

Cold Spring City Council March 23, 2015

The regular meeting of the Cold Spring City Council was called to order by Mayor Nancy Bay. Pledge to the flag and prayer was led by the City Clerk. Roll call showed the following council members present – Chris Ampfer, Lisa Cavanaugh, Lou Gerding, Brenda Helton, Roger Jones, and Adam Sandfoss. Also present were Attorney Cameron Blau, Acting Police Chief Wayne Hall, Public Works Supervisor Dave Rodgers, and City Clerk Rita Seger.

Mayor Bay pointed out exits from Council Chambers, per Fire Department regulations.

Lou Gerding requested the deletions under New Business of Items 10 E. F. and G. on the agenda, which were discussions on three resolutions for various text changes. He questioned why these were placed on the agenda because it makes it look like Council or Planning and Zoning is being manipulated to becoming the applicant on the text changes. K.R.S. says that it is Planning & Zoning or City Council who can sponsor text amendments, and when we put these text changes on the agenda we have opinions in advance, which may put us in a bad legal situation and in possible jeopardy of legal procedures in the future. If a resident or a business wants something different Councilman Gerding suggests that they get placed on the agenda at one of our Planning and Zoning meetings and state what they would like to have changed and ask them to sponsor a text amendment, or if they don't get it there they could come to a City caucus meeting and ask if the City would consider sponsoring a text amendment. That cuts down all of these discussions that you are really not supposed to get into until the public hearing. That is the reason for his request to remove these text amendments from the agenda.

Brenda Helton stated she read in the draft of the Planning & Zoning minutes that they tabled all three of these items. Cameron Blau stated that all three of the text amendments were removed, but if the City wants to discuss it, they can do so from the perspective of moving forward, or the applicant can go before our Planning & Zoning Commission and they can interview them and discuss with them the reasons for it, and then they can make a proposal through that process as well. Lou Gerding made a **motion to remove New Business Items E. F. and G. from the March 23, 2015 Council Agenda**. Brenda Helton seconded the motion. All were in favor. **Motion carried.**

Nancy Bay stated that these will be sent to Planning & Zoning and let them take the first step. Chris Ampfer stated that he thought, after reading the draft of the P&Z minutes, that these were on their agenda but were tabled because there were questions to be answered. Lou Gerding stated it was because of procedural issues and he asked for this action so that we can stay out of legal trouble in the future, regardless of who that applicant may be. Brenda Helton verified that we have no recommendation from our Planning & Zoning Commission yet so it would be difficult for us to take any action on this. Chris Ampfer questioned the Paulena Drive map amendment issue. Nancy Bay stated that is not on the agenda tonight. Cameron Blau stated that had a notice issue with the neighbors and that is why it was tabled.

Under items of interest to community, Nancy Bay announced that Saturday, March 28th at 1 pm we will hold the City's Annual Easter Egg Hunt. Hopefully we will have a nice day for it and there will be a nice turnout. If any council members are willing to come and help, it would be greatly appreciated. On Saturday April 25th the Arbor Day celebration will be held at the Municipal Park Shelter. Adam Sandfoss verified that this would be held at 10:30 in the morning. Mayor Bay stated that the Park Board has been very busy with all of their events. If you would like to volunteer at any events it would be greatly appreciated. Also there are openings on the Park Board if anyone would like to step forward and volunteer. Call the City Clerk at 441-9604. Campbell County Spring Cleanup will be held on Friday and Saturday April 17th and 18th from 8 am to 5 pm, and on Sunday April 19th from 8 am to 4 pm. General trash will be accepted at Pendery Park and the Campbell County Police Station. The Campbell County Transportation Center will accept general trash as well as bulky items such as furniture, tires, scrap metal, car batteries, appliances, electronics and propane tanks. They do not accept oil or paint. Shred Day will be held at the DAV Headquarters at 3725 Alexandria Pike, on Saturday April 25th from 9 am to 1 pm. Your paper documents will be shredded onsite in a secure and safe manner.

The minutes of the February 23, 2015 regular council meeting were reviewed by all. Lou Gerding made a motion for approval and Adam Sandfoss seconded the motion. All were in favor. **Motion carried.**

There were no scheduled or unscheduled guests.

Under old business, Mayor Bay read **Resolution 15-02 adopting and approving the execution of a contract between the City of Cold Spring and the Campbell County Fiscal Court for general planning services on an as-needed basis**. This agenda item was tabled from the February 23rd meeting. Cameron Blau explained that right now, whether you want to use Campbell County Planning Services or not, based on the current contract we could not use their services. This resolution would

allow for the mayor to enter into a contract with the Fiscal Court. Judge Pendery could move forward with it and then we could enter into a contract allowing for those services as needed. Legally Campbell County Planning and Zoning right now is not authorized to provide those services and this would allow the City to take advantage of the opportunity to use their services should you wish to do so.

Lou Gerding stated that we do not have a copy of that contract yet. Cameron Blau stated that it mirrors the previous Fiscal Court contract that we currently have, but the resolution just adds the additional addendum allowing specifically for general planning services. Lou Gerding stated that the copy passed out at the last meeting is really not a contract but just allows the mayor to enter into a contract. Under the rules of the Finance Committee they are really supposed to rule on all contracts and expenses, so we should send that to the Finance Committee to review this contract before approval. Chris Ampfer verified with Lou Gerding that there was any money set aside in the budget for this. He questioned if it was a matter for the Finance Committee to determine how much they want to allow. Lou Gerding stated that it would be a matter of the Mayor and Cameron Blau to put the contract together. Then the Finance Committee would take a look at it, make sure that it is revenue neutral to the existing budget, and then give the blessing back to the Mayor. Lou Gerding made a **motion to approve Resolution 15-02 with the condition that before the mayor signs it, it has to be approved by the Finance Committee.** Adam Sandfoss seconded the motion. Discussion followed. Brenda Helton questioned if there was a term on this contract. Cameron Blau stated that there is not. You are not agreeing to pay County any money at this moment or even use their services, it just allows you to use their services should you want to. Roll call vote showed six yeses and no noes. **Motion carried.**

Mayor Bay stated that the next item under old business is the request for approval of the Comprehensive Plan update assistance by Campbell County Planning & Zoning. Mayor Bay stated that the previous item was for other planning services, but this is strictly for the Comprehensive Plan. Lou Gerding questioned if we received an estimated amount. Mayor Bay stated that it would be \$80 per hour and would be for approximately 300 hours or \$24,000. The budgeted amount is \$25,000. Cameron Blau stated that this would bleed over into the next fiscal year so obviously we will have to continue that line item on the next budget. Adam Sandfoss made a **motion to approve the assistance of the Campbell County Planning and Zoning for the Cold Spring Comprehensive Plan update.** Lou Gerding seconded the motion. Roll call vote showed six yeses and no noes. **Motion carried.**

The next item for discussion was the AT&T cell tower, 5692 (formerly 9 ½) Weaver Lane. Mayor Bay stated that the last lease agreement that we had was 29 years ago. That lease expired in July 2014. We have never received rental for the tower property, only the property tax payments. Crown Castle who now has ownership wishes to do a new lease agreement and pay both rental fee and property taxes. Cameron Blau explained that they are proposing a 30 year lease that will increase by 15% of the quarterly amount every five years which is standard. They are asking to pay \$3,000 quarterly which is usually based on population / location so they are just equating \$1 per square foot. However, based on Attorney Blau's preliminary research on comparable population and sizes, this seems low and should probably be at a minimum of \$4,500 quarterly. They are also proposing, as an irrevocable option, an additional 500 square feet at a base price of whatever you lease it for. They don't indicate what they intend to use it for, but that they just want to lease it, obviously and presumptuously to expand. The current proposal is the base value per square foot, so if they are doing \$3,000 quarterly at \$1 per square foot the additional 500 square feet would be \$500 additional every quarter.

Chris Ampfer verified that this is the property that is down by the soccer field, and there is a hillside beside it. Nancy Bay stated that there is residential around it and her personal opinion is that what they have there now should be enough. If we start giving them more, you are running into the residential homes and she doesn't know if that is such a great idea. Chris Ampfer and Lou Gerding stated that they did not receive Exhibit A that was referred to. Brenda Helton stated that it says that we would agree to the exact location and she is assuming it would be adjacent to where the cell tower currently sits. Cameron Blau stated that they didn't attach Exhibit A. Nancy Bay stated that we can table this to the caucus meeting and have them get us more information, but she wanted to put it on the agenda tonight to let Council know that we can get rental income that we have never gotten before. Chris Ampfer verified that the 29 year lease has come and in fact passed. Nancy Bay stated that it is currently leased on a month to month basis. Cameron Blau stated that they are also offering an expedited fee of \$2,500 for you to sign it quickly in so many days.

Lou Gerding stated that they could try to put up another tower on that same property. He has worked as a project manager with people doing cell towers for quite a few years and has seen them put up other towers close to each other. He thinks that we need to have them come in and discuss it. Nancy Bay stated that we will have them bring in more information and discuss it at the next Caucus meeting. Councilman Gerding stated that he was new on council close to the period of time of the first lease agreement, and he heard that this was part of the land swap that went on between Mr. Hay and the City at Friendship Park. Lou Gerding made a **motion to table the cell tower discussion until they are invited to the next Caucus meeting.** Adam Sandfoss seconded the motion. All were in favor. **Motion carried.**

Resolution 15-03 for the Cable Board / Time Warner merger was introduced. Cameron Blau stated that at the last caucus meeting Council had asked him to look into it and review it. Jennifer Teipel with the Cable Board is also present tonight to answer any questions as well. Council had asked how long the effective date would be and if you would be able to revoke the contract if entered into. In reviewing, it indicates that it is for a term of ten years from the moment that all parties sign off on it. There are also terms for relief of the franchise which benefits the cable company, but it doesn't mean it will be granted. Attorney Blau reviewed the provisions of the contract and the three conditions, requirements, and remedies that have to be complied with in order to get out of it should the City wish to terminate it. Mr. Blau did not see any provision of this contract to allow them to renew it automatically. By written provision is limited to ten years.

Lou Gerding questioned page 32 D and if the termination doesn't stand by itself. Cameron Blau stated that it just says that you are not limited by this breach action if there are other causes of actions so in lieu of all other sanctions, rights and remedies then the county participants may revoke, terminate, or cancel the franchise. He verified with Jennifer Teipel that she agrees with his assessment.

Lou Gerding verified with Cameron Blau that the document that he is reading is Exhibit A to the resolution. Cameron Blau stated that the Fiscal Court has signed off on it as have Bellevue, Southgate and Highland Heights. Chris Ampfer made a **motion to approve Resolution 15-03 for the Cable Board / Time Warner merger**. Brenda Helton stated that it sounds like the only way that the city can get out of this contract is if they mess up majorly and we call them on it multiple times. Suppose in the next ten years a competitor comes in the market. We may want to shop around but we can't get out of this contract. Attorney Blau stated that you can't get out of this one, but nothing forestalls a competitor from coming into the area. Brenda Helton replied that we can't go with a competitor because we are locked in for ten years. Jennifer Teipel stated that we already have a competitor in the market, Cincinnati Bell Fioptics. Anybody can come in and get a franchise with the Cable Board. Cincinnati Bell Fioptics is a competitor and they have a franchise agreement with them. If somebody else wants to come in and build and compete against Time Warner they are liberty to do that. Chris Ampfer stated that there are other options out there including DISH. Brenda Helton verified that by entering into this contract we are agreeing to this franchise and we are not locked in to any one service for ten years because they are offering multiple services. Attorney Blau stated that is correct. They have been in negotiations a new franchise contract for many years when Insight sold to Time Warner. They didn't agree with it so the addendum that you see was provided as well regarding the additional conditions.

Brenda Helton verified with Cameron Blau that is the only way that we can pull out is that there has to be repeated violations and they have to have the ability to cure it, pursuant to the contract. Cameron Blau stated that it doesn't mean that there aren't other potential remedies available at law, it is just for a breach of the contract. Chris Ampfer verified that for a competitor to come in they would they have to lay their own hardware. Jennifer Teipel of the Cable Board stated that in order to Time Warner to legally operate in Cold Spring, unless you are going to tell them that they can't operate, by Federal Law they have to have a franchise agreement. If you don't pass this franchise agreement with Time Warner Cable, they cannot operate in Cold Spring. Nancy Bay verified this means that any Cold Spring homeowner who has Time Warner Cable will no longer be able to get it. Jennifer Teipel concurred and said it would be a big issue.

Lou Gerding stated his concern about the change in the law about the franchise fee and he questioned when they expect the court to rule on the appeal of that decision. Jennifer Teipel replied that the Court of Appeals has changed that and overruled the original ruling. They declared the telecommunications franchise tax is unconstitutional. They are still waiting for declaratory judgment. She is sure that they are going to wait and see if the Supreme Court will take that case on, but right now, that is where it stands. Lou Gerding stated that a franchise fee is different than a franchise tax. The money comes to us from the State right now and we turn it over to the Cable Board. If they go back to the old ways where there were the other franchise fees, he doesn't see a problem. He wishes there was an answer for this before we had to sign this agreement. Jennifer Teipel stated that she believes the ruling is going to be upheld. Cameron Blau stated that whether it is granted or not is unknown at this moment. Mayor Bay asked if there was a second to the motion. Chris Ampfer stated that we have to pass this, otherwise we will have no cable.

Brenda Helton stated that according to this resolution the Cable Board would transfer from Insight to ComCast and from ComCast to Charter, but the franchise that we are looking at here says that it is with Insight. She questioned if we are behind in our resolution or should we be signing our franchise to somebody else. Mr. Blau stated it is his understanding that they have already petitioned to transfer it from Time Warner to ComCast pursuant to the underlying agreement. Brenda Helton verified with Cameron Blau that if we agree to this franchise tonight with Insight Kentucky that means that we are agreeing to a franchise with whoever they go to next. Mr. Blau stated it will not be Insight or Time Warner which is where the underlying issue came up, but it is going to ComCast and whatever third party that they break off onto. Jennifer Teipel stated that it will be Charter. Comcast and Charter have signed off on an assumption agreement meaning that they will abide by everything that is in that document. The FCC is ultimately ruling on that. Lou Gerding confirmed that Charter was the name of another provider. Jennifer

Teipel stated that if this all goes through at the federal level, it will be ComCast for only about thirty days and then they will be Charter.

Brenda Helton stated that all of this happened in December of 2014 but this resolution is under the name of Insight. Jennifer Teipel stated that Insight is the parent company of Time Warner that operates it. Dave Guidugli who was the City's former cable board representative was in the audience and he stated that with the Court of Appeals it was a unanimous decision and you very seldom get that out of the Court of Appeals. He would think that the Supreme Court would probably not take that case up. As far as the taxing issue, it will probably go back to the way that it was taxed before. This is the best contract that you are going to get. Jennifer Teipel stated that this has been many years in the making. Nancy Bay stated that if we don't approve this contract everybody who has Time Warner will lose their cable service. Dave Guidugli stated if that is the case then he guarantees that there will be lawsuits. Lisa Cavanaugh seconded the motion made by Chris Ampfer. Roll call vote showed five yeses, one abstain – Lou Gerding, and no noes. **Motion carried.**

The police department had submitted and requested approval from council of surplus items to be disposed of due to age or the equipment being obsolete. Lou Gerding made a **motion to declare these items surplus and declare that they be disposed of according to K.R.S. disposal of city properties.** Adam Sandfoss seconded the motion. Chris Ampfer questioned if we get salvage money from this. Lou Gerding stated that it has to be auctioned off. Wayne Hall stated that would be through sealed bids per K.R.S. Cameron Blau stated that once this is received you can put in a low threshold as well and then if you don't get offers then the city can dispose of them. Chris Ampfer questioned the market for used radar guns. Wayne Hall stated that they are broken. Brenda Helton questioned the hard drive on the laptop. Wayne Hall stated that the hard drive will be removed and destroyed. He stated that the laptop is totally shot. Lou Gerding stated that you still have to make the motion to dispose of them, even if they are declared junk or salvage. Brenda Helton just wanted to make sure that the PD laptop is not going into an office somewhere. Roll call vote showed six yeses and no noes. **Motion carried.**

Municipal Order 15-02 was read, **appointing Amanda Kinnett to the Park Board** to replace a vacancy that expires on 1/27/18. Lou Gerding made a **motion for approval** and Lisa Cavanaugh seconded the motion. All were in favor. **Motion carried.**

Steve Trauth of 59 Madonna Lane addressed council. He referred to the resolution passed tonight for the County planning services, and he stated that we are double spending. We have a Planning and Zoning Commission that is working for the city now and making recommendations, and now we are going to hire the county and pay \$25,000 to review what our P&Z is doing. Lou Gerding stated that the \$25,000 is for our Comprehensive Plan that we have to do every five years. Mr. Trauth questioned if the County was going to do any of our local issues. Lou Gerding stated that the resolution for the mayor to enter into a contract with the County is to allow them to be our planner of choice, which they already were. Mr. Trauth stated that we have given the mayor a blank check. You are going to send it to the Finance Committee before signing, but it should come out of the Finance Committee and then back to the Council to review again, and then authorize the mayor to sign it, so that each member of council can see the contract. This is not the right way of doing this. Nancy Bay stated that we can take the contract to the Finance Committee and if they approve it, we can send it to each council member to look over. If they agree with it, then she will sign, but not until she gets an okay from each council member.

Chris Ampfer stated that this isn't anything new. We used to contract with Northern Kentucky Area Planning and they would give advice. Everyone here has fulltime jobs and they need to rely on someone who is an expert in this. We are hiring an expert who does this all of the time. They guide us, give recommendations, and either council or Planning and Zoning can vote yes or no. Mr. Trauth agrees but it is still Council's responsibility with the taxpayers' money to see what this contract says. You don't sign blank contracts. Good business practices doesn't follow that. Cameron Blau stated that even though this is a contract between the City and Fiscal Court, it is to allow and authorize Planning and Zoning to provide those services as needed, we are not authorizing them to do anything. The second was approval of the Comprehensive Plan allowing County Planning & Zoning to use that ability as provided by the approval of this contract to allow the County to move forward with the Comprehensive Plan at \$80 per hour. It is a contract, but it is not a contract that is guaranteeing any specific job. It is not allowing the mayor to write a blank check but still, finances have to be approved. There is a line item in the budget for the general planning services, but so that there is still the checks and balances of where that money is going to be spent, this is just allowing County to offer those services to the City. Steve Trauth verified that it would be capped at \$25,000. Mr. Blau stated that is the line item budget for the Comprehensive Plan. Nancy Bay stated that if it goes over that figure, it would have to come back to council and be approved.

Departmental reports were submitted in writing.

Nancy Bay stated that we had to cancel the March 19th finance budget committee meeting and she has re-scheduled it for Thursday April 2nd at 6 pm. Notification will be sent out and it will be published.

Wayne Hall stated that the police department is functioning fine. The Police Department is running smoothly and they have a group of employees that he would consider to be the best in Northern Kentucky. Last month, with all of the snow they had 22 accidents. While even one is too many, thanks to public works keeping the streets clear of snow, they didn't have a whole lot of accidents. They issued 34 total traffic offenses, five driving under the influence and eleven narcotic drug arrests. Drug arrests are increasing every month. Warm weather is coming on and with that, crime increases. They would like to see everybody take a few precautions, keep doors and windows locked, keep garage doors down at night, keep your car windows up and doors locked whether they are in your driveway or on the street, and hide items of value that are in your vehicle. With warm weather people like to exercise, walk, and run. If you do this at night or early morning please wear reflective gear so that you are visible and there will be no accidents. He stressed that if you see anything that looks suspicious, call either 911 or Campbell County Dispatch at 292-3622 at once. He would rather go on some suspicious call and have it turn out to be nothing than to go to one that has been an actual crime.

Chris Ampfer questioned the submitted police department report and the figures that were just quoted did not match up to the report. Lt. Hall explained that the activity page is what they get called to for the month, and the second sheet shows the arrests that the officers have actually made. He stated the dates are for the month of February 1st to the 28th. Ninety percent of the drug arrests are due to traffic stops. Most are usually from people passing through the city. Chris Ampfer stated the report shows that the amount of money recovered is actually more than what was stolen. Lt. Hall explained that one of the officers recovered a stolen vehicle. The thefts during the month may have been were only \$1,000, but they add on the recovered amount from January. Lou Gerding stated he received an e-mail from Jerry Ling in Granite Spring sent to council and Officer Hildebrand, and he just wanted to verify that Officer Hildebrand will respond to that e-mail.

Dave Rodgers reviewed an issue that occurred in the Glenridge Subdivision during the past heavy rain spell. They had what could have been a major flooding issue, and it was rather a nightmare for public works. In the evening they had a 2" and a 3" trash pump, trying to pump water out of the street and catch basin to unplug the pipe only to find six bags of dog excrement tied up in Kroger bags which caused the problem. Once they relieved the flooding issue, upon further investigation they went and cleaned all of the catch basins and found a pattern. They contacted the Police Department and appreciated their stern letter to the residents in Glenridge. They actually found 24 bags of excrement on Spireridge alone, and more bags on Ridgepointe up to Glenridge where the dog is apparently walked. Those items blow up, catch leaves and other items of debris and plug it up tight. All catch basins in Glenridge and the majority of catch basins in Cold Spring have been cleaned and are flowing freely. Not only did they enlist the help of the Police, they are enlisting the help of residents as well. They have not found additional bags in the last couple of days so it is a positive sign. Obviously the person could be arrested because this is an illicit discharge, per city ordinance. Mr. Rodgers emphasizes to all of the residents to not put anything in the catch basins. Those are for storm water only. Nancy Bay verified that they recovered a total of 46 bags of dog excrement in the Glenridge Subdivision.

Dave Rodgers also stated that we are more than halfway through last year's road reconstruction program. It will start up again in the Springhouse Subdivision within the next few weeks. The contractor will be starting on the two streets remaining in Springhouse and there are also a few streets remaining in Sturbridge that will be addressed before the end of the fiscal year.

The City Clerk reported that since last month eight more property taxes were paid, so currently we have forty tax bills that remain unpaid out of 2,926 that were mailed out in October. There are seven tangibles that are still delinquent and we are working on those.

Brenda Helton questioned the building permit report and she saw permits issued for HVAC replacements. She always thought replacements did not require permits. The City Clerk reported that HVAC replacements now have to be inspected and that is why they now have to have permits.

Nancy Bay stated that the Easter Egg Hunt is this Saturday at one o'clock. If anyone could come and be willing to help, please arrive around noon. They will take any volunteers. Also if anyone would like to serve on the Park Board it would greatly appreciated.

Nancy Bay stated that it is her understanding that the Central Campbell County Fire District has appointed a Fire Chief who will take office by April 1st. She plans to invite the new chief to the next meeting.

Council comments followed.

Lisa Cavanaugh had a question from some residents, who stated that they saw an article in the paper where the mayor planned to talk to every business owner to get their input about the city. They haven't seen anything where she addressed talking to the residents. A majority of the people said they didn't want to see US 27 turn into another Colerain Avenue. They would

like to know what the mayor's ideas are for getting the residents' input. Since they pay a large part of the city revenue they would like to feel reassured that she has the interests of the community at heart. Nancy Bay stated that right now she is waiting for the weather to break and as soon as we have warm weather her plan is to have a couple of town hall meetings. We can have them here or in the park and invite people to come and give their input on the city and what they would like to see done, what they don't like and take it from there.

Chris Ampfer stated that with the timing of the Comprehensive Plan, this would be a good time for them to give their input. Nancy Bay encouraged everyone who has an idea of what they would like to see to call her or the city and share their ideas.

Lou Gerding stated Council received an e-mail from Joshua Bowlin of Kona Ice as an introduction. The city came to a conclusion a number of years ago that is a commercial use in a residential neighborhood when the ice cream trucks and such come through the city. It looks like Mr. Bowlin has taken over for someone else and it sounds like he is going to drive his trucks back in the subdivisions, and he needs to know that we do not allow this. Brenda Helton stated any business going through a residential neighborhood needs to come to the city to get a permit. Nancy Bay stated we will check into this and contact them.

Nancy Bay stated she is glad that spring is here and hopes everyone stays safe. Come to the Easter Egg Hunt with your children and grandchildren and if anyone is willing to serve on the Park Board she would appreciate a call.

Lou Gerding made a motion to adjourn the March 23, 2015 council meeting at 8:38 pm, and Brenda Helton seconded the motion. All were in favor. Motion carried.

Approved:

City Clerk:

Mayor: