator Andy Pouncey stated the Board had asked to bring forward for consideration an invitation to the representatives of Memphis Tomorrow to present their position on consolidation. This would be a motion to have administration to invite Memphis Tomorrow.

Mayor Goldsworthy stated it was administration's interpretation of what the Board was looking for was to invite representatives of Memphis Tomorrow to meet with the Board but it was not the intent of the Board to make it a public invitation even though it would abide with the Sunshine Law.

Motion by Mr. Billingsley, seconded by Mr. Chism, to direct administration to invite the appropriate representatives from Memphis Tomorrow to meet with the Germantown Board of Mayor and Aldermen on the issue of consolidation and metro government.

A discussion followed on whether to invite the public to a public forum to exchange ideas with the Board and the public.

Alderman Drinnon moved to amend the motion to make it a public meeting and to invite all the citizens of Germantown to hear what Memphis Tomorrow had to say. There being no second, the motion failed.

It was a consensus of the Board that the initial meeting would be to just listen to Memphis Tomorrow and after the meeting if the Board wanted to take a position on consolidation it would be after this meeting. The meeting will take place in the Council Chambers at 7:00 on Tuesday, October 13.

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

CONSENT AGENDA

Recognition of Donations – Germantown Community Library and the Germantown Regional History and Genealogy Center

Several individuals and organizations donated funds for the period of June 1, 2009 through August 10, 2009 to the Germantown Community Library totaling \$924.20 and to the Germantown Regional History and Genealogy Center totaling \$484.72.

MOTION: To recognize the monetary donations made to the Germantown Community Library totaling \$924.20 and the Germantown Regional History and Genealogical Center totaling \$484.72.

Recreational Youth Cheerleading – Budget Adjustment

The Parks and Recreation Department is providing administration for the Germantown Youth Cheerleading program this year and its handling the finances as well. Staff collected money from a recently held 2009 Cheerleading Camp totaling \$4,357.50. Staff is requesting this money be distributed in the budget cost center for cheerleading to be spent for program supplies. This program is self-sustaining.

MOTION: To accept monies in the amount of \$4,357.50 as revenue and to approve Budget Adjustment No. 10-27.

Recognition of Grant – Parks and Recreation Department

Germantown Parks and Recreation Department was recently awarded a grant for \$500 from the National Recreation and Park Association for the Archery program.

MOTION: To recognize the grant made to the Parks and Recreation Department for a community program totaling \$500.00 and to approve Budget Adjustment No. 10-28.

On-Call Professional Services Agreement – Kimley-Horn & Associates

This agreement with Kimley-Horn & Associates, Inc. will be used as an on-call Engineering Services Agreement for their transportation expertise. The proposed funding for FY10 is an amount not to exceed \$30,000.00.

MOTION: To approve an On-call Professional Services Agreement with Kimley-Horn & Associates, Inc. in an amount not to exceed \$30,000.00.

Appointments to Youth Commission

Three students have applied for vacancies on the Youth Commission.

MOTION: To approve the appointments of Hannah Griffiths, Shelby Glass and Matthew Berry to serve on the Youth Commission.

ADD-ON – Appointment to the Historic Commission

Mr. Warren Travis has volunteered to fill a vacancy on the Historic Commission.

MOTION: To approve the appointment of Mr. Warren Travis to serve on the Historic Commission until December 31, 2009.

Motion by Alderman Drinnon, seconded by Ms. Hinely, to approve the Consent Agenda as read.

ROLL CALL: Billingsley – yes, 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