

MINUTES**REGULAR MEETING OF THE CITY COUNCIL****CITY OF MEMPHIS****February 15, 2005****3:30 P.M. SESSION**

ROLL CALL: Joe Brown, Carol Chumney, Janet Hooks, E. C. Jones, Myron Lowery, Tom Marshall, Scott McCormick, TaJuan Stout Mitchell, Rickey Peete, Jack Sammons, Brent Taylor and Chairman Edmund Ford
Barbara Swearengen Holt was absent

**THE MEETING WAS CALLED TO ORDER
BY THE SERGEANT-AT-ARMS**

INVOCATION

The meeting was opened with prayer by Reverend Brad Gabriel from Colonial Park United Methodist Church . Councilwoman Chumney presented Reverend Gabriel with a certificate naming him Chaplain of the day.

The original of the ordinances, resolutions and documents relating to each item is filed in the office of Council Records and on microfilm in the office of Records Management, Room 2B-08. The original documents shall control in the event of any conflict between the description in these minutes and the original documents.

24. **RESOLUTION APPROVING A SPECIAL USE PERMIT LOCATED ON THE EAST SIDE OF LAURIE LANE; BEGINNING 114.53 FEET NORTH OF BRANTFORD ROAD, CONTAINING 0.28 ACRE IN THE SINGLE FAMILY RESIDENTIAL (R-S10) DISTRICT.** (Held from 9/21;11/23;12/21;1/18;2/1)

Case No. SUP 04-208

Held to March 15, 2005

12. **RESOLUTION DEDICATING QUINN AVENUE AS “DEPUTY CHIEF CARL WESLEY STOTTS STREET” IN HONOR OF MR. CARL WESLEY STOTTS.**

MOTION: Mitchell
SECOND: Peete

APPROVED, by unanimous voice vote

13. **RESOLUTION EXTENDING FAREWELL WISHES TO BETSY AND KINZIE BIRD.**

MOTION: Lowery
SECOND: Brown

APPROVED, by unanimous voice vote

29. **RESOLUTION APPROVING THAT THE EARLY CHILDHOOD SCHOLARS PROGRAM FORMERLY KNOWN AS DAYCARE INITIATIVE SHALL BE KNOWN AS UNITED WAY OF THE MID-SOUTH.**

MOTION: Mitchell
SECOND: Marshall
AYES: Brown, Chumney, Hooks, Jones, Lowery, Marshall, McCormick, Mitchell, Peete, Sammons, Taylor and Chairman Ford

Holt was absent

APPROVED

31. **RESOLUTION AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF CITY OF MEMPHIS, TENNESSEE, GENERAL IMPROVEMENT REFUNDING BONDS SERIES 2005, FOR THE PURPOSE OF REFUNDING CERTAIN OUTSTANDING BONDS OF THE CITY OF MEMPHIS.**

MOTION: Mitchell
 SECOND: Marshall
 AYES: Brown, Chumney, Hooks, Jones, Marshall, Mitchell, Peete, Sammons, Taylor, and Chairman Ford
 McCormick abstained
 Lowery did not cast a vote
 Holt was absent

APPROVED

CONSENT AGENDA – Items 1-8, 27 & 32 may be acted upon by one motion. SEE PAGE 1505 FOR ROLL CALL

1. **ORDINANCE TO AMEND CHAPTER 18, ARTICLE II, TO REFLECT CURRENT CHANGES IN THE STRUCTURE AND OPERATIONS OF HE MEMPHIS AND SHELBY COUNTY PUBLIC LIBRARY AND INFORMATION CENTER, UP FOR S E C O N D READING.**

Ordinance No. 5093

APPROVED, on Second reading

2. **ORDINANCE REZONING THE NORTHWEST CORNER OF BRUNSWICK ROAD & PHILLIP ROAD, CONTAINING 5.08 ACRES IN THE AGRICULTURAL (AG) DISTRICT, UP FOR F I R S T READING.**

Ordinance No. 5094
 Case No. Z 04-127cc

APPROVED, on First reading

3. **ORDINANCE REZONING THE WEST SIDE OF PISGAH ROAD; +/-4,323 FEET SOUTH OF LATTING ROAD, CONTAINING 2.02 ACRES IN THE AGRICULTURAL (AG) DISTRICT, UP FOR F I R S T READING.**

Ordinance No. 5095
 Case No. Z 04-142cc

APPROVED, on First reading

4. **ORDINANCE REZONING LOONEY AVENUE AND SAFFARANS AVENUE, CONTAINING 2.051 ACRES IN THE MIXED USE (MU) DISTRICT, UP FOR S E C O N D READING.**

Ordinance No. 5092
 Case No. Z 04-140

APPROVED, on Second reading

5. **RESOLUTION ACCEPTING BLUE STONE GLEN PLANNED DEVELOPMENT, AND AUTHORIZING RELEASE OF BOND.**

Case No. PD 03-310cc

Resolution accepts completion of the improvements and the dedication of public streets and easements as shown on the final plat located on the south side of East Holmes Road, east of Cherokee Rose Lane.

The standard improvement contract was approved on November 4, 2003. Resolution also authorizes the release of the letter of credit in the amount of \$32,000.00 and Amendment #1 dated August 19, 2004, in the amount of \$18,000.00. This action is subject to county approval.

City Engineer recommends approval

APPROVED

6. **RESOLUTION ACCEPTING ROYAL OAKS PD SEWER OUTFALL, AND AUTHORIZING RELEASE OF BOND.**

(Contract No. CR-4647)

Resolution accepts completion of the improvements and the dedication of public streets and easements as shown on the final plat located on the south side of Bolen Huse Road, west of Singleton Parkway. The standard sewer extension contract was approved on August 7, 2001. Resolution also authorizes the release of the performance bonds in the amount of \$532,200.00 and \$5,000.00.

City Engineer recommends approval

APPROVED

7. **RESOLUTION ACCEPTING WOODLAND HILLS PD, 3RD AMENDMENT, PH 17, AND AUTHORIZING RELEASE OF BOND.**

Case No. PD 99-352cc
(Contract No. CR-4858)

Resolution accepts completion of the improvements and the dedication of public streets and easements as shown on the final plat located on the north side of Humphrey Road, west of Houston Levee Road. The standard improvement contract was approved on March 16, 2004. Resolution also authorizes the release of the certificate of deposit in the amount of \$7,000.00. This action is subject to County approval.

City Engineer recommends approval

APPROVED

8. **NOTATIONS FROM LAND USE CONTROL BOARD THAT THE FOLLOWING CASES WERE HEARD AND RECOMMENDATION MADE REQUESTING A DATE OF PUBLIC HEARING:**

- A. Case No. PD 04-364 – Gray's Creek Business Park Planned Development, 3rd Amendment
- B. Case No. PD 04-373
- C. Case No. PD 04-378
- D. Case No. PD 04-377 – The Arbors at Hickory Ridge, P.D. 2nd Amendment
- E. Case No. SAC 04-617 – Shults Road (a.k.a. Sholtz/Shoultz Road)
- F. Case No. UV 04-04
- G. Case No. S 04-070 – Shady Grove Mendenhall Subdivision

Public Hearing Set for March 1, 2005

27. **RESOLUTION APPROVING FINAL PLAT OF CONCORD ESTATES SUBDIVISION, 1ST ADDITION.**

Case No. S 99-063cc
Contract No. CR-4925

Resolution approves the final plat located on the southwest corner of Shelby Drive and Gertrude Drive. Cost of the required improvements to be borne by the Developer. Resolution also authorizes the proper officials to execute the attached standard improvement contract. This action is subject to County approval.

City Engineer recommends approval

APPROVED

32. **RESOLUTION EXPRESSING SYMPATHY TO THE FAMILY OF WILLARD SPARKS.**

APPROVED**ROLL CALL CONSENT ITEMS**

MOTION: Marshall
 SECOND: Peete
 AYES: Brown, Chumney, Hooks, Jones, Lowery, Marshall, McCormick, Mitchell,
 Peete, Sammons, Taylor and Chairman Ford
 Holt was absent

APPROVED**MLGW FISCAL CONSENT AGENDA - Items 9-11 may be acted upon by one motion**

9. **RESOLUTION APPROVING CHANGE NO.10 TO CONTRACT NO. 10780, ELECTRIC CONSTRUCTION AND MAINTENANCE, WITH ALLIED ELECTRICAL CONTRACTORS, INC. IN AN ESTIMATED/FUNDED AMOUNT OF \$850,000. (THIS EXTENDS THE CONTRACT NOT TO EXCEED 60 DAYS BEGINNING FEBRUARY 3, 2005, RETROACTIVE TO AUGUST 15, 2004, WITH NO INCREASE IN PRESENT CONTRACT RATES. THE CONTRACT VALUE INCREASE OF \$850,000 INCLUDES \$400,000 FOR WORK ALREADY PERFORMED.)**

APPROVED

10. **RESOLUTION APPROVING CHANGE NO. 2 TO CONTRACT NO. 11011, NORTH SERVICE CENTER ROOFING PROJECTS, WITH B FOUR PLIED, INC. IN THE FUNDED AMOUNT OF \$30,316. (THIS COVERS EMERGENCY ROOF REPAIRS TO BUILDING NOS. 5, 6 AND 8 AT THE NORTH SERVICE CENTER.)**

APPROVED

11. **RESOLUTION AWARDED EXPEDITED PROCUREMENT CONTRACT NO. 11034, AUGER EXCAVATIONS SERVICES, TO MCKINNEY DRILLING COMPANY IN AN ESTIMATED/FUNDED AMOUNT OF \$70,500. THE AGREEMENT VALUE OF \$24,999 HAS BEEN PAID FOR THESE SERVICES UNDER AGREEMENT NO. C-1255 AND THE CONTRACT NOW EXCEEDS THE AGREEMENT VALUE.**

APPROVED**ROLL CALL MLGW FISCAL CONSENT ITEMS**

MOTION: Sammons
 SECOND: Marshall
 AYES: Brown, Chumney, Hooks, Jones, Lowery, Marshall, McCormick, Mitchell,
 Peete, Sammons, Taylor and Chairman Ford
 Holt was absent

APPROVED

14. **RESOLUTION AMENDING THE FY 2005 COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) OPERATING BUDGET BY TRANSFERRING AN APPROPRIATION OF \$38,025.00 IN COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS FROM DIRECTOR'S OFFICE, CD90001-AWARD 12180, TO COMMUNITY INITIATIVES, CD90011-AWARD 12181, TO FUND OPERATING COSTS ASSOCIATED WITH THE HYDE PARK CDC.**

MOTION: Brown
 SECOND: Taylor

AYES: Brown, Chumney, Hooks, Jones, Lowery, Marshall, McCormick, Mitchell,
Peete, Sammons, Taylor and Chairman Ford
Holt was absent

APPROVED

15. **RESOLUTION INCLUDING BOTANIC GARDEN IMPROVEMENTS, CIP PROJECT NUMBER PK08004, AS PART OF THE FY 2005 CAPITAL IMPROVEMENT PROGRAM. RESOLUTION SEEKS APPROVAL TO CONTINUE PREPARATION OF PLANS AND SPECIFICATIONS, AND TAKING OF BIDS, AT AN ESTIMATED CONSTRUCTION COST OF \$821,000.00, FUNDED BY G.O. BONDS GENERAL.**

MOTION: McCormick
SECOND: Sammons
AYES: Brown, Chumney, Hooks, Jones, Lowery, Marshall, McCormick, Mitchell,
Peete, Sammons, Taylor and Chairman Ford
Holt was absent

APPROVED

16. **RESOLUTION APPROPRIATING AN ALLOCATION OF \$36,000.00 IN CONSTRUCTION FUNDED BY G.O. BONDS GENERAL CHARGEABLE TO THE FISCAL YEAR 2005 CAPITAL IMPROVEMENT BUDGET FOR AQUATIC FACILITIES MAJOR MAINTENANCE, CIP PROJECT NUMBER PK04002 AS NECESSARY TO MAKE REPAIRS AT FOX MEADOWS AND BICKFORD POOLS PRIOR TO BEGINNING THE SEASON IN JUNE 2005.**

MOTION: McCormick
SECOND: Sammons
AYES: Brown, Chumney, Hooks, Lowery, Marshall, McCormick, Mitchell, Peete,
Sammons, Taylor and Chairman Ford
Jones did not cast a vote
Holt was absent

APPROVED

17. **RESOLUTION ACCEPTING GRANTS FUNDS IN THE AMOUNT OF \$8,500.00 FROM THE MEMPHIS CITY SCHOOLS FOR THE DRUG ABUSE RESISTANCE EDUCATION (DARE) PROGRAM. RESOLUTION ALSO AMENDS FY 2005 OPERATING BUDGET TO APPROPRIATE GRANT AND MATCHING FUNDS.**

MOTION: Sammons
SECOND: McCormick
AYES: Brown, Chumney, Hooks, Jones, Lowery, McCormick, Mitchell, Peete, Sammons
Taylor and Chairman Ford
Marshall did not cast a vote
Holt was absent

APPROVED

18. **RESOLUTION AUTHORIZING EXECUTION OF A LEASE AGREEMENT WITH KANORADO CORPORATION FOR THE USE OF DECK BARGE REGISTERED AS "BAR 343", AS APPROVED BY THE BOARD OF COMMISSIONERS OF THE MEMPHIS AND SHELBY COUNTY PORT COMMISSION ON DECEMBER 16, 2004.**

Contract No. CR-4924

MOTION: Jones
SECOND: McCormick
AYES: Brown, Chumney, Hooks, Jones, Lowery, Marshall, McCormick, Mitchell,
Peete, Sammons, Taylor and Chairman Ford
Holt was absent

APPROVED

19. **RESOLUTION AMENDING THE FY 2005 CAPITAL IMPROVEMENT BUDGET BY APPROPRIATING \$268,840.00 IN G.O. BONDS FOR PROJECT NUMBER PW01049 FRONT AT CAROLINA FOR A CONSTRUCTION CONTRACT WITH ENSCOR, LLC.**

Director of Public Works and City Engineer recommends approval

MOTION: Hooks
 SECOND: Peete
 AYES: Brown, Chumney, Hooks, Jones, Lowery, Marshall, McCormick, Mitchell, Peete, Sammons, Taylor and Chairman Ford
 Holt was absent

APPROVED

20. **RESOLUTION TRANSFERRING AND ALLOCATION AND APPROPRIATING \$161,180.00 IN G.O. BOND FUNDS FOR ORANGE MOUND DRAINAGE DISTRICT, PW03051 FOR CONSTRUCTION CONTRACT WITH TIPLE K CONSTRUCTION.**

Director of Public Works and City Engineer recommends approval

MOTION: Hooks
 SECOND: McCormick
 AYES: Brown, Chumney, Hooks, Jones, Lowery, McCormick, Mitchell, Peete, Sammons, Taylor and Chairman Ford
 Marshall did not cast a vote
 Holt was absent

APPROVED

21. **RESOLUTION AMENDING THE CAPITAL IMPROVEMENT BUDGET BY TRANSFERRING AN ALLOCATION AND APPROPRIATING \$854,760.00 IN G.O. BONDS FROM ARENA AREA IMPROVEMENTS, PROJECT NUMBER PW01153 TO FEDEX FORUM INFRASTRUCTURE, PROJECT NUMBER PW04048 FOR REIMBURSEMENT TO PUBLIC BUILDING AUTHORITY.**

Director of Public Works and City Engineer recommend approval

MOTION: Hooks
 SECOND: Jones
 AYES: Hooks, Jones, Marshall, McCormick, Peete, Sammons, Taylor and Chairman Ford
 NAYS: Lowery and Mitchell
 Chumney abstained
 Brown did not cast a vote
 Holt was absent

APPROVED

22. **RESOLUTION AMENDING THE FY 2005 CAPITAL IMPROVEMENT BUDGET BY APPROPRIATING \$417,700.00 IN G.O. BONDS FOR PROJECT NUMBER PW04047 YARD WASTE DIVERSION FOR A CONTRACT WITH VERMEER MIDSOUTH, INC. FOR THE PURCHASE OF A TUB GRINDER.**

Director of Public Works recommends approval

MOTION: Hooks
 SECOND: Brown
 AYES: Brown, Chumney, Hooks, Lowery, Marshall, McCormick, Mitchell, Peete, Sammons, Taylor and Chairman Ford
 Jones did not cast a vote

Holt was absent

APPROVED

23. **RESOLUTION APPROVING A SPECIAL USE PERMIT LOCATED ON THE NORTHWEST CORNER OF DUPONT AVENUE AND OVERTON CROSSING ROAD, CONTAINING .29 ACRE (12,632 SQ. FT.) IN THE HIGHWAY COMMERCIAL (C-H) DISTRICT.**

Case No. SUP 04-222

Applicant: Crown Castle, USA
Oasis Consulting, LLC (Shawn Massey) – Representative

Request: Special use permit to increase the height of a cellular communications tower from one-hundred (100') feet to one-hundred eighty (180') feet to allow a maximum of six (6) antennae co-locations

LUCB and OPD recommendation: APPROVAL, with conditions

MOTION: Peete
SECOND: Jones
AYES: Hooks, Jones, Lowery, McCormick, Mitchell, Peete, Sammons, Taylor and Chairman Ford
NAYS: Brown and Chumney
Marshall did not cast a vote
Holt was absent

APPROVED, as amended

25. **RESOLUTION APPROVING A PLANNED DEVELOPMENT LOCATED ON THE SOUTH SIDE OF POPLAR AVENUE; @ THE SOUTHERN TERMINUS OF BRIARCREST AVENUE, CONTAINING 3.7 ACRES IN THE GENERAL OFFICE (O-G) DISTRICT.**

Case No. PD 04-374

Applicant: Outback Steakhouse, Inc.
Fisher & Arnold (Jud Te Paske) – Representative

Request: Add a free standing restaurant

LUCB and OPD recommendation: APPROVAL, with conditions

MOTION: Peete
SECOND: McCormick
AYES: Brown, Chumney, Hooks, Jones, Lowery, McCormick, Mitchell, Peete, Sammons, Taylor and Chairman Ford
Marshall did not cast a vote
Holt was absent

APPROVED, as amended

26. **RESOLUTION APPROVING A STREET/ALLEY CLOSURE LOCATED ON THE SOUTHERN TERMINUS OF EAST CHERRY CIRCLE, CONTAINING 8,362 SQUARE FEET IN THE SINGLE FAMILY RESIDENTIAL (R-S10) DISTRICT.**

Case No. SAC 04-621

Applicant: Christ United Methodist Church
Jud TePaske – Representative

Request: Close & Vacate Alley Street Right-Of-Way

LUCB and OPD recommendation: APPROVAL, with conditions

MOTION: Peete
 SECOND: McCormick
 AYES: Brown, Chumney, Hooks, Jones, Lowery, McCormick, Mitchell, Peete, Sammons
 Taylor and Chairman Ford
 Marshall did not cast a vote
 Holt was absent

APPROVED

30. **RESOLUTION APPROPRIATING \$931,700.00, FUNDED BY G.O. BONDS GENERAL, IN CONSTRUCTION FUNDS, FOR LIBERTY BOWL FIELD REPLACEMENT, CIP PROJECT NUMBER PK10001.**

MOTION: McCormick
 SECOND: Sammons
 AYES: Brown, Chumney, Hooks, Jones, Lowery, McCormick, Mitchell, Peete,
 Sammons, Taylor and Chairman Ford
 Marshall did not cast a vote
 Holt was absent

APPROVED

28. **RESOLUTION APPROVING A SPECIAL USE PERMIT LOCATED ON THE SOUTHEAST CORNER OF WINCHESTER ROAD AND TCHULAHOMA ROAD, CONTAINING 0.55 ACRE IN THE LOCAL COMMERCIAL (C-L) DISTRICT.**
 Case No. SUP 04-221

Held to March 1, 2005

MINUTES

Approval of the Minutes of the regular meeting of February 1, 2005

MOTION: Mitchell
 SECOND: McCormick
 MOTION: Chumney, Hooks, Jones, Marshall, McCormick, Mitchell, Peete, Sammons,
 Taylor and Chairman Ford
 Brown and Lowery did not cast a vote
 Holt was absent

APPROVED

Councilman Marshall stated that we have just received this letter from the attorney’s for the Commercial Appeal having to do with the meeting that we held previously today. It is the contention of this letter signed by Mr. Pera, Attorney at Law for Armstrong, Allen that we held this meeting in violation of the Sunshine Law or the Open Meetings Act. I would like to ask the City Attorney to come and respond to this letter. Mrs. Hall, City Attorney, quoted from the 1991 Tennessee Supreme Court decision that allowed privileged meetings when a “pending controversy is likely to result in litigation” and that the City was in its rights to do so.

INTRODUCTION OF ITEMS ON MATTERS BY THE GENERAL PUBLIC:

ADJOURNMENT

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 Upon statement of the Chairman, without objection, the meeting was adjourned, subject to the call of the Chairman.

CHAIRMAN

Attest:

Deputy Comptroller/Council Records