

**CITY OF SWARTZ CREEK
SWARTZ CREEK, MICHIGAN
MINUTES OF THE COUNCIL MEETING
DATE 04/12/2010**

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, DPS Director Tom Svrcek.

Others Present: Boots Abrams, Tommy Butler, Jim Florence, Sharon Klein, Ron Schultz.

APPROVAL OF MINUTES

Resolution No. 100412-01 **(Carried)**

Motion by Councilmember Porath
Second by Councilmember Hurt

I Move the Swartz Creek City Council hereby approve the Minutes, as presented, for the Regular Council Meeting, held March 22, 2010, 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. 100412-02 **(Carried)**

Motion by Councilmember Krueger
Second by Councilmember Hurt

I Move the Swartz Creek City Council approve the Agenda, as printed, for the Regular Council Meeting of April 12, 2010 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. 100412-03

(Carried)

Motion by Councilmember Shumaker
Second by Councilmember Hurt

I Move the Swartz Creek City Council approve the City Manager’s Report of April 12, 2010, 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:

Tommy Butler, 40 Somerset, spoke about the newspaper article about fixing the City streets. Mr. Butler also spoke about a newspaper article that referenced adding a casino to the race track.

COUNCIL BUSINESS:

Meijers, Amend Development Agreement

Resolution No. 100412-04

(Carried)

Motion by Councilmember Hicks
Second by Councilmember Binder

I Move the City of Swartz Creek amend the agreement with Meijer Inc. of Grand Rapids Michigan, dated October 17, 2008, herein referred to as the First Amendment to Development Agreement Between the City of Swartz Creek and Meijer Inc, as follows:

**FIRST AMENDMENT TO
DEVELOPMENT AGREEMENT
Between
THE CITY OF SWARTZ CREEK
And
MEIJER INC.**

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (the “Amendment”) is made this 12th day of April, 2010, by and between the CITY OF SWARTZ CREEK, a Michigan Municipal Corporation, with principal offices at 8083 Civic Drive, Swartz Creek, MI 48473 (“City”) and Meijer Inc, a Michigan Domestic Profit Corporation, with principal offices at 2929 Walker Avenue NW, Grand Rapids, Michigan 49544 (“Meijer”).

WHEREAS, the City and Meijer entered into a Development Agreement, dated October 17, 2008, (the "Agreement") setting out all of the duties and responsibilities of both parties in connection with the Project, as well as the remedies for failure of a party to comply with said duties and/or responsibilities; and

WHEREAS, all terms defined in the Agreement shall have the same definitions as set forth herein unless expressly stated otherwise; and

WHEREAS, Meijer has deposited \$150,000 with the City towards the cost of the Morrish Road Improvements; and

WHEREAS, the City and Meijer desire to post-pone the completion of the Morrish Road Improvements until 2010; and

WHEREAS, there have been modifications to the design plans for the Morrish Road Improvements, including the phasing of the paving project and the phasing and overall need of the signals.

NOW, THEREFORE, the City and the Meijer, acting by and through their duly authorized representatives, hereby **AGREE AS FOLLOWS**:

1. Section 3 (Conditions and Acknowledgements) of the Agreement is amended to include the following new provisions:

k. It is understood that the easement requirements, as illustrated in the revised project plans (Exhibit D attached to this Amendment) shall be adequate for any and all work related to the Morrish Road Improvement Project and any additional work that shall be required at the intersection of Bristol Road and Morrish Road, including any future signal work. It is further understood that the Morrish Road Improvement Project, as revised and shown on Exhibit D, is sufficient to accommodate all potential Morrish Road traffic generated by the Meijer Project (both the Meijer Store Phase and future phases), and the City will not require any additional improvements or easements for the Morrish Road Improvement Project as a result of development within the Meijer Project (both the Meijer Store Phase and future phases), except only for the Middle Drive. If in the future any improvements or easements for Morrish Road are required by any other governmental entity in addition to those included in the Morrish Road Improvement Project, the City agrees that the City (or others) will be responsible for them.

l. The City agrees that for a period of ten (10) years from the date of this Amendment, that for future developments by other parties (excluding developments in the Meijer Project, both the Meijer Store Phase and future phases) in the North Morrish Road Planned Unit Development, it will include or require inclusion of the traffic counts projected for the Meijer Project (both the Meijer Store Phase and future phases) as shown in the traffic study by Tetra Tech, dated July, 2006, as background traffic.

2. Section 4 (Morrish Road Improvements) of the Agreement is deleted in its entirety and the following substituted:

4. Morrish Road Improvements.

The Project includes the design, engineering and construction of certain Public Improvements to Morrish Road as described on the attached revised Exhibit D (the "Morrish Road Improvement Project"). The Morrish Road Improvement Project includes curbs, curb cuts, lane widening, paving, traffic signals, signage, lighting, drainage, ditching, utility relocation, right-of-way acquisition, and permit and inspection fees. The City agrees to design, engineer and construct the Morrish Road Improvement Project at its expense (subject to Meijer's contribution). The

Morrish Road Improvement Project shall be constructed in two phases: phase one being that portion of the Project located within the jurisdiction of the City of Swartz Creek, and phase two being that portion of the Project located within the jurisdiction of the Genesee County Road Commission. The City further agrees to complete the Morrish Road Improvement project (both phase one and phase two) by December 1, 2010, except for any and all unwarranted traffic signals. The City will provide Meijer and their consulting engineer copies of the pre-bid plans to insure compliance coordination on the Project site. The City acknowledges its responsibility for timely completion of the Morrish Road Improvement Project, and agrees that it will not delay issuance of a certificate of occupancy for the Meijer store and/or Meijer gas station/convenience store by reason of any delay.

The Morrish Road Improvement Project includes two traffic signals and associated improvements which currently do not meet the warrants for a signalized intersection under the Uniform Manual for Traffic Control Devices. One of these signals is at the intersection of Morrish Road and I-69 (the "Morrish/I-69 Signal"), and the other is at the intersection of Morrish Road and Bristol Road (the "Morrish/Bristol Signal"). The parties acknowledge that the City will install these signals and related improvements as and when they are warranted.

Meijer shall contribute (the "Meijer Contribution") a maximum of one-million, five-hundred thousand dollars (\$1,500,000.00) toward the cost of the Morrish Road Improvement Project in full satisfaction of its obligations therefore. The Meijer Contribution shall be deposited with the City in accordance with the following schedule: (a) one hundred fifty thousand dollars (\$150,000) has already been paid by Meijer, the receipt of which the City acknowledges; (b) nine hundred forty-five thousand dollars (\$945,000) after the City awards the winning bid(s) for phase two of the Morrish Road Improvement Project, or June 1, 2010, whichever is later; (c) one hundred fifty thousand dollars (\$150,000) after the entire Morrish Road Improvement Project (except for the Morrish/I-69 Signal and Morrish/Bristol Signal) is finished and accepted by the City; (d) one hundred seventy-five thousand dollars (\$175,000) after the Morrish/I-69 Signal is warranted and the City awards the winning bid(s) for the construction; and (e) eighty thousand dollars (\$80,000) after the Morrish/Bristol-69 Signal is warranted and the City awards the winning bid(s) for the construction. The foregoing amounts will be deposited by Meijer within twenty (20) business days of receipt of an invoice from the City, with supporting documentation.

The Meijer Contribution may only to be used for the Morrish Road Improvement Project. The City acknowledges that it has received, or will receive, certain sums (in total, the "State Contribution") from the State of Michigan and/or other governmental entities toward the cost of the Morrish Road Improvement Project. The State Contribution is currently estimated to be three hundred sixty-eight thousand dollars (\$368,000). If the projected cost of the Morrish Road Improvement Project (except for the Morrish/I-69 Signal and Morrish/Bristol Signal), based upon the lowest bids received, is less than the sum of (i) one million two hundred forty-five thousand dollars (\$1,245,000) plus (ii) the State Contribution, then the amount of the Meijer Contribution shall be reduced by the amount of the difference and deducted from the amount to be deposited under subparagraph (b) of the preceding paragraph. After completion of the Morrish Road Improvement Project (except for the Morrish/I-69 Signal and Morrish/Bristol Signal) a final accounting will be done and adjustments will be made to the amount owing to or by Meijer and payments made accordingly. Likewise, if the projected cost based on lowest bids of either Morrish/I-69 Signal or the Morrish/Bristol Signal is less than the amount to be deposited by Meijer in accordance with the preceding subparagraph, then the amount deposited shall be reduced accordingly with a final accounting and adjustments made after completion.

3. Section 13 (Term) of the Agreement is hereby deleted and replaced with the following:

This Agreement shall commence on October 17, 2008, and continue until the earliest of (i) December 31, 2020, or (ii) the Meijer Project, both the Meijer Store Phase and future phases, have been constructed; provided, however, that any and all City permits and approvals shall only be valid for a period of three (3) years from the date of this Amendment. After three years from the date of this Amendment, all City permits and approvals associated with the Project shall expire (unless further extended) unless Meijer has begun construction of the Project. Once construction of the Project has commenced, the permits and approvals shall remain in force until completion of the Project. The warranty and maintenance obligations of paragraph 7 shall in any event continue in effect for the periods provided for therein.

4. Except as expressly set forth herein the Agreement is ratified and affirmed.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to Agreement as of the date first above written.

MEIJER INC.

CITY OF SWARTZ CREEK

Michael L. Kinstle
Vice President of Real Estate

Richard Abrams, Mayor

Juanita Aguilar, Clerk

Approved as to form
Michael J. Gildner,
Assistant City Attorney

And further, direct the Mayor and City Clerk to execute the amendment on behalf of the City.

Discussion Ensued.

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

Appropriation, Morrish Road Meijers Phase I & Phase Construction Engineering, Rowe Professional Services

Resolution No. 100412-05

(Carried)

Motion by Councilmember Binder
Second by Councilmember Hurt

WHEREAS, the City applied and was awarded funding through the Genesee County MPO Traffic Improvement Program and design plans were crafted and accepted by MDOT for curb, gutters, drainage, crush, mill, reshaping, resurfacing, crack and joint repair for Morrish Road between I-69 and the North City Limit, being Phase I of the project; and

WHEREAS, the City developed design plans for the improvement of the intersection of Bristol and Morrish, including east, west and north approach legs, being Phase II of the project, the intersection and approach legs falling within the jurisdiction of the Genesee County Road Commission; and

WHEREAS, design plans for Phase II improvements were submitted to and approved by the Genesee County Road Commission, Phase II being a locally funded non-participating project; and

WHEREAS, the City bid for engineering services using the Qualification Based Selection Process and appointed the firm of Rowe Professional Services Inc., to a three year contract on June 28, 2008, as its Professional Engineering Consultant; and

WHEREAS, the City's contracted engineering firm, Rowe Professional Services Incorporated, has submitted a proposal for construction engineering, testing and inspection services associated with both Phase I and Phase II, a copy of the proposal attached hereto, amount of such services calculated on a time and materials basis, at \$109,162.

NOW, THEREFORE, BE IT RESOLVED that the City of Swartz Creek accept the proposal of Rowe Professional Services Inc., and appropriate funding in the amount of \$109,162, plus 5% contingency, for all associated and necessary costs related to construction engineering, testing and inspection services for the Morrish Road Re-Construction and Improvement Projects Phase I and Phase II, and further, authorize the Mayor and City Clerk to execute any Third Party Agreements, funding to be allocated from Major Street 202, Morrish Road Re-Construction and Improvement Project.

Discussion Took Place.

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

County Road Commission Construction Agreement, Morrish Road Improvement Project, (Meijers)

Resolution No. 100412-06

(Carried)

Motion by Councilmember Hurt
Second by Councilmember Krueger

WHEREAS, the City approved a site plan for the construction of a Meijer's retail outlet on Morrish at I-69, the approval providing for contributions towards public infrastructure improvements; and

WHEREAS, the City evaluated the retail impact and future development for the area and created a Commercial Planned Unit Development District, associated zoning, public infrastructure improvement, future land use and traffic management plans; and

WHEREAS, the City applied and was awarded funding through the Genesee County MPO Traffic Improvement Program and design plans were crafted and

accepted by MDOT for curb, gutters, drainage, crush, mill, reshaping, resurfacing, crack and joint repair for Morrish Road between I-69 and the North City Limit, being Phase I of the project; and

WHEREAS, the City developed design plans for the improvement of the intersection of Bristol and Morrish, including east, west and north approach legs, being Phase II of the project, the intersection and approach legs falling within the jurisdiction of the Genesee County Road Commission; and

WHEREAS, design plans for Phase II improvements were submitted to and approved by the Genesee County Road Commission, Phase II being a locally funded non-participating project; and

WHEREAS, the County Road Commission requires an agreement for the approved construction of Phase II as well as a right of way permit for the posting of advance warning signs for Phase I of the project.

NOW, THEREFORE, I Move that the City of Swartz Creek enter into an agreement with the Genesee County Road Commission, a copy of which is attached hereto, and further, direct the Mayor and City Clerk to execute the agreement on behalf of the City.

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

NO: None. Motion Declared Carried.

RFP-Bid Award & Appropriation, Morrish Road Meijer's Phase II Intersection Improvements

Resolution No. 100412-07

(Carried)

Motion by Mayor Pro-Tem Porath
Second by Councilmember Hurt

WHEREAS, The City desires to make certain improvements to Morrish Road from I-69 to a point 650 feet north of the intersection of Morrish and Bristol and 150 feet east and west there from; and

WHEREAS, the project consists of two parts, Phase I being Morrish from I-69 to the north City Limit and Phase II being the intersection improvements, including points east, west and north of; and

WHEREAS, Phase I funding will in part, include FHA contributions and Phase II funding is entirely local sources; and

WHEREAS, Phase I has been designed, approved by MDOT, let for bid and awarded, the low bidder being Zito Construction of Grand Blanc Michigan at a cost of \$1,108,954, construction scheduled to begin on June 2, 2010; and

WHEREAS, it is cost advantageous to construct both Phase I and Phase II simultaneously; 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 MDOT Phase I bid returns included submittals from a record 23 bidders ranging in cost from \$1,108,954 to \$1,478,290, significantly below engineer's estimates; and

WHEREAS, the City designed Phase II and submitted plans to the jurisdiction agency, being Genesee County Road Commission, final approval granted on April 8, 2010; and

WHEREAS, the City negotiated the cost of improvements with the contractor, Zito Construction, for Phase II as approved by the Genesee County Road Commission, such costs based on MDOT Phase I bid return unit pricing, Zito providing a total cost of \$269,711 for construction; and

WHEREAS, analysis of the unit construction costs in comparison with Phase I MDOT bid returns show 8% reduction, explanation being that the City is not requiring the stipulation of prevailing wage as required by MDOT Contracts, and further, traffic mobilization costs can be handled in conjunction with Phase I, thus further reducing costs; and

WHEREAS, in review, the City Council finds that circumstance exist that the best interest of the City is served by the negotiated pricing using bid unit costs as a base, and further, such negotiated pricing would be lower than if the City bid this project independently.

NOW, THEREFORE, I Move that the City of Swartz Creek award the Phase II portion of the project direct to Zito Construction of Grand Blanc Michigan, in accordance with the plans and specifications prepared by the City's Engineer and approved by the Genesee County Road Commission, dated April 8, 2010, and further, appropriate an amount not to exceed \$269,711 plus 10% contingency, for payment thereof, funds to be allocated from 202 Major Streets, at the direction of City Staff, and further, direct the Mayor and City Clerk to execute any and all necessary contracts and documents on behalf of the City.

Discussion Ensued.

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

Local Street Repair, Bid Specification Proposal

Resolution No. 100412-08

(Carried)

Motion by Councilmember Krueger
Second by Councilmember Hurt

I Move the City of swart Creek appropriate an amount not to exceed \$4,115 to the City's Engineer, Rowe Professional Services Inc., for the preparation of a bid specification package that provides for the re-construction of one local street and the Cape Seal Reconditioning of an undetermined number of streets, and further, to bring returns, findings and recommendation back to the City Council for review and decision.

Discussion Took Place.

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

DDA Resignation, Richard Mattson, Accept

Resolution No. 100412-09

(Carried)

Motion by Councilmember Shumaker
Second by Councilmember Hicks

I Move the City Council accept, with regret, the resignation of Richard Mattson from the Downtown Development Authority, and further, offer appreciation for his dedication and commitment to the City.

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

POLC-Police Labor Agreement Wage Re-Opener

Resolution No. 100412-10

(Carried)

Motion by Councilmember Hicks
Second by Councilmember Hurt

WHEREAS, the 2009-2012 POLC Police Collective Bargaining Agreement provided for no wage or benefit increase for the first effective year of the agreement, being July 1, 2009, and further, the agreement allows for wage re-opener negotiations on July 1, 2010 and July 1, 2011; and

WHEREAS, the City Manager met with the union wherein the union believes that compensation has fallen behind other similar sized police departments, they do understand the economic crisis the City is experiencing and is willing to work with the City; and

WHEREAS, it was understood that the City continues to significantly scale back its operation in order to keep expenses within revenues, the POLC asking only that the City continue to review its economic position and work towards merit increases as soon as able, and to this end, it was agreed to forgo any rate increases effective July 1, 2010 and schedule meetings on six month increments in order to conduct such reviews together.

NOW, THERFORE, I Move that the City of Swartz Creek allow for a letter of understanding to amend the 2009-2010 POLC Labor Agreement to reflect that the City will meet on six month increments, being prior to July and December of each year, for the purpose of discussing finances and exploring wage increases

Discussion Ensued.

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

Guardrail Issues

(Discussion Topic)

City Manager Bueche spoke about guardrail issues on Morrish Road. Mr. Bueche stated that the time has come to get it fixed based on the possible safety issues for the houses that the guardrail will protect. Discussion took place with Council stating that they believe a guardrail is necessary.

MEETING OPENED TO THE PUBLIC

Tommy Butler, 40 Somerset, commented on the food pantry that is located at the United Methodist Church. Mr. Butler stated that the churches that are involved in the program have done a fantastic job.

REMARKS BY COUNCILMEMBERS:

Councilmember Krueger spoke about the possibility of having a Council meeting at the park with a picnic beforehand.

Councilmember Shumaker spoke about the poles on Morrish and Elms Roads being fixed. Mr. Shumaker stated that there is a problem with a large Spruce tree in the right of way on Bristol Road, westbound to Elms Road. Mr. Shumaker stated that it is difficult to see other traffic at the intersection due to the tree. Mr. Shumaker talked about the plans for parking at Syring School. Mr. Shumaker stated that he believes it is a good design and will help to alleviate traffic problems. Mr. Shumaker spoke about digital meter readers being used in Saginaw.

Councilmember Hicks announced that the Women's Club is having a fundraiser on Tuesday, April 20, 2010 between 4pm and 7pm. Wendy's restaurant has agreed to give the Club 10% of all proceeds on that day.

Councilmember Binder talked about the Cub Scout pack. Ms. Binder stated that they will be at Little Caesar's on Wednesday to make the pizzas for the day. Proceeds will benefit the Cub Scout pack.

Councilmember Hurt questioned how the staffing level would affect wood chipping this summer. Director of Public Services Tom Svrcek advised that it would take a little longer to do the routes and he is examining the possibility of subcontracting the work out.

Mayor Pro-Tem Porath questioned whether anyone went to the State of the County address. Mr. Porath stated that they spoke about the pipeline from Port Huron.

Mayor Abrams spoke about the Crapo family celebration that the Historical Society put on.

ADJOURNMENT:

There being no objection, Mayor Abrams declared the meeting adjourned at 9:01 p.m.

Richard Abrams, Mayor

Juanita Aguilar, City Clerk