

Cold Spring City Council Special Meeting January 12, 2015

The special meeting of the Cold Spring City Council was called to order by Mayor Nancy Bay. For the record, Mayor Bay stated that all elected Cold Spring city officials were sworn into office prior to January 1, 2015. Roll call showed the following members present – Chris Ampfer, Lisa Cavanaugh, Lou Gerding, Brenda Helton, Roger Jones, and Adam Sandfoss. Also present were Police Chief Ed Burk and City Clerk Rita Seger.

Mayor Bay pointed out exits from Council Chambers, per Fire Department regulations. She requested that everyone silence or turn off their cell phones during the meeting, and when everyone speaks it should be into the microphone. If someone can't be heard, just raise your hand.

The minutes of the December 8, 2014 special 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.

The next agenda item was city attorney appointment. Mayor Bay announced that she has replaced Brandon Voelker, who held the position of city attorney for the City of Cold Spring. She did not take this action lightly. He was receiving \$54,000 from our city and in accordance of the Kentucky League of Cities, we do not need to have the position of city attorney. She considered three attorneys and she has chosen Cameron Blau as the attorney for the city of Cold Spring. She has also been able to cap his fee at \$2,000 per month, not to exceed an annual fee of \$24,000 per year without consulting the mayor and council. This results in at least a \$30,000 savings each year to our city. Mayor Bay reviewed Cameron Blau's history and his qualifications. Mayor Bay invited Cameron Blau to sit next to her on the dais. She asked if anyone had questions.

Councilman Adam Sandfoss stated that he was not notified by the new mayor of this decision until now and he doesn't think this was the right course of action. Both returning council members and new council members should have been notified of this action prior to this meeting so that we could raise questions, comments or concerns prior to such. Referencing Brandon Voelker's salary, for someone who has saved the city thousands of dollars and has helped us with litigation involving multiple issues including our independence from SD1 for stormwater, it is not correct to let him go. You get what you pay and he stated his opinion that this unilateral action was taken and done unprofessionally and unethically.

Councilman Lou Gerding stated that according to city ordinance the mayor can appoint the City of Cold Spring attorney but council has to approve the appointee. Mr. Blau cannot be a city attorney because he already holds a government office in the State of Kentucky so he cannot be a city attorney here. The Office of the Attorney General has agreed that you cannot hold two offices at the same time. He does not have the right under K.R.S.

Nancy Bay stated that this is a different situation. She is not picking a city attorney but she is picking an attorney to represent the city and she asked Cameron Blau to explain the situation. Cameron Blau stated that he is the assistant county attorney and agrees with Councilman Gerding's statement regarding the opinion of the Office of the Attorney General however as long as he has been privately retained by contract with the mayor he can do so. The OAG offices, in opinions 6724571523 and 73759 has agreed actually that he can do this for the same reason that Steve Franzen, as the county attorney can also be the attorney for the City of Highland Heights. Mr. Blau has also been retained as counsel for the City of Silver Grove. In fact, Brandon Voelker was also an assistant county attorney for Kenton County at the same time he was the Cold Spring attorney.

Lou Gerding again stated that our ordinance says the city attorney appointment has to have approval of the city council. Cameron Blau agrees that if he were holding the position as city attorney under your provision Section 31.38 that he would need it, but there are two conflicts. First our city ordinance actually conflicts with KRS 61.080 because it says you can't hold public office and still be the city attorney. Regardless of that conflict, he is not being hired or retained as the city attorney but being contracted for specific services, the exact same way Mr. Voelker was retained as well as others who were retained in the past. Councilman Gerding stated that Mr. Voelker was hired as a city attorney and only holds one office. Cameron Blau stated that he was then in conflict with the OAG opinion by your own statement. In October 2005 if not later he was actually the Kenton County Assistant County Attorney doing fiscal court work. He held two offices, and in addition he is also the attorney for Newport for their school board, at which Lou Gerding stated that is not a sworn office. Mr. Blau stated that the OAG opinion is correct but Mayor Bay has not hired him as city attorney. He has been hired on a contract basis which the mayor has the executive authority in enter into. KRS 83A.130, subsection 8 along with your own ordinances 31.21 subsection 6 reiterates that she shall enter into contract, and since there is a line item in the city budget for attorney fees she can enter into a contract.

Adam Sandfoss verified with Cameron Blau that he stated that he is not our city attorney, but an attorney for the city hired by the mayor, yet according to the agenda for this special meeting, it says city attorney appointment. Lou Gerding stated that since it is a special meeting, you have to follow the special meeting agenda and the agenda says "city attorney appointment" and since Mr. Blau stated that he is not going to be the city attorney it doesn't meet the agenda and there should be no more discussion on this tonight. Cameron Blau agrees that the mayor is not appointing a city attorney which she could have done tonight, but instead she chosen to contract with him for those legal services, and she is making it known tonight at this meeting. The OAG opinions are all consistent that she has that ability and it is her authority to enter into it. You may not appreciate Mayor Bay's decision but it is quite legal and she is following in what is consistent with the law.

Lou Gerding questioned that if we did break the law back in 2005 with Brandon Voelker, is it now it is okay to break the law in 2015. Cameron Blau stated that he indicated that you followed the law back then and never said that it was unlawful. It was consistent with the same pattern of conflict which you approved back in 2005. You may be unhappy with the mayor's decision but it doesn't make it illegal. Lou Gerding verified that it was then lawful back then to hire Brandon Voelker as our city attorney. Cameron Blau stated that it was for the position of attorney for the city, not the city attorney. If you hired Mr. Voelker as city attorney then at that moment you may have been doing something unlawful because you did not hire him appropriately following K.R.S. in addition to the OAG opinion which was referenced. Your mayor is doing this lawfully and correctly. She is not replacing the city attorney but has contracted for city services and when a need arises for legal questions she has the ability to contact him, ask questions and have him come to meetings to answer any legal questions that she or city council may pose.

Chris Ampfer asked for an explanation of the difference between city attorney and attorney for the city. Cameron Blau stated that the city attorney covers all manners of items. If there is a question of law or a reference to the attorney, normally the city attorney is called directly to ask the question. As an attorney for the city, if there is a legal question that arises in the city, then the mayor or the council has the ability to call him to ask or reference that, and pursuant to the contract, that is when his costs start ticking for services. Pursuant to the agreement that they have worked out, it is \$150 per hour but it caps at \$2000 per month and it won't go beyond that amount unless the mayor or the city council gives approval. Then he can go above and beyond that fee. You may have a general counsel hired as an office for city attorney for the city council. However, Mr. Blau is an attorney that has been privately retained by the mayor to represent or answer any general questions that the city has, to look at ordinances for review. The goal of course is to save the city money by doing that practice which of course has been done throughout Campbell, Kenton counties and throughout the commonwealth since 1967.

Councilman Ampfer questioned if Brandon Voelker was considered full time at \$54,000 per year and if he could be asked an unlimited amount of questions, and if he was considered a city attorney. Based on what he has heard he wasn't getting paid by the hour. Cameron Blau stated Mr. Voelker wasn't getting paid by the hour, and he presented himself as the city attorney but he would have to look into what his original contract was in greater depth. He can only answer that question in part. In addition, the city attorney also needs to be bonded. And he doesn't know if city council named a bond. Mr. Voelker may have been an attorney for the city and then once he left that position he may have then become the city attorney and been appointed appropriately. Cameron Blau stated he has been retained and if his services go above the 13 1/3 hours he could still answer the questions but would have to get prior approval before receiving an additional amount.

Adam Sandfoss stated that he is still confused as to the special meeting and how he has always been told over the years we have to follow the agenda and can't discuss anything else that doesn't pertain to the special meeting agenda. Our special agenda states clearly "city attorney appointment", yet Mr. Blau is saying he is not a city attorney. Cameron Blau explained that he has been retained and that is still following the agenda. The mayor has chosen to not appoint a city attorney and to contract with him which follows in the spirit of the agenda. By not appointing one and going this route she is informing the city of her action, which is still following the agenda, in this case conversely by not appointing a city counsel.

Lou Gerding stated that he would like to address the city attorney appointment. Prior to the start of the meeting he gave council members some information which he put together, especially after hearing what the mayor has done tonight. Mayor Bay stated that he has given this information to council, but he hasn't given it to her. Lou Gerding stated that he didn't need to give it to her since he just wrote it to city council members. Nancy Bay stated that we are here on the appointment and this matter is done and finished. Lou Gerding stated that we are talking about the appointment of a city attorney now, as on the agenda, and not talking about her hiring Mr. Blau on the side.

Lisa Cavanaugh stated that the point of the city attorney appointment is saying that I am not appointing a city attorney as we had it before. That is where this decision falls. She is contracting for an attorney for the city. It is two different things. Lou

Gerding continued and stated that on the second sheet of information that he passed out to city council and following the special meeting agenda for the city attorney appointment, he is asking at this time that city council pass the ordinance which he attached at the end of the document. It says that we can direct the mayor to enter into a personal service contract per the budget amount set forth in the city's 2014 / 2015 budget with Brandon Voelker to continue providing legal guidance to the city. This will ensure the city continues to receive proper legal guidance as compared to the actions proposed to be taken with the appointment of Cameron Blau, which are contrary to law. Mayor Bay stated that if Councilman Gerding wants to get into that he will have to wait until the next council meeting

Brenda Helton stated that that cannot happen because she has already let go of Brandon Voelker. She can fire anyone that she chooses and she has fired Brandon Voelker. Lou Gerding stated that according to our ordinance, city council can hire their own attorney. If we change the ordinance she cannot do that. Brenda Helton stated that action has already been done, and even if we change the ordinance tonight it doesn't affect what has already taken place in the past.

Lisa Cavanaugh stated that there is a difference in doing something that is wrong and doing something that someone just doesn't like. The fact is, if Mayor Bay can do this, that is her authority whether we like it or not. She stated that she personally would support Brandon Voelker if he were an option. She likes him, has never had problems with him, and he has been the only one that has been professional and decent to her over the last couple of years. But the fact is he is not an option and like it or not, we have to move forward from here. She doesn't have a reason not to give Cameron Blau a chance. If Mr. Blau doesn't do a good job the mayor can get rid of him at will and the city council is going to be watching.

Mayor Bay stated that we need to end this discussion and move onto the next agenda item. Lou Gerding stated that he would like to continue addressing the city attorney appointment. He reviewed the qualifications and accomplishments of Brandon Voelker over his past 14 years as city attorney. Nancy Bay repeated that Brandon Voelker is not her choice and wishes to move on. Lou Gerding stated that we have no limits on this timeline. Mayor Bay hit the gavel and stated that we are moving onto the next item. Lou Gerding stated that he would like to make a "point of order", stating that the mayor is out of order on this. We have the right to discuss this since it is on the agenda. We are under Robert Rules of Order. Brenda Helton stated that he was the one who earlier said the discussion on a city attorney appointment should end. Lou Gerding stated that he is discussing the city attorney appointment which is on the agenda.

Chris Ampfer questioned if we are having this discussion because Brandon Voelker wants to come back. Lou Gerding stated that he is doing this because Brandon Voelker has the experience to protect the citizens of Cold Spring. He has the experience to protect us. When the developers come in here, we now have an attorney who doesn't know planning and zoning or annexation rules. Cameron Blau respectfully disagreed with Lou Gerding's connotation as to not knowing or having any knowledge of the law. He has in fact been practicing law for eleven years and is the attorney for Silver Grove. Lou Gerding stated that this council was not given the privilege of interviewing him so he doesn't know these things. He is just saying that Brandon Voelker knows these things and he is an expert at them. Lisa Cavanaugh questioned if Brandon Voelker is the only one that knows these things and the only one that can get the answers.

Christopher Ampfer stated that if we are not going to approve a city attorney then we should move on because he doesn't want to discuss this any longer. If at our next meeting you can find something that says that what Mr. Blau says is not true or if Councilman Gerding or Brandon Voelker wants to do something more, that is fine. Councilman Ampfer stated that he is not a lawyer and he doesn't have time to read all of this beforehand. If something is illegal it will come out in the wash. If Mayor Bay is doing something incorrect, we will find out. If the time comes that we have to approve him we will do so, but right now he is under contract.

Cameron Blau added that an important thing to note is that if you approve a city attorney, then his contract is null and void. It is a provision of the contract. He is at will and has been retained as private counsel and most importantly as an independent contractor. He is not an employee of the city and if we should find a city attorney obviously under mayor's purview pursuant to your own ordinance, it is she that shall appoint and then the city council approves after she chooses. Lou Gerding stated that we can change the ordinance. Christopher Ampfer stated that if she is not appointing a city attorney, then we have nothing to approve.

The next item on the agenda is **the Ad Hoc Committee appointments**. She requested that the city clerk pass out the sheets with the committee appointments for council approval. She stated that she asked council to pick two committees that they would like to serve on with the understanding that they might not get both appointments. Lou Gerding made a 'point of order' that again, according to the agenda of a special meeting, it says ad hoc committee appointments. You mention Finance Committee, but that is a standing committee under Ordinance 03-820. The special meeting agenda does not address standing

committees, it is saying ad hoc committee appointments and it separates standing and ad hoc committees. Lisa Cavanaugh stated that we don't have to hang on to every single word.

Nancy Bay stated that she has appointed Adam Sandfoss and Lou Gerding for the Finance Committee, Brenda Helton and Roger Jones for Public Works Committee, Lisa Cavanaugh and Chris Ampfer for Personnel Committee, and Adam Sandfoss and Roger Jones for Public Safety. She has appointed Chris Ampfer to the Stormwater Subcommittee per former Mayor Stoeber making stormwater an ad hoc subcommittee.

Brenda Helton made a **motion to approve these appointments** and Chris Ampfer seconded the motion. Discussion followed. Lou Gerding stated that this action is illegal again because it is not following the agenda of the special meeting, but at the same time he had put in for the Public Works Committee and he feels that a member of this committee needs to have been around construction, know things about construction, streets utilities and the like. He verified with Roger Jones that he is not experienced with that. Brenda Helton stated that she has been part of the Public Works Committee in the past. Her father worked in construction so she has been around that her whole life. She has some construction knowledge. Lou Gerding stated that we also need someone on that committee who knows what is in or not in the city and what is private property because in the last several years the City of Cold Spring has spent a lot of money and time working the state right of ways, the county right of ways, and on private property. He had asked to be on this committee so that we can address these issues. He would still like to be on there. Brenda Helton stated that she is sure that Mr. Rodgers is aware of the property lines. Chris Ampfer stated that it should be pretty apparent on what the difference is between state right of ways and city road right of ways. The state has right of way maps and the county has right of way maps. Whatever is left is ours. Nancy Bay stated that when the committee meets they will talk to Mr. Rodgers about this. Brenda Helton clarified that Public Works Committee also includes the mayor as well as Dave Rodgers who is our superintendent of Public Works. There will be four members and what we don't know, we will learn. Nancy Bay stated that if people feel that work being done is not in the city you must inform us. Brenda Helton further stated that all council members are welcome to attend any of the committee meetings. Nancy Bay thanked Chris Ampfer for being on the Stormwater Subcommittee. He does know about stormwater and he is an engineer so that will be a great help to us.

There being no further comments, roll call vote showed five yeses and one no – Lou Gerding. **Motion carried.**

The next item of business is the **Cable Board appointment**. Due to the resignation of Dave Guidugli from the Cable Board she would like to appoint Lou Gerding to the Cable Board. He has been on it before and knows all about it and can bring good information back to the city to keep us abreast one everything that is going on with the Cable Board. Lou Gerding stated that he has a conflict of interest being on the Cable Board due to some personal insurance umbrella policies, and that is why he had to get off on his last term. He thanked Mayor Bay for the consideration.

Chris Ampfer questioned what the Cable Board representative does. Lou Gerding stated that as a member of the Cable Board you meet monthly and you oversee Time Warner who now runs it, trying to get a contract with them and an agreement is made on which equipment, how much is paid for the programming, and what is allowed to be put on the stations. It is interesting because there is money that comes back through the State for the lease of right of ways and with the utilities. There is money that the Cable Board does get and that is what you are administrating, trying to keep the staff on budget and keeping the prices down so that it doesn't get to the point where the cities have to throw in more money than what comes back from the state.

Chris Ampfer questioned if the Cable Board was set up by the state or individually by cities. He verified that it didn't originate here in the City of Cold Spring. Cameron Blau stated that it is by statute but it does hold great import. When TWC took over or merged with Insight, there was a huge debate over that contract and it was the Cable Board that kept the cities abreast of that situation and their recommendation on whether to sign the contract or not. K.R.S. created it and it was preferred to be populated by members of different cities for obvious reasons to give representation for their interest in the cities. Christopher Ampfer verified that the appointee would not be overseeing permits for installation of lines in street right of ways and things like that. Mr. Blau stated you just make decisions on contracts and cost of the equipment and approval of where the funds are spent. Christopher Ampfer questioned if, on a city level, do we decide on who we contract for the cable. Lou Gerding stated that in a way you do. That is what the Board is arguing about right now. Cameron Blau stated the answer is yes or no. Generally for the county, the answer is yes and then each city has input after the Board makes a decision and makes a recommendation to the cities. The cities are all impacted because of the right of ways, the lines going through, and the money that comes back potentially. Christopher Ampfer questioned if this was on a yearly basis. Lou Gerding stated that once the contract is signed, it is usually a long term contract. Mr. Blau stated that you really find out what is involved in the communication process. It is intriguing and overwhelming at times but very interesting.

Mayor Bay stated that we need a representative to be on that Board so that we have representation for our city. She can appoint someone else unless there is someone willing to serve on that. The meeting is once per month. Christopher Ampfer

made a **motion to table the Cable Board appointment until the next Council meeting on January 26th** and Lisa Cavanaugh seconded the motion. All were in favor. **Motion carried.**

Lou Gerding made a motion to adjourn the January 12, 2015 special council meeting and Adam Sandfoss seconded the motion. All were in favor. Motion carried.

Approved:

City Clerk:

Mayor: