

**CUT OFF FOR QUESTIONS WILL BE MONDAY, MAY 3RD AT
10:00 AM**

PRE-BID MEETING MINUTES

Date of Meeting: 4/29/2021
Project: Lakeland Athletic Fields
Subject: **Pre-Bid Meeting**
Meeting Location: Lakeland City Hall
Barge Project No.: 3695300

PARTICIPANTS: See attached sign-in sheet

Copy to: Project Folder

ITEMS DISCUSSED:

1. Items discussed about Bidding Process
 - Due date, time and location for bids
 - Required documents must be complete and in binder
2. Project Description
3. Meeting is opened up to comments/questions from attendees – responses will be provided by distribution of these minutes.
 - Q: Will the contractor be allowed to burn on site? Is a pit required?
A: Burn operations are permitted provided they meet all City requirements – see attached. Contractor shall be responsible for obtaining all required permits.
 - Q: Can the contractor acquire CAD files?
A: Only the contractor with the winning bid will receive CAD files
 - Q: How soon after the award can the contractor begin?

A: As quickly as the award process can be completed while meeting City and LPRF grant requirements.

- Q: Is the engineer's estimate available?
A: Not at this time

- Q: Will topsoil on site be able to be used on site?
A: Yes, but better soil may need to be utilized within the limits of the playing fields.

- Q: What sod is specified?
A: Tifway 419

- Q: What is the DBE goal?
A: The City of Lakeland encourages all bidders must make a good faith effort to include participation from small, minority, and women's businesses and has set participation goals of 7% minority and 1% women.

- Q: Will the contractor have any requirements regarding logging?
A: No, the contractor has flexibility to handle any logging as preferred

- Q: Is there a soils report available?
A: Yes, it is in the specifications provided

- Q: Who is responsible for the twice weekly erosion control inspections?
A: City of Lakeland

- Q: Is there any flexibility with the September 1st deadline, based on anything including conditions, weather, etc.?
A: No

- Q: Should grow in time be factored into the schedule to meet completion deadline?
A: Grow in can occur during the warranty period.

- Q: What utilities are in the area?
A: There is an existing sewer line running through the project that is approx. 15' deep and not impacted by the project and water main located on the south side of Memphis-Arlington Rd.

4. Announced schedule:

May 3 rd	Issue Addendum (if needed)
May 6 th	2:00 PM CST, Bids Due and Opened

5. Meeting adjourned.

These notes represent my understanding of items discussed and conclusions reached. Participants are requested to review these items and advise of necessary corrections or revisions.

Signed: _____ **Date:** 4/29/2021
Russ Brasfield



Lakeland City Hall - Chambers
 10001 US Highway 70
 Lakeland, Tennessee
 April 29, 2021
 11 am

Pre-Bid Meeting - FY18 LPRF Project - Lakeland Athletic Complex & Recreation Park

Date	Company Name / Address	Name	Contact Phone	Contact Email
4/29	204 W 1st Roberts Builders Inc Ripley MS 38663	Jarratt Roberts	662-837-7835	jarratt@robertsbuildersinc.com
4-29	Xcavators INC.	Rob Hill	662-837-2499	rob@xcavators-inc.com
4-29	Xcavators, Inc.	Josh Rakestraw	662-668-0356	joshrake@xcavators-inc.com
4-29	Legacy Const Services	Zach Herin	901-301-6843	bracey.herin@gmail.com
4-29	7540 Bartlett Wagner General Contractor - Corp Dr	Harper Wagner	901-386-0060	harper@wagnergeneral.com
4-29	Grinder Taber & Grinder / 1919 Lynnfield	Jalce Smithmier	401 456 9951	jsmithmier@grindertaber.com
4/29	B&C CONST ARUNWTON	DEXTER DUNLAP	901-386-7040	DEXTER@BANDC CONSTRUCTION.ORG
4/29	A+B Construction Co., Inc. 5091 Wilfong Rd.	Heather Page	901-383-7360	heather@ aandbconstructionco.com
4/29	ENSCOR LLC 5566 Annada Ar. I. TXI 3802	Tommy Stutz	901-245-7130	tommy@enscor.net
4/29	ENSCOR-LLC.	Charlie McGee	901-512-7561	charlie@enscor.net

20-102. Open burning. (1) No person shall cause, suffer, allow or permit open burning of refuse, garbage, trade waste, trees, limbs, brush, or materials from salvage operations. The open burning of tires and other rubber products, vinyl shingles and siding, other plastics, asphalt shingles and other asphalt roofing materials, and/or asbestos containing materials is expressly prohibited, and such materials shall not be lawful in any open burning conducted under the provisions of § 20-102.

(2) Open burning as listed below may be conducted without permit subject to fire department approval and provided further that no public nuisance is or will be created by the open burning.

(a) Fires used for the cooking of food or for ceremonial, recreational or comfort-heating purposes including barbecues and outdoor fireplaces. This exception does not include commercial food preparation facilities and their operation.

(b) Fires set for the training and instruction of firemen or for research in fire protection or prevention. However, routine demolition of structures via supervised open burning by responsible fire control persons will not be considered fire training. Additionally, the person responsible for such burning, unless conducted at a recognized fire training academy, must certify compliance with the following requirements by written statement. The certification must be delivered to the Pollution Control Section of the Memphis-Shelby County Health Department (department) at least ten (10) working days prior to commencing the burn:

(i) The open burning is being conducted solely for fire training purposes.

(ii) All vinyl siding, carpet, vinyl flooring, asphalt roofing materials, and any other materials expressly prohibited in subsection 20-102(1), have been removed.

(iii) All regulated asbestos containing materials have been removed in accordance with section 20-1(111) [Reference 1200-3-11-.02(2)(d)3.(x)].

(iv) A traffic hazard will not be caused by the air contaminants generated by the fire training.

(v) A public nuisance will not be created by the open burning.

(c) Smokeless flares or safety flares for the combustion of waste gases provided other applicable paragraphs of this section are met.

(d) Reserved.

(e) Fire used for carrying out recognized agricultural procedures necessary for the production or harvesting of crops or for the control of diseases or pests, in accordance with practices acceptable to the department.

(f) Fires for the burning of bodies of dead animals, including poultry, where no other safe and/or practical disposal method exists.

(3) Exceptions to paragraph (1) may be permitted for vegetation if all of the following conditions are met when an air curtain destructor is used:

(a) A request is filed with the health officer giving the reason why no method except open burning can be employed to dispose of the material involved, the amount and kind of material to be burned, the exact location where the burning will take place, and the dates when the open burning will be done. All changes in type of, or increase in quantities of, materials burned must be preceded by notification. The notification must be delivered to the department at least ten (10) working days prior to commencing the change in the burn.

(b) The person applying for the permit certifies, by written statement, compliance with following distance requirements, at a minimum:

(i) The open burning site must be at least five hundred (500) feet from any federal and from any state highway; and

(ii) The open burning site must be at least one thousand (1,000) feet from any school, national or state park, national reservation, national or state forest, wildlife area, and/or residence not on the same property as the air curtain destructor; and

(iii) The open burning site must be at least on-half ($\frac{1}{2}$) mile from any airport, nursing home or hospital.

(c) The plume from the air curtain destructor must meet the visible emission standards specified in section 20-1(105) [Reference 1200-3-5-.01(1)]; however, for certain materials the department may allow one start-up period in excess of the standard, per day, not to exceed 20 minutes in 24 hours.

(d) All material to be burned must be dry and in other respects be in a state to sustain good combustion. Open burning must be conducted when ambient conditions are such that good dispersion of combustion products will result. Priming materials used to facilitate such burning shall be limited to #1 or #2 grade fuel oils.

(e) No fire shall be ignited while any air pollution emergency episode is in effect in the area of the burn. No fire shall be ignited during any exceedance of the National Ambient Air Quality Standard for ozone, oxides of nitrogen, carbon monoxide, or particulate matter. Permittee is required to contact the department's Computerized Local Air Index Reporting system (CLAIR) recorded line at (901) 544-7489 or 544-7490 before igniting a fire to determine if it is a burning day or a no-burning day.

(f) Approval is received from the health officer in writing.

(g) Permission is secured from the fire department in the jurisdiction involved.

(h) The burning will be done between the hours of 9:00 AM and 4:00 PM or as authorized by the health officer.

This approval will not relieve the person responsible for such burning from the consequences of any damages, injuries, or claims resulting from such burning.

(4) Definitions. (a) "Air curtain destructor" is a portable or stationary combustion device that directs a plane of high velocity forced draft air through a manifold head into a burn chamber with vertical walls in such a manner as to maintain a curtain of air over the surface of the burn chamber and a recirculating motion of air under the curtain. The use of an air curtain destructor is considered controlled open burning.

(b) "Air pollution emergency episode" is defined as air pollution alerts, warnings, or emergencies declared by the health officer during adverse air dispersion conditions that may result in harm to public health or welfare.

(c) "Natural disaster" is defined as any event commonly referred to as an "Act of God" and includes but is not limited to the following weather related or naturally occurring categories of events: tornadoes, hail and wind storms, snow or ice storms, flooding and earthquakes.

(d) "Open burning" is the burning of any matter under such conditions that products of combustion are emitted directly into the open atmosphere without passing directly through a stack.

(e) "Person" is any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, an agency, authority, commission, or department of the United States government, or of the State of Tennessee government; or any other legal entity, or its legal representative, agent, or assigns.

(5) Burning after natural disasters.

(a) Open burning of materials resulting from a natural disaster, and when conducted in conformity with the following conditions, may be permitted:

(i) Fires disposing of structural and household materials and vegetation are allowed only when those structures or materials are destroyed or severely damaged by natural disaster. Input from emergency management personnel may be requested in determining qualification with this criteria. The provisions of this section pertaining to structural and household materials may be waived if the persons seeking to open burn under this provision make a reasonable effort to remove all expressly prohibited material from the structural remains before ignition. The department reserves the right to inspect the proposed materials to be burned before ignition. The alternative use of chippers and grinders, landfilling, or on-site burial of waste in lieu of burning, if lawful, is encouraged.

(ii) If a governmental collective burn site for disposing of structural and household materials and vegetation damaged by a natural disaster is planned, the person responsible for such burning must notify the department of the proposed location. The notification must be delivered to the department at least three (3) days prior to commencing the burn. The department may request that alternate sites be identified to minimize impact to air quality. The alternative use of chippers and grinders in lieu of burning is encouraged.

(iii) A traffic hazard shall not be caused by the air contaminants generated by the fire.

(iv) No fire shall be ignited while any air pollution emergency episode is in effect in the area of the burn. No fire shall be ignited during any exceedance of the National Ambient Air Quality Standard for ozone, oxides of nitrogen, carbon monoxide, or particulate matter. Contact the department's Computerized Local Air Index Reporting system (CLAIR) recorded line at (901) 544-7489 or 544-7490 before igniting a fire to determine if it is a burning day or a no-burning day.

(v) Open burning conducted under this exception is only allowed where no other safe and/or practical means of disposal is available.

(b) The health officer reserves the right to require a person to cease or limit open burning if emissions from the fires are deemed by the health officer or his designee to jeopardize public health or welfare, create a public nuisance or safety hazard, create a potential safety hazard, or interfere with the attainment or maintenance of the air quality standards.

(c) Any exception to the open burning prohibition granted by this section does not relieve any person of the responsibility to obtain a permit required by any other agency, or of complying with other applicable requirements, ordinances, or restrictions. [Particular attention is directed to Tennessee Code Annotated, § 39-14-306, which prohibits open air fires between October 15 and May 15 within five hundred (500) feet of any forest, grasslands or woodlands without first securing a permit from the state forester in unincorporated portions of Shelby County.] (1989 Code, § 8-602, as replaced by Ord. #03-39, June 2003)

20-103. Severability of parts of articles. The provisions of this air pollution control code are hereby declared to be severable, and if any sections, provisions, clauses, or parts be held unconstitutional or void, then the remainder of this air pollution control code shall continue in full force and effect, it being the legislative intent that this air pollution control code would have been

adopted even if such unconstitutional or void matter had not been included therein. (1989 Code, § 8-603, as replaced by Ord. #03-39, June 2003)

20-104. Enforcement – violations of chapter – notice; citation; injunctive relief. (1) Whenever evidence has been obtained or received establishing that a violation of this code has been committed, the health officer shall issue a notice to correct the violation or a citation to cease the violation. Such notice or citation shall briefly set forth the general nature of the violation and specify a reasonable time within which the violation shall be rectified or stopped. If the violation is not corrected within the time so specified, or the violation stopped, or reasonable steps taken to rectify the violation, the health officer shall have the power and authority to issue an order requiring the violator to cease or suspend operation of the facility causing the violation until the violation has been corrected, or initiate proceedings to prosecute the violator for violation of this code.

(2) In the event any person fails to comply with a cease or suspend operation order, that is not subject to a stay pending administrative or judicial review, the health officer shall institute proceedings in a court of competent jurisdiction for injunctive relief to enforce the regulations or orders pursuant hereto. (as added by Ord. #03-39, June 2003)

20-105. Enforcement penalties – misdemeanor, civil, and noncompliance. (1) Failure to comply with any of the provisions of the City of Lakeland, Tennessee – Air Pollution Control Code shall constitute a violation thereof and shall subject the person or persons responsible therefore to any and all of the penalties provided by law.

(2) The Memphis-Shelby County Health Department in conjunction with the local air pollution control board shall have authority, at their option, to institute and litigate proceedings for violations as set out therein. Any person who knowingly:

(a) Violates or fails to comply with any provision of the City of Lakeland, Tennessee – Air Pollution Control Code, any board or administrative order or any permit condition;

(b) Makes any false material statement, representation, or certification in any record, report, plan or other document required by permit to be either filed or maintained;

(c) Falsifies, tampers with, renders inaccurate or fails to install any monitoring device or method required to be maintained or followed; or

(d) Fails to pay a fee commits a Class C misdemeanor pursuant to the Tennessee Code Annotated with the fine not to exceed ten thousand dollars (\$10,000) per day per violation. For the purpose of this section, each day of continued violation constitutes a separate offense and is punishable as such.

No warrant, presentment or indictment arising under subsection 20-105(2) shall be issued except upon application, authorized in writing, by the health officer on behalf of the local air pollution control program operating under a certificate of exemption pursuant to Tennessee Code Annotated, § 68-201-115, for a violation within its jurisdiction.

(3) Willful and knowing violation of any provision of the City of Lakeland, Tennessee – Air Pollution Control Code is declared to be a misdemeanor, and each day of violation shall constitute a separate offense. Conviction of a misdemeanor is punishable with the fine not to exceed ten thousand dollars (\$10,000) per day per violation or with imprisonment not greater than thirty (30) days, or both.

(4) In addition and supplemental to any criminal action which may be prosecuted under this section, the health officer has and is vested with jurisdiction and authority to determine whether or not any provision of the City of Lakeland, Tennessee – Air Pollution Control Code, any permit condition, or any order has been violated, and whether or not such violation constitutes a public nuisance. Upon such finding that a public nuisance exists, the health officer has authority to abate any such public nuisance in the manner provided by the general law relating to the abatement of public nuisances.

(5) Orders and assessments of damages and civil penalties and appeals.

(a) When the health officer discovers that any provision of the City of Lakeland, Tennessee – Air Pollution Control Code has been violated, the health officer may issue an order for correction to the responsible person, and this order shall be complied with within the time limit specified in the order. Such order shall be served by personal service or sent by certified mail, return receipt requested. The recipient of such an order may appeal in the same manner as with an assessment of damages or civil penalty under paragraph (b).

(b) (i) In addition to the criminal penalties in this section, any person who violates or fails to comply with any provision of the City of Lakeland, Tennessee – Air Pollution Control Code or any standard adopted pursuant thereto in a permit, shall be subject to a civil penalty of up to twenty-five thousand dollars (\$25,000) per day for each day of violation. Any person against whom an assessment in excess of ten thousand dollars (\$10,000) for each violation has been issued by a local pollution control program pursuant to this section may petition the technical secretary for de novo review of the assessment under the provisions of Tennessee Code Annotated, § 68-201-116. The technical secretary shall render an initial determination, and that initial determination may be appealed to the Tennessee Air Pollution Control Board pursuant to this section. Each day such violation continues constitutes a separate punishable offense, and such person shall also be liable for any damages to the municipality resulting therefrom.

(ii) Any civil penalty or damages shall be assessed in the following manner:

(A) The health officer on behalf of the Memphis-Shelby County Health Department operating under a certificate of exemption pursuant to Tennessee Code Annotated, § 68-201-115 may issue an assessment against any person responsible for the violation or damages. Such person shall receive notice of such assessment by certified mail, return receipt requested;

(B) Any person against whom an assessment has been issued may appeal the assessment by filing a petition for review with the health officer, or with the technical secretary of an assessment in excess of \$10,000 for each violation, within thirty (30) days after receipt of the assessment, setting forth the grounds and reasons for such person's objections and requesting a hearing on the matter; and

(C) If a petition for review of the assessment is not filed within thirty (30) days after the date the assessment is served, the violator shall be deemed to have consented to the assessment and it shall become final.

(iii) In assessing such civil penalty, the factors specified in Tennessee Code Annotated, § 68-201-106 and title 42 U.S.C. § 7413 and § 7420 may be considered. Damages to the state or to the City of Lakeland may include any expenses incurred in investigating the enforcing of this section; in removing, correcting, or terminating the effects of air pollution; and also compensation for any expense, loss or destruction of plant or animal life or any other actual damages or clean-up expenses caused by the pollution or by the violation. The plea of financial inability to prevent, abate or control pollution by the polluter or violator shall not be a valid defense to liability for violations of the provisions of the City of Lakeland, Tennessee – Air Pollution Control Code.

(iv) The issuance of an order or assessment of civil penalty by the Memphis-Shelby County Health Department operating under a certificate of exemption as provided for in this section is intended to provide additional and cumulative remedies to prevent, abate and control air pollution in Tennessee. Nothing herein shall be construed to preempt, supersede, abridge or otherwise alter any rights, action or remedies of the technical secretary, Tennessee Air Pollution Control Board or Commissioner of the Tennessee Department of Environment and Conservation.

(v) (A) Whenever any order or assessment under this section has become final, a notarized copy of the order or

assessment may be filed in the office of the clerk of the chancery court of Shelby County if the final order or assessment is from the Memphis-Shelby County Health Department.

(B) When filed in accordance with clause (v)(A), a final order or assessment shall be considered as a judgment by consent of the parties on the same terms and conditions as those recited therein. Such judgment shall be promptly entered by the court. Except as otherwise provided in this section, the procedure for entry of the judgment and the effect thereof shall be the same as provided in title 26, chapter 6, Tennessee Code Annotated.

(C) Within forty-five (45) days after entry of a judgment under clause (v)(B), any citizen of the City of Lakeland shall have the right to intervene on the ground that the penalties or remedies provided are inadequate or are based on erroneous findings of facts. Upon receipt of a timely motion to intervene, the court shall determine whether it is duplicitous or frivolous, and shall notify the movant and the parties of its determination. If the motion is determined not to be duplicitous or frivolous, all parties shall be considered to have sought review of the final order or assessment, and the court shall proceed in accordance with Tennessee Code Annotated, § 4-5-322. If no timely motion to intervene is filed, or if any such motion is determined to be duplicitous or frivolous, the judgment shall become final forty-five (45) days after the date of entry.

(D) A final judgment under this subparagraph has the same effect, is subject to the same procedures, and may be enforced or satisfied in the same manner, as any other judgment of a court of record of this state. (as added by Ord. #03-39, June 2003)

20-106. Enforcement – variances. (1) Any person who owns or is in control of any plant, building, structure, establishment, process or equipment including a group of persons who own or control like processes or like equipment may apply to the air pollution control hearing board, hereinafter referred to as "the board", for a variance from rules or regulations governing the quality, nature, duration or extent of discharge of air contaminants. The application for a variance shall include information and data sufficient for the board to make the findings required below. The hearing held hereunder shall be conducted in accordance with the rules of evidence as set forth in subsection 20-108(6) of the City of Lakeland, Tennessee – Air Pollution Control Code. The board may grant such variance, but only after public hearing on due notice and subject to the

certificate of exemption issued pursuant to Tennessee Code Annotated, § 68-201-115 if it finds that:

(a) The emissions proposed to occur as a result of a variance would not endanger or tend to endanger human health, safety, or welfare, and would not cause or tend to cause property damage; and

(b) Compliance with the rules or regulations from which variance is sought would produce serious hardship without equal or greater benefits to the public or a variance is needed only until a rule adopted by the Tennessee Air Pollution Control Board becomes state effective. If economic hardship is claimed, a description of expected monetary losses shall be included.

(2) No variance shall be granted or denied pursuant to this section until the board has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges, and others who may be affected by granting or denying a request for variance.

(3) Any variance or renewal thereof shall be granted within the requirements of subsection (1) for time periods and under conditions consistent with the reasons therefore, and with the following limitations:

(a) If the variance is granted on the grounds that there is no practicable means known or available for the adequate prevention, abatement, or control of the air pollution involved, the variance shall be permitted only until the necessary means for prevention, abatement, or control become known and available, and the variance shall be subject to the taking of any substitute or alternate measures that the board may prescribe.

(b) If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time as, in view of the board, is requisite for the taking of necessary measures. A variance granted on the ground specified herein shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to such timetable and submittal of proof that such timetable is being met.

(c) Any variance or renewal granted shall be for a time period not to exceed one (1) year.

(4) Any variance granted pursuant to this section may be renewed by the air pollution control hearing board on terms and conditions and for periods which would be appropriate on initial granting of the variance following the same procedures required for issuance of the initial variance. If complaint is made to the board on account of the variance, no renewal thereof shall be granted, unless, following public hearing on the complaint, the board finds that renewal is justified. No renewal shall be granted except on application therefore. Any such application shall be made at least sixty (60) days prior to

the expiration of the variance. Immediately upon a receipt of an application for renewal, the board shall give public notice of such application in accordance with rules and regulations of the board.

(5) A variance or renewal shall not be a right of the applicant or holder thereof, but shall be in the discretion of the board. However, any applicant adversely affected by the denial or the terms and conditions of the granting of an application for a variance or renewal of a variance by the board may obtain judicial review thereof only in a court of competent jurisdiction.

(6) Nothing in this section and no variance or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of Sections 20-107 and 20-1(115) [Reference 1200-3-15] to any person or his property. (as added by Ord. #03-39, June 2003)

20-107. Enforcement – emergency powers of health officer.

(1) Any other provisions of the law notwithstanding, if the health officer finds that a generalized condition of air pollution exists and that it creates an emergency requiring immediate action to protect human health or safety, the health officer shall order persons causing or contributing to the air pollution to reduce or discontinue immediately the emission of air contaminants. Upon issuance of any such order, the health officer shall fix a place and time, not later than twenty-four (24) hours thereafter, for a hearing to be held before the air pollution control hearing board. Such hearing shall be held in conformity with the provisions of § 20-108, insofar as applicable. Not more than twenty-four (24) hours after the commencement of such hearing, and without adjournment thereof, the air pollution control hearing board shall affirm, modify or set aside the order of the health officer.

(2) In the absence of a generalized condition of air pollution of the type referred to in subsection (1) of this section, but if the health officer finds that emissions from the operation of one or more air contaminant sources is causing imminent danger to human health or safety, he may order the person responsible for the operation in question to reduce or discontinue operations immediately, without regard to the provisions of this chapter. In such event, the requirements for hearing and affirmance, modification or setting aside of orders set forth in subsection (1) of this section shall apply. (as added by Ord. #03-39, June 2003)

20-108. Air pollution control hearing board-created; membership; term of office; jurisdiction; hearings; appeals. (1) There is hereby created the Memphis and Shelby County Air Pollution Control Board, hereinafter referred to as "the board" to be composed of nine members to be appointed as described in (a) and (b) below. No member of the board shall hold any elective office or receive any governmental salary except as a member of the faculty or staff of a school in the Tennessee education system. Otherwise, all members

shall serve without compensation. Any member of the board who has any conflict of interest or potential conflict of interest shall make adequate disclosure of it and abstain from matters related to it.

(a) Eight (8) members of the board are to be appointed jointly by the Mayor of the City of Memphis and the Mayor of Shelby County and confirmed by both the Memphis City Council and the Shelby County Board of Commissioners. These eight members shall consist of the following: One professional engineer knowledgeable in the field of air pollution control, one physician licensed to practice in Tennessee, one attorney licensed to practice law in Tennessee, one member of academia, a representative of industry at large, and such other citizen members as may be appointed, except that industry may have no more than two representatives.

(b) One member of the board is to be appointed by the Executive Committee of the Memphis Area Association of Governments. This member is to be a representative for the municipalities of Arlington, Bartlett, Collierville, Germantown, Lakeland, and Millington and is to be a citizen of one of these communities.

(2) The terms of the members shall be four years except that of the initially appointed members, of which three shall serve for four years, two shall serve for three years, two shall serve for two years and two shall serve for one year as designated time of appointment. Whenever a vacancy occurs, the vacancy shall be filled for the unexpired term in the same manner as the original appointment. Should the term of any board member expire without a replacement member being appointed, the existing member shall continue to hold the board membership until such appointment or reappointment occurs.

(3) The board shall select annually a chairman from among its members. The board shall hold at least four regular meetings each year and such additional meetings as the chairman deems necessary. All hearings conducted by the board shall be open to the public. The health director shall act as secretary to the board and shall keep records of its hearing and other official actions. All hearings shall be held before not less than a majority of the board.

(4) The board is hereby vested with the following jurisdiction and authority:

(a) Grant, deny or revoke variance applications.

(b) To decide appeals from any decisions, rulings, or determinations of the health director or his designated representative under this air pollution control code.

(c) To hear appeals arising from the failure of the health director or his designated representative to act within a reasonable period on complaints under this air pollution control code.

(5) Any person taking exception to and who is uniquely affected by any decision, ruling, requirement, rule, regulation, or order of the health director or by his failure to act within a reasonable amount of time may take an appeal to

the board as established by this section. Such appeals shall be made within fifteen (15) days after receiving notice of such decision, ruling, requirement, rule, regulation, or order or failure to act by filing a written notice of appeal directly to the board specifying the ground thereof and the relief requested. Such an appeal shall act as a stay of the decision, ruling, requirement, rule, regulation or order in question until the board has taken final action on the appeal, except when the health director has acted under § 20-107, "Emergency order" or except when an appeal has been filed pursuant to section 20-1(109), Reference 1200-3-9-.05(8). The board, not more than thirty (30) days after the date of filing an appeal, shall set a date for the hearing not more than sixty (60) days after the date of filing of the appeal and shall give notice thereof by mail to the interested parties.

(6) Hearings before the board shall be conducted in the following manner:

(a) Notice of any and all hearings shall be given at least fifteen (15) days prior to the scheduled date of the hearing by public advertisement in a newspaper of general circulation in Shelby County, Tennessee giving the date, time, place and purpose of the hearing; and

(b) The chairman of the board shall act as the hearing examiner to conduct such hearing; and

(c) Any person seeking a variance or any party who has filed a written notice of appeal pursuant to § 20-108 or section 20-1(109) [Reference 1200-3-9-.05], may appear in person or by agent or attorney and present evidence, both written or oral, relevant to the questions and issues involved and may examine and cross examine witnesses.

(d) All testimony shall be under oath and recorded. The board is authorized to have all testimony transcribed and a transcript of such testimony, if transcribed, shall be made available to the respondent or any party to the hearing upon payment of the normal fee, which shall not exceed the cost of transcribing such testimony.

(e) After due consideration of the written and oral statements, the testimony and arguments submitted at the hearing upon such complaint, or, upon default in appearance of the respondent on the return date specified in the formal notice of complaint, the board shall issue and enter such final order or make such final determination as it shall deem appropriate not later than sixty (60) days after the hearing date, and shall immediately notify the respondent thereof, in writing, by certified mail. Such order or determination shall be approved by at least a majority of members to which the board is entitled.

(f) Upon failure of the board to enter a final order or determination within sixty (60) days after the final argument of such hearing, the respondent shall be entitled to treat for all purposes such failure to act as a finding favorable to the respondent.