

April 24, 2017

The Common Council met with Mayor William McKean for a regular meeting on Monday, April 24, 2017 at 7:30 p.m. in the Council Chambers at City Hall according to the posted notice. Councilmen Gregg Sprunger, Curtis Wurster, Ron Dull, Mark Wynn and Philip Provost were present, along with Attorney Dave Baumgartner and Clerk-Treasurer Gwen Maller.

Councilman Gregg Sprunger opened the meeting with the pledge of allegiance and Mayor McKean gave the invocation.

Minutes

On a motion by Phil Provost and a second by Gregg Sprunger, the minutes of the April 10, 2017 meeting were unanimously approved.

Claims

On a motion by Ron Dull and a second by Curtis Wurster, the claims were unanimously approved for payment.

Annual CF-1 Approval FCC Adams

FCC Adams submitted their Annual CF-1 Forms for eight real and personal property tax abatements to Council for their consideration. Ms. Sandra Affolder, FCC Adams representative, was present to answer any questions. She stated that they have 528 associates employed on three shifts. Mayor McKean and the Council thanked Sandra for all that FCC Adams has done for the community. Ron Dull made a motion to find FCC Adams in substantial compliance and have Mayor McKean sign the annual CF-1 forms. Curtis Wurster made the second and the motion was unanimously passed.

Annual CF-1 Approval MAFCO/Poseidon Barge

MAFCO Leasing and Poseidon Barge submitted their annual CF-1 forms for Council consideration. Ms. Mary Habegger and Ms. Joyce Smith, Poseidon representatives, were present to answer any questions. Ms. Habegger reported that while last year was a slow year for them, business has picked up and they have already added more employees than was reported on the CF-1. Mayor McKean asked if their business was seasonal? She replied that she thought that the election had a lot to do with their slow down and now money is being released for government contracts and bridge work. Gregg Sprunger made a motion to find MAFCO Leasing and Poseidon Barge in substantial compliance and have Mayor McKean sign their annual CF-1 forms. Curtis Wurster made the second and the motion was unanimously passed.

Annual CF-1 Approval First Bank of Berne

First Bank of Berne submitted their annual CF-1 form for Council consideration. Mr. Kevin Gould, First Bank of Berne representative, was present to answer any questions. He stated that they had estimated on their SB-1 that there would be 10 additional employees and they have already added 14 new employees with room for additional growth. Ron Dull made a motion to find the First Bank of Berne in substantial compliance and have Mayor McKean sign their annual CF-1 form. Mark Wynn made the second and the motion was unanimously passed.

Annual CF-1 Approval Sherrell Industries

The Annual CF-1/RE form for Sherrell Industries was submitted for Council consideration. Mayor McKean stated that he had talked to Mr. Ricky Sherrell by phone. Mr. Sherrell resides in Tennessee and was unable to be present for tonight's meeting. Mr. Sherrell's original plans per their SB-1, was "to purchase the building and rehabilitate it to bring the property up to conditions/standards necessary to begin production for one business in January 2016 and the second later to follow." Indiana Coatings was to begin production in early 2016 and Sherrell Industries was to add 20 employees in a separate but compatible operation later. Indiana Coatings shut down their production efforts due to a lack of orders and are no longer in the area. This has resulted in Sherrell Industries having a building, but no vehicle for their production operation. While Sherrell Industries have invested the \$1,850,000 in the building, they have not met the employee estimate. The Council had discussion whether

Sherrell Industries is in compliance. Clerk-Treasurer Maller stated that the CF-1 Form was for the real estate, which they had invested in as was originally presented on the SB-1 Form. They had also received a tax abatement on equipment which has not been purchased at this time nor has a CF-1 been submitted for it. Attorney Baumgartner stated that it might be in the City's best interest to find Sherrell Industries in substantial compliance, reducing the risk of having the property become abandoned and have the building go up for tax sale. Attorney Baumgartner added that at some point the Council is going to have to determine if Sherrell Industries is in compliance if there is no production. Mark Wynn made a motion to find Sherrell Industries in substantial compliance for one more year and to have Mayor McKean sign the CF-1 form. Ron Dull made the second and the motion was unanimously approved.

Resolution for Title VI

A resolution for the City of Berne Title VI assurance and the City of Berne Non-Discrimination policy statement were presented for Council approval. These policies need to be in place before the City could be eligible for federal funds to help with Title VI. Gregg Sprunger made a motion to approve the Assurance policy and the Discrimination policy. Curtis Wurster made the second and the motion was unanimously passed. The policies are as follows:

CITY OF BERNE NON-DISCRIMINATION POLICY STATEMENT

The City of Berne reaffirms its policy to allow all individuals the opportunity to participate in federal financially assisted services and adopts the following provision:

"No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." In applying this policy, the city, and its sub-recipients of federal funds, shall not:

1. Deny any individual with any services, opportunity, or other benefit for which such individual is otherwise qualified;
2. Provide any individual with any service or other benefit which is inferior (in quantity or quality) to, or which is provided in a different manner from, that which is provided to others;
3. Subject any individual to segregated or disparate treatment in any manner related to such individual's receipt of services or benefits;
4. Restrict an individual in any way from the enjoyment of services, facilities, or any other advantage, privilege, or other benefit provided to others;
5. Adopt or use methods of administration which would limit participation by any group of recipients or subject any individual to discrimination;
6. Address any individual in a manner that denotes inferiority because of race, color, or national origin;
7. Permit discriminatory activity in a facility built in whole or in part with federal funds;
8. Deny any segment of the population the opportunity to participate in the operations of a planning or advisory body that is an integral part of a federally funded program;
9. Fail to provide information in a language other than English to potential or actual beneficiaries who are of limited English speaking ability, when requested and as appropriate;
10. Subject an individual to discriminatory employment practices under any federally funded program whose objective is to provide employment;
11. Locate a facility in any way which would limit or impede access to a federally funded service or benefit.

The City of Berne will actively pursue the prevention of any Title VI deficiencies or violations and will take the necessary steps to ensure compliance. If irregularities occur in the administration of the program's operation, procedures will be promptly implemented to resolve Title VI issues within a period not to exceed 90 days. The City of Berne designates Rebecca Sprunger, City of Berne Administrative Assistant, as the city's Title VI Coordinator. The City of

Berne Administrative Assistant will be responsible for initiating and monitoring Title VI activities and other required matters, ensuring that the City of Berne complies with the Title VI regulations, and pursues prevention of Title VI deficiencies or violations. Inquiries concerning the City of Berne and Title VI may be directed to the Title VI Coordinator at:

Rebecca Sprunger, City of Berne Title VI Coordinator
158 W. Franklin Street
Berne, IN 46711
Phone: (260) 589-8526 Fax: (260) 589-3983
bsprunger@cityofberne.com

William F. McKean
Mayor
Coordinator

Rebecca Sprunger
City of Berne Title VI



CITY OF BERNE TITLE VI ASSURANCE

The City of Berne, Indiana (hereinafter referred to as the "Recipient"), by its Common Council and chief executive, HEREBY AGREES that as a condition to receiving any federal financial assistance from the U.S. Department of Transportation, it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 USC 2000d-42 USC 2000d-4 (hereinafter referred to as the "Act"), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-Discrimination in Federally Assisted Programs for the Department of Transportation — Effectuation of Title VI of the Civil Rights Act of 1964 (hereinafter referred to as the "Regulations") and other pertinent directives, to the end that in accordance with the Act, Regulations, and other pertinent directives, no person in the United States shall, on the grounds of gender, race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Recipient received federal financial assistance from the Department of Transportation, including the Indiana Department of Transportation, and HEREBY GIVES ASSURANCES that it will promptly take any measures necessary to effectuate this assurance. This assurance is required by subsection 21.7 of the Regulations. More specifically and without limiting the above general assurance, the Recipient hereby gives the following specific assurance with respect to the Federal Aid Highway Program:

1. That the Recipient agrees that each "program" and each "facility" as defined in subsections 21.23(e) and 21.23(b) of the Regulations, will be (with regard to a "program") conducted, or will be (with regard to a "facility") operated in compliance with all requirements imposed by, or pursuant to, the Regulations.
2. That the Recipient shall insert the following notification in all solicitations for bids for work or material subject to the Regulations and made in connection with all Federal Aid Highway Programs and, in adapted form in all proposals for negotiated agreements:

"The City of Berne, Indiana, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 USC 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office the Secretary, Part 21, Non-Discrimination in Federally-Assisted Programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids

in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.”

3. That the Recipient shall insert the clauses of Appendix A of this assurance in every contract subject to the Act and the Regulations.
4. That the Recipient shall insert the clauses of Appendix B of this assurance, as a covenant running with the land, in any deed from the United States effecting a transfer of real property, structures, or improvements thereon, or interest therein.
5. That where the Recipient receives federal financial assistance to construct a facility, or part of a facility, the assurance shall extend to the entire facility and facilities operated in connection therewith.
6. That where the Recipient receives federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the assurance shall extend to rights to space on, over, or under such property.
7. That the Recipient shall include the appropriate clauses set forth in Appendix C of this assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the Recipient with other parties:
 - a. for the subsequent transfer of real property acquired or improved under the Federal Aid Highway Program; and
 - b. for the construction or use of, or access to space on, over, or under, real property acquired or improved under the Federal Aid Highway Program.
8. That this assurance obligates the Recipient for the period during which federal financial assistance is extended to the program, except where the federal financial assistance is to provide, or is in the form of, personal property or real property, or interest therein or structures or improvements thereon, in which case the assurance obligates the Recipient or any transferee for the longer of the following periods:
 - a. the period during which the property is used for a purpose for which the federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
 - b. the period during which the Recipient retains ownership or possession of the property.
9. The Recipient shall provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom it delegates specific authority to give reasonable guarantee that it, other recipients, sub-grantees, contractors, subcontractors, transferees, successors in interest, and other participants of federal financial assistance under such program will comply with all requirements imposed or pursuant to the Act, the Regulations and this assurance.
10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Act, the Regulations, and this assurance.

This assurance is given in consideration of and for the purpose of obtaining any and all federal grants, loans, contracts, property, discounts or other federal financial assistance extended after the date hereof to the Recipient under the Federal Aid Highway Program and is binding on it, other recipients, sub-grantees, contractors, sub-contractors, transferees, successors in interest and other participants in the Federal Aid Highway Program. The person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Recipient.

PASSED AND ADOPTED by the Common Council of the City of Berne by a _____ vote of all members present and voting this _____ day of _____, 2017.

COMMON COUNCIL OF THE CITY OF BERNE

Economic Development Commission Appointments

Attorney Dave Baumgartner informed the Council that Smith Brothers is going to be building a new addition to their plant. While they have most of the money for the project, they are also planning to finance a portion of it with a bond issue. They would like to go through the Redevelopment Commission and not request a tax abatement. The taxes they pay will go into the TIF district and will be used to pay off the bond. If the Redevelopment Commission issues the bonds, rules require that the bonds be bid out. If the Berne Economic Development Commission issues a bond it doesn't have to be bid out. Smith Brothers would prefer that the bond not be bid out so that they can purchase it.

Ordinance 265 passed in 1980 created the Berne Economic Development Commission and set out guidelines for member's terms. The last time the Commission was active was in 2008 when Swiss Village issued a bond. The ordinance sets out that the Commission consists of three members, one nominated by the Mayor, one by the Common Council and one by the Adams County Council.

Gregg Sprunger made a motion to nominate Mr. Rod Mason as the City Council's representative to the Berne Economic Development Commission. Phil Provost made the second and the motion was unanimously passed.

Mayor McKean accepted the Council's nomination and then appointed Mr. Mason to the Commission. Mayor McKean also appointed Mr. Paul Zurcher as the Mayor's appointment to the Commission.

The County Council will be meeting on May 9, 2017 and will make their nomination at that time.

Board of Works and Safety Update

Mayor McKean reported that the Board of Works met on Wednesday April 19, 2017 and one of the items for discussion was the overflowing dumpster problem on the east side of the City garage. Removing the dumpsters wasn't really an option as then the trash would be sitting curbside and hard to pick up. The Board discussed surveillance cameras, an ordinance with a significant fine and possibly adding a fence and lighting. In the end, the board instructed the City Attorney to draw up a dumpster use ordinance.

Street Commissioner Gary Nussbaum submitted the annual street repair and repaving list to the Board of Works who approved it. The itemized list is in the Board of Works minutes. The general list is as follows:

3 City parking lots	\$ 11,525.00
Crack & Seal	14,560.35
Repaving Various Streets	158,733.00
Concrete Street Work	55,998.00

Attorney Comments

Attorney Dave Baumgartner stated that when there is a bond issue, as in the case of the Smith Brother's bond, there needs to be a bond council and an accountant hired to prepare all the bond documents. Smith Brothers has agreed that the City should not have any expense in this bond issue and they will absorb it. Steve Carter with Carter Dillion and Umbaugh, LLC submitted a proposal outlining his duties as the accountant as well as his fee for the work. Dave stated that the City needs to approve the it since Mr. Carter will be representing the City's interests. Curtis Wurster made a motion to approve Steve Carter's proposal with the understanding that Smith Brothers will reimburse the City or direct pay the not-to-exceed fee of \$18,000. Ron Dull made the second and the motion was unanimously passed.

Attorney Baumgartner submitted a letter that he was instructed to prepare at the last meeting in support of the South Adams Trails Inc. in the planning and construction of a recreational trail system within the City of Berne. The letter also states that the City will grant an easement if required by fee simple title for a period of 25-50 years. The easement may or may not be required depending on who the grant applicant will be.

Phil Provost made a motion to approve the letter of support for the trail system and have the Mayor sign it. Ron Dull made the second and the motion passed with four yeas, 0 nays and Gregg Sprunger abstaining.

Council Comments

Curtis Wurster thanked everyone who came to the work day at the Girls softball diamond, especially Mark Wynn and Brent Frank. It was a long chilly day, but they got a lot of projects done. He stated that there is still some roofing and siding that needs done and a lot of painting. Hopefully this will get done as soon as possible.

There being no other business to come before the Council and upon a motion duly made to adjourn by Ron Dull and seconded by Mark Wynn, adjournment followed.

William F. McKean, Mayor

ATTEST:

Gwen Maller, Clerk-Treasurer