



City of Fort Wright

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City of Fort Wright Caucus Meeting Wednesday, April 21, 2021 – 6:00 PM

CALL TO ORDER

The Caucus Meeting was called to order at 6:00 PM by Mayor Dave Hatter. Mayor Hatter led the Pledge of Allegiance and moment of silence. City Clerk Maura Russell called the roll.

Councilman Abeln	Absent
Councilman Feinauer	Present
Councilman Wall	Present
Councilman Weber	Present
Councilman Wessels	Absent
Councilwoman Witt	Present

Also present for this meeting were:

City Administrative Officer Jill Bailey
City Attorney Tim Theissen
Fire/EMS Chief Steve Schewe
Police Chief Ed Butler
Public Works Director Jeff Bethell
City Clerk Maura Russell

CITIZEN COMMENTS/GUESTS

There were no citizen comments.

ITEMS FOR DISCUSSION

TBNK Franchise Update & COFW ROW Ordinance (Tom Litzler) – Mayor Hatter introduced Tom Litzler, City of Fort Wright Representative to TBNK [Telecommunications Board of Northern Kentucky], and Bill Gullett, legal counsel for TBNK. Mr. Litzler said TBNK represents the City on cable franchises, going back to 1980 when the organization was formed via an interlocal agreement with other cities in Boone and Kenton counties. He said TBNK administers the franchise agreements, negotiates renewals, investigates transfers, and handles complaints from residents and subscribers.

Mr. Litzler explained the makeup of TBNK, saying there is a seven-member board for Kenton County, which includes one representative from Kenton County, two representatives from Covington, and one representative from each of 16 Kenton County cities, excluding Erlanger and Crescent Springs who do not participate in TBNK. He said the four executive committee members are appointed based on clusters, with Fort Wright being in a cluster with Park Hills and Kentonvale, and the cluster representative is rotated every two years.

Mr. Litzler reviewed the Cincinnati Bell franchise, saying they have had a franchise agreement since 2012. He said having Cincinnati Bell on the scene has allowed for better quality, service, and pricing for subscribers, and the discussions for renewing their franchise agreement have been going well, with hopes to have it completed by July. Mr. Litzler said Cincinnati Bell currently services almost all of Kenton County, with some exceptions, but he believes they will be expanding. Councilman Weber asked about fiber optics in the City, and Mr. Litzler said they do offer it throughout Fort Wright.

Mayor Hatter said when he was on the TBNK there was discussion about other entities, like Duke Energy, becoming players in this area, and he asked about data being sent via existing wires and 5G coverage, and how that may impact franchises. Mr. Litzler said he has not heard anything specifically like that, but the industry is changing rapidly, adding that focus has grown from cable to include internet and phone. Councilman Weber added that satellite could also kill local cable.

Mr. Gullett confirmed 5G technology will take time to build out in the United States. He went on to discuss Cincinnati Bell, saying they were recently bought out by an investment company in Australia, Macquarie, which will bring in new money and allow for extending networks and infrastructure.

Ms. Bailey asked about PEG [Public, Educational, and Government] fees. Mr. Gullett said Cincinnati Bell has no issue with paying those minimal fees. He said they pay a franchise fee of 5%, of which 3% goes to the cities and 2% goes to TBNK for capital equipment, like cameras, studio equipment, and equipment to bring meetings and events online. Mr. Gullett said Charter has been fighting the PEG fees for a long time, as they do not feel they should have to pay those on top of the franchise fee. Ms. Bailey asked about some communities saying they are trying to level the playing field for franchise fees and do not want their residents to pay more than 5% and Mr. Gullett said Cincinnati Bell has agreed to that.

Ms. Bailey brought up restoration, saying there are concerns about franchises not restoring property after doing work or putting in infrastructure. She said there used to be language in the franchise agreements about this, and there is talk of communities adopting their own policies. Mr. Gullett said there is language in the franchise agreements that restoration must occur and if it does not happen, cities can approach the franchises directly to recover costs for restoration. He said there are also stipulations about adding new poles in cities, saying new poles must be approved by the city before being installed. Mr. Gullett said tree trimming is also addressed, with franchises being required to submit plans to the city and follow ordinances.

Mr. Litzler encouraged Councilmembers to review the last franchise agreement, saying most of the items within the agreement are there to protect residents and homeowners, including how to do things and what happens if something is messed up.

Ms. Bailey thanked Mr. Litzler and Mr. Gullett for addressing the Cincinnati Bell franchise agreement and questions. She asked for an update on Spectrum, saying there is a lot of discussion among communities about the cost of negotiating with Spectrum. Ms. Bailey said the talk is that legal bills are over \$1 million and questioned how TBNK can support those fees. She also asked about resolution for this, as it has been going on for 13 years.

Mr. Litzler addressed this, saying someone had been hired two years ago by Spectrum to bad-mouth TBNK about the money spent and time taken on the franchise agreement. He admitted that he is embarrassed it has taken this long, but the timeline shows multiple delays, including one week after

requesting to begin discussions on a contract, the company asked to start with a different contract. He said the company was sold, and there were no negotiations for a year or two. Mr. Litzler said in the time that they requested to start the negotiations, the company has been sold at least four times. He also said transfer-to-buy requires inspections which take more time, so there are many issues leading to this taking this much time.

Ms. Bailey asked under which franchise agreement Spectrum is operating and Mr. Litzler said they have been given 20 extensions of the same franchise agreement from 1997. He said they are still paying the 5% franchise fee, but they legally do not have a franchise right now.

Mayor Hatter questioned how they can continue to operate without a franchise agreement. Mr. Gullett said they are essentially in limbo because of the process they are required to follow. He said they are a hold-over without an agreement. Mr. Gullett said TBNK has asked them to finish the Cincinnati Bell agreement, which should be completed in July. He said once that is complete, they will focus on Charter and may have to go back to formal negotiations and if a "No" is given by Charter then TBNK can revoke their franchise agreement. Mr. Gullett said he thinks they will want to work things out because district court proceedings have not gone in their favor in the past. He also agreed that this should have never taken as long as it has.

Mr. Gullett also addressed the cost rumors, saying he charges half his normal rate to TBNK, and that Spectrum/Charter is lumping in all other costs with the \$1 million. He said transfers can be between \$20,000 and \$30,000, TBNK gets reimbursed for some items, and the Verizon contract fees were paid by TBNK but reimbursed by the participating cities. He said there are no line items being reported, just a lump amount.

Mr. Litzler acknowledged that cities feel TBNK has spent too much because of delays. He said the organization has its books audited every year and there has been no finding of waste or misspending at TBNK. Mr. Bailey said there is no implication about misspending and has not heard that from other cities, but there are concerns about these large companies with deep pockets and a sustained fight. Mayor Hatter acknowledged that this is a very complex industry and attorneys must have very specific expertise.

Mayor Hatter asked if there was something the City of Fort Wright can do to help TBNK. Mr. Gullett said when cities come together these large companies typically back down and work through negotiations. Councilman Weber said it sounds like TBNK is just reacting to everything that Spectrum/Charter is doing and suggested bringing in local legislators like Senator Chris McDaniel and Representative Kim Banta to assist. Mr. Gullett said they are doing something similar with Cincinnati Bell by having Kenton County Judge/Executive Kris Knochelmann and City of Covington City Manager Dave Johnston participate in those discussions.

Mayor Hatter said residents continue to want to utilize these services and said when the companies work within the City, they need to repair rights-of-way back to the condition they were in prior to work starting. He said PEG is important and he wants to continue giving access to City meetings, but there is no way the City can or should do this on its own, which is why TBNK and attorneys like Mr. Gullett are so important to negotiate for residents. Mayor Hatter said he sees no reason to change course with TBNK and the City wants to support their work, but the City needs to know where TBNK would like assistance. He asked how Fort Wright and other cities can help TBNK to get this franchise agreement moving.

Councilwoman Witt agreed with Councilman Weber, suggesting bringing in local legislators to assist with negotiations may help. Mr. Gullett said there are some things in the works, but he cannot go into details yet. He said if things do not go as he hopes, he would like for City Council to come together in support. Mayor Hatter asked Mr. Litzler and Mr. Gullett to think further on what assistance they would like from Council, as he is willing to approach the Mayor's Group in addition to having the Fort Wright City Council vocally support TBNK.

101 Rosa Avenue – Driveway Encroachment Permit – Ms. Bailey said a resident has applied for an encroachment permit to place a driveway in front of the house on Rosa, to have access from Augusta Avenue. She said there was concern about the language from the Zoning Code affecting this approval, but Mr. Bethell clarified that the Zoning Code on local or residential streets lets the City make decisions to allow multiple access points. Councilman Weber asked about the impact on taking a parking space, and Mr. Bethell said it is a crowded area, but it would pull one car off the street and into this driveway.

Tyler McCamish, property owner of 101 Rosa Avenue, thanked Council for the consideration of the encroachment permit, saying he understands there are multiple factors involved.

Mayor Hatter asked about implications of changing the zoning and the impact on anything in the same zone. Mr. Theissen clarified that this is a request for an encroachment permit, not a zoning change. He said this property is on a corner lot and there is no request to change any rules or regulations. He said the encroachment permit is being requested because some of the driveway apron will be in the City right-of-way. Mr. Theissen said any decision is certainly setting a precedent but there are principles of law saying every piece of real estate is unique, and Council would be making a decision that is unique to this property, not to every corner lot in the City.

Ms. Bailey asked Council if there were concerns about one property having two access points and mentioned the parking concerns on Glazier. She said staff want to understand their direction and concerns. Mr. McCamish said the driveway would be concrete, to match the neighborhood and clarified that property slopes and the existing driveway goes to the basement level of the house.

Councilwoman Witt pointed out that the house at the corner of Rosa Avenue and Kennedy Road has a pass-through driveway, and Councilman Wall said there is a property at Beaumont and Mt. Vernon that has two driveways. Mr. Bethell said the concern is not with the driveway, as it falls within the zoning code, but it appeared to be an odd request because of the size of the existing driveway. Ms. Bailey said initially there were concerns about making the home into a multi-family dwelling with two access points, but it has been clarified that that is not the case, and she wants to be sure Council is comfortable with this permit.

Mayor Hatter said his initial concern was with changes to zoning, but because it is an encroachment permit it will only impact this one property. He clarified with Mr. McCamish that one of the cars that would park in the driveway is one of the cars that would be removed from the road. Mayor Hatter said he has no issues with this request.

Mr. McCamish said he initially wanted to request a handicapped parking spot be marked, but that is not feasible for his family because of loading and unloading of his child into the family vehicle on the narrow street. Ms. Bailey said there have been requests for handicapped parking spots, but the City is not doing

those at this time because of the number of requests and the already-tight parking situation on many of the residential streets. Mr. McCamish said this new driveway would hold two cars, even though it will be the width of one parallel-parked car. He also said there will be enough room for the family to build a ramp to the front door if that becomes necessary in the future.

Ms. Bailey, Mayor Hatter, and Council thanked Mr. McCamish for attending the meeting.

Kentucky Sidewalk Partial Replacement Request – Mr. Bethell said he received a quote from Don Markesberry Contractor for labor and materials, based on measurements, totaling \$1,700 for the City's portion of the replacement.

Mr. Theissen said, based on records available at the Kenton County Courthouse, Kentucky Walk was deeded to the City and dedicated for use as a public sidewalk. He also said the Fritzes, who own 38 Crittenden Avenue, have a driveway easement over Kentucky Walk, allowing their car to drive on the City-owned portion. Mr. Theissen said there is a legal principle called equitable contribution when two parties share ownership. He said this rule says that the cost of maintenance is supposed to be divided by the two parties equitably, not equally, meaning if one party uses the property five times more than the other, then they would pay 5 times the cost. He asked Council to consider this principle as he does not think the City's cost should be zero, but also it may not be 50% based on the usage of the sidewalk by pedestrians versus cars.

Mr. Bethell said the homeowner plans to replace the entire driveway and get rid of a wall to move their vehicles away from foot and bike traffic. He said the quote given is for a five-foot section of the walk. Mr. Bethell said the homeowner is also requesting a survey to show what portion belongs to the City and wants to split that cost evenly with the City.

Ms. Bailey shared Councilman Abeln and Councilman Wessels' opinions, as they were not able to attend this meeting. She said Councilman Abeln is in favor of paying the \$1,700 to do the work but does not want to pay for the survey. She said Councilman Wessels did not initially want to accept the bid and requested the process be sent out for bids. Ms. Bailey said she explained that requesting bids was not required for this, and Councilman Wessels agreed to the \$1,700 quote and wants to be sure the contractor is paid directly, not the homeowner. He also asked that the contractor is checked to be sure it has all permits and workers compensation coverage, and that documentation is provided to the City.

Mayor Hatter agreed that he does not want to pay for a survey, but is willing to pay the \$1,700, contingent on Councilman Wessels' terms, including paying the contractor directly.

Truck Traffic East & West Henry Clay – Mayor Hatter reminded Council that various complaints have come in, which is not new but increasing because of Brent Spence Bridge construction. He said semi-trucks have caused damage in the past. He also said he understands the special circumstances of the bridge issues, but people who live in that area should expect some cut-through traffic because of the connection between Kyles Lane and Highland Avenue into Covington. Mayor Hatter said there are only 13 Police Officers on staff and the City cannot have one person always stationed there. He said there has been discussion in the past about closing part of the street and turning it into a cul-de-sac, but the

consensus was that is not a good idea. Mayor Hatter acknowledged that some action needs to be taken to alleviate the truck traffic because of safety issues and the maintenance of City streets.

Councilman Weber asked if someone could reach out to Waze and other GPS applications if the Ordinance is passed to update their maps. Mayor Hatter added that the plan is to put up signage and increase Police Department presence for the first couple weeks to see if that makes a difference. He also suggested allowing the Police Department to work overtime to monitor as he does not want to detract from the rest of the City by placing an Officer there and not being available to other residents. Ms. Bailey said a draft of the Ordinance has been provided and there is a provision that requires the installation of signage and identifies the location of signs.

Chief Butler said this Ordinance is necessary because of the damage these larger trucks can do to City streets, but he does not think the traffic has been as bad as what people are saying. He acknowledged weekend traffic back-ups because of the bridge are worse than during the week, and that is when the email and call complaints come in. Chief Butler said he checked accident reports in the City from the beginning of the year and only two happened on East Henry Clay Avenue and no semi-trucks were involved in either accident. He agreed that the Ordinance is a good idea, but he does not feel it is an overwhelming problem yet. Mayor Hatter added that perception is always different from reality based on the purchase of the speed boxes, saying most drivers are going the speed limit. He added that he would like to purchase another so that one could be set up on the east side of the City and another could be on the west side to collect data and move around based on complaints.

Councilman Feinauer suggested adding more City streets to this Ordinance, including potentially Morris Road and Redwood Drive. Councilwoman Witt added that she would like to see no semi-trucks on City streets unless they have business in the City. Mr. Theissen said they are currently working on amending the traffic Ordinance and can amend the Ordinance later to add more streets once an assessment is complete.

Occupational Payroll Tax Deduction – Mayor Hatter clarified previous discussion and the existing Ordinance, of which there has been a first reading, saying he proposed moving the payroll tax rate to 0.99%, but is not opposed to Council's decision to move it to 0.95%. He did some calculations and said that putting the rate at 0.99% would result in a loss of approximately \$9,452 from last year and putting the rate at 0.95% would result in an approximate loss of \$71,000.

Council and Mayor Hatter agreed to go with the 0.99% rate. Ms. Bailey said there will be a first reading of the revised Ordinance at the next Council Meeting then there will be a Special Council Meeting ahead of the next regular Caucus Meeting to do the second reading. She said this will be done so that the Kenton County Occupational License group will have enough time for the change.

Volunteer Park Playground Demo & Replacement – Ms. Bailey said the City has been receiving complaints about the playground at Volunteer Park on Park Road for a couple years and the play structure is rotted and needs to be replaced. She said there had been a budget item for \$15,000 and that was increased to \$25,000 this year. Ms. Bailey said they are still looking at equipment and numbers,

but the Public Works Department will remove it and the company who manufactures the set they choose will install it. She said the equipment in the photo shared in the Council Packet is about \$17,000.

Mr. Bethell said he has received several quotes and \$17,000 is very reasonable. He said it will be an additional \$1,600 for a border. Mayor Hatter said he has no issues overall with the plan but wanted suggestions on what should be there. Ms. Bailey said they can downsize from what is pictured to allow a swing structure to be installed. She added that the age range they are targeting for this structure is 5 to 12 years old. Councilwoman Witt suggested one infant swing and Councilman Feinauer suggested two child swings.

Mayor Hatter said he does not want to spend an enormous amount of money but does not want to get cheap equipment. He also said there is nothing like this on the west side of the City and residents will appreciate the upgrade for the park.

EXECUTIVE SESSION

There was no need for an Executive Session.

COUNCIL COMMENTS

Councilwoman Witt reminded residents that Fort Wright Clean Up Day is Saturday, April 24, from 8:30 – 12 PM.

ADJOURNMENT OF THE CAUCUS MEETING

There being no further business, Councilman Feinauer made a motion to adjourn the Caucus Meeting. Councilman Wall made a second. Ms. Russell called the roll.

Councilman Feinauer	Yes
Councilman Wall	Yes
Councilman Weber	Yes
Councilwoman Witt	Yes

The Caucus Meeting was adjourned at 8:17 PM.

Respectfully submitted,

Dave Hatter, Mayor

Attest:



Maura Russell, City Clerk