

CITY OF WEST LAFAYETTE
COMMON COUNCIL
PRE-COUNCIL MINUTES
April 27, 2017

The Common Council of the City of West Lafayette, Indiana, met in the Multi-Purpose Room at the Morton Community Center on April 27, 2017, at the hour of 4:30 p.m.

President Bunder called the meeting to order and presided.

Present: Peter Bunder, Nick DeBoer, Steve Dietrich, Aseem Jha, Gerry Keen, Larry Leverenz, David Sanders [arrived at 4:36 p.m.], and Norris Wang.

Absent: Gerald Thomas

Also present: Corporation Counsel Eric Burns, Clerk Sana Booker, IT Director Brad Alexander, Street Commissioner Ben Anderson, Police Lieutenant Art Choate, Facilities Director Tim Clark, Parks Superintendent Janet Fawley, Human Resources Director Diane Foster, City Engineer Ed Garrison, City Controller Peter Gray, Fire Chief Tim Heath, WWTU Director David Henderson, and Building Commissioner Chad Spitznagle.

SPECIAL REPORTS:

Indiana Senate Bill 213

Corporation Counsel Burns stated that this issue pertains to Senate Enrolled Act (SEA) 213 that was passed last Friday [April 21, 2017]. The reason that it is being brought to Council now is because there is a deadline which is before May 1, 2017, so the deadline would be Sunday. This timeframe provided to us will allow us to decide if there are areas in the City that we believe we need to continue controlling regarding the installation of small cell towers. Small cell towers are the newest and best way to make sure that cellular communications are very intense in areas with high populations. He shared an analogy that was explained to him, saying that it is like holding a flashlight way up in the air; when you turn it on, the beam will go very wide but will be relatively weak. The closer to the ground the flashlight gets, the more intense the beam is, but it is smaller. So, these small towers are like bringing the flashlight down to increase intensity. He explained that the small cell towers are monopoles, and they tend to be made to try to blend in. They do not have a lot of apparatus hanging off the outside of them. He stated that we have been in conversation with various providers of these services over the last six to eight months, and there have been good, in-depth conversations about what we need and what they need. However, that all has probably changed because the State legislature passed SEA 213 that essentially says that municipalities do not have power to regulate very much at all in this area. The State statute does provide some fairly specific directions, guidelines, and requirements, but the intention is to have a state-wide standard. Counsel Burns explained that what we are talking about for the May 1 deadline, which is given in the SEA, is that a city may designate areas that are strictly for underground utilities. If we so designate that area strictly for underground utilities, then we have a lot more control in that area. He stated that the right-of-ways management, by State law, and by our local code, rests with the Board of Works. They have the authority to make all of these management decisions. The Board of Works will have a special meeting on Saturday [April 29, 2017] at 10:30 a.m., and they will consider what kinds of designations the Board believes will be appropriate in order to meet that May 1 deadline. He stated that his belief is that if the Board does pass something on Saturday, then they will have met that deadline, and that there is no further action required. However, he will ask, with the indulgence of the Council, that on Monday night the Council suspend the rules to allow consideration of the document that is ultimately

passed by the Board and ratify it by ordinance. He does not believe that it is legally strictly necessary, but to the extent that our City is able to speak with one voice, and to make it clear to any Statehouse or any review in court, if it would get to that, that it would be important to have the Council be involved in that. It is not altogether clear why municipalities across the State were only given nine days, but that is what we have, and what we will work with, and we will be able to comply with that.

[Councilor Sanders arrived at 4:36 p.m.]

Councilor Keen states that he knows, because this has been before the Ordinance Committee of the Area Plan Commission, that the intent of that Committee is that wherever possible they would like to have the control boxes that go with the poles be underground, knowing that there are some areas where that cannot happen. The Committee ended up tabling this issue because of this legislation, but that was the intent of the discussion at the time.

City Engineer Garrison stated that this has been a lengthy process. We were first contacted over one year ago, and we have been looking into it quite a bit over the last six to eight months. We decided that the best way to handle it is to use our current Unified Zoning Ordinance (UZO) that is in place for primary-use towers, saying that the towers can only be used in certain designations. We were able to lean on that for the micro towers under the same ordinance policy. He explained that we wanted to create a revised ordinance for the micro towers that can be used where they need to be used. He added information to Counsel Burns' flashlight analogy, saying that the large towers are designed to reach a 10-mile radius. The function is to reach as many people as possible. In urbanized areas there is a lot of data use which lowers the range of the big towers. In order to free up that usage for a wide area, the companies are putting up a lot of these smaller towers in highly urbanized areas to increase data streaming capabilities. There is a big push for it around the campus area where there are a lot of data users, and we are going to see a big influx of companies wanting to come in. There are four main carriers, and we assume that all four of them are going to want to install these towers. We were working on something that would benefit them as well as the City, to clean up the streetscape, beautify, and protect the millions of dollars we have spent over the last several years to put in new street lighting and everything else. However, we are now in a different position where we need to do something that can still give us that right. If we do this, if we start defining areas where we want to be completely underground, and have the right to work with the companies, then that is how we are leaning right now. We will see how the City of Lafayette handles it tomorrow at their special meeting of Board of Works. Our final resolution will probably be similar to what Lafayette is working on.

President Bunder asked why we are having this discussion. He asked what the reason is for making this piece of legislation happen, and he asked why we only have a handful of days to do this. He asked what the advantage is to the State to have uniform regulation and to have this timeline. He stated that speculation is appropriate.

City Engineer Garrison stated that he guesses that the State feels that it should be regulated through the Indiana Utility Regulatory Commission (IURC).

Counsel Burns stated that until recently, many municipalities took the position that the cellular companies are not really a public utility, because it did not meet the definition. For 100 years or more, Duke Energy has known what their rights are, we know what their rights are, and everybody goes along fine in the right-of-way. Now there is a new technology, and it was not clear what they were. The perceived and actual need to have some uniformity would be determined by whether or not they are a utility. That has now been determined; there is no question that they are a utility. They have rights in the right-of-way like any other public utility. That is first. Then, the other

uniformity issue is, he believes, an attempt by the State to allow the big providers to come into the State en masse and be able to know what the rules are in the whole State. It encourages the companies to come if the rules are the same in Logansport as they are in Rising Sun. He believes that these are good reasons to do that from a public-policy standpoint. He provided some speculation about the timeline issue, noting that he has not looked into the legislative history, but he is sure that we could get an explanation.

Councilor DeBoer stated that he wants to make sure he understands this correctly. The State creates uniform regulations across the State for this. He asked if this piece of legislation [Ordinance No. 12-17] is going to allow us to circumscribe certain rules. Counsel Burns stated that we can circumscribe certain areas, so it is a geographic area, and there are different rules within the geographic area that we so designate. We designate that area as strictly underground. Councilor DeBoer asked if this legislation prescribes those areas. Counsel Burns responded that the way the Board of Works has designated this for the first run is to say the entire City. This is the way that many municipalities have dealt with it, particularly given the short timeframe. Councilor DeBoer asked if what the Board of Works is taking up will overrule—what? Counsel Burns responded that it will fall within the statute, which says that if you want to designate, go ahead and designate, and then there will be different rules, and they will be much more protective of those areas. For example, if we say that Northwestern Avenue is strictly underground, then it would allow us much more control over what goes in there as far as these small cell facilities. If we designated only Northwestern, then it would only apply to Northwestern. Councilor DeBoer asked if it can start with the entire City first and then be pared back down, if we choose. Counsel Burns responded that it is still a work in progress. He noted that several other municipalities have already passed legislation, and they have gone city-wide. It may or may not be the best strategy, and we are still working through that from an engineering and legal standpoint. It may stay that way, or it may change.

Councilor Jha asked if we are trying to take as much of the land off the table from the State, as far as regulations. Counsel Burns responded yes, and that is the theory being put forth by the other places that have used their entire corporate boundary.

Councilor Sanders asked who the sponsor is of this measure in the Senate. Councilor DeBoer responded that it is Senator Brandt Hershman, and Councilor Dietrich added that there were also several others behind it. Councilor Sanders stated that this was not surprising.

Councilor Dietrich asked why we care whether we designate the entire City underground or not. He asked what our advantage is of saying the entire City, and if it gives us control to negotiate with these companies as opposed to the State negotiating for us. He asked if it is just a matter of physical placements, where the State could put a 50-foot poll where we do not think we want one.

City Engineer Garrison stated that it will give us the flexibility to start negotiating. For example, if the company wants to choose this corridor that we say cannot be used, then we can provide the parameters that the company will have to meet to try to keep the streetscape design that we have there.

Councilor Dietrich asked if we would be able to tell them to put it underground, if it would work underground. Counsel Burns stated that a portion of it would work underground, but the poll is the flashlight, and the technology requires that it be above ground. City Engineer Garrison stated that he believes they have some underground in urban Chicago, but it is not nearly as functional. Counsel Burns stated that he has been told that they are everywhere in Chicago due to a line-of-sight issue, because the signal will not go through a building, and the towers are only as tall as a five-story building.

Councilor Dietrich asked if there is a dollar-and-cents issue here. He asked if the State is trying to snatch some of our ability to raise funds or control this. City Engineer Garrison stated that there is an application fee of \$50 to \$100, and then a co-location fee of \$50 per month.

Councilor Dietrich stated that there was a section about the historical district, and he asked how we will be dealing with that. Counsel Burns responded that it is just like any other designation. If the City wants to say that all historic districts will henceforth be underground, that is fine. It could be circumscribed by specifying the historic district, such as New Chauncey. It would require us to have everything underground. Councilor Dietrich asked if it would also allow us to grant an exception in a certain corner, if it is an all-or-nothing decision. City Engineer Garrison stated that it is set up now that any exceptions would go through the Board of Works. Counsel Burns stated that it does have an appeal process. It is not a fully comprehensive plan yet, but he believes that exceptions could be made within the designations. Councilor Dietrich asked if it can be written such that it is the entire City plus future annexations. Counsel Burns stated that he does not know, but that is a good idea.

Councilor Wang asked if it is correct that other jurisdictions, such as Lafayette, are facing the same deadline. City Engineer Garrison responded that that is correct, and Lafayette is also holding a special Board of Works meeting for the same reason. We are doing the same thing right now as just about every community throughout the State. Councilor Wang asked what happens if it does not get passed by Monday. Counsel Burns stated that it would put us behind the eight ball, and we will not allow that to happen.

Councilor Keen stated that some of the concerns that came up during the discussion at the Ordinance Committee included the height of the poles, and that the poles could be placed as frequently as every 100 feet, which could get unsightly. The three options for locating the operating mechanism of these poles are on the pole, on the ground by the pole, or underground. The box on the pole is not very big, but the boxes on the ground could be as big as three cubic feet, and every pole would have its own box. He stated that he thinks it is good that we are responding to this and considering making everything underground to eliminate that portion of it. He stated that his understanding of the reason for this legislation is that technology has been changing so fast that they are running into this issue of all of these poles. The big issue that was never answered is that of who will be responsible for removing these items when this technology becomes obsolete. City Engineer Garrison stated that he thinks that we are putting that into the ordinance. If the company is going to abandon the equipment then they need to take it back down, or transfer ownership to the City if it includes a service point and a light. It would be part of the negotiation process.

Councilor Leverenz stated that, as Councilor Dietrich mentioned, he brought up the issue of putting the equipment on top of buildings with the Ordinance Committee. The problem with that is that the companies would have to lease that space from those buildings. The other issue about putting them underground is that we have to be aware of ADA requirements if the boxes are installed on the sidewalk.

Councilor Jha asked if it will be sufficient for the Board of Works to pass this by May 1, or if the Council needs to pass it by then. Counsel Burns stated that his opinion is that it is enforceable when the Board passes it. It is the belt of the Board and the suspenders of the Council to pass it and ratify it back to the April 29, 2017. He would ask the action of the Council to be a ratification of the action of the Board.

Councilor Sanders stated that he has two technical points. One is that the draft resolution refers to right-of-ways, but "ROW" should be inserted in parenthesis, because ROW is not otherwise

defined. The second thing is, to follow-up on Councilor Dietrich's suggestion, it seems like applicability to future annexation should be included either in a separate letter or separate section, in case it would get invalidated. Counsel Burns agreed.

Counsel Burns stated that he will get something on file and linked to the agenda as quickly as we can, and he confirmed for Councilor Dietrich that a copy of the final resolution passed by the Board could be sent to the Council.

President Bunder asked who we have to thank for catching this issue. Counsel Burns responded that it came through Accelerate Indiana Municipalities (AIM), which was formerly known as the Indiana Association of Cities and Towns (IACT).

UNFINISHED BUSINESS: None

NEW BUSINESS:

Ordinance No. 09-17 An Ordinance Amending Ordinance No. 32-97 Being The Unified Zoning Ordinance Of Tippecanoe County. (UZO Amendment #91) (Zoning Maps URL Change And R3W & R4W Height Variances) (Submitted by Area Plan Commission)

President Bunder read Ordinance No. 09-17 by title only.

Building Commissioner Spitznagle stated that this ordinance is to clean-up two items in the Unified Zoning Ordinance (UZO). One is a simple URL link for the website. The second one is to allow variances to go through for heights in the R3W and R4W districts. The variances had been allowed to go through even though the UZO said that they were not allowed, so this is to clean up that issue.

President Bunder asked if it is correct that we do not have an R3W or R4W zone. Commissioner Spitznagle responded that we do; however, the Zoning Ordinance Committee is currently revising those because they are out of date and need to match the new higher density. He confirmed for President Bunder that this UZO amendment does affect West Lafayette in some way. He explained that the current R3W and R4W height restrictions are based on older capabilities of the fire departments.

There was no further discussion.

Ordinance No. 10-17 An Ordinance Providing For Temporary Loans (MVH to Parks) (Presented by the Controller)

President Bunder read Ordinance No. 10-17 by title only.

Controller Gray stated that Ordinance No. 10-17 is our usual ordinance for temporary funds to help our cash flow through the end of the year. We did one at the end of last year to have that cash flow until the June payment from the County. This loan is to get us through December. He noted that the Parks and Recreation Fund is the only fund that needs a loan.

There was no further discussion.

Ordinance No. 11-17 An Ordinance Requesting An Additional Appropriation And Reduction To The 2017 Budget (Engineering, MVH) (Submitted by the Controller)

Resolution No. 06-17 A Resolution Requesting A Transfer of Funds (Engineering) (Submitted by City Controller)

Controller Gray explained Ordinance No. 11-17 and Resolution No. 06-17 together. He stated that Resolution No. 06-17 relates to issues in Engineering regarding personnel and salary. The first issue is that we have a person on maternity leave, so the Engineering Department has hired a person from a temporary agency, which gets paid out of Contract Labor. This is under a different major category than salaries. The Resolution is to move money from salaries to the service category for contract labor. The Ordinance is to move money from the Motor Vehicle Highway (MVH) Fund into the Engineering Fund for salaries. This will allow us to save money on inspections for the State Street Project. We can hire inspections to an outside engineering firm, which can be paid out of MVH. However, it will save us a lot of money if we can do that in-house.

There was no further discussion.

Resolution No. 05-17 A Resolution Authorizing The Filing Of An Application With The U.S. Department Of Housing And Urban Development, For Community Development Block Grant Funds, As Provided In Title I Of The Community Development Act Of 1974, As Amended (Submitted by Department of Development)

President Bunder read Resolution No. 05-17 by title only.

Director of Rental Housing Inspections Dale Dixon stated that this is to make application with U.S. Department of Housing and Urban Development (HUD). We do this once per year for our Community Development Block Grant (CDBG) funds for infrastructure and housing projects.

President Bunder asked if there is a list of awards available for this year. Director Dixon stated that the list was published in the newspaper after the second public hearing on April 10, 2017, and he will make that available to the Council.

There was no further discussion.

COMMUNICATIONS

► President Bunder acknowledged that Councilor Leverenz is teaching his last class as a Purdue Professor, and he thanked Councilor Leverenz for his service to the University.

ADJOURNMENT

There being no further business at this time, Councilor DeBoer moved for adjournment. President Bunder adjourned the meeting, the time being 5:07 p.m.