

City of New Baltimore  
Regular Council Meeting  
January 26, 2009

Mayor Thomas Goldenbogen called the regular meeting of the City Council to order at 7:00 PM.

Roll Call: Butler, Christie, Duffy, Hayman, Morisette  
Absent: Burkhardt

Also in attendance were Tim Tomlinson, City Attorney, Marc Levis Administrative Assistant, John Monte City Engineer, John Bolgar, Police Chief, Ken Lawfield Fire Chief, Greg Nikkel, Building Official, Mike Hoffard, Parks & Recreation Director, Andy Messina, Water Plant Superintendent, and Judy Sproat, Director of Planning & Economic Development.

Motion by Butler, second by Christie to excuse Councilperson Burkhardt.  
All voting yes.                      Opposing: none                      Motion carried.

At this time Mayor Goldenbogen presented the winners of the 2008 Holiday Decorating Contest Winners:

Homeowner: 1<sup>st</sup> Place      Michael Desjardine      53840 County Line  
                  2<sup>nd</sup> Place      Terry & Nancy Vandermeer 52068 Elizabeth Lane  
                  3<sup>rd</sup> Place      Michael & Lorraine Smith      37121 Creekview Lane  
Commercial: Maple Creek Subdivision Homeowner's Association (Subdivision entrance)

Opening prayer was offered by Rev. Philip Myers.

Motion by Duffy, second by Morisette to approve the Budget and Revenue Reports for December 2008.  
All voting yes.                      Opposing: none                      Motion carried.

Motion by Christie, second by Hayman to approve the regular City Council meeting minutes of January 12, 2009.  
All voting yes.                      Opposing: none                      Motion carried.

Motion by Christie, second by Hayman to approve the consent agenda as follows:

- A.      Plante & Moran \$5,500.00 Professional Services
- B.      Barton Malow Company \$65,667.80
- C.      Trademaster, Inc. \$2,067.67 – Fire Department Software License renewal
- D.      BSB Communications \$3,490.10 – Phone Module for City Hall
- E.      Schedule of Bills

All voting yes.                      Opposing: none                      Motion carried.

Motion by Duffy, second by Morisette to receive and file the following communications and petitions.

- C-1      Utility Advisory Committee meeting minutes of December 17, 2008
- C-2      WWTP Committee meeting minutes of January 14, 2009

All voting yes.                      Opposing: none                      Motion carried.

Motion by Butler, second by Christie to add the following agenda items:

- S-5      Proposed 5 year sanitary sewer maintenance plan

All voting yes.                      Opposing: none                      Motion carried.

~~Motion by Butler, second by Duffy to approve Special Approval Land Use #253 10-02-08, Burger King, 35600 Main Street, New Baltimore for the following reasons and subject to the following conditions:~~

- ~~1. The special approval land use is of a location, size and character that will be in harmony with the appropriate and orderly development of the surrounding neighborhood and regulations of the zoning~~

This motion was rescinded at the February 9, 2009 Council meeting and a new motion was approved with reference to the correct ordinance numbers.

district. The property is zoned by GC General commercial. Section 60-381 provides the general commercial district is designed to provide sites for more diversified business types and are often located to serve passerby, highway oriented traffic. Section 60-383 special approval land uses sub section (3) allows for drive in establishment fast food restaurants as provided under special land use 60-652. Standards of 60-652 are met. Ingress and egress is on to a paved public road designed as a major thoroughfare meeting sub section 1. The lighting as prescribed on the site plan is arranged so that it does not shine reflective glare into surrounding areas and public streets. Meeting requirement two. The site is adequately designed so that vehicles are not required to wait or be parked in dedicated public right away meeting requirement three. Adequate drainage, lighting and other technical aspects are provided as there is no objection on technical or engineering grounds being presented by our engineering firm and all drives and approaches are paved meeting section four. Ingress and egress is at least 50 feet from a street intersection meeting section five. Screening meeting the requirements of section 60-551 of areas which abut the residential zoning is provided meeting section 6. Outside speakers are provided only for placing and taking orders and by condition will be limited to 45 decibels at the property line meeting section 7. Landscaped area adjacent to public streets not less than 15 feet wide is provided meeting section 60-552 fulfilling section 8 of 60-652. The surrounding area has commercial establishments with drive through facilities including Mr. Z's Diner and Coney Island, McDonalds and Dairy Queen.

2. The use is of a nature that will make vehicular and pedestrian traffic no more hazardous than is normal for the district involved, taking into consideration vehicular turning movements, routes of traffic flow, proximity in relationship to intersections adequacy of site distances, location of access to off street parking and provisions for pedestrian traffic paying particular attention to minimizing pedestrian vehicle conflicts. The site plan as submitted locates a new public sidewalk one foot inside the existing right of way bringing pedestrian traffic further away from roadway traffic. Driveway approaches that have been in place since 1985 are maintained. The traffic impact assessment conducted by C & W Consultants, Inc. concludes that the development will function at safe reasonable service levels and not create a traffic burden upon the local road network.
3. The proposed use including conditions attached hereto will be designed involving a location, size intensity and site layout in periods of operation which eliminate possible nuisances which might be objectionable to occupants of other nearby uses. Conditions imposed eliminate possible nuisances including restricting the decibel range to 45 decibels at the residential property line for outdoor speakers, limiting operations to no later than 2:00 a.m., requiring the installation and maintenance of a catalytic unit to eliminate food and cooking odors including Duke model number 175480 and signage prohibiting left turns in accordance with MDOT standards and the installation of a poured concrete brick embossed wall stained to match the building six feet high along the east property line and installation of a trash enclosure built of split faced block matching the building, with a sliding gate as per sheet number ST4. The conditions imposed control noises, odors and lighting adequately. Other uses which are permitted and do not require a special land use could be situated with an intensity of odor, noise or lighting equal to or greater than those proposed. Examples would include a bakery or restaurant facility which broils food.
4. The proposed use is designed so that the location and height of the buildings, structures, walls, fences and landscaping will not interfere with or discourage the development or use of adjacent land or unreasonably affect their value. If the property was being constructed other than by special land use, the building could be situated closer to the adjacent residential than as presently proposed. The landscape wall and other landscaping provided would not be required if the drive through restaurant facility were not provided. The block wall and plantings result in an increase in screening over what otherwise would exist if special land use was not required.
5. The proposed use relates harmoniously with the physical and economic aspects of adjacent land uses regarding prevailing shopping habits, convenience of access by prospective patrons continuity of development and need for services and facilities in specific areas of the city. Other properties along M-29 and Main Street involve drive through facilities with circular patterns for ingress and egress as is proposed. The site plan as proposed provides convenience of access. The GC Zoning District along with special land use is the zoning district within the city where drive through facilities such as those proposed can be situated. Harmony with the physical and economic aspects of adjacent land uses result from the conditions imposed including limitations on noises and odors and screening as provided.
6. The proposed use is designed, located and proposed such that public health, safety and welfare are protected. This general condition is met for all of the reasons previously outlined. The nature and intensity of the use is being limited by the site plan. Conditions regulating noises, odors and lighting are provided. The intensity of the use is actually less than what could conceivably be placed on the site without special land use approval.
7. The proposed use will not cause substantial injury to the value of other property in the neighborhood in which it is located, and will not be detrimental to existing and permitted land uses in the zoning district. The property has remained general commercial for many years. The proposed use is consistent with other proposed uses within the surrounding general commercial area. Other drive through restaurant facilities exist including McDonalds, Z's Diner and Coney Island, and Dairy Queen. There is no evidence that any of the surrounding commercially zoned property will be adversely affected. No evidence is presented that substantial injury to the value of surrounding

residential uses will occur.

Significant screening including a wall and planting is provided. Odors, noises, and lighting are regulated by condition. Without special land use approval, a use of greater intensity that is which is proposed could be installed.

8. The following are conditions which shall be strictly adhered to and remain applicable to the site. Note some of these conditions are subject to additional alteration in order to assure adequate protection of surrounding uses;

A. The decibel reading is determined by city officials shall be maintained and not exceed 45 decibels at any residential property line from the speaker box.

B. Hours of operation are limited to 2:00 a.m.

C. A catalytic unit as proposed Duke model 175480 will be installed and maintained. If this is insufficient to eliminate food odors from the facility being noticeable at the location of residential structures other devices will be installed to eliminate food odors at such locations.

D. Signage prohibiting left turns in accordance with MDOT standards will be installed as reflected on the site plan.

E. The trash enclosure will be built of split face block pursuant to sheet number ST four detail and will match the building. A sliding gate will replace the swinging gate on the trash enclosure.

F. The wall along the east property line adjoining the closest house will be poured concrete brick embossed and stained to match the building which will be six feet on the high side or lower if determined by City Council after discussion with the neighbor.

G. The cross access agreement will be executed in the form as reviewed and approved by the City Attorney.

H. Comments by the planner and engineers will be followed.

I. Existing wooden fence of its superior or equivalent be maintained from the front of the auto repair facility

J. Contingent upon the City receiving written confirmation from the Michigan Department of Transportation approving and/or issuing a permit for the proposed project.

K. Applicant must install nothing less than the Duke model 175480 or its equivalent or better.

L. A six-foot vinyl fencing will be installed at the rear of the property.

All voting yes. Opposing: none Motion carried.

Motion by Butler, second by Duffy to adopt Resolution No. 708 - Supporting Amendment to Public Act 312 Binding Arbitration.

All voting yes. Opposing: none Motion carried.

Motion by Morisette, second by Butler to approve the request from the Chief of Police to purchase and outfit a new police vehicle from Golling Chrysler Jeep of Bloomfield Hills, MI through the Oakland County bid process at a cost of \$23,218.00 and the outfitting of the new vehicle through Canfield Equipment Services, Inc. in the amount of \$29,967.00 for a total cost of \$29,967.00.

All voting yes. Opposing: none Motion carried.

Motion by Butler, second by Morisette to adopt Resolution No. 709 – Supporting the stimulus funding to local governments.

All voting yes. Opposing: none Motion carried.

Motion by Butler, second by Christie to accept the 5 year sanitary sewer plant as presented by Project Control Engineering and authorize the first year of the plan in the amount of \$30,000.00 for the engineering and contract administration costs at this time.

Voting yes: Butler, Christie, Hayman, Morisette Opposing: Duffy  
Motion carried.

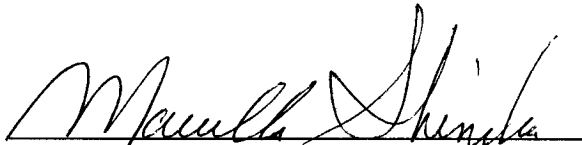
Motion by Butler, second by Duffy to go into closed session at 7:55 PM regarding pending litigation: Legacy Land Development vs. City of New Baltimore.


Council reconvened into open session at 8:50 PM.

Motion by Butler, second by Christie to authorize and accept the settlement agreement for the gift of land (Maple Creek Subdivision II) from Legacy Land Development and ob the City of the remediation up to \$93,000.00 and the waiver of the fines from the DEQ subject to any attorney or engineering clarifications of said acceptance.

All voting yes.                      Opposing: none                      Motion carried.

Motion by Butler, second by Christie to adjourn at 8:55 PM.

  
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Marcella Shinska, Clerk

  
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Thomas A. Goldenbogen/Mayor