

## Cold Spring City Council February 25, 2008

The regular meeting of Cold Spring City Council was called to order by Mayor Mark Stoeber. Pledge to the flag was recited and prayer was lead by the City Clerk. Mayor Stoeber asked that we keep in our prayers Dave Guidugli's father-in-law who passed away this morning. Roll call showed the following present – Lou Gerding, Charles Gray, Rob Moore, Kathy Noel and Stuart Ohrle, excused – Dave Guidugli. Also present were Tom Benke, Police Chief Ed Burk, Rita Seger and Brandon Voelker.

Mayor Stoeber pointed out exits from Council Chambers, per Fire Department Regulations

Mayor Stoeber acknowledged and thanked the Public Works Department for the outstanding job they have done in keeping our streets cleared and safe throughout the recent snow, sleet and ice events.

Members of the Cold Spring Police Department were invited to step forward. Chief Burk commended Officers Les Caudill, Jeremy Enzweiler, Nick Love, Chris Ratcliff, Sgt. Brian Messer, and Police Clerk April Robinson for their efforts during a recent event that occurred in our city with the apprehension of a suspect who had a felony warrant for military desertion. He was considered armed and dangerous, and had escape risk indicators on him. Perimeters were secured, the road was secured, Special Ops Group and SWAT were called in, and neighboring residents were contacted to stay inside. With the assistance of April Robinson on the telephone, the suspect gave himself up peacefully. It was a team effort and they are a credit to the department, the city, and their profession. Mayor Stoeber thanked them for their involvement and professionalism, and he credited Chief Burk for their training and expertise shown within the department. It went exactly how a professionally trained organization should go.

Nancy Bay was invited to step forward. Mayor Stoeber stated that Nancy Bay, who works at the city's front desk, has tremendous history with the grounds. Holly Hills Children's Home was run by her aunt and uncle, Mr. and Mrs. Koch. Nancy started working with the city fifteen years ago and is very familiar with this facility which the city purchased in 1990. Not much was done with this facility since that time. Council allocated some monies to re-do and update the interior of the building, and Nancy Bay took care of overseeing and re-decorating the first floor. Much of what Nancy did was outside of her normal work hours and Mayor Stoeber thanked her for her extra efforts. She has done a wonderful job.

Mayor Stoeber read the Oath of Office to our newest police officer, Scott Hildebrand and welcomed him into the city. Chief Burk introduced Scott Hildebrand's wife and asked her to present Officer Hildebrand's shield.

The annual City Easter Egg Hunt will be held on Saturday, March 15, at 1:00 pm at the Municipal Park.

City Offices will be closed on Friday, March 21<sup>st</sup> for Spring Holiday.

Congratulations go to the Newport Elk's Lodge #273 who hosted the 100<sup>th</sup> State Convention Anniversary this past February 21, 22, and 23 at our local Elks Lodge. Russell Kramer, a Highland Heights resident, was inducted as the Elks State President.

Mayor Stoeber stated that a resident Sandy Ross made a suggestion before council about having bus shelters erected in the city after seeing citizens waiting at bus stops in harsh weather. In response the city contacted TANK. They did a survey along US 27 and agreed to erect two glass shelter sites in the city, one at northbound Crossroads Boulevard, and the other at northbound Downing Street/Buning Lane/US27. Thanks to Sandy Ross for the suggestion.

There will be a drawing for a winner of a flag and pole for any Cold Spring resident who stays until the end of this meeting.

Minutes of the **January 28th** regular council meeting were reviewed by all. Charles Gray made a motion to **approve these minutes**. Stuart Ohrle seconded the motion. All were in favor. Motion carried.

Mr. Lawson Walker, attorney representing Mr. Michael Berberich addressed council. They have sent in a written letter withdrawing from their current zoning position that the city has on the property at Aqua Drive. They are here because they would like to sit down and talk to council to work something out for the betterment of the Water District and Mr. Berberich. They would like to have a discussion to find a way to use the property and address the road that the city wants, tonight if possible.

Mayor Stoeber stated that a discussion this night would be inappropriate in that they have other issues relating to this property. With the withdrawal coming in and asking for the additional conversation, there is usually more lead time and planning. He will talk to Council and our City Attorney to see how they wish proceed. Mr. Walker wants it understood that they have withdrawn their application, and Mayor Stoeber concurred that it was understood.

Sandy Ross, of 210 Thornbush Court addressed council. She thanked Mayor Stoeber and council for sending the letter to TANK and stated it was nice to see that they responded and city approved. This will be a nice improvement to the city. Also thanks for the snow removal to date. The city done a beautiful job in keeping the roads clear and safe and open.

**Ordinance 08-939, amending the occupational license ordinance to remove the exemption status for ministers, was read in summary form for the second time.** Stuart Oehrle made a motion to adopt this ordinance and Kathy Noel seconded the motion. Roll call vote showed five yeses and no noes. **Motion carried.**

**Ordinance 08-940, amending the occupational license ordinance to exempt huckster licenses for city sponsored events, was read in summary form for the second time time.** Stuart Oehrle made a motion to adopt this ordinance, and Rob Moore seconded the motion. Roll call vote showed five yeses and no noes. **Motion carried.**

**Ordinance 08-941, was read in summary form for the second time for zone change on Area A approximate 5.3 acre area located along the southeast side of Aqua Drive, approximately 200 feet southeast of Pooles Creek Road, from R-RE to HC; and for Area B approximate 5.1 acre area located at the southwest corner of the intersection of Pooles Creek Road with Aqua Drive from R-RE and NC to PO.**

Mayor Stoeber stated that we have received a letter of withdrawal for that action, and Brandon Voelker advised that Council accept the withdrawal of the application and he has suggested proper language for the record.

Lou Gerding made a **motion to accept the withdrawal of the application from Mike Berberich on behalf of the Northern Kentucky Water District, acting as the agent of said property owner pursuant to Attorney General Opinion 83.30. Based on said withdrawal of said request by the agent of the property owner, the recommendation of the Cold Spring Planning and Zoning Commission (CS-07-11-15) is hereby disapproved, on the grounds that the request for zone change has been withdrawn by the applicant, rendering further deliberations unnecessary. A copy of the letter of withdrawal from both the applicant and his attorney shall be attached to these minutes and incorporated by reference herein.** Rob Moore seconded the motion.

Brandon Voelker stated that the Water District can re-apply again, but this allows the record to reflect that the application has been withdrawn. Mr. Berberich has requested that we take no action, so we are not taking action. We are not making a finding, but allowing the record to reflect this withdrawal to stop deliberation and it is appropriate to have in the minutes. We are not disapproving the project. If this is not done, then at the end of ninety days, someone could say that we have not taken any action and the ninety day period could be utilized.

Roll call vote showed five yeses and no noes. **Motion carried.**

**Ordinance 08-942 was read in summary form for the first time, for a proposed map amendment to the Cold Spring zoning Ordinance on an approximate 3.6 acre area located along the east side of Alexandria Pike, approximately 500 feet north of Ripple Creek, changing the described area from HC\* (Highway Commercial Zone regulated by the Campbell County Zoning Ordinance) to HC (Highway Commercial Zone regulated by the Cold Spring Zoning Ordinance).**

Lou Gerding made a **motion to deny this ordinance on the bases of the wording in our Zoning Ordinance, page 17-3, which says minimum size is to be five acres, unless specifically referred to in our comprehensive plan. This site is only 3.6 acres.** Stuart Oehrle seconded the motion.

Lou Gerding stated that our comprehensive plan does not say anything specifically about it, the land use map shows this to be an SDA zone, and the 2005 comprehensive plan does not show this as being Highway Commercial property. Kathy Noel questioned if it is HC\* on the map.

Brandon Voelker stated that this pocket of the land came into the city as part of an annexation where the zoning was not changed. There is a snapshot in time taken so Planning & Zoning sponsored a zone change amendment to make it HC without

the asterisk. This came up because the applicant wanted to apply certain provisions of Cold Spring zoning ordinance, and certain provisions of the county ordinance. Our sign ordinance is stricter than the county's but our setback is less strict than the county's. The decision was made by Planning & Zoning that Cold Spring ordinances were to be applied. Brandon Voelker stated that Lou Gerding is correct in that it is not a five acre stand alone lot, but we should discuss changing our text. We have this zone that is stuck in time and doesn't grow with our ordinance. Staff is applying land use regulations from the county ordinances which applied in 1994. Mike Schwartz considers the land use regulations as part of the zoning ordinance and Brandon Voelker agrees with that. We are trying to come up with a uniform way to allow this zone.

Kathy Noel questioned if there was any other property in the city with the asterisk assigned. Brandon Voelker stated that there was no other commercial property. The rest are R-RE\* which they usually come in for a zone change anyway. The zoning and comprehensive plan should be studied in the future when annexing any properties. This is a very gray area with no clear cut guidance.

Lou Gerding stated that the county zoning, with the asterisk, still protects the residential property better than what the city zoning does. When this was annexed, the issue was to try to maintain a buffer to the residential property behind that site. Perhaps Planning and Zoning could come up with some language on how to get these two things together. This may set a precedent in the future if someone wants to come in with less than five acres and wants a zone change.

A notice will be sent to the chairman of the Cold Spring Planning & Zoning Commission to request that they study this issue with a recommendation on how to deal with the difference between the two zones with less than five acres, and the different zone in comprehensive zone on the land use map.

Roll call vote to disapprove Ordinance #08-942 showed five yeses and no noes. **Motion carried.**

**Municipal Order #08-01 was read, appointing Alan McCullough to the Cold Spring Planning and Zoning Commission, term to expire 1/31/2012.** Stuart Oehrle made a motion for approval and Charles Gray seconded the motion. Roll call vote showed four yeses and one no – Kathy Noel. **Motion carried.**

Kathy Noel spoke on behalf of Sheila Bogen, chairperson of our Operation Hug ASA Adopt a Soldier program who was unable to attend tonight's meeting. We ask our citizens to remember our adopted soldiers. The cost of shipping our CARE packages is unfortunately eating away at our savings account, and we find that we must scale down on the number of shipments we make per month. Along with donated goods, we are asking for cash donations, which are tax deductible.

Charles Gray stated that if there is something out there that citizens would like for us to address, such as Sandy Ross's suggestion of bus shelters which was referred to at the beginning of this meeting, please let us know and we will certainly try to deal with it and act appropriately.

Brandon Voelker stated that council had authorized the mayor to sign an annexation agreement with Mr. Souza, but there was an issue of typos and an issue of the sidewalk, He provided copies of the addendum to council. Planning & Zoning did vote to allow one sidewalk on the outside of the horseshoe and agreed that an internal sidewalk around the single lot was not necessary. There is no need to take another vote. This is just a change in some wording, and nothing substantial, but he wanted council to be aware of this. If council has any concerns they are to inform the mayor.

Lou Gerding verified for the citizens, that this was already agreed to previously with an agreement between the property owners and the city upon annexation.

Mayor Stoeber again recognized Public Works for their great job, Chief Ed Burk and the Police Department along with April Robinson for their incredible professionalism in rapidly diffusing a very intense situation, and thanks again to Nancy Bay and Sandy Ross.

The American flag and pole was awarded to Jerry Robinson of 7 Orchard Terrace.

Motion to enter into executive session per K.R.S. 61.810 C - Litigation and K.R.S. 61.810 – B Real Estate was made by Rob Moore and seconded by Stuart Oehrle. All were in favor. Motion carried.

Motion to go out of executive session was made by Rob Moore and seconded by Charles Gray. All were in favor. Motion carried. No action was taken as a result of the executive sessions.

Motion to adjourn was made by Lou Gerding and seconded by Kathy Noel. All were in favor. Motion carried.

**Approved:**

**City Clerk:**

**Mayor:**

Michael Berberich  
783 Stable Lane  
Hebron, KY 41048

February 22, 2008

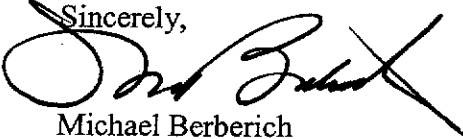
To: City of Cold Spring, KY  
Mayor and City Council  
5694 East Alexandria Pike  
Cold Spring, KY 41076

Subject: Withdrawal of Zone Change Request Number CS-07-11-15

I have retained Mr. Lawson Walker, Attorney at Law, to represent me in the matter of my zone change request Number CS-07-11-15 for the Northern Kentucky Water District property located at 100 Aqua Drive, Cold Spring, KY. Please see his letter dated February 22, 2008 regarding withdrawal of my application.

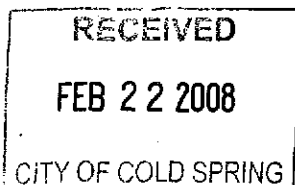
If you have any questions in this matter, you may contact Mr. Walker.

Sincerely,



Michael Berberich

cc: Mr. Brandon Voelker, City Attorney  
Mr. Michael Schwartz, NKAPC  
Mr. Ron Lovan, NKWD



**Frost  
Brown Todd** LLC  
ATTORNEYS

KENTUCKY · OHIO · INDIANA · TENNESSEE · WEST VIRGINIA

H. Lawson Walker II

FLORENCE: (859) 817-5904; CINCINNATI: (513) 651-6925

CELL: (859) 468-8319

LWALKER@FBTLAW.COM

February 22, 2008

**VIA FACSIMILE #859-441-4640**

Mayor Mark Stoeber and  
Cold Spring City Council  
City of Cold Spring  
5694 East Alexandria Pike  
Cold Spring, Kentucky 41076

Re: *Zoning Application #CS-07-11-15*

Dear Mayor Stoeber:

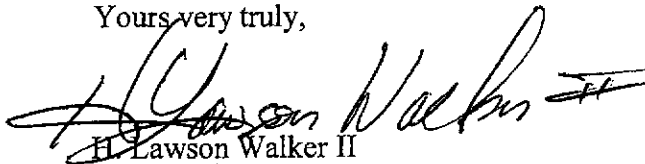
We represent Mike Berberich, who on behalf of the Northern Kentucky Water District, submitted an application requesting the Cold Spring Planning and Zoning Commission to review and make recommendations on an approximate 5.3 acre tract located along the southeast side of Aqua Drive, approximately 200 feet southeast of Pooles Creek Road. The request was to change the property from a rural residential estate zone to a highway commercial zone from R-RE (a rural residential estate zone) to HC (a highway commercial zone); and Area B: An approximate 5.1 acre area located at the southwest corner of the intersection of Pooles Creek Road with Aqua Drive, from R-RE (a rural residential estate zone) and NC (a neighborhood commercial zone) to PO (a professional office zone).

The purpose of this letter is to advise the City that our client is withdrawing the proposed map amendment to the Cold Spring Zoning Ordinance. Therefore, there is no reason for the City Council to act in any way on this matter at the next scheduled Council meeting as our client is no longer requesting the zone change.

Mayor Mark Stoeber and  
Cold Spring City Council  
February 22, 2008  
Page 2

The reason for this withdrawal are the additional conditions imposed by the City Council including the condition that our client not only provide the right of way for the extension of the street but provide 100% of the cost of constructing a portion of a new road that is not necessary for the use of our client.

Yours very truly,



H. Lawson Walker II

HLW/lbh

cc: Mr. Michael Berberich  
Mr. Michael D. Schwartz,  
Brandon Voelker, City Attorney  
Mr. Ronald Lovan