

Cold Spring Planning & Zoning November 9, 2011

The regular meeting of the Cold Spring Planning and Zoning Commission was called to order by Vice-Chair Christopher Vaught. Pledge to the flag was led by the city clerk. Roll call showed the following present – Alan McCullough, Tony Ponting, Tom Ross, Vince Sticklen, Tami Trunick, and Christopher Vaught – excused was Donna Schmidt. Also present were City Clerk Rita Seger, City Attorney Brandon Voelker, and Andy Videkovich, NKAPC.

Vice-Chair Vaught pointed out the exits from the building, per Fire Department regulations.

The October 12, 2011 regular meeting minutes were reviewed by all. Tami Trunick made a motion to approve these minutes and Tom Ross seconded motion. All were in favor. Motion carried.

The public hearing was called to order on a proposed **text amendment to the Cold Spring Zoning Ordinance as follows: 1.) prohibiting the outdoor sale of novelty fireworks and trick noisemakers and authorizing temporary permits for outdoor promotional or merchandising activity only if the activity is permitted in the underlying zone; 2.) allowing the sale of novelty fireworks and trick noisemakers as accessory uses to all retail establishments in any commercial zone; and 3.) adding the HC* (Highway Commercial*) zone to Article X zones.**

Andy Videkovich stated that definitions of consumer fireworks and novelty fireworks are described in Attachment D of staff report. In reference to the **first petition**, under the current regulations there is no provision that temporary sales on a lot have to actually be a permitted use in that zone. This text amendment will prohibit the temporary outdoor sales, including novelty and trick fireworks, if they are not listed as a permitted use within the zone. It will allow the temporary sale of consumer fireworks in any zone which allows said use. It is Staff's opinion that this text amendment is reasonable, and they have recommended approval.

The **second petition** would still prohibit the temporary outdoor sale of fireworks at retail establishments in any commercial zone since it would not be considered a permitted use, but it would allow establishments such as Krogers, Meijers, Home Depot or the like to have their indoor seasonal displays of novelty fireworks and trick noisemakers. Staff's opinion is that this text amendment is reasonable and they have recommended approval.

The intent of the **third petition** is to add the HC* (Highway Commercial asterisk) under Campbell County zone to Article X of the Cold Spring Zoning Ordinance. The purpose of the Highway Commercial zone is to allow a variety of retail service / business uses. The HC* zone is almost identical to the current HC zone, but there are a couple of additional uses as listed in staff report. While it is basically the same as regulated in Campbell County, it will be a little bit different when it is adopted into the city zoning by the addition of this particular use of consumer fireworks sales. Mr. Videkovich explained that the HC* zone is staff's way of identifying zones that are regulated by the County. If the City annexes a piece of property but doesn't change the zoning by statute, then the zoning on that property will remain under the County regulations. Statute states that newly annexed property will be subject to the same land use restrictions as applied prior to annexation until the restrictions are changed by a map amendment or the regulations. By identifying this zone as HC* it could end up causing some confusion from an administration standpoint, since their inclination of seeing the asterisks is to check the Campbell County regulations. Staff recommends to rename this zone by having a different name that is more conventional, such as HC-2 (Highway Commercial – 2) zone. Even though the HC is identical to the county and even though this will not officially result in a change of the official zoning map, staff's opinion is that, even if you decide to name it HC* it still will not officially apply to those properties until there is a map amendment submitted. Staff recommends that we go through that process.

Staff has recommended approval of the third petition subject to the two conditions that 1) it be renamed the HC-2 zone, and 2.) this Board sponsor a map amendment to rezone those properties currently zoned HC* to apply the new zoning regulations.

Vince Sticklen questioned the application fee of \$250 for the temporary fireworks sales, on page 13 of staff report. Brandon Voelker stated that this is a State fee.

Vince Sticklen questioned how you determine the parking requirements listed in page 5 Attachment A, section G and H for temporary permits for outdoor activities. Brandon Voelker gave an example of a large store with numerous parking spaces. They would have to have enough stand alone parking or they would not be granted a permit for a tent. You can't turn your whole parking lot into a temporary outdoor sale. Vince Sticklen verified that if a small strip center wanted to do this, they may not be allowed to because of parking. Brandon Voelker stated that from a practical standpoint, under state

law it has to be under its own building. Using this scenario if there is a strip mall within the allowable zone, they would be allowed to have a temporary outdoor consumer fireworks stand as presented here tonight that could sell consumer fireworks as long as they have ample parking. We do not currently have such buildings in the HC* zone. Vince Sticklen also verified that you are only allowed to have two temporary outdoor sales per year.

Vince Sticklen made a motion to accept petition #1 of the proposed text amendments **prohibiting the outdoor sale of novelty fireworks and trick noisemakers and authorizing temporary permits for outdoor promotional or merchandising activity only if the activity is permitted in the underlying zone, based on the supporting information and recommendation of Staff.** Tom Ross seconded the motion. Roll call vote showed six yeses and no noes. **Motion carried.**

Vince Sticklen made a motion to accept petition #2 of the proposed text amendment **allowing the sale of novelty fireworks and trick noisemakers as accessory uses to all retail establishments in any commercial zone, based on the supporting information and recommendation of Staff.** Alan McCullough seconded the motion. Roll call vote showed six yeses and no noes. **Motion carried.**

On **petition #3**, Tom Ross requested further clarification and discussion on the renaming of the HC* zone. Vince Sticklen stated that we already have the asterisk zone and questioned if we really want to rename it. He does not know what we accomplish by changing the name from the asterisk to a HC-2. Andy Videkovich stated the asterisk is there for Staff to identify zones regulated by the county. Those asterisk zones are not actually part of our zoning ordinance. We just have a section in our regulations with an appendix listing them. He stated that an HC* zone and the city's HC are the conventional naming system, but both could be regulated by a different set of regulations.

Brandon Voelker gave an example that if we annex a strip mall in an unincorporated area without re-zoning it, and the County had it zoned as HC, at that point it would come in to the City as HC* or whatever the County is at that time. If properties are designated with either HC* or HC-2 zoning, whatever rules are set tonight will apply to that property. This Board should consider if you want to allow any HC property that is annexed from the County to come into the City and have these same rules apply to them or do you want to create a new zone so where a property comes in as HC, it is just HC* and is locked in time for whatever regulations are in the County at that time. At that point either this body or council can put the existing HC* through a zone change and put the property in that designated zone. The reason that council asked that we look at this zone is because it is a very small zone. One of the concerns is that if you use the HC zone in general you could have gigantic pole barns in the middle of a shopping plaza selling fireworks. This is the reason they used an "out of the box" way of thinking for this small designation of HC* versus the entire HC designation. If this Board wants to follow Staff recommendations on the two conditions, we can sponsor a map amendment and go ahead with the recommendation to say that any properties that are currently zoned HC* would go through a zone change and become an HC-2 zone. There is really no right or wrong way to do this.

Vince Sticklen confirmed that if this Board follows Staff recommendation, it will then go to council for an ordinance basically adopting this text amendment. Brandon Voelker stated that at the next P & Z meeting we would have a zoning hearing on whether or not to change to this newly created zone, and that also would go to council. At that point they would adopt, not adopt, or do nothing. If they do nothing, after ninety days this body's recommendation would pass as a matter of law.

Alan McMullough made a motion to accept petition 3 text amendment **adding the HC* (Highway Commercial*) zone / HC 2 zone to Article X zones, based on Staff supporting information and recommendations.** Vince Sticklen seconded the motion. Roll call vote showed six yeses and no noes. **Motion carried.**

Alan McMullough made a motion to **sponsor a map amendment, to change the HC* zone to the new designation of HC-2 zone.** Tami Trunick seconded the motion. All were in favor. **Motion carried.**

Per House Bill 55 Vince Sticklen earned three hours of continuing education. Alan McCullough made a motion for approval and Tom Ross seconded the motion. All were in favor. **Motion carried.**

Councilman Rob Moore was present in the audience, and requested that this Board sponsor a text amendment to allow a warehouse for recycling products in the HC* zone for his property at the AA Highway. Brandon Voelker explained that the only bodies allowed to sponsor text amendments are Planning and Zoning and Council. Since Mr. Moore sits on the other body, it would be best to start here. Vince Sticklen verified that the recycling would be all indoors, and would be just

for warehousing and there would be no processing. He verified that the road to this property could handle the traffic. Rob Moore stated that the road is owned by the State. Any vehicular use would be smaller vehicles and not large trucks.

Tony Ponting verified that this request is not because the zone prohibits this use, but it just does not name it as a permitted use.

Alan McCullough made a motion that this Board **sponsor a text amendment to add recycling warehouses to the HC* / HC-2 zone.** Vince Sticklen seconded the motion. All were in favor. **Motion carried.**

Vince Sticklen made a motion to adjourn the November 9th meeting and Alan McCullough seconded the motion. All were in favor. Motion Carried.

Respectfully submitted,

Rita Seger, City Clerk