

MINUTES

A meeting of the Board of Public Works and Safety and the Plan Commission was held on Friday, April 28, 2017 at 4:00 pm in council chambers of Berne City Hall, 158 West Franklin Street according to the posted notice. Per state statute, the area media were given 48 hours prior notification.

Present from the Plan Commission; Gregg Sprunger, Gwen Maller, Jim Fluecikger, Linda Steury, Jerry Burke, Phil Provost and Ted Beitler. Unable to attend, Brent Lehman and Rod Mosser.

Present from the Board of Public Works and Safety, Mayor McKean, Curtis Wurster and Ron Dull. Other present, City Attorney Dave Baumgartner, Plan Commission Director Shannon Smitley and Secretary of Record Becky Sprunger.

The meeting was called to order and Mayor McKean verified a quorum for the Board of Works, and Gregg Sprunger verified a quorum for the Plan Commission.

City Attorney Baumgartner began the meeting by explaining that on April 25, 2017, the Indiana General Assembly passed Senate Enrolled Act No. 213 , which will go in to effect on May 1, 2017. In reviewing this bill City Attorney Baumgartner said that this will bill would allow for the placement of small cell structures in a community, even if subdivisions have protective covenants that say all utilities must be underground. Dave went on to explain that to protect these areas, as well as other sensitive areas in Berne, a resolution must be passed before May 1st 2017 . The early understanding of this bill is that only the Board of Works needed to pass a resolution, but Dave further explained that he felt it would be wise if the Plan Commission would also to consider the passage of a resolution.

Discussion among the members continued with the conclusion that the two resolutions are in the best interest of our community as it pertains to SB No. 213.

On a motion by Curtis Wurster and a second by Ron Dull, the Board of Public Works and Safety unanimously approved their Resolution 2017-1 as written. 3 Yeas – 0 Nays

RESOLUTION NO. 2017-1 A RESOLUTION OF THE BOARD OF PUBLIC WORKS AND SAFETY OF BERNE, INDIANA

WHEREAS, on or about April 25, 2017, the Indiana General Assembly passed Senate Enrolled Act No. 213, effective April 30, 2017, which is codified, in part, at IC 8-1-32.5-15

(hereinafter the “Act”), which said Act sets forth certain requirements for municipalities in setting limitations regarding the erection of small cell facilities and above ground utilities by utility in the State of Indiana; and

WHEREAS, said Act provides that with respect to the construction, placement, or use of small cell facilities and associated supporting structures and other utilities, a permit authority may prohibit the placement of a new utility pole or wireless support structure in a right-of-way within an area that is designated before May 1, 2017, strictly for underground and buried utilities, if certain conditions are met; and

WHEREAS, the Board of Public Works and Safety of the City of Berne desires to so limit and restrict the construction, placement, or use of utilities, small cell facilities and associated supporting structures within the City of Berne without the utility company first filing for and receiving a variance from said limitation and restriction.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF PUBLIC WORKS AND SAFETY OF THE CITY OF BERNE THAT:

1. Designated Underground Utility Area: The City of Berne hereby designates all City rights-of-way located on or about all streets, and roads, as well as all alleys and public easements within the City of Berne, Indiana as designated strictly for underground or buried utilities (individually or collectively known as the “Underground Utility Area”), and prohibits the placement of a new utility pole, small cell facility or new wireless support structure within the Underground Utility Area. To the extent new wireless support structures are not required, this prohibition does not restrict the collocation of small cell facilities on existing utility poles and wireless support structures within the Underground Utility Area or the replacement of existing utility poles and wireless support structures within the Underground Utility Area. This action shall not prohibit the replacement of existing utility poles and wireless support structures within said rights-of-way, alleys and public easements.

2. Waiver Procedure for Variance: Any and all utilities that seek a waiver of this restriction, and request to install new utility poles or new wireless support structures within said Underground Utility Area, may file for a variance with the City of Berne Board of Zoning Appeals, which said Board shall hear and determine appeals from and review this restriction or the decision or determination made by the zoning administrator and/or the building director made in relation to the enforcement of this restriction. Said Board of Zoning Appeals may reverse or affirm, wholly or partly, or may modify the restriction, decision or determination for which the utility has sought a waiver or variance. The Board may impose conditions regarding the location, character, and other features of the new utility poles or new wireless support structures with which the request before it is concerned as it may deem advisable in the protection of the public convenience and welfare. Said granting or denying of any such variance request shall be applied in a nondiscriminatory manner.

3. Notice of Variance Application: Upon receipt of an application for a variance in the construction, placement, or use of a small cell facility or other utility on one (1) or more new utility poles or one (1) or more new wireless support structures in Underground Utility Area, the plan administrator and/or building director shall post notice of the application for variance on the City’s

Internet web site, if the City maintains an Internet web site. Such notice of the variance application required herein must include a statement indicating that the application is available to the public upon request.

4. Notice to Neighborhood Associations and Homeowners Associations: Any neighborhood association or a homeowners association may register with the zoning administrator and/or building director to receive notice by United States mail of any application filed with the City for the construction, placement, or use, or for a variance from the restrictions set forth herein, regarding a small cell facility or other utility on one (1) or more new utility poles or one (1) or more new wireless support structures in an area within the jurisdiction of the neighborhood association or homeowners association. If the City maintains an Internet web site, then the City shall post on said Internet web site instructions for how a neighborhood association or homeowners association may register to receive notice under this subsection.

5. Severability: If any of the terms of this Resolution are held by a court of competent jurisdiction to be null, void or inoperative for any reason, or if any provision or term of this Resolution is in violation of any applicable federal, state or local law, guideline, rule or regulation, all such provisions are severable and the remaining provisions shall remain in full force and effect.

6. This Resolution shall be effective upon its adoption and shall be in full force and effect on April 30, 2017.

DULY PASSED AND ADOPTED by the Board of Public Works of the City of Berne, Indiana, on April 28, 2017.

CITY OF BERNE BOARD OF PUBLIC WORKS AND SAFETY

Curtis L. Wurster, Member

Ronald N. Dull, Member

William F. McKean, Member

APPROVAL BY THE MAYOR OF THE CITY OF BERNE, INDIANA

William F. McKean, Mayor

ATTEST:

Gwen Maller, Clerk-Treasurer

With nothing further to be discussed by the board and on a motion by Ron and a second by Curtis, the Board of Public Works and Safety was adjourned. **3 Yeas – 0 Nays**