

**CITY OF SWARTZ CREEK
SWARTZ CREEK, MICHIGAN
MINUTES OF THE COUNCIL MEETING
DATE 01/23/2012**

The meeting was called to order at 7:00 p.m. by Mayor Abrams in the Swartz Creek City Council Chambers, 8083 Civic Drive.

Invocation and Pledge of Allegiance to the Flag.

Councilmembers Present: Abrams, Hicks, Hurt, Krueger, Porath, Shumaker.

Councilmembers Absent: Binder.

Staff Present: City Manager Paul Bueche, City Clerk Juanita Aguilar, DPS Director Tom Svrcek.

Others Present: Steve Shumaker, Boots Abrams, Tommy Butler, Shirley Oliver, Rich Tesner, Sharon Shumaker, Peggy Mattson, Richard Mattson, Lou Fleury, Todd Beedy.

Resolution No. 120123-01

(Carried)

Motion by Councilmember Hurt
Second by Mayor Pro-Tem Krueger

I Move the Swartz Creek City Council excuse the absence of Councilmember Binder due to family commitments.

YES: Hicks, Hurt, Krueger, Porath, Shumaker, Abrams.
NO: None. Motion Declared Carried.

APPROVAL OF MINUTES

Resolution No. 120123-02

(Carried)

Motion by Councilmember Porath
Second by Councilmember Hurt

I Move the Swartz Creek City Council hereby approve the Minutes of the Regular Council Meeting, held January 9, 2012, to be circulated and placed on file.

YES: Hicks, Hurt, Krueger, Porath, Shumaker, Abrams.
NO: None. Motion Declared Carried.

APPROVAL OF AGENDA

Resolution No. 120123-03

(Carried)

Motion by Mayor Pro-Tem Krueger
Second by Councilmember Hurt

I Move the Swartz Creek City Council approve the Agenda, as printed, for the Regular Council Meeting of January 23, 2012, to be circulated and placed on file.

YES: Hurt, Krueger, Porath, Shumaker, Abrams, Hicks.
NO: None. Motion Declared Carried.

REPORTS AND COMMUNICATIONS:

City Manager's Report

Resolution No. 120123-04

(Carried)

Motion by Councilmember Shumaker
Second by Councilmember Hurt

I Move the Swartz Creek City Council approve the City Manager's Report of January 23, 2012, to be circulated and placed on file.

YES: Krueger, Porath, Shumaker, Abrams, Hicks, Hurt.
NO: None. Motion Declared Carried.

All other reports and communications were accepted and placed on file.

MEETING OPENED TO THE PUBLIC:

City Manager Bueche introduced the new Flint Journal reporter, Nate Orenshall.

COUNCIL BUSINESS:

Approve Amended Site Plan, Meijer, Inc., Tax ID No. 58-36-100-001, 4013 South Morrish Road

Resolution No. 120123-05

(Carried)

Motion by Councilmember Hicks
Second by Councilmember Hurt

WHEREAS, the City of Swartz Creek set up a Planned Unit Development District and approved the construction of a 207,364 square foot Meijer retail outlet store along with associated special land use permits, waivers and a development agreement on August 14, 2006, resolutions as follow:

Amend Zoning Ordinance, Morrish Road Planned Unit Development District

Resolution No. 060814-06

(Carried)

Motion by Councilmember Hurt,
Second by Mayor Pro-Tem Christie,

WHEREAS, pursuant to the City of Swartz Creek Zoning Ordinance (Section 11.05 c) The City of Swartz Creek Planning Commission has held a public hearing to explain the purpose of the proposed North Morrish Road Conceptual Planned Unit Development Plan and receive public comment; and,

WHEREAS, pursuant to Public Act 207 of 1921 as amended, the Swartz Creek Planning Commission has determined the need to establish a Planned Unit Development District as shown on the proposed City of Swartz Creek Zoning Map, a copy of which is included and attached hereto; and,

WHEREAS, the City of Swartz Creek Planning Commission has reviewed the City of Swartz Creek Master Plan, dated 2004, and based the North Morrish Road Conceptual Planned Unit Development Plan on said Master Plan; and,

WHEREAS, the Swartz Creek Planning Commission has recommended approval to the City Council, the creation of the North Morrish Road Planned Unit Development Plan; and,

WHEREAS, the Swartz Creek City Council has held a Public Hearing and received public comment on the creation of the North Morrish Planned Unit Development District.

NOW, THEREFORE, be it resolved that the Swartz Creek City Council hereby approves and adopts the North Morrish Road Conceptual Planned Unit Development Plan as part of the official Zoning Map for the City of Swartz Creek, a copy of which is attached hereto, to be placed on file with the office of the City Clerk.

YES: Abrams, Christie, Hurt, Plumb, Porath, Shumaker.
NO: None. Motion declared carried.

Final Approval: Final Site Plan Approval, Special Land Uses, Meijer's

Resolution No. 060814-07

(Carried)

Motion by Councilmember Porath,
Second by Councilmember Hurt,

The Swartz Creek City Council approves a Special Land Use Permit for 4013 Morrish Road, Tax ID No. 58-36-100-001, applicant Meijer's, to operate a pharmacy with drive-through lanes, subject to the following conditions and stipulations:

1. LSL Letters dated July 28, 2006 and August 10, 2006.
2. The proposed drive-through includes a rolled curb around the separation island at the west edge of the drive through. In addition, the walkway connecting the seasonal sales area and the garden center will be constructed of stamped concrete.
3. Council approval of the final site plan, sealed and dated August 7, 2006
4. Council adoption of the Zoning Ordinance and Zoning Map.

YES: Abrams, Christie, Hurt, Plumb, Porath, Shumaker.
No: None. Motion declared carried.

Resolution No. 060814-08

(Carried)

Motion by Mayor Pro-Tem Christie,
Second by Councilmember Hurt,

The Swartz Creek City Council approves a Special Land Use Permit for 4013 Morrish Road, Tax ID No. 58-36-100-001, applicant Meijer's, to operate a garden center, subject to the following conditions and stipulations:

1. LSL Letters date July 28, 2006 and August 10, 2006.
2. All garden center deliveries to occur during off hours.
3. Council approval of the final site plan, sealed and dated August 7, 2006
4. Council adoption of the Zoning Ordinance and Zoning Map.

YES: Abrams, Christie, Hurt, Plumb, Porath, Shumaker.
NO: None. Motion declared carried

Resolution No. 060814-09

(Carried)

Motion by Councilmember Shumaker,
Second by Councilmember Hurt,

The Swartz Creek City Council approves a Special Land Use Permit for 4013 Morrish Road, Tax ID No. 58-36-100-001, applicant Meijer's, to operate a gasoline station, subject to the following conditions and stipulations:

1. LSL Letters date July 28, 2006 and August 10, 2006.
2. Preparation of revised mini mart building elevations for administrative review and approval.
3. Council approval of the final site plan, sealed and dated August 7, 2006
4. Council adoption of the Zoning Ordinance and Zoning Map.

YES: Abrams, Christie, Hurt, Plumb, Porath, Shumaker.
NO: None. Motion declared carried.

Resolution No. 060814-10

(Carried)

Motion by Councilmember Plumb,
Second by Councilmember Hurt,

The Swartz Creek City Council approves a Special Land Use Permit for 4013 Morrish Road, Tax ID No. 58-36-100-001, applicant Meijer's, to operate an outdoor storage and sales area within the parking lot, subject to the following conditions and stipulations:

1. LSL Letters date July 28, 2006 and August 10, 2006.
2. Submittal of revisions to the outdoor storage/seasonal sales area, including screening methods, for administrative review and approval.
3. The outdoor storage/seasonal sales shall be in place no more than 5 consecutive months per calendar year.
4. Council approval of the final site plan, sealed and dated August 7, 2006
5. Council adoption of the Zoning Ordinance and Zoning Map.

YES: Abrams, Christie, Hurt, Plumb, Porath, Shumaker.
NO: None. Motion declared carried.

Resolution No. 060814-11

(Carried)

Motion by Councilmember Hurt,
Second by Councilmember Plumb,

The Swartz Creek City Council approves a Special Land Use Permit for 4013 Morrish Road, Tax ID No. 58-36-100-001, applicant Meijer's, to construct and operate a building that exceeds 30,000 square feet, subject to the following conditions and stipulations:

1. LSL Letters date July 28, 2006 and August 10, 2006.
2. Council approval of the final site plan, sealed and dated August 7, 2006
3. Council adoption of the Zoning Ordinance and Zoning Map.

YES: Abrams, Christie, Hurt, Plumb, Porath, Shumaker.
NO: None. Motion declared carried.

Resolution No. 060814-12

(Carried)

Motion by Councilmember Porath,
Second by Councilmember Plumb,

WHEREAS, the City of Swartz Creek Planning Commission and the Swartz Creek City Council has reviewed Phase I of the final Planned Unit Development Site Plan for Meijer, Inc.; and,

WHEREAS, the Planned Unit Development satisfies the eligibility criteria of Section 11.01 of the City of Swartz Creek Zoning Ordinance; and,

WHEREAS, the Planned Unit Development is designed and constructed in a manner harmonious with the character of adjacent property and surrounding areas; and,

WHEREAS, the Planned Unit Development is adequately served by essential public facilities and services, such as roads, pedestrians or bicycle facilities, police and fire protection, drainage systems, water supply, and sewage facilities; and,

WHEREAS, the Planned Unit Development does not have an unacceptable significant adverse effect on the quality of the natural environment in comparison to the impacts associated with a conventional development; and

WHEREAS, after a public hearing wherein the Swartz Creek City Planning Commission heard public comments on the proposed Meijer's Project, associated Special Land Use Permit Applications and the Planned Unit Development District, recommendation was made to the Swartz Creek City Council to approve the project, with conditions and stipulations; and

WHEREAS, the Swartz Creek City Council conducted a public hearing wherein comments from the public were heard on the proposed Meijer's Project, associated Special Land Use Permit Applications and the Planned Unit Development District.

NOW, THEREFORE, the Swartz Creek City Council approves Phase I, final Planned Unit Development Site Plan for Meijer, Inc., 4013 Morrish Road, Tax ID No. 58-36-100-001, subject to the following conditions;

1. The issues identified in LSL letters, dated July 28, 2006 and August 10, 2006, titled be addressed in construction documents for administrative review and approval.
2. Submission of a Development Agreement for Council review and approval.
3. Preparation of revised mini mart building elevations for administrative review and approval.
4. Approval of the waivers identified in LSL Letters dated July 28, 2006 and August 10, 2006
5. The review comments of all other consultants, departments and review agencies.
6. Council adoption of the Zoning Ordinance and Zoning Map.
7. Administrative review and approval of the gas station and mini mart.

YES: Abrams, Christie, Hurt, Plumb, Porath, Shumaker.

NO: None. Motion declared carried.

and;

WHEREAS, on August 11, 2008, the City of Swartz Creek granted Meijer Inc. a site plan extension and an amendment that among other minor items, adjusted the gross square footage downward to 156,544; resolution as follows:

Meijer's Amendment to Final Site Plan

Resolution No. 080811-05

(Carried)

*Motion by Mayor Pro-Tem Christie
Second by Councilmember Hurt*

WHEREAS, the City of Swartz Creek City Council has reviewed and approved a Planned Unit Development Site Plan, with special land uses for Meijer and,

WHEREAS, the Planned Unit Development satisfies the eligibility criteria of Section 11.01 of the City of Swartz Creek Zoning Ordinance; and,

WHEREAS, the applicant put forth an extended timeline for completion of the project, including possible revisions prior to commencement; and

WHEREAS, the existing Site Plan and all Special Land Uses remain valid contingent upon any revisions.

NOW, THEREFORE, the Swartz Creek City Council approves the Site Plan Amendment for a downsizing and layout alternation of the Meijer Store to be constructed at, 4013 Morrish Road, Tax ID No. 58-36-100-001, applicant Michael Kinstle (Meijer Inc.), as illustrated in the site plan dated July 30, 2008, subject to the following conditions and stipulations:

- 1.) Identified waivers in the staff SPR review letter dated August 1, 2008 are approved by City Council.
- 2.) Approval by the City Council of a planned unit development agreement.
- 3.) Comments by Rowe Engineering and other permitting agencies are addressed.
- 4.) Meijer Inc. is to provide \$1,500,000 towards the Morrish Road improvements as need for completion of Phase I.

Discussion Took Place.

YES: Shumaker, Abrams, Christie, Hurt.

NO: None. Motion Declared Carried.

and;

WHEREAS, the City completed improvements to Morrish Road in September 2010, the improvements designed to service the Meijer retail store and other future developments, Meijer Inc. contributing \$1,500,000 towards the construction; and

WHEREAS, Meijer applied and was granted SEC permits from the Genesee County Surface Water Management Division in September 2011 and constructed detention and land balancing, completing the work in November 2011; and

WHEREAS, Meijer submitted a request for an amended site plan that includes an increase to 192,214 gross square feet of the primary structure, with related changes to parking, traffic circulation, lighting, landscaping, and signage, all of which have

been deemed by the City's staff as minor and within the general concept of the original site plan approval, the matter being heard by the City's Planning Commission on January 10, 2012 with recommendation to the City Council for approval, Planning Commission Resolution as follows:

WHEREAS, the City of Swartz Creek Planning Commission has reviewed and approved a Planned Unit Development Site Plan, with special land uses for Meijer and,

WHEREAS, the Planned Unit Development satisfies the eligibility criteria of Section 11.01 of the City of Swartz Creek Zoning Ordinance; and,

WHEREAS, the applicant put forth an extended timeline for completion of the project, including possible revisions prior to commencement; and,

WHEREAS, the applicant has commenced and finished site work for the project before expiration of the timeline as outlined in the existing development agreement, including over \$1 million dollars towards road improvements and the onsite drainage detention areas; and,

WHEREAS, the existing Site Plan and all Special Land Uses remain valid and vested for the applicant; and,

WHEREAS, the applicant is proposing a site plan amendment that includes an increase in the size of the primary structure, with related changes to parking, traffic circulation, lighting, landscaping, and signage; and,

NOW, THEREFORE, the Swartz Creek City Planning Commission recommends approval of the Site Plan Amendment for a resizing and layout alteration of the Meijer Store to be constructed at, 4013 Morrish Road, Tax ID No. 58-36-100-001, applicant Michael Kinstle (Meijer Inc.), as illustrated in the site plan dated December 15, 2011, subject to the following conditions and stipulations:

- 1.) *Identified waivers in the staff SPR review letter dated August 1, 2008 shall remain in force as incidentally amended herein, as shall special use permits, and other prior conditions not otherwise noted in the revised site plan.*
- 2.) *Approval by the City Council of a revised planned unit development agreement.*
- 3.) *Comments by Rowe Engineering and other permitting agencies are addressed.*

NOW, THEREFORE, I Move the City of Swartz Creek accept the recommendation of the Planning Commission and approve the Site Plan Amendment for a resizing and layout alteration of the Meijer Store to be constructed at 4013 Morrish Road, Tax ID No. 58-36-100-001, applicant Michael Kinstle (Meijer Inc.), as illustrated in the site plan dated December 15, 2011, subject to the following conditions and stipulations:

- 1.) Identified waivers in the staff SPR letter dated August 1, 2008 shall remain in force as incidentally amended herein, as shall special use permits, and other prior conditions not otherwise noted in the revised site plan.
- 2.) Approval by the City Council of a revised planned unit development agreement.
- 3.) Comments by Rowe Engineering and other permitting agencies are addressed.

Discussion Ensued.

YES: Porath, Shumaker, Abrams, Hicks, Hurt, Krueger.

NO: None. Motion Declared Carried.

Final Authorization, Police Carry & Use of Non-Lethal Conductive Energy Weapons (A.K.A. Taser)

Resolution No. 120123-06

(Carried)

Motion by Councilmember Hurt
Second by Mayor Pro-Tem Krueger

WHEREAS, the City Council has considered testimony from the Chief of Police on his recommendation for the purchase, carrying and use of non-lethal conductive energy weapons, more commonly referred to by the brand name "Taser", by the City's Police Force; and

WHEREAS, the City Council has determined that the purchase, issuance, carrying and use of such weapons is warranted and will provide an additional safety option to the City's Police Officers; and

WHEREAS, the City Council passed a resolution at the meeting of October 24, 2011 authorizing the purchase, carrying and use of non-lethal conductive energy weapons, resolution as follows:

Appropriation, Purchase Non Lethal Conductive Energy Weapons (Taser)

Resolution No. 111024-06

(Carried)

*Motion by Councilmember Hurt
Second by Councilmember Hicks*

WHEREAS, the City finds that authorizing the issue and use of Electronic Control Devices, also known by the brand name Taser, to its Police Officers will provide an effective tool in managing un-cooperative and unruly subjects and further, provide additional protection and safety to officers and the citizens they protect; and

WHEREAS, there are several manufactures of such non lethal weapons, however, the choice by the majority of Police Departments and the recommendation of the City's Chief of Police is "Taser" X-2; and

WHEREAS, the manufacturer's distribution of these weapons is territorial, meaning that a single vendor is responsible for an entire state or grouping of states which eliminates the option for competitive bids; and

WHEREAS, the City's purchasing ordinance provides for competitive and cooperative bids, but also allows for exceptions in certain circumstances, text as follows: **Chapter 2, Article VI, Division 3, Sec 2-402(a), 2, i & ii** "...The city council may, at the request of the city manager, authorize the city manager to negotiate a contract for the purchase of any product, material or service with a provider of such product, material or service without regard to the requirements of this section relative to purchases where the city council finds:

- i. Due to circumstances beyond the control of the city, the market for such product, material or service is not competitive even though such product, material or service is normally competitive in nature; and*
- ii. The economic interests of the city are best served by negotiating a contract with a provider of the product, material or service without requesting sealed bids."; and*

WHEREAS, the City finds that the market for such product is not competitive even though such product, material or service is normally competitive in nature.

NOW, THEREFORE, I Move the City of Swartz Creek authorize the issue, carrying and use of Electronic Control Devices, more commonly known as "Taser's", to its Police Officers, stipulating:

- 1. Creation of a policy for training and use, policy to conform to the Michigan Commission on Law Enforcement Standards (MCOLES), the Michigan Municipal League's (MML) Risk Management and the manufacture's recommendations.*
- 2. Policy to be integrated into the Police Departments policy on the use of force, the entire policy to be reviewed and edited by the City Attorney's Office and upon completion, to be brought back before the Council for final approval.*

BE IT FURTHER RESOLVED, that the City appropriate an amount not to exceed \$4,012 plus 10% contingency to Michigan Taser Distributing of South Lyon Michigan, for the purchase of three X-2 Taser units and accessories, in accordance with the bid specifications, funds to be appropriated from 101 General Fund, and further, direct the staff to make any necessary budget adjustments and journal entry postings in the City's Ledger.

Discussion Took Place.

YES: Shumaker, Abrams, Hicks, Hurt, Krueger, Porath.
NO: None. Motion Declared Carried.

WHEREAS, the Chief of Police has reviewed the Police Departments entire force and force continuum policy and in working with the Michigan Municipal League's Law Enforcement Risk Management Section, has developed a policy that is based on MML suggested policies for force and have integrated the carrying, issuance, use and training for non-lethal conductive energy weapons into the policy; and

WHEREAS, the draft policy has been reviewed and approved by City Attorney Mike Gildner.

NOW, THEREFORE, I Move the City Council authorize the carrying, issuance and use of non-lethal conductive energy weapons (Taser's) by the City's Police Officers, in accordance with law, policy, rules and regulations, and/or as such policy may be updated from time to time by State Statute, the Michigan Municipal League's Law Enforcement Risk Management Section, County Prosecuting Attorney's Office or City Attorney's Office.

Discussion Ensued.

YES: Shumaker, Abrams, Hicks, Hurt, Krueger, Porath.
NO: None. Motion Declared Carried.

Appropriation, Five-Year Park & Recreation Plan

Resolution No. 120123-07

(Carried)

Motion by Councilmember Hicks
Second by Councilmember Hurt

I Move the City of Swartz Creek appropriate an amount not to exceed \$5,900 to the City Engineer, Rowe Professional Services Inc., for the preparation of the City's five-year Parks & Recreation Plan, in accordance with the proposal attached hereto, and further, upon completion, review and recommendation from the City's Park and Recreation Board, submit the plan to the City Council for final review and approval.

Discussion Took Place.

YES: Abrams, Hicks, Hurt, Krueger, Porath.
NO: Shumaker. Motion Declared Carried.

Addendum, Consumer's Energy Streetlight Contract

Resolution No. 120123-08

(Carried)

Motion by Councilmember Porath
Second by Councilmember Hurt

I Move the City of Swartz Creek approve an addendum to the Consumer's Energy Streetlight Contract, for the replacement of a streetlight at 5188 Winshall Drive,

reference Consumer's work order #16400420, and further, direct the Mayor and City Clerk to endorse the addendum on behalf of the City
Discussion Ensued.

YES: Hicks, Hurt, Krueger, Porath, Shumaker, Abrams.
NO: None. Motion Declared Carried.

Springbrook Colony Utility Agreement

(Discussion Topic)

City Manager Bueche spoke about a letter from the Springbrook Association in reference to utilities transfer.

MEETING OPENED TO THE PUBLIC:

Shirley Oliver, Springbrook Colony president, asked what Councilmember Porath meant when he said "they get all the breaks." Mr. Porath clarified that he meant that it was the developers that wanted all the breaks.

Tommy Butler, 40 Somerset, spoke about the Morrish Road and Bristol Road intersection. Mr. Butler stated that it is a dangerous intersection. Mr. Butler spoke about the plans for the parks, stating that there seemed to be no specific plan. Mr. Butler spoke about an article in the paper about a large water bill for the BP station that closed. Mr. Butler questioned why the City would let the water bill get so far behind.

Boots Abrams, 5352 Greenleaf Dr., stated that the Women's Club is having a chili dinner Friday, February 10th, with the proceeds benefiting the parks.

Todd Beedy, 8216 Burkeshire, thanked Mayor Pro-Tem Krueger for attending the Chamber meetings. Mr. Beedy spoke about the City being more involved in the Chamber.

Jim Florence, 4296 Springbrook, spoke about the Springbrook utilities agreement, stating that he doesn't believe anything has been resolved.

REMARKS BY COUNCILMEMBERS:

Councilmember Hicks thanked the City Council for supporting the Park Board.

Councilmember Shumaker spoke to the Morrish/Bristol Road traffic issue. Mr. Shumaker thanked the Mayor for allowing his remarks in regards to modular homes. Mr. Shumaker stated that he is a supporter of the parks, being on the Park Board for many years.

Councilmember Porath stated that he would not apologize for bringing up discussion on things that people don't agree with or can't come to agreement on. Mr. Porath asked for explanation on why it was so hard to come to an agreement on the Springbrook issue. Mr. Porath stated that he agrees with Councilmember Shumaker in that the State should be helping the City with more money for the parks.

Adjournment

Resolution No. 120123-09

(Carried)

Motion by Mayor Pro-Tem Krueger
Second by Councilmember Shumaker

I Move the City of Swartz Creek adjourn the Regular Session of the City Council meeting at 8:35 p.m.

YES: Unanimous Voice Vote.
NO: None. Motion Declared Carried.

Richard Abrams, Mayor

Juanita Aguilar, City Clerk