

Cold Spring City Council November 22, 2010

The regular meeting of the Cold Spring City Council was called to order by Mayor Mark Stoeber. Pledge to the flag and prayer was led by the City Clerk. Roll call showed the following council members present – Lou Gerding, Dave Guidugli, Brenda Helton, Rob Moore, and Sandy Ross, excused - Stuart Oehrle. Also present were Police Chief Ed Burk, City Clerk Rita Seger, and City Attorney Brandon Voelker.

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

There were two additions to tonight's agenda as requested by Mayor Stoeber, under New Business, Item 10 D. two appointments to the Parks, Recreation and Tree Commission, and under Item 10 E. first reading of an ordinance for administrative updates to the police policy.

Mayor Stoeber stated that the first item of interest to the community is a 911 call, which was placed by four year old Kayla Thompson when her father badly injured his hand. Kayla is a true hero that comes in a tiny four year old package. Among those involved in this situation and who were present at this meeting included Kayla Thompson and her brother Lucas, her parents Michelle and Sam Thompson, 911 Dispatcher Heather Bartel, and the responding firemen Dave Weghorn and Chuck Bixler of the Central Campbell County Fire Department Emergency Squad. Mayor Stoeber also acknowledged Cold Spring Police Officers Jeremy Enzweiler and Andy Hyett who were also responders.

Chief Ed Burk stated that this four year old girl performed absolutely magnificently in getting the squad to respond to the house, and he played a recording of this 911 call to Dispatcher Heather Bartel. Kayla stayed in control, got the information out and remained very calm. Her parents taught her the right thing to do at the right time. Fireman Chuck Bixler stated that she was calm and cool when they arrived. He stated that her little brother Lucas assured the firemen that his dad would be okay and was going to the hospital.

Mayor Stoeber then read a proclamation to Kayla Thompson and everyone involved, acknowledging their brave actions, He presented the proclamation to her parents.

The annual Visit with Santa will be held on Sunday December 5th at the Cold Spring Firehouse from noon until 3 pm. Also, as a reminder to our residents, our Cold Spring lobby is a collection point for the U.S. Marine Corps Toys for Tots program. If you wish to donate toys, please do so. The box will be in our lobby through the end of November.

City offices will be closed on Thursday, November 25th and Friday, November 26th due to the Thanksgiving holiday. There will be no change to the trash pickup, which will be on Friday, November 26th.

The December council meeting will be held on Monday, December 13th at 7:30 pm. The regular December caucus meeting will be cancelled due to the Christmas holiday. We will have one meeting in December, a council meeting in place of and on the same date as the regularly scheduled caucus meeting.

There will be a drawing for an American flag and pole for a resident staying until the end of this meeting.

The minutes of the October 25, 2010 council meeting were reviewed by all. Lou Gerding made a motion for approval and Sandy Ross seconded the motion. All were in favor. Motion carried.

Jerry Ling and George Tagge, Granite Spring residents, were present and thanked the city for their great job in fixing the leak in the road at the Granite Spring island, preventing possible accidents and injuries. The city found a solution to get it done without impeding traffic. Mayor Stoeber thanked them for coming. He stated that a lot of the thanks goes to the public works department who worked very hard and made sure there was no inconvenience.

Resident Larry Robinson was present and questioned the city's stand on the smoking ban which was discussed at the Campbell County meeting last week. Mayor Stoeber replied that we did not support the smoking ban, however we did not speak against it. For the last five years, the city did in fact ban tobacco use in all of our public places in the city because if residents wish to come to a meeting and someone is smoking and they chose not to be around that smoke, they could not duplicate the meeting. However, the city also followed up and said that individual rights versus health and wellness of the entire community is a large and important issue which should be dealt with at the County level.

Mike Flannery, 4 Neltner Drive, stated he lives right behind Blockbuster on the city border. He wants to get a storage building and has found out that his property is zoned commercial. The ramifications are that he could get a 120 sq ft. storage building, but because of the commercial zone it has to be 100 feet from each border. His property is not 200 feet. He questioned if city council has any control over that. He just wants to put in a ten foot x ten foot storage shed. NKAPC told him that he could go before our Board of Adjustment at a cost of \$520.

Lou Gerding, who has twenty plus years experience as a city council member, stated that at the time when Neltner Drive was zoned as commercial property, the agreement was that the residents would still be allowed to build what would normally be allowed in a residential zone. Several years ago, another resident of Neltner was granted a building permit for such a building and at that time we sent some type of communications to this resident and also to NKAPC telling them what council had decided.

Brandon Voelker stated that if this shed has no electric or lighting, then he will be okay. Mayor Stoeber stated that if he wishes, he can move forward with this as long as he stays at or less than 120 square feet and keeps it ten feet off of the back and side property lines. We will track down this letter, and get a copy to NKAPC and to Mr. Flannery. Thanks to Lou Gerding for the history.

Ordinance 10-972 was read in summary form for the second time, **to amend, modify language, and re-adopt the Cold Spring Comprehensive Plan.** Dave Guidugli made a motion to adopt this ordinance and Brenda Helton seconded the motion. Roll call vote showed five yeses and no noes. **Motion carried.**

Resolution 10-09 was read, **approving and authorizing the mayor to execute the Cable Board Interlocal Agreement.** This was discussed at the November caucus meeting. City Attorney Brandon Voelker reviewed the agreement and stated that there is nothing wrong with it. At this point it is a legislative decision. He spoke to Lou Gerding about concerns he had about turning over our right of way. He stated that if someone should want to build something in our right of way it could not be done. There are setback requirements and our zoning ordinance would trump that. This is primarily for underground telecommunications, which will probably be standard in the future.

Another area of concern was the timing of when the city could pull out of this interlocal agreement. Mr. Voelker stated that there are two timing provisions in this agreement. The Cable Board's fiscal year is the same as the city, from July 1st to June 30th. The Cable Board will give Council their annual report in November. Brandon Voelker stated that the agreement under Section 4 automatically renews unless you give sixty days notice by January 1. There is a second ninety day provision in Section 15 which allows you to get out at any time with ninety days notice giving council the chance to cancel before the Cable Board adopts their new budget. The key is that you are going to examine the report and look at the financials when it comes out in November. If you are not going to be able to withdraw by January 1st, you can still exercise your ninety day clause and get out before their next year starts.

Mayor Stoeber stated if by chance we accept this resolution tonight, we will have this discussion as a standing item on each years October caucus agenda as a reminder so that we don't get into the month of November and run out of time to ask questions.

Lou Gerding questioned how the four percent cost of living will be handled if it doesn't come up until April 15th. Brandon Voelker stated that when they have the Cable Board annual report in November, then council can diligently review this budget, and this cost of living can be predicted. But first they are required to deplete their reserves. You should be able to monitor this. Councilman Dave Guidugli who is also a cable board representative, stated that first the actual board votes on a cost of living increase, and then, if passed, it would go to the individual cities and the fiscal court, where it has to pass by a majority vote. Mr. Guidugli stated that on the plus side, the Cable Board is staying with the 2005 revenues, and reserves have been built up a little since then, due to school contracts for meetings which they can do "for profit" or other income generated activity like that. The Board has not taken a four percent cost of living increase in these last five years.

Lou Gerding questioned why they handle the COLA in April while their budget is handled in November. Dave Guidugli stated that their budget is not really handled in November, but that is just when they come out with it. The executive director is going to send out a report to all of the cities and the fiscal court, showing where they are at, what they did last year, and what they are proposing for the future. They start on their budget much like our city does in March and finalize it in May or June.

Lou Gerding stated that the Board will be able to have up to a four percent cost of living increase, which would be voted on by April 15th. We have ninety days to get out of the agreement, but if we are not notified until April 15 and the beginning of the fiscal year is July 1st that is less than ninety days. We would have to take the COLA for three months. We are giving up the rights of our citizens. Mr. Gerding stated that we have been burnt before with interlocal agreements, and he would like to get out

of them when we want to get out. We have given up the right to streets, roads, public ways, easements, and in return we are getting our council meetings broadcast, which he and the citizens do like. The Cable Board should want our business and be able to work with us so we don't have to be locked into this ninety days.

Dave Guidugli said that Cold Spring could technically just not send the check to the Cable Board in June or July and remove themselves for non-payment. Lou Gerding verified that the Board would have to remove us according to the contract. They can also hold us liable for that check, according to the franchise agreement. Dave Guidugli stated that you are going to see the pattern from year to year and report to report. If you see they are coming close to charging the cost of living, then the city can decide they don't want to be involved.

Mayor Stoeber questioned what the Cable Board annual budget is currently. Dave Guidugli stated that ballpark figure is approximately \$250,000, but reserves are almost as high as \$600,000, however, they are in the process of buying new cameras, switches, etc. and the reserves will be down to the about \$400,000. Mayor Stoeber stated that if an annual budget is \$250,000 and the reserve is \$400,000, the law states that the four percent COLA cannot be initiated until that \$400,000 reserve goes down to three months of operating budget, or approximately \$80,000. On a \$250,000 operating budget this means they would have over one whole year of operating expenses before they get there. Mayor Stoeber agrees with Councilman Gerding that the way the agreement is written, it does look like the city could be in a precarious state, however, given the fact that they have to show what their budget is in November and what they think they will do, the likelihood of them using up that entire reserve and then invoking the four percent increase by April 15th would be pretty small. Basically it appears that there is an early warning system and if we put this on the agenda in October and look at their financials in November, we can raise whatever questions we want. There are certain realities that inherently build in a safety net for us.

Mayor Stoeber stated that he is in agreement of Mr. Gerding's interpretation that there is a possibility of a four percent increase in a period which we may have to take for the three months of the ninety day notice, because we would not know until April. Another alternative is that in November, after reviewing the financials, we can write the Cable Board and ask for an immediate response as to whether or not they are going to use the COLA, and the Cable Board will then have to put it in writing. Brandon Voelker stated that after the budget review in November, if we feel that there is just mismanagement, we can pull out. The one thing that he likes about the agreement is that at least it does give you a chance to raise the questions in November. You always have the right to get out and nothing stops that right.

Sandy Ross stated that it was her understanding after caucus discussion that, after we vote on this, we would also send a resolution requesting a shorter notification period. This was an item on the agenda. Brandon Voelker stated that he did not think it was good to pass a resolution and then immediately pass another resolution wanting to change it. The terms of the interlocal agreement need to govern how it is changed. The proper course at that point would be for all of the members and the Cable Board to choose to change the terms. If we can agree at least in principle to the interlocal agreement, then that is the best we can hope for.

Lou Gerding verified with Brandon Voelker that they have to follow our subdivision regulations and they would have to get permits from the city for working in the street right of way. Mr. Voelker stated that there are some easements, but if they are interfering with our road they should contact the city.

Rob Moore made a **motion to authorize the mayor to execute the Cable Board interlocal agreement**, and Dave Guidugli seconded the motion. Roll call vote showed three yeses and two noes – Lou Gerding and Brenda Helton. **Motion carried.**

Mayor Stoeber stated that we have had two resignations from the Parks, Recreation and Tree Commission, and he has put two people, **Cindy Moore and Tricia Tobergte, forward for appointment to fill these vacancies**. Dave Guidugli made a motion to approve this appointment, per **Municipal Order 10-09**, and Lou Gerding seconded the motion. Brenda Helton questioned if this was by recommendation of the Park Board. Mayor Stoeber stated that it is the mayor who makes these appointments. All were in favor. **Motion carried.**

As an addition to the agenda, **Ordinance 10-973** was read in summary form for the first time, **updating Police Administrative Policy**, as recommended by the Safety Committee. Chief Burk stated that there are seventeen policies to be updated, due to accreditation changes, maintenance and departmental justice training changes, and technology changes, which we try to update yearly. These were completely reviewed by the Safety Committee. Rob Moore made a motion to approve this ordinance and Dave Guidugli seconded the motion. Sandy Ross verified that council would receive a full copy of these police policy updates. Roll call vote showed five yeses and no noes. **Motion carried.**

When questioned by a resident on an update on the SD1 lawsuit, Mayor Stoeber replied that we do not have an update at this time. It is still working its way through the system. Also questioned was the purpose of construction equipment on the property across from First Baptist Church. Mayor Stoeber stated that this is the SD1 updating a tremendous amount of their piping systems because of their new plant at the southern end of the county, and also to relieve the pump station into a gravity feed. None of this is a developer.

Brenda Helton stated that the police department activity page shows eight animal complaints in October, and yet for the last two months there has not been a report from our animal control officer. She questioned if the police department is now handling animal complaints. Chief Burk stated that they sometimes get calls from the dispatch center with animal complaints such as a deer being struck on the highway or dogs barking too loud and things like that.

Mayor Stoeber stated that based on the list from public works they are extremely busy. They are crack sealing, and they did an excellent job on the island at Granite Spring. They have a variety of other work to do too.

Sandy Ross questioned where we stand on the planning and zoning indoor/outdoor recreational facilities in the SDA zone. She questioned if this now it goes to code enforcement. Lou Gerding stated that this will be coming to us, as a text amendment. Brandon Voelker stated that it was a recommendation from Planning and Zoning and it is definitely up to council at this point. There are no time constraints on when council can make a decision on this. Zone changes have ninety days to approve or disapprove, but with text amendments there are no time constraints, and he suggests that this be placed as a caucus agenda item.

Brenda Helton questioned if our park board or the city would be contacting Home Depot about assisting us with the shelter in the park. Home Depot has come to the last two meetings stating that they would like to volunteer to assist the community. Mayor Stoeber stated that this is a public works and city administration issue, not a park board issue.

Mayor Stoeber stated that we have run an ad for a Code Enforcement Officer and we will be reviewing the applications and moving through on this.

Dave Guidugli questioned why we have not received recent Animal Control reports. The City Clerk replied that our Animal Control Officer has stated that she does not have a computer, and it is very difficult to write down what she does for each city each month, and she gets to it when she can. The reports are very sporadic.

Rob Moore stated that he has had several phone calls these past two weeks regarding the smoking ban. Five years ago this was a pretty spirited debate among council. He questioned if the city would want to review this on a city level and not a county level. He questioned that if the county does pass this, do we have an option. He would rather have our hands on this rather than leaving it for the county.

Mayor Stoeber stated that it is up to city council to put this issue on the agenda or not. Technically the question is if the county passes a smoking ban ordinance, does the city have the prerogative to review and accept it or say no, that we don't have a smoking ban in Cold Spring. Brandon Voelker stated that in the review, they are using what is called general home rule powers under KRS 83 A, which says that it is a public health and welfare issue and adopting it countywide. The only way a city can do something is if they do something that is more stringent. They are trying to clear the field to where the city has no say on the issue and it is countywide.

Sandy Ross appreciated getting the resolution on the smoking ban from 2005 and did not realize that that was when the difference was made between public and government buildings. She recalled last summer when she asked where we were on the non-smoking policy and our city administrator stated that the Judge Executive and County were going to take up that issue. If she knew the issues then, she would have recommended that we have our own public hearing. Sandy Ross stated that she hopes the city will not opt out if this is the direction that the county goes.

Mayor Stoeber stated that we did have a public hearing in 2005 with the business community, the public, and the health officials. Mayor Stoeber stated this is an important issue but we are at a point where this is not public discussion. The essential question tonight is, should the county pass a smoking ban ordinance, can the city do something on its own. If the county answers yes to the smoking ban, we can put it on our agenda and fully explore it, however, Mayor Stoeber does get the impression that it would be probably a very legal issue for the city to take a position on if it is other than a smoking ban. We can cross that bridge later.

Lou Gerding commended the Planning & Zoning Commission for how they did the comprehensive plan update. This is the first time in a long time that they have done this without a full-blown comprehensive plan update. This was the right thing to do and they did a fantastic job. Dave Guidugli stated that Steve Taylor, Planning & Zoning Chairman had the foresight to see that this update made sense.

Mayor Stoeber gave his sincere thanks to the residents of Cold Spring for the honor of being elected mayor for another four years. He takes this responsibility very deeply and is thrilled about having this opportunity for another four years. He also gave his congratulations to the council members Lou Gerding, Dave Guidugli, Rob Moore, and Stuart Oehrle who chose to run again and were re-elected. He welcomed Kathy Noel, who was a former councilwoman and former Planning & Zoning Commission Member, for stepping forward and joining council for the next two years. Mayor Stoeber welcomed new member Adam Sandfoss and he stated that it is great that we have a completely new person sitting on council. Mayor Stoeber thanked Sandy Ross and Brenda Helton for their time and effort in serving over the last two years.

The winner of the American flag and pole was resident George Tagge.

Mayor Stoeber stated that the executive session listed as the next item on the agenda was not needed and it was removed from the agenda.

Rob Moore made a motion to adjourn the November 22nd meeting, and Lou Gerding seconded the motion. All were in favor. Motion carried.

Approved:

City Clerk:

Mayor: