

BOARD OF MAYOR AND ALDERMEN

July 28, 2008

A regular meeting of the Board of Mayor and Aldermen was held on July 28, 2008 at 7:00 p.m. in the Council Chamber of the Municipal Center.

Mayor Sharon Goldsworthy was present and presiding.

The following Aldermen were present: Ernest Chism, John Drinnon, Carole Hinely, Mike Palazzolo and Frank Uhlhorn. Staff present: Patrick Lawton, Andy Pouncey, George Brogdon, Kristen Geiger, Tom Cates, Pam Beasley, Jerry Cook, Tim Gwaltney, Josh Whitehead, Chief Richard Hall, Bo Mills, Chief Dennis Wolf, Michael Stoll, Ralph Gabb, Lisa Piefer, Michael Saddler, Melody Pittman. Derek Chaput and Dotty Johnson.

Mayor Goldsworthy stated that during the Executive Session the Board noted two deferrals, #6 – the Beer Board Hearing – Suspension/Revocation of Beer License – American Café and on the Consent Agenda, Item 10g – at the request of staff – Professional Services Agreement – Kimley-Horn & Associates, Engineering Services.

Invocation

Assistant City Administrator Kristen Geiger gave the invocation.

Pledge of Allegiance

Alderman Palazzolo led the Pledge.

Approval of Minutes

Approval was requested of the minutes as amended of the executive and regular session held July 14, 2008.

Motion by Mr. Palazzolo, seconded by Mr. Chism, to approve the minutes of the Executive Session and Regular Meeting held July 14, 2008 as corrected in the Executive Session.

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

Citizens to be Heard

Ms. Sarah Freeman of 7684 Apahon Ln. stated that the City had failed to answer her questions about the projections of traffic impact of Saddle Creek IV on the neighborhoods north of Poplar. She asked what was the square footage used to arrive at the projections? Ms. Freeman stated she was looking forward to a more comprehensive and accurate traffic impact study. She asked if a more comprehensive and accurate traffic impact study data would be given to those who we are soon to hire in order to look at the cost of improving our City to handle the true impact of Saddle Creek IV.

Presentation of Beautification Business Award

Alderman Palazzolo, the liaison to the Commission and LeAnn Byrum, a member of the commission, came forward to present the award to Paul Bruns, the owner of Good Winds Nursery. Mr. Bruns thanked the City for recognizing the family's hard work and how much they appreciated the recognition.

Mayor Goldsworthy declared the Board of Mayor and Aldermen in recess and convened as a Beer Board.

BEER BOARD

Suspension/Revocation – Beer Permit – American Café – DEFERRED

Suspension/Revocation – Beer Permit – Chili’s

City Prosecuting Attorney Joe Lee Wyatt came forward. The following is the verbatim minutes of the Beer Board:

MAYOR GOLDSWORTHY: At this time I declare that the meeting of the Board of Mayor and Aldermen is in recess, and, at this moment, it is now convened as a Beer Board.

We ask Joe Lee Wyatt, the Prosecuting Attorney on the information relevant to item number 7 which deals with the suspension, revocation, of the beer permit held by Chili's.

MR. WYATT: May it please the Board of Mayor and Aldermen, anybody from Chili's here? If you all would step forward. And if you could introduce yourselves and give your address, please, for the record.

MR. PINSON: Certainly. My name is Robert Pinson. I am actually a Nashville native. My address is 501 Brookhollow Road, Nashville, 37205. And I have with me --

MS. JOHNSON: Jane Johnson, 1232 Sugar Lane, Collierville, Tennessee.

MR. WYATT: Also, for the purpose of the record, we have John Durfee, Germantown Police Department, presently on assignment to the Shelby County Metro DUI squad. This matter is before the Mayor and Board of Aldermen acting as a Beer Board tonight dealing with the license which permits Chili's to sell, on premise, for on-premise consumption, beer. The proof, as I understand, has been stipulated or agreed that there was a violation, but for the purposes of the Beer Board in making a determination regarding the penalty, we are going to put on the proof and allow counsel to ask any questions that may be appropriate in his mind, and also to allow Chili's to set forth, which they have already done so in a response to the Petition, which is part of your packet. But if we could now swear in Officer Durfee and put on the proof.

Whereupon, OFFICER JOHN J. DURFEE a witness, was called for examination, and, after having been duly sworn by the Clerk, was examined and testified as follows:

EXAMINATION OF OFFICER DURFEE BY MR. WYATT

Q. Please state your full name for the record.

A. John Jason Durfee.

Q. And with whom are you employed?

A. The City of Germantown Police Department.

Q. Let me ask you to turn your attention to March 20th of this year. At that time, who were you assigned to?

The Sheriff's Department's Metro DUI Squad.

Q. And did the Sheriff's Department on that date, in conjunction with and with assistance from the Germantown Police Department, conduct a beer sting in Germantown?

A. That's correct.

Q. There was some, roughly, 30 stores on-premise consumption permit holders checked, were they not?

A. That's correct.

Q. I am going to ask you to focus your attention on the Chili's located here in Germantown, Shelby County, Tennessee. And if you could, tell me if there was an individual that was asked to go in that particular location who was not 21 years of age on the 20th of March?

A. That's correct.

Q. And let me pass to you a document. I will pass it over to counsel and let him look at that. Let me ask you if that individual's driver's license and also a photograph both before the sting and after the sting were taken?

A. That's correct.

Q. What is the purpose of the photograph?

A. To show that there was no change in the under-age operant's appearance during the time of the beer sting.

Q. The driver's license, which I am about to pass and be made an exhibit to this hearing, is that his driver's license?

A. That's correct.

Q. And actually, he was required to use that whenever he was asked, if he was asked, to present identification?

A. That's correct.

Q. What birthdate does it indicate?

A. It shows the birthdate of February 6th, 1988.

Q. And on the 20th of March, 2008 how old would he have been?

A. Twenty years of age.

Q. And does that driver's license have any other indicators of this individual's age?

A. It does. On the side of the individual's photograph, it does state: Under 21 until 2/6 of 2009.

MR. WYATT: May I approach and pass that?

MAYOR GOLDSWORTHY: Yes.

MR. WYATT: Would it be okay if I go ahead and ask questions while you are looking at that?

MAYOR GOLDSWORTHY: Please proceed.

BY MR. WYATT:

Q. Officer Durfee, let me ask you, did this individual that we are passing, Mr. David Hayes, did he enter the premises of Chili's?

A. Yes, he did.

Q. And were you where you could observe this?

A. I was sitting at the same table.

Q. And on this date, did Mr. Hayes order an alcoholic beverage?

A. Yes, he did.

Q. A beer?

A. Yes, he did.

Q. And the individual that waited on him, we now understand to be Andrea Michelle Mitchell, is that correct?

A. That's correct.

Q. If you could, tell the Board what she did in regard to this order for a beer.

A. In response to the order, she did request his identification, and did look at it, and subsequently did serve him alcohol.

Q. And was she cited and given a misdemeanor citation to appear in Germantown City Court?

A. Yes.

MR. WYATT: That is all the questions I have. I tender the witness to opposing counsel.

MR. PINSON: I have no questions.

MR. WYATT: The City has no further proof. We pass to respondent.

MR. PINSON: Chili's definitely does not dispute the Officer's testimony. We merely prefer just to give evidence and have the Assistant Manager at the time of the event give a brief testimony about the training procedures that have already been in place. We believe they are pretty sound. We cannot explain this incident. We just don't know why it happened. If you all want to hear from the Assistant Manager directly, I can certainly have her answer a few brief questions.

MAYOR GOLDSWORTHY: That would be good. Whereupon,

JANE JOHNSON a witness, was called for examination, and, after having been duly sworn by the Clerk, was examined and testified as follows:

EXAMINATION OF JANE JOHNSON BY: MR. PINSON

Q. What is your name?

A. Jane Johnson.

Q. And where are you currently employed?

A. The Chili's, Germantown location.

Q. What is your position now?

A. Night manager.

Q. Now, the night in question, March 20th, 2008, were you on duty?

A. Yes, I was.

Q. And do you recall that evening?

A. Uh-huh.

Q. Can you tell me briefly, basically just generally what happened leading up to the few minutes before the issue of the citation?

A. Well, it was kind of a busy night in a cocktail lounge. Some people walked in, entered, sat down. From my understanding, I wasn't right there at the table, they ordered alcoholic beverages. And it is my understanding she carded them and then served them alcohol. The next thing I know, the Sheriff's Department said that they had to take her outside and talk to her. And then he came back and asked me my name.

Q. Did she come back in the restaurant afterwards?

A. Yes.

Q. What happened after that?

A. Well, per policy, we had to take her to the back, cash her out, do all of her money transactions and everything. And then we had to terminate her employment and escort her off the property, which is what happened.

Q. And that is Chili's policy?

A. Yes.

Q. Let me go to just not necessarily that night in general, but training for serving alcoholic beverages. What kind of training do new employees receive before they start working on the floor?

A. New employees, we have at least a five-day process. Each day it is different. It is broken up from food and beverage and alcohol each day. At the end of five days, if we don't feel they are strong enough or understand, it could last longer, you know, depending on how seasoned the employee is.

Q. And is there a state-required training course as well?

A. Yes, the ABC Board. Of course, they have the ABC permit that they go to. It is a five-hour course that they do. Plus, we also have one, a Safe Serve that Chili's actually does. So, it is like two courses they go to.

Q. I do have to apologize. I don't have enough copies to give opposing counsel. But if the Board would like to see the Safe Serve manual briefly. It is a color copy.

MR. WYATT: May I approach?

MAYOR GOLDSWORTHY: Yes.

MR. PINSON: As you can see, it is a rather extensive manual. I believe there is also a class training and video training as well that accompanies that.

BY MR. PINSON:

Q. Before every shift, do you discuss with that shift's employees the policy about alcoholic beverages?

A. Yes, we do. We have a preshift meeting for lunch and for dinner every evening. We have a form that they must fill out before their shift. It is a daily one that we fill out. It shows what date it is and what day you have to be legal to purchase alcohol. They sign it, stating that they are aware of it. And, you know, just anything that goes on during a shift, any business for the day, we go over that morning and night.

MR. PINSON: I also apologize, I only have one copy of that. I just got that tonight. I believe it is basically kind of an affirmation of the company's policy that everyone has to sign before they start work there. Also, there is a requirement and a signature line for the manager of the shift.

BY MR. PINSON:

Q. Now, explain that site check column.

A. As a manager, we have to – we have lunch and dinner. We have to actually also go over to tables have alcohol sitting on them and spot check and make sure that there is an I.D. on the person and that they did ask for it, that our server did ask for it. You know, it is just kind of a back check just to make sure that they are doing their job.

MR. PINSON: No further questions. Do you have any questions?

EXAMINATION OF JANE JOHNSON

BY: MR. WYATT

Q. Just one question. Do you know if Chili's has ever used any type of what some grocery stores, and not supermarkets, what I call the 7/11 type operation, they use mystery buyers who are actually under age, they are not under 18, they are under 21, do they use any type of program such as that, if you know?

A. I am not really sure. I know we have mystery shoppers. There is a full big detail.

Q. But it is geared to something other than alcohol, if you know?

A. It wouldn't be just for alcohol. Alcohol would be included in that.

MR. WYATT: That is all the questions I have.

MR. PINSON: I would just like to state that I think Chili's is very proud of its training policy. If this employee had followed the company policy, there wouldn't have been a problem and we wouldn't be here. We can't explain it. We are not justifying it at all. We regret that it happened. And we just hope that -- we prefer a warning, but unfamiliar with you all's policy, a fine would be perfectly acceptable to Chili's. Thank you.

MR. WYATT: The City has nothing further.

MAYOR GOLDSWORTHY: Are there any questions from Board members at this time to any of those who have presented information?

MR. UHLHORN: I do. I see that you have this form that is specific to Chili's, Chili's alcohol procedures. This is the National Restaurant Association. But this one is specific to Chili's. Do you have the one from March 20th, the one that was filled out?

MS. JANE JOHNSON: I went and looked right before we came over here. All of our records went back to May 1st. We had a manager recently leave. So, I haven't been able to contact him to find out what was done with them. I mean, we have like an attic space with older reports. It could be in that.

MR. PINSON: We have looked. I apologize. We don't have that.

MR. UHLHORN: So, we have no way of knowing if she signed it?

MR. PINSON: Did she sign it that day?

MS. JANE JOHNSON: Yes.

MAYOR GOLDSWORTHY: Any other questions from the Board?

MS. HINELY: I would like to say something. You are a franchise, and you have, it seems like, everything in place, all the materials. You know, and you can't look over everybody's shoulder. So, I would think a fine would satisfy me this evening myself. I can't speak for the rest of the Aldermen, but that is what I propose.

MAYOR GOLDSWORTHY: At this time, heard the information presented and having knowledge from those representing Chili's that there is no contest as to the violation, what is the Board's will on how it might assess a penalty against Chili's?

MR. DRINNON: Madam Chairman, we are delighted to have Chili's Restaurant in our City. And it looks like the training manual you had is good work. And I know, as Ms. Hinely says, you can't look over everyone all the time. But we are charged with the responsibility to look out for the public. And I would move, Madam Chairman, that we pose a 30-day suspension on the license of Chili's to sell beer, or if they were to choose to, to pay a \$1,500 fine in lieu of the suspension.

MR. UHLHORN: Second.

MAYOR GOLDSWORTHY: Alderman Drinnon, is there a time frame placed on the period in which the fine must be paid?

MR. DRINNON: Mr. Wyatt, what is the statutory time?

MR. WYATT: Our Ordinance provides under Section 3-4 that when a suspension is given and the Board determines that there is an alternative, that is to allow a fine to be paid in lieu thereof, that has to be done within seven days of today.

MR. DRINNON: All right. So, I would incorporate that into the motion, Madam Chairman.

MR. UHLHORN: Amendment seconded.

MAYOR GOLDSWORTHY: There is a motion with a second. And the penalty assessed against Chili's be a 30-day suspension of the privilege with an alternative to pay a \$1,500 fine, and for that, in correspondence with our Ordinance, to be paid within seven days. Is there any discussion among the Board members? Please call the roll.

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

MR. WYATT: Thank you very much. That concludes the business of the Beer Board this evening. Thank you.

The Mayor concluded the business of the Beer Board and reconvened the Board of Mayor and Aldermen meeting.

BOARD OF MAYOR AND ALDERMEN

Ordinance 2008-9 – Amendment to Ordinance 2007-17 – to change the name of the Germantown Centre Advisory Commission – First Reading/Set public Hearing Date

Patrick Lawton stated that with the name change of the Germantown Centre to Germantown Athletic Club it was appropriate that the name of the commission reflect the new name of the facility. An ordinance created the commission and an amendment must be done that requires three readings.

Motion by Mr. Palazzolo, seconded by Mr. Chism, to approve on first reading an amendment to ordinance number 2007-17 renaming the Germantown Centre Advisory Commission to the Germantown Athletic Club Advisory Commission and set August 25, 2008 as the public hearing date.

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

Fiscal Impact Analysis Agreement

Kristen Geiger stated this professional services agreement with Miley, Gallo & Associates, LLC and Rose & Associates Southeast, Inc. was for the Fiscal Impact Analysis on the proposed property development of Saddle Creek IV.

The Board adopted a Public Private Partnership Policy earlier this year in which the Board of Mayor and Aldermen could analyze development proposals within a certain designated area of the Smart Growth zone. The policy identifies the framework to ensure a successful project by setting expectations and requirements between the City, various stakeholders and developers.

The Fiscal Impact Analysis will assist in determining whether revenues generated by the project are sufficient enough to cover the resulting cost of the services. The total cost for the FIA is \$32,000.00 with the City's portion being \$16,000.00 or half of the total amount. Other expenses including travel, reproduction costs, express delivery charges and other customary expenses related to the completion of the work not to exceed \$5,000.00.

Motion by Mr. Chism, seconded by Mr. Palazzolo, to approve the agreement with Miley, Gallo & Associates, LLC and Rose & Associates Southeast, Inc. for the Fiscal Impact Analysis on the proposed property development of Saddle Creek IV in the amount not to exceed \$21,000.00 (\$16,000 for FIA and \$5,000 for expenses), subject to approval by the City Attorney.

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

CONSENT AGENDA

Purchase – Mail Sorter

The mail sorter is utilized for bulk mailings (utility bills, tax bills, special mailings) to citizens of the City. The purchase is being made through an existing GSA contract and there will be no charge for the first year of maintenance. The price includes an \$8,190.00 discount for trade in of the old model. The agreement will provide for installation and operator training.

MOTION: To purchase an insert mail sorter system from Pitney Bowes in the amount of \$41,147.60.

Subdivision Development Contract No. 493 – The Sanctuary

This property contains an existing house built in 1973. The house will remain in the subdivision. The contract is for a fifty-one lot residential subdivision. The lots range in size from 15,988 sq. ft. to 34,376 sq. ft. The property is located at 8580 Poplar Ave. east of Kimbrough, west of Brachton, opposite of Oakleigh Lane.

MOTION: To approve Subdivision Development Contract No. 493 for The Sanctuary of Germantown. P.D.

Project Development Contract No. 1170 – Forest Hills Heights Office Building – Phase II

This property is located in the “O-51” Office Zoning District on Crestwyn Hills Drive in the Forest Hill Heights Planned Development. The proposed building will be a 14,300 sq. ft. two story office building on a 1.139 acre site.

MOTION: To approve Project Development Contract number 1170 for the development of Forest Hills Heights Office Building Phase II.

Amendment to Project Development Contract No. 1128 - Phase 2, Germantown Square Condominiums – implement phasing schedule and extend completion date.

Germantown Square Residential Community Phase 2 will be comprised of two buildings, each with three units, facing McVay Road. The request is for approval of the Phasing Schedule and to extend the completion date.

MOTION: To approve the First Amendment to Project Development Contract Number 1128 for Germantown Square Residential Community, Phase 2.

Subdivision Development Contract No. 458 – Forest Hill-Irene Commercial Subdivision

The contract had a date of completion set two years after the contract date. The contract was dated October 11, 2006. The date of completion is rapidly approaching. The developer received Planning Commission approval on July 1, 2008, to subdivide Lot 1 into two lots. The First Amendment to the contract extending the date of completion to January 28, 2009, will allow for the installation of an additional sewer line and water service to the new lots.

MOTION: To approve the First Amendment to Subdivision Development Contract No. 458 for the development of Forest Hill-Irene Commercial Subdivision.

Project Development Contract No. 1171 - Germantown Presbyterian Church – 2008 Expansion

The request is for approval for approximately a 15,000 square foot expansion of the administration building and a portion of the chapel.

MOTION: To approve Project Development Contract No. 1171 for the expansion of Germantown Presbyterian Church.

Professional Services Agreement – Kimley-Horn Consultants – Engineering Services - DEFERRED

Appointment to Germantown Athletic Club Advisory Commission

With the resignation of one of the members, Ms. Caroline Winters has expressed a desire to serve as a volunteer on this commission.

MOTION: To approve the appointment of Ms. Caroline Jones Winters to serve on the Germantown Athletic Club Advisory Commission until December 21, 2008.

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

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

ADJOURNMENT

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

Sharon Goldsworthy, Mayor

Dotty Johnson, City Clerk/Recorder