



Date: February 20, 2024

To: D. Angelo Penque, Mayor  
Steve Taylor, Administrative Officer  
Brandon Voelker, City Attorney  
All City Council members

From: Robin Morency, City Clerk

Subject: Meeting

The City of Cold Spring will hold a Special Council meeting on Thursday, February 22, 2024 at 5:00pm per the attached agenda. This meeting will be held at the Cold Spring City Building 5694 E. Alexandria Pike Cold Spring, KY 41076.

Thanks,  
Robin



# **Cold Spring City Council Special Meeting Agenda**

**February 22, 2024  
5:00pm**

1. Call Meeting to Order
2. Prayer & Pledge
3. Roll Call
4. Minute Approval
  - February 12, 2024 special meeting minutes
5. Ordinance 24-1090
  - 1<sup>st</sup> reading to approve an ordinance of the City Council of the City of Cold Spring, Kentucky, closing Harvest Trail at US 27 in accordance with the provisions of KRS 82.405 (Alexandria Pike)
6. Approve extension of development agreement with Neyer
7. Adjourn

## Cold Spring Council Minutes

### February 12, 2024

The February 12, 2024 special council meeting was called to order by Mayor Penque at 7:30pm.

Prayer and pledge were led by the Assistant City Clerk (00:12)

#### *Roll Call & Exit Instructions: (00:56)*

- Present: Mayor Penque, Lisa Cavanaugh, Dave Guidugli, Paul Kloeker, Cindy Moore, Adam Sandfoss, Assistant City Clerk Heather Markus, City Administrator Steve Taylor, Public Works Director Ron Hitch, Police Chief Steve Collinsworth, Event Coordinator Stacy Klosterman, and City Attorney Brandon Voelker
- Not Present: Chris Ampfer, Robin Morency

#### *Audit Presentation: (1:30)*

- John Chamberlin of Chamberlin Owen & Co. presented the findings of the audit for the year ending June 30, 2023. Scott Horne of Munnighoff Lange & Co. addressed council stating that the city is financially sound.

#### *Approval of Minutes: (18:23)*

- January 22, 2024 council meeting minutes were reviewed by council. There was discussion regarding the accuracy of the resolution under New Business in the minutes. Council agreed to approve the minutes under the conditions that the minutes be amended to what was listed and read from the agenda at the January 22<sup>nd</sup> meeting. Adam Sandfoss made a motion. Lisa Cavanaugh seconded the motion. All were in favor. **Motion passed.**

#### *Ordinance 23-1088: (29:39)*

- A 2<sup>nd</sup> reading of an ordinance to adopt an amendment to the zoning map of the City of Cold Spring, county of Campbell, Kentucky for an approximate 26-acre area on the southeast corner of US 27 and AA highway for portions of land located in the City of Cold Spring from Rural Residential Estate (R-RE\*) to Mixed Use Planned Development (MUPD) and Highway Commercial Two (HC-2). There was discussion. Dave Guidugli made a motion. Adam Sandfoss seconded the motion. Roll call vote shows 5 yeses and 0 noes. **Motion passed.**

#### *Ordinance 23-1089: (31:20)*

A 2<sup>nd</sup> reading of an ordinance to adopt annexing certain unincorporated territories within the county of Campbell, Kentucky and contiguous to the present boundary lines of the City of Cold Spring, Kentucky, and defining by metes and bounds the territory annexed; designating the zoning classification of the property to be annexed to Mixed Use Plan Development (MUPD) and Highway Commercial 2 (HC-2) after compliance with the provisions of KRS 100.209, at the time the annexation of the property is final. There was discussion. Dave Guidugli made a motion. Adam Sandfoss seconded the motion. Roll call vote shows 5 yeses and 0 noes. **Motion passed.** Mr. Voelker stated Midland is requesting two special meetings to vacate Harvest Trail. Clayton from Midland addressed council, stating they need the street vacated in order to close on the construction loan. There was discussion about when to hold the meetings. No dates were decided on.

*Executive Session per KRS 61.810(1)(b) and (g):* regarding the former DAV site, specifically, the sharing of business information that the open discussion thereof may jeopardize the project as contemplated by statute (35:33)

- Lisa Cavanaugh made a motion to enter into executive session. Adam Sandfoss seconded the motion. All were in favor. **Motion passed.**

## Cold Spring Council Minutes

February 12, 2024

- Dave Guidugli made a motion to exit the executive session. Paul Kloeker seconded the motion. All were in favor.  
**Motion passed.**

### *Action taken during Executive Session:*

- There was no action taken.

### *Adjourn:*

- Lisa Cavanaugh made a motion to adjourn the meeting. Dave Guidugli seconded the motion. All were in favor.  
**Motion passed.**

### *Adjournment: (24:53)*

- Mayor Penque adjourned the special meeting at 8:55pm.

Approved:

City Clerk:

Mayor:

*To view the meeting agenda, visit:*

*To view the meeting video, visit: <https://coldspringky.gov/meeting-videos/>*

**COMMONWEALTH OF KENTUCKY  
COUNTY OF CAMPBELL  
CITY OF COLD SPRING  
ORDINANCE NO. 24-1090**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COLD SPRING, KENTUCKY, CLOSING HARVEST TRAIL AT US 27 IN ACCORDANCE WITH THE PROVISIONS OF KRS 82.405 (ALEXANDRIA PIKE)**

**Whereas**, Kentucky Revised Statute 82.405 sets forth the procedure for closing a public way; and

**Whereas**, the proposed development of the Cold Spring Pointe renders all portions of Harvest Trail useless; and

**Whereas**, the prerequisites of KRS 82.405 have been met.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY OF COLD SPRING, CAMPBELL COUNTY, COMMONWEALTH OF KENTUCKY AS FOLLOWS:**

**Section I**

That the City of Cold Spring, Campbell County, Kentucky closes all portions of the public way known as "Harvest Trail" from a point where Harvest Trail and US 27 (Alexandria Pike) intersects to a point where Harvest Trail terminates, and as more specifically outlined on "Exhibit A" attached hereto.

Furthermore, the City of Cold Spring, Campbell County, Kentucky makes the following findings of fact:

1. All abutting property owners to the public way subject to closure have been identified.
2. Written notice of the proposed closing has been given to each.
3. All abutting property owners have given their written notarized consent to the closing, with copies of the consent attached hereto as "Exhibit B".

**Section II**

Any section or provision of this Ordinance which is declared invalid by a court of competent jurisdiction for any reason, such declaration shall not invalidate, or adversely affect, the remainder of this Ordinance.

### Section III

That this ordinance shall take effect and be in full force from and after its passage, publication and recording, according to law.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

1<sup>st</sup> Reading - \_\_\_\_\_, 2024

2<sup>nd</sup> Reading - \_\_\_\_\_, 2024

City of Cold Spring, Kentucky

By: \_\_\_\_\_  
D. Angelo Penque  
Mayor

Attest:

\_\_\_\_\_  
Clerk



**Exhibit A**

DESCRIPTION:	Harvest Trail
LOCATION:	US 27 & Harvest Trail
DATE:	January 24, 2024

Group No. 70380/Z and 70402/Z

Situated in the City of Cold Spring, County of Campbell, Commonwealth of Kentucky, lying on the Northeast side of US 27 (Alexandria Pike) South of KY Hwy 9 (AA Highway) and being all of Harvest Trail, a portion of what was formerly known as Old State – Visalia Road, and shown on the David Leitch Patent of 13,800 Acres and recorded on Plat Cabinet D, Slide 433B; also the 25-foot wide strip of right-of-way shown on the plat attached to the deed to Robert N. & Deborah Rottman in Deed Book 165, Page 154 and the 25-foot wide strip of right-of-way shown on the deed to John C. & Lisa Cavanaugh in Deed Book 209, Page 285, all of the Campbell County Clerk's Records at Alexandria, Kentucky.

Harvest Trail begins approximately 1,800 feet South of the centerline intersection of US 27 and the AA Highway, at a point in the existing Northeast right-of-way line of US 27, 171.58 feet right of US 27 centerline station 264+63.86, as shown on Kentucky Department of Transportation plans for Alexandria-Cold Spring Road, and runs in a North and Northwest direction approximately 870 feet to its terminus on the existing Northeast right-of-way line of US 27, 155.87 feet right of US 27 centerline station 271+34.76. No record was found dedicating or documenting a uniform right-of-way width for Harvest Trail.

Prior Instrument Reference:	Deed Book 165, Page 154 Deed Book 209, Page 285 Plat Cabinet D, Slide 433B
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**Exhibit B**

**Consent of Abutting Property Owners to the  
Closure of Harvest Trail**



**FOURTH AMENDMENT TO**  
**ASSIGNMENT OF PURCHASE AGREEMENT**

This Fourth Amendment to Assignment of Purchase Agreement (the "Fourth Amendment") is entered into effective February 28, 2024 (the "Effective Date"), by and between Al. Neyer, LLC, an Ohio limited liability company ("Assignor"), and the City of Cold Spring, Kentucky, a Kentucky municipal corporation and city of the home rule class ("Assignee").

**RECITALS:**

**A.** Assignor and Disabled American Veterans, a federally chartered non-profit corporation ("Seller" or "DAV") were parties to that certain Purchase Agreement concerning approximately 30.95 +/- Acres dated November 13, 2020 (the "Purchase Agreement") related to the sale of real property and improvements located at Alexandria Pike and Industrial Road in Cold Spring, Campbell County, Kentucky as described in the Purchase Agreement (the "Property");

**B.** Assignor and Assignee entered into an Assignment of Purchase Agreement ("Assignment"), dated December 20, 2021;

**C.** On January 4, 2021, Assignee, Assignor and DAV entered into a Memorandum of Purchase Agreement and Assignment ("Memorandum"), which Memorandum was recorded on January 26, 2021, in the Campbell County, Kentucky Clerk's Office, as Document No. 5124954, and at Book MC716, Page 189;

**D.** On March 8, 2021, Assignor and Assignee entered into a First Amendment to Assignment of Purchase Agreement ("First Amendment") to provide, among other things, that Assignor shall be entitled to all rights and interest in and to the deposits made under the Purchase Agreement which are required to be made by the Purchaser;

**E.** On April 7, 2021, Assignor and Assignee entered into a Second Amendment to Assignment of Purchase Agreement ("Second Amendment") to provide, among other things, that the exclusive development rights of Assignor shall be amended to be a duration of three (3) years from the date DAV surrenders possession and occupancy of the Property. Per the Campbell County, Kentucky PVA, DAV surrendered possession and occupancy on April 8, 2021;

**F.** Assignee purchased and acquired legal title to the Property from DAV on April 8, 2021;

**G.** On July 5, 2023, Assignor and Assignee entered into a Third Amendment to Assignment of Purchase Agreement ("Third Amendment") to, among other things, modify the maximum interest rate with shall determine the amount of Carry Cost (as defined in the Second Amendment) that Assignor shall be required to reimburse to Assignee; and

**H.** Assignor and Assignee desire to enter into this Fourth Amendment to extend the duration of the exclusive development rights of Assignor.

NOW, THEREFORE, in consideration of the covenants contained herein and the recitals set forth above, the parties hereto agree as follows:

1. **Capitalized Terms; Recitals.** All capitalized terms not otherwise specifically defined in this Fourth Amendment shall have meanings ascribed to such terms in the original Assignment or Purchase Agreement, as amended, as the case may be. The foregoing recitals are incorporated into this Fourth Amendment.

2. **Duration of Assignor's Exclusive Development Rights.** Notwithstanding anything within the Assignment to the contrary, the exclusive development rights of Assignor set forth in Section 2 of the Assignment, as amended by Section 3 of the Second Amendment, are hereby extended for an additional three (3) years, expiring on April 8, 2027.

3. **Reimbursement of Carry Cost of Assignee.** As set forth in the Third Amendment effective July 5, 2023, shall continue during this Agreement.

4. **Counterparts; Interpretation.** This Fourth Amendment may be signed in counterparts and each counterpart will be considered an original, but all of which, when taken together, will constitute one instrument. This Fourth Amendment, along with any future amendments or notices hereunder, may be signed and delivered by electronic mail, facsimile, any other electronic means (e.g. DocuSign) as provided by the Uniform Electronic Transactions Act as enacted in the State of Kentucky (c.f. Kentucky Revised Statutes Chapter 369), commercial carrier, or by regular mail. Each of the parties agrees to permit the use of telecopy or other electronic signatures in order to expedite the execution and delivery of this Fourth Amendment, intends to be bound by its respective telecopy or electronic signature, and is aware that the other will rely on the telecopied or other electronically transmitted signature.

5. **Governing Law.** This Fourth Amendment shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of Kentucky.

6. **No Further Modification.** The Assignment, as previously amended, remains in full force, except as amended by this Fourth Amendment, and is hereby ratified and reaffirmed.

7. **Conflicts.** If any conflict between this Fourth Amendment, previous Amendments and the Assignment should arise, the terms of this Fourth Amendment shall control.

*[Remainder of Page Intentionally Left Blank – Execution Page(s) Follow]*

IN WITNESS WHEREOF, Assignor and Assignee have executed this Fourth Amendment effective as of the date written above.

ASSIGNOR:

Al. Neyer, LLC,  
an Ohio limited liability company

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

ASSIGNEE:

City of Cold Spring, Kentucky  
a Kentucky municipal corporation

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_