

FAYETTE COUNTY LEGISLATIVE BODY

July 26, 2005

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FILE COPY

BE IT REMEMBERED That the Fayette County Legislative Body met in regular session at the Courthouse in Somerville, Tennessee, on the 26th day of July, 2005. Present and presiding Chairman Rhea Taylor. Also present, Dell T. Graham, County Clerk and the following County Commissioners: Joann C. Allen, Steve A. Anderson, Joe B. Burnette, Jr., Christopher L. Campbell, Bob Doll, Lee "Sissy" Dowdle, John F. Dowdy, Willie German, Jr., Ronnie Harris, Myles Leifer, David H. Lillard, Sr., Sylvester Logan, George McCloud, Claude D. Oglesby, Jr., Gordon M. Tomlin, Myles Wilson and Allen Yancey, Jr.

Absent: Commissioners Thomas Howell Fowler and Ronnie Graves.

With a quorum being present, the following proceedings were had and entered of record, to-wit:

Chairman Taylor opened the floor to the public to address items not on the Agenda. Addressing the Board was Charles Byars.

Motion was then made by Commissioner Wilson, seconded by Commissioner Oglesby and unanimously carried by the Board approving the minutes of the June 2005 meeting of this Board.

At this time the floor was turned over to Shelby County Sheriff Mark Lutrell who addressed the Board and presented to Fayette County Sheriff Bill Kelley a Resolution of appreciation for work done between the two departments.

Chairman Taylor then reviewed a **Speed Limit** Resolution to set the speed limit on Dogwood Road. The floor was opened to the public to address the matter in favor of or in opposition to the change. With no comments being offered, the floor was closed to the public. Motion was then made by Commissioner McCloud, seconded by Commissioner Leifer and unanimously carried by the Board approving the following Resolution setting the **speed limit on Dogwood Road** at thirty miles per hour:

RESOLUTION

BE IT RESOLVED, by the Board of County Commissioners and/or County Legislative Body of Fayette County, Tennessee, in regular session assembled on this 26th day of July, 2005, being the fourth Tuesday of said month and the regular monthly meeting date of the July term of said County Legislative Body, in the Courthouse in Somerville, Tennessee, that pursuant to the provisions of Chapter No. 357 of the Private Acts of Tennessee 1967-68, and amended thereto, it shall be unlawful for any person to operate or drive a motor vehicle in excess of thirty (30) miles per hour on Dogwood Road in its entirety, for a distance of approximately one (1) mile, being located in the 8th Civil District of Fayette County, Tennessee; and

BE IT FURTHER RESOLVED that any person violating the provisions of this Resolution shall be guilty of a misdemeanor and punished accordingly.

Motion was made by Commissioner Dowdy, seconded by Commissioner Anderson and unanimously carried by the Board appointing the following as a **Notary Public**: Janet A. Tucker.

Motion was made by Commissioner Oglesby, seconded by Commissioner Dowdle and unanimously carried by the Board approving the **bond of Myles G. Wilson as Board of Director of Schools**. Same being as follows:

SURETY'S BOND NO. 69179398

STATE BOND FORM
COB-7(82)

STATE OF TENNESSEE
COUNTY OF Fayette
OFFICIAL STATUTORY BOND
FOR
COUNTY PUBLIC OFFICIALS
OFFICE OF Director of Schools

KNOW ALL MEN BY THESE PRESENTS:

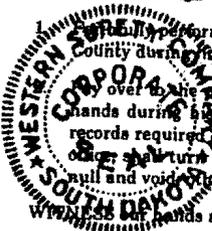
That Myles G. Wilson
of Somerville (City or Town), County
of Fayette Tennessee, as Principal, and WESTERN SURETY COMPANY

as Surety, are held and firmly bound unto THE STATE OF TENNESSEE in the full amount of One Hundred Thousand and 00/100 Dollars (\$ 100,000.00) lawful money of the United States of America for the full and prompt payment whereof we bind ourselves, our representatives, successors and assigns, each jointly and severally, firmly and unequivocally by these presents.

WHEREAS, The said Principal was duly _____ elected appointed to the office of Director of Schools Board of Education, of and for Fayette County for the (4) year term beginning on the 1st day of July, 2005 and ending on the 1st day of July, 2009

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH:

That if the said Myles G. Wilson Principal, shall perform the duties of the office of Director of Schools Board of Education, of Fayette County during the term of office or his continuance therein; and



over to the persons authorized by law to receive them, all monies, properties, or things of value that may come into his hands during his term of office or his continuance therein without fraud or delay, and shall faithfully and safely keep all records required of him in his official capacity, and at the expiration of his term, or in case of his resignation or removal from office, shall turn over to his successor all records and property which have come into his hands, then this obligation shall be null and void, otherwise to remain in full force and effect.

WITNESS - ATTEST:

Jim B. Bowling

PRINCIPAL: Myles G. Wilson

SURETY:

COUNTERSIGNED BY:

Glenda A. Ward
Tennessee Resident Agent

WESTERN SURETY COMPANY
by: Paul T. Bruflat

Paul T. Bruflat, Senior Vice President
(Attach evidence of authority to execute bond)

ACKNOWLEDGMENT OF PRINCIPAL

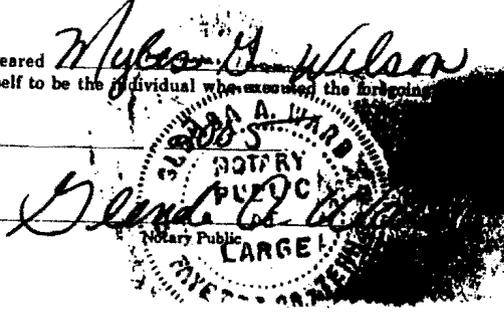
STATE OF TENNESSEE

COUNTY OF Fayette

Before me, a Notary Public, of the State and County aforesaid, personally appeared Myles G. Wilson with whom I am personally acquainted and who, upon oath, acknowledged himself to be the individual who executed the foregoing bond, and he acknowledged to me that he executed the same.

WITNESS my hand and seal this 30 day of June

My Commission Expires: October 31st 2007



ACKNOWLEDGMENT OF SURETY

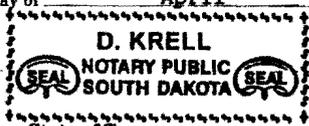
STATE OF South Dakota

COUNTY OF Minnehaha

Before me, a Notary Public, of the State and County aforesaid, personally appeared Paul T. Bruflat with whom I am personally acquainted and, who, upon oath, acknowledged himself to be the individual who executed the foregoing bond on behalf of WESTERN SURETY COMPANY, the within named Surety, a corporation duly licensed to do business in the State of Tennessee, and that he as such individual being authorized so to do, executed the foregoing bond, by signing the name of the corporation by himself as such individual.

WITNESS my hand and seal this 13th day of April, 2005

My Commission Expires: November 30, 2006



D. Krell
Notary Public

Form Prescribed by the Comptroller of the Treasury, State of Tennessee
Form Approved by the Attorney General, State of Tennessee

APPROVAL AND CERTIFICATION

SECTION I. (Applicable to all County Officials except Clerks of Chancery and Circuit Courts)

Bond and Sureties approved by Rhea Taylor Mayor of Fayette County, on this 26th day of July, 2005

Signed: Rhea Taylor
County Executive

CERTIFICATION:

I, Dell T. Graham, County Clerk of Fayette County, hereby certify that the foregoing bond was approved by the Legislative Body of said county, in open session on the 26th day of July, 2005, and entered upon the minutes thereof.

Signed: Dell T. Graham
County Clerk

Chairman Taylor then submitted **Jim Gallagher** for appointment to the **Zoning Appeals Board**. Motion was made by Commissioner Leifer, seconded by Commissioner Burnette and unanimously carried by the Board making the appointment as submitted.

Chairman Taylor then called for an Attorney/Client Meeting.

Meeting was called back in session.

Annual Financial Reports from the County Clerk and the Register of Deeds were filed as was a **Combined Summary Financial Statement** for the period of April 2005 through June 30, 2005.

Chairman Taylor then reported for the Mayor's Office.

Reports were called for from the Sheriff's Department, Board of Education, Juvenile Court and Board of Public Works. None were given.

Commissioner Yancey reported for the **Development Committee**. Motion was made by Commissioner Leifer, seconded by Commissioner McCloud, and unanimously carried by Roll Call Vote of members present, adopting the following **Resolution** regarding county use of **eminent domain**.

RESOLUTION

WHEREAS, the takings clause of the Fifth Amendment of the United States Constitution states "nor shall private property be taken for public use, without just compensation";

WHEREAS, upon adoption, the Fourteenth Amendment of the United States Constitution extended the application of the Fifth Amendment to each and every state and local government;

WHEREAS, the takings clause of the Fifth Amendment of the United States Constitution has historically been interpreted and applied by the United States Supreme Court to be conditioned upon the necessity that Government assumption of private property through eminent domain must be for the public use and requires just compensation;

WHEREAS, the Constitution of Tennessee states in Article I, Section 21 "that no man's particular services shall be demanded or property taken, or applied to public use, without the consent of his representatives, or without just compensation being made therefore";

WHEREAS, Tennessee Code Annotated Section 29-17-101 allows the counties to exercise the power of eminent domain "for any county purpose";

WHEREAS, the opinion of the majority of the United States Supreme Court in *Kelo, et al. v. City of New London, et al.*, renders the public use provision in the takings clause of the Fifth Amendment without meaning;

WHEREAS, the majority opinion in *City of New London* justifies the forfeiture of a person's private property through eminent domain for the sole benefit of another private person;

WHEREAS, the dissenting opinion in *City of New London* upholds the historical interpretations of the takings clause and affirms that "the public use requirement imposes a more basic limitation upon government, circumscribing the very scope of the eminent domain power: Government may compel an individual to forfeit her property for the public's use, but not for the benefit of another private person";

WHEREAS, all levels of Government have a responsibility and moral obligation to always defend the property rights of individuals and to only execute their power of eminent domain for the good of public use and contingent upon the just compensation to the individual property owner;

WHEREAS, it is appropriate for the Fayette County Commission to take action, consistent with its limited powers, to restore the vital protections of the Fifth Amendment, and to uphold the provisions of Article I, Section 21 of the Constitution of Tennessee and to protect homes, small businesses and other private property rights against unreasonable government use of the power of eminent domain; and

WHEREAS, it is appropriate for the County of Fayette, Tennessee to take action to voluntarily limit its own power of eminent domain;

NOW, THEREFORE, BE IT RESOLVED that the Fayette County Commission interprets the phrase "for any county purpose" in Tennessee Code Annotated Section 29-17-101 to require that any use of eminent domain by the County must be for the public use;

FURTHER RESOLVED, that the County Commission disagrees with the majority opinion in the *City of New London* case and its holdings that effectively negate the public use requirement of the takings clause;

FURTHER RESOLVED, that the County Commission agrees with the dissenting opinion in *City of New London* in its upholding of the historical interpretation of the takings clause and its deference to the rights of individuals and their property;

FURTHER RESOLVED, that the term "public use" and "county purpose" shall not be construed to include economic development;

FURTHER RESOLVED, that this self-imposed limitation on the power of Fayette County government's use of eminent domain may be amended only with a two-thirds vote of the Fayette County Commission; and

FURTHER RESOLVED, that the provisions of this Resolution shall have no application as a limitation of the exercise by Fayette County of those police powers which are necessary to the safety and tranquility of a well-ordered community, nor of the general power over private property which is necessary for the orderly existence of all governments.

Having been reviewed by the **Development Committee** and presented with their recommendation for acceptance, motion was made by Commissioner Anderson and seconded, to accept the following as **county roads**: Aston Brook Cove, Aston Hall Drive, Aston Park Drive and Coventry Cove. Said motion carried with Commissioner Burnette abstaining.

The Development Committee having reviewed and approved **Askew, Hargraves, Harcourt & Associates, Inc.** as the **engineer** for the **airport**, motion was made by Commissioner McCloud, seconded by Commissioner Dowdy and unanimously carried by the Board approving the recommendation and making such appointment.

Motion was made by Commissioner Burnette, seconded by Commissioner Oglesby, and unanimously carried by the Board adopting the following Resolution requesting the **City of Somerville** to apply for a **State Industrial Access Road Grant** for **road construction to the Justice Complex**. Said being as follows:

RESOLUTION REQUESTING THE CITY OF SOMERVILLE TO REQUEST A GRANT FROM THE STATE INDUSTRIAL ROAD ACCESS PROGRAM

WHEREAS, Fayette County wants the State of Tennessee, through its Industrial Access Road program, to grant it funds to construct a road into property owned by it next to the Fayette County landfill; and

WHEREAS, the State of Tennessee has said that within the city limits of Somerville, only the City of Somerville may request such a grant; and

WHEREAS, Fayette County is in agreement that the City of Somerville should apply for said grant; and

WHEREAS, Fayette County agrees to be responsible for assembling and submitting all paperwork for said grant; and

WHEREAS, Fayette County will assume all responsibilities of upkeep for the road once it is built:

NOW THEREFORE BE IT RESOLVED, that Fayette County asks that the City of Somerville to apply for a State Industrial Access Road grant to be placed on the land owned by Fayette County next to the proposed Somerville By-Pass, and going to the Justice Complex site from Highway 76. In addition, Fayette County will assemble, submit, and complete all paperwork on the project on behalf of Somerville; and Fayette County will assume any upkeep to the project as required by the grant.

Commissioner Lillard reported for the General Services Committee. Motion was made by Commissioner Lillard, seconded by Commissioner Dowdle and unanimously carried by Roll Call Vote by members present approving a **three year lease agreement** with the **Hickory With Fire Department** at **\$850.00 per month**.

Commissioner Doll then reported for the Budget Committee. He advised that the next meeting date of the Budget Committee would be Thursday, August 11th. Commissioner Dowdle began discussion on a Joint Committee meeting. No action was taken.

Motion was then made by Commissioner Dowdle, seconded by Commissioner Leifer for the **Public Works Board** to look closely into their ten employee layoff and report back to this Board at the August meeting. Discussion followed. Upon Roll Call Vote, the following voted "YES": Commissioners Allen, Burnette, Campbell, Dowdle, Dowdy, German, Harris, Leifer, Oglesby and Wilson. (10).

Voting "NO": Commissioners Anderson, Doll, Lillard, Logan, McCooud, Tomlin and Yancey. (7)

Absent: Commissioners Fowler and Graves.

Said motion carried.

With no other matters to be brought before this Board, said meeting adjourned.

RHEA TAYLOR, Chairman

ATTEST:

Dell T. Graham, County Clerk