

A G E N D A

FARRAGUT BOARD OF MAYOR AND ALDERMEN

October 27, 2011

RETIREMENT WORKSHOP

6:15 PM

BEER BOARD MEETING

(see Beer Board Agenda)

6:55 PM

BMA 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. October 13, 2011

VI. Ordinances

- A. Ordinance 11-21, request to amend the text of the Farragut Zoning Ordinance, Chapter 2. Definitions, to define "medical spa", Chapter 3. Specific District Regulations, to permit medical spas in commercial and office zoning districts (Stacey M. Handel, Applicant)
- B. Ordinance 11-24, ordinance to amend the Farragut Municipal Code, Title 8, Alcoholic Beverages, Chapter 2, Beer

VII. Business Items

- A. Approval of Change Order #1, Contract 2011-12, Farm at Willow Creek
- B. Approval of Revised Stormwater Drainage Policy
- C. Approval of Resolution R-2011-09, Approval of suspending the issuance of special event permits during the "Shop Farragut" program
- D. Approval of Memorandum of Understanding between Town of Farragut and the Farragut Business Alliance
- E. Consideration of a request to reconstruct a retaining wall located at 11421 Turkey Creek Road that is located within the Town of Farragut's right of way

VIII. Town Administrator's Report

IX. Attorney's Report

FARRAGUT BEER BOARD

October 27, 2011

6:55 PM

I. Approval of Minutes

A. September 22, 2011

II. Consider Approval for a On-Premise Beer Permit for:

A. Go Bananaz Café, 11151-D Kingston Pike

FARRAGUT BEER BOARD

September 22, 2011

Ron Honken, Chairman, called the beer board meeting to order at 6:55 PM. Elected officials present were, Mayor McGill, Aldermen Elliott and Honken; Alderman Markli and LaMarche were absent.

Approval of Minutes

Motion was made to approve the minutes of June 23, 2011 as presented. Moved by Alderman Markli, seconded by Alderman Honken; voting yes, Mayor McGill, Aldermen Elliott, Honken and Markli; Alderman LaMarche abstained; no nays; motion passed.

Motion was made to approve the minutes of August 11, 2011 as presented. Moved by Mayor McGill, seconded by Alderman Elliott; voting yes, Mayor McGill, Aldermen Elliott, Honken, LaMarche and Markli; no nays; motion passed.

Consider Approval for an On-Premise Beer Permit for:

Motion was made to approve the on-premise beer permit for Blue Sky Café, 138 West End Avenue. Moved by Alderman Elliott, seconded by Alderman Markli; voting yes, Mayor McGill, Aldermen Elliott, Honken, LaMarche and Markli; no nays; motion passed.

Beer Board meeting adjourned at 6:57 PM

Ron Honken, Chairman

Allison Myers, Town Recorder

pd #250
10/31/11

BEER PERMIT APPLICATION

TOWN OF FARRAGUT, TENNESSEE

APPLICANT

Name of Business: Go Bananasz Cafe
Address: 1151-D Kingston Pike
City/State/Zip: Knox TN 37934 Phone No.: 865 966 1151

NAME OF MANAGER, OPERATOR AND/OR FRANCHISE OWNER

Name: Kai J Chia
Home Address: 3100 Lake Brook Blvd #53
City/State/Zip: Knox TN 37909 Phone No.: 865-773-5810
Social Security No.: [REDACTED] Date of Birth: 11/16/1959

Name of owner of the business premises: Kai J Chia

Beer Permit desired: Off Premise ☐ ☒ On Premise

Has applicant ever had a beer permit or beer license revoked in any city or county?

Yes ☐ No ☒

If answer to preceding question is "yes," state time and place of revocation.

Has applicant been convicted of any crime within the past ten years? Yes ☐ No ☒

- X Applicant has obtained or will obtain a state certificate of registration and has complied or will fully comply with state and federal laws requiring the payment of special fees and taxes (consult TCA '57-202). Yes ☒ No ☐
- X Applicant has appraised or will appraise himself of all federal, state and local laws relating to the control and regulation of beer and will abide by those laws. Yes ☒ No ☐

Beer Permit Application
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- X Applicant recognizes and agrees that the Farragut Beer Board may revoke or suspend his permit or place him on probation for a designated period of time if in the operation of his business he commits or is responsible for any violation of law.

Yes ☒ No ☐

- X Applicant warrants that no owner or distributor of vending machines, pinball machines, jukeboxes and other amusement machines or devices, other than the applicant himself, has any interest, financial or otherwise, in the premises or in the business of the applicant.

Yes ☒ No ☐

- X Applicant warrants that, at the time of the making of this application, he/she has no indebtedness or other financial obligation to any brewer, distiller or manufacturer of beer, and will not during the period this beer permit shall be in force, contract any financial obligation to any brewer, distiller or manufacturer of beer other than the purchase of such beer.

Yes ☒ No ☐

ALL OF THE ABOVE STATEMENTS ARE TRUE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

Name (Print): Kai J. Chia

Address: 3100 Lake Brook Blvd. #53

City/State/Zip: Knox TN 37909

Signature: Kai Chia

Subscribed and sworn to before me, this _____ day of _____, 20 ____.

Notary Public _____

My Commission Expires: _____

Application approved this _____ day of _____, 20 ____.

Chairman, Farragut Beer Board

October 6, 2011

Lt. Allen "Wolfe" May, Beer Inspector
Knox County Sheriff Department
400 Main Street
Knoxville, TN 37902

Dear Lt. May:

The Town of Farragut has received an application for a beer permit that will be considered for approval by the Farragut Beer Board. I will need the requested as soon as you can get it in order to schedule the meeting. If you have any information on file concerning the following applicant, I would appreciate the information:

Kai Chia
3100 Lake Brook Blvd. #53
Knoxville, TN 37909

SS# 415-47-7752

DOB 11/16/1959

EVERY THING
CHECKS OK. 10-6-11
Wolfe

Thank you for your cooperation. Please call me if you have any questions.

Sincerely,

Allison Myers
Town Recorder/Treasurer

A G E N D A

FARRAGUT BOARD OF MAYOR AND ALDERMEN October 13, 2011

The Farragut Board of Mayor and Aldermen met in regular session on Thursday, September 8, 2011 at 7:00 p.m.

Present were Mayor McGill, Aldermen Elliott, Honken, LaMarche and Markli.

Approval of Agenda

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

Approval of Minutes

Motion was made to approve the minutes of September 22, 2011 as presented. Moved by Alderman Elliott, seconded by Alderman LaMarche; voting yes, Mayor McGill, Aldermen Elliott, Honken, LaMarche and Markli; no nays; motion passed.

Business Items

Consider Appointment to the Farragut Folklife Museum Committee

Motion was made to appoint Carolyn Sinclair to the Farragut Folklife Museum Committee. Moved by Alderman LaMarche, seconded by Alderman Markli; voting yes, Mayor McGill, Aldermen Elliott, Honken, LaMarche and Markli; no nays; motion passed.

Approval of Resolution 2011-09 Supporting Recreation Trails Program Grant

Motion was made to approve Resolution 2011-09 Supporting Recreation Trails Program Grant, requesting \$63,750 matching grant. Moved by Alderman LaMarche, seconded by Alderman Honken; voting yes, Mayor McGill, Aldermen Elliott, Honken, LaMarche and Markli; no nays; motion passed.

Approval of Lease Agreement with Knox County Clerk

Motion was made to approve the lease agreement with Knox County Clerk with the following terms.

Current and New Lease Rates		
Year	Current Rate per Month	New Rate per Month
1	\$800	\$900
2	\$825	\$950
3	\$850	\$1,000
4	\$875	\$1,050

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

Consideration of Social Security Buy-Back program for the Town of Farragut

Motion was made to approve the Social Security Buy-Back program for the Town of Farragut. Moved by Alderman Elliott, seconded by Alderman Honken. Roll call vote: Alderman Elliott, no; Alderman Honken, no; Alderman LaMarche, no; Alderman Markli, no; Mayor McGill, no; motion failed.

Approval of Settlement Agreement

Motion was made to approve the settlement agreement with Pinnacle Management Company in the amount of \$9,500. Moved by Alderman Markli, seconded by Alderman Elliott; voting yes, Mayor McGill, Aldermen Elliott, Honken, LaMarche and Markli; no nays; motion passed.

Town Administrator's Report

David Smoak, Town Administrator, announced that the Town of Farragut received a New Facility Four Star Award for McFee Park Phase II from the Tennessee Recreation and Parks Association (TRPA).

Attorney's Report

The Board recessed for an executive session at 8:00 PM.

The Board reconvened at 8:43 PM.

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

Meeting adjourned at 8:45 PM.

Ralph McGill, Mayor

Allison Myers, Town Recorder

REPORT TO THE BOARD OF MAYOR AND ALDERMEN

PREPARED BY: Ruth Viergutz Hawk, Community Development Director *RA*

SUBJECT: Ordinance 11-21, ordinance on 1st reading to amend the text of the Farragut Zoning Ordinance, Chapter 2. Definitions, to add "medical spa", and Chapter 3. Specific District Regulations, to permit medical spas in commercial and office zoning districts (Stacey M. Handel, Applicant)

INTRODUCTION: The majority of the Renaissance Farragut center is zoned C-1 General Commercial District. When the developers purchased the land located off of Deadwood Road (Old Stage Hills subdivision) to expand their development, as a compromise with the neighborhood that area was zoned from R-2 General Single-Family Residential District to O-1 Office District.

The O-1 district often serves as a transition area between the higher intensity commercial uses and residential neighborhoods. The uses permitted within the O-1 district generally hold normal office hours and, therefore, are not as disruptive to the adjacent neighborhoods as most commercial uses can be.

DISCUSSION: Ms. Handel is the owner of Garde Bien Spa and Salon, which is currently located near the Mellow Mushroom restaurant. Ms. Handel has purchased a condo space in the Renaissance Farragut center complex to move her business. The building in which her unit is located is zoned O-1 Office District. Within the O-1 Office District, "Professional Services" are a permitted use but "Personal Services" are not a permitted use. Per Chapter 2. Definitions, these services are defined as follows:

PERSONAL SERVICES: Establishments primarily engaged in providing services involving the care of a person or his or her personal goods or apparel. Such activities include: barber, beautician, shoe repair, seamstress, tailor, laundry and dry cleaning and other similar activities as defined by the Board of Zoning Appeals.

PROFESSIONAL SERVICES: Services provided by a member of a recognized profession. Such activities include: medical, legal, dental, scientific consulting, insurance agent, architectural, engineering, land-planning, financial and business consulting services, accounting offices, and other similar activities as defined by the Board of Zoning Appeals.

From a traffic perspective, personal services generally have a quicker customer turn around than professional services and, therefore, generate higher traffic volumes. Currently spas are a personal service and are not permitted within the O-1 Office District. The applicant originally requested that "medical spa" be included in the "Professional Services" definition. Based on our discussion at the planning commission workshop, however, it was decided to define "medical spa" and then to include

medical spas as an allowed use within the commercial districts and the Office District (O-1) provided the tenant space is less than 1,500 gross square feet. Medical Spa is defined as follows:

MEDICAL SPA: Establishments primarily engaged in non-surgical elective cosmetic medical treatments, massage treatment therapies, hair treatments, and nail applications with a minimum of one medical professional retained on staff. Such establishment shall be regulated and licensed by the State of Tennessee Department of Commerce and Insurance and the Tennessee Department of Health.

Attached please find a copy of Ordinance 11-21.

PROFESSIONAL RECOMMENDATION: Community Development Director, Ruth Hawk, recommends approval of Ordinance 11-21 because the proposed ordinance meets the needs of the applicant and, as discussed by the planning commission, addresses the concerns of commercial uses being permitted within the office districts.

PLANNING COMMISSION RECOMMENDATION: On October 20, 2011, in a unanimous vote, the Farragut Municipal Planning Commission recommended approval of Ordinance 11-21.

PROPOSED MOTION: To approve Ordinance 11-21 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	_____	_____	_____	_____	_____

ORDINANCE:	11-21
PREPARED BY:	Hawk
REQUESTED BY:	Stacey M. Handel, Applicant
CERTIFIED BY FMPC:	October 20, 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 2. DEFINITIONS, TO DEFINE THE TERM “MEDICAL SPA” AND CHAPTER 3., SECTION XII. GENERAL COMMERCIAL DISTRICT (C-1), SECTION XV. REGIONAL COMMERCIAL DISTRICT (C-2), SECTION XVII. OFFICE DISTRICT (O-1), AND XXVII. TOWN CENTER DISTRICT (TCD), TO ALLOW MEDICAL SPAS AS AN ALLOWED USE, 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 2. Definitions, is amended by inserting the term “medical spa”;

MEDICAL SPA: Establishments primarily engaged in non-surgical elective cosmetic medical treatments, massage treatment therapies, hair treatments, and nail applications with a minimum of one medical professional retained on staff. Such establishment shall be regulated and licensed by the State of Tennessee Department of Commerce and Insurance and the Tennessee Department of Health.

SECTION 2.

Chapter 3, Section XII. General Commercial District (C-1), B., is amended by inserting numerically the following and re-numbering the remaining uses sequentially;

10. Medical spas.

ORDINANCE 11-21

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SECTION 3.

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

10. Medical spas.

SECTION 4.

Chapter 3, Section XVII. Office District (O-1), B., is amended by inserting numerically the following and re-numbering the remaining uses sequentially;

5. Medical spas, provided the building space and/or tenant space shall not exceed 1,500 gross square feet.

SECTION 5.

Chapter 3, Section XXVII. Town Center District (TCD), C., is amended by inserting numerically the following and re-numbering the remaining uses sequentially;

5. Medical spas.

SECTION 6.

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

ORDINANCE 11-21

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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

AGENDA NUMBER V1.B. MEETING DATE October 27, 2011

REPORT TO THE BOARD OF MAYOR AND ALDERMEN

PREPARED BY: Allison Myers, Town Recorder

SUBJECT: Approval Ordinance 11-24, ordinance to amend the Farragut Municipal Code, Title 8, Alcoholic Beverages, Chapter 2, Beer

INTRODUCTION: The purpose of this agenda item is to eliminate the current beer ordinance and replace it with Ordinance 11-24.

DISCUSSION: A majority of the current beer ordinance has not been updated since 1985. Since then State law has changed and different requests have arisen.

Attachment A is a copy of the current ordinance for comparison. Highlights of the new ordinance are as follows:

- Enhanced definitions section
- Revision to the Special Occasion Beer Permit
- Modified On-Premise Consumption permit requirements
- Permit Beer sales within Hotels
- Revised serving hours to correspond with Knox County and City of Knoxville
- Improved revocation or suspensions and Civil Penalty sections

RECOMMENDATION BY: Allison Myers, Town Recorder, for approval.

PROPOSED MOTION: To approve Ordinance 11-24 on first reading.

BOARD ACTION:

MOTION BY: _____ **SECONDED BY:** _____

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

ORDINANCE: 11-24
PREPARED BY: Myers
1ST READING: _____
2ND READING: _____
PUBLISHED IN: _____
DATE: _____

AN ORDINANCE TO AMEND THE FARRAGUT MUNICIPAL CODE, TITLE 8, ALCOHOLIC BEVERAGES, CHAPTER 2, BEER

WHEREAS, the Board of Mayor and Aldermen of the Town of Farragut, Tennessee, wishes to amend Title 8, Chapter 2, Beer, of the Farragut Municipal Code,

NOW, THEREFORE, BE IT ORDAINED by the Board of Mayor and Aldermen of the Town of Farragut, Tennessee, that the Farragut Municipal Code is hereby amended as follows:

SECTION 1.

The Farragut Municipal Code, Title 8. Alcoholic Beverages, Chapter 2. Beer Ordinance is amended by deleting Chapter 2 in its entirety and substituting on lieu thereof the following:

8-201. Beer board established.

There is hereby established a beer board to be composed of the board of mayor and aldermen.

8-202. Meetings of the beer board.

All meetings of the beer board shall be open to the public. The beer board shall hold regular meetings upon the second and fourth Thursday of each month when there is business to come before the Beer Board. A special meeting may be called by the chairman, provided reasonable notice thereof to each member. The board may adjourn a meeting at any time to another time and place.

8-203. Record of beer board proceedings to be kept.

The recorder shall make a record of the proceedings of all meetings of the beer board. The record shall be a public record and shall contain at least the following: The date of each meeting; the names of the board members present and absent; the names of the members introducing and seconding motions and resolutions, etc., before the board; a copy of each such motion or resolution presented; the vote of each member thereon; and the provisions of each beer permit issued by the board.

8-204. Requirements for beer board quorum and action.

The attendance of at least a majority of the members of the beer board shall be required to constitute a quorum for the purpose of transacting business. Matters before the board shall be decided by a majority of the members present if a quorum is constituted. Any member present but not voting shall be deemed to have cast a "nay" vote.

8-205. Powers and duties of the beer board¹.

The beer board shall have the power and it is hereby directed to regulate the selling, storing for sale, distributing for sale, and manufacturing of beer within this municipality in accordance with the provisions of this chapter.

8-206. Definitions

1. *Applicant* shall mean the person on whose behalf an application for beer permit is filed.
2. *Adequate public notice* shall consist of publication, where possible, of notice of a meeting or hearing scheduled by the beer board, either regular or special, in a newspaper of general circulation within the corporate limits of the Town of Farragut.
3. *Beer* means beer, ale or other malt beverages, or any other beverages having an alcoholic content of not more than five percent (5%) by weight, except wine as defined in TCA § 57-3-101; provided, however, that no more than forty-nine percent (49%) of the overall alcoholic content of such beverage may be derived from the addition of flavors and other nonbeverage ingredients containing alcohol. TCA §57-5-101
4. *Beer board* or *board* means that administrative body organized and empowered under the authority of T.C.A. § 57-5-106.
5. *Church* means a building or property where a congregation regularly meets at least one day per week for religious worship.
6. *Certified clerk* shall mean a clerk who has successfully satisfied the training requirements contained in this part, or who has received certification from a responsible vendor training program.
7. *Clerk* shall mean any person working in a capability to sell beer directly to consumers for off-premise consumption.
8. *Commission* shall mean the Tennessee Alcoholic Beverage Commission.
9. *Responsible Vendor* means a person, corporation or other entity that has been issued a permit to sell beer for off-premise consumption and has received certification by the Tennessee Alcoholic Beverage Commission under the “Tennessee Responsible Vendor Act of 2006,” Tennessee Code Annotated, §57-5-601, et seq.
10. *Responsible Vendor Training Program* shall mean a training program related to the responsible sale of beer for off-premise consumption which has met all the statutory and regulatory requirements set forth in Tenn. Code Ann. § 57-5-601 et seq.
11. *Permit* means any permit issued pursuant to this article.

¹ State law reference

Tennessee Code Annotated, § 57-5-106.

12. *Permittee* means any person to whom any permit has been issued pursuant to this article.
13. *Person* shall mean any private individual, partnership, joint venture, corporation, and any other business entity or association.
14. *Premise* shall mean the property owned, leased, or controlled by the permittee and so connected with the beer business in which the permittee is engaged as to form a component or integral part of it, including, but not limited to, the building and the parking areas surrounding it. *Premise* includes all decks, patios and other well-defined outdoor serving and consuming areas that are contiguous to the exterior of the building in which the business is located and that are operated by the business identified in the permit. A permit shall be valid for all decks, patios and other well-defined outdoor serving areas that are contiguous to the exterior of the building in which the business is located, that are operated by the business and only for a business operating under the name identified in the permit.
15. *Restaurant* shall mean a business establishment whose primary business is the sale of prepared food to be consumed on the premise.
16. *Storage* shall mean the storing or possessing of beer or other alcoholic beverages for the purpose of resale by the permit holder.
17. The pronouns *he*, *him* and *his* shall refer to persons of the female as well as the male gender, as applicable.
18. *TABC* shall mean the Tennessee Alcoholic Beverage Commission

8-207. Permit required for engaging in beer business.

- (1) *Permit required.* It shall be unlawful for any person to sell, store for sale, distribute for sale, or manufacture beer without first making application to and obtaining a permit from the beer board. Each applicant must be a person of good moral character and must certify that he has read and is familiar with the provisions of this chapter. Four types of permits may be issued by the beer board.
 - a. A retailer's "off-premise permit" shall be issued to any person engaged in the sale of beer where the beer is not to be consumed by the purchaser or his guest upon or near the premise of the seller;
 - b. A retailer's "on-premise" permit shall be issued to any person engaged in the sale of beer where the beer is to be consumed by the purchaser or his guest upon the premise of the seller.
 - c. An "On/Off premise permit" shall be issued for both on-premise and off-premise consumption. Anyone who has consumed beer on the premise shall be prohibited from purchasing beer for off-premise consumption when leaving the premise.
 - d. A Special Occasion Beer Permit

Permits shall at all times be subject to all of the limitations and restrictions provided under this

code and the laws of the State of Tennessee.

- (2) Permits shall be issued to the owner of the business, whether a person, firm, corporation, joint stock company, syndicate, or association.
- (3) The applicant or a representative must appear in person before the board and subject himself to examination upon any and all questions appertaining to his qualifications under this chapter and amendments thereto. If the applicant fails to appear before the board the permit request will be postponed until the next regularly scheduled beer board meeting.

8-208. Application Fees and Privilege tax.

- (1) *Application Fee.* The application shall be made on such form as the board shall prescribe and/or furnish, and pursuant to Tennessee Code Annotated, § 57-5-104(a), shall be accompanied by a non-refundable application fee of two hundred and fifty dollars (\$250.00), or such larger amount as may be authorized by the laws of the State of Tennessee.
- (2) *Privilege Tax.* There is hereby imposed on the business of ²selling, distributing, storing or manufacturing beer a privilege tax of one hundred dollars (\$100.00), or such larger amount as may be authorized by the laws of the State of Tennessee. Any person, firm, corporation, joint stock company, syndicate or association engaged in the sale, distribution, storage or manufacture of beer shall remit the tax each successive January 1 to the Town of Farragut, Tennessee. At the time a new permit is issued to any business subject to this tax, the permit holder shall be required to pay the privilege tax on a prorated basis for each month or portion thereof remaining until the next tax payment date.

8-209-Public consumption of alcoholic beverages prohibited.

None of the beverages regulated by this chapter shall be consumed upon any public street, public market not governed by an on-premise permit, alley, boulevard, bridge, nor upon the grounds of any cemetery or public school.

8-210-Police record check

The town recorder shall submit all applications to the Knox County Sherriff's Office for a records check prior to time of the beer board meeting at which the application will be considered.

8-211. – Application-Requirements and conditions.

Each applicant for a beer permit shall be required to complete a formal, written application in a form approved by the beer board. Each applicant must explicitly and affirmatively state all of the following:

1. The owner or owners of such premise.
2. Name of applicant's business and whether the applicant is a person, partnership, corporation, limited liability company or association.
3. Location of premise of the business by street address and tax map and parcel.
4. Telephone number at the location.

² State Law Reference

Tennessee Code Annotated, § 57-5-104(b)

5. If beer will be sold at two or more restaurants or other businesses, within the same building as provided by T.C.A. §57-5-103(a)(4), a description of all such businesses.
6. Persons, firms, corporations, joint stock companies, syndicates, partnerships, limited liability companies or associations having at least a five-percent ownership in the applicant, together with addresses, telephone numbers, social security numbers and Federal Tax ID numbers.
7. Identity and address, telephone number, and email address of a representative to receive annual tax notices and other communication from the town.
8. Whether any person, firm, corporation, joint stock companies, syndicate or associations having at least a five-percent ownership interest in the applicant or any person employed in the distribution or sale of beer has been convicted of any violation of the laws against possession, sale, manufacture, or transportation of beer or other alcoholic beverages or any crime involving moral turpitude within the past ten years.
9. Whether the applicant is seeking a permit which would allow the sale of beer for on-premise consumption of beer or for off-premise consumption or both types of consumption.
10. The name, address, and telephone number of the owner of the property.
11. The application shall authorize a police records check and shall waive any right the applicant may have to privacy concerning arrests reflecting on the moral character of the applicant.
12. That the applicant will not engage in the sale of such beverages except at the place or places for which the beer board has issued a permit or permits to such applicant.
13. That no sales of such beverages will be made except in accordance with the permit granted.
14. The application shall be submitted to the town recorder at least 15 days prior to the beer board meeting at which it is to be considered.
15. Applications shall at all times be kept on file by the town recorder and shall be open to inspection of the general public within the limits of federal, state and local law, and any person, firm, corporation or association knowingly making any false statement in the application shall forfeit his permit or right to a permit and shall not be eligible to receive any permit for a period of one (1) year thereafter.
16. No applicant for a beer permit for on-premise consumption shall be issued a permit unless the town recorder has obtained approval of the premise from the building inspector and fire marshal, and a background report from the Knox County Sheriff's Office recommending approval.
17. Any other relevant information as may be required by the beer board.

8-212. Special occasion beer permit.

The special occasion beer permit request shall be made on such form as the board shall prescribe and/or furnish and shall be accompanied by a non-refundable application fee of one hundred dollars (\$100).

- (1) The beer board is authorized to issue a special occasion beer permit to bona fide charitable or nonprofit organizations for special events.
- (2) The special occasion beer permit shall not be issued for longer than one 48-hour period, unless otherwise specified by the beer board, subject to the limitations on the hours, imposed by law.
- (3) The application for the special occasion beer permit shall state whether the applicant is a charitable or nonprofit organization, include documents showing evidence of the type of organization, and state the location of the premise upon which alcoholic beverages shall be served and the purpose for the request of the license.
- (4) For purposes of this section:

Bona fide charitable or nonprofit organization means any corporation or other legal entity which has been recognized as exempt from federal taxes under section 501(c) of the Internal Revenue Code.

- (5) No charitable or nonprofit organization possessing a special occasion beer permit shall purchase, for sale or distribution, beer from any source other than a licensee as provided pursuant to state law.
- (6) Failure of the special occasion permittee to abide by the conditions of the permit and all laws of the State of Tennessee and the Town of Farragut will result in a denial of a special occasion beer permit for the sale of beer for a period of two (2) years.

8-213. Beer permits shall be restrictive³.

All beer permits shall be restrictive as to the type of beer business authorized under them. Separate permits shall be required for selling at retail, storing, distributing, and manufacturing. Beer permits for retail sale of beer may be further restricted so as to authorize sales only for either off-premise or on-premise consumption. It shall be unlawful for any beer permit holder to engage in any type or phase of the beer business not expressly authorized by his permit. It shall likewise be unlawful for holder of a permit not to comply with any and all express restrictions or conditions in the permit.

Where an owner operates two (2) or more restaurants or other businesses within the same building, the owner may, in the owner's discretion, operate some or all such businesses pursuant to the same permit.

8-214. Permits not transferable; permitted locations for consumption

- (1) The beer permit is only for the owner to whom the permit is issued and cannot be transferred to another owner. If the owner is a corporation, a change in ownership shall occur when control of at least fifty percent (50%) of the stock of the corporation is transferred to a new owner.
- (2) The beer permit is only for a single location, except as provided in Section 8-213, and cannot be transferred to another location. A permit shall be valid for all decks, patios and other outdoor serving areas that are contiguous to the exterior of the building in which the business is located and that are operated by the business.
- (3) Notwithstanding any provision of this part to the contrary, when a permittee applies for a new permit based solely upon a change of the name under which the business operates with no change whatsoever in the ownership of the business or the location of its operation, upon completion of the appropriate application form and payment of any required fees, the town recorder shall be authorized to issue the new permit without further review by the beer board.

³ Tennessee Code Annotated, § 57-5-301(a) provides that neither beer permit holders nor persons employed by them may have been "convicted of any violation of the laws against possession, sale, manufacture and transportation of intoxicating liquor or any crime involving moral turpitude" within the previous ten years. Under Tennessee Code Annotated § 57-5-301(b), violations are punishable under state law as a Class A misdemeanor. Under Tennessee Code Annotated § 16-18-302, town courts may only enforce local ordinances that mirror, substantially duplicate or incorporate by reference Class C misdemeanors. Town courts are thus prohibited from enforcing ordinances making violations of Tennessee Code Annotated § 57-5-301(a) a local offense.

8-215. Display of permit.

The permit required by this chapter shall be posted in a conspicuous place on the premise.

8-216. Interference with public health, safety, and morals prohibited.

No permit authorizing the sale of beer will be issued when, as determined in the discretion of the board, such business would cause congestion of traffic or would interfere with schools, residences, churches, or other places of public gathering, or would otherwise interfere with the public health, safety, and morals.

In no event will a permit be issued authorizing the manufacture or storage of beer, or the sale of beer within three hundred and forty (340) feet of any school or church. The distances shall be measured in a straight line from the nearest point on the building from which the beer will be manufactured, stored or sold to the nearest point on the building of the school or church. No permit shall be suspended, revoked or denied on the basis of proximity of the establishment to a school or church if a valid permit had been issued to any business on that same location, unless beer is not sold, distributed or manufactured at that location during any continuous six-month period.

In no event will a permit of any type required by this chapter be issued for use in conjunction with an establishment in which there is permitted:

- (1) Any female to appear or remain on the premise so costumed or dressed that one (1) or both breasts are wholly or substantially exposed to public view. "Wholly or substantially exposed to public view," as it pertains to such exposure shall mean the showing of the female breast with less than a fully opaque covering of any portion of the breast below the top of the nipple.
- (2) Any person to appear or remain upon the premise so costumed or dressed that the pubic hair, anus, or genitals are exposed to public view.

8-217. Issuance of permits to persons convicted of certain crimes prohibited

No beer permit shall be issued to any person who has been convicted for the possession, sale, manufacture, or transportation of intoxicating liquor, or any crime involving moral turpitude within the past ten (10) years.

8-218. On-premise consumption permit.

To qualify for an on-premise permit, the applicant and the establishment must, in addition to meeting all other provisions, regulations and restrictions in this chapter, meet the following requirements:

1. Be a restaurant or an eating place regulated, monitored and rated by the State of Tennessee; and
2. Provide adequate and sanitary kitchen and dining room equipment on the premise; and
3. The establishment for which a permit for on-premise consumption is sought must sell food prepared for on-premise consumption as a normal, regular and integral part of its everyday activities and such food is available for purchase during the same hours that beer is sold for on premise consumption.

4. To satisfy the requirement that it sell food for on-premise consumption as a normal, regular and integral part of its business, the on-premise permit holder must generate a minimum of 60% of the gross revenues of the establishment from food sales. Reporting procedures for establishments holding an on-premise permit are herewith established. Reporting forms shall be provided to establishments holding an on-premise permit and shall detail food sale and alcoholic beverage sale percentages on an annual basis and shall be due on or before June 30. The permit holder will submit copies of all sales tax returns and liquor by the drink returns, with appropriate documentation. These returns shall be subject to audit by the Town. Reporting year shall be January 1 through December 31 of the previous year. The Town Recorder shall keep a record of such compliance and notify the Beer Board of an establishment which fails to meet the 60% ratio.
5. The establishment must be able to seat a minimum of 15 people, including children, in booths and at tables, which tables are for the seating of patrons for the consumption of food, in addition to any other seating it may have; and
6. A minimum of 15 seats in the interior of the building shall be under a permanent roof and enclosed on all sides; and in the event the restaurant/eating place has adjoining and contiguous meeting rooms beer as defined herein may be served in said contiguous meeting rooms under all the requirements and conditions set forth herein.
7. Beer must be contained within the designated seating area contiguous to the on-premise beer permit location.

8-219. Hotels

If a hotel or motel otherwise meets the requirements of this code and the laws of the state of Tennessee for either an on-premise consumption permit or for an off-premise consumption permit, it is eligible to hold two separate permits. All off-premise consumption permits for hotels/motels are subject to the following additional conditions:

- (a) The hotel/motel that holds the permit must have fifty (50) or more guest rooms;
- (b) The permit holder may only sell beer to guests of the hotel/motel, but only for consumption within the guest room assigned to the guest;
- (c) The permit holder may only sell beer at the front desk for the establishment, or through a retail convenience shop that is within the hotel/motel building and that is regularly maintained as such by the hotel/motel; and
- (d) The total receipts of the hotel/motel resulting from the sale of beer and other alcoholic beverages may not exceed forty (40%) percent of the total revenues received by the permit holder hotel/motel.

8-220. Prohibited conduct or activities by beer permit holders, employees and persons engaged in the sale of beer.

It shall be unlawful for any beer permit holder, employee or person engaged in the sale of beer to:

- 1) Employ any person convicted for the possession, sale, manufacture, or transportation of intoxicating liquor, or any crime involving moral turpitude within the past ten (10) years.
- 2) Employ any minor under eighteen (18) years of age in the sale, storage, distribution or manufacture of beer.

- 3) Make or allow the sale of beer between the hours of 3:00 A.M. and 10:00 A.M. on Sundays, and between 3:00 A.M. and 5:00 A.M. on all other days of the week.
- 4) Allow any loud, unusual, or obnoxious noises to emanate from the premise of the beer permit holder.
- 5) Allow any person under twenty-one (21) years of age to loiter in or about the place of business of the beer permit holder.
- 6) Make or allow the sale of beer to a minor under twenty-one (21) years of age.
- 7) Make or allow any sale of beer to any intoxicated person or to any feeble-minded, insane, or otherwise mentally incapacitated person.
- 8) Allow drunk persons to loiter about the premise of the beer permit holder.
- 9) Serve, sell, or allow the consumption on the premise of any off-premise beer permit holder of any alcoholic beverage with an alcoholic content of more than five (5) percent by weight unless specifically permitted by other, additional permit.
- 10) Fail to provide and maintain separate sanitary toilet facilities for men and women.
- 11) Exhibit any motion pictures for which a fee for entrance to the theater is charged.
- 12) Permit any female to appear or remain upon the premise so costumed or dressed that one or both breasts are wholly or substantially exposed to public view. "Wholly or substantially exposed to public view," as it pertains to such exposure shall mean the showing of the female breast with less than a fully opaque covering of any portion of the breast below the top of the nipple.
- 13) Permit any person to appear or remain upon the premise so costumed or dressed that the pubic hair, anus, or genitals are exposed to public view.

8-221. Fire and building inspection.

No beer permit of any type shall be issued unless and until the premise to which such permit is applicable have been inspected and have passed the minimum fire and building codes adopted by the town.

The beer board shall have the power to revoke any beer permit issued under the provisions of this chapter when the premise are found to be in violation of the minimum fire and life safety codes and building codes. No beer permit shall be revoked until a public hearing is held by the beer board after reasonable notice to all the known parties in interest. Revocation proceedings may be initiated by the town administrator, or a member of the beer board.

8-222. Issuance.

After all inspections have been made and the applicant for a beer permit has met all requirements of this article, after all necessary fees and charges have been paid by the applicant, and after the beer board has determined the applicant has complied with all other requirements contained in this article, the board shall approve the application. Within a reasonable time following final approval of the application, a beer permit shall be issued to the applicant. The permittee shall retain such beer permit for as long as he shall wish to do business at the premise for which it was issued; provided that such permit is not revoked or suspended by the board.

8-223. Revocation or suspension of beer permits.

The beer board shall have the power to revoke or suspend any beer permit issued under the provisions of this chapter when the holder thereof is guilty of making a false statement or misrepresentation in his application or of violating any of the provisions of this chapter. However, no beer permit shall be revoked

or suspended until a public hearing is held by the board after reasonable notice to all the known parties in interest. Revocation or suspension proceedings may be initiated by the town administrator or member of the beer board.

Pursuant to Tennessee Code Annotated, § 57-5-608, the beer board shall not revoke or suspend the permit of a “responsible vendor” qualified under the requirements of Tennessee Code Annotated § 57-5-606 for a clerk’s illegal sale of beer to a minor if the clerk is properly certified and has attended annual meetings since the clerk’s original certification, unless the vendor’s status as a certified responsible vendor has been revoked by the alcoholic beverage commission. If the responsible vendor’s certification has been revoked, the vendor shall be punished by the beer board as if the vendor were not certified as a responsible vendor. “Clerk” means any person working in a capacity to sell beer directly to consumers for off-premise consumption. Under Tennessee Code Annotated, § 57-5-608, the alcoholic beverage commission shall revoke a vendor’s status as a responsible vendor upon notification by the beer board that the board has made a final determination that the vendor has sold beer to a minor for the second time in a consecutive twelve-month period. The revocation shall be for three (3) years.

8-224. Civil penalty in lieu of revocation or suspension.

A. Responsible vendor.

The Beer Board shall not, pursuant to T.C.A. § 57-5-608, revoke or suspend the permit of a responsible vendor for a clerk's illegal sale of beer to a minor, if the vendor and the clerk making the sale have complied with the requirements of T.C.A. § 57-5-606 as a responsible vendor under that part, but may impose upon the responsible vendor a civil penalty not to exceed \$1,000.00 for each offense of making or permitting to be made any sales to minors or for any violation of this article or state law. Permanent revocation of beer permits issued to responsible vendors may only be applied when a responsible vendor permittee commits at least two violations within a 12-month period and then only after the state alcoholic beverage commission revokes the permittee's status as a responsible vendor.

B. Non-responsible vendor.

The prohibition of subsection (a) concerning the revocation or suspension of the vendor's permit shall not apply to any vendor who is not a responsible vendor under the Responsible Vendor Act, T.C.A. § 57-5-601 et. seq., or to a participating vendor, if the vendor or clerk making a sale to a minor fails to comply with the requirements of T.C.A. § 57-5-606. With respect to such permittee, the Beer Board may, at the time it imposes a revocation or suspension, offer the permittee the alternative of paying a civil penalty not to exceed \$2,500.00 for each offense of making or permitting to be made any sales to minors, or a civil penalty not to exceed \$1,000.00 for any other offense.

- C. If a civil penalty is offered as an alternative to revocation or suspension, the holder shall have seven (7) days within which to pay the civil penalty before the revocation or suspension shall be imposed. If the civil penalty is not received within seven (7) days the revocation or suspension shall begin eight (8) days after the beer board hearing. If the civil penalty is paid within that time, the revocation or suspension shall be deemed withdrawn.

Payment of the civil penalty in lieu of revocation or suspension by a permit holder shall be an admission by the holder of the violation so charged and shall be paid to the exclusion of any other penalty that the town may impose.

8-225. Violations.

Any violation of this chapter shall constitute a civil offense and shall, upon conviction, be punishable by a penalty under the general penalty provision of this code. Each day a violation shall be allowed to continue shall constitute a separate offense

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

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⁽¹³⁾ **State Law reference**— For a leading case on a municipality's authority to regulate beer, see the Tennessee Supreme Court decision in *Watkins v. Niafeh*, 635 S.W.2d (1982).

[Sec. 8-201. - Beer board established.](#)

[Sec. 8-202. - Meetings of the beer board.](#)

[Sec. 8-203. - Record of beer board proceedings to be kept.](#)

[Sec. 8-204. - Requirements for beer board quorum and action.](#)

[Sec. 8-205. - Powers and duties of the beer board.](#)

[Sec. 8-206. - "Beer" defined.](#)

[Sec. 8-207. - Permit required for engaging in beer business.](#)

[Sec. 8-207.1. - Permit required for special events involving the outdoor retail sale of beer.](#)

[Sec. 8-208. - Beer permits shall be restrictive.](#)

[Sec. 8-209. - Application fees.](#)

[Sec. 8-210. - On-premises consumption permit.](#)

[Sec. 8-211. - Privilege tax.](#)

[Sec. 8-212. - Interference with public health, safety and morals prohibited.](#)

[Sec. 8-213. - Issuance of permits to persons convicted of certain crimes prohibited.](#)

[Sec. 8-214. - Prohibited conduct or activities by beer permit holders.](#)

[Sec. 8-215. - Public health inspection.](#)

[Sec. 8-216. - Fire and building inspection.](#)

[Sec. 8-217. - Revocation of beer permits.](#)

Sec. 8-201. - Beer board established.

There is hereby established a beer board to be composed of the board of mayor and aldermen.

(1985 Code, § 2-201)

Sec. 8-202. - Meetings of the beer board.

Matters to be brought before the beer board shall be brought at normal sessions of the board of mayor and aldermen or in special sessions called by the mayor upon reasonable notice to other members of the board. The board of mayor and aldermen, acting in its capacity as the beer board may adjourn a meeting at any time to another time and place.

(1985 Code, § 2-202)

Sec. 8-203. - Record of beer board proceedings to be kept.

The recorder shall make a record of the proceedings of all meetings of the beer board provided that duplicate records of meetings of the governing body acting jointly in such capacity and as the beer board need not be prepared. Where separate records are required, the record shall be a public record and shall contain at least the following: The date of each meeting; the names of the board members present and absent; the names of the members introducing and seconding motions and resolutions,

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etc., before the board; a copy of each such motion or resolution presented; the vote of each member thereon; and the provisions of each beer permit issued by the board.

(1985 Code, § 2-203)

Sec. 8-204. - Requirements for beer board quorum and action.

The attendance of at least a majority of the members of the beer board shall be required to constitute a quorum for the purpose of transacting business. Matters before the board shall be decided by a majority of the members present if a quorum is constituted. Any member present but not voting shall be deemed to have cast a "nay" vote.

(1985 Code, § 2-204)

Sec. 8-205. - Powers and duties of the beer board.

The beer board shall have the power and it is hereby directed to regulate the selling, storing for sale, distributing for sale, and manufacturing of beer within this town in accordance with the provisions of this chapter.

(1985 Code, § 2-205)

Sec. 8-206. - "Beer" defined.

The term "beer" as used in this chapter shall mean and include all beers, ales, and other malt liquors having an alcoholic content of not more than five (5) percent by weight.

(1985 Code, § 2-206)

Sec. 8-207. - Permit required for engaging in beer business.

It shall be unlawful for any person to sell, store for sale, distribute for sale, or manufacture beer without first making application to and obtaining a permit from the beer board. The application shall be made on such form as the board shall prescribe and/or furnish. Each applicant must be a person of good moral character and the applicant must certify to having read and being familiar with the provisions of this chapter. Each holder of a beer permit shall display and keep displayed such permit in a conspicuous place on the premises where the holder is authorized by that permit to conduct business.

(1985 Code, § 2-207)

Sec. 8-207.1. - Permit required for special events involving the outdoor retail sale of beer.

It shall be unlawful for any establishment to conduct any special event involving the outdoor retail sale of beer without first obtaining a special event permit from the Beer Board. The establishment shall have been previously approved by the Beer Board for a Beer Permit.

(a) *Setback from residential uses.* Unless specifically permitted by the Beer Board, special event activities shall not encroach within eight hundred (800) feet from any residentially used land.

(b) *Application.*

(1) Before any establishment receives a permit for a special event involving the outdoor retail sale of beer, the establishment shall make application for the event through the Office

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of the Town Recorder. Only complete applications, as determined by the Town Recorder, shall be placed on the next available Beer Board Agenda for consideration.

The application shall be in writing on the form provided by the Office of the Town Recorder and shall include the following information:

- a. Name of establishment requesting event;
- b. Address of establishment requesting event;
- c. Advertised name and description of event;
- d. If special event is sponsored or supported by business other than the establishment, please identify the sponsor and the sponsor product that is advertised in connection with the special event;
- e. Name, address, and all emergency contact numbers for owner of establishment and managing on-site operator of event;
- f. Duration of event;
- g. Sketch plan of event to include the following detail:
 1. Principal building and any accessory structures;
 2. Parking lot detail;
 3. Designated outdoor beer service area and distance from all abutting residentially used properties;
 4. Location/detail of any tents, temporary storage, bandstands, televisions, speakers, beer service apparatus;
 5. Emergency vehicle staging area, ingress, and egress routes; and
 6. Any other information deemed necessary by the reviewing agents of the Town.
- h. Detailed calendar indicating dates of each repeated event (if applicable).

(2) Prior to Beer Board consideration, the following agents of the Town shall review the application and report their findings in writing to the Beer Board through the Town Recorder:

- a. Knox County Sheriff's Office;
- b. Fire Marshal; and
- c. Town Administrator or his/her designee.

(c) *Duration of approval.* The Beer Board shall have the authority to approve a single event application, or a calendar of events for a single establishment under one (1) application, if the specific event or events is planned to be repetitive over a specified period of time and does not substantially change from the originally approved application. Calendar of events that are

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approved under one (1) application shall be reconsidered for re-approval by the Beer Board after six (6) consecutive months.

(d) *Suspension and revocation of permit.* The permit may be suspended at any time for any reason by the Town Administrator until the next regular meeting of the Beer Board. The Town Administrator shall submit a report to the Beer Board explaining the reason for the suspension of the permit. This permit may only be revoked by majority vote of the Beer Board. Revoked permits are not eligible for re-application for six (6) consecutive months from the date of revocation.

(Ord. No. 08-11, § 1, 6-26-2008)

Editor's note— Ord. No. 08-11, § 1, adopted June 26, 2008, amended the Code by adding provisions designated at § 8-208. At the discretion of the editor, said provisions have been included as a new § 8-207.1. See also the Code Comparative Table.

Sec. 8-208. - Beer permits shall be restrictive.

All beer permits shall be restrictive as to the type of beer business authorized under them. Separate permits shall be required for selling at retail, storing, distributing, and manufacturing and separate permits shall be required for each location at which any of said activities occur. Beer permits for the retail sale of beer may be further restricted by the beer board so as to authorize sales only for off premises consumption. It shall be unlawful for any beer permit holder to engage in any type or phase of the beer business not expressly authorized by the holder's permit. It shall likewise be unlawful for the holder not to comply with any and all express restrictions or conditions which may be written into the permit by the beer board.

(1985 Code, § 2-208)

Sec. 8-209. - Application fees.

A fee of two hundred fifty dollars (\$250.00) is imposed and shall be paid simultaneously with the filing of the application for any type beer permit or license for the sale of beer within the town. No portion of the fee shall be refunded to the applicant notwithstanding whether an application is approved or denied.

(1985 Code, § 2-209)

Sec. 8-210. - On-premises consumption permit.

No permit shall be issued authorizing on-premises consumption of beer in the town unless the place of business for which a permit for on-premises consumption is sought sells food prepared for on-premises consumption as a normal, regular and integral part of its every day activities and unless such food is available for purchase during the same hours that beer is sold for on premises consumption. Effective July 1, 1983, it shall be grounds for revocation of an existing permit for on premises consumption if the total dollar volume of sales of the permit holder attributable to such food is less than sixty (60) percent of the total dollar volume of sales of such food and beer combined.

In determining the ratio of food sales to combined food and beer sales, the permit holder may, at holder's option, utilize sales figures for any one (1) of the following three (3) time periods: (1) most recent calendar year; (2) most recent fiscal year of holder; (3) most recent consecutive twelve-month period.

Any holder or applicant who has less than twelve (12) months continuous operating history immediately

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preceding the filing of an application or preceding July 1, 1983, upon which to determine compliance may nevertheless retain a license previously issued or file an application and, if otherwise qualified, be granted a permit for on premises consumption, provided the holder or applicant submits an affidavit to the best of the holder's or applicant's knowledge, information or belief that holder or applicant will, during the initial twelve (12) months of permitted on premises consumption of beer sales from and after July 1, 1983, be in compliance with the required percentage ratio of food sales to total food and beer sales combined so as to meet the requirements of this chapter.

During the month of June of each calendar year the town administrator shall make or cause to be made an inspection of the premises occupied by the holder of every permit for on premises beer consumption granted by the town to determine continuing compliance with the minimum standards and conditions imposed by this chapter and may at other times during the year make or cause to be made such inspections of such premises. Failure to be in compliance shall be sufficient grounds to justify appropriate action by the beer board including, but not limited to, revocation of the on-premises beer consumption permit or license.

The holder of an on-premises beer consumption permit or license shall file with the beer board on or before July 1, 1983, and on or before July 1 of each succeeding year financial information in form and content sufficient in the opinion of the beer board to demonstrate actual compliance by the permit or license holder with the sixty (60) percent ratio requirement of food sales to total combined food and beer sales for holder's applicable prior twelve-month period. In lieu of submitting financial data, holder may submit the statement of holder's accountant, submitted on the accountant's letterhead stationery and signed by said accountant attesting to the accountant's verification of compliance by holder with this provision of this chapter. Holder's failure to establish compliance with said ratio requirement on or before July 1 of each year beginning July 1, 1983, shall be grounds for appropriate action by the beer board including, but not limited to, revocation of the on-premises beer consumption permit or license.

(1985 Code, § 2-210)

Sec. 8-211. - Privilege tax.

A privilege tax of one hundred dollars (\$100.00) shall be imposed on any business selling beer within the corporate limits. This tax shall be remitted to the town recorder on January 1, 1994, and each successive January 1. A written notice shall be mailed to each permit holder of the payment date of the annual tax at least thirty (30) days prior to January 1. Notice shall be mailed to the address specified by the permit holder on its permit application. If a permit holder does not pay the tax by January 31 or within thirty (30) days after written notice of the tax was mailed, whichever is later, the permit holder shall be notified by certified mail that the tax payment is past due. If a permit holder does not pay the tax within ten (10) days after receiving notice of its delinquency by certified mail, then the permit shall be void. At the time a new permit is issued to any business subject to this tax, the permit holder shall be required to pay the privilege tax on a prorated basis for each month or portion thereof remaining until the next tax payment date.

(1985 Code, § 2-211)

Sec. 8-212. - Interference with public health, safety and morals prohibited.

No permit authorizing the sale of beer will be issued to an applicant when such would or in the opinion of the board, be likely to cause congestion of traffic or interfere with schools or churches or otherwise interfere with the public health, safety and morals. In no event will a permit be issued authorizing the storage, sale or manufacture of beer at places within three hundred forty (340) feet of any school or

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church, measured from the nearest portion of the school or church building to the nearest portion of that portion of a building or structure actually occupied by the premises for which a permit is sought.

In no event will a permit of any type required by this chapter be issued for use in conjunction with an establishment in which there is permitted:

(1) Any female to appear or remain on the premises so costumed or dressed that one (1) or both breasts are wholly or substantially exposed to public view. "Wholly or substantially exposed to public view," as it pertains to such exposure shall mean the showing of the female breast with less than a fully opaque covering of any portion of the breast below the top of the nipple.

(2) Any person to appear or remain upon the premises so costumed or dressed that the pubic hair, anus, or genitals are exposed to public view.

(1985 Code, § 2-212)

Sec. 8-213. - Issuance of permits to persons convicted of certain crimes prohibited.

No beer permit shall be issued to any person who has been convicted for the possession, sale, manufacture, or transportation of intoxicating liquor, or any crime involving moral turpitude within the past ten (10) years.

(1985 Code, § 2-213)

Sec. 8-214. - Prohibited conduct or activities by beer permit holders.

It shall be unlawful for any beer permit holder to:

(1) Employ any person convicted for the possession, sale, manufacture, or transportation of intoxicating liquor, or any crime involving moral turpitude within the past ten (10) years.

(2) Employ any minor under eighteen (18) years of age in the sale, storage, distribution, or manufacture of beer.

(3) Make or allow any sale of beer between the hours of 3:00 a.m. and 6:00 a.m. during any night of the week.

(4) Allow any loud, unusual, or obnoxious noises to emanate from the premises of the beer permit holder.

(5) Make or allow the sale of beer to a minor under twenty-one (21) years of age.

(6) Allow any minor under twenty-one (21) years of age to loiter in or about the place of business of the beer permit holder.

(7) Make or allow any sale of beer to any intoxicated person or to any feeble-minded, insane, or otherwise mentally incapacitated person.

(8) Allow drunk or disreputable persons to loiter about the premises of the beer permit holder.

(9) Serve, sell, or allow the consumption on the premises of any off-premises beer permit holder of any alcoholic beverage with an alcoholic content of more than five (5) percent by weight unless specifically permitted by other, additional permit.

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(10) Exhibit any motion pictures for which a fee for entrance to the theater is charged.

(11) Fail to provide and maintain separate sanitary toilet facilities for men and women with respect to the holder of an on-premises beer permit or fail to provide and maintain at least one (1) sanitary toilet facility with respect to the holder of an off-premises beer permit.

(12) Permit any female to appear or remain upon the premises so costumed or dressed that one or both breasts are wholly or substantially exposed to public view. "Wholly or substantially exposed to public view," as it pertains to such exposure shall mean the showing of the female breast with less than a fully opaque covering of any portion of the breast below the top of the nipple.

(13) Permit any person to appear or remain upon the premises so costumed or dressed that the pubic hair, anus, or genitals are exposed to public view.

(1985 Code, § 2-214)

Sec. 8-215. - Public health inspection.

No beer permit of any type shall be issued unless and until the premises to which such permit is applicable have been inspected by the appropriate public health authorities (presently the Knox County Public Health Department) and have received a report from such public health authority reflecting the conditions of the premises as the same pertain to sanitation, cleanliness, and such other factors as said authority may comment upon as may effect public health and welfare. The beer board may, as a condition precedent to the issuance of any license require the correction of matters adversely commented upon by the public health authority or, at its discretion, may refuse to issue any permit based upon the report of the public health authority.

(1985 Code, § 2-215)

Sec. 8-216. - Fire and building inspection.

No beer permit of any type shall be issued unless and until the premises to which such permit is applicable have been inspected and have passed the minimum fire and building codes adopted by the town.

The beer board shall have the power to revoke any beer permit issued under the provisions of this chapter when the premises are found to be in violation of the minimum fire and life safety codes and building codes. No beer permit shall be revoked until a public hearing is held by the beer board after reasonable notice to all the known parties in interest. Revocation proceedings may be initiated by the fire marshal, the building official, the town administrator, or the beer board.

(Ord. No. 01-06, Apr. 2001)

Sec. 8-217. - Revocation of beer permits.

The beer board shall have the power to revoke any beer permit issued under the provisions of this chapter when the holder thereof is guilty of making a false statement or misrepresentation in the holder's application or fails to pay any and all business taxes owing to the town or of violating any of the provisions of this chapter or of violating any applicable provisions of state law. A beer permit also shall be revoked when the business for which the beer permit was issued ceases to operate for a period of thirty (30) consecutive calendar days. No beer permit shall be revoked until a public hearing is held by

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Title 8 - ALCOHOLIC BEVERAGES
CHAPTER 2. - BEER

the beer board after reasonable notice to all the known parties in interest. Revocation proceedings may be initiated by any member of the municipal governing body, or its designated representative.

(1985 Code, § 2-216; Ord. No. 01-06, Apr. 2001)

REPORT TO THE BOARD OF MAYOR AND ALDERMEN

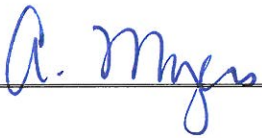
PREPARED BY: Darryl W. Smith, PE 

SUBJECT: Approval of Change Order No. 1, Contract 2011-12, Farm at Willow Creek

INTRODUCTION: The purpose of this agenda item is to consider approval of payment for additional work required as part of Contract 2011-12, Farm at Willow Creek Drainage Project

BACKGROUND: The Board of Mayor and Aldermen awarded Contract 2011-12, Farm at Willow Creek Drainage Project, to Blalock & Sons, Inc. for \$1,125,000.00 on July 28. In preparing the contract, staff anticipated the possibility of encountering voids during excavation of the existing pipe, and included several "Unit Price" items that might be used for sinkhole/void repairs. Such a void was recently discovered, and total costs for repairing the void were **\$19,546.90**, based upon the unit prices provided by Blalock in their bid (see highlighted items on attached spreadsheet). Upon discovery of the void, Engineering staff recommended the appropriate methods of repair and remained on-site during all operations. The repair required the use of graded solid rock, No. 57 stone, 3000 psi concrete, and flowable fill.

FINANCIAL SECTION:

Project: Project 2011-12, Farm at Willow Creek Drainage Project			
<u>Project Budget</u>	<u>Requested Amount</u>	<u>Contracted Amount</u>	<u>Remaining Amount</u>
\$1,200,000	\$19,546.90	\$1,125,000	\$55,453.10
Approved By: 			

RECOMMENDATION BY: Darryl Smith, Town Engineer, for approval of Change Order No. 1, in the amount of \$19,546.90.

PROPOSED MOTION: Approval of Change Order No. 1 for Contract 2011-12, Farm at Willow Creek Drainage Project

BOARD ACTION:

MOTION BY: _____ SECONDED BY: _____

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

Pay Estimate #1 (October 14, 2011)
Beginning of project thru 10/14/11

Contract 2011-12 Farm @ Willow Creek Drainage
PAY REQUEST SUMMARY

Contractor: Blalock

ITEM #	DESCRIPTION	QNTY	UNITS	BID PRICE	Pay Period #1		Previous Pay Periods		Accumulated Totals	
					AMOUNT	% Complete		% Complete		% Complete
1	Storm Pipe Replacement	1	LS	\$953,910.00	\$286,173.00	30.00%	\$0.00	0.00%	\$286,173.00	30.00%
2	Paving & Milling	1	LS	\$136,450.00	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
3	Sidewalk Replacement	1	LS	\$26,140.00	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
4	Seeding	1	LS	\$3,000.00	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
5	Payment & Performance Bond	1	LS	\$5,500.00	\$5,500.00	100.00%	\$0.00	0.00%	\$5,500.00	100.00%
	BASE BID AMOUNT			\$1,125,000.00	\$291,673.00		\$0.00		\$291,673.00	
UP-1	Graded Solid Rock	66.11	Ton	\$50.00	\$3,305.50		\$0.00		\$3,305.50	
UP-2	No. 57 Stone	46.38	Ton	\$30.00	\$1,391.40		\$0.00		\$1,391.40	
UP-3	3000 psi concrete	26.00	CY	\$450.00	\$11,700.00		\$0.00		\$11,700.00	
UP-4	Type IV Geotextile (TDOT Item No. 740-10.01)		SY	\$5.00	\$0.00		\$0.00		\$0.00	
UP-5	Flowable Fill	18.00	CY	\$175.00	\$3,150.00		\$0.00		\$3,150.00	
SINKHOLE ITEMS TOTAL					\$19,546.90		\$0.00		\$19,546.90	
Project Total Amount					\$311,219.90		\$0.00		\$311,219.90	
					Retainage (5%)		\$0.00		\$15,561.00	
					Current Payment Amount		\$0.00		\$295,658.91	

Inspector Signature

DATE

 10-18-11

Engineer Signature

DATE

 10/19/2011

Indicates Items used in addition to the Lump Sum Bid (prices included in contract)

REPORT TO THE BOARD OF MAYOR AND ALDERMEN

PREPARED BY: Darryl W. Smith, PE *DS*

SUBJECT: Revised Stormwater Drainage Policy

INTRODUCTION: Due to ongoing confusion over various inconsistencies in the Town of Farragut's existing Drainage Policy concerning the responsibilities of drainage system maintenance as it pertains to property owners and as it pertains to the Town of Farragut, a new Stormwater Drainage System Maintenance Policy has been drafted. The new policy more closely mirrors Knox County's Drainage System Maintenance Policy creating greater cross-jurisdictional consistency while eliminating ambiguity.

BACKGROUND: Prompted by numerous long standing citizen requests that had remained open largely due to divergent interpretations and conflicting direction within the existing drainage policy, it was determined that it would be prudent to address these issues.

DISCUSSION: Level of service as described in the existing drainage policy (A) is inconsistent with the level of service in Knox County and is confusing as written. In the new document (B) Town of Farragut responsibility is clearly defined as 1) the enforcement of water quality policy, 2) maintenance of Stormwater and Drainage system in public right-of-way and on other public lands and 3) the administration and enforcement of floodplain regulations. It is more clearly stated that the maintenance of Stormwater and drainage features on private property (including easements) are the responsibility of property owners.

The final paragraph of the existing drainage policy (A) states: "To be consistent with NPDES stormwater best management practices, the Town discourages any unnecessary piping of drainage ways. Routing Stormwater through grassed swales and channels allows the water to infiltrate back into the ground and provides a means of natural pollutant filtration." This follows a description of a 60/40 cost share program that supports piping projects.

The Town of Farragut's 60/40 cost share for pipe installation has been totally removed from the new document (B) to bring it in line with contemporary water quality policy which discourages the piping of Stormwater runoff as it prevents infiltration and increases flow rates downstream. It is the intent of the Town Staff to replace the 60/40 pipe cost share with a comparable cost share with property owners to retrofit utilizing best management practices consistent with current Stormwater policy.

A motion was unanimously approved at the September 8, 2011 SAC meeting to recommend the approval of the Revised Drainage Policy.

RECOMMENDATION BY: Darryl Smith (Town Engineer), Jason Scott (Stormwater Coordinator), and the Stormwater Advisory Committee (SAC) for approval of the revised Stormwater Drainage Policy.

PROPOSED MOTION: Motion to approve the revised Stormwater Drainage Policy.

BOARD ACTION:

MOTION BY: _____ SECONDED BY: _____

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

A



POLICY CONCERNING CITIZEN REQUESTS FOR DRAINAGE IMPROVEMENTS

ADOPTED by FARRAGUT BOARD of MAYOR and ALDERMEN on November 06, 2008

Upon purchase of property in the Town of Farragut, it is implied that the property owner is solely responsible for the general maintenance and upkeep of their property, including any easements, in accordance with the adopted Property Maintenance Code. The Town of Farragut is not responsible for the maintenance of privately owned property.

The purpose of a platted drainage easement is to control the flow of stormwater within a designated area and allow Town Staff access for maintenance and/or repair. The town's responsibility, as it relates to the drainage easement, is to maintain positive flow within the easement, ensure that the easement does not contribute to flooding of roadways or adjacent properties, and to ensure that the water is contained within the dedicated easement. All other general maintenance of the easement is the responsibility of the property owner.

In order for a drainage request to be considered, the following criteria must be met*:

1. The project must involve drainage from a public street or right of way
2. The project must involve a platted drainage easement
 - a. Drainage easements/areas which run from the rear lot line to the street, between houses or lots, will be reviewed by the Town Engineer for eligibility on a case by case basis
3. All necessary easements (temporary or permanent) must be provided to the Town, by all affected property owners, at no acquisition cost prior to any Town action
4. Projects must meet current engineering design standards as interpreted by the Town Engineer or his designee

All affected property owners must be willing to participate in the cost of the project as outlined in the policy and allow the Town access to their property through completion of the project

* The Town Engineer may defer to the Stormwater Advisory Committee for a recommendation on any or all cases involving the containment of stormwater and/or drainage

If the above criteria are met, the following policy may apply:

I. PROJECTS WHICH CAN BE COMPLETED WITH TOWN PERSONNEL AND RESOURCES

Upon receipt of a drainage request and at the direction of the Town Engineer or his designee, contingent upon funds available, the Town may utilize either of the two options as outlined below. In either situation, the Town will be responsible for the drainage investigation and survey, engineering design, installation of materials, and labor associated with the drainage modification. The property owner will be responsible for all material costs as outlined below.

1. Drainage easement cleanout and/or modification without pipe installation
 - a. Town staff will clean out/modify the area to provide adequate drainage as the easement was designed
 - b. Project will be scheduled based on Town Staff availability/workload
2. Pipe installation
 - a. Property owner/requestor shall be responsible for paying for following materials in accordance with the Town's design standards:
 - i. Pipe (in accordance with the Town's currently adopted material standards)
 - ii. End treatments (Headwall, Flared-end sections, etc)
 - iii. Iron castings and catch basins
 - b. The Town Shall be responsible for:
 - i. Procurement of all materials
 - ii. Engineering design and layout of project
 - iii. Installation of pipe and materials
 - iv. Labor and equipment
 - v. Bedding and Backfill
 - c. Projects will be scheduled when payment for materials is received and completed as the Town's schedule allows

To be consistent with NPDES stormwater best management practices, the Town discourages any unnecessary piping of drainage ways. Routing stormwater through grassed swales and channels allows the water to infiltrate back into the ground and provides a means of natural pollutant filtration.

II. ELIGIBLE PROJECTS WHICH ARE BEYOND THE PERSONNEL AND/OR EQUIPMENT CAPABILITIES OF THE TOWN

- A. The total amount to be spent for drainage projects will be determined by the Board of Mayor and Aldermen during budget preparation each year. The Town will provide the cost estimate, contract administration, construction inspection, and 60% of the contract amount for construction.
- B. The property owner will provide 40% of the contract amount. This amount (based on the estimated contract amount) must be deposited with the Town prior to contract preparation. If the actual contract amount is less than the estimated amount, the overage will be returned to the property owner. If the actual contract amount exceeds the estimated amount, the additional amount to make 40% must be paid to the Town before the contract is executed.
- C. Drainage projects will be completed as the Town's schedule and financial resources allow.

THE TOWN OF FARRAGUT RESERVES THE RIGHT TO DEVIATE FROM THIS POLICY
FOR THE HEALTH, WELFARE, AND SAFETY OF THE COMMUNITY

B

Proposed Policy



Stormwater Drainage System Maintenance Policy

ADOPTED by FARRAGUT BOARD of MAYOR and ALDERMEN on DATE OF ADOPTION

The purpose of this policy is to define the maintenance responsibilities for Stormwater and Drainage features within the Town of Farragut.¹

Town of Farragut's Responsibilities

The Town of Farragut Department of Engineering and Department of Public Works have the following responsibilities:

- Administration and enforcement of Stormwater and Drainage management regulations and associated inspections.
- Maintenance of the Stormwater and Drainage system located in public rights-of-way along public streets and on other public lands. Within right-of-way areas the Town of Farragut's level of service may include periodic inspection, cleaning and emergency response.
- Administration and enforcement of floodplain management regulations and associated inspections, in accordance with the requirements of the National Flood Insurance Program (NFIP) and in order to secure the Town of Farragut's participation in the Community Rating System (CRS) program.

The Town of Farragut is not responsible for the maintenance of Stormwater and Drainage features located on private property nor within easements on private property.

Private Property Owner's Responsibilities

The property owner is solely responsible for:

- the maintenance and upkeep of Stormwater and Drainage features located on their property (including easements, platted and implied) in accordance with the adopted Property Maintenance Code (*International Code Council, International Property Maintenance Code, 2006, Fourth Printing*) and Stormwater ordinance (*Farragut Codes and Ordinances, Title 14 - Land use Controls, Chapter 5 – Stormwater Ordinance*).

Said Stormwater and Drainage features include (nonexclusively): a good surface cover such as grass to minimize erosion, drainage easements, pipes, open grass swales, detention/retention/sediment basins, oil/water separators, rainwater harvesting systems, pervious paving systems, rain gardens, proprietary water treatment devices etc.

THE TOWN OF FARRAGUT RESERVES THE RIGHT TO DEVIATE FROM THIS POLICY
FOR THE HEALTH, WELFARE, AND SAFETY OF THE COMMUNITY

ⁱ The law of easements in the State of Tennessee is governed primarily by the common law. For statutory provisions concerning special types of easements, see T.C.A. §§ 66-9-101 et seq. (preservation restrictions); T.C.A. §§ 66-9-201 et seq. (solar easements); and T.C.A. §§ 66-9-301 et seq. (conservation easements).

Miller v. City of Brentwood, 548 S.W.2d 878 (Tenn. Ct. App. Midd. Tenn. 1977)

Yates v. Metropolitan Government of Nashville, 60 Tenn. App. 719 (Tenn. Ct. App. 1969)

AGENDA NUMBER VII.C.

MEETING DATE October 27, 2011

REPORT TO THE BOARD OF MAYOR AND ALDERMEN

PREPARED BY: David Smoak, Town Administrator DS

SUBJECT: Resolution R-11-09: Approval of suspending the issuance of separate special event permits during the "Shop Farragut" program

INTRODUCTION: The purpose of this agenda item is to approve Resolution R-11-09, which will designate a time period from November 5, 2011 to January 14, 2012 where no special events permits will be issued by the Town of Farragut.

BACKGROUND: The Fall of 2011 will be the 6th year for the "Shop Farragut" program. Originally the program was held from Thanksgiving through December 24 but was expanded several years ago to cover the week before Thanksgiving all the way through the end of the holiday buying season (December 31).

The purpose of the Shop Farragut program is to promote business in the Town of Farragut and make citizens aware that shopping in Farragut helps the town provide valuable services to the community.

DISCUSSION: The purpose of the suspension of the special events permits is to allow for a two week time period before and after the designated Shop Farragut holiday season (November 19, 2011-December 31, 2011) to help brand the program. During this two week period, no special events signage would be permitted to be displayed. The 2010 holiday shopping season was the first year this suspension on special events permits was implemented. If a business applies for a special event permit during the designated Shop Farragut period they will be automatically enrolled in the program and would be allowed to keep their signage up for the program's duration without it being counted against the businesses allocation of four special event permits per calendar year.

The change to this program would exclude churches and other places of worship. The exact dates that no special event permit would be issued would be November 5, 2011 to January 14, 2012. This will also be the first year the Farragut Business Alliance is in charge of the program.

RECOMMENDATION BY: Town Administrator David Smoak for approval.

PROPOSED MOTION: To approve Resolution R-11-09.

BOARD ACTION:

MOTION BY: _____ **SECONDED BY:** _____

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



RESOLUTION: R-11-09

**A RESOLUTION BY THE BOARD OF MAYOR AND ALDERMEN OF THE
TOWN OF FARRAGUT TO ENHANCE THE “SHOP FARRAGUT” PROGRAM
BY SUSPENDING THE ISSUANCE OF SEPARATE SPECIAL EVENT
PERMITS**

WHEREAS, each year between the Saturday prior to Thanksgiving and January 1, the Town of Farragut sponsors the “Shop Farragut” program; and

WHEREAS, the “Shop Farragut” program promotes Farragut businesses by offering free advertising and additional signage; and

WHEREAS, in the interest of branding and enhancing the “Shop Farragut” program, the Farragut Board of Mayor and Aldermen wish to suspend the issuance of separate Special Event Permits from November 5, 2011, to January 14, 2012; and

NOW, THEREFORE, be it resolved by the Board of Mayor and Aldermen of the Town of Farragut, that no separate Special Event Permits shall be issued from November 5, 2011 to January 14, 2012 to any business enterprises which would be eligible to participate in the Shop Farragut program.

This resolution is duly adopted by the Board of Mayor and Aldermen of the Town of Farragut on this 27th day of October, 2011.

Dr. Ralph McGill, Mayor

Allison Myers, Town Recorder

REPORT TO THE BOARD OF MAYOR AND ALDERMEN**PREPARED BY:** David Smoak, Town Administrator **SUBJECT:** Approval of Memorandum of Understanding between the Town of Farragut and the Farragut Business Alliance**INTRODUCTION:** The purpose of this agenda item is to consider approval of a memorandum of understanding (MOU) between the Town of Farragut and the Farragut Business Alliance (FBA).**DISCUSSION:** The FBA was formed two years ago as a non-profit 501(c)6 organization whose primary mission is to help promote businesses in the Town of Farragut. Since that time, the FBA has held several community events, such as the Red, White and Blues Festival, the Taste of Farragut, and several events during the Dogwood Arts Festival. This year, the FBA will also be taking over the Shop Farragut campaign, with hopes of turning it into a full time program to promote the businesses in our area.

The attached MOU outlines several economic development initiatives the FBA will be responsible to provide for the Town of Farragut and the businesses located within the Town (see Exhibit A). The Economic Development Committee has reviewed the list of services to be provided by the FBA and approved them at their committee meeting in September 2011. Other terms of the MOU call for quarterly progress reports from the FBA to the Town, a detailed plan of action to accomplish the objectives of the Economic Development Committee, and to increase the visibility and promotional opportunities of businesses in Farragut. The agreement is for five years with a decreasing financial commitment from the Town over the term of: \$44,000 in FY12 and FY13; \$37,000 in FY14; \$30,000 in FY15; and \$23,000 in FY16. The Town may also terminate this agreement at any time during the term.

RECOMMENDATION BY: Town Administrator David Smoak for approval.**PROPOSED MOTION:** To approve a Memorandum of Understanding between the Town of Farragut and the Farragut Business Alliance 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	_____	_____	_____	_____	_____

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding entered into as of the _____ day of _____, 2011 by and between Farragut Business Alliance, a 501(c)6 corporation filed under the laws of the State of Tennessee ("FBA") and The Town of Farragut, a municipal corporation created under the laws of the state of Tennessee (the "Town").

WHEREAS, the Town seeks to further economic development for the benefit of its citizens and businesses by the development and implementation of a strategic action plan designed to enhance awareness of local businesses and increase marketing through the use of publications and special events;

WHEREAS, the Town desires to further these economic development objectives of promoting local business by coordinating with the Town's business community to better serve their needs and increase retail revenues and to attract the citizens of the greater Knoxville area to shop at the Town's businesses; and

WHEREAS, FBA possesses the qualifications and desire to develop and implement an Economic Development Plan that will increase economic development within the Town and enhance the awareness of the Town's businesses and community; and

WHEREAS, the parties desire to memorialize herein the terms and conditions of an agreement whereby the Town commissions the FBA to undertake the process of developing and implementing an economic development plan for the Town.

NOW, THEREFORE, in consideration for the terms, conditions and agreements provided for hereinafter, the sufficiency of which are hereby acknowledged by the parties, the parties do hereby agree as follows:

1. Engagement. The Town hereby engages the FBA to perform the following services and to provide the following support to the Town and its businesses located within the Town's boundaries (hereinafter the "Economic Development Plan"):
 - (a) Increase tourism and economic development by partnering with the local hospitality industries, the Knoxville Tourism and Sports Corporation, the Knoxville Chamber Partnership, the Farragut West Knox Chamber, and other business groups with the goal of promoting the Town via strategic partnerships and special events to attract Knoxville area residents to the Town;
 - (b) Promote local businesses through events, marketing, programs and publications with the goal of enhancing awareness among local businesses and residents of Knoxville, at large, with the objective of increasing retail revenues within the Town;
 - (c) Coordinate and promote special events within the Town with the goal of identifying promotional opportunities to increase visibility of the Town and its local businesses; and

- (d) Act as a liaison between the Town and the business community of the greater Knox area to determine specific needs of the Town's business community and assist in recruitment of new retail and office businesses and provide a road map to prospective businesses owners that will increase an understanding of the Town's business development process.

The FBA accepts such engagement and will provide services necessary to accomplish the Economic Development Plan with reasonable assistance of representatives of the Town in providing the FBA with relevant information possessed by the Town.

Within the first six months of the term of this Agreement, the FBA agrees to furnish the Town a written Action Plan describing in detail the services that will be provided and the actions taken by the FBA to accomplish the objectives listed in the Economic Development Plan using the provisions of paragraph 1 and the attached Exhibit A as the general outline for the Action Plan. Upon the Town's acceptance of the Action Plan, it shall be the essence of this Agreement and guide the work of the FBA.

2. Term. FBA shall commence work on the Economic Development Plan effective July 1, 2011, and shall devote the time and attention it deems appropriate and required in order to comply the goals outlined within the Economic Development Plan. The term of this agreement shall be five years from the date hereof, except as otherwise provided in paragraph 8 below.

3. Compensation. In full compensation for the FBA's compliance with the Economic Development Plan, which shall include the submission of the Action Plan and progress reports as outlined in paragraph 5 below, and conditioned approval and adoption of the Town's budget by the Board, Mayor and Alderman during the applicable fiscal year, the FBA shall receive the sum of \$178,000.00 paid by the Town, to be paid to the FBA in the manner provided in paragraph 4.

4. Manner of Payment. Subject to the provisions of this Agreement, the sum of \$178,000.00 shall be paid to FBA as follows:

(a) The sum of \$44,000 for the fiscal year from July 1, 2011 through June 30, 2012 payable in four quarterly installments commencing on September 30, 2011 and continuing for the following three three (3) month intervals ("Quarter" or "Quarters") conditioned upon the due submission of the progress reports referred to in paragraph 5 below and pending the approval and adoption of the Town's budget by the Board of Mayor and Alderman in the 2011-2012 fiscal year;

(b) The sum of \$44,000 for the fiscal year from July 1, 2012 through June 30, 2013 payable in four quarterly installments commencing on September 30, 2012 and continuing for the following three three (3) month intervals ("Quarter" or "Quarters") conditioned upon the due submission of the progress reports referred to in paragraph 5 below and pending the approval and adoption of the Town's budget by the Board of Mayor and Alderman in the 2012-2013 fiscal year;

(c) The sum of \$37,000 for the fiscal year from July 1, 2013 through June 30, 2014 payable in four quarterly installments commencing on September 30, 2013 and continuing for the following three three (3) month intervals ("Quarter" or "Quarters")

conditioned upon the due submission of the progress reports referred to in paragraph 5 below and pending the approval and adoption of the Town's budget by the Board of Mayor and Alderman in the 2013-2014 fiscal year;

(d) The sum of \$30,000 for the fiscal year from July 1, 2014 through June 30, 2015 payable in four quarterly installments commencing on September 30, 2011 and continuing for the following three three (3) month intervals ("Quarter" or "Quarters") conditioned upon the due submission of the progress reports referred to in paragraph 5 below and pending the approval and adoption of the Town's budget by the Board of Mayor and Alderman in the 2014-2015 fiscal year;

(e) The sum of \$23,000 for the fiscal year from July 1, 2015 through June 30, 2016 payable in four quarterly installments commencing on September 30, 2015 and continuing for the following three three (3) month intervals ("Quarter" or "Quarters") conditioned upon the due submission of the progress reports referred to in paragraph 5 below and pending the approval and adoption of the Town's budget by the Board of Mayor and Alderman in the 2015-2016 fiscal year.

5. Progress Reports. FBA shall furnish Town with written progress reports at the end of each Quarter from and after September 30, 2011 (i.e., December 30, 2011, March 30, 2012, June 30, 2012, September 30, 2012, December 30, 2012, etc. The content of the Progress Report should include a summary of the actions taken by the FBA, during the subject Quarter, in furtherance of the Economic Development Plan. The Progress Report should also include specific objectives that the FBA plans to meet by the next date of the Progress Report. If FBA fails to furnish a Progress Report, or if it appears from the report that no progress has been made in the advancement and achievements of the Economic Development Plan since the last Progress Report, the Town shall have the right to withhold the quarterly payment until FBA resumes progress on the work. In addition, the FBA shall, if the Town so requests, confer with representatives of the Town from time to time on matters of substance concerning the efforts that have been and will be taken to advance the goals of the Economic Development Plan.

6. Delays in Completion. In the event contingencies arise that hinder the ability of the FBA from moving forward with the Economic Development Plan through no fault of the FBA, the FBA shall inform the Town Administrator of such circumstances as soon as possible. The Town will take steps within its control to assist the FBA with overcoming said contingencies.

7. Independent Contractor. It is the mutual understanding of the parties that the members of the FBA are undertaking the Economic Development Plan as independent contractors, not as employees of the Town. The FBA shall be solely responsible for reporting for tax purposes the amount received hereunder and for the payment of any taxes of every kind that may be payable on account of the payments provided for herein. The FBA specifically agrees to indemnify, defend and hold the Town harmless from any such taxes and related penalties, and other costs incurred by the Town including, but not limited to, attorneys' fees and costs incurred thereby.

8. Termination on Convenience of Municipality. For any reason the sufficiency of which the Town shall be the sole judge, the Town may terminate this Agreement, including, but

not limited to, the non-approval of the Town's budget by the Board of Mayor and Alderman in the applicable fiscal year, refusal of the FBA to comply with any of the provisions of this Agreement or for the convenience of the Town.

In such event, the payments FBA has theretofore received, plus a pro rata amount of payment as compensation for the work performed during the Quarter in which the determination to terminate is made, shall constitute the FBA's full and final compensation, and FBA shall have no further claim with respect thereto.

9. Waiver. The failure of any party hereto at any time to require performance of any of the provisions hereof shall in no manner affect the right to enforce same.

10. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to rules concerning conflicts of law.

11. Further Assurances. The provisions of this Agreement are intended to be self-operative and shall not require further agreement by the parties except as otherwise specifically provided herein. Nevertheless, all parties agree to cooperate fully to execute any and all supplementary documents, and to take all additional actions that are consistent with and which may be necessary or appropriate to give full force and effect to the basic terms and intentions of this Agreement.

12. Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall not invalidate the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

13. Assignment. FBA shall not assign, transfer or otherwise dispose of any of its rights, duties or obligations hereunder without the prior written consent of the Town. Any attempted assignment without such prior written consent shall be void *ab initio*.

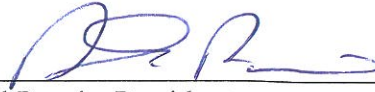
14. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective personal representatives, successors and assigns.

15. Entire Agreement. This Agreement constitutes the entire agreement of the parties hereto with respect to the transaction contemplated, and supersedes all prior agreements, understandings, negotiations, both written and oral, among the parties with respect thereto.

16. Amendments. This Agreement may be amended only by a written instrument duly executed by all parties or their respective successors, assigns or legal representatives.

This Agreement entered into as of the day and year first above written.

Farragut Business Alliance:



David Purvis, President

TOWN:

Dr. Ralph McGill, Mayor

As to form:

Thomas M. Hale
Town Attorney

Farragut Business Alliance shall provide the following services and support to the Town of Farragut and the businesses located within the Town's boundaries:

1. Tourism/Economic Development Initiatives
 - a. Partner with hotels/restaurants on events and marketing strategy
 - b. Partner with the Knoxville Tourism and Sports Corporation on developing a marketing strategy for Town of Farragut businesses through publications and events
 - c. Partner with the Farragut West Knox Chamber, Knoxville Chamber Partnership, Innovation Valley, etc. on economic development initiatives
 - d. Assist the Town in identifying and evaluating strategic partnerships to develop
 - e. Market the Town's assets to drive people to Farragut – sports tournaments/events, historic assets (Russell House, Folklife Museum, etc.), News Sentinel Open
2. Business Development
 - a. Promote local business through events and marketing strategies to enhance retail revenues
 - b. Coordinate Visitors Center marketing booth at the Turkey Creek Public Market to help promote Farragut businesses
 - c. Coordinate the Shop Farragut program and enhance awareness among local businesses and the greater Knox County area
3. Coordinate and promote special events within the Town of Farragut
 - a. Dogwood Arts Festival – Coordinate between the Town, Farragut businesses and Dogwood regarding promotional opportunities and events – April
 - b. Red, White and Blues Festival – July
 - c. Taste of Farragut – September
 - d. Christmas Holiday Event – December
 - e. Coordinate any additional events that may be added in the future
4. Liaison between the Town of Farragut and the business community
 - a. Advocate for the Town of Farragut when interacting with businesses
 - b. Facilitate discussions with businesses owners on Town regulations that may affect business
 - c. Assist prospective business owners on how to open a business in Farragut and develop a comprehensive understanding of the Farragut development process
 - d. Assist the Town in the recruitment of new retail and office business

In consideration of the above services and support provided by the Farragut Business Alliance to the Town of Farragut, the Town will provide the following monetary levels of support pending approval and adoption of the Town's budget by the Board of Mayor and Aldermen in each of the fiscal years stated below:

1. FY2011-2012: \$44,000
2. FY2012-2013: \$44,000
3. FY2013-2014: \$37,000
4. FY2014-2015: \$30,000
5. FY2015-2016: \$23,000



REPORT TO THE BOARD OF MAYOR AND ALDERMEN

PREPARED BY: David Smoak, Town Administrator
Tom Hale, Town Attorney

SUBJECT: Consideration of a request to reconstruct a retaining wall located at 11421 Turkey Creek Road that is located within the Town of Farragut's right of way

INTRODUCTION: The purpose of this agenda item is to consider a request to reconstruct a retaining wall located at 11421 Turkey Creek Road. This retaining wall is not only located within the ten foot setback requirement from the Town's right of way (ROW) but it is actually located approximately one foot within the current ROW of Turkey Creek Road.

DISCUSSION: The attached letter (Exhibit A) requests your consideration of a problem that has arisen with respect to a retaining wall located on the south side of Turkey Creek Road adjacent to the water. Apparently a number of years ago, before the Town had any regulations with respect to retaining walls (i.e. permitting, setbacks, etc.), the predecessor owner of the lot (Mr. George Rogers) states that he sought and obtained permission to build a retaining wall so the waterside of his lot could be excavated so that it was usable. The wall was built from railroad ties. Because of deterioration of the wall over time, the current owner decided to construct a block/stone wall to replace it. The current owner hired a contractor who set to work removing the old wall and replacing it.

Since the original wall was built, the Town has adopted regulations with respect to retaining walls, including a setback of either five or ten feet from the common boundaries with adjacent property owners, depending on whether it was front, rear or side property line.

It appears that rather than being ten feet from the Town's right-of-way, the new retaining wall is slightly within the right-of-way of Turkey Creek Road. The owner states that the new wall is in the same location as was the old wall. Unfortunately, before being discovered by Town staff, the wall was all but completely rebuilt.

Originally, the property owners applied for a variance from the setback requirements from the Board of Zoning Appeals. When staff learned that the wall was actually on the Town's property, it became clear that this was beyond BZA authority, and that authorizing a third party to maintain a wall on the Town's property would first require Board of Mayor and Aldermen approval.

If the Board is inclined to allow this wall to remain rather than the property owner being required to remove or reconstruct it, then the Board needs to approve an authorization of the right of the encroachment of the retaining wall.

Were the Board to be inclined to allow this, then staff and the Town Attorney recommends that the approval be conditioned on the following requirements:

- A. The property owner have a survey prepared that shows the edge of pavement of Turkey Creek Road, the Town's right-of-way, the location of the retaining wall as currently built, and the topographic elevations of the bank of the lake and the elevation below which all construction is

controlled by the Tennessee Valley Authority. The survey should show the distances that are generally between each of the foregoing.

- B. If the northern edge of the top of the retaining wall encroaches into the Town's right-of-way is found to be equal to or less than eighteen inches along any portion of its entire length, then a conditional easement be granted provided that it contains the following provisions and the following characteristics:
1. Be in recordable form so that it runs with the land such that it will be binding on future owners, as well as the current owner.
 2. Require the owner to install a guardrail between the curb and the top of the retaining wall based on specifications determined by the Town Engineer.
 3. Be subject to termination by the Town in the event that (1) the right-of-way needs to be widened or the Town has some other public need that the Town Engineer determines cannot reasonably be met without removal of the wall, or (2) the presence of the wall presents an obstacle to the extension, movement, expansion or installation of utilities by utility providers, and the Town Engineer, after consultation with the utility provider and property owner, cannot determine a reasonable way to accommodate the needs of the utility provider without removing the retaining wall.
 4. In the event of termination, or if some modification to the wall is required in order to avoid termination and removal of the wall, the property owner shall remove or modify, as the case may be, the retaining wall at it(s) or their own expense and, in the event of removal, either (1) restore the portion of the lot to the south of Turkey Creek Road to the slope required by the regulations of the Town, or (2) submit plans to reconstruct the retaining wall on the lot pursuant to and in accordance with the then existing regulations of the Town.
 5. Contain the agreement of the property owner to indemnify, defend and hold the Town harmless from any losses, claims, etc. by any person or entity that alleges that the cause of the loss, etc. was caused by or the result of the presence of the retaining wall or the guardrail in the location where it will be.
 6. Contain the agreement by the property owner to maintain in full force and effect liability insurance in an amount of not less than one million dollars, to list the Town of Farragut as an additional insured on such policy and to always maintain on file with the Town evidence of such insurance and the fact that the Town is listed as an additional insured.

The form of the conditional easement with the foregoing terms shall be prepared to the satisfaction of the Town Attorney, who will consult in its preparation with the Town Administrator and the attorney for the property owner. The Mayor should be authorized to sign the document upon its form being satisfactory to the Town Attorney so long as it contains the foregoing provisions, and any others that the Board may require as a condition of its approval.

In the event the Board is inclined to grant a conditional easement, there is one additional step that we suggest. Our zoning ordinance provides for a 10 foot setback of a retaining wall from a right of way. Although it is unclear whether this provision was intended to apply to this unusual set of circumstances (i.e., section of lot separated by roadway from portion of lot where residence is located, retaining wall not actually on the lot, original retaining wall authorized by the Town years ago, etc.), following a strict reading of the ordinance one could argue that it does apply. In the interest of avoiding any argument, we suggest that if the conditional easement is approved that the matter be sent back to the BZA in order to obtain a variance from the 10 foot setback requirement.

RECOMMENDATION BY: Town Administrator David Smoak and Town Attorney Tom Hale for approval with the conditions as stipulated in this report.

PROPOSED MOTION: To approve a conditional easement for the retaining wall located at 11421 Turkey Creek Road, based on conditions A and B(1-6) as referenced in this report and authorizing the Mayor to execute such documents as approved by the Town Attorney.

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	_____	_____	_____	_____	_____

I. ACCESSORY STRUCTURES

It is the intent of this section to establish the development requirements specific to accessory structures.

A. General Provisions

No accessory structure, excluding fences, detention basin structures, and retaining walls, shall be placed within any utility, drainage, or construction easement.

B. Requirements on Specified Accessory Structures for Non-Single-Family and Non-Two-Family Residential Uses

1. Garbage Dumpsters and Recycling Containers

- a. Garbage dumpsters and recycling containers shall be screened with opaque walls and gates. Such gates and walls shall be architecturally compatible with the principal building located on the same lot; and
- b. Garbage dumpsters and recycling containers shall be set back a minimum of forty (40) feet from the nearest point of any right-of-way and a minimum of ten (10) feet from all side and rear property lines.

2. Heating, Ventilation, Air Conditioning, and Mechanical Units

Such units shall be screened with opaque materials and shall not be visible from adjacent properties or rights-of-ways.

3. Retaining Walls

- a. Retaining walls shall be designed and constructed per the adopted building code. Plans must be submitted to and approved by the Town Engineer;
- b. Retaining walls shall not be constructed within any required buffer strip; and
- c. Retaining walls shall be set back a minimum of ten (10) feet from the nearest point of any right-of-way and all side and rear property lines.

C. Requirements for Retaining Walls for Single-Family and Two-Family Residential Uses

1. Retaining walls shall be designed and constructed per the adopted building code. Plans must be submitted to and approved by the Town Engineer;

- 
2. Retaining walls shall not be constructed within any required buffer strip; and
 3. Retaining walls shall be set back a minimum of ten (10) feet from the nearest point of any right-of-way and a minimum of five (5) feet from all side and rear property lines. A retaining wall, including the footer, may be constructed at the side or rear property line if a signed agreement from the adjoining property owner is submitted to the Town stating the retaining wall may be constructed at their property line. If a retaining wall is removed or damaged as a result of work conducted within the utility, drainage, or construction easement, the property owner shall be responsible for repairs to the retaining wall. When a retaining wall is constructed at a property line, if appropriate a swale shall be constructed behind the retaining wall to ensure storm water run off is properly directed.

D. Requirements for Retaining Walls for Attached Single-Family Developments

1. Retaining walls shall be designed and constructed per the adopted building code. Plans must be submitted to and approved by the Town Engineer;
2. Retaining walls shall not be constructed within any required buffer strip;
3. Retaining walls shall be constructed per the original design of the development and approved as part of the preliminary plat. The retaining walls shall be owned and maintained by the homeowners association. Retaining walls may be placed within utility, drainage, or construction easements, but it shall be the responsibility of the homeowners association to reconstruct such walls if they are damaged or removed as a result of work within the easement(s). No portion of a retaining wall, including footer, may be placed within the right-of-way. When a retaining wall is constructed at a property line, if appropriate, a swale shall be constructed behind the retaining wall to ensure stormwater run off is properly directed; and
4. If an individual property owner within an Attached Single-Family Development chooses to construct a retaining wall after the development is complete and the dwelling unit is constructed, the retaining wall shall comply with all requirements of subsection C. of this section.

Exhibit I

BOARD OF ZONING APPEALS APPLICATION RECEIVED TOWN OF FARRAGUT, TENNESSEE

APR 11 2011

TOWN OF FARRAGUT

FOR OFFICE USE ONLY

Fee Paid: \$ 100.00

APPLICANT NAME: Terry Brown and Becky Macklin Brown
Address: 11421 Turkey Creek Road City/State/Zip: Knoxville, TN 37934
Phone Number: 865-741-3535 Fax Number: 865-483-5479

DESCRIPTION OF PROPERTY (Attach Map of Property):

Name of Owner: Becky A. Macklin - Brown
Address: 11421 Turkey Creek Rd, Knoxville, TN 37934
Parcel(s) No.: 015 04 Tax Map No.: 153-01504 Size of Tract: 0.63 AC.
Zoning District: TN DSI #14 Subdivision: HARVEY C. HANKINS

Proposed Use of Property or Building Requested for Appeal (Be Specific):

Replace existing retaining wall. See Attached Exhibit #1

NATURE OF APPEAL (Check One):

☐ Administrative Review

☒ Variance* - State number of feet requesting: <1'

☐ Special Exception

☐ Map Interpretation

Reason: Previous wall deteriorating. See Attached Exhibit #1

IF REQUESTING A VARIANCE, APPLICANT HAS BURDEN OF SHOWING:

- (1) That the granting of the permit will not be contrary to the public interest.
- (2) That the literal enforcement of the ordinance would deprive the applicant any reasonable use of his land.
- (3) That by granting the permit contrary to the provisions of the ordinance, the spirit of the ordinance will be observed.
- (4) That by granting the permit, substantial justice will be done.

* Variances shall be granted only where special circumstances or conditions exist, such as exceptional narrowness, topography, or siting.

I HEREBY CERTIFY THAT THE ABOVE INFORMATION IS ACCURATE AND COMPLETE AND I AM THE APPLICANT OR THE LEGAL REPRESENTATIVE OF THE APPLICANT.

Stephen A. Leasing, attorney at law 4/11/11
NAME (SIGNATURE) 865-740-7829 DATE

BZA ACTION TAKEN:

Approved: _____ Denied: _____ Date: _____

Conditions: _____

Your Farragut homeowners submit the following information in support of their request for a variance and/or special exception:

1. The replacement wall on their property was built at the exact same location and to the same dimensions as the pre-existing wall, which was deteriorating. The predecessor retaining wall was approved by the Town of Farragut. It used railroad ties and was rotting and posed a danger.
2. The new wall is superior to the predecessor wall in a number of ways. It is sturdier, more durable, and provides better drainage of the runoff from Turkey Creek Road. It prevents erosion.
3. The replacement wall, like its predecessor, benefits both the Town of Farragut and the homeowners. No harm has been caused to either party by the replacement wall.
4. Your homeowners are willing, if necessary, to replace the new wall with railroad ties, which were the constituents of the predecessor wall.
5. Under the laws of the State of Tennessee, a replacement wall is grandfathered under law and ordinance, if of the same dimensions and at the same site.
6. Your homeowner's contractor erred in failing to contact the Town of Farragut prior to commencing replacement activities on the predecessor wall. However, all actions were done in good faith, with the belief that the replacement wall was in the best interests of all parties.
7. Asking the homeowners to remove the replacement wall and re-slope the land without any wall benefits neither the Town of Farragut nor the homeowners. The homeowners lose valuable land and experience a diminution in property value. The Town of Farragut has a more significant erosion problem from Turkey Creek Road. No utilities in any easement are affected or disturbed by the new wall.
8. Refusal to allow the homeowners to replace the existing and failing wall has no rationale of value to either party. It is arbitrary and capricious. Again, the new wall is located at the same location as the predecessor wall and is of the same dimensions. Admittedly, it is more sturdy and provides better drainage and is therefore a better structure. It could have been replaced using the same materials of the predecessor wall. This is allowable under law.
9. Under chapter 13 of the Tennessee Code Annotated, a replacement wall would be grandfathered and therefore allowable.
10. The prior wall was approved by the Town of Farragut, even though it was technically non-confirming. Your homeowners respectfully request a variance or special exception to allow them to keep the replacement wall rather than tearing it down and restoring it to a wall made of railroad ties.

Exhibit #1, p2

11. The literal enforcement of ordinances cited by Farragut in this matter would deprive your homeowners from any reasonable use of the affected land. It would lower property value for no beneficial reason. By granting either a special exception or a variance, as the case may be, substantial justice will be done.

SUMMARY

Your homeowners and their contractor erred in not making contact with appropriate Farragut officials prior to replacing their retaining wall. However, this was a ministerial error and not a substantive error in that your homeowners were replacing an existing wall at the same location and with the same dimensions.

Had your homeowners replaced the failing portion of the existing retaining wall with railroad ties, this situation would not be at issue.

Your homeowners improved the predecessor wall both in structural security and in drainage.

The new wall harms no one and in fact provides a "Win-Win" situation to the homeowner and the Town of Farragut.

The new wall actually looks better from an appearance standard than did the old.

Literal enforcement of the ordinances applicable would deprive the homeowners of any reasonable use of the land in question, as well as the value of the land, for no good reason. which is of value to any party.

Wherefore, your Farragut Citizen Homeowners ask that they be allowed to replace their existing retaining wall, without penalty or retribution.

RECEIVED

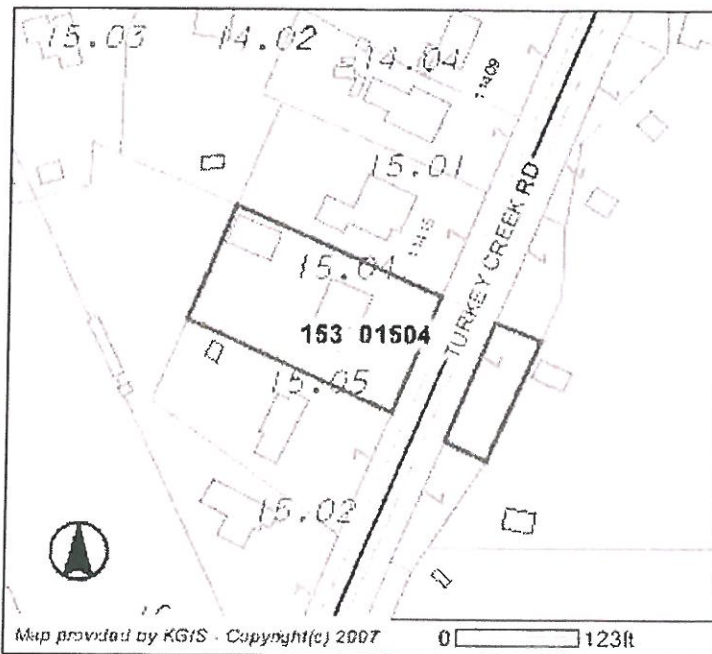
APR 11 2011

TOWN OF FARRAGUT

RECEIVED

11421 TURKEY CREEK RD - Property Map and Details Report

APR 11 2011

**Parcel Information** (last updated: 3/28/2011)

Location Address: 11421 TURKEY CREEK RD
 CLT Map: 153
 Insert:
 Group:
 Condo Letter:
 Parcel: 01504
 Parcel ID: 153 01504
 Parcel Type: NORMAL DISJ
 District: FW
 Ward:
 Subdivision: HARVEY C HANKINS PROP E=
 Recorded Acreage: 0.00
 Calculated Acreage: 0.00
 Recorded Plat: -
 Recorded Deed: 20090803 - 0009232
 Deed Type: WARRANTY
 Deed Date: 08/03/2009

Address Information (last updated: 3/28/2011)

Site Address: 11421 TURKEY CREEK RD
 KNOXVILLE - 37934
 Address Type: RESIDENTIAL
 Site Name:

Owner Information (last updated: 3/28/2011)

MACLIN BECKY A
 11421 TURKEY CREEK RD
 KNOXVILLE, TN 37934

The owner information shown in this section does **not** necessarily reflect the person(s) responsible for Last Year's property taxes. Report any errors to the Knox County Property Assessor's office at (865) 215-2365.

Jurisdiction (last updated: 11/12/2010)

County: KNOX COUNTY
 City / Township: FARRAGUT

MPC Info (last updated: 3/10/2010)

Census Tract: 58.06
 Planning Sector: Southwest County
 1990 Traffic Zone: 239
 2000 Traffic Zone: 246
 Please contact Knox County Metropolitan Planning Commission (MPC) at (865) 215-2500 if you have questions.

Political Districts (last updated: 9/13/2010)

Voting Precinct: 66S Farragut II
 Voting Location: Farragut High School
 11237 KINGSTON PIKE
 TN State House: 14 Ryan Haynes
 TN State Senate: 7 Stacey Campfield
 County Commission: 5 Richard Briggs
 Ed Shouse
 Mike Hammond

City Council:
 School Board: 6 Thomas Deakins

Please contact Knox County Election Commission at (865) 215-2480 if you have questions.

School Zones (last updated: 2/1/2011)

Elementary: FARRAGUT PRIMARY
 Intermediate: FARRAGUT INTERMEDIATE
 Middle: FARRAGUT MIDDLE
 High (2007): FARRAGUT HIGH
 High (2008):

Please contact Knox County Schools Transportation and Zoning Department at (865) 594-1550 if you have questions.

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