

**CITY OF SWARTZ CREEK
SWARTZ CREEK, MICHIGAN
MINUTES OF THE COUNCIL MEETING
DATE 02/11/2008**

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: Mayor Abrams, Adams, Mayor Pro-Tem Christie, Hicks, Hurt, Porath, Shumaker.

Councilmembers Absent: None.

Staff Present: Assistant City Manager Zettel, City Attorney Figura, Treasurer/Deputy Clerk Deanna Korth, Engineer Lou Fleury.

Others Present: Ron Schultz, Bob Plumb, Jim Florence.

APPROVAL OF MINUTES

Resolution No. 080211-01 **(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 28, 2008, to be circulated and placed on file.

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

APPROVAL OF AGENDA

Resolution No. 080211-02 **(Carried)**

Motion by Mayor Pro-Tem Christie
Second by Councilmember Hicks

I Move the Swartz Creek City Council approve the Agenda as presented for the Regular Council Meeting of February 11, 2008 to be circulated and placed on file.

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

REPORTS AND COMMUNICATIONS:

City Manager's Report

Resolution No. 080211-03

(Carried)

Motion by Councilmember Shumaker
Second by Councilmember Hurt

I Move the Swartz Creek City Council approve the City Manager's Report of February 11, 2008, to be circulated and placed on file.

Discussion Took Place.

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

Mayor Abrams read aloud a letter sent to him by Ms. Joanne Holmquist:

Dear Mayor and respected members of Council;

This is a letter of appreciation for police officer Jeff Storms for his heroic efforts in administering to our beloved Father Wischmeyer on January 27, 2008. Jeff not only did everything possible to save "Papa", but he gently but firmly quieted panicked parishioners, who although well intended, may have been in the way.

The shock of the situation was overwhelming for those waiting to attend Mass. Jeff's presence and demeanor assured them that whatever could be done was being done. We know Officer Storms grew up in Swartz Creek and had to put his own personal hurt aside and do his job. He did it well, with kindness and compassion. Not only that, he knew of my feelings of heartbreak, so he stopped at my house later that day to make sure I was "OK."

For these reasons, I would like my words of gratitude read into the minutes of your next meeting and ask that each of you extend a hand or give Jeff a hug of thanks the next time you see him.

Thanking you in advance for your kind attention, I remain

Sincerely,

Joanne Holmquist

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

MEETING OPENED TO THE PUBLIC:

Mayor Abrams presented a Proclamation for Father Wischmeyer to his sister-in-law Bonnie Wischmeyer.

COUNCIL BUSINESS:

Construct Phase #1, Non-Motorized Trail System

Resolution No. 080211-04

(Carried)

Motion by Councilmember Hicks
Second by Councilmember Hurt

WHEREAS, it is in the best interest of the public's health, safety, and welfare to create a viable non-motorized transportation network, locally and regionally, to provide residents with safe alternatives to driving, recreational opportunities, and opportunities to connect communities and the natural environment; and

WHEREAS, the City of Swartz Creek has adopted a non-motorized trail-way plan that has also been included into the Genesee County Regional Trail Plan; and

WHEREAS, the City of Swartz Creek has made investments according to this plan, such as the Miller Road bike lanes, an off-street path on Miller near Elms, improved pedestrian street crossings, and implementation of a sidewalk maintenance program; and

WHEREAS, Section 10K of Act 51 requires that 1% (~\$30,000) of the City's Act 51 allocation be spent on non-motorized engineering or construction over a ten year period; and

WHEREAS, the City of Swartz Creek intends to bid out a large amount of work to resurface and make other improvements to Elms Road between the city limits and I-69; and

WHEREAS, the Elms Road corridor and Elms Park are crucial links in the City's, and the County's trail-way system; and

WHEREAS, the City's staff and engineer have been working diligently to make conceptual plans, estimates, and funding arrangements to complete a phase of the trail from the Elms and Miller intersection to the Consumer's Power Company easement at the northeast end of Elms Park; and

WHEREAS, the State of Michigan awards Enhancement Grants to assist in the construction of these trails by matching up to 80%; and

WHEREAS, the Ruth Mott Foundation may also be able to assist with the local match portion of the grant.

NOW, THEREFORE, BE IT RESOLVED that the Swartz Creek City Council approve the City staff to pursue Option #2 of the trail proposals, being a total estimated project cost of \$178,980 with estimated local match portion of \$73,294, a copy of which is attached hereto, and further, apply to the State of Michigan and Ruth Mott for funding assistance.

Discussion Ensued.

YES: Hurt, Porath, Shumaker, Abrams, Adams, Christie, Hicks.

NO: None. Motion Declared Carried.

MDOT Trunk-Line Right of Way Performance Resolution for Governmental Bodies

Resolution No. 080211-05

(Carried)

Motion by Councilmember Adams
Second by Councilmember Hurt

WHEREAS, the City has applied for and received funding to repair and resurface a section of Elms Road from the I-69 Viaduct to the North City Limit, a section of which will cause for work in the Interstate No 69 Right-of-way under the control and jurisdiction of the Michigan Department of Transportation; and

WHEREAS, in order to secure such permits for work within Michigan Department of Transportation Rights of Way, a Performance and Resolution for Governmental Bodies is required.

NOW, THEREFORE, BE IT RESOLVED that the City of Swartz Creek approve application to the Michigan Department of Transportation for a Performance Resolution as follows:

**PERFORMANCE
RESOLUTION FOR GOVERNMENTAL BODIES**

This Performance Resolution is required by the Michigan Department of Transportation for purposes of issuing to a municipal utility an "Individual Permit for Use of State Trunkline Right of Way" (form 2205), or an "Annual Application and Permit for Miscellaneous Operations Within State Trunkline Right of Way" (form 2205B).

RESOLVED WHEREAS, the City of Swartz Creek, hereinafter referred to as the GOVERNMENTAL BODY," periodically applies to the Michigan Department of Transportation, hereinafter referred to as the "DEPARTMENT," for permits, referred to as "PERMIT," to Construct, operate, use and/or maintain utility or other facilities, or to conduct other activities, on, over, and under state trunkline right of way at various locations within and adjacent to its corporate limits;

NOW THEREFORE, in consideration of the DEPARTMENT granting such PERMIT, the GOVERNMENTAL BODY agrees that:

Each party to this Agreement shall remain responsible for any claims arising out of their own acts and/or omissions during the performance of this Agreement, as provided by law.

This Agreement is not intended to increase either party's liability for, or immunity from, tort claims.

This Agreement is not intended nor shall it be interpreted, as giving either party hereto a right of indemnification, either by Agreement or at law, for claims arising out of the performance of this Agreement.

1. Any work performed for the GOVERNMENTAL BODY by a contractor or subcontractor will be solely as a contractor for the GOVERNMENTAL BODY and not as a contractor or agent of the DEPARTMENT. Any claims by any contractor or subcontractor will be the sole responsibility of the GOVERNMENTAL BODY. The DEPARTMENT shall not be subject to any obligations or liabilities by vendors and contractors of the GOVERNMENTAL BODY, or their subcontractors or any other person not a party to the PERMIT without its specific prior written consent and notwithstanding the issuance of the PERMIT.

2. The GOVERNMENTAL BODY shall take no unlawful action or conduct, which arises either directly or indirectly out of its obligations, responsibilities, and duties under the PERMIT which results in claims being asserted against or judgment being imposed against the State of Michigan, the Michigan Transportation Commission, the DEPARTMENT, and all officers, agents and employees thereof and those contracting governmental bodies performing permit activities for the DEPARTMENT and all officers, agents, and employees thereof, pursuant to a maintenance contract. In the event that the same occurs, for the purposes of the PERMIT, it will be considered as a breach of the PERMIT thereby giving the State of Michigan, the DEPARTMENT, and/or the Michigan Transportation Commission a right to seek and obtain any necessary relief or remedy, including, but not by way of limitation, a judgment for money damages.

3. It will, by its own volition and/or request by the DEPARTMENT, promptly restore and/or correct physical or operating damages to any State trunkline right of way resulting from the installation construction, operation and/or maintenance of the GOVERNMENTAL BODY'S facilities according to a PERMIT issued by the DEPARTMENT.

4. With respect to any activities authorized by PERMIT, when the GOVERNMENTAL BODY requires insurance on its own or its contractor's behalf it shall also require that such policy include as named insured the State of Michigan, the Transportation Commission, the DEPARTMENT, and all officers, agents, and employees thereof and those governmental bodies performing permit activities for

the DEPARTMENT and all officers, agents, and employees thereof, pursuant to a maintenance contract.

5. The incorporation by the DEPARTMENT of this resolution as part of a PERMIT does not prevent the DEPARTMENT from requiring additional performance security or insurance before issuance of a PERMIT.

6. This resolution shall continue in force from this date until cancelled by the GOVERNMENTAL BODY or the DEPARTMENT with no less than thirty (30) days prior written notice to the other party. It will not be cancelled or otherwise terminated by the GOVERNMENTAL BODY with regard to any PERMIT which has already been issued or activity which has already been undertaken.

BE IT FURTHER RESOLVED, that the following position(s) are authorized to apply to the Michigan Department of Transportation for the necessary permit to work within state trunkline right of way on behalf of the GOVERNMENTAL BODY:

City Manager
Assistant City Manager
Director of Department of Public Services
City Engineer

I HEREBY CERTIFY that the foregoing is a true copy of a resolution adopted by the Swartz Creek City Council of the City of Swartz Creek, Genesee County Michigan, at a Regular City Council Meeting held on the 11th Day of February, 2008 A.D.

Signed _____, Juanita Aguilar, City Clerk for the City of Swartz Creek

Discussion Took Place.

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

Agreement To Extend Garbage Collection, Swartz Creek Estates

Resolution No. 080211-06

(Failed)

Motion by Councilmember Hurt
Second by Councilmember Shumaker

WHEREAS, the City is a municipal corporation that provides a variety of community services, including the collection of refuse, yard waste and recyclables under a contract with Republic Waste of Wayne Michigan; and

WHEREAS, the City funds its waste collection program with a levy set by the City Council, limited to a maximum of 3 mills, as defined by the Michigan Headlee

Amendment, across all real and personal property tax rolls, such levy collected with the summer tax; and

WHEREAS, the City limits the collection of waste to single family residential parcels, or such parcels that substantially correspond to a single family residential parcel; and

WHEREAS, the City, under individual agreements, has extended its waste collection program to private subdivisions that were developed under the Michigan Condominium Association Act, provided, such associations substantially correspond to a single family or duplex residential development; and

WHEREAS, Swartz Creek Estates, a manufactured housing community to which a single housing unit is located on an individual lot, has formally requested to receive waste collection services and is willing to enter into an agreement with the City for such services; and

WHEREAS, the City staff has reviewed the request and determined that Swartz Creek Estates is substantially similar to other single-family residential parcels, or such parcels that substantially correspond to a single-family residential parcel or subdivision, inclusive of both private associations and platted subdivisions.

NOW, THEREFORE, BE IT RESOLVED that the City of Swartz Creek hereby extend its curbside waste collection program to Swartz Creek Estates, under an agreement to which a copy is attached hereto, in accordance with the terms of the agreement the City has with its contracted waste collection provider, and further, direct the Mayor and City Clerk to execute the agreement with Swartz Creek Estates on behalf of the City.

Discussion took place.

YES: Hicks.

NO: Shumaker, Abrams, Adams, Christie, Hurt, Porath. Motion Declared Failed.

Affirmation of Mayor's Proclamation, Law Day Observance

Resolution No. 080211-07

(Carried)

Motion by Councilmember Porath
Second by Councilmember Hurt

I Move the City of Swartz Creek Council affirm the Mayor's Proclamation in observance of Law Day, as follows:

WHEREAS, this country was founded that the principle that voluntary adherence to the rule of law expands, rather than, limits, the opportunities for freedom; and

WHEREAS, a viable democracy required understanding of the nature and basis of our freedoms and recognition of the individual responsibilities which those freedoms impose; and

WHEREAS, Law Day 2008's 50th anniversary theme of "The Rule of Law: Foundation of Communities, Opportunity, and Equity" encourages all to examine the rule of law, our role in its sustainability, and its role in protecting our communities, our democracy, opportunity, equity, and all that is most precious to us.

NOW THEREFORE I Richard B. Abrams, the Mayor of the City of Swartz Creek do hereby proclaim Thursday, May 1 2008 as Law Day. I urge the citizens, schools, businesses, legal professionals, and the media for the City of Swartz Creek to use this occasion to preserve and strengthen he rule of law.

IN WITNESS WHEREOF I have hereunto set my hand this 11th day of February, in the year of our lord 2008, and the independence of the United States of America, the two-hundred and thirty second.

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

Veterans Park Committee, Recognize As Community Charitable Organization

Resolution No. 080211-08

(Carried)

Motion by Mayor Pro-Tem Christie
Second by Councilmember Hicks

I Move the City of Swartz Creek, at the request of the Veterans Park Committee, 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 by raising funds and construction of a public memorial for veterans of all branches of the United States Military, and further, recommends that the Michigan State Lottery and Gaming Commission consider and approve a license to conduct raffles for the purpose of raising funds.

Discussion Ensued.

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

Annual Membership, Genesee County Recycling Coalition

Resolution No. 080211-09

(Carried)

Motion by Councilmember Shumaker
Second by Councilmember Hurt

I Move the City of Swartz Creek continue its membership in the Genesee County Recycling Coalition and further, approve the annual membership payment of \$750 to the organization.

Discussion Took Place.

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

Proposed I.P.P. Sewer Ordinance

(Discussion Topic)

Assistant City Manager Zettel made a brief presentation about the Industrial Pollution Prevention Sewer Ordinance.

Discussion Ensued.

Overhead Utility Project

(Discussion Topic)

Attorney Figura gave the City Council an update on the project. He went over the points of the draft of a contract with Trison Engineering.

Discussion Took Place.

Abandoned Marathon Station, Blight Options

(Discussion Topic)

Assistant City Manager Zettel spoke about the basic options that the City could use to approach the blight problem with the Marathon station. He talked about the “do nothing” approach with the sign; the option to take the Marathon owner to circuit court; enforcement of the ordinance to take the sign down and charge the cost against the property; or to use the municipal civil infraction process, which is recommended by Mr. Figura as it is much faster and cheaper.

MEETING OPENED TO THE PUBLIC:

None.

REMARKS BY COUNCILMEMBERS:

Councilmember Porath questioned the May 6th elections; wondering if it applies to the City in any way. Mayor Abrams advised that it was for school elections.

Councilmember Shumaker talked about the reminder notices that were sent out for the Winter 2007 taxes. He questioned the word “delinquent” on the notices. Mr. Shumaker also talked about the turn lane on Miller Rd. He stated that the turn lane doesn’t get plowed. He expressed concern and stated that he would like it looked into.

Councilmember Hicks questioned whether Heritage Park belonged to the City at this time. Asst. City Manager Zettel stated that the City has the property but not officially a park yet. Mr. Zettel stated that it is still in the planning stages at this time. Ms. Hicks questioned the decals in the bike lane on the road—whether they had to be maintained as well as the signs. Mr. Zettel stated that they would be replaced as needed.

Councilmember Hurt spoke about a traffic incident that he witnessed on Miller Rd. near Seymour. He stated that he hoped when the county did the re-striping on the roads, that the problem would be taken care of.

ADJOURNMENT:

There being no objection, Mayor Abrams declared the meeting adjourned at 8:48 p.m.

Richard B Abrams, Mayor

Deanna Korth, Treasurer/Deputy Clerk