

Cold Spring Planning & Zoning September 11, 2013

The regular meeting of the Cold Spring Planning and Zoning Commission was called to order by Chairman Christopher Vaught. Pledge to the flag was led by the city clerk. Roll call showed the following present – Christopher Vaught, Peter Glenn, Donna Schmidt, and Vince Sticklen - excused were Alan McCullough, Tony Ponting, and Tami Trunick. Also present were City Clerk Rita Seger, City Attorney Brandon Voelker, and Campbell County P&Z Member Ryan Hutchinson.

Mr. Vaught pointed out the exits from the building, per Fire Department regulations.

The August 14, 2013 regular meeting minutes were reviewed by all. Vince Sticklen made a motion to approve these minutes and Donna Schmidt seconded motion. All were in favor. Motion carried.

Christopher Vaught opened **public hearing #124-13-TXA-01, on a proposed text amendment to the Cold Spring Zoning Ordinance Section 10.0 (D) R-RE Residential Rural Estate: adding a thirteenth conditional use to conditionally permit small farm wineries in the R-RE zone, applicant is the City of Cold Spring.** He stated that during the public hearing, any questions/comments should be addressed directly to this Board and not to anyone in the audience. If any questions/comments need to be redirected, then this Board will be the one to redirect them. Also, he will limit any public speaking time to five minutes, as posted on the council chamber doors.

Ryan Hutchinson, Campbell County Planning & Zoning, approached the Board with Staff review. He handed out a slight modification on page 2 of Staff report which corrected the number of properties affected by this proposed amendment. Mr. Hutchinson gave a background on this proposal, with a request from Larry Leap for the operation of a small farm winery on his property at 333 Pooles Creek Road within the in the city's R-RE zone. Mr. Hutchinson read the proposed addition of a thirteenth conditional use, as listed in staff report, and the definition of wineries, and he showed slides including an overlay of the zoning of this property and surrounding areas. He pointed out all properties that would be affected by this proposal.

Mr. Hutchinson explained the Staff review and the results and staff recommendations. He stated that the Planning Commission Staff has recommended that the Cold Spring City Council adopt the proposed text amendments and definitions to the Cold Spring Zoning Ordinance Article 10.0 "R-RE" Residential Rural Estate Zone Section 10.0 (D) subject to the following conditions:

13. a) The facility shall be located on a minimum of five acres; b) the parcel must be located along a collector or arterial roadway not a local road; c) a maximum of 50,000 gallons of wine may be produced annually; d) the applicant must retain all occupational, business and liquor licenses needed to run this facility; e) public tasting is permitted subject to the following additional conditions: e 1) the maximum area for public tasting is limited to 1,000 square feet of enclosed building; e 2) that the maximum outdoor seating be 15 tables / 50 people; e 3) hours for the public tasting are limited to 11:00 AM to 10:00 PM; e 4) No full size tour buses shall be permitted on site; e 5) in addition to serving wine and beer by the glass, the tasting facility may serve light accompaniments such as cheese, crackers, and similar fair; and e 6) items used in connection with the serving, storing or display of wine related merchandise are permissible for sale inside the building.

Donna Schmidt questioned how many parcels this would affect on Pooles Creek Road in Cold Spring. After looking at the slide presentation she thought she only saw two that could possibly consider this. Ryan Hutchinson pointed out three of the parcels which are on Pooles Creek Road.

Peter Glenn questioned the recommendation of removing the word "shall" on the maximum of 50,000 gallons of wine, and where the wording for the 50,000 gallon amount came from. Ryan Hutchinson stated that the word "shall" seems subjective. If you take "shall" out of it, then it is clear that the maximum is 50,000 gallons. Vince Sticklen suggested that we change the wording to say "up to" 50,000 gallons. Brandon Voelker stated that if you use the word "shall" it almost suggests that you have to produce 50,000 gallons of wine. Ryan Hutchinson stated that he researched other communities that had an actual winery ordinance in their zoning code and the production of 50,000 gallon maximum was on the low end. Donna Schmidt questioned what at most could be produced on this parcel should the land allow it. Mr. Hutchinson stated that he isn't familiar with how much wine can be produced on an acre, and that is a question for Larry Leap.

Peter Glenn stated that while we discussed the size of the building for the tasting area, he questioned the size of the facilities need to produce and store the wine and whether we need to include a provision for the size of these buildings. Ryan Hutchinson said staff did not look at that but this Board could make that a condition. You are allowed to have accessory structures in the R-RE zone. Anytime someone is proposing this conditional use they would have to come back for approval

and submit a site plan. At that time you would have the ability to set those conditions. Brandon Voelker stated that the real question is what would be the size of the structure and equipment needed to produce that amount of wine. The amount you are going to produce would probably mandate what you are going to need. Ryan Hutchinson stated that looking under the home occupation regulations it says no more than twenty-five percent of the gross floor area of the dwelling be used for the conduction of a home occupation area, but by proposing this change a conditional use would trump that. It is up to the Board's discretion. Brandon Voelker stated that if this is approved, then the Board of Adjustment could set limits on how big the building could be. The good thing about conditional uses is that you do have the ability to put restrictions on it.

Peter Glenn asked if additional parking spaces would be required for the buildings used in the making of the wine. Mr. Hutchinson stated that for every two employees you need one parking space, either the number of seats or size of the facility will determine the parking.

Christopher Vaught stated his concern that, by allowing the manufacturing of wine in homes, what is to stop someone else from coming forward and saying that they want to start another kind of manufacturing in this zone. Ryan Hutchinson stated that the ordinance will read specifically for wineries with a definition. Brandon Voelker stated that they would have to go through the same process as Larry Leap.

Peter Glenn verified that the public tasting would be restricted to wine and beer sales and questioned if hard liquor could be sold. Ryan Hutchinson stated that he may sell beer on the premises also, but none by the bottle or keg. Brandon Voelker stated you have to have fifty percent of food sales to sell hard liquor on a premise. Also, there are no more hard liquor permits available in this county.

Peter Glenn questioned if there were any restrictions as far as the food that can be served. The proposal says cheese and crackers and similar fare, but it may morph into sandwiches, soups, etcetera. He questioned if we need to be more restrictive in the wording to clarify this. He questioned if we could restrict it to something that the Health Department would have to approve of and if the city should even regulate this at all. Ryan Hutchinson stated that if you start to produce other types of food you are getting into Health Department regulations and you would have to have a commercial kitchen, and the like. Brandon Voelker stated that the Health Department does not regulate what you serve, as long as you comply with their regulations such as cleanliness or things like that. If this Board wishes, you may define it so as not to include sit down meals or lunches. It is better to say what can be served versus leaving it to the Health Department. He stated that this would be something that Captain Leap could clarify.

Vince Sticklen stated that the bigger concerns right now are whether we going to sandwich this in between residential properties and the hours of operation. People may not want to have a winery next to them in a residential zone. Also, we must think about the times they start and stop working there, yet allow him to operate his business. The parking is also a concern and if he only has ten spaces, that is not enough for the business and we don't know if this will fit on his property. Brandon Voelker stated that Larry Leap would have to apply to the Board of Adjustment and come up with a site plan for the parking area. We could require so many parking spots or be more restrictive on the number of patrons.

Christopher Vaught verified that all Board members received a copy of the letter from neighboring property owners Ralph and Deena Anthony, 347 Pooles Creek Road, who are in opposition to this winery. He has concerns for the residents living nearby and who have been established there for years or who bought in their properties in their current state. Christopher Vaught stated that he is open to hearing what the applicant says.

Larry Leap addressed the Board. He stated that the production of 50,000 gallons of wine comes from the small farm winery license requirements by ABC and that is their maximum allowable requirement. As far as production, generally a good unit will produce about three tons per acre, which is about 400 to 500 gallons per ton. His vineyard currently would produce about 4,000 to 5,000 gallons, not a lot of wine. Even with all of his acreage he would never come close to 50,000 gallons. He described equipment and tanks he would need and stated he would not require a massive building, and that he has an existing barn to use for producing wine.. He plans on converting that to where he would put his tanks. In response to a question by Peter Glenn, Mr. Leap stated that his barn is 55 to 60 feet from the property line, plus there is a 7 ½ foot privacy fence between the barn and the adjacent property, 330 feet long.

Peter Glenn questioned what types of requirements there would be as far as fencing and landscaping or buffering for a business like this and if so, would he be subject to complying with those requirements. Ryan Hutchinson stated that there is a section in the zoning regulations on screening that has to do with incompatible land use adjacent to a residential zone. If you want that as a condition, then we can add something to the proposed ordinance now stating that they would need to comply with the landscaping screening ordinance. Once a plan is submitted, that is something that the Board of Adjustment would look at. Brandon Voelker stated in reading the landscape control regulations, since this would be a conditional use, it

would implicate zoning regulation section 9.15. Peter Glenn questioned how much of this property would have to comply with the landscape requirement. Ryan Hutchinson stated that it would be between property lines. Peter Glenn stated that most businesses are required to have a front landscape requirement as well. Brandon Voelker stated that the right of way would require three trees per one hundred linear feet of road frontage. Larry Leap stated that this would not be a problem.

Vince Sticklen questioned how far away his current fence is from the property line. Larry Leap stated that it is approximately twenty feet. He plans on running the privacy fence all the way to the back of the property. He is just waiting for a decision on this issue.

Captain Leap stated that the Kentucky ABC passed the ability for small farm wineries to serve beer by the glass in conjunction with the wine tasting room, however he is not allowed to sell beer as a package liquor item or by the bottle. It could only be served on tap in the tasting room along with the wine, and he has to buy an additional license to do so. Wine can be sold by the bottle or the case. He cannot produce beer on the property. He would serve premium beer on tap by the glass only.

Larry Leap stated that he is fine with the hours of operation from 7 am to 10 pm and he will work with the Board on this. He wasn't planning on having parties with loud bands.

He stated that he hasn't seen the letter which was submitted by Mr. and Mrs. Anthony and asked for time to review it and write a rebuttal. Mr. Leap gave a history on his relationship with Ralph and Deena Anthony and various issues with them regarding a sign, fence, and tree. Vince Sticklen stated we don't need to hear this. Christopher Vaught stated that this is not pertaining to the issue at hand and if he wishes to make a rebuttal it is between him and his neighbor and the Board doesn't need to get into this area.

Christopher Vaught questioned if he had plans to have a winery there at the time he purchased the property, and if so, why he didn't approach the city sooner before he began planting and constructing. Larry Leap confirmed that he did so, from day one. He said that he did approach the city attorney and the mayor in 2008 and told them of his intentions, but he was then deployed. Christopher Vaught stated that he knows the chain of command being in the military, and to go forward with this anyway is a sign of disrespect of the policies and procedures of the City of Cold Spring. He could have waited to talk to us or brought this to a formal planning and zoning meeting. He did acknowledge that Mr. Leap sent his representative, Mark Schmidt here on his behalf a year or so ago, but it didn't go through at that time.

Larry Leap stated that regardless of whether or not he has a winery, he would have gone through his vineyard anyway. It is something that he enjoys doing regardless, and he can grow grapes on his property and he enjoys the way it looks. As far as remodeling the house, whether he has the winery or not it is going to be a beautiful place, and was designed to be a residence and easily converted to a tasting room. He also believes that sometimes you have to show how things can be done. Once people can get a visual on how things look, then they can visualize the dream. He wanted the city to see what it could be and how the improvements to the property make quite an impact. He loves to landscape so that will not be a problem. This winery will go quite well with the Cold Spring environment. He asks that this Board gives him full consideration. He didn't intend any disrespect but to just follow a dream.

Chairman Vaught asked if he considered any other property in the county and what drew him to Cold Spring. Larry Leap stated that it is the location. Some other wineries have problems in that they are in isolated agricultural areas, and because people didn't know how to find them, they created winery tours/trails. He decided that he really needed to find someplace close the major artery roads and this is only fifteen minutes from downtown. When he spoke to the Nafus family, they had farmed it all of their lives and didn't want it developed. He told them that he planned to farm it and in order to do that he has to make a little bit of money on it. The property has a lot of cool history and nostalgia.

Vince Sticklen questioned what he thinks the real hours of operation will be because we want to be considerate of people next to us, but we will work with him to set some guidelines that we can live with. Wine tasting should be limited to certain times. He also questioned the hours used for picking and producing. Larry Leap stated that wine tasting is seasonal with more customers in the summer months than in the fall. The busiest days for tastings are Thursdays through Saturday, and lighter on Monday, Tuesdays and Wednesdays. Brandon Voelker stated that you need to close the tasting room at 10 pm. Larry Leap said he is agreeable to closing the tasting rooms at 9 pm on Mondays through Wednesdays. He stated that for the hours of production the agricultural part is weather contingent. Generally most farm work in summer is early in the morning at sunrise to noon, and they break away until evening. Vince Sticklen questioned if the making of the wine was done only in the daytime. Captain Leap stated that the winemaking is done day or the middle of the night but it is a quiet process and no one knows that it is going on. The picking and crushing is seasonal, two months out of the year. Bottling may require some part time help, but that is contingent on aging time. On the production end of it, restrictive hours would

not be helpful, but there could be some restrictions on the farming end of it. Brandon Voelker stated that farming wise, no one has really legislated that type of noise, but mechanical equipment at 6 am might cause issues with neighbors.

Peter Glenn questioned the reduction of footage from 2,000 to 1,000 square feet. Larry Leap stated that he just put that 2,000 square feet in as a rule of thumb. The property at 333 Pooles Creek Road has three levels, each only about 350 square feet, less than 1,100 square feet total. The changing of allowable footage wouldn't really affect him. Regarding the parking areas, he had set a minimum of 10 off street parking spaces because a lot of people come to wineries in groups, but he has enough real estate to put in more between this lot and the additional lot that they purchased next door. Vince Sticklen verified that on the main property at #333, he will have about 17 parking spaces. Christopher Vaught stated that this amount would not meet the minimum. Larry Leap stated that the reason he purchased the additional parcel was to use it as a parking area. Brandon Voelker stated you can do a parking exchange, where an agreement between parcels can put additional parking on separate lot. Ryan Hutchinson stated that in an R-RE zone you can have offset parking if it is within 300 feet of the location so the parking next door could also be used for the main lot.

Larry Leap said he had asked Ryan Hutchinson to look at what the county is doing for wineries, because many of them don't have that many parking spaces nor do they need them. Typically people come to the winery and the parking is pretty fluid, because they are not there all day. If he schedules a larger event he can come to the city and ask for a special permit. Part of his square footage is for restrooms and a small prep kitchen area and not all of the footage will be utilized for people coming to taste wine. He stated that what Ryan Hutchinson has proposed will work for him on what he would like to do. Vince Sticklen stated we are looking at potentially ten other lots that could become wineries and may want to do this, so we need to make sure that the ordinances that the city already have are followed. Brandon Voelker stated that Staff has struck through the proposed wording on parking, and therefore the city regulations would apply. Donna Schmidt stated that the parking is not spelled out because it would fall under the current city ordinances. Ryan Hutchinson stated that by taking the wording out it defaults to the city regulations.

Larry Leap stated that the wineries in the county do not have paved parking lots and he would prefer not to be required to asphalt the parking. Christopher Vaught stated that this is not possible under city ordinance. Other citizens in the city have wanted temporary driveways but you have to pave them. Ryan Hutchinson stated that he did not look at county regulations because there is no comparison. The county A1 zone is an agriculture zone which supports vineyards but it doesn't specify it. The A1 zone in the county is the only zone that doesn't require paved parking. We do not have this option in the city. Larry Leap stated that the issue wasn't creating enough parking, but the surface itself which is cost prohibitive. He can work with the number of parking spaces and he would be okay if we had to restrict the number of people to meet the parking requirements. Brandon Voelker stated that it would have to be paved, because you can't have unpaved in the city. You could restrict the number of people instead, with an eye on impervious surface. Having less spots, the minute someone parks off of that paved surface, the Police Department will be calling a towing company and hauling it out of there.

Christopher Vaught questioned if any proponents were present on behalf of Larry Leap. Dennis Nafus, the previous owner, gave a brief history of this property. Mr. Nafus stated this is carrying on the history of their family and it means so much to them. Larry Leap is a very responsible person and they fully support what he is doing.

There were no citizens in the audience who were opposed.

Vince Sticken stated that we haven't established if this is a good proposal or not. It may be fine but is in an area that is residential. He doesn't have problems with a winery, but there are obstacles in the way as far as the property is concerned. He would like to limit hours of operation on Monday thru Wednesday from 11 am to 8 pm. On Thursday through Saturday, the tasting can go until 10 pm, but not after that. This is for the tasting purposes. The hours of farm operation can be from 7 am to 8 pm and with no one in the picking area after 8 pm. It is okay for people working inside as long as there is no noise. The decibel levels allowed by city regulations were discussed. Captain Leap would not exceed 55 decibels. The only other equipment is a sprayer that doesn't make any noise. Making the wine is not using machinery that would have that type of sound when crushing grapes.

Christopher Vaught questioned if any other neighbors are against this. Larry Leap produced a sign off sheet for the Board to review, from people along Pooles Creek Road who were in favor of this. His other neighbor Margie Raines, has been sick but he doesn't believe that she is opposed to this. Audience member Mr. Nafus stated that he spoke to the Raines family a few months ago and they were actually thrilled with the improvements that were made to this property.

Christopher Vaught questioned Mr. Leap about the gravel parking, and verified that he will pave it. Mr. Leap stated that the plan long term is to pave it. Christopher Vaught stated it has to be short term. Larry Leap stated the he didn't know the requirements for that were, but was hoping to pave it within the first six months. He does have a gravel driveway that has

been there forty years and is not paved. His biggest concern is that he is right on a stream as a major tributary to the Licking River and when the water comes off of the hill with the paving, there could be a lot more water issues. Peter Glenn stated that he will have plenty of restrictions that he will have to abide by with water quality and quantity standards. Brandon Voelker stated that he will have to provide detention.

Vince Sticklen verified that nineteen lots in the city would qualify for this, with three of the lots being on Pooles Creek Road. Ryan Hutchinson stated that four of those are churches, gas stations, and that kind of thing. He pointed out all of the qualifying lots on his slide presentation.

Peter Glenn questioned if there were any other revisions that should be made other than the hours of operation. Christopher Vaught verified that all of Captain Leap's employees will be certified by ABC. He is thinking about the safety of the city. Larry Leap stated they will all be trained on how to serve alcohol and they will have to meet those and federal permits. He has to have both, and they also do spot inspections, whenever they choose.

At this point Christopher Vaught closed the public hearing, and stated that he will entertain a motion.

Peter Glenn made a motion to **approve the proposed text amendment to Article 10.0 "R-RE Residential Rural Estate Zone on the bases of the recommendations of Campbell County Planning and Zoning as noted in Staff report, subject to the CCP&Z recommended conditions as stated, but amending the condition item 13. e. 3 that the hours of public tasting be limited from Monday through Wednesday from 11 am to 8 pm, and on Thursday through Saturday, 11 am to 10 pm.** Vince Sticklen seconded the motion.

Vince Sticken then made **an additional motion to further amend Mr. Glenn's original motion to revise condition item 13.e. 3 amendment to add that there will not be employees in the vineyard before 7 am and after 8 pm.** Peter Glenn seconded the amendment to his original motion. All were in favor. **Motion carried.**

Roll call vote for the **proposed text amendment** showed one yes – Peter Glenn and three noes – Christopher Vaught, Donna Schmidt, and Vince Sticklen. **Motion failed.**

The next item on the agenda was an amendment to a plat, as presented by Ryan Hutchinson. He stated that he has an identification plat on a standard lot which was submitted to Staff for review. There is an existing lot which fronts on Dry Creek Road. There is a small triangular piece which was in dispute of ownership a long time ago. That triangular piece is the access to Dry Creek Road for three property owners on that side of the road. They were in dispute with the property owners across the road, the Stampers, who stated that they owned to the other side of the street, but the applicants stated that they owned to the edge of the right of way. A lawsuit was filed in 1982 between the parties and the Judge sided with the Stampers, stating that they did in fact own to the opposite side of the street which effectively cut off the road front to the three property owners. The Judge did award that the three property owners get the prescriptive passage, and the property that they were driving on was theirs.

The Stamper's attorney was told by the Judge that he had to provide a description of the property however, in the second filing, he didn't describe adequately where the driveway was or the road was, just the property boundary. Some of the people involved in this suit have passed away and it is now in estate. The executor is trying to settle the estate and move forward with the original motion and they want to sell off this parcel with the road frontage. Staff had concerns because the road frontage wasn't clearly defined. Brandon Voelker verified with Ryan Hutchinson that the Judge awarded the frontage where they had access to Dry Creek. Staff did not feel comfortable with this because even though there is a Judge's order on this, technically the property is still the Stamper's who wouldn't sign off on the addition to the estate. Brandon Voelker verified that the three property owners are given title to the strip of land between Dry Creek Road (formerly called Pooles Creek Road #2) and Pooles Creek Road from which their driveways are presently located. The surveyor has gone on record to the best of his ability, because when the judgment was finalized that is where the driveway was. Christopher Vaught verified that Cynthia Stamper is still alive but is not willing to sign off on it. Ryan Hutchinson stated that from a planning standpoint this does meet the city's minimum requirement for a lot. Brandon Voelker verified that it is the Williams estate that wants to subdivide this property. Ryan Hutchinson pointed out the property lines and the part they want to convey. The remainder of this property has frontage down further along Dry Creek and AA Highway.

Brandon Voelker stated that as long as it meets the subdivision regulations it is good. Christopher Vaught made a motion **to approve the identification plat for this parcel, on the bases of Staff recommendation.** Donna Schmidt seconded the motion. All were in favor. **Motion carried.**

Per House Bill 55, **Alan McCullough earned two hours of continuing education credits.** Vince Sticklen made a **motion for approval** and Peter Glenn seconded the motion. All were in favor. **Motion carried.**

Larry Leap approached the Board to ask for clarification. He stated that this Board made amendments to the Campbell County P&Z proposal, and he understands that this Board has rejected all. He questioned why the amendments and then the rejection. Vince Sticklen stated that there were other things to be considered and he doesn't think it is right for the plan. Larry Leap questioned what his next step would be and where he goes to from here. Brandon Voelker stated that this action will go to council, and it is up to them as to whether or not they will hear the issue. Larry Leap said he is very confused by the overall rejection after the augmentation. He stated that he will be hiring an attorney and we will hear further from him.

Donna Schmidt made a motion to adjourn the September 11, 2013 meeting at 9:25 pm and Peter Glen seconded the motion. All were in favor. Motion carried.

Respectfully submitted,

Rita Seger, City Clerk