

City of West Lafayette, Indiana
Board of Public Works and Safety
MINUTES

April 29, 2017
8:30 a.m.

Morton Community Center
Multi-Purpose Room

Members present were Bradley L. Cohen, Brooke E. Folkers, Jason D. Huber, and Thomas J. Kent. Clerk Sana G. Booker presided.

1. NEW BUSINESS

Resolution No. BW 2017-1: A Resolution Of The Board Of Public Works And Safety Of The City Of West Lafayette, To Establish An Underground And Buried Utility District

Mayor John Dennis thanked the representatives of the Board of Works for taking time out of their weekend to assist us with this issue. He provided some background about the issue, explaining that it was brought to our attention that there were some issues that needed to be attended to quickly by one of our legislative bodies. This issue basically empowers us to assert local control of some utilities that have the potential to come into our community. Whenever we have the opportunity to assert local control, we are going to do so, because we serve the people of West Lafayette. We want to do so in a way that will be efficient, effective, and provide some sort of input from the citizenry before we do anything in regards to our infrastructure. He stated that we are in a changing environment when it comes to technology. Like most processes that are evolving, technology is probably leading the pack on that. Greater Lafayette is one of the most densely populated areas in the State and even in the country. With our population base, especially the high student population in West Lafayette, there truly is a demand on technology, and specifically on cellular technology. With some of the plans that we have in regards to evolving to being a "smart city," and with some of the infrastructure that we are doing every day in conjunction with the State Street project, it is imperative that we have the necessary agility to do things in a way that is going to be logical, practical, and suitable for the timelines that we have established for some of these large projects. More importantly, when we talk about serving not just our static population, but also serving our student population and our business population, it is imperative that we have that technology in a way that will be dependable, efficient, and planned. That is one of the primary reasons we are here this morning. The recent legislation passed by State has the potential to create some challenges in regards to local control. There is some concern about communities across the State taking these necessary steps, but it is imperative that we establish these parameters, at least in so far as this City goes. Another thing to consider is that, when it comes to legislative bodies, the Board is one of the most agile boards that we have. Case in point is that the Board is here on a Saturday morning to make some decisions in regards to the future of this City. Should this change, speaking in the hypothetical, we are in a position to make amendments to this as well. He stated that he wants to make clear how appreciative he is to everybody for showing up this morning. We are setting parameters here not just for today, but for our future.

Ms. Folkers moved that Resolution No. BW-2017-1 be approved. Mr. Cohen seconded the motion.

Corporation Counsel Eric Burns provided background about right-of-ways. He explained that right-of-ways are all over the world, all over the United States, and all over our City. They tend to be next to any road or street that you can think of. The purpose of them is to allow a right for businesses to use, often with utilities. It is a very well-established system; it is well-known and well-understood. When a utility comes to the community, they know what the rules are because the rules are the rules, and that is that there is a permitting process. He explained that the background is important because it has been a question of local control because the right-of-ways are owned by the City. It is a piece of property that is owned by the City and has always had City control. The State legislature, about a week ago, made a change to that to an extent. It essentially said that when it comes to small cell tower technology, that the State law will control rights of way. It is a shift, and there have been similar shifts in the past. As the Mayor said, it is an issue of evolving technology. Counsel Burns stated that when the State passed that legislation, it also passed an exception. It said that if a municipality will, by May 1, 2017, designate areas that it wants to continue to have control over, then it would be allowed. The purpose of this resolution is to designate certain areas of the City, that we as the City—based on the analysis of the City Attorney and City Engineer—need and should have more control over. It is not complete control; it is the kind of control we exert and are able to exert now. We are here to designate these areas. Once the areas are designated, a much more traditional process goes forward, which is that an entity that wants to have a small cell tower facility would go through the permitting process. They would work with the City Engineer's Office to make sure there are no conflicts, and then the facilities go in. That is the purpose here. The reason that this is a special meeting is because the deadline to do this is before May 1. He stated that the resolution before the Board tracks the statute, and it complies with statute in terms of making designations where we, as a City, want to continue to exert a more traditional type of control. It does not violate the State law at all, and he believes that it will probably enhance the ability of cellular providers to come to town and understand what is going on. By passing the Senate Enrolled Act 213, it changed the rules a bit, and he believes that will create a bit of confusion.

City Engineer Ed Garrison stated that, for clarification, a right-of-way includes anything on the back of sidewalk, bike path, or anything that is used for public transportation. Within the current State laws, any public utility has the right to have their infrastructure within that right-of-way, as long as there is a location for them. What we have currently in the County, for the Grater Lafayette area, is a Unified Zoning Ordinance (UZO) that has restrictions on primary-use cell phone towers. Within that, we have the same restriction on these micro cell towers. We have been working with a lot of the companies that want to install these new cell towers, and we have had that UZO as a crutch to lean on in order to work with them. We do want to put this infrastructure in, as it is good for the community, but we want to do so in a way that also fits within the footprint of what we have been doing here for the last 10 to 15 years with beautifying the community. We have been working hard and spending money on new signal infrastructure, new lighting infrastructure, landscaping, and other aesthetic improvements. We need to have some control on what other entities are going to do as far as what they put in within that infrastructure that we have already established. This will protect us and give us a bit more control on where the towers go in, how they go in, and what they look like. That is the main goal of what we are doing here.

Mr. Kent stated that there is probably a push to have the entire City as a hot zone for Wi-Fi and everything like that. He asked if we are specifically discussing the small arrays, which are really apparent in cities like Chicago, that are slapped-up against sides of buildings and look like old UHF antennas and things of that nature.

City Engineer Garrison stated that, for clarification, this is not Wi-Fi service. This is cellular service. The way that it has been described to us is that the large cell towers you see now are designed to reach a ten-mile radius. What is happening is that when a dense urban area uses so much data, it ties up the ability to go that ten miles, and service is not getting to everyone. The micro cell towers are to have smaller, localized areas where it can disperse that data without messing up what the larger towers are doing. This is why they are looking to do this in dense, urban areas with a lot of younger generation members using a lot data streaming.

Mr. Cohen stated that he understands all of the pros, but asked if there are any cons to this. Counsel Burns responded that he does not believe there are any cons. The reason is that, as Mr. Garrison and Mayor Dennis just outlined, this is great technology. We as a City, would really be smart to get it here as quickly as we can, and in as robust a fashion as possible. So, the intention of this is to not chill that whatsoever. The intention of this is to make sure that it is installed in an orderly fashion. It allows local control over right-of-ways, which are owned by the local governmental unit, so it makes it a more efficient system.

City Engineer Garrison stated that we first heard about this and knew it was coming around one year ago. We did not want to start throwing things up without having a good game plan. We knew that we had the cell tower UZO to lean on, and we were working on the UZO with the County to establish a new micro cell tower ordinance separate from the other one. It would include limitations and restrictions to make these smaller cell towers fit within the footprint of what we have here in the City. We have been working on that for six to eight months, and we were getting close to finalizing that as the State bill was going through. Everything was put on pause until that happened. Now that this has come through, and it is quite a bit different than what we were trying to establish, this is us protecting the City. The waiver process that we will have will be similar to what we were originally going to set up to begin with.

Mr. Cohen stated that with the way the Resolution is written, it seems like pretty much everything is covered. So, our specialized or specific districts are basically the City.

City Engineer Garrison stated that the only downside that we could foresee, and will address with the waiver process, is that this is technology. Like any other technology, in three to five years from now, this may not be the new technology anymore and may no longer be needed. We are setting up limits as to what the companies have to do if they are going to abandon their infrastructure. This may include taking it down or handing it over to the City if it has some value to us.

Mr. Cohen asked if Tippecanoe County and the City of Lafayette are taking similar action. Mayor John Dennis responded that the Lafayette Board of Works passed a resolution yesterday.

Ms. Folkers asked what the micro cell towers look like. Mr. Garrison responded that within the State ordinance, there are certain colors they have to be. They are 50-feet tall. He explained that we are going to base it on which district they will be installed in and what kind of lighting we have in that area. We will give the company the option to replace an existing light with something similar with a longer pole. If the area does not currently have the upgraded lighting, we would have them replace the light with something similar to the newer style lighting.

Director of Development Carlson stated that he wants to speak to what was referred to as the chilling effect. He stated that the situation in the community of West Lafayette is that there would be no chilling effect. This is the exact type of community where these organizations are looking to go, and we welcome them into our community. He stated that if he thought that we would be shunning technology, he would have done his best to make sure none of us were here this morning. We are going to be welcoming this technology into the City, because we need this technology. However, we need it to match our community. During an initial meeting with one of the micro cell tower groups they provided a Photoshopped image of a 125-foot wooden pole on Greenbush Street in Lafayette. While the technology it brings is very much welcome in our community, we need to make sure that it is not that type of thing that we start to see. These companies have the ability to do very artful uses with these poles, which we have seen in Westfield and elsewhere in the State. We would like to make sure that when we start seeing these poles in this community that they meet that standard, and not what we have seen as the lowest cost of entry into this field.

The motion was adopted.

Clerk Booker stated that she wants to say to the members of the Board that she does not know if they know every week how important they are, but if not then they should know today. The Board's voice makes a difference, and she expressed appreciation to them for showing up this morning to help us move through this issue.

2. ADJOURNMENT

There being no further business to come before the Board, Mr. Cohen moved that the meeting be adjourned, and Clerk Booker adjourned the meeting.