

A G E N D A

FARRAGUT BOARD OF MAYOR AND ALDERMEN

January 24, 2013

BMA WORKSHOP

Land Use Plan

6:00 PM

BEER BOARD MEETING

6:30 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. January 10, 2013
- VI. Business Items**
 - A. Approval of TDOT Contract for Kingston Pike Greenway/Sidewalk Improvements 1200' East of Old Stage Road to Virtue Road
- VII. Ordinances**
 - A. Public Hearing & Second Reading
 1. Ordinance 12-19, ordinance to amend the Farragut Zoning Ordinance, Chapter 4. General Provisions and Exceptions, by adding Section XXIX. Grand Opening Special Events Permit
 2. Ordinance 12-20, ordinance to amend the Farragut Zoning Ordinance, Chapter 4. General Provisions and Exceptions, Section XIII. Outdoor Site Lighting, to establish wall mounted light heights and required glare shields
 3. Ordinance 12-21, ordinance to amend the Farragut Zoning Ordinance, Chapter 4. General Provisions and Exceptions, Section I. Accessory structures, to require HVAC screening to be architecturally compatible and to rename section to Accessory Structures and Uses
 4. Ordinance 12-22, ordinance to amend the Farragut Zoning Ordinance, Chapter 3. Specific District Regulations, Section XVI. Reserved for Future Use, to create a new commercial zoning district entitled Business District, Four Story (BD-4)
 5. Ordinance 12-23, ordinance to rezone Parcel 63, Tax Map 151, located on the southwest corner of Kingston Pike and Way Station Trail, part of the Renaissance development, approximately 2.5 Acre, from C-1 General Commercial District to BD-4 Business District, Four-Story (Myers Bros. Holding, Applicant)

VIII. Town Administrator's Report

IX. Attorney's Report

FARRAGUT BEER BOARD

January 24, 2013

6:30 PM

- I. **Approval of Minutes**
 - A. December 12, 2012
- II. **Public Hearing to address The Fresh Market violation(s) of Town of Farragut Code of Ordinances § 8-201et seq**

FARRAGUT BEER BOARD

December 12, 2012

6:55 PM

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

Approval of Minutes

Motion was made to approve the minutes of September 11, 2012 as presented. Moved by Alderman LaMarche, seconded by Mayor McGill; voting yes, Mayor McGill, Aldermen LaMarche and Markli; Aldermen Elliott and Honken abstained; no nays; motion passed.

Consider Approval for an Off-Premise Beer Permit for:

Motion was made to approve an off-premise beer permit for Publix Tennessee, LLC, 11656 Parkside Drive. Moved by Alderman LaMarche, seconded by Alderman Elliott; voting yes, Mayor McGill, Aldermen Elliott, Honken, LaMarche and Markli; no nays; motion passed.

Beer Board meeting adjourned at 7:00 PM

Ron Honken, Chairman

Allison Myers, Town Recorder

TOWN OF FARRAGUT, TENNESSEE)
BEER BOARD,)
)
v.)
)
THE FRESH MARKET, INC.)

NOTICE OF HEARING

TO: THE FRESH MARKET, INC.
c/o Roger Cassell, Manager
11535 Kingston Pike
Farragut, TN 37934

You are hereby commanded to appear before the Town of Farragut, Tennessee Beer Board on Thursday, January 24, 2013 at 6:30 P.M. at the Town of Farragut Town Hall located at 11408 Municipal Center Drive, Farragut, Tennessee.

At that place and time, a hearing will take place to address your violation(s) of Town of Farragut Code of Ordinances § 8-201 *et seq.* Specifically, on or about September 12, 2012 an employee of your business was cited for selling alcohol to a minor in violation of Tenn. Code Ann. § 57-4-203(b) and Farragut Code § 8-220(6). A copy of the citation evidencing this violation is attached as Exhibit A to this Notice. The Town of Farragut, Tennessee Beer Board shall at that time review the facts of this matter and determine what penalty, if any, is appropriate under the circumstances including, but not limited, revocation or suspension of your beer permit, Permit No. 0222, as provided by Town of Farragut Code of Ordinances § 8-223 and/or levying a civil penalty as provided by Town of Farragut Code of Ordinances § 8-224.

This ____ day of January, 2013.

Thomas M. Hale, Esq.
Attorney, Town of Farragut
Kramer Rayson LLP
P.O. Box 629
Knoxville, TN 37901
(865) 525-5134

☒ STATE OF TENNESSEE T.C.A. CITATION

☐ KNOX COUNTY ORDINANCE CITATION

No. KCO-27384

COMPLAINT - AFFIDAVIT

THE UNDERSIGNED BEING DULY SWORN UPON HIS OATH DEPOSES:

VIOLATOR	NAME (FIRST)	(MIDDLE)	(LAST)	DATE OF BIRTH	RACE	SEX
	KATHLEEN	ELIZABETH	STAIR	09/12/1992	W	F
	ADDRESS			IN RESIDENT?	SEAT BELT?	
	8322 GLEASON DR APT 22			☒ YES ☐ NO	☐ YES ☐ NO	
	CITY	STATE	ZIP CODE	SOCIAL SECURITY NUMBER		
KNOXVILLE	TN	37919	XXXXXXXXXXXXXX			
DRIVER LICENSE NUMBER		CLASS/TYPE LICENSE	STATE	EXPIRATION DATE	TELEPHONE NUMBER	
XXXXXXXXXX		D	TN	09/11/18	(845)-258-0922	
PLACE OF EMPLOYMENT		FRESH MARKET 11535 KINGSTON PK FARRAGUT				

VEHICLE	☐ OWNED ☐ LEASED	NAME	ADDRESS			
	☐ CARRIER					
	DID UNLAWFULLY OPERATE/PARK A MOTOR VEHICLE:					
MAKE	MODEL	YEAR	COLOR	LICENSE PLATE NUMBER	STATE	YEAR
LOCALE	UPON STREET/HIGHWAY	S.R.#	TRAVEL DIR.	M.M.#	CITY/COUNTY	HIGHWAY TYPE
			☐ N ☐ S ☐ E ☐ W			☐ 2-L ☐ 3-L ☐ 4-L ☐ DIV. ☐ I-RO
AREA ☐ BUSINESS ☐ SCHOOL ☐ RES. ☐ RURAL						

VIOLATION	AFORESAID DID THEN AND THERE COMMIT THE FOLLOWING OFFENSE:						
	☐ SPEEDING ☐ MPH IN ☐ SPEED LIMIT ☐ ZONE ☐ PACING ☐ RADAR ☐ TRAFFIC CONTROL DEVICE						
	☐ RECKLESS DRIVING ☐ IMPROPER PASSING ☐ FOLLOWING TOO CLOSELY ☐ PASSING SCHOOL BUS						
	☐ EQUIPMENT VIOLATION-MOTORCYCLE ☐ EQUIPMENT VIOLATION-AUTOMOBILE ☐ CHILD RESTRAINT ☐ WINDOW TINT						
	☐ HANDICAPPED PARKING ☐ VIOLATION OF NOISE ORDINANCE						
☒ OTHER: SALE OF ALCOHOL TO A MINOR.							
T.C.A. 59-4-203							
ORDINANCE:							

NARRATIVE	ON SEP 12, 2012, DEFENDANT DID SELL A SIX PACK BOTTLES OF RED DASHSEE TO A MINOR LESS THAN 21 YOA AT FRESH MART 11535 KINGSTON PK. THIS OCCURRED IN KNOX COUNTY.						
	BOOKING DATE: SEP 26, 12 @ 7:30 A.M. CITY/COUNTY BLD KNOXVILLE LEVEL 11						

OFFICER	THE UNDERSIGNED FURTHER STATES THAT HE/SHE HAS JUST AND REASONABLE GROUNDS TO BELIEVE AND DOES BELIEVE, THAT THE PERSON NAMED ABOVE COMMITTED THE OFFENSE HEREIN SET FORTH, CONTRARY TO THE LAW.						
	THIS	12 TH	DAY OF	SEP	20	12	TIME 2049
							☐ AM ☒ PM
				RANK		OFFICER NAME (PRINT)	BADGE/ID NO.
						CAPT HILLEN MARY	1719

OFFICER	HAVING BEEN DULY SWORN, I DO HEREBY ATTEST THAT THE ABOVE IS A TRUE AND COMPLETE COPY OF THE ORIGINAL CITATION, AND THAT THE INFORMATION CONTAINED THEREIN IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.						
	SWORN TO AND SUBSCRIBED BEFORE ME THIS _____ DAY OF _____ 20____						
	SIGNATURE OF OFFICER			JUDGE/CLERK			

COURT	1 ☒ GENERAL SESSIONS COURT OF KNOX COUNTY, KNOXVILLE, TN										
	2 ☐ JUVENILE COURT										
IN THE		ON		THE		DAY OF		20____		TIME	

☐ KNOX COUNTY ORDINANCE CITATION	☒ STATE OF TENNESSEE T.C.A. CITATION
I UNDERSTAND THE ABOVE CITATION, AND THAT MY SIGNATURE IS NOT AN ADMISSION OF GUILT.	NOTICE: FAILURE TO APPEAR IN COURT ON THE DATE ASSIGNED TO THIS CITATION OR AT THE APPROPRIATE POLICE STATION FOR BOOKING AND PROCESSING WILL RESULT IN YOUR ARREST FOR A SEPARATE CRIMINAL OFFENSE WHICH IS PUNISHABLE BY A JAIL SENTENCE OF UP TO SIX (6) MONTHS AND/OR A \$50 FINE. I UNDERSTAND THE ABOVE NOTICE, AND THAT MY SIGNATURE IS NOT AN ADMISSION OF GUILT.
VIOLATOR'S SIGNATURE <u>Kathleen Stair</u> 9-12-12	
DATE	

Farragut, Tennessee, Code of Ordinances >> - CODE OF ORDINANCES >> **Title 8 - ALCOHOLIC BEVERAGES >> CHAPTER 2. - BEER >>**

CHAPTER 2. - BEER [13]

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.1

Sec. 8-206. - Definitions.

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

Sec. 8-208. - Application fees and privilege tax.

Sec. 8-209. - Public consumption of alcoholic beverages prohibited.

Sec. 8-210. - Police record check.

Sec. 8-211. - Application—Requirements and conditions.

Sec. 8-212. - Special occasion beer permit.

Sec. 8-213. - Beer permits shall be restrictive.3

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

Sec. 8-215. - Display of permit.

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

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

Sec. 8-218. - On-premise consumption permit.

Sec. 8-219. - Hotels.

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

Sec. 8-221. - Fire and building inspection.

Sec. 8-222. - Issuance.

Sec. 8-223. - Revocation or suspension of beer permits.

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

Sec. 8-225. - Violations.

Sec. 8-201. - Beer board established.

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

(Ord. No. 11-24, § 1, 11-15-2011)

Sec. 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.

(Ord. No. 11-24, § 1, 11-15-2011)

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. 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.

(Ord. No. 11-24, § 1, 11-15-2011)

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.

(Ord. No. 11-24, § 1, 11-15-2011)

Sec. 8-205. - Powers and duties of the beer board.¹

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.

(Ord. No. 11-24, § 1, 11-15-2011)

¹**State law reference—**Tennessee Code Annotated § 57-5-106.

Sec. 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 (5) percent by weight, except wine as defined in Tennessee Code Annotated § 57-3-101; provided, however, that no more than forty-nine (49) percent of the overall alcoholic content of such beverage may be derived from the addition of flavors and other nonbeverage ingredients containing alcohol. Tennessee Code Annotated § 57-5-101.
4. *Beer board* or *board* means that administrative body organized and empowered under the authority of Tennessee Code Annotated § 57-5-106.
5. *Church* means a building or property where a congregation regularly meets at least one (1) 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 Tennessee Code Annotated § 57-5-601 et seq.
11. *Permit* means any permit issued pursuant to this article.
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.

(Ord. No. 11-24, § 1, 11-15-2011)

Sec. 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 (4) 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.

(Ord. No. 11-24, § 1, 11-15-2011)

Sec. 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 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.

(Ord. No. 11-24, § 1, 11-15-2011)

²**State law reference—**Tennessee Code Annotated § 57-5-104(b).

Sec. 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.

(Ord. No. 11-24, § 1, 11-15-2011)

Sec. 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.

(Ord. No. 11-24, § 1, 11-15-2011)

Sec. 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.
5. If beer will be sold at two (2) or more restaurants or other businesses, within the same building as provided by Tennessee Code Annotated § 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 (10) 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 fifteen (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.

(Ord. No. 11-24, § 1, 11-15-2011)

Sec. 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 (\$100.00).

- (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 (1) forty-eight -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.

(Ord. No. 11-24, § 1, 11-15-2011)

Sec. 8-213. - Beer permits shall be restrictive.³

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.

(Ord. No. 11-24, § 1, 11-15-2011)

³**State law reference—**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.

Sec. 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 (50) percent 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.

(Ord. No. 11-24, § 1, 11-15-2011)

Sec. 8-215. - Display of permit.

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

(Ord. No. 11-24, § 1, 11-15-2011)

Sec. 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 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.

(Ord. No. 11-24, § 1, 11-15-2011)

Sec. 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.

(Ord. No. 11-24, § 1, 11-15-2011)

Sec. 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 sixty (60) percent 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 sixty (60) percent ratio.
5. The establishment must be able to seat a minimum of fifteen (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 fifteen (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.

(Ord. No. 11-24, § 1, 11-15-2011)

Sec. 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 (2) 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.

(Ord. No. 11-24, § 1, 11-15-2011)

Sec. 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 (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.
- (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.

(Ord. No. 11-24, § 1, 11-15-2011)

Sec. 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.

(Ord. No. 11-24, § 1, 11-15-2011)

Sec. 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.

(Ord. No. 11-24, § 1, 11-15-2011)

Sec. 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.

(Ord. No. 11-24, § 1, 11-15-2011)

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

- A. *Responsible vendor.* The beer board shall not, pursuant to Tennessee Code Annotated § 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 Tennessee Code Annotated § 57-5-606 as a responsible vendor under that part, but may impose upon the responsible vendor a civil penalty not to exceed one thousand dollars (\$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 (2) violations within a twelve-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, Tennessee Code Annotated § 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 Tennessee Code Annotated § 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 two thousand five hundred dollars (\$2,500.00) for each offense of making or permitting to be made any sales to minors, or a civil penalty not to exceed one thousand dollars (\$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.

(Ord. No. 11-24, § 1, 11-15-2011)

Sec. 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.

(Ord. No. 11-24, § 1, 11-15-2011)

FOOTNOTE(S):

⁽¹³⁾ **Editor's note**—Ord. No. 11-24, § 1, adopted Nov. 15, 2011, repealed the former Ch. 2, §§ 8-201—8-217, and enacted a new Ch. 2 as set out herein. The former Ch. 2 pertained to similar subject matter and derived from 1985 Code, §§ 2-202—2-216; Ord. No. 01-06, 4-2001; Ord. No. 08-11, 6-26-2008. ([Back](#))

⁽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). ([Back](#))

FARRAGUT BOARD OF MAYOR AND ALDERMEN

January 10, 2013

BMA MEETING

7:00 PM

- I. **Silent Prayer, Pledge of Allegiance, Roll Call**
- II. **Approval of Agenda**
- III. **Mayor's Report**
 - A. Proclamation
- IV. **Citizens Forum**
- V. **Approval of Minutes**
 - A. December 13, 2012
- VI. **Business Items**
 - A. Approval of Resolution R-2013-01, Appointment of Town of Farragut Municipal Judge
 - B. Approval of Contract for Information Technology Services
- VII. **Ordinances**
 - A. Public Hearing & Second Reading
 1. Ordinance 12-18, ordinance establishing a Community Health Council
 - B. First Reading
 1. Ordinance 12-19, ordinance on 1st reading to amend the Farragut Zoning Ordinance, Chapter 4. General Provisions and Exceptions, by adding Section XXIX. Grand Opening Special Events Permit
 2. Ordinance 12-20, ordinance on 1st reading to amend the Farragut Zoning Ordinance, Chapter 4. General Provisions and Exceptions, Section XIII. Outdoor Site Lighting, to establish wall mounted light heights and required glare shields
 3. Ordinance 12-21, ordinance on 1st reading to amend the Farragut Zoning Ordinance, Chapter 4. General Provisions and Exceptions, Section I. Accessory structures, to require HVAC screening to be architecturally compatible and to rename section to Accessory Structures and Uses
 4. Ordinance 12-22, ordinance on 1st reading to amend the Farragut Zoning Ordinance, Chapter 3. Specific District Regulations, Section XVI. Reserved for Future Use, to create a new commercial zoning district entitled Business District, Four Story (BD-4)
 5. Ordinance 12-23, ordinance on 1st reading to rezone Parcel 63, Tax Map 151, located on the southwest corner of Kingston Pike and Way Station Trail, part of the Renaissance development, approximately 2.5 Acre, from C-1 General Commercial District to BD-4 Business District, Four-Story (Myers Bros. Holding, Applicant)

- VIII. Town Administrator's Report**
- IX. Attorney's Report**

The Farragut Board of Mayor and Aldermen met in a regular session on Thursday, January 10, 2013 at 7:00 p.m.

Members present were Mayor McGill, Aldermen Elliott, Honken and Markli; Alderman LaMarche was absent.

Approval of Agenda

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

Mayor's Report

Mayor McGill presented a proclamation to Bobi King, recipient of the Milken Educator Award.

Approval of Minutes

Motion was made to approve the minutes of December 13, 2012 as presented. Moved by Alderman Honken, seconded by Alderman Markli; voting yes, Mayor McGill, Aldermen Elliott, Honken and Markli; Alderman LaMarche was absent; no nays; motion passed.

Business Items

Approval of Resolution R-2013-01, Appointment of Town of Farragut Municipal Judge

Motion was made to appoint Lucinda Troyer as Municipal Judge and approve Resolution R-2013-01. Moved by Alderman Elliott, seconded by Alderman Markli; voting yes, Mayor McGill, Aldermen Elliott, Honken and Markli; Alderman LaMarche was absent; no nays; motion passed.

Approval of Contract for Information Technology Services

Motion was made to approve professional services agreement for Information Technology Services with Claris Networks for the following terms:

Remainder of FY2013:	\$49,882 (\$7,240/mo. + one time network upgrade fee of \$6,442)
FY2014:	\$86,880 (\$7,240/mo.)
FY2015:	\$86,880 (\$7,240/mo.)

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

Ordinances

Public Hearing & Second Reading

Ordinance 12-18, ordinance establishing a Community Health Council

Motion was made to approve Ordinance 12-18 on second and final reading. Moved by Alderman Markli, seconded by Alderman Honken; voting yes, Mayor McGill, Aldermen Elliott, Honken and Markli; Alderman LaMarche was absent; no nays; motion passed.

First Reading

Ordinance 12-19, ordinance on 1st reading to amend the Farragut Zoning Ordinance, Chapter 4. General Provisions and Exceptions, by adding Section XXIX. Grand Opening Special Events Permit

Motion was made to approve Ordinance 12-19 on first reading. Moved by Alderman Honken, seconded by Alderman Markli; voting yes, Mayor McGill, Aldermen Elliott, Honken and Markli; Alderman LaMarche was absent; no nays; motion passed.

Ordinance 12-20, ordinance on 1st reading to amend the Farragut Zoning Ordinance, Chapter 4. General Provisions and Exceptions, Section XIII. Outdoor Site Lighting, to establish wall mounted light heights and required glare shields

Motion was made to approve Ordinance 12-20 on first reading. Moved by Alderman Honken, seconded by Alderman Markli; voting yes, Mayor McGill, Aldermen Elliott, Honken and Markli; Alderman LaMarche was absent; no nays; motion passed.

Ordinance 12-21, ordinance on 1st reading to amend the Farragut Zoning Ordinance, Chapter 4. General Provisions and Exceptions, Section I. Accessory structures, to require HVAC screening to be architecturally compatible and to rename section to Accessory Structures and Uses

Motion was made to approve Ordinance 12-21 on first reading. Moved by Alderman Honken, seconded by Alderman Elliott; voting yes, Mayor McGill, Aldermen Elliott, Honken and Markli; Alderman LaMarche was absent; no nays; motion passed.

Ordinance 12-22, ordinance on 1st reading to amend the Farragut Zoning Ordinance, Chapter 3. Specific District Regulations, Section XVI. Reserved for Future Use, to create a new commercial zoning district entitled Business District, Four Story (BD-4)

Motion was made to approve Ordinance 12-22 on first reading. Moved by Alderman Honken, seconded by Alderman Markli; voting yes, Mayor McGill, Aldermen Elliott, Honken and Markli; Alderman LaMarche was absent; no nays; motion passed.

Ordinance 12-23, ordinance on 1st reading to rezone Parcel 63, Tax Map 151, located on the southwest corner of Kingston Pike and Way Station Trail, part of the Renaissance development, approximately 2.5 Acre, from C-1 General Commercial District to BD-4 Business District, Four-Story (Myers Bros. Holding, Applicant)

Motion was made to approve Ordinance 12-23 on first reading. Moved by Alderman Honken, seconded by Alderman Markli; voting yes, Mayor McGill, Aldermen Elliott, Honken and Markli; Alderman LaMarche was absent; no nays; motion passed.

Town Administrator's Report

David Smoak, Town Administrator, announced that Tom Hale, Town Attorney, was the recipient of the 2012 Governor's Award. The Governor's Award is designated as the Knoxville Bar Association's highest award, is presented annually to an attorney who commands special respect from his/her peers.

Meeting adjourned at 8:05 PM.

Ralph McGill, Mayor

Allison Myers, Town Recorder

AGENDA NUMBER Vl. A. MEETING DATE January 24, 2013

REPORT TO THE BOARD OF MAYOR AND ALDERMEN

PREPARED BY: Darryl W. Smith, PE

SUBJECT: Approval of TDOT Contract for Kingston Pike Greenway/Sidewalk Improvements
1200' East of Old Stage Road to Virtue Road

INTRODUCTION: The purpose of this item is approval of an agreement with the Tennessee Department of Transportation for development of a project to install a greenway along the south side of Kingston Pike between Old Stage Road and Virtue Road.

BACKGROUND: Over the last several years, the Town has identified the need for construction of a greenway connector along the south side of Kingston Pike, from 1200 feet east of Old Stage Road to Virtue Road. This connection will parallel Kingston Pike from the end of the existing sidewalk in front of the Townhomes at Wentworth, across the frontage of Willow Creek Golf Course to the Virtue Road intersection (see map). The route is approximately 2050 feet in length, and most of the route will be constructed as an 8' wide asphalt walking trail. On the eastern end of the project, it may be necessary to construct the path as 5' sidewalk (with curb & gutter) as it approaches Virtue Road, due to the narrow available width and the need to minimize any impact to Willow Creek Golf Course.

This project is funded through the Knoxville Regional Transportation Planning Organization's 2011-14 TIP, with total costs estimated to be \$1.05 million. Costs will be reimbursed on an 80/20 federal/local split. The attached TDOT contract outlines the duties and obligations of both the Town and TDOT for the development of the project.

RECOMMENDATION BY: Darryl Smith, Town Engineer.

PROPOSED MOTION: Approval of TDOT contract for development of the Kingston Pike Greenway Improvements 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	_____	_____	_____	_____	_____

Town of Farragut

Proposed Kingston Pk Sidewalk Extension 2008



Proposed Sidewalk

Existing Sidewalk

Edge of Pavement

Willow Creek

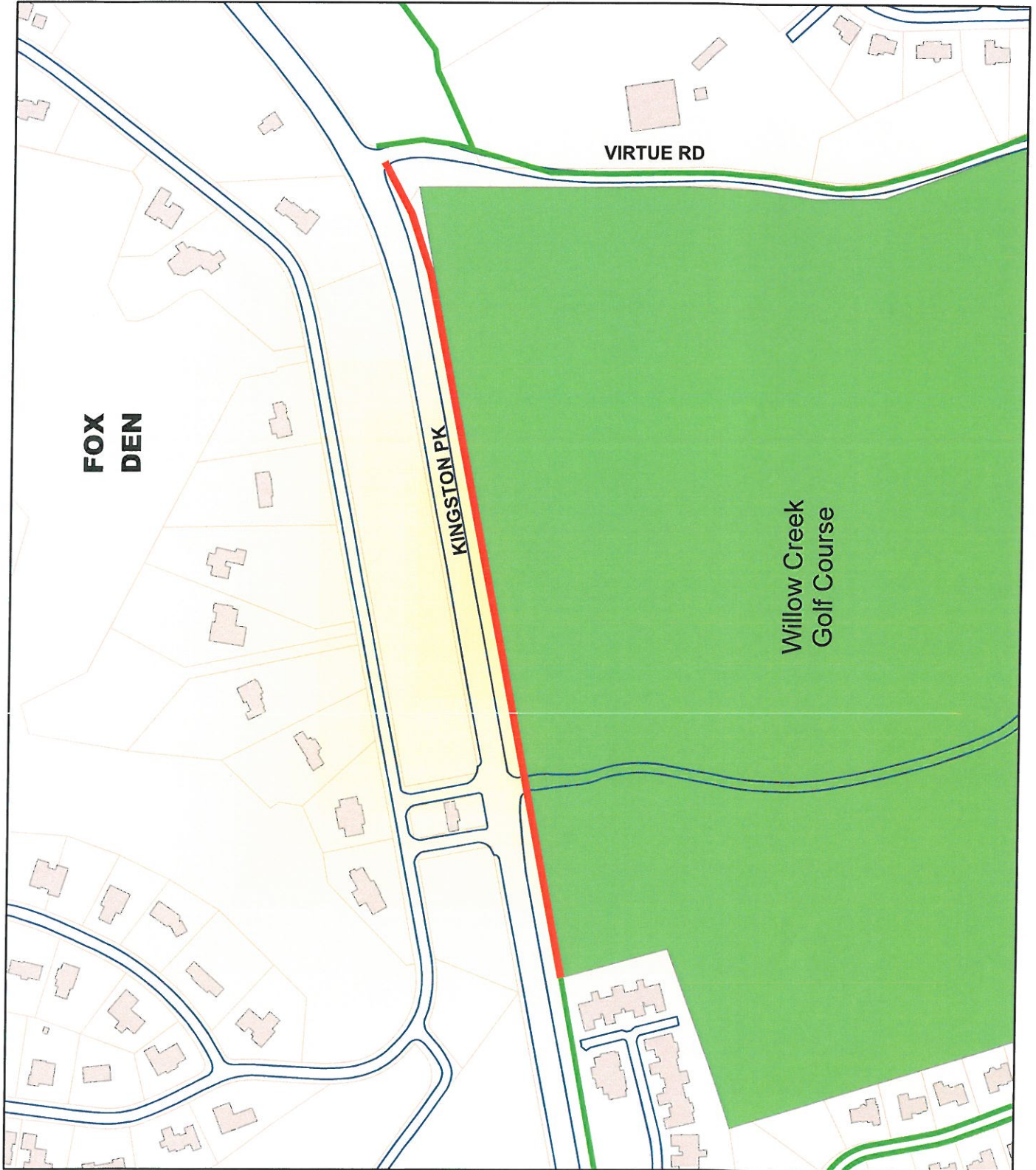
Buildings



NOT TO SCALE

Map Prepared by
Town of Farragut GIS

EXHIBIT A





**STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION
PROGRAM DEVELOPMENT & ADMINISTRATION DIVISION
LOCAL PROGRAM DEVELOPMENT OFFICE
SUITE 600, JAMES K. POLK BUILDING
505 DEADERICK STREET
NASHVILLE, TN 37243-0341
(615) 741-5314**

RECEIVED

JUL 25 2012

TOWN OF FARRAGUT

JOHN C. SCHROER
COMMISSIONER

BILL HASLAM
GOVERNOR

July 18, 2012

The Honorable Ralph McGill
Mayor, Town of Farragut
11408 Municipal Center Dr.
Farragut, TN 37934

Re: Kingston Pike Greenway Sidewalks (1200' E of Old Stage Rd to Virtue Rd)
Farragut, Knox County
PIN: 106915.00
Federal Project # STP-M-9109(140)
State Project # PE-N: 47LPLM-F0-045; PE-D: 47LPLM-F1-046, ROW/Utilities: 47956-2526-94 and
Construction: 47956-3526-54
Contract: 100043

Dear Mayor McGill:

I am attaching a contract providing for the development of the referenced project. Please review the contract and advise me if it requires any additional explanation. If you find the contract fully satisfactory, please execute it in accordance with all rules, regulations and laws, obtain the signature of the attorney for your agency and return the contract to me along with the schedule attached. Once the contract is fully executed, we will forward a copy to you for your records.

If you have any questions or need any additional information, please contact Ms. Maria Hunter at 615-532-3632 or maria.hunter@tn.gov.

Sincerely,

A handwritten signature in blue ink that reads "Teresa Estes".

Teresa Estes
Transportation Coordinator
teresa.estes@tn.gov

Attachment

cc: Chris Jenkins, w/attach.

Begin Environmental document Preliminary Engineering

Advertise for consultant engineering services	<u> / </u>
Verify that consultant is on TDOT pre-approved list	<u> / </u>
Select consultant	<u> / </u>
Hold public involvement meeting	<u> / </u>
Submit environmental document to TDOT for review	<u> / </u>

Begin Preliminary Engineering Final Design Plans

Hold Design Meeting	<u> / </u>
Submit Final Design plans/Design Certification Letter to TDOT	<u> / </u>
Submit ROW, Utility and Railroad Estimates to TDOT	<u> / </u>
Submit Approved Final Design plans to TDOT permits for Review	<u> / </u>

Work with TDOT ROW office to begin Right of Way Process

Submit ROW/Utility Certification/Plans to TDOT ROW/utilities for Review	<u> / </u>
---	--------------

TDOT Utilities Division will handle the utility coordination

Agreement Number: 100043

Project Identification Number: 106915.00

Federal Project Number: STP-M-9109(140)

State Project Number: 47956-3526-54

State of Tennessee Department of Transportation

LOCAL AGENCY PROJECT AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 20__ by and between the STATE OF TENNESSEE DEPARTMENT OF TRANSPORTATION, an agency of the State of Tennessee (hereinafter called the "Department") and the Town of Farragut (hereinafter called the "Agency") for the purpose of providing an understanding between the parties of their respective obligations related to the management of the project described as:

"Kingston Pike Greenway - Sidewalk (1200' East of Old Stage Road to Virtue Road)"

A. PURPOSE OF AGREEMENT

A.1 Purpose:

- a) The purpose of this Agreement is to provide for the Department's participation in the project as further described in Exhibit A attached hereto and by this reference made a part hereof (hereinafter called the "Project") and state the terms and conditions as to the manner in which the Project will be undertaken and completed.

A.2 Modifications and Additions:

- a) Exhibit(s) are attached hereto and by this reference made a part hereof.

B. ACCOMPLISHMENT OF PROJECT

B.1 General Requirements:

- a)
- | | Responsible Party | Funding Provided by Agency or Project. |
|-----------------------------|--------------------------|---|
| Environmental Clearance by: | Agency | Project |
| Preliminary Engineering by: | Agency | Project |
| Right-of-Way by: | Agency | Project |

Utility Coordination by:	Department	Project
Construction by:	Department	Project

- b) After receiving authorization for a phase, the Agency shall commence and complete the phases as assigned above of the Project as described in Exhibit A with all practical dispatch, in a sound, economical, and efficient manner, and in accordance with the provisions herein, and all applicable laws. The Project will be performed in accordance with all latest applicable Department procedures, guidelines, manuals, standards, and directives as described in the Department's Local Government Guidelines, available in electronic format, which by this reference is made a part hereof as if fully set forth herein.
- c) A full time employee of the Agency shall supervise the herein described phases of the Project. Said full time employee of the Agency shall be qualified to and shall ensure that the Project will be performed in accordance with the terms of this Agreement and all latest applicable Department procedures, guidelines, manuals, standards, and directives as described in the Department's Local Government Guidelines and this Agreement.

B.2 Completion Date:

- a) The Agency agrees to complete the herein assigned phases of the Project on or before N/A. If the Agency does not complete the herein described phases of the Project within this time period, this Agreement will expire on the last day of scheduled completion as provided in this paragraph unless an extension of the time period is requested by the Agency and granted in writing by the Department prior to the expiration of the Agreement. An extension of the term of this Agreement will be effected through an amendment to the Agreement. Expiration of this Agreement will be considered termination of the Project. The cost of any work performed after the expiration date of the Agreement will not be reimbursed by the Department.

B.3 Environmental Regulations:

- a) The Department will review environmental documents and require any appropriate changes for approval as described in the Department's Local Government Guidelines.
- b) In the event the Agency is made responsible for the Environmental Clearances in Section B.1(a) of this Agreement, the Agency will be solely responsible for compliance with all applicable environmental regulations and for any liability arising from non-compliance with these regulations and will reimburse the Department of any loss incurred in connection therewith to the extent permitted by Tennessee Law. The Agency will be responsible for securing any applicable permits as described in the Department's Local Government Guidelines.

- c) In the event the Agency is made responsible for the Environmental Clearances in section B.1.(a) of this Agreement, then the Agency must complete environmental clearances before it begins final design and understands that a separate Notice to Proceed will be submitted for final design. Any work on final design performed ahead of this Notice to Proceed will not be reimbursable.

B.4 Plans and Specifications

- a) In the event that the Agency is made responsible for the Preliminary Engineering in Section B.1.(a) of this Agreement and federal and/or state funding is providing reimbursement, except as otherwise authorized in writing by the Department, the Agency shall not execute an agreement for the Preliminary Engineering phase of the Project without the written approval of the Department. Failure to obtain such written approval shall be sufficient cause for nonpayment by the Department.
- b) In the event that this Agreement involves constructing and equipping of facilities on the State Highway System and/or is a Project with Federal participation and the Agency is made responsible for Preliminary Engineering in section B.1.(a) of this Agreement, the Agency shall submit to the Department for approval all appropriate plans and specifications covering the Project. The Department will review all plans and specifications and will issue to the Agency written approval with any approved portions of the Project and comments or recommendations covering any remainder of the Project deemed appropriate.
 - 1) After resolution of these comments and recommendations to the Department's satisfaction, the Department will issue to the Agency written approval and authorization to proceed with the next assigned phase of the Project. Failure to obtain this written approval and authorization to proceed shall be sufficient cause for nonpayment by the Department.
- c) In the event that this Agreement involves the use of State Highway Right-of-Way, the Agency shall submit a set of plans to the TDOT Traffic Engineer responsible for the land in question. These plans shall be sufficient to establish the proposed Project and its impact on the State Highway Right-of-Way.

B.5 Right-of-Way

- a) The Agency shall, without cost to the Department, provide all land owned by the Agency or by any of its instrumentalities as may be required for the Project right-of-way or easement purposes.
- b) The Agency understands that if it is made responsible for the Right-of-Way phase in section B.1(a) hereof and federal and/or state funds are providing the reimbursement, any activities initiated for the appraisal or the acquisition of land prior to authorization from the Department will not be reimbursed and that failure

to follow applicable Federal and State law in this regard may make the Project ineligible for federal and/or state funding.

- c) The Department will review the processes the Agency used for the acquisition of land and other right-of-way activities. If those processes are found to be in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Public Law 91-646, 84 Stat. 1894), the Department will certify that the acquisition phase was completed appropriately. The Agency understands that the Project cannot proceed to the Construction phase until this certification of the acquisition phase has been provided. It further understands that if the processes used for acquisition are such that certification is impossible, federal and/or state funds will be withdrawn from the Project. If such withdrawal does occur, the Agency hereby agrees to reimburse the Department for all federal and/or state funds expended at the time of such withdrawal.
- d) If the Agency is responsible for the Construction phase, it agrees to correct any damage or disturbance caused by its work within the State Highway Right-of-Way, including but not limited to the replacement of any control access fence removed by the Agency or its Contractor or agent during the Construction phase of the Project.

B.6 Approval of the Construction Phase

- a) In the event that the Agency is made responsible for the Construction phase in section B.1.(a) of this Agreement, except as otherwise authorized in writing by the Department, the Agency shall not execute an agreement for the Construction phase of the Project without the written approval of the Department. Failure to obtain such approval shall be sufficient cause for nonpayment by the Department.
- b) In the event that the Department is made responsible for the Construction phase in section B.1.(a) of this Agreement, when the construction phase begins, the Agency may make such periodic visits to the Project site as necessary to familiarize itself generally with the progress and quality of the work and to determine in general if the work is proceeding in accordance with the Construction Agreement. If there is any perceived failure, the Agency shall give prompt written notification to the Department's Resident Engineer in charge.
- c) If the Project includes State Highway Right-of-Way and the Agency is responsible for the Construction phase, the Agency shall follow all requirements imposed by the TDOT Traffic Engineer.
- d) In the event that the Project includes State Highway Right-of-Way and the Agency is performing any construction work on this project, such work shall be performed to the satisfaction of the Department. If the Agency is being compensated for any construction work under this Agreement, any remedial work deemed necessary by the Department shall be done at the Agency's sole expense.

- e) The Agency understands that all contractors allowed to bid hereunder must be included on the Department's pre-qualified contractor list. Under Federal law, however, no contractor shall be required by law, regulation, or practice to obtain a license before submitting a bid or before a bid may be considered for an award of a contract; provided, however, that this is not intended to preclude requirements for the licensing of a contractor upon or subsequent to the award of the contract if such requirements are consistent with competitive bidding.

B.7 Detours

- a) If the Agency deems a detour to be necessary to maintain traffic during a road closure, then the Agency shall select, sign, and maintain the detour route in strict accordance with the Departments Final Construction Plan Notes and the Manual on Uniform Traffic Control Devices.

B.8 Utilities

- a) In the event that the Department is made responsible for the Construction phase in Section B.1(a) of this Agreement, the Department shall also be responsible for the Utilities phase.
- b) In the event that the Agency is made responsible for the Utilities Phase in section B.1.(a) of this Agreement, the following applies:
 - 1) The Agency shall assist and ensure that all utility relocation plans are submitted by the utilities and received by the Regional TDOT Utility Office per TDOT's coordination instructions for approval prior to the Project advertisement for bids.
 - 2) The Agency agrees to provide for and have accomplished all utility connections within the right-of-way and easements prior to the paving stage of the Construction phase.

B.9 Railroad

- a) In the event that a railroad is involved, Project costs may be increased by federally required improvements. The Agency agrees to provide such services as necessary to realize these improvements. The Agency understands it may have to enter into additional agreements to accomplish these improvements.

C. PAYMENT TERMS AND CONDITIONS

C.1 Total Cost:

In the event that the Agency shall receive reimbursement for Project expenditures with federal and/or state funds for any portion of the herein described Project, this provision shall apply.

- a) The Department agrees to reimburse the Agency for eligible and appropriate Project expenditures as detailed in the Department's Local Government Guidelines with federal and/or state funds made available and anticipated to become available to the Agency, provided that the maximum liability of the Department shall be as set forth in Exhibit A.

C.2 Eligible Costs:

In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.

- a) Only Project costs incurred after the issuance of the Notice to Proceed for each phase as detailed in the Department's Local Government Guidelines are eligible for Department reimbursement.

C.3 Limits on Federal and State Participation:

- a) Federal and/or state funds shall not participate in any cost which is not incurred in conformity with applicable federal and state law, the regulations in 23 C.F.R. and 49 C.F.R., and policies and procedures prescribed by the Federal Highway Administration (FHWA). Federal funds shall not be paid on account of any cost incurred prior to authorization by the FHWA to the Department to proceed with the Project or part thereof involving such cost. (23 CFR 1.9 (a)). If FHWA and/or the Department determines that any amount claimed is not eligible, federal and/or state participation may be approved in the amount determined to be adequately supported. The Department shall notify the Agency in writing citing the reasons why items and amounts are not eligible for federal and/or state participation. Where correctable non-compliance with provisions of law or FHWA requirements exists, federal and/or state funds may be withheld until compliance is obtained. Where non-compliance is not correctable, FHWA and/or the Department may deny participation in Project costs in part or in total.
- b) For any amounts determined to be ineligible for federal and/or state reimbursement for which the Department has made payment, the Agency shall promptly reimburse the Department for all such amounts within ninety (90) days of written notice.
- c) The Agency agrees to pay all costs of any part of this project which are not eligible for federal and/or state funding. These funds shall be provided upon written request therefore by either (a) check, or (b) deposit to the Local Government Investment Pool, whenever requested.

C.4 Payment Methodology:

In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.

- a) The Agency shall submit invoices, in a form outlined in the Local Government Guidelines with all necessary supporting documentation, prior to any reimbursement of allowable costs. Such invoices shall be submitted no more often than monthly but at least quarterly and indicate, at a minimum, the amount charged by allowable cost line-item for the period invoiced, the amount charged by line-item to date, the total amounts charged for the period invoiced, and the total amount charged under this agreement to date. Each invoice shall be accompanied by proof of payment in the form of a canceled check or other means acceptable to the Department.
- b) The payment of an invoice by the Department shall not prejudice the Department's right to object to or question any invoice or matter in relation thereto. Such payment by the Department shall neither be construed as acceptance of any part of the work or service provided nor as final approval of any of the costs invoiced therein. The Agency's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the Department not to constitute allowable costs. Any payment may be reduced for overpayments or increased for under-payments on subsequent invoices.
- c) Should a dispute arise concerning payments due and owing to the Agency under this Agreement, the Department reserves the right to withhold said disputed amounts pending final resolution of the dispute.

C.5 The Department's Obligations:

In the event that the Department is managing all phases of the Project herein described, this provision C.5 does not apply.

- a) Subject to other provisions hereof, the Department will honor requests for reimbursement to the Agency in amounts and at times deemed by the Department to be proper to ensure the carrying out of the Project and payment of the eligible costs. However, notwithstanding any other provision of this Agreement, the Department may elect not to make a payment if:
 - 1) **Misrepresentation:**
The Agency shall have made misrepresentation of a material nature in its application, or any supplement thereto or amendment thereof, or in or with respect to any document or data furnished therewith or pursuant hereto;
 - 2) **Litigation:**
There is then pending litigation with respect to the performance by the

Agency of any of its duties or obligations which may jeopardize or adversely affect the Project, this Agreement or payments to the Project;

3) **Approval by Department:**

The Agency shall have taken any action pertaining to the Project, which under this Agreement requires the approval of the Department or has made related expenditure or incurred related obligations without having been advised by the Department that same are approved;

4) **Conflict of Interests:**

There has been any violation of the conflict of interest provisions contained herein in D.16; or

5) **Default:**

The Agency has been determined by the Department to be in default under any of the provisions of the Agreement.

C.6 Final Invoices:

In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.

- a) The Agency must submit the final invoice on the Project to the Department within one hundred twenty (120) days after the completion of the Project. Invoices submitted after the one hundred twenty (120) day time period may not be paid.

C.7 Offset:

In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.

- a) If, after Project completion, any claim is made by the Department resulting from an audit or for work or services performed pursuant to this Agreement, the Department may offset such amount from payments due for work or services done under any agreement which it has with the Agency owing such amount if, upon demand, payment of the amount is not made within sixty (60) days to the Department. Offsetting any amount pursuant to this section shall not be considered a breach of agreement by the Department.

C.8 Travel Compensation

- a) If the Project provided for herein includes travel compensation, reimbursement to the Agency for travel, meals, or lodging shall be subject to amounts and limitations specified in the "State Comprehensive Travel Regulations," as they are amended from time to time and subject to the Agreement Budget.

D. STANDARD TERMS AND CONDITIONS

D.1 Governing Law:

- a) This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee. The Agency agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Agreement. The Agency acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under Tennessee Code Annotated, Sections 9-8-101 through 9-8-407.

D.2 General Compliance with Federal, State, and Local Law:

- a) The Agency is assumed to be familiar with and observe and comply with those Federal, State, and local laws, ordinances, and regulations in any manner affecting the conduct of the work and those instructions and prohibitive orders issued by the State and Federal Government regarding fortifications, military and naval establishments and other areas. The Agency shall observe and comply with those laws, ordinances, regulations, instructions, and orders in effect as of the date of this Agreement.
- b) The parties hereby agree that failure of the Agency to comply with this provision shall constitute a material breach of this Agreement and subject the Agency to the repayment of all damages suffered by the State and/or the Department as a result of said breach.

D.3 State Law:

- a) Nothing in the Agreement shall require the Agency to observe or enforce compliance with any provision thereof, perform any other act or do any other thing in contravention of any applicable state law, provided, that if any of the provisions of the Agreement violate any applicable state law, the Agency will at once notify the Department in writing in order that appropriate changes and modifications may be made by the Department and the Agency to the end that the Agency may proceed as soon as possible with the Project.

D.4 Submission of the Proceedings, Agreements, and Other Documents:

- a) The Agency shall submit to the Department such data, reports, records, agreements, and other documents relating to the Project as the Department and the Federal Highway Administration may require.

D.5 Appropriations of Funds:

- a) This Agreement is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the Department reserves the right to terminate the Agreement upon thirty (30) days written notice to the Agency. Said termination shall not be deemed a breach of agreement by the Department. Upon receipt of the written notice, the Agency shall cease all work associated with the Agreement. Should such an event occur, the Agency shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Agency shall have no right to recover from the Department any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

D.6 Rights and Remedies Not Waived:

- a) In no event shall the making by the Department of any payment to the Agency constitute or be construed as a waiver by the Department of any breach of covenant or any default which may then exist on the part of the Agency and the making of such payment by the Department, while any such breach or default shall exist, shall in no way impair or prejudice any right or remedy available to the Department with respect to such breach or default.
- b) Nothing in this agreement shall be construed to limit the Department's right at any time to enter upon its highway right-of-way, including the area occupied by the Project, for the purpose of maintaining or reconstructing its highway facilities.

D.7 Department and Agency Not Obligated to Third Parties:

- a) The Department and Agency shall not be obligated hereunder to any party other than the parties to this Agreement.

D.8 Independent Contractor:

- a) The parties hereto, in the performance of this Agreement, shall not act as agents, employees, partners, joint ventures, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Agreement shall be construed to create a principal/agent relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- b) The Agency, being a political subdivision of the State, is governed by the provisions of the Tennessee Government Tort Liability Act, Tennessee Code Annotated, Sections 29-20-101, et seq, and all other applicable laws.

D.9 Maintenance:

- a) Nothing contained herein shall be construed as changing the maintenance responsibility of either party for any part of the referenced project that lies on its system of highways. If the project funded hereunder results in the installation of any traffic signal, lighting or other electrically operated device(s), then the Agency shall be solely responsible for and pay all costs associated with maintenance and operation of all electrically operated devices together with the related equipment, wiring and other necessary appurtenances, and the Agency shall furnish electrical current to all such devices which may be installed as part of the project. Additionally, the Agency shall be solely responsible for and pay all costs associated with the maintenance and operation of solar-powered devices, including, but not limited to, replacement of solar panels, batteries, lights and lenses.
- b) In the event that the Department is made responsible for the Construction phase in section B.1.(a) of this Agreement and to the extent that the Department is responsible for accomplishing the construction of the project, the Department will notify the Agency when Construction phase of the project has been completed; provided however, that failure to notify the Agency shall not relieve the Agency of its maintenance responsibilities.

D.10 Disadvantaged Business Enterprise (DBE) Policy and Obligation:

In the event that the herein-described project is funded with federal funds, the following shall apply:

- a) **DBE Policy:**
It is the policy of the Department that Disadvantaged Business Enterprises, as defined in 49 C.F.R., Part 26, as amended, shall have the opportunity to participate in the performance of agreements financed in whole or in part with Department funds under this Agreement. The DBE requirements of applicable federal and state regulations apply to this Agreement; including but not limited to project goals and good faith effort requirements.
- b) **DBE Obligation:**
The Agency and its Contractors agree to ensure that Disadvantaged Business Enterprises, as defined in applicable federal and state regulations, have the opportunity to participate in the performance of agreements and this Agreement. In this regard, all recipients and Contractors shall take all necessary and reasonable steps in accordance with applicable federal and state regulations, to ensure that the Disadvantaged Business Enterprises have the opportunity to compete for and perform agreements. The Agency shall not discriminate on the basis of race, color, national origin or sex in the award and performance of Department-assisted agreements.

D.11 Tennessee Department of Transportation Debarment and Suspension:

- a) In accordance with the Tennessee Department of Transportation regulations governing Contractor Debarment and Suspension, Chapter 1680-5-1, the Agency shall not permit any suspended, debarred or excluded business organizations or individual persons appearing on the Tennessee Department of Transportation Excluded Parties List to participate or act as a principal of any participant in any covered transaction related to this Project. Covered transactions include submitting a bid or proposal, entering into an agreement, or participating at any level as a subContractor.

D.12 Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion (applies to federal aid projects):

- a) **Instructions for Certification - Primary Covered Transactions:**

By signing and submitting this Agreement, the Agency is providing the certification set out below.

- 1) The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The Agency shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the Department's determination whether to enter into this transaction. However, failure of the Agency to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- 2) The certification in this clause is a material representation of fact upon which reliance was placed when the Department determined to enter into this transaction. If it is later determined that the Agency knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department may terminate this transaction for cause or default.
- 3) The Agency shall provide immediate written notice to the Department if at any time the Agency learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 4) The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the Department for assistance in obtaining a copy of those regulations.

- 5) The Agency agrees by entering into this Agreement that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Department.
- 6) The Agency further agrees by entering into this Agreement that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the Department, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- 7) An Agency may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement portion of the "Lists of Parties Excluded From Federal Procurement or Non-procurement Programs" (Non-procurement List) which is compiled by the General Services Administration.
- 8) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- 9) Except for transactions authorized under these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the Department may terminate this transaction for cause or default.

b) Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Primary Covered Transactions:

The prospective participant in a covered transaction certifies to the best of its knowledge and belief, that it and its principals:

- 1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal, State or local department or agency;

- 2) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or agreement under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- 3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in this certification; and
- 4) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- 5) Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

D.13 Equal Employment Opportunity:

- a) In connection with the performance of any Project, the Agency shall not discriminate against any employee or applicant for employment because of race, age, religion, color, sex, national origin, disability or marital status. The Agency will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, age, religion, color, gender, national origin, disability or marital status. Such action shall include, but not be limited to, the following: employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- b) The Agency shall insert the foregoing provision in all agreements modified only to show the particular contractual relationship in all its agreements in connection with the development of operation of the Project, except agreements for the standard commercial supplies or raw materials, and shall require all such Contractors to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials. When the Project involves installation, construction, demolition, removal, site improvement, or similar work, the Agency shall post, in conspicuous places available to employees and applicants for employment for Project work, notices to be provided by the Department setting forth the provisions of the nondiscrimination clause.

D.14 Title VI – Civil Rights Act of 1964:

- a) The Agency shall comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), 49 C.F.R., Part 21, and related statutes and regulations. The Agency shall include provisions in all agreements with third parties that ensure compliance with Title VI of the Civil Rights Act of 1964, 49 C.F.R., Part 21, and related statutes and regulations.

D.15 Americans with Disabilities Act of 1990 (ADA):

- a) The Agency will comply with all the requirements as imposed by the ADA and the regulations of the federal government issued thereunder.

D.16 Conflicts of Interest:

- a) The Agency warrants that no amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subContractor, or consultant to the Agency in connection with any work contemplated or performed relative to this Agreement.
- b) The Agency shall insert in all agreements entered into in connection with the Project or any property included or planned to be included in any Project, and shall require its Contractors to insert in each of its subcontracts, the following provision:
 - 1) "No amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subContractor, or consultant to the Agency in connection with any work contemplated or performed relative to this Agreement."

D.17 Interest of Members of or Delegates to, Congress (applies to federal aid projects):

- a) No member of or delegate to the Congress of the United States shall be admitted to any share or part of the Agreement or any benefit arising therefrom.

D.18 Restrictions on Lobbying (applies to federal aid projects):

The Agency certifies, to the best of its knowledge and belief, that:

- a) No federally appropriated funds have been paid or will be paid, by or on behalf of the Agency, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any federal agreement, the making of any federal grant, the making of any federal loan, and entering into of any cooperative agreement, and the extension,

continuation, renewal, amendment, or modification of any federal agreement, grant, loan, or cooperative agreement.

- b) If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this grant, loan, or cooperative agreement, the Agency shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c) The Agency shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, subcontracts, and agreements under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly.

D.19 Records:

- a) The Agency shall maintain documentation for all charges against the Department under this Agreement. All costs charged to the Project, including any approved services contributed by the Agency or others, shall be supported by properly executed payrolls, time records, invoices, agreements or vouchers evidencing in proper detail and in a form acceptable to the Department the nature and propriety of the charges. The books, records, and documents of the Agency, insofar as they relate to work performed or money received under this Agreement, shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for at least three (3) years after final payment is made.
- b) Copies of these documents and records shall be furnished to the Department, the Comptroller of the Treasury, or their duly appointed representatives, upon request. Records of costs incurred includes the Agency's general accounting records and the Project records, together with supporting documents and records, of the Agency and all subContractors performing work on the Project and all other records of the Agency and subContractors considered necessary by the Department for a proper audit of costs. If any litigation, claim, or audit is started before the expiration of the three (3) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.
- c) The aforesaid requirements to make records available to the Department shall be a continuing obligation of the Agency and shall survive a termination of the Agreement.

D.20 Inspection:

- a) The Agency shall permit, and shall require its Contractor, subContractor or materials vendor to permit, the Department's authorized representatives and authorized

agents of the Federal Highway Administration to inspect all work, workmanship, materials, payrolls, records and to audit the books, records and accounts pertaining to the financing and development of the Project.

- b) The Department reserves the right to terminate this Agreement for refusal by the Agency or any Contractor, subContractor or materials vendor to allow public access to all documents, papers, letters or other material made or received in conjunction with this Agreement.

D.21 Annual Report and Audit:

- a) In the event that an Agency expends \$500,000 or more in federal awards in its fiscal year, the Agency must have a single or program specific audit conducted in accordance with the United States Office of Management and Budget (OMB) Circular A-133.
- b) All books of account and financial records shall be subject to annual audit by the Tennessee Comptroller of the Treasury or the Comptroller's duly appointed representative. When an audit is required, the Agency may, with the prior approval of the Comptroller, engage a licensed independent public accountant to perform the audit. The audit agreement between the Agency and the licensed independent public accountant shall be on an agreement form prescribed by the Tennessee Comptroller of the Treasury. Any such audit shall be performed in accordance with generally accepted government auditing standards, the provisions of OMB Circular A-133, if applicable, and the Audit Manual for Governmental Units and Recipients of Grant Funds published by the Tennessee Comptroller of the Treasury.
- c) The Agency shall be responsible for reimbursement of the cost of the audit prepared by the Tennessee Comptroller of the Treasury, and payment of fees for the audit prepared by the licensed independent public accountant. Payment of the audit fees of the licensed independent public accountant by the Agency shall be subject to the provisions relating to such fees contained in the prescribed agreement form noted above. Copies of such audits shall be provided to the designated cognizant state agency, the Department, the Tennessee Comptroller of the Treasury, and the Department of Finance and Administration and shall be made available to the public.

D.22 Termination for Convenience:

- a) The Department may terminate this agreement without cause for any reason. Said termination shall not be deemed a breach of agreement by the Department. The Department shall give the Agency at least thirty (30) days written notice before the effective termination date. The Agency shall be entitled to compensation for

authorized expenditures and satisfactory services completed as of the termination date, but in no event shall the Department be liable to the Agency for compensation for any service which has not been rendered. The final decision as to the amount for which the Department is liable shall be determined by the Department. Should the Department exercise this provision, the Agency shall not have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

D.23 Termination for Cause:

- a) If the Agency fails to properly perform its obligations under this Agreement in a timely or proper manner, or if the Agency violates any terms of this Agreement, the Department shall have the right to immediately terminate the Agreement and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Agency shall not be relieved of liability to the Department for damages sustained by virtue of any breach of this Agreement by the Agency.
- b) In the event that the Project herein described includes Federal funds, the Agency understands that if the Federal Highway Administration (FHWA) determines that some or all of the cost of this project is ineligible for federal funds participation because of failure by the Agency to adhere to federal laws and regulations, the Agency shall be obligated to repay to the Department any federal funds received by the Agency under this agreement for any costs determined by the FHWA to be ineligible.
- c) If the Project herein described lies on the state highway system and the Agency fails to perform any obligation under this section of this agreement, the Department shall have the right to cause the Agency, by giving written notice to the Agency, to close the Project to public use and to remove the Project at its own expense and restore the premises to the satisfaction of the Department within ninety (90) days thereafter.

D.24 How Agreement is Affected by Provisions Being Held Invalid:

- a) If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance the remainder would then continue to conform to the terms and requirements of applicable law.

D.25 Agreement Format:

- a) All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

D.26 Certification Regarding Third Party Contracts:

- a) The Agency certifies by its signature hereunder that it has no understanding or contract with a third party that will conflict with or negate this Agreement in any manner whatsoever.
- b) The Agency further certifies by its signature hereunder that it has disclosed and provided to the Department a copy of any and all contracts with any third party that relate to the Project or any work funded under this Agreement.
- c) The Agency further certifies by its signature hereunder that it will not enter into any contract with a third party that relates to this project or to any work funded under this Agreement without prior disclosure of such proposed contract to the Department.
- d) The Agency hereby agrees that failure to comply with these provisions shall be a material breach of this Agreement and may subject the Agency to the repayment of funds received from or through the Department under this Agreement and to the payment of all damages suffered by the Department as a result of said breach.

D.27 Amendment:

- a) This Agreement may be modified only by a written amendment, which has been executed and approved by the appropriate parties as indicated on the signature page of this Agreement.

D.28 State Liability:

- a) The Department shall have no liability except as specifically provided in this Agreement.

D.29 Force Majeure:

- a) The obligations of the parties to this Agreement are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.

D.30 Required Approvals:

- a) The Department is not bound by this Agreement until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.

D.31 Estimated Cost:

- a) The parties recognize that the estimated costs contained herein are provided for planning purposes only. They have not been derived from any data such as actual bids, etc
- b) In the event that the Department is made responsible in section B.1.(a) of this Agreement for the management of the herein described Project, the parties understand that more definite cost estimates will be produced during project development. These more reliable estimates will be provided to the Agency by the Department as they become available.

D.32 Third Party Liability:

- a) The Agency shall assume all liability for third-party claims and damages arising from the construction, maintenance, existence and use of the Project to the extent provided by Tennessee Law and subject to the provisions, terms and liability limits of the Governmental Tort Liability Act, T.C.A. Section 29-20-101, et seq, and all applicable laws.

D.33 Deposits:

- a) Required deposits and any other costs for which the Agency is liable shall be made available to the Department, whenever requested.

D.34 Department Activities:

- a) Where the Agency is managing any phase of the project the Department shall provide various activities necessary for project development. The estimated cost for these activities are included in the funds shown herein.

D.35 Congestion Mitigation and Air Quality Requirement:

- a) If the herein described project is funded with Congestion Mitigation Air Quality (CMAQ) funds, this section D.35 shall apply.
 - 1) Whereas the Agency understands and agrees that the funding provided hereunder must be obligated with the Federal Highway Administration within three years from the date of this agreement. It is further agreed that once all requirements have been met for development of the project, the Agency will expend the funds in a manner to insure its expenditure on a continuous basis until the funds are exhausted. Failure to follow this process may result in a loss of funds.

D.36 Investment of Public Funds:

- a) The facility on which this project is being developed shall remain open to the public and vehicular traffic for a sufficient time to recoup the public investment therein as shown below:

Amount		Open to Public and Vehicular Traffic
\$1.00 - \$200,000	=	5 Years
>\$200,000 - \$500,000	=	10 Years
>\$500,000 - \$1,000,000	=	20 Years

- b) Projects over \$1,000,000 carry a minimum 25 years open to public and vehicular traffic requirement and will be subject to individual review.

D.37 Federal Funding Accountability and Transparency Act:

- a) **If the Project is funded with federal funds the following shall apply:** The Agency shall comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub.L. 109-282), as amended by section 6202 of Public Law 110-252 ("the Transparency Act") and the regulations and requirements of the federal government issued thereunder, including, but not limited to, 2 CFR Part 170. The Agency shall submit the information needed for the Transparency Act in accordance with the forms and processes identified by the Department.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their respective authorized officials on the date first above written.

TOWN OF FARRAGUT

**STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION**

By: _____ Date _____ By: _____ Date _____
Mayor John C. Schroer
Commissioner

APPROVED AS TO
FORM AND LEGALITY

APPROVED AS TO
FORM AND LEGALITY

By: _____ Date _____ By: _____ Date _____
Attorney John Reinbold
General Counsel

EXHIBIT "A"

CONTRACT No.: 100043**PROJECT IDENTIFICATION No.: 106915.00****Federal Project No.: STP-M-9109(140)**

PROJECT DESCRIPTION: KINGSTON PIKE GREENWAY SIDEWALKS (1200' E OF OLD STAGE RD TO VIRTUE Rd)

Change in Cost: Cost hereunder is controlled by the Surface Transportation Program funding available to or allocable to the Agency

TYPE OF WORK: PEDESTRIAN AND BICYCLE FACILITIES

PHASE	FUNDING SOURCE	FED %	STATE %	LOCAL %	ESTIMATED COST
PE-N	L-STP	80%	0%	20%	\$60,000.00
PE-D	L-STP	80%	0%	20%	\$40,000.00
PHASE	FUNDING SOURCE	FED %	STATE %	LOCAL %	ESTIMATED COST
ROW	L-STP	80%	0%	20%	\$250,000.00
UTIL	L-STP	80%	0%	20%	\$60,800.00
PHASE	FUNDING SOURCE	FED %	STATE %	LOCAL %	ESTIMATED COST
CONST	L-STP	80%	0%	20%	\$643,978.00

INELIGIBLE COST: One hundred percent (100%) of the actual cost will be paid from Agency funds if the use of said state or federal funds is ruled ineligible at any time by the Federal Highway Administration due to any action on the part of the Agency.

LEGISLATIVE AUTHORITY: STP: 23 U.S.C.A, Section 133, Surface Transportation Program funds allocated or subject to allocation to the Agency.

Note: Where the local government is managing any phase of the project the Department shall provide various activities necessary for project development. The estimated cost for these activities are included in the funds shown as OVERS above.

For federal funds included in this contract, the CFDA Number is 20.205, Highway Planning and Construction funding provided through an allocation from the US Department of Transportation.

EXHIBIT "B"

BICYCLE PATH STANDARD

Bicycle paths shall be constructed on a compacted subgrade using a four (4) inch course of mineral aggregate, Type "A" Base, Grading "D" and a two (2) inch course of Bituminous Plant Mix Base (Hot Mix) Grading "E". The minimum width of bicycle paths shall not be less than six (6) feet for a one-way path. It should be recognized, however, that one-way paths will often be used as two-way facilities unless effective measures are taken to assure one-way operation. The recommended width for a two-way, shared use path is ten (10) feet but a reduced width of eight (8) feet may be used as a minimum.

WALKING PATH STANDARD

Walking paths shall be constructed on a compacted subgrade using four (4) inches of mineral aggregate, Type "A" Base, Grading "D" and four (4) inches of Portland cement concrete, Class "A". The minimum width of walking paths shall be not less than five (5) feet. It should be noted that a five (5) foot path will require signing prohibiting bicycles.

The Local Agency may choose to use either of the above standards for the composition of the trail whenever the use of the path will include both cycling and walking, provided the minimum widths contained in each of the standards shall remain unchanged.

REPORT TO THE BOARD OF MAYOR AND ALDERMEN

PREPARED BY: Ruth Viergutz Hawk, Community Development Director

SUBJECT: Ordinance 12-19, ordinance on 2nd and final reading to amend the Farragut Zoning Ordinance, Chapter 4. General Provisions and Exceptions, by adding Section XXIX. Grand Opening Special Events Permit

INTRODUCTION: During the past year the Town has updated the Special Events Permit requirements, has created a new Group Based Outdoor Sales Permit, and updated the Celebratory Gatherings, Concerts, Parades, Races, Demonstrations, Public Assemblies, Block Parties and Picketing ordinance. The Farragut Business Alliance (FBA) and the business community have participated in each of these ordinance updates.

Since the adoption of these ordinances, business owners have come to the FBA regarding the need for a separate ordinance for Grand Openings. The staff and FBA hosted a public meeting on October 11, 2012, to garner input from businesses regarding this new ordinance.

DISCUSSION: When a new business opens, they often rely on extra signage to get the message out that they are here and open for business. Through the Special Events Permit process, businesses are eligible for four (4) Special Events per year. A 20 square foot sign can be posted as part of each Special Event. The intent behind the signs used for Special Events is that they can be used repeatedly and that they can help brand the Shop Farragut program. Such signs, however, do not convey that the business is new and is now open.

Although the Costco's, JC Penney's, and the like make a big splash in the news when they open, the bulk of our new businesses are smaller, locally owned enterprises. Such new businesses find it financially straining to purchase a Grand Opening sign which can only be used once.

Following is a summary of the parameters of the new Grand Opening Special Events Permit ordinance:

- Town would purchase "Grand Opening" signs
- Applicant would pay a deposit to use one of the Town's "Grand Opening" signs (refundable if no damage to the sign)
- Signs would be dark blue with white letters
- The corner of the sign (approximately 15% of sign area) would be blank with clear Velcro. Users could personalize the sign with additional information that could be added in that corner

- The Grand Opening signs would be a minimum ten millimeter (10mm) corrugated plastic, affixed to studded T-posts, and affixed in such a manner that they would not move in the wind.
- Sign Size – 32 square feet
- Maximum posted/mounted sign height of six (6) feet
- Signs shall be set back a minimum of twenty (20) feet from the edge of pavement as measured from the farthest most protrusion of the sign to the nearest point of the street edge of pavement. Signs shall be set back a minimum of ten (10) feet from all entrance driveways.
- 20 day maximum for posting grand opening sign [If the 20 day time frame is exceeded, the business would lose their deposit and lose a Special Event permit for the calendar year]
- Sign could not be posted until the business is actually open
- One “Grand Opening” sign per each street on which the lot, parcel, or tract fronts. When more than one “Grand Opening” sign is permitted, such signs shall be a minimum of one hundred fifty (150) feet apart
- In addition to the “Grand Opening” sign, the business could also have the 20 square feet special event sign. This sign would be owned by the business and they could use it in the future.
- The Grand Opening would not count toward their 4 Special Events

We all know that good customer service, not large signs, is the key to success for any business. Our goal with this ordinance, however, is to help give new businesses some additional publicity so that they have greater opportunity to showcase their business and customer service, which in turn will bring back repeat customers.

Attached please find a copy of Ordinance 12-19.

PROFESSIONAL RECOMMENDATION: Community Development Director, Ruth Hawk, recommends approval of Ordinance 12-19.

PLANNING COMMISSION RECOMMENDATION: On December 20, 2012, in a unanimous vote, the Farragut Municipal Planning Commission recommended approval of Ordinance 12-19.

PROPOSED MOTION: To approve Ordinance 12-19 as attached.

BOARD ACTION:

MOTION BY: _____ **SECONDED**

BY: _____

ORDINANCE:	12-19
PREPARED BY:	Hawk
REQUESTED BY:	Staff
CERTIFIED BY FMPC:	December 20, 2012
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 4. BY ADDING SECTION XXIX. GRAND OPENING SPECIAL EVENTS PERMIT, TO ESTABLISH REQUIREMENTS FOR GRAND OPENING SPECIAL EVENTS, 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 4. General Provisions and Exceptions, is amended by adding the following:

XXIX. GRAND OPENING SPECIAL EVENTS PERMIT

It is the intent of this section to establish the permitting process and the requirements for grand opening special events held by commercial entities within the Town of Farragut. The purpose of this grand opening special events permit is to help give new businesses additional publicity so that they have greater opportunity to showcase their business and customer service, which in turn will bring back repeat customers to their business.

A. General Requirements

ORDINANCE 12-19

Page 2

1. Each individual permanent commercial entity located within the General Commercial District (C-1), the Regional Commercial District (C-2), or the Planned Commercial Development District (PCD) is eligible for a grand opening special events permit.
2. A commercial entity is eligible for one grand opening special events permit when such entity is opening for business for the first time at a particular location.
3. The duration of each grand opening special event shall not exceed twenty (20) calendar days.

B. Sign Requirements

1. In order to brand the grand opening events and to increase the recognizability of grand opening signs, all grand opening signs shall be town owned.
2. Upon payment of a security/damage deposit, the Town of Farragut shall provide grand opening sign(s) to the applicant. The town's grand opening signs shall be dark blue with white letters, shall be thirty-two (32) square feet, and shall be a minimum ten millimeter (10 mm) corrugated plastic. The corner of the sign will remain blank so that users can personalize the sign with additional information.
3. There shall be a maximum of one (1) grand opening sign per each street on which the lot, parcel, or tract fronts. When more than one grand opening sign is permitted, such signs shall be a minimum of one hundred fifty (150) feet apart.
4. In addition to the grand opening sign, the commercial entity may also have a twenty (20) square foot special event sign. Such special event sign shall comply with the sign requirements established in Chapter 4. Section XXIV. Special Events Permit, of this ordinance.
5. For ground mounted signs, the maximum sign height shall be six (6) feet.
6. Signs shall be set back a minimum of twenty (20) feet from the street edge of pavement as measured from the farthest most protrusion of the sign to the nearest point of the street edge of pavement. Signs shall be set back a minimum of ten (10) feet from all entrance driveways.
7. Ground mounted signs shall be affixed to studded T-posts and affixed in such a manner that they do not move in the wind.

ORDINANCE 12-19

Page 3

8. Signs shall not be posted until the commercial entity is open for business.
9. All signs and any associated support posts shall be removed at the end of the grand opening special event. If the permitted time frame is exceeded, the commercial entity shall lose their deposit and lose a special event permit for the calendar year.

C. Permitting Process

A grand opening special events permit application and filing fee and security/damage deposit shall be submitted to the Town Hall prior to the commencement of the event. The applicant must have an approved permit in hand prior to holding the event.

All grand opening special event permit applications shall include the following information:

1. Applicant's name, street address, telephone number, fax number, and e-mail address.
2. Name, street address, telephone number, fax number, e-mail address, and signature of individual identified who assumes the responsibility of meeting the conditions of the permit.
3. Location of event.
4. Date range of event.
5. If applicable, a drawing of the separate special event sign which includes dimensions that show the length and width of the sign, the height and width of all letters and figures, and the overall height of the sign.

SECTION 2.

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

Dr. Ralph McGill, Mayor

ORDINANCE 12-19

Page 4

Allison Myers, Town Recorder

Certified to the Farragut Board of Mayor and Aldermen this _____ day of _____,
2012, with approval recommended.

Rita Holladay, Chairman

Edwin K. Whiting, Secretary

FARRAGUT MUNICIPAL PLANNING COMMISSION

REPORT TO THE BOARD OF MAYOR AND ALDERMEN

PREPARED BY: Ruth Viergutz Hawk, Community Development Director

SUBJECT: Ordinance 12-20, ordinance on 2nd and final reading to amend the Farragut Zoning Ordinance, Chapter 4. General Provisions and Exceptions, Section XIII. Outdoor Site Lighting, to establish wall mounted light heights and required glare shields

INTRODUCTION: This amendment was initiated at the planning commission workshop session during the discussion of the four-story business district.

DISCUSSION: Because the town is now allowing taller buildings, there is a greater possibility of having wall lights mounted well above adjacent ground elevations. The planning commission decided that the mounting height of wall lights should be limited to fifteen (15) feet. This mounting height accommodates lighting at building entrances and adjacent walkways, but limits the negative glare onto adjacent properties and rights-of-ways.

A second concern is that when adjacent properties are below the parking lot elevation, even compliant pole lights can cast negative light and glare onto the adjacent properties. At staff's request, Costco willingly added such exterior glare shields to their pole lights in order to protect the adjacent Powell Acres residences. We are now addressing complaints from residents adjacent to the Publix complex. Like Powell Acres, these residences are located below the adjacent parking lot elevation. We are working with the Publix developers to add similar exterior glare shields to their light pole fixtures. This proposed amendment also addresses this concern by requiring exterior glare shields when adjacent residentially zoned property are located below the parking lot elevation.

Attached please find a copy of Section XIII. Outdoor Site Lighting of Chapter 4 of the Farragut Zoning Ordinance with the proposed text amendment in red. Also attached please find a copy of Ordinance 12-20.

PROFESSIONAL RECOMMENDATION: Community Development Director, Ruth Hawk, recommends approval of Ordinance 12-20.

PLANNING COMMISSION RECOMMENDATION: On December 20, 2012, in a unanimous vote, the Farragut Municipal Planning Commission recommended approval of Ordinance 12-20.

PROPOSED MOTION: To approve Ordinance 12-20 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	_____	_____	_____	_____	_____

XIII. - Outdoor site lighting.

It is the intent of this section to establish outdoor lighting requirements that reduce the negative effects of lighting, but at the same time address the need for adequate lighting for safety and visibility concerns. The following requirements shall apply to all developments and/or facilities, excluding single-family and two-family dwellings and street lighting. In no case, however, shall any light shine or glare so as to create a traffic safety hazard on any adjacent properties, rights-of-way, access easements, or driveways.

A. *Performance standards and criteria.*

1. No lights shall shine or glare directly onto adjacent properties, right-of-ways, access easements, or driveways. For the purposes of this ordinance, glare shall be defined as any brightness within the field of vision of such a character as to cause annoyance, discomfort, interference with vision, or loss in visual performance and visibility.
2. The maximum number of footcandles at a property line that is adjacent to non-commercial or non-office zoned land shall be 0.5 footcandles. The maximum number of footcandles at a street right-of-way or a property line that is adjacent to commercial or office zoned land shall be 3.0 footcandles.
3. Light poles, including any supporting base, shall not exceed twenty-eight (28) feet in height. The height shall be measured from the ground to the top of the pole.

If an existing development is expanding, existing light poles are taller than twenty-eight (28) feet, and new light poles are to be added as part of the expansion to the project, the planning commission may approve a light pole taller than twenty-eight (28) feet so as to match the existing light poles if it can be shown that the taller light pole will not create any negative effects on any adjacent properties, right-of-ways, access easements, or driveways. In no case shall new light poles exceed the height of the existing light poles or forty (40) feet in height, whichever is less.

4. All pole lights shall be directed toward the ground. No portion of the bulb or the globe/glass/plastic surrounding the bulb shall protrude from the light box/housing. The shoebox style fixture shall be used unless it can be shown that a different style would be equivalent to or better than these requirements. If the pole lights are located adjacent to property zoned residential or agriculture and such land is below the pole base elevation, exterior glare shields shall be added to the pole lights.

5. Unless specified elsewhere in this ordinance, all wall lights shall be directed toward the ground. No portion of the bulb or the globe/glass/plastic surrounding the bulb shall protrude from the light box/housing. The wedge style fixture shall be used unless it can be shown that a different style would be equivalent to or better than these requirements. The maximum mounting height on the wall for all wall lights shall be fifteen (15) feet.

Decorative wall mounted lights may be used in lieu of a wedge style or comparable fixture provided they are located at public entrance ways into the building, the globe/glass/plastic are frosted/milky/white acrylic, the bulbs are frosted or yellow, the bulbs do not protrude from the globe/glass/plastic, and the maximum total wattage shall be fifty (50) watts (standard bulb).

6. All ground-mounted lights, whether used to illuminate a building or a sign, shall be designed to minimize light that does not illuminate the target area. Blinders, or some other type of protectors, may be required to be placed on the lights so as to direct the beam away from adjacent properties, rights-of-way, access easements, or driveways.

7. Lights located under gasoline service station canopies, canopies for bank automatic teller machines, and other such similar canopies shall be recessed into the structure ceiling and shall use light shields so as to prevent glare. No portion of the bulb or the glass/plastic surrounding the bulb shall protrude from the structure ceiling unless it can be shown that a different style would be equivalent to or better than these requirements.

8. All electrical lines servicing all lights shall be underground.

ORDINANCE:	12-20
PREPARED BY:	Hawk
REQUESTED BY:	Staff
CERTIFIED BY FMPC:	December 20, 2012
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 4., SECTION XIII. OUTDOOR SITE LIGHTING, TO ESTABLISH WALL MOUNTED LIGHT HEIGHTS AND REQUIRE GLARE SHIELDS, 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 4. General Provisions and Exceptions, Section XIII. Outdoor Site Lighting, 4., is amended by deleting it in its entirety and substituting in lieu thereof the following:

4. All pole lights shall be directed toward the ground. No portion of the bulb or the globe/glass/plastic surrounding the bulb shall protrude from the light box/housing. The shoebox style fixture shall be used unless it can be shown that a different style would be equivalent or better than these requirements. If the pole lights are located adjacent to property zoned residential or agriculture and such land is below the pole base elevation, exterior glare shields shall be added to the pole lights.

SECTION 2.

Chapter 4. General Provisions and Exceptions, Section XIII. Outdoor Site Lighting, 5., is amended by deleting it in its entirety and substituting in lieu thereof the following:

ORDINANCE 12-20

Page 2

5. Unless specified elsewhere in this ordinance, all wall lights shall be directed toward the ground. No portion of the bulb or the globe/glass/plastic surrounding the bulb shall protrude from the light box/housing. The wedge style fixture shall be used unless it can be shown that a different style would be equivalent to or better than these requirements. The maximum mounting height on the wall for all wall lights shall be fifteen (15) feet.

SECTION 3.

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

Dr. Ralph McGill, Mayor

Allison Myers, Town Recorder

Certified to the Farragut Board of Mayor and Aldermen this _____ day of _____, 2012, with approval recommended.

Rita Holladay, Chairman

Edwin K. Whiting, Secretary

FARRAGUT MUNICIPAL PLANNING COMMISSION

AGENDA NUMBER VII.A.3

MEETING DATE January 24, 2013

REPORT TO THE BOARD OF MAYOR AND ALDERMEN

PREPARED BY: Ruth Viergutz Hawk, Community Development Director

SUBJECT: Ordinance 12-21, ordinance on 2nd and final reading to amend the Farragut Zoning Ordinance, Chapter 4. General Provisions and Exceptions, Section I. Accessory structures, to require HVAC screening to be architecturally compatible and to rename section to Accessory Structures and Uses

INTRODUCTION: The first portion of this amendment was initiated by the planning commission during the discussion of the four-story business district. The second portion of this amendment is a staff initiated amendment to the Zoning Ordinance text.

DISCUSSION: Our current HVAC screening requirements state that all units shall be screened with opaque materials and shall not be visible from adjacent properties or rights-of-way. The planning commission decided that the HVAC screening should not just be opaque, but should also be architecturally compatible with the principal building. We currently require this architectural compatibility of dumpster enclosures. This amendment would treat the two accessory structures/uses the same.

The second portion of this amendment deals with Section I's title name, which is "Accessory Structures". In July, 2012, Danny Kirby submitted a request to the Farragut Board of Zoning Appeals (BZA) for administrative review of the Town staff's application of the requirement to screen the HVAC units at the Farragut Public Market. The BZA ruled that the staff did not err in the application of the zoning ordinance in this regard and that the HVAC units were required to be screened.

In order to clarify the intent of this section of the ordinance, staff is proposing that this section be renamed to "Accessory Structures and Uses". This would ensure that HVAC units and dumpsters are required to be screened whether someone considers them an accessory use or an accessory structure.

Since we are amending this section, I have also added the term "compactors" when referencing garbage dumpsters and recycling containers. The ordinance has always been interpreted to include compactors and adding the term clarifies the ordinance's intent.

Attached please find a copy of Section I. Accessory Structures of Chapter 4 of the Farragut Zoning Ordinance with the proposed text amendments in red. Also attached please find a copy Ordinance 12-21.

PROFESSIONAL RECOMMENDATION: Community Development Director, Ruth Hawk, recommends approval of Ordinance 12-21.

PLANNING COMMISSION RECOMMENDATION: On December 20, 2012, in a unanimous vote, the Farragut Municipal Planning Commission recommended approval of Ordinance 12-21.

PROPOSED MOTION: To approve Ordinance 12-21 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	_____	_____	_____	_____	_____

I. - Accessory structures and uses.

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

- 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, compactors, 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-way. Such screening shall be architecturally compatible with the building the units are serving.

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.

ORDINANCE:	12-21
PREPARED BY:	Hawk
REQUESTED BY:	Staff
CERTIFIED BY FMPC:	December 20, 2012
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 4., SECTION I. ACCESSORY STRUCTURES, TO RENAME SECTION TO ACCESSORY STRUCTURES AND USES AND TO REQUIRE HVAC SCREENING TO BE ARCHITECTURALLY COMPATIBLE, 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 4. General Provisions and Exceptions, Section I. Accessory Structures, is amended by renaming the section to Section I. Accessory Structures and Uses.

SECTION 2.

Chapter 4. General Provisions and Exceptions, Section I. Accessory Structures, is amended by deleting the introductory paragraph in its entirety and substituting in lieu thereof the following:

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

SECTION 3.

Chapter 4. General Provisions and Exceptions, Section I. Accessory Structures, B., 1., is amended by adding the term “compactors” so as to read as follows:

1. Garbage dumpsters, compactors, and recycling containers

SECTION 4.

Chapter 4. General Provisions and Exceptions, Section I. Accessory Structures, B., 2., is amended by deleting it in its entirety and substituting in lieu thereof the following:

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. Such screening shall be architecturally compatible with the building the units are serving.

SECTION 5.

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

REPORT TO THE BOARD OF MAYOR AND ALDERMEN

PREPARED BY: Ruth Viergutz Hawk, Community Development Director

SUBJECT: Ordinance 12-22, ordinance on 2nd and final reading to amend the Farragut Zoning Ordinance, Chapter 3. Specific District Regulations, Section XVI. Reserved for Future Use, to create a new commercial zoning district entitled Business District, Four Story (BD-4)

INTRODUCTION: The Myers Bros. Holdings, owner of Renaissance development, have requested the creation of a new commercial zoning district that would allow for four story construction with reduced building setback requirements.

DISCUSSION: Staff met with the applicants on two occasions to discuss the proposed zoning district and we discussed it extensively at several planning commission meetings. In summary, the planning commission agreed on the following items:

- Amend the Outdoor Site Lighting ordinance to restrict the mounting height of wall mounted lights to 15';
- Prohibit drive-through window/lanes for restaurants;
- Amend the Accessory Structures ordinance to require that HVAC screening be architecturally compatible with the principal building; and
- Require additional landscaping or berm construction so that 60% of parking lot length that faces a street has limited viewability from the adjacent street.

The planning commission discussed extensively the pros and cons of a minimum twenty foot (20') building setback from all property lines. Much of the discussion focused on the following:

- A reduced setback will encourage parking lots in locations other than in front of the building;
- A reduced setback could provide a more creative site design and emphasize the architecture of the building rather than the parking lot;
- Tall buildings close to the road could create a canyon/cavern feel along Kingston Pike;
- Power lines will be close to the building edge;
- The limited space in the front yard will limit the ability to plant shade trees between the building and the edge of the road;
- The close proximity of the building to the road could affect future road improvements, such as the addition of bike lanes and/or travel lanes.

Noah Myers pointed out that although the Kingston Pike right-of-way is 100' wide, the paved roadway itself is only 60'. This 60' width is exclusive of deceleration lanes and sidewalks/walking trails. There currently are no bike lanes on Kingston Pike. In essence a 20' setback would still provide for a 40'

setback from the edge of roadway pavement. Knick Myers suggested that the 20' setback be increased at deceleration lanes to help alleviate some of the expressed concerns.

After the first planning commission meeting where this new district was discussed, I received a phone call from a citizen who suggested that we follow the Golden Ratio to determine building setbacks. The Golden Ratio, also known as the Golden Mean, is 1.618. I suggest each of you google these terms. There are several websites and videos explaining the ratio and the visual balance it creates. The Golden Ratio supports the request before you, but would build in some flexibility.

The setback would be determined based on the height of the building. For example, if the building is 70 feet tall, you would take $70' / 1.618 = 43.26'$. The setback would be 43.26'. Rather than purely measuring from the property line, the measurement would be taken from the edge of pavement. If roadway improvements are anticipated, the setback should take such improvements into consideration. The minimum setback, however, would remain at 20' from the front property line.

Although this may be perceived as making things more complicated, it does provide flexibility. It is also no more complicated than our lot and building coverage calculations in the Open Space Residential (OSR) and Open Space Mixed Residential (OSMR) overlay zoning districts, which are working extremely well.

With regards to anticipated improvements to the adjacent roadways, most of the improvements, such as turn lanes, will be triggered by the development itself. I asked Darryl Smith, Town Engineer, about the likelihood of additional lanes or bike lanes. He stated that additional lanes will be added to Kingston Pike between Smith Road and Campbell Station Road. This improvement has already been placed on the *Knoxville Regional Mobility Plan*. He also stated that it would be best to assume that bike lanes will be constructed in the future on all collectors and arterials.

Attached please find a copy of Ordinance 12-22. Also attached please find copies of Section 14-305 and 14-306 of the Farragut Municipal Code.

PROFESSIONAL RECOMMENDATION: Community Development Director, Ruth Hawk, recommends approval of Ordinance 12-22.

PLANNING COMMISSION RECOMMENDATION: On December 20, 2012, in a unanimous vote, the Farragut Municipal Planning Commission recommended approval of Ordinance 12-22.

PROPOSED MOTION: To approve Ordinance 12-22 as attached.

BOARD ACTION:

MOTION BY: _____ **SECONDED**

BY: _____

VOTE/TOTAL

ELLIOTT

LAMARCHE

MARKLI

HONKEN

MCGILL

ORDINANCE:	12-22
PREPARED BY:	Hawk
REQUESTED BY:	Myers Bros. Holdings, Applicant
CERTIFIED BY FMPC:	December 20, 2012
PUBLIC HEARING:	_____
PUBLISHED IN:	_____
DATE:	_____
1ST READING:	_____
2ND READING:	_____
PUBLISHED IN:	_____
DATE:	_____

AN ORDINANCE TO AMEND THE TEXT OF THE ZONING ORDINANCE OF THE TOWN OF FARRAGUT, TENNESSEE, ORDINANCE 86-16, AS AMENDED, BY AMENDING CHAPTER 3. SPECIFIC DISTRICT REGULATIONS, SECTION XVI. RESERVED FOR FUTURE USE, TO CREATE A NEW COMMERCIAL ZONING DISTRICT ENTITLED BUSINESS DISTRICT, FOUR STORY (BD-4), AS AUTHORIZED PURSUANT TO SECTION 13-4-201, TENNESSEE CODE ANNOTATED.

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

SECTION 1.

Chapter 3, Section XVI. Reserved for Future Use, is deleted in its entirety and substituted in lieu thereof the following:

XVI. BUSINESS DISTRICT, FOUR STORY (BD-4)

A. General description

This district provides space for general office and limited commercial uses. The office uses will provide regional employment opportunities and the commercial uses will primarily serve the residents of the Town of Farragut and immediate surrounds. These office and commercial uses are intended to be designed to minimize negative impacts on nearby residential uses and to strengthen our sense of community.

B. Permitted Principal and Accessory Uses and Structures

1. Generally recognized retail sales. This excludes all outdoor sales or storage.
2. Retail sale of alcoholic beverages, as provided for in the Farragut Municipal Code.
3. Financial and real estate services.
4. Professional, personal, and business services.
5. Restaurants, tea rooms, cafes, coffee houses, or other similar establishments serving food or beverage that is primarily consumed within the principal building or in designated outdoor seating areas associated with the principal building. This excludes drive-through service lanes and windows.
6. Public, governmental, and general offices.
7. Medical, dental, and veterinary facilities.
8. Medical spas.
9. Adult education and training facilities, indoors only.
10. Theaters, indoors only.
11. Indoor recreational facilities.
12. Cultural activities.

C. Building Façade Requirements

Building construction shall comply with Title 14, Chapter 3, Section 14-305. and Section 14-306. (1) and (2), of the Farragut Municipal Code.

D. Low Impact Development Requirements

The development shall incorporate a minimum of one of the following Low Impact Development (LID) practices into the design:

1. Twenty-five percent (25%) of the parking lot being constructed with permeable pavers;
2. Stormwater runoff draining to rain gardens;
3. The building being constructed with a vegetated roof, commonly referred to as a green roof;
4. Stormwater draining to bioswales/bioretenention facilities; or
5. Rainwater being harvested for irrigation or gray water uses.

E. Area Regulations

1. Front Yards

- a. Building setbacks shall be determined based on the building height and the location of the street edge of pavement. Anticipated roadway improvements such as additional travel lanes, turn lanes, and bikes lanes shall be taken into consideration in determining the location of the street edge of pavement. The building setback shall be calculated as follows:

Building setback = (equals) total building height / (divided by) 1.618

The setback shall be measured from the street edge of pavement. At a minimum, all buildings shall be set back a minimum of twenty (20) feet from all front property lines and access easements.

- b. All accessory structures, excluding detention basin structures, shall be set back from the nearest point of any right-of-way a minimum of forty (40) feet, except as provided for elsewhere in this ordinance or the Municipal Code. Detention basins, measured from the exterior toe-of-slope, and all associated structures shall be set back from the nearest point of any right-of-way a minimum of ten (10) feet.

2. Side and Rear Yards

- a. All buildings shall be set back a minimum of twenty (20) feet. When the abutting property is zoned residential or agricultural, buildings shall be set back a minimum of one hundred (100) feet. When the abutting property is zoned buffer district and the property immediately adjacent to such buffer

district is zoned residential or agricultural, buildings shall be set back a minimum of one hundred (100) feet from the residentially or agriculturally zoned land. All buildings shall be set back a minimum of twenty (20) feet from all access easements.

- b. All accessory structures shall be set back a minimum of ten (10) feet, except as provided for elsewhere in this ordinance or the Municipal Code.

3. Buffer Strips

- a. There shall be a buffer strip a minimum of thirty-five (35) feet in width on all front property lines when the street adjacent to that front property line is classified as a collector or local street on the Major Road Plan and the property on the opposite side of the street is zoned residential or agricultural;
- b. There shall be a buffer strip a minimum of thirty-five (35) feet in width on all side and rear property lines when the abutting property is zoned residential or agricultural;
- c. Existing, mature vegetation shall be preserved and incorporated into the buffer strip; and
- d. Detention basins, measured from the exterior toe-of-slope, and all associated structures shall not be located within any buffer strips.

4. Maximum Lot Coverage

Total lot coverage – sixty percent (60%)

5. Land Area

Minimum lot size of one (1) acre

6. Height Regulations

No building shall exceed four stories, or seventy (70) feet in height. All buildings shall be a minimum of two stories. Except as provided for elsewhere in this ordinance or the Municipal Code, no accessory structure shall exceed ten (10) feet in height.

7. Parking

As regulated in Chapter 4.

When a parking lot is constructed adjacent to a front property line, a berm shall be constructed or landscaping shall be planted so as to limit the viewability of the parking lot from the street. A minimum of sixty percent (60%) of the total parking lot length adjacent to the front property line shall be screened from view with a berm or landscaping.

SECTION 2.

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

Dr. Ralph McGill, Mayor

Allison Myers, Town Recorder

Certified to the Farragut Board of Mayor and Aldermen this _____ day of _____, 2012, with approval recommended.

Rita Holladay, Chairman

Edwin K. Whiting, Secretary

FARRAGUT MUNICIPAL PLANNING COMMISSION

AGENDA NUMBER VII.A.5

MEETING DATE January 24, 2012

REPORT TO THE BOARD OF MAYOR AND ALDERMEN

PREPARED BY: Ruth Viergutz Hawk, Community Development Director

SUBJECT: Ordinance 12-23, ordinance on 2nd and final reading to rezone Parcel 63, Tax Map 151, located on the southwest corner of Kingston Pike and Way Station Trail, part of the Renaissance development, approximately 2.5 Acre, from C-1 General Commercial District to BD-4 Business District, Four-Story (Myers Bros. Holding, Applicant)

INTRODUCTION: This property is an out parcel of the Renaissance development. The Myers Bros. Holdings, owner, has requested the creation of a new commercial zoning district that would allow for four story construction with reduced building setback requirements. They are requesting this property be rezoned to the newly created zoning district.

DISCUSSION: The property is currently vacant and fronts on Kingston Pike and Way Station Trail. The rear of the property is treed and has an unnamed stream. A Weigel's store is located to the east across from Way Station Trail. South of the property is a single-family residence and the detention basin for Renaissance development. The property to the west is vacant commercial land that is part of the Renaissance development. First Farragut United Methodist Church is located to the north across from Kingston Pike. The Renaissance development backs up to the Old Stage Hills neighborhood.

The property is currently zoned C-1 General Commercial District. The proposed BD-4 district allows taller buildings, but the types of uses allowed within the BD-4 district are more restrictive than in the C-1 district. The BD-4 district would be compatible with the surrounding area.

Attached please find a copy of Ordinance 12-23. Also attached please find a copy of the aerial photo of the general area.

PROFESSIONAL RECOMMENDATION: Community Development Director, Ruth Hawk, recommends approval of Ordinance 12-23 because the request is compatible with the surrounding area.

PLANNING COMMISSION RECOMMENDATION: On December 20, 2012, in a unanimous vote, the Farragut Municipal Planning Commission recommended approval of Ordinance 12-23.

PROPOSED MOTION: To approve Ordinance 12-23 as attached.

BOARD ACTION:

MOTION BY: _____ **SECONDED**

BY: _____

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

ORDINANCE:	12-23
PREPARED BY:	Hawk
REQUESTED BY:	Myers Bros. Holding, Applicant
CERTIFIED BY FMPC:	December 20, 2012
PUBLIC HEARING:	_____
PUBLISHED IN:	_____
DATE:	_____
1ST READING:	_____
2ND READING:	_____
PUBLISHED IN:	_____
DATE:	_____

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE TOWN OF FARRAGUT, TENNESSEE, ORDINANCE 86-16, AS AMENDED, PURSUANT TO AUTHORITY GRANTED BY 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.

The Farragut Zoning Ordinance, Ordinance 86-16, as amended, is hereby amended by rezoning Parcel 63, Tax Map 151, located on the southwest corner of Kingston Pike and Way Station Trail, part of the Renaissance development, approximately 2.5 Acres, from C-1 General Commercial District to BD-4 Business District, Four-Story (Exhibit A)

SECTION 2.

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

Dr. Ralph McGill, Mayor

ORDINANCE 12-23

Page 2

Allison Myers, Town Recorder

Certified to the Farragut Board of Mayor and Aldermen this _____ day of
_____, 2012, with approval recommended.

Rita Holladay, Chairman

Edwin K. Whiting, Secretary

FARRAGUT MUNICIPAL PLANNING COMMISSION