

## **BOARD OF MAYOR AND ALDERMEN**

**January 12, 2009**

A regular meeting of the Board of Mayor and Aldermen was held on January 12, 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, Jerry Cook, Pat McConnell, Ernie Moretta, Michael Sadler, Ralph Gabb, Chief Richard Hall, Chief Dennis Wolf, Bo Mills, Derek Chaput, Melody Pittman, Tim Gwaltney, Josh Whitehead, Joe Nunes and Dotty Johnson.

Mayor Goldsworthy stated the Board had agreed to move from the Consent agenda to the regular agenda one item, Herbicide Application Contract.

Alderman Billingsley asked to also move 14 g from the consent agenda to the regular agenda, Subdivision Development Contact No. 356 – Resubdivision of Lot 5, Johnson Road S/D – Refund of Development Fees (Interest). The Board unanimously agreed.

The Mayor welcomed Alderman Billingsley to his first full Board meeting.

### **Invocation**

Assistant City Administrator Andy Pouncey gave the invocation.

### **Pledge of Allegiance**

Alderman Carole Hinely led the Pledge.

### **Approval of Minutes**

Approval was requested of the minutes of the executive and regular session held December 9, 2008 and the special called meeting held December 17, 2008.

Motion by Mr. Palazzolo, seconded by Ms. Hinely, to approve the minutes of the Executive Session and Regular Meeting held December 9, 2008

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

Motion by Mr. Palazzolo, seconded by Ms. Hinely to approve the minutes of the special called meeting held December 17, 2008.

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

### **Citizens to be Heard – Verbatim per request of Alderman Palazzolo**

Sarah Wilkerson Freeman: My name is Sarah Wilkerson Freeman, I live at 7684 Apahon Lane and this is more a question and clarification. There has been some confusion on this issue of the appeals process regarding ah decisions on developments and so this question goes to the appeals process so it is not on the agenda, it is about the process.

I have questions regarding the appeals process for Smart Growth Developments. The City Code allows property owners that live within 300 feet of a proposed development to appeal changes to a development. Does this same criteria apply to Smart Growth Developments and specifically then to Saddle Creek IV

since that is the only development so far that we have been looking at? I ask because former Planning Commission member Lorie Hendricks pointed out from a Smart Growth Committee Meeting that the management within a condition supplying the Saddle Creek IV restricted the right of appeal to adjacent properties, property owners only. Not property owners within 300 feet. Ah, she requested that this inconsistency be rectified so I don't know if David Harris is here because I know he was at that meeting. But, when last I read these conditions that were in the contract that language was still there so, I do think it is important that we be clear about the rights of the property owners, so any decisions that we make we know who has the right to appeal and why. So, if Tom can you answer this question?

Mayor Goldsworthy: Ms. Freeman, our practice here is for the Board to receive comments or questions, ah, with questions properly directed to the City Attorney; I would ask him to respond to you after he has had an opportunity to research.

Ms. Freeman: Okay, because if, if this line has not been rectified and the specific request of the Planning Commissioner, it seems this critical issue arises, the appeals should be clarified, before motions to amend the outline plan goes forward. So it just seems like that as an important legal point that we all need to know before you all move forward with positions. Thank you.

### **Teacher of Month**

Ms. Kate Mullins Crowder, a fourth grade teacher at Farmington Elementary, was selected to receive the award for December.

Alderman Chism announced that Ms. Kight the principal at Farmington Elementary sent her congratulations.

Mayor Goldsworthy read her many accomplishments and some recommendations the class had written.

Audubon Dental Group was the sponsor of the award and former alderman, Dr. Robert Parrish presented her the check.

### **Youth Excellence Award**

The November award recipient was Ms. Mary Lyn Albritton, a senior at ECS. Mayor Goldsworthy recognized her many accomplishments.

Ms. Lavanya Mittal received the award for December. Ms. Mittal is a senior at St. Mary's, and the Mayor congratulated her on her many accomplishments.

### **BEER BOARD**

The Mayor declared the regular session of the Board recessed and convened the Beer Board.

### **PUBLIC HEARING – Beer Permit Application – El Chapultepec Mexican Restaurant – 2037 Exeter Rd., Suite 2 & 3**

City Administrator Patrick Lawton requested the Board to consider a request from the owners of the El Chapultepec Mexican Restaurant for a permit to sell beer for on-premise consumption. They were in compliance with the City's ordinance.

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

Motion by Ms. Hinely, seconded by Mr. Palazzolo, to approve the request from Erica Castrejon and partners, owners of El Chapultepec Mexican Restaurant for a permit to sell beer for on-premise consumption.

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

Mayor Goldsworthy declared the Beer Board closed and reconvened the regular board meeting.

### **BOARD OF MAYOR AND ALDERMEN**

#### **PUBLIC HEARING - Saddle Creek IV Planned Development – Approval of Amended Outline Plan and Warrant**

Andy Pouncey stated these amendments to the original outline plan that was approved on July 14, 2008 for Saddle Creek IV Planned Development. The specific requests was for amendments to (1) Relocate warranted 8-story office building 22.87 feet to the south; (2) Delete open space along Poplar Ave. to move outparcel restaurant closer to Poplar Ave.; and (3) increase total retail square footage/decrease restaurant square footage, and decrease total square footage with the deletion of future development.

Mr. Pouncey showed on the screen exactly what was proposed to take place and went into detail on the changes. In regard to the first amendment to relocate the 8-story office building, a portion of the office building was to be built on a plat on the northeast corner but he was not able to purchase the property. Therefore, the applicant requested to shift the office building 22.87 feet to the south. This will not affect the sight lines of existing residentially zoned parcels. This will not affect future access to existing Saddle Creek South.

The second amendment was to delete open space along Poplar Ave., to move outparcel restaurant closer to Poplar Ave. The applicant wishes to comply with Section 23-767(7) of the City Ordinance and locate the building 40 feet from Poplar Ave.

In the third amendment, the applicant is requesting an amendment to the Outline Plan in order to increase the maximum square footage for retail space and reduce the square footage for restaurant space. The additional square footage is located off the plaza nearest the railroad tracks. The addition of retail square footage does not adversely affect the overall project conforming to the Smart Code.

The applicant was required by staff to provide an updated traffic analysis which reflects the proposed use and square footage changes.

Staff also required the applicant to revise the sanitary sewer analysis to reflect the currently proposed use and square footage changes. The revised analysis was received and reviewed by staff. The proposed changes in use and square footage result in a total sanitary sewer flow reduction of 30 gallons per minutes from the previously approved plan.

Additional changes made to the site line plan must be specifically approved by the Planning Commission and the Board of Mayor and Aldermen. The final plan must follow the provisions of the Outline Plan. If a Final Plan receives Planning Commission approval, the project will proceed to the Board of Mayor and Aldermen for Final Plan and Development Contract Approval. Any changes made to the Outline Plan must be specifically approved by both the Planning Commission and the Board of Mayor and Aldermen.

Alderman Palazzolo asked about Park Land and Public Art Dedication. Andy stated that is such a small portion of this which is apartments or residential that would apply to the Park Land Dedication. The whole site plan has the requirement for .5% of total value of the project which in this case would be a minimum of \$200,000 to cover the size of the project for public art.

Alderman Palazzolo also asked about discussions of the east/west connectors through Market Square.

Mr. Pouncey stated they had held off of those discussions because we are in the middle of a traffic analysis. When Kimley-Horn gets to a point, staff will be brought in to talk about the complete streets and this will be incorporated into that discussion.

Alderman Hinely asked since the restaurant had been moved closer to Poplar and there are residential across the street, what type of buffer is going to be used.

Mr. Pouncey stated you have to be within 40 feet of that major artery so there will be some street landscaping. Using Saddle Creek West as an example, there is a 20 foot landscaping area and then 40 feet of parking so they are back about 60 feet which is more than what this will be. It has across from it, Bavarian Village. It is the nature of Smart Growth to bring things to the street so there will not be big parking lots behind. We are producing what is called a smaller carbon footprint instead of spreading out.

In response to a question from Alderman Billingsley about traffic signals, Mr. Pouncey stated that driveway A on the west side does not have a signal. If one is wanted in the future, they will have to come before the Planning Commission and then the Board of Mayor and Aldermen and show analysis that proves it will not endanger or slow traffic on Poplar.

Alderman Billingsley asked if these amendments are made, how that affects the internal traffic flow.

Mr. Pouncey stated there would be very little effect.

Tim Gwaltney stated the changes to the accesses in future such as Germantown Road realignment then North Street may be modified to a right-in, right-out only. The internal traffic specifically with changes would put more outbound traffic at Driveway B and more traffic on Poplar. The overall result would be a .35 second additional delay on Poplar.

Alderman Palazzolo felt with the reduction of amount of parking spaces there would be less internal traffic on-site.

Mayor Goldsworthy opened the public hearing.

(The public hearing is verbatim per Alderman Palazzolo's request)

Greg Lawsom: Mr. Greg Lawsom 7480 Willey Road. I bought a home, ah, over in, ah, Germantown Heights about three years ago, had a three year old and another one on the way, ah, came to Germantown because of the schools, ah, the schools, ah, the parks, ah it's a great place to raise kids. I am concerned about the size of this development. It looks beautiful, ah, I probably would like to go over there and eat at a restaurant, ah, do some shopping, but I am very concerned about how it might affect Germantown Heights. Ah, and I will just leave it at that.

Mayor: Thank you.

Mr. Lawsom: Thanks.

Mayor: Next.

Sarah Freeman: My name is Sarah Wilkerson Freeman, I live at 7684 Apahon Lane. Some of you might remember this document (she held up the Smart Growth Document) that you spent I don't know how

many thousands of dollars generating to the Lawrence Group. But on page 45, we see a schematic concept plan that Patrick referred to in the Board of Mayor and Aldermen packet and how this development with these changes somehow the recommendations of the schematic and I think its straining a good deal to even imagine that. It would be nice for the people to know, to see a comparison between what they were told this property would look like under what you all call Smart Growth, what you sold us back in 2007, compared to like, you are trying to deliver to us now. It would be nice to have some sunshine on how this process went forward and why the Lawrence Group was cut loose after they were delivering us this soft soap and sell in giving the people of Germantown something that we cannot believe who ever imagined (inaudible). So I would like to, if I may, and it may take more than three minutes, because I have spent hours of my time watching this process, reviewing the tapes, and it is scary the type of abuse of power and trickery I have observed and documented and that will become public.

Mayor: Ms. Freeman, I would ask if your comments be constructive.....

Ms. Freeman, interrupting: This, they are very constructive.

Mayor: .....and that they respect the Board's practice of approximately three minutes...

Ms. Freeman, interrupting: I will do my best.....(Inaudible)

Ms. Freeman: So I just have a few points, if I may. In the application requesting the bequeath the development square footage, ah, this is because the applicant has no intention of developing that square footage or because by diminishing the extent of the development on paper, the developer and the City can use artificially deflated numbers that the development in a more favorable light. To take the office space out of square footage, and out of the traffic setting, is dishonest unless the applicant is willing to commit now to not building on that property. If this were a true effort to scale back the project many would applaud the effort, but if not, should the City be complicitus in such an obvious deception.

Secondly, you are increasing the density and a good deal of the impervious surface and that, Andrew, is not a good carbon footprint. The expense of a potential hazards of ruining our sewage detention, I don't even want to go into. Laura Hendrix did her best to try to describe this to you all and ah, I wish we could see more like Laura Hendrix on a commission. But certainly it is important to note that in an internal memo, from the City Planning Department, regarding Saddle Creek IV drainage, it states quote all drainage systems should be designed for the twenty-five year event. The City requests that the fifty to one hundred storm.....

Patrick Lawton: Mayor that is time.

Ms. Freeman:.....be routed through the system to determine possible effects. What were the results on this test, especially those living along the Miller Farms Ditch?

Mayor: Please conclude your comments.

Ms. Freeman: I will do my best. One of the main reasons given for mixed use under Smart Growth is to even out the traffic flow. Increased retail defeats that purpose and requires more parking. Where is the multi-modal connectivity, the quote safe streets the pedestrian, cycles and cars throughout this property. Smart Growth development designs are supposed to achieve the required goal of connectivity.

Finally, the Lawrence Group concept plan has been completely disregarded. I don't understand why we wasted how many thousands of dollars but I do wish for many of us as we see property on Willey Road go up for sale. Didn't you expect that? People who have poured out their hearts to you who aren't here today because you have done nothing but humiliate and ignore them every time they tried to get their

message across. This poor man you imagine this.... (inaudible).....something he would like to say, having spent his hard earned money, moved his children here, why, why have you sold us out?

Mayor: Ms. Freeman

Ms. Freeman: Mayor, good night. Thank you. Should I leave you a copy? (She held up the Smart Growth Plan.)

Mayor: Are there other who would like to address the Board? Please step forward.

Linda Waltz: I am Linda Waltz and I live at 7542 Willey Road in Germantown Heights neighborhood. Ah, I have been here for many of the Planning Commission meetings, ah, when the discussion of this, ah, development has come up. The concern of the Germantown Heights neighborhood is the safety of our community and also the values, ah, property values, ah, in the article of the paper, it said you were trying to achieve an urban effect with Smart Growth and Germantown Heights neighborhood therefore will be encircled on three sides by Urban development. There could even be in the Owen Track at the other end of Willey Road, possibly a high-rise, who knows. But, ah, the integrity and the safety of the Germantown Heights neighborhood and Willey Road in particular which is already a cut-through road, which already has had many near misses and as I have described to a couple of people, my dog the other day who was merely trying to follow me across the street.... (inaudible) ... and thousands of dollars later, you know, fortunately he is still alive, but that could have been a child. Children don't think any further ahead than a dog does when he wants to cross the street. If a ball runs out in the street, or ah, their friends are out there, ah, on their bicycles.....It has been suggested, you know, that our neighborhood, like English Meadows when it had no sidewalks, we should keep our children in our yards. And I may be rambling, I'm sorry. Ah, but that would mean that they could never ride their bikes, they could not use their scooters, because Willey Road is a narrow, two lane, winding road with no sidewalks that was built back in the 1950's when Poplar Road itself was a two-lane road, when Germantown Road was a two-lane road and to expect Willey Road to get cut through traffic and the effects of urban development on three sides with no impact to it, I don't think is plausible.

Ah, I really wish you would look very, very hard at protecting the oldest planned neighbor, single family neighborhood in Germantown, Germantown Heights. Ah, closing the road would be wonderful. If you are concerned about fire and police, ah, I myself drove out of the Fire Department up to the, the intersection of Germantown Road and Farmington, turned right at the light, got into the left hand lane, within half a block, turned down Cordova for about a block and went straight down Willey. Ah, saying that Poplar needs to be open, I, ah, then went back, I came out from the Fire Department, went to the intersection at a light, went straight all the way down through Saddle Creek, came to another light, turned right, came to a third right, and then finally turned in on Willey Road. It was both longer in mileage, and had more stop lights.

Mayor: Ms. Waltz could you....

Ms. Waltz: Yeah, that's, that's about it. It just seems to me that if you need to use Willey Road, then you could cut up and come down Willey Road and if you needed to some, for some reason, to pop all the way through and out onto Poplar, there are such things as break through walls that can be erected and that would possibly help save our neighborhood. Thank you very much.

Mayor: Thank you Ms. Waltz.

Paul Edwards: Good evening. I am Paul Edwards of Evans & Petree. I represent the Shops at Saddle Creek. Ah, I think Mr. Pouncey you addressed real briefly the ballot the cross easements ah, could you elaborate or would you .....

Mr. Pouncey: When this plan came to being, we looked at what we now call complete streets, and the way they connect with folks whether they are on their feet, on a bicycle, public transportation or in vehicles and such and, ah, what we have right now are long large blocks and so part of the plan is to break that up and then into streets. And so, we did not want to them to be limited to one or two access of things, but the driving results would be future access and ah, they have very little access to the east. Ah, there is a, ah, driveway into corporate center which is a very straight line to West Street. There is the area behind your ah, where Jerry goes to eat, American Café that ah, goes right through, so we are looking at all these possibilities that there are none ah, none of them have been.....yet where..... you can get and such. We are always at the connectivity between various parcels that people can walk to eat, shop..... but....

Mr. Edwards: I thought, I was assuming that there were going to be some joint access easements and I think that, probably Saddle Creek would be very open to that, I think it would just be, just like.....

Mr. Pouncey: You have the right out at Market Square all the way down to the railroad tracks.

Mr. Edwards: Thank you.

Paul Bryan: My name is Paul Bryan of 7538 Wiley Road, Willey Road. I wanted to cover what my neighbors have already thrashed, but Ms. Hinely, to your point of easements, of the restaurant bringing that close to the road. That is very concerning because what there plats and schematics don't show you is that where that restaurant will be, will be elevated so therefore it doesn't take too much common sense to know that elevated sound travels much further than flat land sounds. There is nothing there to block it. Even the forty-feet. You are going to have noise maybe not across Poplar because of the road noise, but you do have, you will have adjacent property that will have noise. So, I strongly discourage moving that restaurant closer.

Secondly, restaurants are notoriously easy to get to, to go in and out of business because they carry no inventory, they are easy to close down very quickly and with our economy the way it is, I am sure you guys, ladies do read the papers, people are stopping, they are not eating out as much as they are. They are not shopping as much as they are. And granted I know this is a long-term plan, however, it also has to address the apparent economic status. So I am not, my concern is with the restaurant, moving it closer because I think it will all lead to noise that will disturb the neighbors and possibly a vacant building sitting their tenant goes out of business for, as such and people don't think that a large chain restaurant can go out of business, Macy's as you have read is closing 11 locations and Sharper Image has gone out of business. Ford, General Motors is on the verge of bankruptcy. So you're contemplating putting a building on a street, major thoroughfare, that there is a higher risk of it being vacant. That is one of my major concerns and secondly to add you are contemplating putting a development at a very down economic time when even major capital industries, city banks don't have capital so therefore they can't lend it and you are gonna, you are building a million plus square foot commercial development, where are you going to get the customers? That is a question I believe you need to ask yourselves. Granted, like I said ten to fifteen years down the road, if that is your time frame, it may be feasible but right now I don't think this is feasible from a business standpoint. Thank you.

Mayor: Is there anyone else who would like to address the Board? Last call, is there anyone else who would like to address the Board in this matter? The Public Hearing is now concluded and we return to consideration of Saddle Creek IV planned development amendment to outline plan/warrant.

Motion by Ms. Hinely, seconded by Mr. Palazzolo, to grant approval of the following amendment to the Outline plan with Warrants for the Saddle Creek IV planned Development located on the southwest corner of Poplar Avenue and West Street:

1. Relocate Warranted 8-story office building 22.87 feet to the south.

2. Delete open space along Poplar Ave. to move outparcel restaurant closer to Poplar Avenue
3. Increase total retail square footage/decrease restaurant square footage and decrease total square footage with the deletion of future development.

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.

Alderman Hinely stated she felt this would be a good project a good complex for Germantown. She agreed that the economy was not conducive for a big complex right now but she doubted that the developer was planning to build tomorrow. She felt this was the future of Germantown. She stated she was very concerned with the issues of the people who live on Willey Road but felt these issues could be resolved. She was concerned with the restaurant and the buffer. She stated she does believe in the complex and will vote for it.

Alderman Palazzolo concurred with Alderman Hinely. He described the process that Smart Growth had taken and stated he understood the comfort level of the citizens but felt this was our "Urban Village" and that things had to change to allow some urbanism to be able to sustain the tax base and to be able to improve the quality of life and to protect the sanctity and serenity of the neighborhoods. He felt the development would not only add character to downtown it would enhance the value of the homes in the fringe area. He stated he was also in favor of the development.

Alderman Drinnon stated he had been on the Planning Commission for over 20 years and this development had been discussed extensively. He felt this would be good for Germantown. He stated in all his years on the Planning Commission he had never known of any deceitful practices that had taken place and if it were, he would have pointed it out and he resented the accusation. He stated he would support the development.

Alderman Chism stated the Board and families all lived in Germantown and had a stake in the City and he would never vote for anything that the citizens of Germantown would not benefit from as a whole. He stated he had lived in the City during the 70's when the Board voted to run the City on the backs of the taxpayers which worked very well but now we are at a point that bold steps must be taken. He stated he would vote for the project.

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

Alderman Palazzolo asked that the public hearing be done verbatim in the minutes.

**PUBLIC HEARING - Ordinance 2008-10, Amendment to Chapter 20, Article V, Division 1, Section 229 of the Code of Ordinances - Traffic and Motor Vehicles – Amendment to Parking on City Streets – Second Reading**

Mr. Pouncey stated the Neighborhood Preservation Ordinance restricts parking on the driveways by placing a limit on weight, height and length. Currently, we have a Motor Vehicle section and we need to make this section consistent. This amendment would bring both in sync.

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

Motion by Ms. Hinely, seconded by Mr. Palazzolo, to approve Ordinance 2008-10 on second reading.

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



**Ordinance 2009-1 - Amendment to Chapter 23 of the Code of Ordinances, Zoning – Permitting Front Porches and 12-Inch Encroachments – First Reading/Set Public Hearing Date**

Mr. Pouncey stated this ordinance gives the Director of Development the ability to grant up to 12-inch encroachments and in the required front yard to require front yard set-backs up to 10 feet for front porches. Often there are contractors or homeowners that are building a house and they encroach maybe a few inches into that front yard setback and must go before the BZA that meets only once a month. This would expedite the process and would be beneficial to the citizens.

Motion by Mr. Chism, seconded by Mr. Drinnon, to approve Ordinance 2009-1 on First Reading and set a public hearing date for February 9, 2009.

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

**Ordinance No. 2009-02 – An Ordinance to Amend Section 20-189, Article IV, Chapter 20 of the Code of Ordinances regarding Automated Enforcement – First Reading/Set Public Hearing Date**

Mr. Pouncey stated this amendment was done to bring the ordinance in sync with the State Statute. There were also certain court costs that the state mandated and this would adhere to those requirements.

Motion by Ms. Hinely, seconded by Mr. Drinnon, to approve Ordinance 2009-2 on First Reading and set February 9, 2009 as the public hearing date.

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

**Civic Support – Germantown Community Television Foundation**

Assistant City Administrator George Brogdon stated this is a Civic Support Grant in the amount of \$220,000.00 to the Germantown Community Television Foundation, Inc.

Motion by Mr. Drinnon, seconded by Mr. Billingsley, to award a Civic Support Grant to the Germantown Community Television Foundation, Inc., in the amount of \$220,000.00.

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

City Attorney Tom Cates stated he noted a correction on the Ordinance 2009-1 Regarding and amendment permitting front porches and 12-inch encroachments. In Section 23-49, Powers (c) it should read The Director of Development or his designee.

Mayor Goldsworthy noted this change could be made at the second reading.

**Purchase of Fire Apparatus**

Fire Chief Dennis Wolf request the replacement of a 1991 Pumper and it was discussed in detail in the Executive Session. His staff had met and discussed the need and the price was very good compared to the current market.

Alderman Drinnon commended Chief Wolf and his department for all the research that had been done and for also running a good department. The City was very privileged to have him and Chief of Police Hall.

Chief Wolf stated he felt very lucky to have his staff.

Motion by Mr. Drinnon, seconded by Ms. Hinely, to authorize the purchase of a 77-foot quint from Ferrara Fire Apparatus, Inc., for \$558,194.87.

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

**Herbicide Application Contract – MOVED FROM CONSENT AGENDA**

Director of Public Services Bo Mills stated this request was for a three-year herbicide and fertilizer application contract. It will provide for five herbicide application and three fertilizer applications per year on selected athletic fields, medians, and municipal grounds throughout the City. The agreement does not include athletic field fertilizations, which are performed in-house by the Grounds Maintenance Division.

Motion by Ms. Hinely, seconded by Mr. Palazzolo, to contract with Herbi-Systems for a three-year herbicide application contract in the amount of \$115,887.00.

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

**Subdivision Development Contract No. 356 – Resubdivision of Lot 5, Johnson Road Subdivision – Refund of Interest for Fees Paid to City – MOVED FROM CONSENT AGENDA**

Mr. Cook stated this was a request for payment to Mr. Steve McCabe for interest on money he had paid to the City for in lieu of road improvements along Duntreath Road. This was the result of subdividing the property into two lots. The approval of the two-lot subdivision occurred in 1992 and it required that the owner pay to the city about \$7,200 in lieu of road improvements to Duntreath Road. In 1996, after Mr. McCabe built his house, he came to the Board of Mayor and Aldermen and request a refund of some of the development fees that were paid and the Board of Mayor and Aldermen approved a portion of those fees as a refund of about \$1900 and some interest that was paid on the money at that time.

In 2007, Mr. McCabe came to the Board of Mayor and Aldermen and asked for the balance of the money that was paid to the City which was about \$5400. The Board turned that request down. In 2008, he again requested the balance of about \$5400 for the improvements. The Board approved the request and paid \$5,438.00 to the owner. Mr. McCabe has now petitioned the City for the interest from 1996 to today.

Alderman Drinnon stated this had been discussed thoroughly for about three years and with the City Attorney and the staff recommendation was to approve the request.

Mr. Cook stated that as a result of reviewing the request of Mr. McCabe, the standard development contract that the developers enter into with the City does now have a section where it stated that all fees paid to the City are non-refundable.

Motion by Mr. Drinnon, seconded by Ms. Hinely, approve a payment to Steve McCabe (owner) for the amount of \$3,262.80, the amount of interest to be paid in conjunction with Subdivision Development Contract No. 356.

Alderman Billingsley stated clarification, that it was the City's intent in the future not to refund the developers fees or interest. However, in this instance, staff was suggesting that the Board approve this refund. He stated that he felt this would set a precedence and would send a mixed message to the developers and he would not be voting to support the refund.

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

**CONSENT**

**Professional Services Agreement – Obsidian Public Relations**

Over the past 12 months, Obsidian has worked closely with the Club Director, the Marketing and Membership Sales Coordinator and the Marketing Manager at City Hall to communicate effectively with current membership and potential new members. In addition to positive media relations, Obsidian will offer counsel and cost-effective resources in helping execute the Club's 2009 strategic communications plan at a cost of \$16,200 for a term of six months.

MOTION: To authorize the Mayor to execute a professional services agreement with Obsidian Public Relations for a term of six months at the expense of \$16,200.00.

**Recognition of Donation - Parks and Recreation**

Donations have been received from businesses and organizations to sponsor two events coordinated by the Parks & Recreation Department totaling \$1,000.00.

MOTION: To recognize donations made to the Parks and Recreation Department for special events totaling \$1,000 and to approve Budget Adjustment No. 09-63 and 09-66.

**Recognition of Donation – Germantown Community Library**

Monetary donations totaling \$1,726.50 and a framed photograph were donated to the Community Library.

MOTION: To recognize the monetary and art donations made to the Germantown Community Library totaling \$1,726.50; and, to approve Budget Adjustment No. 09-57.

**Recognition of Donation – Economic Development - REMOVED**

**Project Development Contract No. 1119: Time Extension - McVay Place Office Park**

The developer is requesting a time extension until the economic climate is more favorable to office construction. This will extend the time in which the McVay Place office buildings can be built until January 12, 2011.

MOTION: To approve the first amendment to Project Development Contract No. 1119, McVay Place Office Buildings.

**Riverdale Road Improvements – Installation of Screening Fence**

The installation of a six foot cedar screening fence at 1745 Riverdale Road is proposed as a result of widening Riverdale Road along the west property line of the existing residence at a cost of \$25,400.00.

MOTION: To authorize the Mayor to enter into a contract with Wagner General Contractors for the installation of a six (6) foot wood cedar screening fence at 1745 Riverdale Road, associated with the construction of Riverdale Road, for a total amount of \$25,400.00 and approve Budget Adjustment No. 09-65.

**Painting – Germantown Jail**

The interior walls, doors and detention areas of the jail area have not been painted since 1979 and according to Tennessee State Inspectors, the jail and processing areas need to be painted in order to meet State Compliance. Hankins Painting Contractor was the low bid for \$22,037.00.

MOTION: To authorize the Mayor to execute a contract with Hankins Painting Contractors in the amount of \$22,037.00 to paint all previously painted interior walls and doors in our jail and dispatch areas, and approve Budget Adjustment No. 09-68.

**Electrical Renovation – Police Dispatch**

Electrical renovations are necessary in order to fully update the Police Communications Control Center. Advance Electric Company was the low bid at a cost of \$37,700.00.

MOTION: To authorize the Mayor to execute a contract with Advance Electric Company, Inc. in the amount of \$37,700.00 to install electrical circuitry and cabling in our jail and dispatch areas.

**Furniture – Police Dispatch**

The Police Department is replacing the 20-year old radio consoles, radios, monitors and assorted communications equipment in the Communications Center. The current furniture will not accommodate the new radio consoles and other monitors being utilized at a cost of \$58,478.88.

MOTION: To purchase furniture for the Communications Center from Wright-Line in the amount of \$58,478.88.

**Bid Rejection - Special Events Trailer**

Thirteen vendors were contacted and only one submitted a bid. To insure we receive competitive bids, staff will revise the specifications and send out another request for bids.

MOTION: To reject a \$50,695.00 bid by Silver Moon Trailers for the purchase of a special events trailer.

**Pharmacy Benefit Management Service**

The City has provided a prescription drug plan for its employees since 1996. Under this plan, through a preferred provider, the City is able to offer prescription drugs to our employees at a greatly reduced cost.

MOTION: To authorize the Mayor to execute a contract with MEDCO Pharmacy Benefit Management Company beginning on April 1, 2009, to provide pharmacy benefits to the employees of the City of Germantown.

Motion by Mr. Drinnon, seconded by Ms. Hinely, to accept the Consent Agenda in its entirety.

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

Mayor Goldsworthy commended the Personnel Department lead by Pat McConnell and her team in securing a very favorable contract for pharmacy benefits management service as part of our employee healthcare plan.

The Mayor stated an honor had come to the City Administrator Patrick Lawton who received the credentials from the International City Managers Association, the recognition of being a credentialed manager and the honor of being able to put the CM after his name. She commended his accomplishments and expertise in his profession.

City Attorney Tom Cates asked to address the Board. He stated that the Board by explaining the reasons for why they were going to vote the way they were on the Smart Growth item, it was a text book example he would like to play for people. When the attorneys get into court defending these matters, the issue before the Judge is not how he would have decided but whether or not there was any rational basis for the Board to have decided one way or the other and when a member of the Board expresses his or her reasons, you don't have to go back through the minutes and try and find out why they voted the way they did. The way the Board expressed themselves tonight it would be very easy for the Court to see that the Board had adequate reasons for each vote.

**ADJOURNMENT**

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

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Sharon Goldsworthy, Mayor

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Dotty Johnson, City Clerk/Recorder