

**CITY OF SWARTZ CREEK
SWARTZ CREEK, MICHIGAN
MINUTES OF THE COUNCIL MEETING
DATE 10/08/2012**

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, Binder, Hicks, Hurt, Krueger, Porath, Shumaker.

Councilmembers Absent: None.

Staff Present: City Manager Paul Bueche, City Clerk Juanita Aguilar.

Others Present: Tommy Butler, Boots Abrams, Bob Plumb, Sharon Shumaker, Ron Schultz, John Gilbert, J. Hough.

City Manager Bueche spoke to the City Council in reference to political signs being placed in the proper places, according to code.

APPROVAL OF MINUTES

Resolution No. 121008-01

(Carried)

Motion by Councilmember Porath
Second by Mayor Pro-Tem Krueger

I Move the Swartz Creek City Council hereby approve the Minutes of the Regular Council Meeting, as corrected, held September 24, 2012, to be circulated and placed on file.

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

APPROVAL OF AGENDA

Resolution No. 121008-02

(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 October 8, 2012, to be circulated and placed on file.

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

REPORTS AND COMMUNICATIONS:

City Manager’s Report

Resolution No. 121008-03

(Carried)

Motion by Councilmember Shumaker
Second by Councilmember Hurt

I Move the Swartz Creek City Council approve the City Manager’s Report of October 8, 2012, to be circulated and placed on file.

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

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

MEETING OPENED TO THE PUBLIC:

None.

COUNCIL BUSINESS:

Marathon Project, Revised Demolition Agreement

Resolution No. 121008-04

(Carried)

Motion by Councilmember Hicks
Second by Councilmember Hurt

WHEREAS, the City of Swartz Creek approved an agreement with HCP-LLC for the demolition of the abandoned Marathon Building at 7026 Miller, agreement as follows:

Marathon Property, Demolition Agreement & Permit

Resolution No. 120910-08

(Carried)

Motion by Councilmember Hurt
Second by Councilmember Hicks

I Move the City of Swartz Creek enter into an agreement with HPC L.L.C. of Durand Michigan, for the demolition of the structure at 7026 Miller Road, agreement as it appears in the Council packet and as revised by discussion of City Manager Bueche:

AGREEMENT & DEMOLITION PERMIT

Between
CITY OF SWARTZ CREEK
And
HCP L.L.C

This Agreement is between the City of Swartz Creek, a Michigan municipal corporation of 8083 Civic Drive, Swartz Creek, Michigan 48473 (“the City”) and HCP, LLC, a Michigan limited liability company of 12568 Lansing Highway, Durand, Michigan 48429 (“HCP”).

Recitals

WHEREAS, the City owns a parcel of property commonly known as 7026 Miller Road, Swartz Creek, Michigan 48473, and described more specifically in Exhibit “1” that is attached hereto (“the Property”);

WHEREAS, HCP has entered into a Purchase and Development Agreement with the City concerning the Property and wishes to begin work on the Property in anticipation of the parties closing on the Purchase and Development Agreement;

WHEREAS, the City and HCP presently intend to close on the Purchase and Development Agreement but acknowledge that questions concerning the City's clear title prevent them from closing before HCP's work can begin;

WHEREAS, notwithstanding the unsettled nature of the Purchase and Development Agreement, the City is willing to permit HCP to begin work on the Property according to the terms and conditions of this Agreement.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

1. Upon receipt of all necessary permits by City, state or federal governmental regulatory bodies, HCP may enter onto the Property to demolish the structure located thereon, lawfully dispose of the remnants of that structure and excavate to a finish grade;

2. HCP acknowledges that asbestos or other hazardous materials might exist on the Property or in the structure located thereon, and represents that it will adhere to all local, state or federal regulations concerning the handling, transport and disposal of all such materials. HCP, for itself and its agents, directors, employees, insurers and assigns, also agrees to indemnify and hold harmless the City (including its agents, employees, public officials and assigns) from all claims, demands, suits or causes of action that relate to or arise from (1) its handling, transport and disposal of any such hazardous substances located on the Property; and (2) its activities on the Property;

3. If the parties do not close on the Purchase and Development Agreement for any reason, the City shall pay HCP liquidated damages in an amount equal to the actual costs it incurred pursuant to this Agreement, not to exceed Twenty-Five Thousand Dollars (\$25,000.00);

4. The person signing this Agreement on behalf of HCP has full authority to execute this Agreement and to bind HCP and its agents, employees and successors.

5. This agreement shall be governed by, interpreted, construed, and enforced pursuant to and in accordance with the laws of the State of Michigan.

6. If any provision of this agreement is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of this agreement which shall remain in full force and effect and enforceable in accordance with its terms.

7. This agreement supersedes all previous or contemporaneous negotiations and/or agreements, except the purchase agreement, and constitutes the agreement between the parties. No verbal statements or prior written materials not specifically incorporated in this agreement have been relied upon by the parties in entering into this agreement.

8. The City and HCP acknowledge that HCP is an independent contractor, is not subject to or covered by the personnel policies and procedures of the City, and is not entitled to any of the employee benefits described or provided therein.

9. HCP agrees that all work and subsequent demolition on the property will be performed by qualified contractors and sub-contractors that are insured and licensed to do business in the State of Michigan.

10. HCP shall be required to secure automobile, casualty and worker's compensation insurance coverage, and shall name the City as an additional insured on all such policies of insurance, which policies shall provide for public liability coverage of not less than \$1,000,000.00, and include at least \$50,000.00 in coverage for property damage.

EXHIBIT 1
LEGAL DESCRIPTION

the following lands situated in the CITY of SWARTZ CREEK ,
County of Genesee, and State of Michigan, to wit:
**PART OF LOTS 1 AND 2 BEG AT NE COR OF LOT 1 TH S 79.20 FT TH SWLY ALONG SLY
LOT LINES OF LTS 1 AND 2 183.17 FT TH NLY 188.50 FT TH E 200 FT TO PLACE OF BEG
CUMMINGS BERLIN ACRES**

Further identified as permanent parcel ID number(s): 58-36-576-001
And commonly known as: 07026 MILLER RD
SWARTZ CREEK MI 48473-1627

Discussion Took Place.
YES: Hicks, Hurt, Krueger, Shumaker, Abrams.
NO: None. Motion Declared Carried.

WHEREAS, the attorney representing HCP-LLC desired changes to the agreement, the proposed changes having been reviewed by the staff and the City Attorney and incorporated into a new agreement by the City Attorney.

NOW, THEREFORE, I Move the City of Swartz Creek rescind resolution #120910-08 dated September 10, 2012 and approve a revised agreement with HPC L.L.C. of Durand Michigan, for the demolition of the structure at 7026 Miller Road, a copy of the agreement attached hereto, and further, direct the Mayor and City Clerk to execute the agreement on behalf of the City

Discussion Ensued.

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

MI-LCC Application, Class "C"—SDM License, Pietro Montini, 8013 Miller Road

Resolution No. 121008-05

(Carried)

Motion by Councilmember Binder
Second by Mayor Pro-Tem Krueger

I Move the City of Swartz Creek accept for consideration the MI-LCC application of Pietro Montini for a new Class "C" – "SDM" license for use at 8013 Miller

Road, and further, refer the matter to the Staff and Planning Commission for review and investigation, the results, findings and recommendation to be brought back to the Council for review and final determination.

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

Set Public Hearing, CDBG Three Cycle Distribution

Resolution No. 121008-06

(Carried)

Motion by Councilmember Hurt
Second by Councilmember Binder

I Move the City of Swartz Creek set a public hearing to be held at the regularly scheduled Council meeting of Monday October 22, 2012 at 7:00 PM, or as soon after as the matter can be heard, to hear public comments and consider projects for the City's three year cycle of Community Development Block Grant fund distribution, and further, direct the staff to publish a notice of the hearing in accordance with law.

Discussion Took Place.

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

Charitable Gaming Application, Swartz Creek Chamber of Commerce

Resolution No. 121008-07

(Carried)

Motion by Councilmember Porath
Second by Mayor Pro-Tem Krueger

I Move the City of Swartz Creek, at the request of the Swartz Creek Chamber of Commerce, a not-for-profit charitable organization located in Swartz Creek, Genesee County, Michigan, hereby recognize and proclaim that the organization is a not-for-profit charitable entity engaged in the business of community service, and further, recommend that the Michigan State Lottery and Gaming Commission consider and approve a license to conduct raffles and other gaming events for the purpose of raising funds.

Discussion Took Place.

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

MEETING OPENED TO THE PUBLIC:

None.

REMARKS BY COUNCILMEMBERS:

Councilmember Porath spoke about the corner of Miller and Elms and asked if that area was in the DDA. He was advised that it was not.

Councilmember Shumaker asked if the DDA designation could skip an area or if it has to be a continuous strip. Mr. Shumaker stated that he noticed that the street striping people were out on Sunday. Mr. Shumaker spoke about the possibility of Meijer asking for a liquor license.

Councilmember Hicks stated that she likes the Halloween decorations in the City.

Councilmember Binder stated that she went by Elms Park and it looked really nice. Ms. Binder also stated that she likes the new lights on Fortino Drive.

Councilmember Hurt said that he is glad the full council was at the meeting tonight.

Mayor Pro-Tem Krueger thanked City Manager Bueche for a smaller council packet. Mr. Krueger spoke about a bake sale for breast cancer awareness that is being held by the University of Michigan Pre-Med Club.

Mayor Abrams spoke about MTA painting a bus pink for breast cancer awareness month. Mr. Abrams talked about seeing people running at the speed cart to see how fast they could run. Mr. Abrams stated that there is only one more meeting with the current council before the election.

Mayor Pro-Tem Krueger stated that breast cancer is not only a problem for women and everyone needs to be aware and involved.

Councilmember Porath asked if a TIFF district has to go to DDA. Mr. Bueche explained that there are many different types of Tiffs and stated that he would email more information to him.

Adjournment

Resolution No. 121008-08

(Carried)

Motion by Councilmember Shumaker
Second by Councilmember Hurt

I Move the City of Swartz Creek adjourn the Regular Session of the City Council meeting at 7:54 p.m.

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

Richard Abrams, Mayor

Juanita Aguilar, City Clerk