

**The meeting of the Berne Board of Zoning Appeals was held on May 14, 2018 at 7:00 P.M. in the Conference Room at City Hall, Berne Indiana according to the posted notice.**

**MEMBERS PRESENT**

Jerry Burke Present  
Mike Habegger Present  
Brent Lehman **Absent**

Tony Mellencamp Present  
Linda Steury Present  
Tom Stuber Present

**STAFF PRESENT**

Director, Shannon Smitley

Board Attorney Dave Baumgartner

**Present from the City of Berne**

Mayor Bill McKean

Council President Gregg Sprunger

**GUESTS PRESENT :** Keith Craig McGrew with Cellusite LLC, Grant A Phillips TowerKing; Bill Lehman, 1646 Oakwood Ln, Berne; Bill Grimm, Adams County Sheriff Department; Jim Phillips, Tower King; and Derek McGrew, Cellusite LLC.

After Mike Habegger opened with prayer, Tony Mellencamp called the meeting to order and verified a quorum. Hearing notice was advertised in the Berne Witness according to state statute, and an agenda was posted at the door.

**Election of Officers for 2018** Mike Habegger made a motion to re-elect the officers from 2017 for 2018 as follows: President Tony Mellencamp, Vice President Mike Habegger, Secretary of the Board, Jerry Burke. Linda Steruy made the second. Motion unanimously approved. 5-0

**Public Hearing BZA 2018-1** Variance Request for Contingent Use filed by Ted and Kitt Toland on behalf of Craig Keith McGrew representing LL & Tower King on property the Toland's own at W 700 S, Berne Indiana, Adams County Tax Parcel Number 01-11-08-200-003.000-017. The request will be for the purpose of the construction of a new 300-foot tower for a wireless communication facility.

Shannon explained that Berne does not have a zoning classification for cell towers, whether it is within the city limits or in our fringe which applies to this hearing. Because of that, the board will have to decide the merits of granting a Variance request for contingent use for the construction of the tower. Craig McGrew, Cellusite LLC, reported to the board that it has taken 3 months and a great deal of financial investment by Tower King for the site being considered tonight. A three ring binder provided by Tower King detailing all of the permits, environmental reports and insurance bonds was given to Shannon and will be on file in his office.

Mr. Grant Phillips, Tower King stated that Adams County has equipment on a Tower King tower located at the Decatur Wal Mart property, and the county contacted him because the current location does not reach to the southernmost half of Adams County. With the proposed location

being considered tonight, Mr. Phillips stated that the signal will actually extend in to Jay County, which will serve as another asset. Mr. Phillips stated that Tower King will donate the top of the tower for use by ham radio operators, which is an added layer of communications should there be a county wide emergency in time of a disasters or wide spread emergency situations. One single network on the tower will be able to accommodate all emergency agencies who could then communicate with other. The tower could also accommodate cell phone companies should they wish to lease space. Towers are built with solid steel construction and Tower King will monitor the condition of the tower. The tower will be placed on a concrete pad and will be fenced in by a 50 foot by 50 foot fence and will have a red light atop at night and a white light during daylight hours.

Mr. Bill Lehman, who owns a cabin within 400 feet of the new location expressed his frustration that he was not contacted by the Sheriff's department or the cell tower company prior to location being mapped out and consideration by the BZA being the last step. Derek McGrew stated that there was a proposed location on the same tract of land, but there were obstacles with artifacts among other factors that came up during the permitting process. Bill stated that although he understands and appreciates the need for emergency communications service to be expanded to the southern half of the county, why wasn't he asked first for his input as the closest home/cabin to the proposed tower?

In response to Mr. Lehman's concerns, Mr. Phillips said that the placement is the highest point in that field, which will allow for the best coverage, and also, the location was chosen so there would not be access from the highway as a security feature if the county choses to house equipment at the tower site. Mr. Phillips added that to make any changes now would not only be expensive, but would set the project back to December because of the need for a new survey and getting all of the needed permits and permissions. Mr. Lehman again stated his frustration for not being informed of, and given a chance for his input as a property owner months prior to the process being in the final stages of construction, even though he does see the need for the tower. Mr. Jim Phillips, Tower King said that care is always was taken to place a tower behind any property and in this case as close to the woods as possible.

Grant Phillips stated that they have met all of the local jurisdictions requirements, and that there also has to be so much upfront work done, the process is well along when the hearing has to be scheduled. When asked, Bill Grimm, Adams County Sheriff's Department Representative stated that because of gaps in coverage in the south half of the county, the tower is critical, and the addition of having ham radio operators in the coverage area is a big asset in communications in times of disasters etc. When asked, Jim Phillips stated that in his years of experience, he has never seen that a cell tower has decreased anyone's property value and in the past has had licensed appraisers and there is no evidence of loss of property values.

After additional discussion and hearing all those wishing to be heard and with no further discussions, Tony called for the reading of the Finding of the Facts.

1. Approval **will not** be injurious to the public health, safety, morals and general welfare of the community because: ***will help with public safety.***

2. The use and value of the area adjacent to the property included in the Variance **will not** be affected in a substantially adverse manner because: *possibly affect the view from the back of an adjacent property, but not in a substantial manner.*
3. The need for the Variance **does** arise from some condition peculiar to the property involved: *City of Berne fringe area is not zoned for a cell tower.*
4. The applicant **did** establish that the strict application of the terms of the Zoning Ordinance will constitute an unnecessary hardship if applied to the property for which the Variance Request is sought because: *Would not be able to erect the tower without BZA Approval.*
5. The petitioner **has** established that approval **does not** interfere substantially with the comprehensive plan of the City of Berne.
6. The proposed contingent use will, **will not** create an undue hazard for vehicular or pedestrian traffic because
7. The nature, location and site layout of use permitted by such Contingent Use will, **will not** be harmonious to the district in which it is situated.
8. If granted, the board prescribes the following conditions: *None*

(DECISION)

Therefore, on a motion by Linda Steury and a second by Jerry Burke, the decision of the Board of Zoning Appeals unanimously approved the variance of BZA 2018-1 as presented.

**Adopted this the 14<sup>th</sup> day of May, 2018 4 yeas -1 nays**

BERNE BOARD OF ZONING APPEALS

*Tony Mellencamp-yea*

*Jerry Burke- yea*

*Linda Steury-yea*

*Tom Stuber- nay*

*Mike Habegger-yea*

## **REGUALR MEETING**

**Approval of Minutes.** On a motion by and a second by Jerry Burke, the minutes of July 10, 2017 were unanimously approved after the correction as noted. **5 yeas -0 nays**

**Old Business-** None

**New Business-** none

**Closing of Meeting.** On a motion by Jerry Burke and a second by Tom Stuber, the meeting was adjourned. **5 yeas -0 nays**