

**PLANNING COMMISSION MEETING  
MUNICIPAL CENTER COUNCIL CHAMBERS  
Tuesday, November 6, 2018**

The regular meeting of the Planning Commission was scheduled and held in the Council Chambers of City Hall on November 6, 2018. Regular meetings of the Planning Commission are broadcast and recorded electronically. Minutes reflect a summary of the proceedings and actions taken.

1. Chairman Harless welcomed everyone and called the meeting to order at 6:05 p.m.
2. Pam Rush called the roll of the Commission and established a quorum.

**Commissioners Present:** David Clark, Dike Bacon, Rick Bennett, Keith Saunders, Mike Harless

**Commissioners Absent:** George Hernandez, Alderman Forrest Owens, Sherrie Hicks, and Mayor Mike Palazzolo

**Staff Present:** Cameron Ross, Tim Gwaltney, Jody Dwyer, Sarah Goralewski, Sheila Pounder, David Harris, and Pam Rush

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Chairman Harless stated for those people who just arrived, tonight's agenda is on the front table.

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**3. Approval of Minutes for October 2, 2018:**

Chairman Harless stated that the next order of business is the approval of the minutes for the October 2, 2018, meeting. If there are no additions, corrections or deletions to the minutes of October 2, 2018, meeting of the Planning Commission, he would entertain a motion for approval.

Mr. Saunders moved to approve the Planning Commission minutes of October 2, 2018, seconded by Mr. Bacon.

Chairman Harless asked for a roll call.

**Roll Call:** Hicks – absent; Saunders – yes; Hernandez – absent; Bacon – yes; Harless – yes; Owens – absent; Clark – yes; Bennett – yes; Palazzolo - absent. **The motion passed.**

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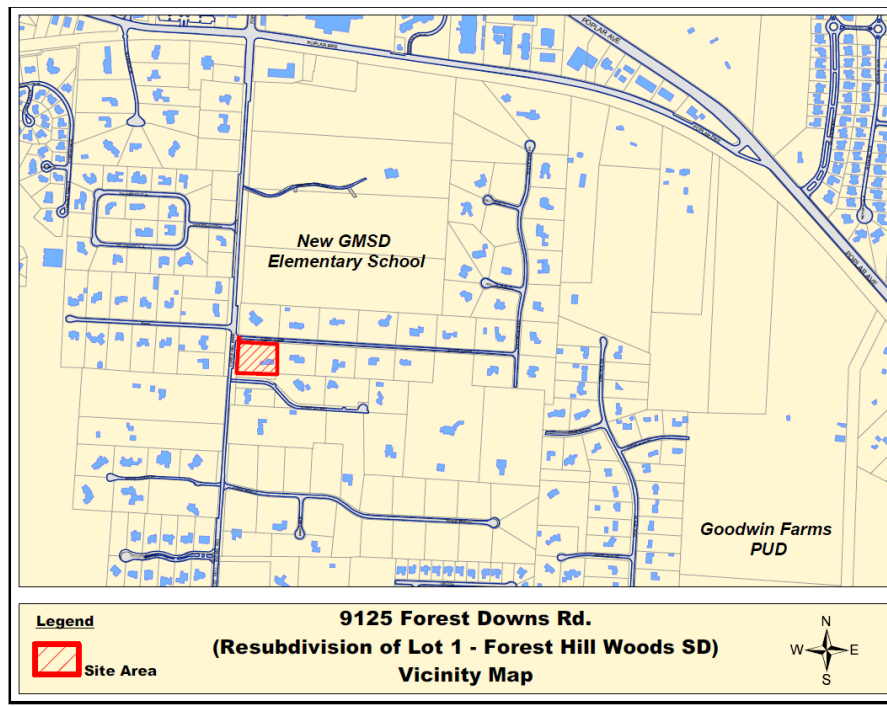
**Public Hearing:**

Ms. Goralewski made a presentation of the application to the Planning Commission.

- 4.A.** Approval of a Resubdivision of Lot 1 of Forest Hill Woods Subdivision and part of open space, Lot 2, Forest Hill Oaks Subdivision, into two lots (Lots 1A and 1B)

**INTRODUCTION:**

Case Number:	18-841
Case Name:	Resubdivision of Lot 1 of Forest Hill Woods Subdivision and part of open space, Lot 2, Forest Hill Oaks Subdivision
Location:	9125 Forest Downs Rd.
Property Owner/ Applicant:	Michael D. & Billie Ray
Zoning District:	“RE-1” Residential Estate
Area:	2.376 acres
Description of Request:	Approval of a Resubdivision of Lot 1 of Forest Hill Woods Subdivision and part of open space, Lot 2, Forest Hill Oaks Subdivision, into two lots (Lots 1A and 1B)



**ECD CERTIFICATION:** The Director of the Department of Economic and Community Development certifies this application as meeting the terms of the Subdivision and Zoning Ordinances upon which relief is sought.

**SUBDIVISION AND SITE PLAN SUBCOMMITTEE REPORT: (DIKE BACON, CHAIRMAN):** The Subcommittee met on October 17, 2018, and recommended that this item be considered at the regular Planning Commission meeting on November 6, 2018, pending the applicant talk with the neighbors. The applicant has done that, as well as obtained the written opinion of an attorney (see p. 12 & 13 of this staff report). Letters of support and opposition are included in the agenda packet.

**REVISIONS:** The applicant has revised the plans per the comments from the Technical Advisory Committee (TAC) and provided letters of support or concern from neighbors. It has been determined that Lot 1 is not a triple frontage lot, as there is an approximately 14' wide buffer between the rear setback line and the Forest Hill Way private drive.

**BACKGROUND:** The subject property is part of the Forest Hill Woods Subdivision. On July 27, 1977, the Forest Hill Woods Subdivision plat was recorded in unincorporated Shelby County. On September 11, 2000, the entire subdivision (including the subject property) was annexed into the City of Germantown under the "RE-1" Single-Family Residential zoning, on the third reading of Ordinance 2000-10. On May 3, 2005, a resubdivision was approved for Lot 11 (9279 Forest Downs Rd.) of the Forest Hill Woods Subdivision, adding an approximately 12-acre parcel of land to Lot 11. The subject property (9125 Forest Downs Rd.) has remained an individual single-family lot with one residence (built in 1984).

In 1986, per Plat Book 106 Page 43 of the Shelby County Register of Deeds, a 50' deep portion of open space originally belonging to part of Lot 2 of the Forest Hill Oaks Subdivision to the south was created. This was to serve as a buffer between the private drive of Lot 2 of the Forest Hill Oaks Subdivision and lot 1 of the Forest Hill Woods Subdivision. This 50' open space was transferred to lot 1 of the Forest Hill Woods Subdivision and is now the southern rear portion of lot 1.

**DISCUSSION:**  
The applicant is proposing to resubdivide Lot 1 of the Forest Hill Woods Subdivision, per the

specifications outlined in the table below:

TOTAL SITE AREA		2.376 ac.			
NUMBER OF PROPOSED LOTS		2			
USE: <i>Single-Family Residential(Residential Estate)</i>					
Lot Number	Size of Lot (in acres)	Lot Width (at building setback)	Side Yard Setback	Front Yard Setback	Rear Yard Setback
1A	1.225	174.33'	25' 75' (Forest Hill Irene Rd.) 25'	75' (per plat) 75'	50'  50'
1B	1.151	161.90'	10' (existing eastern side), per the plat	(per plat)	

The project is being reviewed under Section 17 (Subdivisions) and Section 23: Division 5 (RE-1 – Residential Estate Single-Family) of the City of Germantown Municipal Code. As with any subdivision request, this resubdivision proposal shall adhere to the requirements of the ordinance, unless variances are to be considered by the Planning Commission in accordance with Sec. 17-6. Given the scope and size of the resubdivision, the following regulations may require consideration:

- Sec. 17-60: Parkland dedication.
- Sec. 17-91(b): Required Improvements, notably curb, gutter, sidewalk and street improvements, or a payment in lieu of.
- Sec. 22-90(a): Tree Preservation and Removal – Development Plan Required.

**STAFF COMMENTS AND CONDITIONS:**

**A. PRIOR TO FINAL SUBDIVISION PLAT APPROVAL**

1. Following Planning Commission approval, the final plat shall be recorded, if no development agreement is required.

**B. PRIOR TO CONSTRUCTION PLAN APPROVAL (to be addressed in the construction plan drawings)**

1. No grading or tree removal permits, or construction plans, for Lot 1A shall be considered until the final plat has been recorded.
2. The driveway for Lot 1A shall be on Forest Downs Rd., as far to the eastern property line as feasible.
3. A note shall be placed on the final plat prohibiting access to Forest Hill Irene Rd.
4. The developer of Lot 1A shall be required to pay an in-lieu fee of \$7,475 to the City of Germantown Engineering Division for sidewalk improvements along Forest Hill Irene Rd. This fee shall be collected at the time of a grading and tree removal permit for Lot 1A.

**C. GENERAL REQUIREMENTS (To be placed on all final site plans, PD plans, or subdivision plats)**

1. All recorded easements shall be shown on the plat. A five (5) foot utility easement is required along all property lines, adjacent to and not within any other easement.
2. All survey data shall be tied to Tennessee State Plane Coordinates and the City of Germantown monumented survey control. The final plat, construction drawings and "as built" plans shall be submitted on electronic media in DXF format.
3. Per Section 17-60 (a), this project is required to pay a parkland dedication fee. The fee amount shall be calculated and collected with the grading and tree removal permit.

4. The applicant shall provide proof of TDEC approval for the water system and sanitary sewer system. Contact Bill Hinch with TDEC for information.
5. If approved, all materials shall be specified on the construction plans for the proposed project. The applicant must receive Final Construction Plan approval from the Department of Community Development before the Memphis/Shelby County Office of Construction Code Enforcement may issue a building permit for the project.
6. The applicant is required to include the following formal written statement by a certified and licensed professional engineer to be placed on the grading and drainage plans, signed, dated and sealed:

I, \_\_\_\_\_, a duly licensed professional engineer in the State of Tennessee, hereby certify that I have designed the drainage in accordance with the Design Standards of the City of Germantown and have considered upstream and downstream conditions that affect drainage to include topography, present and future land use, existing zoning, and location of natural water courses.
9. No owner, developer, or tenant of property within the subdivision shall commit an act, or allow a condition to exist on property within the subdivision, which act or condition endangers life or health, violates the laws of decency, or obstructs or interferes with the reasonable and comfortable use of other property in the vicinity.
10. The Developer agrees to comply with the following requirements unless otherwise authorized in writing by the City Engineer:
  - (a) All streets shall be kept clear and free of dirt and debris;
  - (b) All construction activity shall begin no earlier than 7:00 a.m. and end no later than 6:00 p.m., Monday thru Saturday, and no construction activity shall be permitted on Sundays; and
  - (c) The Developer and Lot Purchasers shall provide the Department of Community Development with the name, address and phone number of person(s) to be contacted and responsible for correcting any of the above should the occasion arise to do so.
11. Total acres disturbed shall be provided. A NOC is required for TDEC for the NPDES, Phase II. The NOC shall be posted on the site at all times and the stormwater reports/documentation/inspections shall be available at all times. The SWPP shall be posted at the site and available. Inspections must be performed by personnel who have completed the Level I – Fundamentals of Erosion Prevention and Sediment Control course.

**TAC COMMENTS:**

The Technical Advisory Committee (TAC) met on October 10, 2018 and requested that the applicant revise the plans to address the following comments. The applicant has revised the plans to address these comments and provided responses to some, in *italics*:

***Planning:***

*Sheila Pounder, Planning Division Manager  
Sarah Goralewski, Senior Planner*

***Existing Condition Plan:***

1. Revise plan to show the location and ROW dimensions of the private drive (Forest Hill Way) along the south line of the site.
2. The existing mailbox is shown in the ROW.
3. Remove “Final Plat” text from existing condition plan.

***Tree Plan:***

1. Revise tree chart on the plan to include information on which trees will be retained and which will be removed from site (buildable area for proposed Lot 1A). Provide a calculation of total DBH of trees to be removed from site.

2. Provide information how removed trees will be mitigated for this site. *Note added to final plat.*
3. Remove “Final Plat” text from tree plan.

***Preliminary and Final Plat:***

1. Revise name of subdivision as follows: Resubdivision of Lot 1, Forest Hill Wood Subdivision and part of open space, Lot 2, Forest Hill Oaks Subdivision.
2. Verify the dimension of the area purchase from the adjacent property in the Forest Hill Oaks Subdivision. The width at the deeded area on the eastern end of the affected area differs from what is shown on the deed.
3. The final plat should only consist of two pages; lot layout page & certificate, CCR, & signature page.
4. Revise plan to show the location and ROW dimensions of the private drive (Forest Hill Way) along the south line of the site and label as “open space” & Lot 2, Forest Hill Oaks Subdivision.
5. If there is some existing COS space remaining between the rear lot line of this site and the private drive within Forest Hill Oaks Subdivision, then show it on final plat to establish the side yard of the new lot and the rear yard of the existing lot. *No COS remaining at rear lot line of site and the private drive.*
6. Label all yard setbacks (front, rear, & side).
7. Relocate existing water meter to existing lot.
8. Label Open Space area at the rear of these lots as “Area deed from Forest Hill Oaks Subdivision”.
9. Remove recording information text from the lot area on the plan.
10. Revise site data as shown on the staff final plan markup.
11. New house should be addressed from Forest Down Road.
12. Add recording information for construction easement to final plat prior to its recording.

***Engineering:***

*Tim Gwaltney, City Engineer (Traffic and General Notes)*

*Tony Ladd, Asst. City Engineer (Utilities and General Notes)*

*Tim Bierdz, Stormwater Manager (Stormwater)*

1. Relocate existing water service/meter to lot 1B. If this is shown just inside the lot line the proposed service/meter to lot 1A could be run adjacent and inside the same trench to reduce number of cuts to Forest Hill Downs.
2. Sanitary sewer from lot 1A is shown tying to a force main. It needs to tie to a gravity line or manhole.
3. Reference Resubdivision of Lot 1, Forest Hill Wood Subdivision and part of open space, Lot 2, Forest Hill Oaks Subdivision for the southern 50' strip across both lots.
4. Add the following note to the final plat “A Grading and Tree Removal Permit will be required to be submitted to the Engineering Department, before homebuilding can begin”. *Note added to final plat.*
5. No driveway access to Forest Hill Irene Road shall be permitted for lot 1A. *Note added to final plat.*

***Public Works:***

*Bo Mills, Public Works Director*

*Andy Sanders, Asst. Public Works Director*

***Sewer:***

1. Sanitary sewer service line for proposed Lot 1A needs to tie into a gravity main either by extending the existing main along Forest Downs Road and setting a new manhole along the frontage of proposed Lot 1A or by boring to the existing sewer manhole along Forest Hill-Irene Rd.

***Water:***

2. Existing water meter serving proposed Lot 1B needs to be relocated to the new lot frontage
3. Street cuts for new utility services should be kept to a minimum to avoid additional patches along Forest Downs Rd. *Note added to final plat.*

4. Please also ensure that the new driveway for proposed Lot 1A does not conflict with utility services (water meters, sewer manholes, etc.) *Note added to final plat.*

**Drainage:**

5. Please ensure that the future driveway location for proposed Lot 1A is as far from the intersection with Forest Hill Irene Rd as possible. *Note added to final plat.*
  - a. Please ensure that the drainage for the new driveway is piped. *Note added to final plat.*

**Fire:**

*Jody Dwyer, Fire Marshal*

*Clint Starnes, Asst. Fire Marshal*

1. Construction of a residential structure will require the builder to meet the current fire code requirements. *Note added to final plat.*

**Police:**

*Capt. Angie Blankenship*

2. Recommendation for street speed signs. *No action.*
3. Recommendation for driveways on Forest Downs Rd. only. *No action.*
4. Recommendation for the driveway for any future development for corner lots can be as close to the east boundary to the lot being developed now. *No action.*

**Parks:**

*Pam Beasley, Parks & Recreation Director*

No comments.

**Neighborhood Services:**

*Joe Nunes, Neighborhood Services Manager*

No comments.

**Economic Development:**

*Marie Lisco, Economic Development Manager*

No comments.

**Germantown Municipal School District (GMSD):**

*Josh Cathey, Asst. Superintendent*

No comments.

**Board Discussion:**

Chairman Harless asked if there were any questions of staff. There were none.

Chairman Harless asked if there were any questions of the Commissioners. There were none.

Chairman Harless invited the applicant to discuss the project.

Harvey Marcom from the Reaves Firm, Inc. 6800 Poplar Avenue, Suite 101, made a presentation. I have been dealing with Mr. & Mrs. Ray for several months regarding this piece of property. We have completed all the background information, including the land survey. The Rays have owned this property since 2006.

Chairman Harless asked is there a minimum square footage for a house going on this lot?

Michael Ray, 9125 Forest Downs Road, the property owner responded to the chairman's question by stating that I believe it's a minimum 3000 s.f. on the first floor. We bought this property from Ms. Piper in January 2006.

She told us there would be the option to split this lot, if we went through the proper processes with the city. We bought this lot with the intent of splitting it. Our proposal follows the zoning rules as well as the neighborhood covenants.

Ms. Goralewski clarified that the covenants are a condition of the plat, and are not enforced by the City.

Chairman Harless stated the City Engineer mentioned that the approximately \$7,000 fee is for street and sidewalk improvements, but in fact it's not for street improvements, it's only for the sidewalk.

Mr. Gwaltney answered that is correct. The road is already widened across the frontage. This \$7,000 fee would be to cover the cost of the installation of the sidewalk along Forest Hill Irene Rd.

Chairman Harless asked if anyone in the audience would like to speak in favor of this project. There were none.

Chairman Harless asked if anyone in the audience would like to speak against this project.

Brandon Wellford at 3366 Hollow Creek Road stated I live in the neighborhood where the re-subdivision to one-acre lots is proposed. I am representing neighbors that could not be here tonight. After just learning about the issue from Mr. Ray last Friday, we have not had a chance to completely canvass the neighborhood. But everyone we spoke to about this, is against it. Everybody likes the Rays; they are nice people and they have been good neighbors. But we don't want to see the lot subdivided. We all purchased our homes knowing that these two-acre lots provided a different type of neighborhood as compared with many other areas in Germantown. We want to maintain the integrity of our neighborhood and not alter this very unique and special area.

Mr. Wellford stated that Mr. Ray sent out a letter to the neighbors last Friday. But we have not had enough time to really get everyone together.

Chairman Harless asked Mr. Wellford how long has he been in the neighborhood? On the recorded plat, is there anything that says it has to be a 2-acre lot?

Mr. Wellford answered that he has lived in the neighborhood since 2004. I am not aware of any such requirements on the plat in terms of lot size; however, the entire neighborhood is 2-acre lots.

Mr. Clark stated to Mr. Ray that we always ask that any developers that come through to meet with the neighbors and show them the proposed plan. I assume that hasn't been done based on Mr. Wellford's comments.

Mr. Ray stated this is not a cheap deal, to split the lot. Before deciding to make an application to the city, we went through all of this matter; we went and personally spoke with the four neighbors whose properties touch ours. That would be Michael Fearnely, Michael Doyle, Mr. and Mrs. Repking, the Burnham.

Chairman Harless asked is there a Homeowners Association (HOA) at all?

Mr. Ray said that there is not an HOA for this neighborhood.

Mr. Saunders noted: 1) I just want to make sure the covenants that are recorded on the plat do not speak to anything about subdividing any property. Is that correct? 2) We are talking about an approximately \$7,000 fee to recapture the cost of the sidewalk, in an event there is a development on this lot in the future, is that correct? Is there any type of variance that our ordinance gives the Planning Commission the right to waive that fee, due to the fact this is being put in as part of street improvements now?

Ms. Goralewski stated on the plat there are no restrictions in regards to subdividing lots. We completed our own research on the County register's website of all the instruments and documents that have been recorded. We did not find any, we also asked the project engineers if through their research, they had come across any other documents, and they said they had not. To our knowledge, there is nothing that speaks to that.

Mr. Gwaltney answered yes, that is correct, the approximately \$7,000 fee is for the sidewalk installation. We are not requesting the full amount that the City is paying for the road improvements across that frontage, again its sidewalk only. We are not asking for the cost to widen the road. There are future developments planned in that area, to which this same situation applies.

Ms. Pounder noted there is the option for a variance to be granted on subdivision improvements and related in lieu fees, in Section 17-8 of the Subdivision Regulations of the Municipal Code. However, the requirement is for the applicant to petition the Planning Commission for the variance, which was not the case with this application. In this particular case, you can either table the application, and allow the applicant to submit the variance in writing, or you can approve it, and request a letter in writing from the applicant for the variance to go forward to BMA for approval.

**STAFF RECOMMENDATION:** Approval.

**SUBDIVISION AND SITE PLAN SUBCOMMITTEE: (DIKE BACON, CHAIRMAN)**

The Subcommittee met on October 17, 2018, and recommended that this item be considered at the regular Planning Commission meeting on November 6, 2018, pending the applicant talking with the neighbors. The applicant has done that, as well as obtained the written opinion of an attorney (see p. 12 & 13 of this staff report). Letters of support and opposition are included in the agenda packet.

**PROPOSED MOTION:** To approve the Resubdivision of Lot 1 of Forest Hill Wood Subdivision and part of open space, Lot 2, Forest Hill Oaks Subdivision, into two lots (Lots 1A and 1B), subject to the Commission's discussion, staff comments and conditions in the staff report and documents filed with the application.

**MAIN MOTION:** Mr. Bacon moved to approve the Resubdivision of Lot 1 of Forest Hill Wood Subdivision and part of open space, Lot 2, Forest Hill Oaks Subdivision, into two lots (Lots 1A and 1B), subject to the Commission's discussion, staff comments and conditions in the staff report and documents filed with the application, seconded by Mr. Clark.

Chairman Harless asked for a roll call.

**Roll Call:** Hicks – absent; Saunders – yes; Hernandez – absent; Bacon – yes; Harless – yes; Owens – absent; Clark – yes; Bennett – yes; Palazzolo - absent. **The motion passed.**

Mr. Bacon voted yes; the new lot complies with all the zoning regulations and recorded documents.

Mr. Bennett voted yes; given the same reasons Mr. Bacon mentioned with our zoning rules and regulations regarding subdivisions.

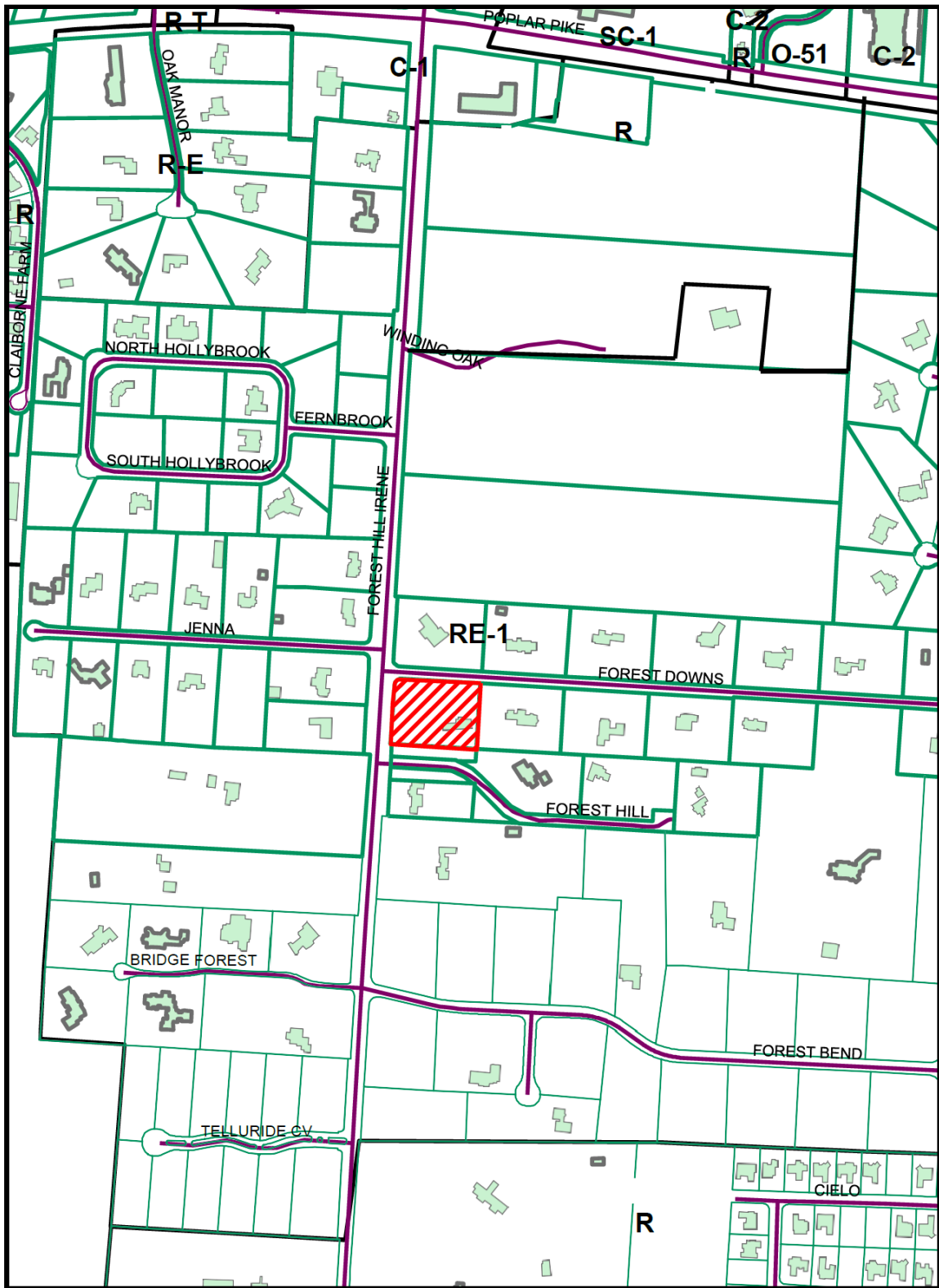
Mr. Clark votes yes; for the reasons stated.

Mr. Saunders voted yes; for the same reasons, it does meet all the requirements regarding our ordinances.

Chairman Harless voted yes; and for the reasons stated.

Chairman Harless said congratulations and the motion passes.





# ZONING MAP

PROPOSED RESUBDIVISION OF LOT 1  
(See agenda packet for full-sized plans)



AREA USED FOR FOREST HILL OAKS SUBDIVISION  
 0.279 AC. (DIST. PROX. 895')

**SITE DATA**

LOT 14, 1.225 ACRES  
 FOREST HILL OAKS SUBDIVISION  
 LOT 18, 1.150 ACRES  
 FOREST HILL OAKS SUBDIVISION

- 1) THE REVISIONS AND THE ORIGINAL PLANS SHALL BE SUBMITTED TO THE ENGINEERING DEPARTMENT, TOWN OF FOREST HILL, MISSISSIPPI.
- 2) THE REVISIONS FROM SET SHALL BE BY THE OWNER ON 10 BUSINESS DAYS.
- 3) LOT 14 SHALL BE RESUBDIVIDED FROM FOREST HILL OAKS SUBDIVISION AND FOREST HILL WOODS SUBDIVISION.
- 4) THE LOT 14, 1.225 ACRES SHALL BE RESUBDIVIDED INTO TWO LOTS.
- 5) THE LOT 18, 1.150 ACRES SHALL BE RESUBDIVIDED INTO TWO LOTS.
- 6) THE NEW CONVEYANCE SHALL NOT CONVEY ANY OTHER SERVICES OR UTILITIES TO THE NEW LOTS.
- 7) THE REVISIONS SHALL BE IN ACCORDANCE WITH ANY OTHER ORDINANCES OF THE TOWN OF FOREST HILL, MISSISSIPPI TO ALLOW CONVEYANCE OF A RESUBDIVISION OF LOT 14 AND LOT 18.
- 8) CONVEYANCE OF A RESUBDIVISION OF LOT 14 AND LOT 18 SHALL BE SUBJECT TO THE TOWN'S CDD CODE.
- 9) THE ORIGINAL PLANS SHALL BE SUBMITTED TO THE TOWN OF FOREST HILL, MISSISSIPPI.



**REVISION AND PLAT  
 RESUBDIVISION OF LOT 1, FOREST HILL OAKS SUBDIVISION AND PART OF OPEN SPACE LOT 2, FOREST HILL OAKS SUBDIVISION**

DATE: 12/15/2011  
 BY: J. B. H. / L.B.  
 PREPARED BY: J. B. H. / L.B.  
 PROJECT: FOREST HILL OAKS SUBDIVISION  
 OWNER: FOREST HILL, MISSISSIPPI  
 JOB NUMBER: 17-0014

SHEET 1 OF 2

**DESCRIPTION OF LOT 14**

DESCRIPTION OF LOT 14 OF FOREST HILL OAKS SUBDIVISION, BEING A RESUBDIVISION OF LOT 1, SAID LOT 1 BEING DESCRIBED AS BOOK 7 PAGE 48 AND INSTRUMENT NUMBER 18589 OF THE PUBLIC COUNTY RECORDS OF DECCA, MISSISSIPPI, COUNTY OF DECCA.

COMBINED AT A POINT LOCATED IN THE INTERSECTION OF FOREST HILL WOODS ROAD (SOUTH OF LOT 14) WITH THE WEST LINE OF FOREST HILL OAKS SUBDIVISION. THE POINT SHALL BE A POINT THAT SHOWS A DISTANCE OF 30 FEET TO THE POINT OF BEGINNING OF LOT 14, A DISTANCE OF 18 FEET TO A POINT ON THE NORTH LINE OF THE FOREST HILL OAKS SUBDIVISION, AND A DISTANCE OF 18 FEET TO A POINT ON THE WEST LINE OF THE FOREST HILL OAKS SUBDIVISION. THE POINT SHALL BE A POINT THAT SHOWS A DISTANCE OF 30 FEET TO A POINT ON THE NORTH LINE OF THE FOREST HILL OAKS SUBDIVISION, AND A DISTANCE OF 18 FEET TO A POINT ON THE WEST LINE OF THE FOREST HILL OAKS SUBDIVISION.

**DESCRIPTION OF LOT 18**

DESCRIPTION OF LOT 18 OF FOREST HILL OAKS SUBDIVISION, BEING A RESUBDIVISION OF LOT 18 OF FOREST HILL OAKS SUBDIVISION, BEING A RESUBDIVISION OF LOT 18 OF FOREST HILL OAKS SUBDIVISION, BEING A RESUBDIVISION OF LOT 18 OF FOREST HILL OAKS SUBDIVISION.

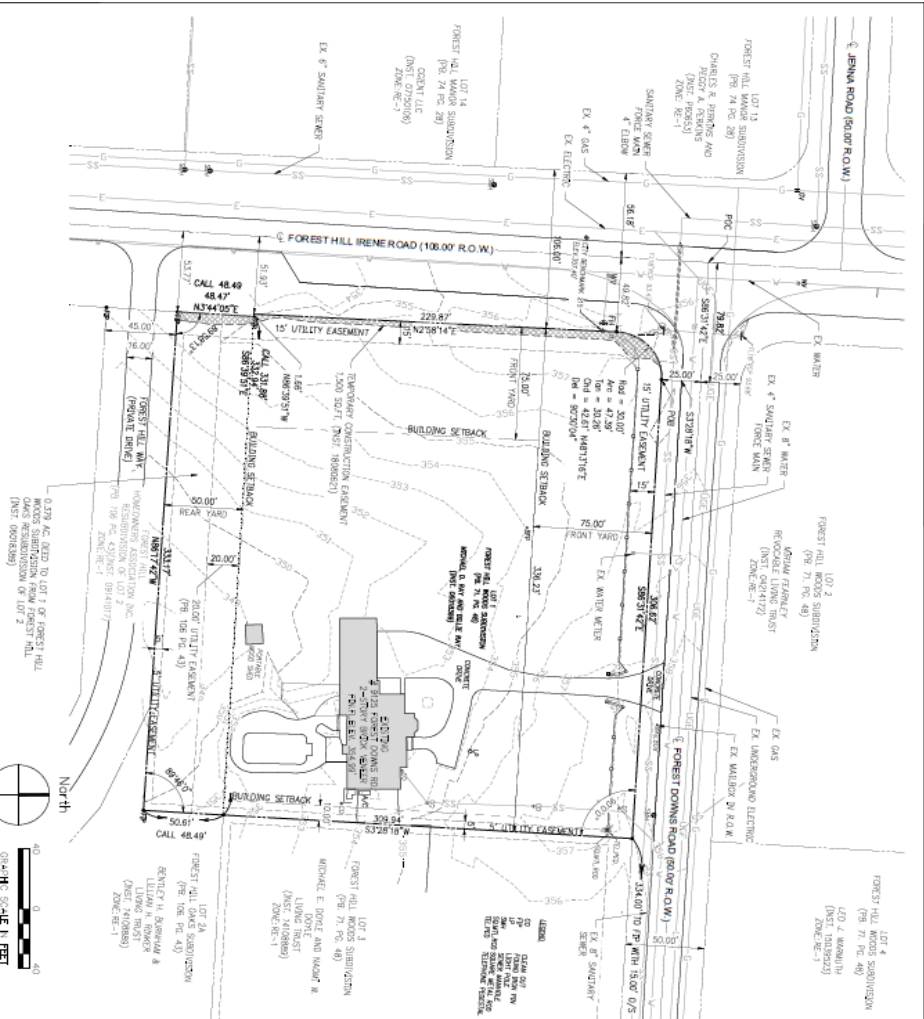
COMBINED AT A POINT LOCATED IN THE INTERSECTION OF FOREST HILL WOODS ROAD (SOUTH OF LOT 18) WITH THE WEST LINE OF FOREST HILL OAKS SUBDIVISION. THE POINT SHALL BE A POINT THAT SHOWS A DISTANCE OF 30 FEET TO THE POINT OF BEGINNING OF LOT 18, A DISTANCE OF 18 FEET TO A POINT ON THE NORTH LINE OF THE FOREST HILL OAKS SUBDIVISION, AND A DISTANCE OF 18 FEET TO A POINT ON THE WEST LINE OF THE FOREST HILL OAKS SUBDIVISION.

**100 YEAR STORMWATER INFILTRATION**

NO ROOM FOR WATER INFILTRATION UNDER THE 100 YEAR STORMWATER INFILTRATION. THE 100 YEAR STORMWATER INFILTRATION SHALL BE 100 YEAR STORMWATER INFILTRATION.

**DIVIDING PLANNED ZONING 9-X**

# EXISTING CONDITIONS



**SITE DATA**  
 1 LOT  
 LAND AREA: 2,304 SQ FT  
 MAX BUILDING HEIGHT: 30 FT  
 BUILDING FOOTPRINT: 1,700 SQ FT  
 REMAINING SURFACE AREA: 889 SQ FT  
 FRONT YARD SETBACK: 25 FT  
 CLASS: RESIDENTIAL  
 ZONE: R-1



**The Planning & Consulting Group, Inc.**  
 1800 W. ...  
 ...

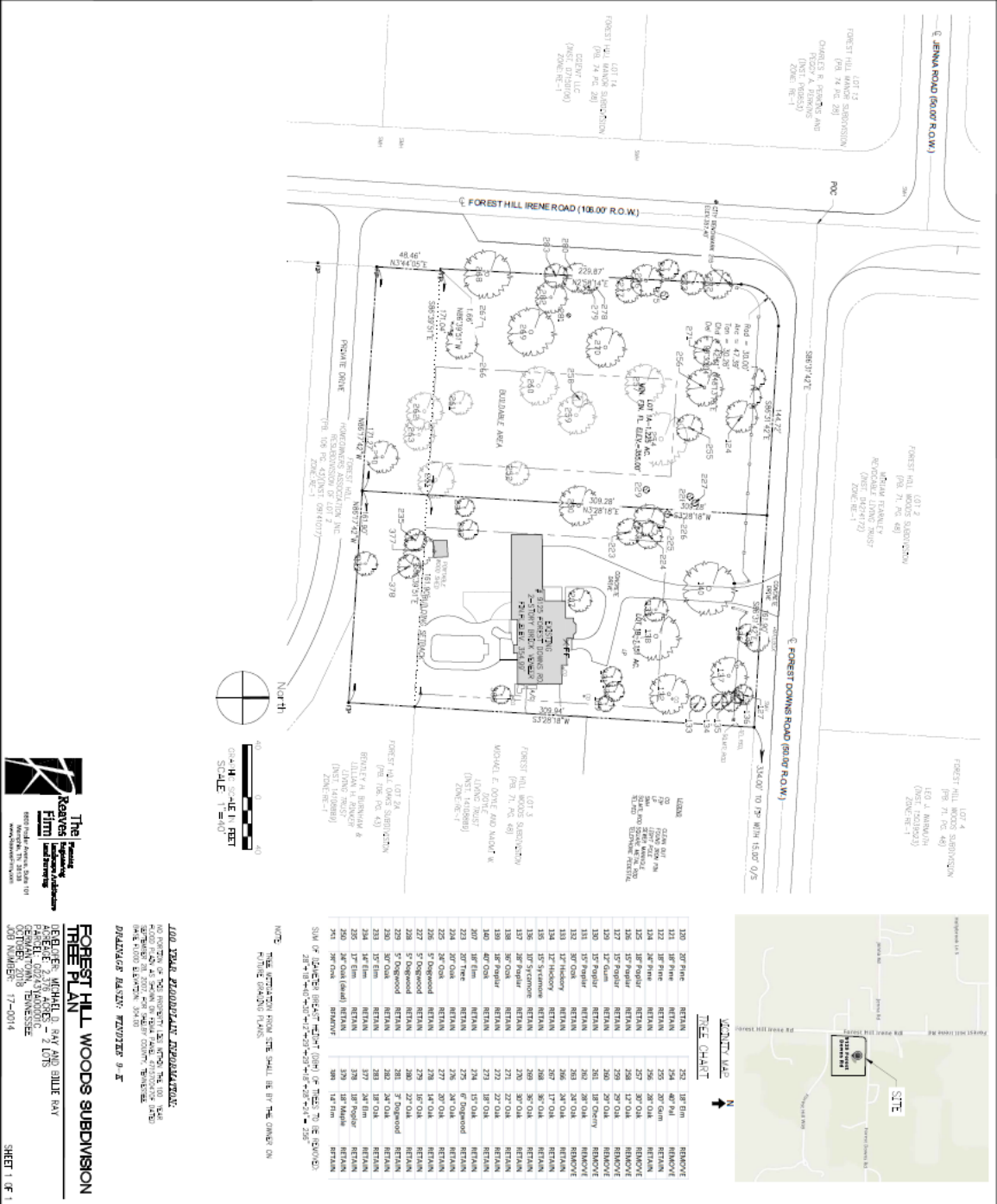
**FOREST HILL WOODS SUBDIVISION EXISTING CONDITIONS**  
 PROJECT NO. ...  
 DATE: ...

**NOTE: SET TREE PLAN FOR TREES**  
**100 YEAR FLOODPLAIN DEMONSTRATION**  
 ...

**DESCRIPTION OF LOT 1 OF FOREST HILL WOODS SUBDIVISION AS RECORDED IN PLAT BOOK # ...**  
 ...



# TREE PLAN



**TREE CHART**

130	30' Pine	RETAIN	250	18' Elm	REMOVE
131	30' Pine	RETAIN	251	40' Elm	REMOVE
132	30' Pine	RETAIN	252	30' Gum	RETAIN
133	30' Pine	RETAIN	253	30' Oak	REMOVE
134	30' Pine	RETAIN	254	30' Oak	REMOVE
135	30' Pine	RETAIN	255	30' Oak	REMOVE
136	30' Pine	RETAIN	256	30' Oak	REMOVE
137	30' Pine	RETAIN	257	30' Oak	REMOVE
138	30' Pine	RETAIN	258	30' Oak	REMOVE
139	30' Pine	RETAIN	259	30' Oak	REMOVE
140	30' Pine	RETAIN	260	30' Oak	REMOVE
141	30' Pine	RETAIN	261	30' Oak	REMOVE
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143	30' Pine	RETAIN	263	30' Oak	REMOVE
144	30' Pine	RETAIN	264	30' Oak	REMOVE
145	30' Pine	RETAIN	265	30' Oak	REMOVE
146	30' Pine	RETAIN	266	30' Oak	REMOVE
147	30' Pine	RETAIN	267	30' Oak	REMOVE
148	30' Pine	RETAIN	268	30' Oak	REMOVE
149	30' Pine	RETAIN	269	30' Oak	REMOVE
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153	30' Pine	RETAIN	273	30' Oak	REMOVE
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158	30' Pine	RETAIN	278	30' Oak	REMOVE
159	30' Pine	RETAIN	279	30' Oak	REMOVE
160	30' Pine	RETAIN	280	30' Oak	REMOVE
161	30' Pine	RETAIN	281	30' Oak	REMOVE
162	30' Pine	RETAIN	282	30' Oak	REMOVE
163	30' Pine	RETAIN	283	30' Oak	REMOVE
164	30' Pine	RETAIN	284	30' Oak	REMOVE
165	30' Pine	RETAIN	285	30' Oak	REMOVE
166	30' Pine	RETAIN	286	30' Oak	REMOVE
167	30' Pine	RETAIN	287	30' Oak	REMOVE
168	30' Pine	RETAIN	288	30' Oak	REMOVE
169	30' Pine	RETAIN	289	30' Oak	REMOVE
170	30' Pine	RETAIN	290	30' Oak	REMOVE
171	30' Pine	RETAIN	291	30' Oak	REMOVE
172	30' Pine	RETAIN	292	30' Oak	REMOVE
173	30' Pine	RETAIN	293	30' Oak	REMOVE
174	30' Pine	RETAIN	294	30' Oak	REMOVE
175	30' Pine	RETAIN	295	30' Oak	REMOVE
176	30' Pine	RETAIN	296	30' Oak	REMOVE
177	30' Pine	RETAIN	297	30' Oak	REMOVE
178	30' Pine	RETAIN	298	30' Oak	REMOVE
179	30' Pine	RETAIN	299	30' Oak	REMOVE
180	30' Pine	RETAIN	300	30' Oak	REMOVE

NOTE: THESE RECOMMENDATIONS SHOULD BE BY THE OWNER ON THE DATE OF THE TREE PLAN.

100.00% RESPONSIBLE DEVELOPMENT

DEVELOPER: MICHAEL RAY AND DALE RAY  
 FOREST HILL WOODS SUBDIVISION  
 PLOT 2, LOT 2 AND 3  
 SEVENTH COUNTY, TENNESSEE  
 LOT NUMBER: 17-0014

SHEET 1 OF 1



## EMAIL FROM APPLICANT TO NEIGHBORS

**From:** Mike Ray [mailto:[mray63@comcast.net](mailto:mray63@comcast.net)]

**Sent:** Friday, November 02, 2018 11:32 AM

**To:** 'Mike Doyle'; 'KEVIN SPEED'; '[charissawellford@yahoo.com](mailto:charissawellford@yahoo.com)'; 'Brandon Wellford'; '[suhailobaji@gmail.com](mailto:suhailobaji@gmail.com)'; '[rolaob@gmail.com](mailto:rolaob@gmail.com)'; 'Mike Bruns'; '[egconder@comcast.net](mailto:egconder@comcast.net)'; '[angelbuddy19@hotmail.com](mailto:angelbuddy19@hotmail.com)'; 'Rhett Hailey'; '[adg1@comcast.net](mailto:adg1@comcast.net)'; '[wjdavis03tn@gmail.com](mailto:wjdavis03tn@gmail.com)'; '[tndavisfamily@gmail.com](mailto:tndavisfamily@gmail.com)'; '[billievray@comcast.net](mailto:billievray@comcast.net)'; '[cleopatrascloset@gmail.com](mailto:cleopatrascloset@gmail.com)'; '[drharriswll@aol.com](mailto:drharriswll@aol.com)'; '[sdonovan1@comcast.net](mailto:sdonovan1@comcast.net)'; '[stanleyogden@comcast.net](mailto:stanleyogden@comcast.net)'; '[tdonovan40@comcast.net](mailto:tdonovan40@comcast.net)'; '[mfearnley@bellsouth.net](mailto:mfearnley@bellsouth.net)'; 'Wade Walker'; '[ron.cheek@american-marsh.com](mailto:ron.cheek@american-marsh.com)'; '[icp@citycurrent.com](mailto:icp@citycurrent.com)'; '[plori.walker@gmail.com](mailto:plori.walker@gmail.com)'; '[busterorr@icloud.com](mailto:busterorr@icloud.com)'; '[cawp3@comcast.net](mailto:cawp3@comcast.net)'; 'Geoff & Louise Wilson'; 'LeeAnn Abrams'; 'Peter Abrams'; 'Lisa Warmuth'; 'Leo Warmuth'; 'Paul Hutchison'; 'Patty Hutchison'; 'Danielle Taylor'; 'Suzanne Haykal'; 'John Knighton'; 'Jay Gibson'; 'Chris & Jody LaFluer'; 'Matt & Wendy Stone'; 'Karla Perrizo'; 'Mike Repking'; 'Jan Kissling'; 'Heidi Joyce'; 'Bently Burnham'; 'Chris Ward'; 'Brian Curry'; 'Naomi Doyle'; 'Beverly Booker'; 'Frank Booker'; 'Lillian Rinker'; 'Karen Hartridge'; 'Olufemi Adeleye'; 'Sharon Miller'; 'Tracy Miller'; 'Kerry Sernal'; 'Penny Pepin'; 'Ted Pepin'; 'Jane Conner'; 'Victoria Hatch'; 'Imesia Hudson'; 'Alan Taylor'; 'Adam Parks'; 'Brook Sparks'; 'Ashley Toney'; 'Steve Radtke'; '[jaimeloftin@hotmail.com](mailto:jaimeloftin@hotmail.com)'; 'Joe Garaffa'; 'David Evans'; 'J. O. Patterson'; 'Joe Brown'; 'Mike Mullis';

'Todd Sudduth'; 'Brandon Toney'; '[radwan.haykal@gmail.com](mailto:radwan.haykal@gmail.com)'; 'Radwan Haykal'; 'Bill & Paula Monsarrat'

**Subject:** 9125 Forest Downs

Dear neighbors,

We live at 9125 Forest Downs. That's the lot on the corner with the English Tudor house located on the far east side.

In 2006 we purchased the property with full intention of someday splitting the lot. We were told by Ms. Piper that all we had to do was make an application to the city. We reviewed the city and neighborhood ordinances and that checked out.

In 2006 our side lot was an overgrown thicket full of scrappy trees and underbrush. We have spent 13 years working hard to clean it up.

Our lot is the largest in the neighborhood containing 2.33 acres. Ours is also the only one where the house isn't built in the middle.

Before going through the long and expensive process we went and talked to the 4 neighbors that would be affected the most since their property touches ours (support letters attached). We then contacted an attorney and he said it met all requirements (attached).

In the last year we have had the school, the road widening and other rezoning issues so we understand everyone's concern.

It is the opinion of our family and our adjacent neighbors that "a new \$1,000,000 corner house on 1.25 acres will be a positive for the neighborhood."

Please contact us if you would like to discuss further.

Sincerely,

Mike & Billie Ray

901 277 6376

**LETTER FROM ATTORNEY**

**SCOTT ROSE**  
**700 COLONIAL RD, SUITE 230**  
**MEMPHIS, TN 38117**  
**901-496-6219**  
**901-537-1347 fax**  
**Email: wini.rowan@yahoo.com**

**December 14, 2017**

Michael Ray  
Billie Ray  
9125 Forest Downs  
Germantown, TN 38138

Mr. and Mrs. Michael Ray:

Pursuant to your request of my opinion if you were within your rights to subdivide your current lot at 9125 Forest Downs under the following conditions:

After subdividing your current lot into 2 lots, both lots would still maintain over 1 acre (with new lot approximately 1.25 acres) and,  
The new lot would meet the minimum city of Germantown, RE-1 zoned property requirements of 150 ft. frontage on both sides as well as the minimum 1 acre requirement,

It is my opinion that under the conditions set forth above, that splitting your lot is not in conflict with the current Declaration of Covenants of Forest Hill Woods Subdivision as it pertains to your lot, and that it also meets the minimum requirements of Germantown, RE-1 zoned properties.

Sincerely,

A handwritten signature in black ink, appearing to read 'Scott Rose', with a long horizontal flourish extending to the right.

Scott Rose

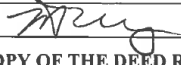


**CITY OF  
GERMANTOWN  
TENNESSEE**

DATE RECEIVED: \_\_\_\_\_  
RECEIVED BY: \_\_\_\_\_

1930 South Germantown Road • Germantown, Tennessee 38138-2815  
Phone (901) 757-7200 Fax (901) 757-7292 www.germantown-tn.gov

**PLANNING COMMISSION  
OFFICIAL APPLICATION FORM**

TYPE OF APPLICATION	
<p><b>(Check <input checked="" type="checkbox"/> all that apply):</b></p> <p><input type="checkbox"/> Sketch Plan;                    <input type="checkbox"/> Preliminary Site Plan;    <input type="checkbox"/> Final Site Plan</p> <p><input type="checkbox"/> Minor Subdivision;            <input type="checkbox"/> Preliminary Plat;        <input type="checkbox"/> Final Plat</p> <p><input type="checkbox"/> Grading/Tree Removal;      <input type="checkbox"/> WTF (Wireless Transmission Facility)</p> <p><input type="checkbox"/> Rezoning From: _____ To: _____</p> <p><input checked="" type="checkbox"/> Other: <u>Resubdivision of an existing lot.</u></p> <p>*****</p> <p><b>IS THIS SITE WITHIN A SMART CODE AREA: (Circle One) YES <input type="radio"/> NO <input checked="" type="radio"/></b></p> <p><small>(Please note - if yes, than follow Smart Code Application Instructions to complete this form for submittal)</small></p>	
<p><b>PLANNED USE DEVELOPMENT'S (PUD) ONLY:</b></p> <p><input type="checkbox"/> PUD Outline Plan (Master Plan);    <input type="checkbox"/> PUD Amendment to Outline Plan;</p> <p><input type="checkbox"/> PUD Preliminary Plan (individual phases);    <input type="checkbox"/> Final Plan (individual phases);</p> <p>Phase: _____ of _____ Date of PUD Outline Plan (Master Plan) Approval: _____</p> <p>Other: _____</p>	
PROJECT INFORMATION <small>(Provide Additional Pages as Needed)</small>	
<p>Project Name: <u>Forest Hill Woods Subdivision - Lot 1</u></p> <p>Address/Location: <u>7125 Forest Downs Road - Germantown, TN 38138</u></p> <p>Project Description: <u>Resubdivision of Lot 1 of Forest Hill Woods Subdivision into lots 1A and 1B</u></p> <p>No. of Acres: <u>2.376</u> Parcel Identification Number(s): <u>G0243YA00001C</u></p> <p><b>PLEASE ATTACH A LETTER EXPLAINING THE PROJECT, IN DETAIL, AND LISTING ALL VARIANCES REQUESTED FROM THE SUBDIVISION AND ZONING REGULATIONS.</b></p>	
PROPERTY OWNER/LESSEE/DEVELOPER INFORMATION <small>(All applicable parties shown below must sign the application)</small>	
<p>Property Owner Name &amp; Title (Print): <u>Michael D. Ray / Billie Ray</u> Address: <u>9125 Forest Downs Rd.</u></p> <p>Phone No.: <u>901.277.6376</u> Email Address: <u>mday63@comcast.net</u></p> <p>Signature of Property Owner _____</p> <p>Lessee Name &amp; Title (Print): <u>NA</u> Address: _____</p> <p>Phone No.: _____ Email Address: _____</p> <p>Signature of Lessee _____</p> <p>Developer Name &amp; Title (Print): <u>SAME AS OWNER</u> Address: _____</p> <p>Phone No.: <u>901.277.6376</u> Email Address: _____</p> <p>Signature of Developer <u></u></p> <p style="text-align: center;"><b>PLEASE ATTACH A COPY OF THE DEED REFLECTING OWNERSHIP OF THE SUBJECT REAL PROPERTY</b></p>	



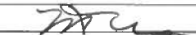
REPRESENTATIVE

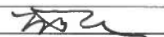
<b>APPLICANT INFORMATION</b>	
Name: <u>Harvey Marcom, P.E.</u>	Title: <u>President</u>
Company Name: <u>The Reaves Firm, Inc.</u>	Address: <u>6800 Poplar Ave. Suite 101</u>
Phone No.: <u>901.761.2016</u>	Email Address: _____
Who will represent this proposal at the Planning Commission meeting (name & title)? <u>Harvey Marcom, P.E. - President - The Reaves Firm, Inc.</u>	
<b>ENGINEER/SURVEYOR INFORMATION</b>	
Engineer Name: <u>The Reaves Firm, Inc.</u>	Address: <u>6800 Poplar Ave. Suite 101</u>
Phone No. <u>901.761.2016</u>	Email Address: <u>jt@reavesfirm.com</u>
Surveyor Name: <u>Mike Frye, RLS</u>	Address: <u>SAME</u>
Phone No.: <u>SAME</u>	Email Address: <u>mfrye@reavesfirm.com</u>

**DISCLOSURE OF OWNERSHIP INTERESTS**

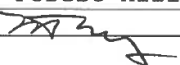
In order to assist staff and appointed and elected officials of the City of Germantown in complying with Ordinances of the City relating to conflicts of interest, the following information is required to be furnished:

- For-Profit Entities.** If the Applicant (including all owners, lessees and developers) submitting this Application ("Applicant") is a for-profit entity, i.e. sole proprietor, general partnership, limited partnership, corporation, limited liability company, RE.I.T., a trust, or any other form of for-profit business entity, the authorized representative of the Applicant must list below the respective names and business or home addresses of all persons or entities which own 10% or more of the ownership interests in the Applicant. (If another business entity owns 10% or more of the ownership interests in the Applicant, all persons owning a 10% or more interest in such last mentioned entity must be identified by name and business or home address.) (If a trust owns a 10% or more interest in the Applicant, all beneficiaries of 10% or more of the trust assets must be identified by name and business or home address.) The amount of ownership interest does not have to be disclosed.

Applicant Name & Title: Michael D. Ray  
Address: 9125 Forest Hill Downs Road Germantown, TN 38138  
Signature of Applicant: 

Property Owner Name & Title: Michael D. Ray  
Address: 9125 Forest Hill Downs Road Germantown, TN 38138  
Signature of Property Owner: 

Lessee Name & Title: NA  
Address: \_\_\_\_\_  
Signature of Lessee: \_\_\_\_\_

Developer Name & Title: Michael D. Ray  
Address: 9125 Forest Hill Downs Road Germantown, TN 38138  
Signature of Developer: 

Persons or Entities Owning 10% or More of the Ownership Interests of the Applicant:

Name	Business <u>or</u> Home Address
_____	_____
_____	_____
_____	_____
_____	_____

#### **4.b. Approval of an Amendment to the Parkland Dedication (Sec. 17-60) Ordinance**

Ms. Goralewski made a presentation of the application to the Planning Commission.

#### **INTRODUCTION:**

Case Number:	18-835A
Applicant Name:	City of Germantown Planning Commission
Request:	Approval of an Amendment to the Parkland Dedication (Sec. 17-60) Ordinance

**ECD CERTIFICATION:** The Director of the Department of Economic and Community Development certifies this application as meeting the terms of the Zoning Ordinance upon which relief is sought.

**ZONING AND ANNEXATION SUBCOMMITTEE REPORT: (DAVID CLARK, CHAIRMAN):** The Subcommittee met on October 17, 2018, and recommended that this item be considered at the regular Planning Commission meeting on November 6, 2018.

**BACKGROUND:** The proposed text amendments to the Subdivision (Chapter 17) ordinance are to more appropriately assess the impact of development projects as related to parkland dedication.

- **Parkland Dedication:** Although all residential projects benefit from parkland, not every residential zoning district requires parkland dedication. Specifically, the current ordinance does not require residential projects in the following zoning districts to assess parkland dedication: retirement housing (R-H) and all SmartCode areas (T3, T4, T4R, T5 and T6). Additionally, parkland dedication fees should be allowed to be used for the purchase and/or capital improvement of any existing or potential parkland location in the city, in accordance with the recently adopted Parks Master Plan. The current ordinance states that fees should be used only in the area in which the development is located.

**DISCUSSION:** In July 2018, Planning Division staff met with the Parks Director to discuss the proposed amendments and a plan to move forward. Since then, Planning Division staff has met with the Parks and Recreation Commission (August 23, 2018) to discuss the proposed amendment language. All are supportive of a proposed text amendment to allow for parkland dedication to apply to all residential projects. The proposed text amendments are on p. 3 of this staff report.

#### **STAFF COMMENTS:**

1. Following recommendation from the Planning Commission, the proposed text amendments will be reviewed by the Board of Mayor and Aldermen for final consideration.
2. The purpose of the text amendments to Chapter 17 (Subdivision) is to require parkland dedication for any residential project, and also to allow the in-lieu fee to be used at any current or potential parkland location in the city.

#### **Board Discussion:**

Chairman Harless asked if there were any questions of staff. There were none.

Chairman Harless asked if there were any questions of the Commissioners. There were none.

Chairman Harless acknowledged that the City was the applicant on this project.

Chairman Harless asked if anyone in the audience would like to speak in favor of this project. There were none.

Chairman Harless asked if anyone in the audience would like to speak against this project.

Pauline Lathram at 6958 Country Road noted I looked at this because I didn't know if it was a tax or fee. I believe this is a fiscal impact fee. I have studied Williamson County's fiscal impact fees for schools, and they are currently in litigation with developers, for the reason that the monies from fiscal impact fee are not being used in the specific neighborhood as the development. I actually went online and found a PowerPoint by TN Recreation and Parks conference, specifically about Parkland Dedication Ordinances. There are specific rules about fiscal impact fees, about Parkland Dedication fees. There are two cases that have constitutional issues about the new parks must be located by the new residential development. The fees collected in the district should be spent in that specific district, and in a timely fashion. My other concern is that the amendment language now identifies the Parks Director as the one reviewing things, and not the Parks and Recreation Commission? Would the Parks Director have more say than the Parks and Recreation Commission?

Ms. Goralewski answered the change in that language is related to who would review the development plans, as related to parkland dedication. The current ordinance says the review of development plans should go to the Parks and Recreation Commission, and then the Parks Director can determine whether or not actual parkland or the dedication fee is needed. The Parks Director would not necessarily have more say, but may have a better idea of where that greatest need would be for the parkland or for the fee may be.

David Harris, City Attorney stated I have been consulting with Mr. Ross. In light of what has been pointed out, I think it might be wise not to take action on this tonight. It would let the city attorney have an opportunity to look at what has been brought before us, and then we could appropriately advise the Planning Commission. There are of course other steps in the ordinance amendment.

Chairman Harless stated this ordinance amendment will be reviewed and tabled for 30 days.

Chairman Harless noted Ms. Pauline Lathram thank you so much for your comments and your research.

**STAFF RECOMMENDATION:** Approval.

**ZONING AND ANNEXATION SUBCOMMITTEE REPORT: (DAVID CLARK, CHAIRMAN):** The Subcommittee met on October 17, 2018, and recommended that this item be considered at the regular Planning Commission meeting on November 6, 2018.

**PROPOSED MOTION:** To approve amendments to the Parkland Dedication (Sec. 17-60) Ordinance, subject to the Commission's discussion, staff comments and conditions in the staff report and documents filed with the application.

**PROPOSED TEXT AMENDMENTS (all changes shown in red):**

**Sec. 17-60. - Parkland.**

(a)*General.* In all residential developments in **any zoning districts, including but not limited to:** AG, R-E-10, R-E, R-E-1, R, R-1, R-2, R-3 and R-T, **R-H, T3, T4, T4R, T5 and T6**, the planning commission and the board of mayor and aldermen shall require dedication to the city, free and clear of all liens and encumbrances, land to be used exclusively as a neighborhood park in the amounts set forth in subsection (b) of this section or, at the city's option, a payment in lieu of dedication according to the formula and in the manner as set forth in subsection (b) of this section, or at the city's option a combination of dedication and payment. Provision for such dedication and/or payment shall be included in the design plans submitted to the planning commission for preliminary approval of such residential development. A copy of the design plans submitted for preliminary approval shall be furnished to **Parks Director** ~~the park and recreation commission~~ at the time such plans are submitted to the planning commission. The ~~parks and recreation commission~~ **Parks**

**Director** shall be given the opportunity to recommend either acceptance of the proposed dedication or payment in lieu of such dedication, or a combination thereof. In no event, however, shall the **Parks Director** ~~park and recreation commission~~ delay the review process of the proposed development, and the **Parks Director** ~~park and recreation commission~~ shall be deemed to have waived its opportunity for such recommendation if such recommendation is not received by the planning commission prior to the date scheduled by the planning commission for preliminary approval of the residential development.

(c) *Payment in lieu of dedication.* Should the formula in subsection (b) of this section result in an amount of land less than one acre, or should the city determine that the proposed dedication, or a portion thereof, is unsuitable for use as parkland for reasons including, but not limited to, size, shape, topography, subsoil's, accessibility, location, utility or compatibility with the master park plan formulated by the park and recreation department (a copy of which is incorporated in this subsection by reference), the city shall require the developer of the residential development to pay to the city prior to execution of the development contract an amount representing the value of the proposed dedication at the time of submission of the design plat as determined by appraised fair market value for the type of development established by a MAI certified appraiser. If the total lots in the development are five or less and, in the opinion of the city, the total parkland cash equivalent will produce a payment of less than \$1,000.00, the developer will pay \$100.00 per lot under this article, and no appraisal will be obtained at cost to the city. Should the developer disagree with the value placed on such parcel by the appraiser, the developer shall have the right to engage additional MAI appraisers at his cost to provide additional appraisals. The city may at its option accept as payment the average value of appraisals so obtained. Any such payments to the city must be made immediately upon execution of the development contract and prior to commencement of any construction, and shall be deposited in a special account segregated from the general funds of the city. They shall be used exclusively, ~~within a reasonable period of time and in any event no more than 12 months following the date of acceptance of the subdivision by the city and release of the bond by the city,~~ for purchase of parkland or capital improvement of **city present** parkland ~~within the park district,~~ as set forth in the parks master plan, ~~in which the development from which such payment is derived is located.~~ The use of such funds shall be deemed to have occurred for the purposes of this subsection (c) upon the initial expenditure of any portion of a payment in lieu of dedication for the purposes set forth in this subsection (c).

**4.c. Approval of Amendments to the Tree Mitigation (Sections 22-107 and 22-108) Ordinance**

Ms. Goralewski made a presentation of the application to the Planning Commission.

**INTRODUCTION:**

Case Number:	18-835B
Applicant Name:	City of Germantown Planning Commission
Request:	Approval of Amendments to the Tree Mitigation (Sections 22-107 and 22-108) Ordinance

**ECD CERTIFICATION:** The Director of the Department of Economic and Community Development certifies this application as meeting the terms of the Zoning Ordinance upon which relief is sought.

**ZONING AND ANNEXATION SUBCOMMITTEE REPORT: (DAVID CLARK, CHAIRMAN):** The Subcommittee met on October 17, 2018, and recommended that this item be considered at the regular Planning Commission meeting on November 6, 2018, per the revisions discussed below.

**REVISIONS:** The Planning Commission considered this item at their regular meeting on October 2, 2018, and requested that it be withdrawn so that Planning Division staff could present an appropriate cap to the tree mitigation payment in-lieu fee. Planning Division staff discussed this request with both the Parks and

Recreation Director and a member of the Tree Board, to provide feedback. In addition to the research already conducted on tree mitigation ordinances that have an in-lieu fee payment option or requirement, namely the cities of Oxford (MS), Chattanooga (TN), Charlotte (NC) and Portland (OR), Planning Division staff also researched the tree ordinances for the cities of Collierville and Bartlett, as well as other payment in-lieu fees in the City of Germantown. Planning Division staff is proposing a recommendation to cap the in-lieu fee at \$200,000, which is consistent with the City of Germantown cap of the payment in-lieu for the public art commitment for new projects per Sec. 23-797(a)(1).

**BACKGROUND:** The proposed text amendments to the Vegetation (Chapter 22) ordinances are to more appropriately assess the impact of development projects as related to tree mitigation.

- **Tree Mitigation:** Per the current ordinance, trees removed as the result of a development project may be mitigated in one of two ways: 1) replacement trees planted on the project site; or 2) replacement trees dedicated to the city to be planted on public land. Often, neither of those options is viable, and a waiver is granted to remove trees without any mitigation. Alternately, the city currently has no tree maintenance and replacement fund for trees on public property. Thus, to address both of these issues, the city would like to create a third tree mitigation option for proposed development projects by establishing a payment in-lieu fee to be assessed, and monies be placed in the future city tree maintenance and replacement fund. (This would also apply to SmartCode projects and smaller lot residential developments where the required number of new trees to be planted per the ordinance may not be feasible.)

**DISCUSSION:** In July 2018, Planning Division staff met with the Parks Director to discuss the proposed amendments and a plan to move forward. In order to understand the process of establishing a tree maintenance and replacement fund, Planning Division staff met with the City Administration, who recommended that staff research the option of amending the vegetation ordinance to allow for a payment in-lieu fee option instead of tree dedication. Since then, Planning Division staff has met with the Tree Board (August 14, 2018), Parks and Recreation Commission (August 23, 2018) and Tree Board Working Group (September 13, 2018), as well as with the Parks Director and the Assistant Public Works Director, to discuss the proposed amendment language. All are supportive of a proposed text amendment to allow for a payment in-lieu fee option for tree mitigation. The proposed text amendments are on p. 3 of this staff report.

**STAFF COMMENTS:**

1. Following recommendation from the Planning Commission, the proposed text amendments will be reviewed by the Design Review Commission, before progressing to the Board of Mayor and Aldermen for final consideration.
2. The purpose of the text amendments to Chapter 22 (Vegetation) is to establish an in-lieu fee tree mitigation option, especially to address pending development projects. In 2019, the Parks and Recreation Department, together with the Economic and Community Development Department, is aiming to analyze and potentially update the complete vegetation ordinance (Chapter 22). At that time, more detailed language related to incentives and credits for saving particular tree species may be explored.
3. Per the recommendation of the Tree Board Working Group, the current replacement ratio of 1” removed: 1” replaced is very challenging to achieve. The Working Group is recommending that consideration be given to amend the ordinance in the future for a ratio of 1” removed: 2” (similar to the Town of Collierville’s tree ordinance).

**Board Discussion:**

Chairman Harless asked if there were any questions of staff. There were none.

Chairman Harless asked if there were any questions of the Commissioners. There were none.

Chairman Harless acknowledged that the City was the applicant on this project.

Chairman Harless asked if anyone in the audience would like to speak in favor of this project. There were none.

Chairman Harless asked if anyone in the audience would like to speak against this project.

Mr. Saunders stated it appears to me this is a more equal way of spreading out the cost; if someone has the opportunity to be able to do something like give trees to Parks and Recreation.

Chairman Harless asked am I correct that in fact this is going to allow us to have more trees in Germantown. It will not only maintain the ones we have to be healthier, but will be able to replace them with the additional funds, if we get funds or unless the developers replace the trees on the development?

Ms. Goralewski answered that is correct. This will give us more flexibility to help us maintain the trees we have and help support the city's tree canopy that we already have. Let's say the Parks Director says we don't need any more trees now on public land. However, a year from now, there is a need for more trees. Under our current ordinance, we have lost our opportunity to use those replacement trees. At the time, when the project was decided on, we had to decide right then whether replacement trees on city property were needed. With this tree mitigation fee, the monies are placed in a fund specifically earmarked for tree replacement and maintenance on city property. The city could then use those funds at a later date, when a need arises.

Chairman Harless asked are we out of space to plant trees on public land now? Do we have any projects now that may be affected by this amendment? For example, do we have a subdivision that's going to cut a lot of trees down and not be able to replace them?

Ms. Goralewski answered I talked to the Assistant Public Works Director, Andy Sanders, as his crew is the ones in charge of maintaining trees on public land. He said right now, they don't have a need for a lot of new trees on city property. Their main concern is having the resources to maintain the existing tree canopy and address any tree hazards. To answer the second part of your question, yes, Goodwin Farms PUD is an example of a development currently in the process, where many trees would be removed and cannot be replanted on site or on public land. So, if certain phases of that development reach final approval, before this amendment passes, then the city would not have the opportunity to mitigate those trees.

Mr. Clark stated correct me if I am wrong, we talked about a number of developments where trees were required and put in the neighborhood between the sidewalk and curb, causing problems with the fire tires like in the Enclave. This is a prime example of where street trees were required and now it's causing a problem. This is so we don't have to shove trees in a neighborhood that they really can't accept them. Their option is to really pay this fee.

Ms. Goralewski answered so again similar to Goodwin Farms PUD, as an example of a development project; they have the option to request a waiver from the Design Review Commission to reduce the number of trees required to mitigate. They can request a waiver from the replanting requirement, and then the trees would not be mitigated. With this amendment, rather than a waiver from replanting the trees to mitigate, the applicant would pay an in-lieu fee, instead of trying to squeeze as many trees on lots as possible to mitigate those taken out with development, and those new trees could create problems for utilities and other infrastructure.

Mr. Bennett stated what I understand under our current ordinance is if you remove 100 trees, you are supposed to put 100 trees back. If it turns out they only put back 50 trees, because of spacing with no room onsite; do they go to option 2, assuming the City would take those 50 trees and buy them and donate those to the City. If the City can't take those, is that when a developer can actually benefit from not paying for an additional 50 trees, correct?

Ms. Goralewski answered that is correct. Under the current ordinance, if trees cannot be mitigate on the development project site, or on city property, then the tree mitigation requirement is often waived, and developers do benefit from not having to mitigate trees removed through development. In terms of the number of trees required to replace, it's based on the caliper inches (at diameter breast height) of trees removed. For example, if you remove 100 inches, then you have to replace that amount back.

Pauline Latham at 6958 Country Road I think it's a great idea how the funds are setup. I have an issue with the

\$200,000 maximum. I don't know what the amount should be, but what I can't figure out is why it should be a fixed amount instead of per acre amount? Why would someone developing a 75 acre lot have the same maximum fee as someone developing a 5 acre lot? When you talked about maintaining current trees, that doesn't have anything to do with saving our trees directly. I don't want to put any of the city's normal expenses into this fund. I want to make sure this fund will be spent to save trees. For example, I don't think cleaning up tree debris and damage after a storm is really an appropriate thing to do.

Chairman Harless noted Ms. Latham had some good comments. However, I can state a lot of questions were asked in our Planning Commission Executive meeting where we talked about making sure that the money was kept in this separate fund and used only for trees and maintaining the tree canopy we have in Germantown.

**STAFF RECOMMENDATION:** Approval.

**ZONING AND ANNEXATION SUBCOMMITTEE REPORT: (DAVID CLARK, CHAIRMAN):** The Subcommittee met on October 17, 2018, and recommended that this item be considered at the regular Planning Commission meeting on November 6, 2018, per the revisions discussed.

**PROPOSED MOTION:** To approve amendments to the Tree Mitigation (Sections 22-107 and 22-108) Ordinances, subject to the Commission's discussion, staff comments and conditions in the staff report and documents filed with the application.

**MAIN MOTION:** Mr. Clark moved to approve amendments to the Tree Mitigation (Sections 22-107 and 22-108) Ordinances, subject to the Commission's discussion, staff comments and conditions in the staff report and documents filed with the application, seconded by Mr. Bennett.

Chairman Harless asked for a roll call.

**Roll Call:** Hicks – yes; Saunders – yes; Hernandez – absent; Bacon – absent; Harless – yes; Owens – yes; Clark – absent; Bennett – yes; Palazzolo - absent. **The motion passed.**

Mr. Bacon voted yes; I would like to commend the staff with this tremendous amount of work and effort over a lengthen period of time. I'm glad we finally have clarity.

Mr. Bennett voted yes; I echo Mr. Bacon comments.

Chairman Harless voted yes; I think this is an excellence change to the ordinance. I know it took a long time to get there; it went through a lot of variations and steps. Congratulations to staff for all their hard work.

Chairman Harless said the motion passes.

**PROPOSED TEXT AMENDMENTS (all changes shown in red):**

**Sec. 22-107. - Commercial, office, multifamily and institutional properties.**

(a) *Compliance with other city standards/ordinances.* Trees shall be preserved, planted and maintained in accordance with the design standards contained in the zoning chapter and the design guidelines contained in the Design Review Manual, the provisions of both, as the same may change from time to time, which are hereby adopted by reference.

(b) *Effect of development plan.* The tree planting and tree protection requirements contained in an approved development plan shall continue in perpetuity or until an amendment to the plan is duly authorized.

(c) *Replacement requirements/dedication of off-site trees.* Any tree removed from an approved development shall be replaced at a ratio equal to the number of inches contained in the diameter of the tree removed. For example, if a 24-inch tree is removed; eight trees with a DBH of three inches will be required to replace the tree which was removed. If the owner cannot accommodate the replanting of such replacement trees on the subject tract, the owner shall be required to dedicate the required replacement trees to a public property approved by the parks and recreation department, **or to pay an in-lieu fee to the city's tree maintenance and**



replacement fund, subject to approval by the Design Review Commission.

i. Should the city choose to require an in-lieu fee payment instead of tree dedication, the fee shall be calculated as follows:  $A$  (total DBH of trees removed) x  $B$  (the current market rate cost of a typical 3" DBH caliper tree, type and cost determined by the Parks Director (or designee) and/or Economic and Community Development Director (or designee), broken down by inch) = in-lieu fee to be paid, with a cap of \$200,000. (A lesser cap to the in-lieu fee may be considered, at the discretion of the Design Review Commission, if the owner is proposing to retain trees of significant size and species and/or if the trees being removed are unhealthy or of a less significant species. In this case, an independent arborist report shall be required, at the applicant's expense.) The in-lieu fee payment shall be collected prior to approval by the Board of Mayor and Aldermen of the development contract for the project.

(d) *Minimum number of trees required.* Within all commercial, office or multifamily and institutional developments, there shall be a minimum of one tree for each 800 square feet of required open space area. Should the property not be able to accommodate the minimum number of trees, the property owner or developer may request to the Design Review Commission to pay an in-lieu fee to the city's tree maintenance and replacement fund (per Sec. 22-107(c)(i)).

(e) *Design review commission requirements.* Notwithstanding the other provisions of this section, the design review commission may require more or fewer trees to be planted, based on peculiar conditions of a specific development.

(Code 1986, § 23-7.1; Ord. No. 2005-4, 2-28-05)

#### **Sec. 22-108. - Single-family residential properties.**

(a) *Compliance with other city standards/ordinances.* Trees shall be preserved, planted and maintained in accordance with any design standards contained in any residential zoning district and any applicable design guidelines contained in the Design Review Manual, the provisions of both, as the same may change from time to time, which are hereby adopted by reference.

(b) *Effect of development plan.* The tree planting and tree protection requirements contained in an approved development plan shall continue in perpetuity or until an amendment to the plan is duly authorized.

(c) *Replacement requirements/dedication of off-site trees.* Any tree removed from an approved development prior to recording a subdivision plat shall be replaced at a ratio equal to the number of inches contained in the diameter of the tree removed. For example, if a 24-inch tree is removed; eight trees with a DBH of three inches will be required to replace the tree which was removed. If the owner cannot accommodate the replanting of such replacement trees on the subject tract, the owner shall be required to dedicate the required replacement trees to a public property approved by the parks and recreation department, or to pay an in-lieu fee to the city's tree maintenance and replacement fund, subject to approval by the Design Review Commission.

i. Should the city choose to require an in-lieu fee payment instead of tree dedication, the fee shall be calculated as follows:  $A$  (total DBH of trees removed) x  $B$  (the current market rate cost of a typical 3" DBH caliper tree, type and cost determined by the Parks Director (or designee) and/or Economic and Community Development Director (or designee), broken down by inch) = in-lieu fee to be paid, with a cap of \$200,000. (A lesser cap to the in-lieu fee may be considered, at the discretion of the Design Review Commission, if the owner is proposing to retain trees of significant size and species and/or if the trees being removed are unhealthy or of a less significant species. In this case, an independent arborist report shall be required, at the applicant's expense.) The in-lieu fee payment shall be collected prior to approval by the Board of Mayor and Aldermen of the development contract for the project.

(d) *Minimum number of trees required.* Within the required front yard of property to be used for single-family residential use, there shall be required a minimum of two trees with a DBH of two inches minimum, which shall be installed and inspected prior to final inspection and approval of the residence. Should the property not be able to accommodate the minimum number of trees, the property owner or developer may request to the Design Review Commission to pay an in-lieu fee to the city's tree maintenance and replacement fund (per Sec. 22-107(c)(i)).

**4.d. Approval of Amendments to the Wireless Transmission Facility (Sec. 23-86) Ordinances**

Ms. Pounder made a presentation of the application to the Planning Commission.

**INTRODUCTION:**

Case Number: -840  
Applicant Name: y of Germantown  
Request: Approval of Amendments to the Wireless Transmission Facility (Sec. 23-86) Ordinances

**ECD CERTIFICATION:** The Director of the Department of Economic and Community Development certifies this application as meeting the terms of the Zoning Ordinance upon which relief is sought.

**BACKGROUND:** An application for a zoning text amendment has been filed at the request of the Planning Commission to update the language in the City Code in accordance with Section 23-67(a), which states “the board of mayor and aldermen may amend the regulations, restrictions, boundaries or any provision of this chapter. A member of the board of mayor and aldermen, the planning commission or any other citizen of the city may present a petition to the board of mayor and aldermen requesting an amendment to this chapter”. The specific propose of this text amendments to the Chapter 23-86 (Wireless Transmission Facility) of the City’s Code of Ordinances is to update the existing regulations pertaining to review and processing of Wireless Transmission Facility (WTF), which addresses changes recently adopted by the Federal Communication Commission (FCC) and the State Legislative Bodies (Public Charter No. 819).

**DISCUSSION:** The approval of these proposed text amendments will make two specific changes to the existing review process of WTF as follows:

The first change will allow for the administrative review and approval of minor modifications to existing WTF, including co-locations and replacement or addition of new equipment. Although the zoning ordinance allows for the approval of WTF co-locations and the replacement or addition of new equipment by service providers on existing towers via a streamlined approval process, that process includes the final approval of the Board of Mayor and Alderman. In order to adhere to the FCC regulations which require that minor modifications to existing WTF be reviewed administratively within a 90 day shot clock window, it is recommended that final approval for these types of changes be by the Director of Economic and Community Development or his designee. The approval of this amendment will reduce the approval process time for most of these minor modifications to approximately half of the time currently required by the FCC regulations.

The purpose of the second text amendment is to establish policies and procedures for the placement of small cell wireless facilities in the public rights-of-way within the City's jurisdiction in response to the State Legislative adoption of Public Charter No. 819 known as the “Competitive Wireless Broadband Investment, Deployment, and Safety Act of 2018.” The staff has worked with the City Attorney, Information Technology and outside wireless service provider to prepare an ordinance amendment that addresses the concerns of allowing this new technology within public rights-of-way as well as created a process for review of these new small cell facilities on private property, that adheres to the regulations and guideline established by the new state legislation.

**STAFF COMMENTS:**

1. Following a recommendation from the Planning Commission, the proposed text amendments will progress to the Board of Mayor and Aldermen for final consideration.

2. These proposed amendments will create a streamline review process for minor modifications to existing wireless transmission facilities that are consistent with the currently adopted FCC regulations.
3. These proposed amendments will create a new process for reviewing and approving new small wireless cell facilities in accordance with requirements recently adopted by the State of TN and the FCC. The regulations will also allow the City of Germantown to maintain some control, where applicable, on the placement of these new facilities within the public row.
4. A new application form has been created to facilitate the review of new small wireless cell facilities within the City. (Include with the web packets for this item)
5. An addendum to the existing DRC Manual is currently being prepared that will provide some design guidelines for small cell facilities to assist in preserving the existing aesthetics of the city as allowed by state law.

### **Board Discussion:**

Mr. Bacon stated the facilities can vary in size, is that correct? There will be conditions where it could be constructed in the right of way completely separate from the traffic light mast arm, is that correct? So we won't have any control? But we will still have the tall towers?

Ms. Pounder stated the small cells can vary in size and appearance. They can be attached to stop signs, mast arms of traffic lights, and any other type of structure that are already in the public right of way. We already have guidelines for the city mast arms and the street lights in residential areas. We can also require attachments to those types of poles according to the city's design standards. Yes, new, stand alone poles can be installed. We can look at what color the stand-alone small cell poles are going to be in relationship to what's around it. If it's close to a mast arm or a light pole we can require them to be very similar. But if we do not have an ordinance with an aesthetic plan in place, then we cannot require the providers to make those types of design changes. We are very limited on what our scope of proposed changes can be. We already have some design standards on the books, for example with the mast arms; we basically can add other aesthetic standards for small cell facilities to it. We the city has very minimal control over small cell facilities, per state legislation. This ordinance would grant us what little control allowed under the state law. MLGW is in conversation with some of the carriers, to attach small cell facilities to existing MLGW poles, but we don't know the results of that conversation at this point in time.

Chairman Harless asked what the benefit for these new small transmission units will be. How does that work with putting a pole in front of someone's house and us not having any control over it?

Ms. Pounder stated the benefit is they're now rolling out 5G. Because of the amount of cellular and data usage, we will now have faster transmission. These small cell facilities will work with larger cell towers. Hopefully, here in the City, you will have better reception. We don't know where the locations will be yet. If it meets the Federal FCC and State requirements, we will not have any control over whether or not that pole can go in a location. We will have to keep up with where the poles are located so we are making sure whatever goes in is put in the right location, so that they are not too intrusive in the neighborhoods. We have little control; it depends on spacing and where the macro towers are located and the coverage that needed in that area. There is also a height limitation; most of these small cell poles can be approximately 50 feet tall maximum. But they can go 10 feet above that, depending on what is surrounding them.

Chairman Harless asked if a carrier said we want to put a 50 foot pole in front of Mr. Bacon's house in the Enclave. Can we say this area is okay, but we want you to put it in the back of his yard or in the greenway? So our option tonight is to not approve this ordinance, which doesn't allow us much control?

Ms. Pounder answered, no sir. We can ask the carriers to consider that, but we cannot require it. If you do not approve this ordinance tonight, the carriers will still be able to come into the City and place those poles where they want.

**STAFF RECOMMENDATION:** Approval.

**ZONING AND ANNEXATION SUBCOMMITTEE: (DAVID CLARK, CHAIRMAN)**

The Subcommittee met on October 17, 2018, and recommended that this item be considered at the regular Planning Commission meeting on November 6, 2018

**PROPOSED MOTION:** To approve two (2) text amendments to the Wireless Transmission Facilities (Sec. 23-86) Ordinance, subject to the Commission's discussion, staff comments and conditions in the staff report and documents filed with the application.

**MAIN MOTION:** Mr. Clark moved to approve two (2) text amendments to the Wireless Transmission Facilities (Sec. 23-86) Ordinance, subject to the Commission's discussion, staff comments and conditions in the staff report and documents filed with the application, seconded by Mr. Bennett.

Chairman Harless asked for a roll call.

**Roll Call:** Hicks – yes; Saunders – yes; Hernandez – absent; Bacon – absent; Harless – yes; Owens – yes; Clark – absent; Bennett – yes; Palazzolo - absent. **The motion passed.**

Mr. Bacon noted Ms. Pounder has done a lot of research very quickly; this is going to impact the City. These applicants vary dramatically, and I'm voting yes because we as the City need to do everything we can to try and maintain as much control as possible.

Mr. Bennett voted reluctantly yes; I don't want to approve this, but we don't have much choice.

Mr. Clark voted reluctantly yes; I agree with the former commissioners' comments on this.

Mr. Saunders voted yes; I agree with the former commissioners' comments on this. Based on looking at some of reasons on why we are going to a 5G network such as to support the first responder capability. I'm sure that has something to do with some of the laws that are being dictated to us.

Chairman Harless voted yes; I think our community has bad spots in it as we all know, and for first responder and emergency calls we need the coverage. I think these new small cells will provide that. As the former commissioners mention, I hate to have somebody dictate to us what's going to happen in our community, but our hands are tied.

Chairman Harless said congratulations and the motion passes.

**PROPOSED TEXT AMENDMENTS**

**(UNDERLINED and ~~STRIKETHROUGH~~ text refers to amendments to Chapter 23 Article II of the ordinance.)**

**SECTION 23-86. - Wireless Transmission Facilities.**

**(C) Process**

- (1) The use of land for the shared use of wireless transmission facilities where an approved wireless transmission facility, under contract with the city, exists on public or private property, and is not located within an existing power transmission line tower, shall be permitted in the agricultural, residential and commercial districts; provided, however, that no building permit shall be issued or construction initiated without the administrative review and approval of the department of community development, ~~and the review and approval of the board of mayor and aldermen;~~ and that the other requirements set forth in this division are met. All wireless transmission facilities shall be subject to the technical and development standards of this chapter, to the minimum standards in the

zoning district in which the wireless transmission facility is located, and to such additional conditions that the department of community development and the board of mayor and aldermen may require in order to preserve and protect the character of the district in which the proposed use is located.

- (2) Any request to modify any Existing Facility shall be administratively reviewed and approved by the department of community development within 90 days of a submitted application being deemed as a complete submission to the City, subject to the following criteria:
- (a) Such request is for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station that involves:
- Collocation of new transmission equipment;
  - Removal of transmission equipment; or
  - Replacement of transmission equipment.
- (b) No building permit shall be issued or construction initiated without the administrative review and approval of the department of community development; and that the other requirements, as applicable, set forth in this division are met. All wireless transmission facilities shall be subject to the technical and development standards of this chapter, to the minimum standards in the zoning district in which the wireless transmission facility is located, and to such additional conditions that the department of community development may require in order to preserve and protect the character of the district in which the proposed use is located.
- (3) If, upon review of a wireless transmission facility submitted under subsections (c)(2)—(c)(3) of this section, and the director of ~~commercial~~ community development determines that additional review is necessary to completely evaluate the proposed facility, the director of commercial development may defer the facility to the full process of review under Subsection (c)(1) of this section.

**(All text below is to be added as a new amendment to Chapter 23, Article II, Section 23-86)**

#### **(n)-Small Wireless Facilities**

##### **Section 1- Purpose and Scope**

- (A) Purpose. The purpose of this amendment is to establish policies and procedures for the placement of small wireless facilities in the public rights-of-way within the City's jurisdiction, which will provide public benefit consistent with the preservation of the integrity, safe usage, and visual qualities of the City's rights-of-way and to the City as a whole.
- (B) Intent. In enacting this Chapter, the City is establishing uniform standards to address issues presented by small wireless facilities, including without limitation, to:
- (1) Prevent interference with the use of streets, sidewalks, alleys, parkways and other public ways and places;
  - (2) Prevent the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;
  - (3) Prevent interference with the facilities and operations of facilities lawfully located in public rights-of-way or public property;
  - (4) Protect against environmental damage, including damage to trees;
- Preserve the character of the neighborhoods in which facilities are installed; and
- (5) Facilitate rapid deployment of Small Wireless Facilities to provide the benefits of advanced wireless services.
- (C) Conflicts with Other Sections or Laws. This Section supersedes all Sections or parts of Sections adopted prior hereto that are in conflict herewith, to the extent of such conflict. In the event of any conflict between a provision hereof and a provision of T.C.A. §13-24-101 et. seq., the provision of such state statute shall control.

##### **Section 2 - Definitions**

- (A) **“Aesthetic plan”** means any publicly available written resolution, regulation, policy, site plan, or approved plat establishing generally applicable aesthetic requirements within the authority or

designated area within the authority. An aesthetic plan may include a provision that limits the plan's application to construction or deployment that occurs after the adoption of the aesthetic plan. For purposes of this part, such a limitation is not discriminatory as long as all construction or deployment occurring after adoption, regardless of the entity constructing or deploying, is subject to the aesthetic plan.

- (B) "**Antenna**" means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.
- (C) "**Annual Lease Fee**" means the fee due to the City for the reimbursement for the installation of a Small Wireless Facility on City property irrespective of whether the property is owned, leased, or within the public right-of-way. Each installation/spot requires a separate Annual Lease Fee.
- (D) "**Applicant**" means any person who submits an application pursuant to this part.
- (E) "**Application**" means a request submitted by an applicant to an authority:
  - (1) For a permit to deploy or collocate small wireless facilities in the ROW; or
  - (2) To approve the installation or modification of a PSS associated with deployment or collocation of small wireless facilities in the ROW.
- (F) "**Authority**" means:
  - (i) Within a county and outside a municipal boundary, the county; or
  - (ii) Upon state-owned property, the state.
  - (1) "Authority" does not include a government-owned electric, gas, water, or wastewater utility that is a division of, or affiliated with, a municipality, metropolitan government, or county for any purpose of this part, and the decision of the utility regarding a request to attach to or modify the plant, facilities, or equipment owned by the utility shall not be governed by this part;
    - (i) Within a municipal boundary, the municipality, regardless of whether such municipality is a metropolitan government.
- (G) "**Authority-owned PSS**" means a PSS owned by an authority but does not include a PSS owned by a distributor of electric power, regardless of whether an electric distributor is investor-owned, cooperatively-owned, or government-owned;
- (H) "**City**" means City of Germantown, Tennessee.
- (I) "**Collocate**," "**collocating**," and "**collocation**" mean, in their respective noun and verb forms, to install, mount, maintain, modify, operate, or replace small wireless facilities on, adjacent to, or related to a PSS. "Collocation" does not include the installation of a new PSS Wireless Support Structure or replacement of authority-owned PSS or Wireless Support Structure;
- (J) "**Communications facility**" means the set of equipment and network components, including wires and cables and associated facilities, used by a communications service provider to provide communications service;
- (K) "**Communications service**" means cable service as defined in 47 U.S.C. § 522(6), telecommunications service as defined in 47 U.S.C. § 153(53), information service as defined in 47 U.S.C. § 153(24) or wireless service;
- (L) "**Communications service provider**" means a cable operator as defined in 47 U.S.C. § 522(5), a telecommunications carrier as defined in 47 U.S.C. § 53(51), a provider of information service as defined in 47 U.S.C. § 153(24), a video service provider as defined in § 7-59-303, or a wireless provider;
- (M) "**Day**" means calendar day.
- (N) "**Fee**" means a one-time, nonrecurring charge;
- (O) "**Local authority**" means an authority that is either a municipality, regardless of whether the municipality is a metropolitan government, or a county, and does not include an authority that is the state;
- (P) "**Micro wireless facility**" means a small wireless facility that:
  - (1) Does not exceed twenty-four inches (24") in length, fifteen inches (15") in width, and twelve inches (12") in height; and
  - (2) The exterior antenna, if any, does not exceed eleven inches (11 ") in length;
- (Q) "**Permittee**" means an Applicant who is party to an Application and/or has been granted a Permit.
- (R) "**Person**" means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including an authority;

- (S) **"Potential support structure for a small wireless facility" or "PSS"** means a pole or other structure used for wire line communications, electric distribution, lighting, traffic control, signage, or a similar function, including poles installed solely for the collocation of a small wireless facility. When "PSS" is modified by the term "new," then "new PSS" means a PSS that does not exist at the time the application is submitted, including, but not limited to, a PSS that will replace an existing pole. The fact that a structure is a PSS does not alone authorize an applicant to collocate on, modify, or replace the PSS until an application is approved and all requirements are satisfied pursuant to this part;
- (T) **"Rate"** means a recurring charge;
- (U) **"Residential neighborhood"** means an area within a local authority's geographic boundary that is zoned or otherwise designated by the local authority for general purposes as an area primarily used for single-family residences and does not include multiple commercial properties and is subject to speed limits and traffic controls consistent with residential areas;
- (V) **"Right-of-way" or "ROW"** means the space, in, upon, above, along, across, and over all public streets, highways, avenues, roads, alleys, sidewalks, tunnels, viaducts, bridges, skywalks under the control of the City, and any unrestricted public utility easement established, dedicated, platted, improved, or devoted for utility purposes and accepted as such public utility easement by the authority, but excluding lands other than streets that are owned by the City.
- (W) **"Right-of-Way Use Permit" or "Permit"** means an excavation/road bore permit from the city for excavation of a street for the construction or installation of fiber optic cable, conduit, and associated equipment in the Right-of-Way.
- (X) **"Small wireless facility"** means a wireless facility with:
- (1) An antenna that could fit within an enclosure of no more than six (6) cubic feet in volume; and
  - (2) Other wireless equipment in addition to the antenna that is cumulatively no more than twenty-eight (28) cubic feet in volume, regardless of whether the facility is ground-mounted or pole-mounted. For purposes of this subdivision (T)(1)(ii), "other wireless equipment" does not include an electric meter, concealment element, telecommunications demarcation box, grounding equipment, power transfer switch, cut-off switch, or a vertical cable run for the connection of power and other services.
  - (3) "Small wireless facility" includes a micro wireless facility.
- (Y) **"Utility Pole"** means a pole or similar structure that is used in whole or in part for the purpose of carrying electric distribution lines or cables or wires for telecommunications, cable or electric service, or for lighting, traffic control, signage, or a similar function regardless of ownership, including City-owned/leased poles. Such term shall not include structures supporting only Wireless Facilities.
- (Z) **"Wire line backhaul facility"** means a communications facility used to transport communications services by wire from a wireless facility to a network.
- (AA) **"Wireless facility"** means equipment at a fixed location that enables wireless communications between the user equipment and a communications network, including:
- (1) Equipment associated with wireless communications; and
  - (2) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration;
  - (3) "Wireless facility" does not include:
    - (i) The structure or improvements on, under, or within which the equipment is collocated;
    - (ii) Wire line backhaul facilities; or
    - (iii) Coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.
- (BB) **"Wireless facility"** includes small wireless facilities.
- (CC) **"Wireless Infrastructure Provider"** means any person, including a person authorized to provide telecommunications service in the state, that builds or installs wireless communication transmission equipment, Wireless Facilities or Wireless Support Structures, but that is not a Wireless Services Provider.
- (DD) **"Wireless provider"** means a person who provides wireless service.
- (EE) **"Wireless services"** means any service using licensed or unlicensed spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public.

- (FF) **"Wireless Support Structure"** means a freestanding structure, such as a monopole; tower, either guyed or self-supporting; or, other existing or proposed structure designed to support or capable of supporting Wireless Facilities. Such term shall not include a utility pole.

### **Section 3 - Right-of-Way Use Permit**

- (A) No Person which has been issued a Right-of-Way Use Permit by the City may construct, install, and/or operate Wireless Facilities that occupy the Right-of-Way without first obtaining approval of a Small Wireless Application from the City. Any Right-of-Way Use Permit shall be reviewed, issued, and administered in a non-discriminatory manner; shall be subject to such reasonable conditions as the City may from time to time establish for effective management of the Right-of-Way, and otherwise shall conform to the requirements of this Section and applicable law.
- (B) A Right-of-Way Use approval for new utility installation pursuant to Section 19-105 is required prior to the issuance of a Right-of-Way Use Permit under this Chapter.
- (C) A Right-of-Way Use Permit shall provide for the Annual Lease Fee, which shall be due January 1 of each year of the Agreement. The initial Annual Lease Fee payment shall be due upon approval of the Right-of-Way Use Permit.
- (D) Insurance. Each Permittee shall, at all times during the entire term of the Right-of-Way Use Agreement, maintain and require each contractor and subcontractor to maintain insurance with a reputable insurance company authorized to do business in the State of Tennessee and which has an A.M. Best rating (or equivalent) no less than "A" indemnifying the City from and against any and all claims for injury or damage to persons or property, both real and personal, caused by the construction, installation, operation, maintenance or removal of Permittee's Wireless Facilities in the Rights-of-Way. The amounts of such coverage shall be not less than the following:
- (1) Worker's compensation and employer's liability insurance. Tennessee statutory requirements.
  - (2) Comprehensive general liability. Commercial general liability occurrence form, including premises/operations, independent contractor's contractual liability, product/completed operations; X, C, U coverage; and personal injury coverage for limits as specified in Appendix A - Comprehensive Fees and Penalties but in no case less than one million dollars (\$1,000,000) per occurrence, combined single limit and two million dollars (\$2,000,000) in the aggregate.
  - (3) Commercial Automobile liability. Commercial automobile liability coverage for all owned, non-owned and hired vehicles involved in operations under this Article XII for limits as specified in Appendix A- Comprehensive Fees and Penalties but in no case less than one million dollars (\$1,000,000) per occurrence combined single limit each accident.
  - (4) Commercial excess or umbrella liability. Commercial excess or umbrella liability coverage may be used in combination with primary coverage to achieve the required limits of liability.
- (E) The City shall be designated as an additional insured under each of the insurance policies required by this section except worker's compensation and employer's liability insurance. The permittee shall not cancel any required insurance policy without obtaining alternative insurance in conformance with this section. The permittee shall provide the City with at least thirty (30) days' advance written notice of any material changes or cancellation of any required insurance policy, except for non-payment of the premium of the policy coverage.
- (F) The permittee shall impose similar insurance requirements as identified in this section on its contractors and subcontractors.
- (G) Indemnification. Each Permittee, its consultant, contractor, and subcontractor, shall, at its sole cost and expense, indemnify, defend and hold harmless the City, its elected and appointed officials, employees and agents, at all times against any and all claims for personal injury, including death, and property damage arising in whole or in part from, caused by or connected with any act or omission of the Permittee, its officers, agents, employees or contractors arising out of, but not limited to, the construction, installation, operation, maintenance or removal of Permittee's Wireless System or Wireless Facilities in the Rights-of-Way. Each Permittee shall defend any actions or proceedings against the City in which it is claimed that personal injury, including death, or property damage was caused by the Permittee's construction, installation, operation, maintenance or removal of Permittee's Wireless System or Wireless Facilities in the Rights-of-Way. The obligation to indemnify, hold harmless and defend shall include, but not be limited to, the obligation to pay judgments, injuries, liabilities, damages, reasonable attorneys' fees, reasonable expert fees, court costs and all other reasonable costs



of indemnification.

- (H) A Permittee desiring to renew a Right-of-Way Use Permit prior to the expiration of the Agreement and/or Permit shall file an Application with the City for renewal of its authorization, which shall include the information and documents required for an initial Application and other material information reasonably required by the City Engineer, or his or her designee.
- (I) The City shall make a determination accepting or denying the renewal Application in writing to the Permittee.
- (J) A valid Right-of-Way Use Permit is required to obtain an Approval for the installation of Small Cell Wire Facilities, Poles, and associated equipment.
- (K) The City shall timely process any renewal Application provided that (i) Permittee is not then in material default under any provision of the Right-of-Way Use Permit, or in material non-compliance with this Chapter, and (ii) has otherwise satisfactorily performed all of its obligations under the Right-of-Way Use Permit, and this Chapter during the expiring term. In the event the City elects not to renew, it shall provide a written basis for such non-renewal. Determinations to grant or deny a renewal application shall be made on a nondiscriminatory and competitively neutral basis. The City shall not unreasonably delay, condition, withhold or deny the issuance of a renewal Right-of-Way Use Permit.
- (L) As-built maps. As the City controls and maintains the Right-of-Way for the benefit of its citizens, it is the responsibility of the City to ensure that such public Right-of-Way meets the highest possible public safety standards. Upon request by the City and within thirty (30) days of such a request, a Permittee shall submit to the City Engineer (or shall have otherwise maintained on file with the Department) as-built maps and engineering specifications depicting and certifying the location of all its existing Small Wireless Facilities within the Right-of-Way, provided in standard electronic or paper format in a manner established by the Director of Engineering, or his or her designee. Such maps are, and shall remain confidential documents and are exempt from public disclosure under the Tennessee Open Records Act (Tenn. Code Ann. §10-7-101 *et seq.*) to the maximum extent of the law. After submittal of the as-built maps as required under this section, each Permittee having Small Wireless Facilities in the City Right-of-Way shall update such maps as required under this chapter upon written request by the City.
- (M) Right to inspect. With just and reasonable cause the City shall have the right to inspect all of the Small Wireless Facilities, including aerial facilities and underground facilities, to ensure general health and safety with respect to such facilities and to determine compliance with the terms of this Chapter and other applicable laws and regulations. Any Permittee shall be required to cooperate with all such inspections and to provide reasonable and relevant information requested by the City as part of the inspection.
- (N) Transitional provisions.
  - (1) Persons already authorized to use the Right-of-Way. Any Wireless Provider and/or entity holding a permit or other authorization from the City to own, construct, install, operate, and/or maintain Wireless Facilities in the Right-of-Way to provide services may continue to conduct those activities expressly authorized until the earlier of the following: i) the conclusion of the present term of its existing authorization, or ii) 180 days after the effective date of this Chapter. Notwithstanding the foregoing, any such Person shall apply for a superseding Right-of-Way Use Permit pursuant to this Chapter within 90 days after the effective date of the Chapter and shall be subject to the terms and conditions of this Chapter. Upon such Application, such Person shall be allowed to continue to own, operate and/or maintain its Wireless Facilities in the Right-of-Way until such Right-of-Way Use Permit becomes effective.
  - (2) Operating without Right-of-Way Use Authorization. Any Person that owns or operates any Wireless Facilities currently located in the Right-of-Way, the construction, operation, or maintenance of which is not currently authorized but is required to be authorized under this Chapter, shall have ninety (90) days from the effective date of this Chapter to apply for a Right-of-Way Use Permit. Any Person timely filing such an Application shall not be subject to penalties for failure to hold a Right-of-Way Use Permit, provided that said Application remains pending. Nothing herein shall relieve any Person of any liability for its failure to obtain a Right-of-Way Use Permit or other authorization required under other provisions of this Chapter or City ordinances or regulations, and nothing herein shall prevent the City from requiring removal of any Wireless Facilities

installed in violation of this Chapter or City ordinances or regulations.

#### **Section 4 - Small Wireless Facility Application and Fees**

- (A) Permitted Use. Collocation of a Small Wireless Facility or installation of a new, replacement, or modified Utility Pole or Wireless Support Structure for the collocation of a Small Wireless Facility shall be a permitted use, subject to the restrictions in this Chapter.
- (B) Requirements. No person shall place a Small Wireless Facility in the Rights-of- Way, without first filing and receiving approval of a Small Cell Facility Application and a Right-of-Way Use Permit, except as otherwise provided in this Chapter.
- (C) Small Wireless Facilities Applications. All Applications for Small Wireless Facilities filed pursuant to this Chapter shall be on a form or paper provided by the City. The Applicant may designate portions of its Application materials that it reasonably believes contain proprietary or confidential information as "proprietary" or "confidential" by clearly marking each page of such materials accordingly.
- (D) Application Requirements. The Application shall be made by the Wireless Provider or its duly authorized representative on forms, paper or electronic, and in such number as required by the City of Germantown in accordance with applicable State legislation.
- (E) Information Updates. Any amendment to information contained in a Permit Application shall be submitted in writing to the City within ten (10) days after the change necessitating the amendment.
- (F) Application Fees. Unless otherwise provided by law, all Agreement and Permit Applications for Small Wireless Facility pursuant to this Section shall be accompanied by a fee for actual, direct, and reasonable costs incurred by the City related to processing the application and inspection, in the amount specified in Annual General Fund Revenue Schedule as adopted by the City in accordance with applicable State legislation.
- (G) The City shall review the Application in light of its conformity with applicable regulations of this Section, and shall issue a Permit on nondiscriminatory terms and conditions subject to the following requirement:
  - (1) The City must advise the Applicant in writing of its final decision, and in the final decision document, the basis for a denial, including specific code provisions on which the denial was based, and send the documentation to the Applicant on or before the day the City denies the Application. The Applicant may cure the deficiencies identified by the City and resubmit the Application within thirty (30) days of the denial without paying an additional Application Fee. The subsequent review by the City shall be limited to the deficiencies cited in the original denial.
- (H) An Applicant seeking to construct, modify or replace a network of Small Wireless Facilities may submit a consolidated Permit Application and receive a single Permit for the installation of multiple Small Wireless Facilities as approved in their Small Wireless Facilities Application. The City, at its discretion, may issue a single permit for each location to facilitate the timely installation, inspection, and documenting of installed facilities. The City's denial of any site or sites within a single Permit Application shall not affect the validity of other sites submitted in the same Application and the City shall grant Permit(s) for all sites approved in the Small Wireless Facilities Application to facilitate the timely installation, inspection, and documenting of installed facilities.

#### **Section 5 -Facilities in the ROW; Maximum Height; Other Requirements**

- (A) Unless otherwise determined by City staff, in an attempt to blend into the built environment, all Small Wireless Facilities, new or modified Utility Poles, Wireless Support Structures for the Collocation of Small Wireless Facilities, and associated equipment shall be similar in size, mass, and color to similar existing facilities and equipment in the immediate area subject to following requirements:
  - (1) Collocation is required, when possible. Should the Wireless Provider not be able to collocate, the Wireless Provider shall provide justification in the application.
  - (2) Utility Poles - Maximum Height, Diameter, Design, Color. Newly erected Utility Poles shall be similar and match the height design, and color of existing Utility Poles in the immediate area but in no case, shall new or modified Utility Pole or Wireless Support Structure installed in the Rights-of-Way exceed the greater of:
    - (i) Ten (10) feet in height above the tallest existing Utility Pole in the Rights-of-Way in place as

of the effective date of this Section that is located within 500 feet of the new pole; or

(ii) Fifty (50) feet above ground level.

(iii) Wood poles are not allowed unless approved by the City.

(iv) When unable to match the design and color of existing Utility Poles in the immediate area new poles shall be designed using stealth or camouflaging techniques, to make the installation as least intrusive as possible including stealth poles that are black or dark green in color, powder-coated, that do not exceed 16 inches in diameter. The City reserves the right to require a street light on the Utility Pole.

(3) If the facility is to be on proposed existing infrastructure the following applies:

(i) Applicant must provide a site plan indicating the location of any infrastructure upon which such small cell is proposed to be attached to. The site plan shall indicate the location of all proposed accessory structures/facilities necessary for the support of the small cell. The site plan shall show all existing infrastructure (i.e. curb/gutter, sidewalk, underground utilities, roadways) in the immediate vicinity.

(ii) Applicant must provide structural analysis from a licensed TN P.E. indicating that existing infrastructure is adequate to support the proposed small cell with appropriate safety factors. If the proposed existing infrastructure is inadequate, the applicant shall replace the existing infrastructure with infrastructure that is adequate to support the small cell. The City has review/approval authority of replacement infrastructure.

(iii) If the proposed existing infrastructure is a mast arm signalized intersection, all components of the small cell are to be black in color, unless otherwise approved by the City.

(iv) In the event it is necessary for fiber optics and/or electrical power to be installed with the proposed small cell, and the applicant chooses to install those utilities by directional boring construction techniques, applicant is responsible for providing proof that the directional boring activities did not adversely affect existing storm drain and/or sanitary sewer connections. "Proof" entails providing pre and post video evidence of all storm drain and/or sewer service connections within the limits of the boring activities.

(v) The applicant is responsible for maintaining all small cell and accessory infrastructure in perpetuity. This includes any landscaping materials that may be required by the City.

(4) If the proposed location is on applicant installed infrastructure the following applies:

(i) Any new infrastructure to be installed with small cell must be black in color unless otherwise approved by the City, and must be break-away as per AASHTO (Green Book) guidelines.

(ii) All items in Section 3(A) (3) shall apply here also.

(B) New Small Wireless Facilities, Antennas, and associated equipment shall be similar in size, mass, and color to similar facilities and equipment in the immediate area of the proposed facilities and equipment, minimizing the physical and visual impact to the community, including but not limited to:

(1) Any associated equipment such as an electric meter, concealment element, telecommunications demarcation box, grounding equipment, power transfer switch, cut-off switch, or a vertical cable run for the connection of power and other services that is required for a Small Wireless Facility shall be mounted at least 8 feet above grade on the pole and located in a shelter or case that does not extend more than 12 (twelve) inches past the edge of the pole it is mounted on. In the case of co-location, the mounts shall be on the same side of the pole. City staff has the discretion for authorizing ground-mounted equipment when unique or exceptional circumstances exist to protect the character of the surrounding area.

(C) From time to time, additional criteria regarding the location, type, and/or design of Small Cell Facilities and Utility Poles shall be subject to change. All changes shall be compiled into a set of guidelines titled, City of Germantown Aesthetic Plan: Design Guidelines for Wireless Communications Facilities in the Public Right-of-Way. In no case, shall any Guidelines be retroactive. Facilities approved for which Right-of-Way Use Permits have been issued prior to the effective date of a new Design Guidelines shall not be affected.

(D) Construction in the Rights-of-Way. All construction, installation, maintenance, and operation of Wireless Facilities in the Right-of-Way by any Wireless Provider shall conform to the requirements of the following publications, as from time to time amended: The Rules of Tennessee Department of Transportation Right-of-Way Division, the National Electrical Code, and

the National Electrical Safety Code, as might apply.

### **Section 6 - Effect of Permit**

- (A) Authority Granted; No Property Right or Other Interest Created. A Permit authorizes an Applicant to undertake only certain activities in accordance with this Section and does not create a property right or grant authority to the Applicant to impinge upon the rights of others who may already have an interest in the Rights-of-Way.
- (B) Duration. No Permit issued under this Section shall be valid for a period longer than twelve (12) months unless construction has commenced within that period and is thereafter diligently pursued to completion. In the event that construction begins but is inactive for more than ninety (90) days, the Permit expires.
- (C) Termination of Permit. In all other circumstances, the Permit expires in twelve (12) months.

### **Section 7 - Maintenance, Removal, Relocation or Modification of Small Wireless Facility and Fiber in the ROW**

- (A) Notice. Within ninety (90) days following written notice from the City, the Permittee shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any Small Wireless Facilities within the Rights-of-Way whenever the City has determined that such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any City improvement in or upon, or the operations of the City in or upon, the Rights-of-Way. The City agrees to use good faith efforts to accommodate any such disconnection, removal, relocation, change, or alteration and to assist with identifying and securing a mutually agreed upon alternative location.
- (B) Maintenance of Existing Facilities. With respect to each Wireless Facility installed pursuant to a Right-of-Way Use Permit, Permittee is hereby permitted to enter the Right-of-Way at any time to conduct repairs, maintenance or replacement not substantially changing the physical dimension of the Wireless Facility. The permittee shall comply with all rules, standards, and restrictions applied by the City to all work within the Right-of-Way. If required by City, Permittee shall submit a "maintenance of traffic" plan for any work resulting in significant blockage of the Right-of-Way. However, no excavation or work of any kind may be performed without a Permit, except in the event of an emergency. In the event of an emergency, Permittee shall attempt to provide advance written or oral notice to the City Engineer.
- (C) Removal of Existing Facilities. If the Permittee removes any Wireless Facilities, it shall notify the City of such change within sixty (60) days.
- (D) Damage to Facilities or property. A Permittee, including any contractor or subcontractor working for a Permittee, shall avoid damage to any Wireless Facilities and/or public or private property. If any Wireless Facilities and/or public or private property are damaged by Permittee, including any contractor or subcontractor working for Permittee, the Permittee shall promptly commence such repair and restore such property within ten (10) business days. The permittee shall utilize the Tennessee One Call System prior to any disturbance of the Rights-of- Way and shall adhere to all other requirements of the Tennessee Underground Utility Damage Prevention Act.
- (E) Emergency Removal or Relocation of Facilities. The City retains the right and privilege to cut or move any Small Wireless Facility located within the Rights-of-Way of the City, as the City may determine to be necessary, appropriate or useful in response to any serious public health or safety emergency. If circumstances permit, the City shall notify the Wireless Provider in writing and provide the Wireless Provider a reasonable opportunity to move its own Wireless Facilities prior to cutting or removing a Wireless Facility and shall notify the Wireless Provider after cutting or removing a Wireless Facility. Any removal shall be at the Wireless Providers sole cost. Should the Wireless Facility be collocated on property owned by a third-party, the City shall rely on the third-party to remove the Wireless Facility and shall be provided adequate notice and time to facilitate such removal. If the third-party fails to remove the wireless facility in a timely manner then the City has the right to remove the facility at the third-party's expense.
- (F) Abandonment of Facilities. Upon abandonment of a Small Wireless Facility within the Rights-of Way of the City, the Wireless Provider shall notify the City within ninety (90) days. Following receipt of such notice, the City may direct the Wireless Provider to remove all or any portion of the Small

Wireless Facility if the City reasonably determines that such removal will be in the best interest of the public health, safety, and welfare. Should the Wireless Facility be collocated on property owned by a third-party, the City shall rely on the third-party to remove the Wireless Facility and shall be provided adequate notice and time to facilitate such removal. Any removal shall be at the Wireless Providers sole cost. Failure to remove Wireless Facilities pursuant to this Code will result in no future permits being granted. If the third-party fails to remove the wireless facility in a timely manner then the City has the right to remove the facility at the third-party's expense.

### **Section 8 - Remedies; violations**

In the event a reasonable determination is made that a Person has violated any provision of this Section, Small Wireless Facility Application or a Right-of-Way Use Permit, such Person shall be provided written notice of the determination and the specific, detailed reasons therefore. Except in the case of an emergency, the Person shall have thirty (30) days to commence to cure the violation. If the nature of the violation is such that it cannot be fully cured within such time period, the City, in its reasonable judgment, may extend the time period to cure, provided that the Person has commenced curing and is diligently pursuing its efforts to cure. If the violation has not been cured within the time allowed, the City may take all actions authorized by this Section and/or Tennessee law and regulations.

### **Section 9 - General Provisions**

- (A) Proprietary information. If a Person considers information it is obligated to provide to the City under this Section to be a business or trade secret or otherwise proprietary or confidential in nature and desires to protect the information from disclosure, then the Person shall mark such information as proprietary and confidential. Subject to the requirements of the Tennessee Open Records Act (Tenn. Code Ann. §10-7-101 *et seq.*) as amended, and other applicable law, the City shall exercise reasonable good faith efforts to protect such proprietary and confidential information that is so marked from disclosure to the maximum extent of the law. The City shall provide written notice to the Person in the following circumstances: i) if the City receives a request for disclosure of such proprietary and confidential information and the City Attorney determines that the information is or may be subject to disclosure under applicable law; or ii) if the City Attorney determines that the information should be disclosed in relation to its enforcement of this Chapter or the exercise of its police or regulatory powers. In the event the Person does not obtain a protective order barring disclosure of the information from a court of competent jurisdiction within thirty (30) days following receipt of the City's notice, then the City may disclose the information without further written notice to the Person.
- (B) Duty to provide information. Within ten (10) days of a written request from the City, a Permittee shall furnish the City with information sufficient to demonstrate the following: that the Permittee has complied with all requirements of this Section; that all fees due to the City in connection with the services provided and Wireless Facilities installed by the Permittee have been properly paid by the Permittee; and any other information reasonably required relating to the Permittee's obligations pursuant to this Section.
- (C) No substitute for other required permissions. No Small Wireless Facility Application or Right-of-Way Use Permit includes, means, or is in whole or part a substitute for any other permit or authorization required by the laws and regulations of the City for the privilege of transacting and carrying on a business within the City or any permit or agreement for occupying any other property of the City.
- (D) No waiver. The failure of the City to insist on timely performance or compliance by any Permittee holding a Right-of-Way Use Permit shall not constitute a waiver of the City's right to later insist on timely performance or compliance by that Permittee or any other Permittee holding such Right-of-Way Use Permit. The failure of the City to enforce any provision of this Section on any occasion shall not operate as a waiver or estoppel of its right to enforce any provision of this Chapter on any other occasion, nor shall the failure to enforce any prior ordinance or City Charter provision affecting the Right-of-Way, any Wireless Facilities, or any user or occupant of the Right-of-Way act as a waiver or estoppel against enforcement of this Section or any other provision of applicable law.
- (E) Policies and Procedures. The City is authorized to establish such written policies and procedures consistent with this Section as the City reasonably deems necessary for the implementation of this

Section.

- (F) Police powers. The City, by granting any Permit or taking any other action pursuant to this Section, does not waive, reduce, lessen or impair the lawful police powers vested in the City under applicable federal, state and local laws and regulations.
- (G) Severability. If any section, subsection, sentence, clause, phrase or word of this Chapter is for any reason held illegal or invalid by any court of competent jurisdiction, such provision shall be deemed a separate, distinct and independent provision, and such holding shall not render the remainder of this Chapter invalid.

**Section 10 - Effective Date**

This Ordinance shall take effect immediately upon its passage, approval, and publication.

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Chairman Harless asked if there was any old business to come before the Commission. There was none.

Chairman Harless asked if there was any new business to come before the Commission. There was none.

Chairman Harless asked if there were any liaison reports. There were none.

**ADJOURNMENT:** The meeting adjourned at 7:10 p.m.