

A G E N D A

FARRAGUT BOARD OF MAYOR AND ALDERMEN

July 14, 2011

WORKSHOP

6:15 PM

Knoxville Area Transit

Discussion of Social Security Section 218 Agreement

FBMA MEETING

7:00 PM

I. Silent Prayer, Pledge of Allegiance, Roll Call

II. Approval of Agenda

III. Mayor's Report

IV. Citizens Forum

V. Approval of Minutes

A. June 23, 2011

VI. Ordinances

A. First Reading

1. Ordinance 11-09, a request to close Herron Road right-of-way between the I-40/75 right-of-way and the Town Limits, located adjacent to Buddy Gregg Motor Homes (Young, Williams & Kirk, PC, Applicant)

2. Ordinance 11-10, a request to amend the Farragut Zoning Ordinance, Chapter 3, Section XV. Regional Commercial District (C-2), to allow motorized wakeboard cable systems as an allowed use (David L. McFarland, Applicant)

VII. Business Items

A. Consider Approval of Appointment to Visual Resources Review Board

VIII. Town Administrator's Report

IX. Associate Town Administrator's Report

X. Engineer's Report

XI. Recorder's Report

XII. Attorney's Report

AGENDA NUMBER _____

MEETING DATE July 14, 2011

BMA WORKSHOP

PREPARED BY: David Smoak, Town Administrator

SUBJECT: Referendum process to elect to participate in the Social Security system

INTRODUCTION: The purpose of this agenda item is to review the process to begin participation in the Social Security system.

DISCUSSION: The Board of Mayor and Aldermen voted in April 2011 to amend the current Town retirement plan, which would include participation in the Social Security system. There is a lengthy process that the Social Security Administration requires entities go through in order to enter the program. One of the first steps in that process is a required referendum of current employees who vote on whether to opt into Social Security. There are two different referendum options available to public entities in the State of Tennessee and each of these is highlighted in the attached memo from the Town's legal counsel.

Staff will be requesting the Board's feedback on the referendum options in order to prepare the proper documents for the Board's approval at the July 28, 2011 meeting.



www.kiesewetterfirm.com
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Memphis, TN 38119
p 901.271.5590
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June 22, 2011

PLEASE NOTE OUR NEW CONTACT INFORMATION:

**5050 Poplar Avenue, Suite 1712
Memphis, TN 38157
901.308.6485 (main line)**

Mr. David Smoak
Town Administrator
Town of Farragut
11408 Municipal Center Drive
Farragut, Tennessee 37934

Ms. Janet W. Curry
Human Resources Manager
Town of Farragut
11408 Municipal Center Drive
Farragut, TN 37934

David and Janet,

I hope this letter finds you well. This letter addresses the process to elect into Social Security, which includes an explanation of the referendum process. Although I had intentions of including responses to all employee questions in this letter as well, the letter was getting a little lengthy and I know that you needed the referendum information prior to the meeting tomorrow night. I will respond to the questions from the employees in a separate memorandum. Please feel free to share this with your employees as you see fit as this letter also illustrates why this process takes some time. I will forward you the responses to the employee questions within the next couple of days.

A. How do we elect into Social Security and why does it take so long?

1. Electing into Social Security: What Are Section 218 Agreements?

On August 14, 1935, Congress voted the Social Security Act of 1935 into legislation. The original legislation did not cover State and local government employees due to constitutional questions regarding the authority to impose taxes on the States. This, however, caused a problem because many public employees did not participate in public retirement systems equivalent to Social Security.

In 1950, Congress enacted Section 218 of the Social Security Act. This allowed Social Security coverage to be extended to the State and local government employees who were not covered by an alternative retirement system. The Social Security coverage was available at the request of the State, through an agreement signed by the State and the Social Security Administration. These agreements are referred to as Section 218 Agreements. Later, in 1954, more amendments were made to the Act which allowed State and local employees who were members of a retirement plan to also be covered under Section 218 Agreements provided coverage was authorized by the State and approved through a voluntary coverage referendum.

A Section 218 Agreement is a written document voluntarily signed by the State and the Social Security Administration extending Social Security and/or Medicare on a voluntary basis to the State and local employees of that State. Although entering into a Section 218 Agreement for Social Security coverage is voluntary, once the Section 218 Agreement is in place, it is permanent and cannot be terminated.

Section 218 Agreements cover positions, not individuals. If the position is covered for Social Security and Medicare under a Section 218 Agreement, then any employee filling that position now or in the future is subject to Social Security and Medicare taxes. Employees covered under a Section 218 Agreement have the same coverage and benefit rights as employees in the private sector.

Each State designates an official State Social Security Administrator (the "State Administrator") to act for the State in administering the State's Section 218 Agreement. The State Administrator is responsible for administering all aspects of Section 218 coverage, including interpreting its provisions, and insuring proper application of Social Security coverage to all State and political subdivision employees. Communication must flow between the State Administrator, the political subdivision, the Social Security Administration and the Internal Revenue Service.

State and local government employees who do not participate in Social Security, either through voluntary coverage (Section 218 Agreements) or mandatory coverage (as set forth under Federal law in specific circumstances) do not have Social Security taxes removed from their paychecks. Therefore, they are not eligible to receive Social Security benefits based on that employment. If such employees later contribute to Social Security via a subsequent Section 218 Agreement, their eligibility for benefits and the amount of those benefits would reflect only the time that such employees were properly covered by Social Security under the Section 218 Agreement and if applicable, any prior employment that was covered by Social Security.

2. Can a public employee voluntarily pay Social Security taxes without a Section 218 Agreement?

No. The employing public entity must have a Section 218 Agreement that covers the employee's services. It is not possible to pay Social Security taxes voluntarily on work that is not covered for Social Security under the terms of the Social Security Act and the Internal Revenue Code.

3. What is the Referendum Process and How Does It Work?

Public employees are brought under a Section 218 Agreement in groups known as coverage groups. There are two (2) basic coverage groups: absolute coverage groups and retirement system coverage groups. An absolute coverage group is composed of employees whose positions are not covered under a public retirement plan. A retirement system coverage group is composed of employees whose positions are covered under a public retirement plan. The Town of Farragut falls into the "retirement system coverage group" as the employees of the Town are covered under a retirement plan.

A public retirement system may be covered under a Section 218 Agreement only after a referendum is held. All States are authorized to use the majority vote referendum process. If a majority of all of the eligible members vote in favor of coverage, all current and future employees in positions in the retirement system coverage group will be covered.

Not all States are authorized to conduct the divided vote referendum; however, Tennessee is so authorized by State law. Under the divided vote referendum, only those employees who vote "yes" will be covered along with all future employees in those same positions as the employees who voted "yes." Employees who vote "no" are not covered as long as they maintain continuous

employment in a position within the same public retirement system. Future employees in those same positions will not be covered as the “no” vote essentially continues with the position. Later in this letter, I address additional opportunities for “no” votes to elect Social Security coverage.

a. Majority Vote Referendum

(1) Referendum Conditions for Majority Vote Referendum

While the referendum itself is a State matter, Federal law requires that certain minimum conditions are met. It requires the State Administrator to certify these conditions have been met:

- Vote was held by secret written ballot
- Opportunity was given and limited to the eligible employees
- Employees were given at least ninety (90) days notice of the vote
- The referendum procedure must be conducted under the direction of the State Administrator.
- A majority of the eligible employees of the retirement system voted for coverage

Social Security coverage may be extended to employees in positions covered by a retirement system only if a majority of the eligible employees vote in favor of such coverage. A majority of all of the eligible employees under the system, rather than a majority of the eligible employees voting, must favor coverage.

Following a favorable majority vote referendum, services under the retirement system, including positions brought under the retirement system in the future, are compulsorily covered for Social Security under the State's Section 218 agreement. Social Security and Medicare coverage will continue as long as the governmental entity exists even though the positions are later removed from under the retirement system, the retirement plan is abolished, or the positions are placed under an additional retirement system.

(2) Time Limitations Applicable to Majority Vote Referendums

There are two (2) time limitations that apply to a referendum:

- The Section 218 Agreement or modification to extend coverage must be executed within two (2) years of the date of the referendum;

- Another referendum cannot be held among the employees of the same retirement system for at least one (1) year after an unfavorable referendum. This prohibition does not apply where the first referendum was null and void.

The one-year time limitation between referendums applies only to a referendum for the same type of coverage for the same retirement system.

Example: A retirement system group held an unsuccessful referendum for Social Security coverage on September 1, 2009. That same retirement system can hold a referendum for Medicare HI-only coverage on January 3, 2010.

b. Divided Vote Referendum

(1) Referendum Conditions for Divided Vote Referendum

Tennessee has the authority under State law to extend coverage to employees in positions under a retirement system on a divided vote basis. This retirement system is then divided into two parts, each of which is considered its own “retirement system”:

- one part or system includes the positions of members of the system who choose coverage.
- the other part or system includes the positions of members who do not choose coverage.

Most States, including Tennessee, prefer to use a voting procedure where all eligible members are divided into two parts or systems based on the member’s choice (or vote) for coverage, and then a majority vote referendum is conducted among the employees who choose coverage.

Like with the majority vote referendum set forth above, the divided vote referendum requires the State Administrator to certify these conditions have been met:

- Vote was held by written ballot (the ballot is not secret since the individual choosing coverage must be identified)
- Opportunity was given to all individuals who were members of the retirement plan when the vote was held;
- Employees who were members of the retirement plan on the date of notice were given not less than ninety (90) days notice

- The referendum procedure must be conducted under the direction of the State Administrator.
- Retirement system was divided into two parts, one composed of the members who voted for coverage and the other composed of the remaining members who did not elect Section 218 coverage.

(2) Time Limitations Applicable to Divided Vote Referendums

The same time limitations as set forth above apply to the divided vote referendum as well.

(3) Voting "YES" vs. Voting "NO"

Employees who elect coverage: These employees remain covered as long as they continue to be members of the retirement plan or as long as they continue to occupy any position which is part of the retirement system coverage group. This coverage applies to all new employees under these same positions. Employees cannot individually elect to terminate their coverage.

Employees who do not elect coverage: These individuals are members of a separate retirement system which is composed of the positions of those members who did not elect coverage.

(4) Additional Opportunities for "No" Votes to Elect Coverage

There are two (2) ways members of a retirement system who voted "no" in a divided referendum can later obtain coverage:

- (a) Second Chance Procedure: If State law permits, the State can offer members of the "no" group a second chance to transfer to the "yes" group. Individual members who then want coverage must file a written request with the State. Members who voted "yes" for coverage and were covered under the Section 218 Agreement cannot transfer to the "no" group.

Under the second chance procedure, the State may specify a time period during which employees who initially voted "no" can request coverage. We will need to confirm with the State Administrator (Mr. Vernon Bush) that this Second Chance Procedure is available in Tennessee under the State Section 218 Agreement policies and procedures as it is not specifically addressed in the state statutes.

(b) Majority Vote Referendum: Members of the divided retirement system who voted “no” for coverage may be covered under the agreement if:

- a majority referendum is held among the “no” vote members of this same deemed system;
- a majority vote for coverage; and
- the same unit, e.g., single political subdivision, is used for referendum purposes.

If the referendum is favorable, all members who originally voted “no” are covered. If a majority favors coverage, this is deemed a separate retirement system coverage group and therefore, the State may elect any effective date for coverage allowed under Federal and State laws.

4. Generally, What is the Timeline for Section 218 Election and Referendum Process?

- a. The Town of Farragut must adopt a resolution to request authorization to conduct the appropriate referendum.
- b. Authorize the appropriate individual to execute a Section 218 Agreement pursuant to the referendum.
- c. Establish within the resolution the effective date of coverage.
- d. Acknowledge the applicable State and Federal laws and regulations regarding employee withholdings, employer contributions and recordkeeping.
- e. Submit the *original signed and properly certified Resolution* adopted by the governing body of the political subdivision. The person executing the resolution and the Section 218 Agreement, as set forth below, must have the authority to do so.
- f. Completes and submits the Section 218 Questionnaire.
- g. Prepare and provide to the State Administrator a Notice of Referendum to be distributed to eligible employees. A sample notice is prepared and sent to the Old Age and Survivors

Insurance ("OASI") Agency. To give notice to all eligible employees, the notice may be given to employees by personal delivery, e-mail or first class mail and must be posted on all bulletin boards maintained by the political subdivision. Notice must be given to eligible employees on leave of absence. If any doubt arises as to an employee's eligibility to participate in the referendum, a notice should be provided, and his or her status can be resolved later. If there are any military personnel who are on active duty and are eligible to vote in the referendum, such personnel must be provided the opportunity to vote.

- h. Upon receipt of the executed Resolution, if all information is found to be in order the State Administrator establishes the date on which the referendum will be held. The referendum must be held no less than ninety (90) days after the date the Notice of Referendum is distributed to eligible employees.
- i. Prepare a listing (electronic format) with the ***names, hire dates, and Social Security Numbers*** of eligible employees of the retirement system(s) who are members of the retirement system(s) on the date of the referendum, and were employed on the date the Notice of Referendum is posted. This list will be modified during the period between the Notice of Referendum and the referendum date for retirements and other separations from service. This information shall be provided to the OASI Agency so that the Agency can schedule a meeting for the eligible employees. The Social Security Administration will answer questions *prior to the referendum date*.
- j. Coordinates an informational meeting with the Social Security Administration for the Referendum eligible employees during the 90-day notice period. The informational meeting will be offered to each eligible employee to inform them of the benefits that may accrue to them and their spouses if their services are covered under Social Security. Additionally, the informational meeting shall include an explanation of the tax liabilities to which they will be subject if coverage is chosen in the referendum process. If the State Administrator is present for the informational meeting balloting instructions will be reviewed.
- k. State Administrator oversees the proper conducting of the referendum.

- l. The State Administrator tabulates the ballots and certifies the referendum to the Tennessee State Treasurer's office, OASI Agency. The Tennessee Consolidated Retirement System retains the original ballots and copies are placed in each employee's file.
- m. A partially completed Section 218 Agreement will be provided to the OASI Agency after the referendum has been verified. The OASI Agency returns a signed Section 218 Agreement to the Tennessee Consolidated Retirement System office.

I hope that this summary is helpful to you in explaining the election process into Social Security which includes the referendum process. Please let me know what questions you may have as this letter could trigger some additional thought.

With kindest regards,

KIESEWETTER LAW FIRM, PLLC



Jennifer S. Kiesewetter

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A G E N D A

FARRAGUT BOARD OF MAYOR AND ALDERMEN

June 23, 2011

COMMITTEE APPOINTMENT & TOWN ENTRANCE SIGN WORKSHOP

5:45 PM

BEER BOARD MEETING

6:55 PM

(see Beer Board Agenda)

FBMA MEETING

7:00 PM

I. Silent Prayer, Pledge of Allegiance, Roll Call

II. Approval of Agenda

III. Mayor's Report

- A. Proclamation for Small Cities Week

IV. Citizens Forum

V. Approval of Minutes

- A. June 9, 2011

VI. Resolution & Ordinances

- A. Resolution 2011-06, Fee Schedule
- B. Public Hearing & Second Reading
 - 1. **Ordinance 11-04**, ordinance to rezone a portion of Parcel 59.06, Tax Map 152, located on the north side of Turkey Creek Road across from Anchor Park, 3.55 Acres, from R-1 Rural Single-Family Residential District to R-4 Attached Single-Family Residential District (Smith Farm Residential Partners, Applicant)
 - 2. **Ordinance 11-05**, ordinance to amend the Farragut Municipal Code, Title 9, Chapter 4. Sign Ordinance, Section 9-404. Definitions, to change the definition of "Abandoned sign" by increasing the time from thirty (30) days to ninety (90) days (Jeffrey Fields, Applicant)
 - 3. **Ordinance 11-07**, Fiscal Year 2012 Budget

VII. Business Items

- A. Resolution 2011-07, MUTCD

- B. Approval of the 5 year strategic plan for the Town of Farragut
- C. Consider Approval of Contract 2012-01, Annual Road Maintenance
- D. Consider Approval of Contract 2012-02, Installation of Pavement Markings
- E. Consider Approval of Contract 2012-03, Annual Guardrail Maintenance
- F. Consider Approval of Contract 2012-04, Annual Signal Maintenance
- G. Resolution 2011-08, Economic Development Committee Charter amendment
- H. Committee Appointments

VIII. Town Administrator's Report

IX. Associate Town Administrator's Report

X. Engineer's Report

XI. Recorder's Report

XII. Attorney's Report

A G E N D A

FARRAGUT BOARD OF MAYOR AND ALDERMEN

June 23, 2011

FBMA MEETING

Mayor McGill called the meeting to order at 7:00 PM. Members present were Mayor McGill, Aldermen Elliott, Honken and LaMarche; Alderman Markli was absent.

Approval of Agenda

Motion was made to approve the agenda as presented. Moved by Alderman Honken, seconded by Alderman LaMarche; voting yes, Mayor McGill, Aldermen Elliott, Honken and LaMarche; no nays; Alderman Markli was absent; motion passed.

Mayor's Report

Proclamation for Small Cities Week

Motion was made to approve the Proclamation for Small Cities Week. Moved by Mayor McGill, seconded by Alderman LaMarche; voting yes, Mayor McGill, Aldermen Elliott, Honken and LaMarche; no nays; Alderman Markli was absent; motion passed.

Approval of Minutes

Motion was made to approve the minutes of June 9, 2011 with one minor change. Moved by Alderman Elliott, seconded by Alderman Honken; voting yes, Mayor McGill, Aldermen Elliott, Honken and LaMarche; no nays; Alderman Markli was absent; motion passed.

Resolution & Ordinances

Resolution 2011-06, Fee Schedule

Motion was made to approve Resolution 2011-06, Fee Schedule. Moved by Alderman Honken, seconded by Alderman Elliott; voting yes, Mayor McGill, Aldermen Elliott, Honken and LaMarche; no nays; Alderman Markli was absent; motion passed.

Public Hearing & Second Reading

Ordinance 11-04, ordinance to rezone a portion of Parcel 59.06, Tax Map 152, located on the north side of Turkey Creek Road across from Anchor Park, 3.55 Acres, from R-1 Rural Single-Family Residential District to R-4 Attached Single-Family Residential District (Smith Farm Residential Partners, Applicant)

Motion was made to approve Ordinance 11-04 on second and final reading. Moved by Alderman Elliott, seconded by Alderman LaMarche; voting yes, Mayor McGill, Aldermen Elliott, Honken and LaMarche; no nays; Alderman Markli was absent; motion passed.

Ordinance 11-05, ordinance to amend the Farragut Municipal Code, Title 9, Chapter 4. Sign Ordinance, Section 9-404. Definitions, to change the definition of "Abandoned sign" by increasing the time from thirty (30) days to ninety (90) days (Jeffrey Fields, Applicant)

Motion was made to approve Ordinance 11-05 on second and final reading. Moved by Alderman LaMarche, seconded by Alderman Honken; voting yes, Mayor McGill, Aldermen Elliott, Honken and LaMarche; no nays; Alderman Markli was absent; motion passed.

Ordinance 11-07, Fiscal Year 2012 Budget

Motion was made to withdraw the funding to KAT and allocation \$10,000 to Hardin Valley Academy Foundation and an additional \$6,000 to each of the five schools that serve the community. Moved by Alderman Honken. Alderman Honken withdrew the motion.

Motion was made to remove the \$40,000 funding from KAT in the Fiscal Year 2012 budget. Moved by Alderman Honken, seconded by Mayor McGill; Roll Call vote; Alderman Elliott, no; Alderman Honken, yes; Alderman LaMarche, no; Mayor McGill, yes; motion failed due to a tie.

Motion was made to add \$10,000 to the budget for the Hardin Valley Academy Foundation. Moved by Alderman Honken, seconded by Alderman Elliott; voting yes, Mayor McGill, Aldermen Elliott, Honken and LaMarche; no nays; Alderman Markli was absent; motion passed.

Motion was made to approve Ordinance 11-07 as amended on second and final reading. Moved by Alderman Honken, seconded by Alderman Elliott; voting yes, Mayor McGill, Aldermen Elliott, Honken and LaMarche; no nays; Alderman Markli was absent; motion passed.

Business Items

Resolution 2011-07, MUTCD

Motion was made to approve Resolution 2011-07, MUTCD. Moved by Mayor McGill, seconded by Alderman LaMarche; voting yes, Mayor McGill, Aldermen Elliott, Honken and LaMarche; no nays; Alderman Markli was absent; motion passed.

Approval of the 5 year strategic plan for the Town of Farragut

Motion was made to approve the 5 year strategic plan for the Town of Farragut. Moved by Alderman Honken, seconded by Alderman Elliott; voting yes, Mayor McGill, Aldermen Elliott, Honken and LaMarche; no nays; Alderman Markli was absent; motion passed.

Consider Approval of Contract 2012-01, Annual Road Maintenance

Motion was made to award Contract 2012-01 to JG Mullins Construction. Moved by Alderman Elliott, seconded by Alderman LaMarche; voting yes, Mayor McGill, Aldermen Elliott, Honken and LaMarche; no nays; Alderman Markli was absent; motion passed.

Consider Approval of Contract 2012-02, Installation of Pavement Markings

Motion was made to award Contract 2012-02 to Volunteer Highway Supply Company. Moved by Alderman Honken, seconded by Alderman LaMarche; voting yes, Mayor McGill, Aldermen Elliott, Honken and LaMarche; no nays; Alderman Markli was absent; motion passed.

Consider Approval of Contract 2012-03, Annual Guardrail Maintenance

Motion was made to award Contract 2012-03 to Tennessee Guardrail. Moved by Alderman Honken, seconded by Alderman Elliott; voting yes, Mayor McGill, Aldermen Elliott, Honken and LaMarche; no nays; Alderman Markli was absent; motion passed.

Consider Approval of Contract 2012-04, Annual Signal Maintenance

Motion was made to award Contract 2012-04 to Progression Electric. Moved by Alderman Honken, seconded by Alderman LaMarche; voting yes, Mayor McGill, Aldermen Elliott, Honken and LaMarche; no nays; Alderman Markli was absent; motion passed.

Economic Development Committee Charter amendment

Motion was made to approve the amendment to the Economic Development Committee Charter. Moved by Alderman LaMarche, seconded by Alderman Honken; voting yes, Mayor McGill, Aldermen Elliott, Honken and LaMarche; no nays; Alderman Markli was absent; motion passed.

Committee Appointments

Motion was made to appoint volunteer to committees as listed:

Arts Council- Sandra Dean, Mary Agnes Schaefer

Beautification Committee- Clare Ansink, Kathy Pierre, Mabel Sumner, Gerry Gennoe

Museum Advisory Committee- Libbie Haynes, Joyce Moran, Robert "Bob" Linsell, Louis LaMarche, Carolyn Coker, Marion Bayless, Jack Moore

Parks & Athletics Council- Loretta Bradley, Nadia Kogeler, Ron Pinchok, Jack Moore

Personnel Committee- Gary Schmitz, John Underwood, Cornell Ward, Mary Ellen Reda

Board of Zoning Appeals- Louis LaMarche

Plumbing, Gas, Mechanical- Stephen Byrd, Chris Duncan, Gary Edsell, Bernard Levenson, Nick Moskal

Visual Resourced Review Board- Linda Johnson, Marty Layman, Noah Myers, Jim Hollis

Economic Development- David Purvis, Jim Nixon

Stormwater Advisory Committee- Patrick McMahon, Violet Fredenberg

School Liaison Committee- Michael Singeltary, Mark Littleton

Moved by Alderman Honken, seconded by Alderman LaMarche; voting yes, Mayor McGill, Aldermen Elliott, Honken and LaMarche; no nays; Alderman Markli was absent; motion passed.

Town Administrator's Report

David Smoak, Town Administrator, announced that the July 4th parade will begin at 9:30 AM. Also the Red, White, and Blues event will be Sunday July 3rd.

Alderman Elliott expressed his gratitude to Bud McKelvey and the Public Works department for the clean up after the past storms.

Associate Town Administrator's Report

Gary Palmer, Associate Town Administrator, reported that he had attended the Knox County redistricting meeting.

Recorder's Report

Allison Myers, Town Recorder, presented the following bills for approval:

Kramer Rayson, 06/07/2011, \$26,492.85

Ms. Gail Howell, Outlets Drive, \$40,000

BB&T, 06/17/11, \$35,000

Knox County Trustee, Election, 06/21/11, \$15,933.55

Motion was made to approve the bills as presented. Moved by Alderman LaMarche, seconded by Alderman Elliott; voting yes, Mayor McGill, Aldermen Elliott, Honken and LaMarche; Alderman Markli was absent; no nays; motion passed.

Attorney's Report

The Board recessed for an executive session at 7:55 PM.
The Board reconvened at 8:35 PM.

Tom Hale, Town Attorney reported there was no deliberation but information purposes only.

Meeting adjourned at 8:37 PM.

Ralph McGill, Mayor

Allison Myers, Town Recorder

AGENDA NUMBER VI, A, 1

MEETING DATE July 14, 2011

REPORT TO THE BOARD OF MAYOR AND ALDERMEN

PREPARED BY: Ruth Viergutz Hawk, Community Development Director

SUBJECT: Ordinance 11-09, ordinance on 1st reading to close Herron Road right-of-way between the I-40/75 right-of-way and the Town Limits, located adjacent to Buddy Gregg Motor Homes (Young, Williams & Kirk, PC, Applicant)

INTRODUCTION: Per the Farragut Municipal Code, Title 16, Chapter 3. Road Closing or Terminating Policy, the planning commission is to review a road closure request and make recommendation to the Board of Mayor and Aldermen.

DISCUSSION: Attached please find a copy of Chapter 3. Road Closing or Terminating Policy of the Farragut Municipal Code. Also attached, please find a copy of the letter of request to close Herron Road north of I-40/75 to the Town limit line. This section of Herron Road is bound by Buddy Gregg Motor Homes and the company would like for the right-of-way to be abandoned so that they can more easily expand their facilities.

Herron Road was bisected by the construction of I-40/75. The section of Herron Road between Sweet Briar subdivision and I-40/75 has already been abandoned as part of the Parkside Drive development. The section of Herron Road located north of I-40/75 within the Town limits accesses a single property that has now been purchased by Buddy Gregg Motor Homes.

On April 19, 2011, I sent notification letters of the road closure request to First Utility District (FUD), Knoxville Utilities Board (KUB), Charter Communications, Lenoir City Utilities Board (LCUB), TDS Telecom, and Rural Metro. I received notice from FUD that they had a 6" waterline, a fire hydrant, and three (3) meters within the current right-of-way. I also received notice from KUB that they had a gas line within this right-of-way. Both utilities were agreeable to the right-of-way being abandoned provided appropriate easements are established. TDS has an above ground line in the right-of-way that crosses the interstate. They are looking into abandoning this line. If that is not feasible, they are agreeable to the right-of-way being abandoned provided the appropriate easement is established.

Attached please find an aerial photo of the general area and a GIS map of the general area for your review.

Staff supports the request to abandon the right-of-way provided adequate easements are retained. The road has functionally served as a private driveway for many years. Since Buddy Gregg Motor Homes has purchased Parcel 179, Tax Map 130, there is no longer a need for this public road. Staff recommends the following conditions of abandonment:

1. That the Town of Farragut relinquish ownership of the right-of-way through Quit Claim Deed to the adjoining property owner of Parcels 179, 181 & 182.01, Tax Map 130;
2. That the owner of the adjoining properties prepare and record a subdivision plat which dissolves the right-of-way and the interior property lines between Parcels 179, 181, and 182.01, Tax Map 130, to create a single parcel. This will ensure that all lots have road frontage;
3. That the plat establish the appropriate utility easements; and
4. The Herron Road right-of-way be used as a land swap for the right-of-way for the Snyder Road/Outlet Drive connector.

Attached please find a copy of Ordinance 11-09 for your review.

PROFESSIONAL RECOMMENDATION: Community Development Director, Ruth Hawk, recommends approval of Ordinance 11-09.

PLANNING COMMISSION RECOMMENDATION: On June 16, 2011, in a unanimous vote, the Farragut Municipal Planning Commission recommended approval of Ordinance 11-09.

PROPOSED MOTION: To approve Ordinance 11-09 as attached.

BOARD ACTION:

MOTION BY: _____ **SECONDED**

BY: _____

<u>VOTE/TOTAL</u>	<u>ELLIOTT</u>	<u>LAMARCHE</u>	<u>MARKLI</u>	<u>HONKEN</u>	<u>MCGILL</u>
YES	_____	_____	_____	_____	_____
NO	_____	_____	_____	_____	_____
ABSTAIN	_____	_____	_____	_____	_____

see State Highway Department's Standard Specifications for Road and Bridge Construction. (1985 Code, § 12-305; Ord. No. 03-02, Feb. 2003; Ord. No. 04-13, Mar. 2004)

CHAPTER 3. ROAD CLOSING OR TERMINATING POLICY

Sec. 16-301. General.

These procedures and minimum standards are adopted under the authority granted by Tennessee Code Annotated § 6-2-201, which entrusts the establishment and general supervision of roads and watercourses and local improvements to the board of mayor and aldermen; and by Tennessee Code Annotated § 13-4-104 which provides that the legislative body shall receive the recommendation of the planning commission before accepting, vacating or changing the use of any road.

These procedures shall govern the closing and termination of all roads within the corporate boundaries of the town.

Any expenses incurred for engineering, materials and construction resulting from a road closing or termination are to be absorbed by the petitioners unless otherwise agreed to by the board of mayor and aldermen.

The procedure for requesting the closing or termination of a local street is a three (3) step process which is initiated through the submission of a petition to the board of mayor and aldermen. The board then refers the request to the planning commission for evaluation and a recommendation. After completing its evaluation, the planning commission makes a recommendation by resolution to the board of mayor and aldermen. The board of mayor and aldermen will then hold a public hearing and make a decision.

(1985 Code, § 12-401)

Sec. 16-302. Petition for closing or terminating roads.

(1) Any citizen of Farragut or group of citizens wishing to have a road closed or terminated shall petition the board of mayor and aldermen requesting the closing or termination of a road by name. A sketch map indicating the desired location of the closing or termination must accompany the petition. Unless petitioning parties agree otherwise in writing, the town will convey by quit claim deed title, to the center of the closed right-of-way, to the owner(s) of each contiguous parcel or lot.

(2) At a minimum the following signatures must appear on the petition:

- (a) *For a temporary dead-end or stub street.* All of the owners of property contiguous to or having direct access to the temporary dead end street except for the owners of property against which the street stubs.
- (b) *For any other local street.* All of the owners of property contiguous to or having direct access to the street except for the owners of property against which the street stubs, and, in addition, a majority of the owners of property who would be

directly affected by a street closing or termination. All owners of lots in a subdivision or interconnected subdivisions are considered to be directly affected by a closing or termination in this category.

(3) For all streets other than local streets, action for closing or terminating must be initiated by either the municipal planning commission or the board of mayor and aldermen. Nothing in the foregoing shall be deemed to abrogate the right of the board of mayor and aldermen or the municipal planning commission to initiate the closing or termination of local streets.

(1985 Code, § 12-402)

Sec. 16-303. Planning commission evaluation and recommendation.

(1) The municipal planning commission staff will notify all utilities that provide services to Farragut of the action being considered and will request information concerning the effect that a closing or termination might have on existing utility systems and future plans.

(2) The municipal planning commission staff will evaluate with the assistance of the town engineer the advisability of the proposed closing or termination, and in the case of a proposed termination will examine the alternatives for accomplishing the termination within the standards established by the Farragut Subdivision Regulations. The planning staff will formulate a report to the municipal planning commission which shall encompass:

- (a) A recommendation on the proposed termination or closing in light of planning guidelines and local policy.
- (b) The recommended method of closing or terminating a road.
- (c) A recommendation on any variances or exceptions to the subdivision regulations which might be desirable in order to accomplish a termination.
- (d) A recommendation on the disposition of rights-of-way and retention of easements.

(3) Within ninety (90) days, the planning commission shall make a report to the board of mayor and aldermen including its recommendation and all information supplied in the staff report.

(4) The board of mayor and aldermen shall act upon the petition by ordinance.
(1985 Code, § 12-403; Ord. No. 96-07, May 1996)

Sec. 16-304. Minimum improvements and security.

The same improvements required for the acceptance of subdivision roads as specified in the subdivision regulations shall normally be required for the termination or closing of a road. However, the Farragut Municipal Planning Commission may recommend that improvements of a lower standard be accepted where exceptional circumstances such as quality of existing construction or encroachment on minimum yards warrant such a deviation. In most cases, the termination or closing of a road will effectively change conditions found on a recorded plat, thus requiring an amendment to said plat. The town shall be responsible for the preparation

and recording of a revised plat which shall be drawn to the standards of a final plat as spelled out in the Farragut Subdivision Regulations. Where improvements are to be financed by the petitioners or residents, the typical security provisions built into the platting process will be utilized to insure that improvements meet minimum standards.

Where the road being terminated or closed has not been platted, the board may require that a plat be drawn. If the board chooses not to require a plat, it may demand or request that the planning commission demand security through any of the methods provided for in the Farragut Subdivision Regulations.

(1985 Code, § 12-404)

CHAPTER 4. DRIVEWAYS AND OTHER ACCESS WAYS

Sec. 16-401. Policy.

The efficiency and safety of a street, road, or highway is greatly affected by vehicles entering, leaving, or crossing the roadway. Commercial, office, and residential developments are major contributors to increased volume of traffic upon municipal streets, roads, and highways. Such developments also give rise to increased traffic volume of a type and pattern characterized by frequent ingress and egress to the same. Therefore, such development significantly affects the efficiency and safety of streets, roads, or highways within the municipality. In the interests of safety, the town must regulate access to the streets, roads, and highways within its town limits in a uniform manner that is fair to the general public, land-owners, and developers.

(Ord. No. 96-30, Jan. 1997)

Sec. 16-402. General provisions.

(1) All access ways shall meet the minimum access requirements of this chapter or as determined by a Traffic Impact Study;

(2) The Farragut Municipal Planning Commission shall review access requests through the site plan review process and forward its recommendation to the board of mayor and aldermen;

(3) The Farragut Municipal Planning Commission shall review new proposed roadway accesses to an existing public road through the subdivision platting process. These roadway accesses shall meet the minimum access requirements of this chapter or as determined by a Traffic Impact Study;

(4) The Farragut Board of Mayor and Aldermen shall review access applications as provided in this chapter, except new roadway accesses to an existing public road created through the subdivision platting process;

(5) Developments requiring the submittal of a site plan or a preliminary subdivision plat may require a Traffic Impact Study;

YOUNG, WILLIAMS & KIRK, PC

J. CHRISTOPHER KIRK+
MARK K. WILLIAMS†+
KATHERINE M. HAMILTON*
BENÉT S. THEISS*
WALTER T. PARTAIN‡
W. LUCAS ARNOLD

+RULE 31 LISTED GENERAL CIVIL MEDIATOR
†ALSO ADMITTED IN NORTH CAROLINA
‡ALSO ADMITTED IN MASSACHUSETTS
*OF COUNSEL

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FACSIMILE (865) 546-9808
EMAIL mark@tn-attorneys.com

ROBERT S. YOUNG, JR. (1913-2009)
LINDSAY YOUNG (1913-2006)

MAILING ADDRESS

POST OFFICE BOX 550
KNOXVILLE, TN 37901-0550

April 14, 2011

RECEIVED

APR 15 2011

TOWN OF FARRAGUT

Ms. Ruth Hawk, Town Planner
Farragut Town Hall
11408 Municipal Center Drive
Farragut, TN 37934

Re: Town of Farragut/Petition to Close Herron Road
Our File No. 4332003

Dear Ms. Hawk:

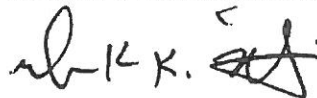
This firm represents Anniversary Holding Company, LLC, the owner of property contiguous to the portion of Herron Road located in the Town of Farragut. Pursuant to Town of Farragut Municipal Code § 16-301, this firm, with proper authorization from Anniversary Holding Company, LLC, requests that the Town of Farragut close the portion of Herron Road located inside the town limits.

Please find enclosed a survey indicating the desired location of the closing. The property in question is located in Parcel 181 of the attached survey and is cross-hatched.

Please contact me with any questions or comments.

Sincerely,

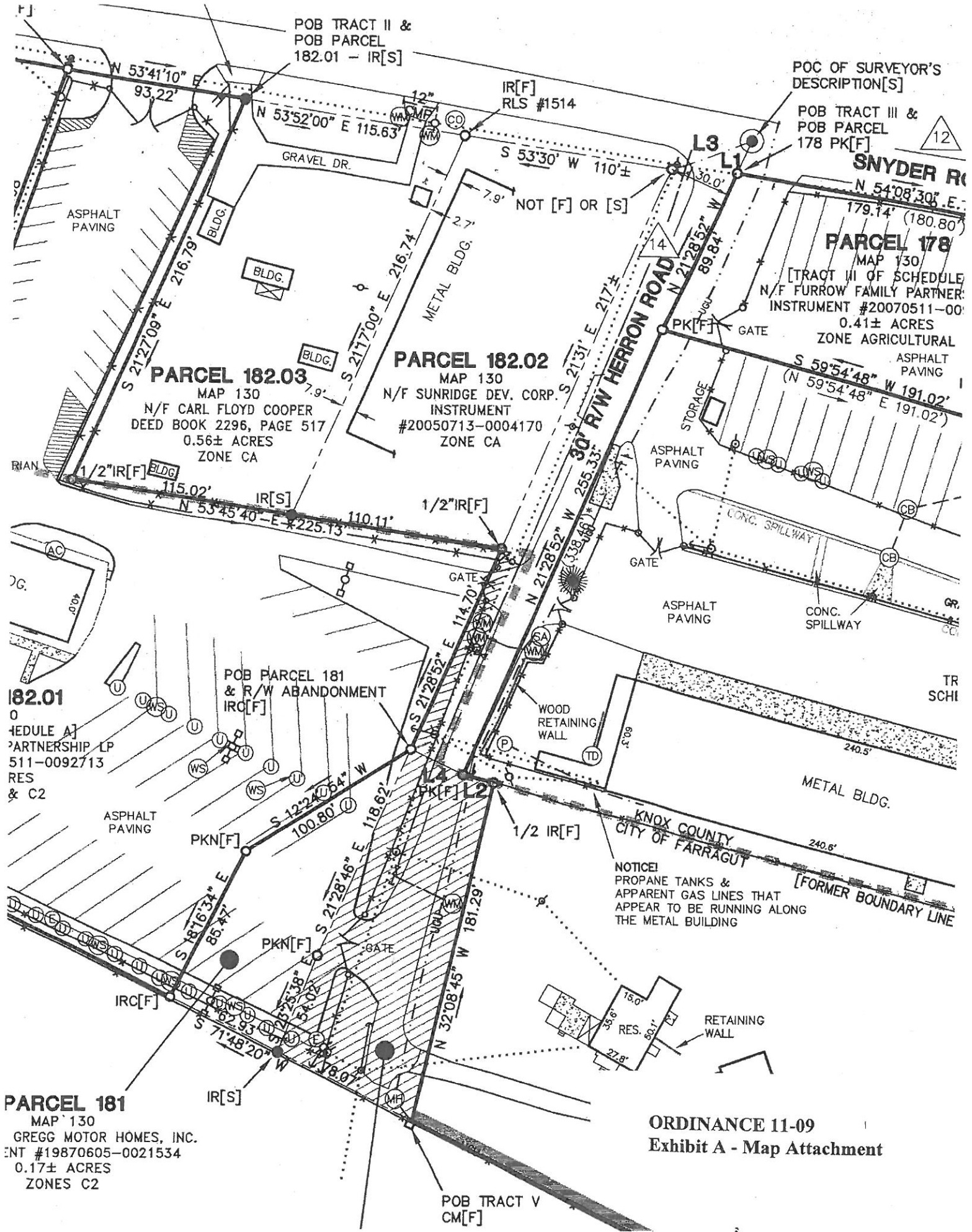
YOUNG, WILLIAMS & KIRK, PC



Mark K. Williams

MKW/gh
Enclosure

cc: Anniversary Holding Company, LLC
Attn: Brad Cohen





N →



Town Limit Line

HERRON RD

SAYBEE RD

Town Limit Line

Buddy Gregg
Motor Homes

I-40/75

ORDINANCE:	11-09
PREPARED BY:	Hawk
REQUESTED BY:	Young, Williams & Kirk, PC
CERTIFIED BY FMPC:	June 16, 2011
PUBLIC HEARING:	_____
PUBLISHED IN:	_____
DATE:	_____
1ST READING:	_____
2ND READING:	_____
PUBLISHED IN:	_____
DATE:	_____

AN ORDINANCE TO CLOSE APPROXIMATELY THREE HUNDRED (300) FEET OF HERRON ROAD RIGHT-OF-WAY BETWEEN I-40/75 RIGHT-OF-WAY AND THE TOWN LIMITS, ADJACENT TO PARCELS 179, 181 & 182.01, TAX MAP 130

WHEREAS the Board of Mayor and Aldermen of the Town of Farragut has been petitioned by the adjacent property owner to close approximately three hundred feet of Herron Road right-of-way between I-40/75 right-of-way and the Town Limits, adjacent to Parcels 179, 181 & 182.01, Tax Map 130, and

WHEREAS the Farragut Municipal Planning Commission has as set forth in Title 16, Section 16-303. of the Farragut Municipal Code, reviewed the request for closure,

NOW, THEREFORE, BE IT ORDAINED by the Board of Mayor and Aldermen of the Town of Farragut, Tennessee, as follows:

SECTION 1.

That approximately three hundred (300) feet of Herron Road right-of-way between I-40/75 right-of-way and the Town Limits be closed, as illustrated on Exhibit A, with the following stipulations:

1. That the Town of Farragut relinquish ownership of the right-of-way through Quit Claim Deed to the adjoining property owner of Parcels 179, 181 & 182.01, Tax Map 130;
2. That the owner of the adjoining properties prepare and record a subdivision plat which dissolves the right-of-way and the interior property lines between Parcels 179, 181, and 182.01, Tax Map 130, to create a single parcel. This will ensure that all lots have road frontage;
3. That the plat establish the appropriate utility easements; and
4. The Herron Road right-of-way be used as a land swap for the right-of-way for the Snyder Road/Outlet Drive connector.

SECTION 2.

This ordinance shall take effect from and after its final passage and publication, the public welfare requiring it.

Dr. Ralph McGill, Mayor

Allison Myers, Town Recorder

Certified to the Farragut Board of Mayor and Aldermen this _____ day of _____, 2011, with approval recommended.

Rita Holladay, Chairman

Edwin K. Whiting, Secretary

FARRAGUT MUNICIPAL PLANNING COMMISSION

REPORT TO THE BOARD OF MAYOR AND ALDERMEN

PREPARED BY: Ruth Viergutz Hawk, Community Development Director

SUBJECT: Ordinance 11-10, ordinance on 1st reading to amend the Farragut Zoning Ordinance, Chapter 3, Section XV. Regional Commercial District (C-2), to allow motorized wakeboard cable systems as an allowed use (David L. McFarland, Applicant)

INTRODUCTION: Currently within the C-2 District, indoor recreational facilities and non-motorized outdoor recreational facilities are allowed uses. Attached please find a copy of Chapter 3, Section XV. Regional Commercial District (C-2), B. Permitted Principal and Accessory Uses and Structures, 21. and 22. of the Farragut Zoning Ordinance for your review. When this section of the ordinance was re-written, it was decided that motorized recreational facilities can be noisy and disruptive and should not be allowed. Noise from such facilities can be quite loud in the near vicinity and can also carry great distances, especially on clear evenings.

DISCUSSION: Mr. McFarland is the owner of Wild Wings Café, which is located at 11335 Campbell Lakes Drive. On his site there is a pond which is approximately 230' x 155'. Although a text amendment is not site specific, in this particular case there are very few locations within the C-2 district where such a system could be used. Because of this, I have included an aerial photo of the Wild Wings Café site.

The motorized wakeboard cable system that Mr. Farland is wishing to install is called System 2.0. We will have a video of the system at the meeting. If you are interested, however, Google "System 2.0" and look at the various websites which explain the system and how it works. Rather than using a lead connected to a boat or a jet ski, the wakeboarder uses a lead connected to a cable system which pulls them from one end of the cable to the other and back again.

Per the information on the website, the system can be operated on water bodies that range in size from 80' – 700' in length and 50' – 120' in width. The system consists of portable towers/stanchions that are designed similar to a step ladder. The towers/stanchions must be anchored on permanent footers/platforms. The cables are strung between the towers/stanchions. Operators of the system can climb the ladders to change out hooking mechanisms at the top of the towers/stanchions.

Although the system itself is quite intriguing and has many benefits to wakeboarders, staff does have some concerns of operating such a system on the Wild Wings Café site.

1. The building's deck is located adjacent to the water and a portion of it actually overhangs the water. Staff is concerned about patrons being so close to the system as it is operating;

2. The ladders are attractive nuisances, particularly to customers who have been consuming alcohol; and
3. The pond is square vs. rectangular shaped. There are concerns that the shape and size of the pond does not conform to the water body size parameters established on the System 2.0 websites.

Staff included the following development criteria in order to address the above referenced concerns and the concerns expressed by the planning commission:

Motorized wakeboard cable system provided the following development criteria are met:

- a. The system is installed per the manufacturer's specifications and inspected by the Town;
- b. The motor is electric powered;
- c. The stanchions are fenced or barricaded so as to prevent open access;
- d. The stanchions and cables are removed during the off season; and
- e. The stanchions are set back from all structures and property lines a minimum of one (1) foot for each one (1) foot of stanchion height.

Attached please find a copy of the text amendment request and Ordinance 11-10.

PROFESSIONAL RECOMMENDATION: Community Development Director, Ruth Hawk, recommends approval of Ordinance 11-10 because the proposed ordinance addresses the concerns expressed by staff and the planning commission.

PLANNING COMMISSION RECOMMENDATION: On June 16, 2011, in a unanimous vote, the Farragut Municipal Planning Commission recommended approval of Ordinance 11-10.

PROPOSED MOTION: To approve Ordinance 11-10 as attached.

BOARD ACTION:

MOTION BY: _____ **SECONDED**

BY: _____

<u>VOTE/TOTAL</u>	<u>ELLIOTT</u>	<u>LAMARCHE</u>	<u>MARKLI</u>	<u>HONKEN</u>	<u>MCGILL</u>
YES	_____	_____	_____	_____	_____
NO	_____	_____	_____	_____	_____
ABSTAIN	_____	_____	_____	_____	_____

APPLICATION TO AMEND ORDINANCE TEXT
TOWN OF FARRAGUT, TENNESSEE

RECEIVED

APR 28 2011

TOWN OF FARRAGUT

FOR OFFICE USE ONLY
Fee Paid: \$250

APPLICANT NAME: David L. McFarland
Address: 502 Lost Tree Lane City/State/Zip: Farragut, TN, 37934
Phone Number: 828-242-7811 Fax Number: 865-777-9453
E-mail: mcfarland@wildwingcafe.com

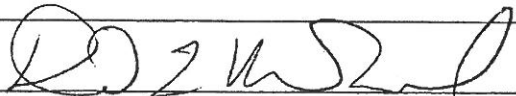
CHANGE REQUESTED

Amend Zoning Ordinance or Sign Ordinance text as follows:

To ammend C-2 Zoning district permitted uses
to provide for motorized wakeboard cable system.

The proposed amendment is necessary due to the following changed or changing conditions (be specific):

To allow a System 2.0 (motorized wakeboard
cable system) to be used for wakeboard enthusiasts
in the area. System would be located at 11335
Campbell Lakes Dr. also the location of
Wild Wing Cafe.



APPLICANT SIGNATURE

4-28-11

DATE

OR

I HEREBY CERTIFY THAT I AM THE LEGAL REPRESENTATIVE FOR THE APPLICANT
INVOLVED IN THIS REQUEST.

NAME (SIGNATURE)

DATE

Street Address

City/State/Zip

Telephone Number

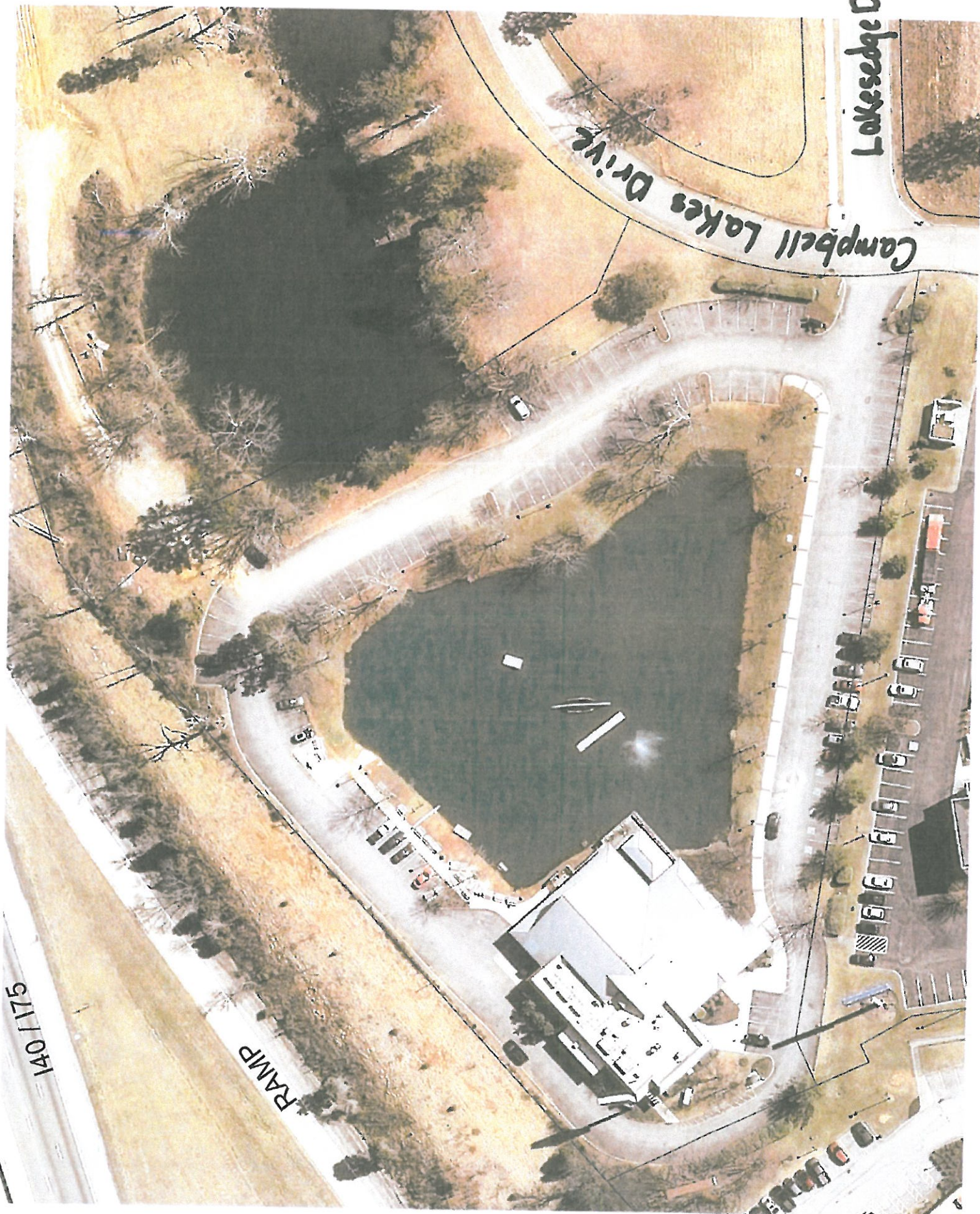
N ↑

Lakesedge Dr.

Campbell Lakes Drive

RAMP

1401175



Farragut Zoning Ordinance

Chapter 3, Section XV. Regional Commercial District (C-Z)

3.171

- 20. Parks, playgrounds, play fields, neighborhood buildings, and community buildings.
- 21. Indoor recreational facilities.
- ⇒ 22. Miniature golf courses, golf courses, driving ranges, batting cages, tennis courts, swimming pools, skating/skateboard facilities, and other similar non-motorized recreational facilities as determined by the Board of Zoning Appeals provided the following development criteria are met:
 - a. A minimum of a forty (40) foot front yard setback is maintained for any recreational facility that does not require the construction of a structure;
 - b. A minimum of a ten (10) foot rear and side yard setback is maintained for any recreational facility that does not require the construction of a structure; and
 - c. All structures developed as an integral part of a recreational facility/use are setback a minimum of forty (40) feet in the front yard and ten (10) feet in the side and rear yards. Setbacks shall be measured from the nearest point of any property line.
- 23. Parking lots.
- 24. Utility uses.

C. Area Regulations

The purpose of these setback regulations is to create a flexible building envelope that will enable the creative possibilities for development of a parcel to be maximized and to allow consideration of the natural features of a parcel as it is being developed. Please refer to Illustrations 11, 12 & 13. These illustrations depict the intent of the following regulations.

Setbacks shall be measured from the nearest point of any property line and all structures shall comply with the following setback requirements. For the purposes of this ordinance, the interstate highway right-of-way shall be considered a side or rear lot line.

- 1. Front Yards
 - a. All buildings shall be set back from the nearest point of any right-of-way a minimum of seventy-five (75) feet;
 - b. All buildings shall be set back from the nearest point of any right-of-way a minimum of fifty-five (55) feet if only a driveway aisle is located in the front yard; or

ORDINANCE:	11-10
PREPARED BY:	Hawk
REQUESTED BY:	David L. McFarland
CERTIFIED BY FMPC:	June 16, 2011
PUBLIC HEARING:	_____
PUBLISHED IN:	_____
DATE:	_____
1ST READING:	_____
2ND READING:	_____
PUBLISHED IN:	_____
DATE:	_____

AN ORDINANCE TO AMEND THE TEXT OF THE ZONING ORDINANCE OF THE TOWN OF FARRAGUT, TENNESSEE, ORDINANCE 86-16, AS AMENDED, BY AMENDING CHAPTER 3, SECTION XV. REGIONAL COMMERCIAL DISTRICT (C-2), B., TO ALLOW MOTORIZED WAKEBOARD CABLE SYSTEMS, AS AUTHORIZED PURSUANT TO SECTION 13-4-201, TENNESSEE CODE ANNOTATED.

BE IT ORDAINED by the Board of Mayor and Aldermen of the Town of Farragut, Tennessee, that the Farragut Zoning Ordinance, Ordinance 86-16, as amended, is hereby amended as follows:

SECTION 1.

Chapter 3, Section XV. Regional Commercial District (C-2), B., is amended by inserting numerically the following and re-numbering the remaining uses sequentially;

23. Motorized wakeboard cable system provided the following development criteria are met:
 - a. The system is installed per the manufacturer's specifications and inspected by the Town;
 - b. The motor is electric powered;
 - c. The stanchions are fenced or barricaded so as to prevent open access;
 - d. The stanchions and cables are removed during the off season; and

ORDINANCE 11-10

Page 2

- e. The stanchions are set back from all structures and property lines a minimum of one (1) foot for each one (1) foot of stanchion height.

SECTION 2.

This ordinance shall take effect from and after its final passage and publication, the public welfare requiring it.

Dr. Ralph McGill, Mayor

Allison Myers, Town Recorder

Certified to the Farragut Board of Mayor and Aldermen this _____ day of _____, 2011, with approval recommended.

Rita Holladay, Chairman

Edwin K. Whiting, Secretary

FARRAGUT MUNICIPAL PLANNING COMMISSION



TOWN OF FARRAGUT CITIZEN BOARD/COMMITTEE APPLICATION

Name Cynthia Ann Hollyfield

Address 200 LAWTON BLVD

Home Phone 865-966-8819

Zip 37934

Fax 865-966-4322

Business Phone 865-966-8819

E-mail CAH95@AOL.COM

Occupation _____

Education BS in Business Ed, MS - Adult + Tech Ed's - Leadership

Why would you like to serve on a Town of Farragut committee (attach resume or additional information if desired):

I WANT TO BE INVOLVED IN MY COMMUNITY AND HELP MAKE THIS PLACE THE BEST IT CAN BE. I WANT TO BE A DOER NOT JUST A TALKER

Indicate which Committee you are interested in serving:

Arts Council

Board of Plumbing & Gas/Mechanical Examiners

Board of Zoning Appeals (BZA)

Beautification Committee

Economic Development Committee

Folklife Museum Committee

☒
Knox County Schools Education Relations Committee

☐
Parks & Athletics Council

☐
Personnel Committee

☒
Stormwater Advisory Committee

☐
Visual Resources Review Board (VRRB)

I give my permission to the Town of Farragut to use my likeness on the web and/or Town publications. I have read and understand the Code of Ethics Ordinance and the applicable committee charter, ordinance or and/or by-laws.

Signature Cynthia Hollyfield

Date July 5, 2011

Please sign, date and return to:

Farragut Town Hall, 11408 Municipal Center Drive, Farragut, TN 37934
Fax: 675-2096 or scan/e-mail to pam.hall@townoffarragut.org

