CITY OF MUSKEGON

CITY COMMISSION MEETING

NOVEMBER 28, 2006

CITY COMMISSION CHAMBERS @ 5:30 P.M.

AGENDA

- **CALL TO ORDER:**
- **PRAYER:**
- **PLEDGE OF ALLEGIANCE:**
- **ROLL CALL:**
- **HONORS AND AWARDS:**
- **INTRODUCTIONS/PRESENTATION:**
- **CONSENT AGENDA:**
  - A. **Approval of Minutes.** CITY CLERK
  - B. **Liquor License Request – Pat's Road House, 157 S. Getty.** CITY CLERK
  - C. **Resolution for Charitable Gaming License.** CITY CLERK
  - D. **FIRST READING: Zoning Ordinance Amendment - Preamble.** PLANNING & ECONOMIC DEVELOPMENT
  - E. **FIRST READING: Zoning Ordinance Amendment – Malfeasance.** PLANNING & ECONOMIC DEVELOPMENT
  - F. **FIRST READING: Zoning Ordinance Amendment – Multiple Family Uses in B-3.** PLANNING & ECONOMIC DEVELOPMENT
  - G. **FIRST READING: Zoning Ordinance Amendment - Eliminate Minimum Lot Size in B-3.** PLANNING & ECONOMIC DEVELOPMENT
  - H. **Engineering Services Agreement with Hubbell, Roth & Clark, Inc.** ENGINEERING
- **PUBLIC HEARINGS:**
  - A. **Amendment to 2003 Leisure Services Master Plan.** LEISURE SERVICES
- **COMMUNICATIONS:**
- **CITY MANAGER'S REPORT:**

- **UNFINISHED BUSINESS:**
- **NEW BUSINESS:**
  - A. **869 and 875 Marquette Avenue – Property Exchange.** PLANNING & ECONOMIC DEVELOPMENT
  - B. **Replacement of Copiers/Document Printing Contract.** FINANCE
  - C. **Tool and Die Recovery Zone Status for Aero Foil International, Inc.** PLANNING & ECONOMIC DEVELOPMENT
  - D. **Request for Final Planned Unit Development Approval for a Residential Development near Sherman Boulevard and Barclay Street.** PLANNING & ECONOMIC DEVELOPMENT
  - E. **City – MDOT Agreement for Western Avenue Landscaping between Third and Terrace.** ENGINEERING
  - F. **Permanently Waive Special Event Application Fee for Fun Inc. Christmas in Hackley Park.** LEISURE SERVICES
  - G. **East Muskegon Little League Tag Sale.** CITY MANAGER
- **ANY OTHER BUSINESS:**
- **PUBLIC PARTICIPATION:**

➢ ***Reminder: Individuals who would like to address the City Commission shall do the following:***
➢ Fill out a request to speak form attached to the agenda or located in the back of the room.
➢ Submit the form to the City Clerk.
➢ Be recognized by the Chair.
➢ Step forward to the microphone.
➢ State name and address.
➢ Limit of 3 minutes to address the Commission.
➢ (Speaker representing a group may be allowed 10 minutes if previously registered with City Clerk.)

- **ADJOURNMENT:**

ADA POLICY: THE CITY OF MUSKEGON WILL PROVIDE NECESSARY AUXILIARY AIDS AND SERVICES TO INDIVIDUALS WHO WANT TO ATTEND THE MEETING UPON TWENTY FOUR HOUR NOTICE TO THE CITY OF MUSKEGON. PLEASE CONTACT LINDA POTTER, ACTING CITY CLERK, 933 TERRACE STREET, MUSKEGON, MI 49440 OR BY CALLING (231) 724-6705 OR TDD: (231) 724-4172.

Date: **November 28, 2006**

To: **Honorable Mayor and City Commissioners**

From: **City Clerk**

RE: **Approval of Minutes**

SUMMARY OF REQUEST: To approve minutes for the November 13th Commission Worksession, and the November 14th Regular Commission Meeting.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

CITY OF MUSKEGON

CITY COMMISSION MEETING

NOVEMBER 28, 2006

CITY COMMISSION CHAMBERS @ 5:30 P.M.

MINUTES

The Regular Commission Meeting of the City of Muskegon was held at City Hall, 933 Terrace Street, Muskegon, Michigan at 5:30 p.m., Tuesday, November 28, 2006.

Mayor Warmington opened the meeting with a prayer from Pastor Penny Johnson from the Oak Crest Church of God after which the Commission and public recited the Pledge of Allegiance to the Flag.

ROLL CALL FOR THE REGULAR COMMISSION MEETING:

Present: Mayor Stephen Warmington, Vice Mayor Stephen Gawron, Commissioner Clara Shepherd, Lawrence Spataro, Sue Wierengo, Chris Carter, and Kevin Davis, City Manager Bryon Mazade, City Attorney John Schrier, and Acting City Clerk Linda Potter.

2006-94 CONSENT AGENDA:

A. Approval of Minutes. CITY CLERK

SUMMARY OF REQUEST: To approve minutes for the November 13th Commission Worksession, and the November 14th Regular Commission Meeting.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Approval of the minutes.

B. Liquor License Request – Pat's Road House, 157 S. Getty. CITY CLERK

SUMMARY OF REQUEST: The Liquor Control Commission is seeking local recommendation on a request from TPWS, Inc., to add space to the existing 2006 Class C-SDM licensed business with Dance-Entertainment Permit, Outdoor Service (1 Area), and 2 Bars.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: All departments are recommending approval contingent upon final inspection.

C. Resolution for Charitable Gaming License. CITY CLERK

SUMMARY OF REQUEST: USS LST 393 Preservation Association Inc. is requesting a resolution recognizing them as a non-profit organization operating in the City for the purpose of obtaining a gaming license. They have been recognized as a 501(c)(3) organization by the State.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Approval

D. FIRST READING: Zoning Ordinance Amendment - Preamble. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Request to amend Preamble to the Zoning Ordinance regarding the reference to the Michigan Zoning Enabling Act.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Staff recommends amendment of the Zoning Ordinance to amend the Preamble.

COMMITTEE RECOMMENDATION: The Planning Commission recommended approval of the request at their November 16th meeting. The vote was unanimous with B. Smith absent.

E. FIRST READING: Zoning Ordinance Amendment - Malfeasance. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Request to amend Section 2501, Creation and Membership, paragraph 4 of Article XXV, Zoning Board of Appeals, regarding the removal of a Zoning Board of Appeals member for malfeasance.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Staff recommends amendment of Section 2501, paragraph 4 of Article XXV.

COMMITTEE RECOMMENDATION: The Planning Commission recommended approval of the request at their November 16th meeting. The vote was unanimous with B. Smith absent.

H. Engineering Services Agreement with Hubbell, Roth & Clark, Inc. ENGINEERING

SUMMARY OF REQUEST: Enter into an engineering services agreement with Hubbell, Roth & Clark, Inc. out of Grand Rapids to perform route study and design for a non-motorized connector between the Musketawa trail and the

City's trail system along both Laketon and Shoreline Drive. The design phase of this agreement is limited to the Laketon connection for a not to exceed fee of $52,517.

FINANCIAL IMPACT: The fee will be paid through a grant the City had secured from the Michigan Department of Natural Resources and the West Michigan Trails and Greenways Coalition.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Enter into an Engineering Services Agreement with Hubbell, Roth & Clark and Michigan Department of Natural Resources staff. The evaluations were based on interviews (top two candidates), qualifications, fees and hours submitted.

Motion by Commissioner Carter, second by Commissioner Shepherd to approve the Consent Agenda as read minus items F and G.

ROLL VOTE: Ayes: Shepherd, Spataro, Warmington, Wierengo, Carter, Davis, and Gawron

Nays: None

MOTION PASSES

2006-95 ITEMS REMOVED FROM THE CONSENT AGENDA:

F. <u>FIRST READING: Zoning Ordinance Amendment – Multiple Family Uses in B-3.</u> PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Request to amend Section 1201, Special Land Uses Permitted, #7 of Article XII, B-3, Central Business District, to allow multiple family developments with a special use permit.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Staff recommends the amendment of Section 1201, #7 of Article XII.

COMMITTEE RECOMMENDATION: The Planning Commission recommended approval of the request at their November 16th meeting. The vote was unanimous with B. Smith absent.

Motion by Commissioner Spataro, second by Vice Mayor Gawron to adopt the zoning ordinance amendment for multiple family uses in B-3.

ROLL VOTE: Ayes: Spataro, Warmington, Wierengo, Carter, Davis, Gawron, and Shepherd

Nays: None

MOTION PASSES

G. **FIRST READING: Zoning Ordinance Amendment - Eliminate Minimum Lot Size in B-3.** PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Request to amend Section 1200, (Principal Uses Permitted, #9) of Article XII, B-3, Central Business District, to eliminate the minimum lot requirements for residential uses.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Staff recommends the amendment of Section 1200, #9 of Article XII.

COMMITTEE RECOMMENDATION: The Planning Commission recommended approval of the request at their November 16th meeting. The vote was unanimous with B. Smith absent.

Motion by Commissioner Spataro, second by Vice Mayor Gawron to approve the zoning ordinance amendment to eliminate minimum lot size in B-3 for residential uses.

ROLL VOTE: Ayes: Warmington, Wierengo, Carter, Davis, Gawron, Shepherd, and Spataro

Nays: None

MOTION PASSES

2006-96 PUBLIC HEARINGS:

A. **Amendment to 2003 Leisure Services Master Plan.** LEISURE SERVICES

SUMMARY OF REQUEST: To adopt the Leisure Services Master Plan of 2003 amendments. The amendments were completed under the "Action Plan and Assessment" and the "Capital Improvements Schedule" sections. This is needed in order to apply for the Michigan Natural Resources Trust Fund by the application deadline of April 1, 2007.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve.

COMMITTEE RECOMMENDATION: The Leisure Services Board held the public hearing at their regular meeting of November 20, 2006. The Leisure Services Board recommended approval at their special meeting of November 28, 2006.

The Public Hearing opened at 5:45 p.m. to hear and consider any comments from the public. No public comments were heard.

Motion by Commissioner Carter, second by Commissioner Spataro to close the Public Hearing at 5:47 p.m. and approve the Leisure Services Master Plan of 2003

amendment.

ROLL VOTE: Ayes: Wierengo, Carter, Davis, Gawron, Shepherd, Spataro, and Warmington

Nays: None

MOTION PASSES

2006-97 NEW BUSINESS:

A. <u>869 and 875 Marquette Avenue – Property Exchange.</u> PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Kelly Hicks owns the home with an address of 869 Marquette. Unfortunately, her home is located on the adjacent City owned property at 875 Marquette. The City Attorney and Staff have worked with Ms. Hicks, her mortgage companies, and the title office to rectify the situation. The easiest way to rectify this is to exchange legal descriptions through deeds. The City will provide a Quit Claim deed to Kelly Hicks for the legal description of the property where her home is located. Ms. Hicks will provide a Warranty Deed to the City for the legal description of the property her home was supposed to be built on. Both of the properties are the same size and the City would still maintain a buildable lot.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve the resolution and to authorize both the Mayor and the Clerk to sign said resolution and deed.

Motion by Commissioner Spataro, second by Commissioner Davis to adopt the resolution and authorize both the Mayor and Clerk to sign the resolution and deed to allow for the transfer of 869 Marquette with 875 Marquette.

ROLL VOTE: Ayes: Carter, Davis, Gawron, Shepherd, Spataro, Warmington, and Wierengo

Nays: None

MOTION PASSES

B. <u>Replacement of Copiers/Document Printing Contract.</u> FINANCE

SUMMARY OF REQUEST: Staff is recommending that the City enter into a five-year agreement with Commercial Equipment Company (CEC) for replacement and maintenance of all City copy machines, print devices and fax machines. CEC was the successful bidder for the Muskegon County copier contract and we will be piggybacking onto the County contract. Also, CEC has had the City's contract for the last twelve years and we have had a very satisfactory and successful relationship with the company.

FINANCIAL IMPACT: We *conservatively* estimate our current cost per page (including copies, printing, faxes) to be $0.0449. Under the new contract we will pay $0.0398 per page, a savings of 11.4%, or $62,000 over the life of the contract. Significant other savings will come from the fact that IT staff will no longer be responsible for analyzing/repairing problem printers or fax machines and from the widespread deployment of more efficient technologies (such as scan to e-mail and greater in-house printing/publishing capabilities).

BUDGET ACTION REQUIRED: None. Funds are budgeted for these costs.

STAFF RECOMMENDATION: Approval of 5-year cost-per-page contract with CEC.

Motion by Vice Mayor Gawron, second by Commissioner Carter to approve the 5-year cost-per-page contract with Commercial Equipment Company for replacement of copiers, print devices and fax machines.

ROLL VOTE: Ayes: Davis, Gawron, Shepherd, Spataro, Warmington, Wierengo, and Carter

Nays: None

MOTION PASSES

C. <u>Tool and Die Recovery Zone Status for Aero Foil International, Inc.</u>
PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: To approve the Development Agreement and Resolution establishing a Tool & Die Recovery Zone for Aero Foil International, Inc., which is moving from 1839 Sixth Street to 1920 Port City Boulevard. The Commission previously passed a resolution supporting a Tool and Die Recovery Zone for Aerofoil for its Sixth Street address. Due to environmental contamination, it is necessary for the company to move.

FINANCIAL IMPACT: The City will forgo approximately $415,017 in taxes for the 15-year period of the zone. In addition, any future investments would be tax exempt also.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve the Development Agreement and Resolution establishing a Tool & Die Recovery Zone, and authorize the Mayor and Clerk to sign.

Motion by Commissioner Spataro, second by Vice Mayor Gawron to approve the request to transfer the Tool & Die Recover Zone for Aero Foil International, Inc. from 1839 Sixth Street to 1920 Port City Boulevard.

ROLL VOTE: Ayes: Gawron, Shepherd, Spataro, Warmington, Wierengo, Carter, and Davis

Nays: None

MOTION PASSES

D. **Request for Final Planned Unit Development Approval for a Residential Development near Sherman Boulevard and Barclay Street.** PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: The request for Final Planned Unit Development (PUD) approval for a mixed use commercial and residential development for the southerly portion of 1266 W. Sherman Boulevard, the northerly portion of 1228 W. Sherman, a portion of 1254 W. Sherman and a portion of 2495 Barclay Street. The request is by Hazel Churchley, Exit Your Way, LLC.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Staff recommends final approval of the PUD provided that the conditions listed in the resolution are met.

COMMITTEE RECOMMENDATION: The Planning Commission recommended approval of the final PUD, with the conditions listed on the resolution, at their November 16, 2006, meeting. The vote was approved by unanimous vote, with B. Smith absent.

Motion by Commissioner Spataro, second by Vice Mayor Gawron to approve the request for final Planned Unit Development for a residential development near Sherman Boulevard and Barclay Street with the conditions listed on the resolution.

ROLL VOTE: Ayes: Shepherd, Spataro, Warmington, Wierengo, Carter, Davis, and Gawron

Nays: None

MOTION PASSES

E. **City - MDOT Agreement for Western Avenue Landscaping between Third and Terrace.** ENGINEERING

SUMMARY OF REQUEST: To approve the contract and resolution with Michigan Department of Transportation for the Jobs Today funds for the construction of decorative concrete, street lights and roundabout along Western Avenue between Third and Terrace. This contract outlines the terms and conditions under which the state made funds available to the City to offset the local match of the federal funds used to construct the aforementioned items.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Approve the contract and resolution and authorize the Mayor and Clerk to sign both.

Motion by Commissioner Shepherd, second by Commissioner Carter to approve the contract with MDOT for Western Avenue landscaping between Third and Terrace.

ROLL VOTE: Ayes: Spataro, Wierengo, Carter, Davis, Gawron, and Shepherd

Nays: None

Absent: Warmington (stepped out of the room)

MOTION PASSES

F. <u>Permanently Waive Special Event Application Fee for Fun Inc. Christmas in Hackley Park.</u> LEISURE SERVICES

SUMMARY OF REQUEST: Family Christmas in Hackley Park has been a community tradition in Hackley Park for over 15 years. At their November 20th meeting, the Leisure Services Board recommended that the application fee for Fun Inc. be waived for the 2006 event and all future Hackley Park Christmas events hosted by Fun Inc. This event is a grandfathered event.

FINANCIAL IMPACT: $50 per year (Special Event Application Fee)

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Staff approves this request.

Motion by Commissioner Spataro, second by Commissioner Wierengo to approve the request to permanently waive the Special Event Application Fee for Christmas in Hackley Park for Fun Inc.

ROLL VOTE: Ayes: Wierengo, Carter, Davis, Gawron, Shepherd, and Spataro

Nays: None

Absent: Warmington (stepped out of the room)

MOTION PASSES

G. <u>East Muskegon Little League Tag Sale.</u> CITY MANAGER

SUMMARY OF REQUEST: East Muskegon Little League is requesting to hold a fund raiser tag sale using City streets.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To deny the request as it is contrary to the City's Special Events Policy.

Motion by Commissioner Spataro, second by Commissioner Davis to deny the request from East Muskegon Little League to hold a tag sale on City streets.

ROLL VOTE: Ayes: Wierengo, Carter, Davis, Gawron, Shepherd, Spataro, and Warmington

Nays: None

MOTION PASSES

Motion by Commissioner Spataro, second by Commissioner Carter to waive the fee for a Peddler License for East Muskegon Little League.

ROLL VOTE: Ayes: Carter, Davis, Gawron, Shepherd, Spataro, Warmington, and Wierengo

Nays: None

MOTION PASSES

ANY OTHER BUSINESS: Mayor Warmington recognized the Muskegon Big Reds and the Muskegon Catholic Central Crusaders.

PUBLIC PARTICIPATION: Various comments were heard from the public.

ADJOURNMENT: The City Commission Meeting adjourned at 7:15 p.m.

Respectfully submitted,

Linda Potter

Linda Potter, CMC
Acting City Clerk

Date: **November 28, 2006**

To: **Honorable Mayor and City Commissioners**

From: **City Clerk**

RE: **Liquor License Request**
Pat's Road House, 157 S. Getty

SUMMARY OF REQUEST: The Liquor Control Commission is seeking local recommendation on a request from TPWS, Inc., to add space to the existing 2006 Class C-SDM licensed business with Dance-Entertainment Permit, Outdoor Service (1 Area), and 2 Bars.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: All departments are recommending approval contingent upon final inspection.

Muskegon Police Department

Anthony L. Kleibecker
Director of Public Safety

980 Jefferson
Muskegon, Michigan
49443-0536

www.muskegonpolice.com

Phone: 231-724-6750
FAX: 231-722-5140

October 30, 2006

To: City Commission through the City Manager

From: A. L. Kleibecker
Anthony L. Kleibecker, Director of Public Safety

Re: Liquor License Request – 157 S. Getty Street (Pat's Road House Bar) Request to Add Space to existing 2006 Class C-SDM licensed business with Dance-Entertainment Permit, Outdoor Service (1 Area), and 2 Bars located at 157 S. Getty

The Muskegon Police Department has received a request from the Michigan Liquor Control Commission for an investigation of applicant TPWS, Inc., comprised of Steven Seng, Treasurer.

TPWS, Inc. requests to Add Space to existing 2006 Class C-SDM licensed business with Dance-Entertainment Permit, Outdoor Service (1 Area), and 2 Bars located at 157 S. Getty.

A check of Muskegon Police Department records and criminal history showed no reason to deny this request.

ALK/kd

To: Tony Kleibecker, Director of Public Safety

From: Det. Kurt Dykman

Date: 10-30-06

Re: Liquor License Add Space

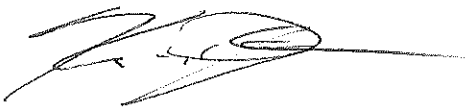
Chief Kleibecker,

The Muskegon Police Department has received a request from the Michigan Liquor Control Commission for an investigation from applicant TPWS, Inc. of 157 S. Getty Street, Muskegon, MI. 49442 which is comprised of applicant Steven Seng.

TPWS, Inc. is requesting to Add Space to its existing 2006 Class C-SDM licensed business with Dance-Entertainment Permit, Outdoor Service (1 Area), and 2 Bars located at 157 S. Getty (Pat's Road House Bar).

A check of MPD records and Criminal History showed no reason to deny this request.

Respectfully submitted,



Det. Kurt Dykman

data/common/liquor/TWPS_06

Michigan Department of Labor & Economic Growth
MICHIGAN LIQUOR CONTROL COMMISSION (MLCC)
7150 Harris Drive, P.O. Box 30005
Lansing, Michigan 48909-7505

376904
10-19-06 TLH

POLICE INVESTIGATION REQUEST

[Authorized by MCL 436.1201(4)]

October 4, 2006

MUSKEGON POLICE DEPARTMENT
CHIEF OF POLICE
980 JEFFERSON STREET, PO BOX 536
MUSKEGON, MI 49443-0536

Request ID #: 376904

Applicant:

TPWS, INC. REQUESTS TO ADD SPACE TO 2006 CLASS C-SDM LICENSED BUSINESS WITH DANCE-ENTERTAINMENT PERMIT, OUTDOOR SERVICE (1 AREA), AND 2 BARS, LOCATED AT 157 S. GETTY, MUSKEGON, MI 49442, MUSKEGON COUNTY.

Please make an investigation of the application. If you do not believe that the applicants are qualified for licensing, give your reasons in detail. Complete the Police Inspection Report on Liquor License Request, LC-1800, or for Detroit police, the Detroit Police Investigation of License Request, LC-1802. If there is not enough room on the front of the form, you may use the back.

Forward your report, along with fingerprint cards (if requested) and $30.00 for each card to the Michigan Liquor Control Commission.

If you have any questions, contact the appropriate unit (On Premises, Off Premises or Manufacturers & Wholesalers) at (517) 322-1400.

sfs

Michigan Department of Labor & Economic Growth
MICHIGAN LIQUOR CONTROL COMMISSION (MLCC)
7150 Harris Drive, P.O. Box 30005
Lansing, Michigan 48909-7505

POLICE INVESTIGATION REPORT

[Authorized by MCL 436.1217 and R 436.1105; MAC]

FOR MLCC USE ONLY
Request ID # 376904
Business ID # 160125
10-19-06 TFK

Please conduct your investigation as soon as possible, complete all four sections of this report and return the completed report and fingerprint cards to the MLCC

LICENSEE/APPLICANT NAME, BUSINESS ADDRESS AND LICENSING REQUEST:

TPWS, INC. REQUESTS TO ADD SPACE TO 2006 CLASS C-SDM LICENSED BUSINESS WITH DANCE-ENTERTAINMENT PERMIT, OUTDOOR SERVICE (1 AREA), AND 2 BARS, LOCATED AT 157 S. GETTY, MUSKEGON, MI 49442, MUSKEGON COUNTY.

Section 1. APPLICANT INFORMATION

APPLICANT #1:	APPLICANT #2:
CONTACT: STEVEN SENG, TREASURER B(231)726-5041/CELL(231)329-1551	
DATE FINGERPRINTED: ***NO FINGERPRINTS REQUIRED***	DATE FINGERPRINTED:
DATE OF BIRTH: Is the applicant a U.S. Citizen: ☐ Yes ☐ No* *Does the applicant have permanent Resident Alien status? ☐ Yes ☐ No* *Does the applicant have a Visa? Enter status:	DATE OF BIRTH: Is the applicant a U.S. Citizen: ☐ Yes ☐ No* *Does the applicant have permanent Resident Alien status? ☐ Yes ☐ No* *Does the applicant have a Visa? Enter status:

Attach the fingerprint card and $30.00 for each card and mail to the Michigan Liquor Control Commission

ARREST RECORD: ☐ **Felony** ☐ **Misdemeanor** Enter record of all arrests & convictions (attach a signed and dated report if more space is needed)	**ARREST RECORD:** ☐ **Felony** ☐ **Misdemeanor** Enter record of all arrests & convictions (attach a signed and dated report if more space is needed)

Section 2. INVESTIGATION OF BUSINESS AND ADDRESS TO BE LICENSED

Does applicant intend to have dancing, entertainment, topless activity, or extended hours permit?
☐ No ☐ Yes, complete LC-1636 Already exist

Are gas pumps on the premises or directly adjacent? ☑ No ☐ Yes, explain relationship:

Section 3. LOCAL AND STATE CODES AND ORDINANCES, AND GENERAL RECOMMENDATIONS

Will the applicant's proposed location meet all appropriate state and local building, plumbing, zoning, fire, sanitation and health laws and ordinances, if this license is granted? ☑ Yes ☐ No

If you are recommending approval subject to certain conditions, list the conditions: (attach a signed and dated report if more space is needed)

Section 4. RECOMMENDATION

From your investigation:

1. Is this applicant qualified to conduct this business if licensed? ☑ Yes ☐ No
2. Is the proposed location satisfactory for this business? ☑ Yes ☐ No
3. Should the Commission grant this request? ☑ Yes ☐ No
4. If any of the above 3 questions were answered no, state your reasons: (Attach a signed and dated report if more space is needed)

D. L. Kleinheksel 10-30-06

Signature (Sheriff or Chief of Police) Date

MUSKEGON POLICE DEPARTMENT

The Department of Labor & Economic Growth will not discriminate against any individual or group because of race, sex, religion, age, national origin, color, marital status, disability, or political beliefs. If you need help with reading, writing, hearing, etc., under the Americans with Disabilities Act, you may make your needs known to this agency.

Req. ID #376904

STATE OF MICHIGAN
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES
LIQUOR CONTROL COMMISSION

RESOLUTION

At a Regular (Regular or Special) meeting of the City Commission (Township Board, City or Village Council)

called to order by Mayor Warmington on November 28, 2006 at 5:30 P.M.

The following resolution was offered:

Moved by Commissioner Carter and supported by Commissioner Shepherd

That the request from TPWS, Inc. to add space to 2006 Class C-SDM Licensed Business with Dance-Entertainment Permit, Outdoor Service (1 Area), and 2 Bars, located at 157 S. Getty, Muskegon, MI 49442, Muskegon County

be considered for Approval - Pending Final Inspection (Approval or Disapproval)

APPROVAL		DISAPPROVAL	
Yeas:	7	Yeas:	
Nays:	0	Nays:	
Absent:	0	Absent:	

It is the consensus of this legislative body that the application be:

Recommended (Recommended or not Recommended) for issuance

State of Michigan)
§
County of Muskegon)

I hereby certify that the foregoing is a true and complete copy of a resolution offered and

adopted by the City Commission (Township Board, City or Village Council) at a Regular (Regular or Special)

meeting held on 11-28-06 (Date).

SEAL

(Signed) Linda Potter (Township, City of Village Clerk)

Linda Potter, Acting Clerk
933 Terrace, Muskegon, MI 49440
(Mailing address of Township, City of Village)

LIQUOR LICENSE REVIEW FORM

Business Name: TPWS, Inc.

AKA Business Name (if applicable): Pat's Roadhouse

Operator/Manager's Name: _____

Business Address: 157 S Getty

_____

Reason for Review:

New License ☐ **Transfer of Ownership** ☐ **Dance Permit** ☐

Drop/Add Name on License ☐ **Transfer Location** ☐

Drop/Add Stockholder Name ☐ **New Entertainment Permit** ☐

Other Request to add space

Deadline for receipt of all information: _____

Public Safety	**Approved** ☐	**Denied** ☐	**No Action Needed** ☐
Income Tax	**Approved** ☒	**Owing** ☐	**Amount:** _____
Treasurer	**Approved** ☐	**Owing** ☐	**Amount:** _____
Zoning	**Approved** ☐	**Denied** ☐	**Pending ZBA** ☐
Clerk's	**Approved** ☐	**Owing** ☐	**Amount:** _____
Fire/Inspections	**Approved** ☐	**Denied** ☐	**Remaining Defects** ☐

_____

_____

Department Signature _____

Please return to the City Clerk's Office
Gail A. Kundinger,
Liquor License Coordinator

LIQUOR LICENSE REVIEW FORM

Business Name: TPWS, Inc.

AKA Business Name (if applicable): Pat's Roadhouse

Operator/Manager's Name: _____

Business Address: 157 S Getty

_____

Reason for Review:

New License ☐ **Transfer of Ownership** ☐ **Dance Permit** ☐

Drop/Add Name on License ☐ **Transfer Location** ☐

Drop/Add Stockholder Name ☐ **New Entertainment Permit** ☐

Other Request to add space

Deadline for receipt of all information: _____

Public Safety	**Approved** ☐	**Denied** ☐	**No Action Needed** ☐
Income Tax	**Approved** ☐	**Owing** ☐	**Amount:** _____
Treasurer	**Approved** ☑	**Owing** ☐	**Amount:** _____
Zoning	**Approved** ☐	**Denied** ☐	**Pending ZBA** ☐
Clerk's	**Approved** ☐	**Owing** ☐	**Amount:** _____
Fire/Inspections	**Approved** ☐	**Denied** ☐	**Remaining Defects** ☐

_____

_____

Department Signature DEA 10/31/06

Please return to the City Clerk's Office
Gail A. Kundinger,
Liquor License Coordinator

LIQUOR LICENSE REVIEW FORM

Business Name: TPWS, Inc.

AKA Business Name (if applicable): Pat's Roadhouse

Operator/Manager's Name: _____

Business Address: 157 S. Getty

_____

Reason for Review:

New License ☐ **Transfer of Ownership** ☐ **Dance Permit** ☐

Drop/Add Name on License ☐ **Transfer Location** ☐

Drop/Add Stockholder Name ☐ **New Entertainment Permit** ☐

Other Request to add space

Deadline for receipt of all information: _____

Public Safety	**Approved** ☐	**Denied** ☐	**No Action Needed** ☐
Income Tax	**Approved** ☐	**Owing** ☐	**Amount:** _____
Treasurer	**Approved** ☐	**Owing** ☐	**Amount:** _____
Zoning	**Approved** ☒	**Denied** ☐	**Pending ZBA** ☐
Clerk's	**Approved** ☐	**Owing** ☐	**Amount:** _____
Fire/Inspections	**Approved** ☐	**Denied** ☐	**Remaining Defects** ☐

_____

_____

Department Signature _____

Please return to the City Clerk's Office
Gail A. Kundinger,
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LIQUOR LICENSE REVIEW FORM

Business Name: TPWS, Inc.

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New License ☐ **Transfer of Ownership** ☐ **Dance Permit** ☐

Drop/Add Name on License ☐ **Transfer Location** ☐

Drop/Add Stockholder Name ☐ **New Entertainment Permit** ☐

Other Request to add space

Deadline for receipt of all information: _____

Public Safety	**Approved** ☐	**Denied** ☐	**No Action Needed** ☐
Income Tax	**Approved** ☐	**Owing** ☐	**Amount:** _____
Treasurer	**Approved** ☐	**Owing** ☐	**Amount:** _____
Zoning	**Approved** ☐	**Denied** ☐	**Pending ZBA** ☐
Clerk's	**Approved** ☑	**Owing** ☐	**Amount:** _____
Fire/Inspections	**Approved** ☐	**Denied** ☐	**Remaining Defects** ☐

_____

_____

Department Signature Irene Dempsey

Please return to the City Clerk's Office
Gail A. Kundinger,
Liquor License Coordinator

LIQUOR LICENSE REVIEW FORM

Business Name: TPWS, Inc.

AKA Business Name (if applicable): Pat's Roadhouse

Operator/Manager's Name: _____

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Reason for Review:

New License ☐ **Transfer of Ownership** ☐ **Dance Permit** ☐

Drop/Add Name on License ☐ **Transfer Location** ☐

Drop/Add Stockholder Name ☐ **New Entertainment Permit** ☐

Other Request to add space

Deadline for receipt of all information: _____

Public Safety	**Approved** ☐	**Denied** ☐	**No Action Needed** ☐
Income Tax	**Approved** ☐	**Owing** ☐	**Amount:** _____
Treasurer	**Approved** ☐	**Owing** ☐	**Amount:** _____
Zoning	**Approved** ☐	**Denied** ☐	**Pending ZBA** ☐
Clerk's	**Approved** ☐	**Owing** ☐	**Amount:** _____
Fire/Inspections	**Approved** ☑	**Denied** ☐	**Remaining Defects** ☐

Department Signature _____

Please return to the City Clerk's Office
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Other Request to add space

Deadline for receipt of all information: _____

Public Safety	**Approved** ☐	**Denied** ☐	**No Action Needed** ☐
Income Tax	**Approved** ☐	**Owing** ☐	**Amount:** _____
Treasurer	**Approved** ☐	**Owing** ☐	**Amount:** _____
Zoning	**Approved** ☐	**Denied** ☐	**Pending ZBA** ☐
Clerk's	**Approved** ☐	**Owing** ☐	**Amount:** _____
Fire/Inspections	**Approved** ☑	**Denied** ☐	**Remaining Defects** ☐

PENDING FINAL INSPECTION

_____

Department Signature _____

Please return to the City Clerk's Office
Gail A. Kundinger,
Liquor License Coordinator

Affirmative Action
(231)724-6703
FAX (231)722-1214

Assessor
(231)724-6708
FAX (231)726-5181

Cemetery
(231)724-6783
FAX (231)726-5617

City Manager
(231)724-6724
FAX (231)722-1214

Civil Service
(231)724-6716
FAX (231)724-4405

Clerk
(231)724-6705
FAX (231)724-4178

Comm. & Neigh. Services
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FAX (231)726-2501

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FAX (231)722-5140

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Water Filtration
(231)724-4106
FAX (231)755-5290

MUSKEGON

West Michigan's Shoreline City

November 21, 2006

Ms. Billie Holmes, President
Jackson Hill Neighborhood Association
473 Mulder
Muskegon, MI 49442

Dear Ms. Holmes:

We have received a letter from the Liquor Control Commission reference a request from TPWS, Inc. (Pat's Road House), 157 S. Getty to add space to their existing 2006 Class C-SDM licensed business. On Tuesday, November 28, 2006, the City Commission will review this request and determine whether or not it should be recommended for approval.

You are being sent this notice because the City Commission would like to know how the Neighborhood Association feels and would appreciate any comments that they may have. You may send these comments to 933 Terrace, Muskegon, MI 49440 or attend the City Commission Meeting on November 28, 2006, at 5:30 p.m. in the Commission Chambers.

If you have any questions, please feel free to contact me at 724-6705.

Sincerely,

Linda Potter
Acting Clerk

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MUSKEGON

West Michigan's Shoreline City

November 21, 2006

Mr. Steven Seng, Treasurer
TPWS, Inc.
157 S. Getty
Muskegon, MI 49442

Dear Mr. Seng:

This letter is to inform you that your request to add space to the 2006 Class C-SDM licensed business with dance-entertainment permit, outdoor service, and two bars, located at 157 S. Getty, will be presented to the City Commission on November 28, 2006. This meeting begins at 5:30 p.m. and is located in the City Commission Chambers, 933 Terrace, Muskegon, MI.

This request has also been sent to the Jackson Hill Neighborhood Association for their comments. It is Commission practice to let the Neighborhood Association know of any liquor license requests that are located within their boundaries. This allows for comments from the people who live there and not just from the owners of the business' who are located there.

Sincerely,

Linda Potter
Acting Clerk

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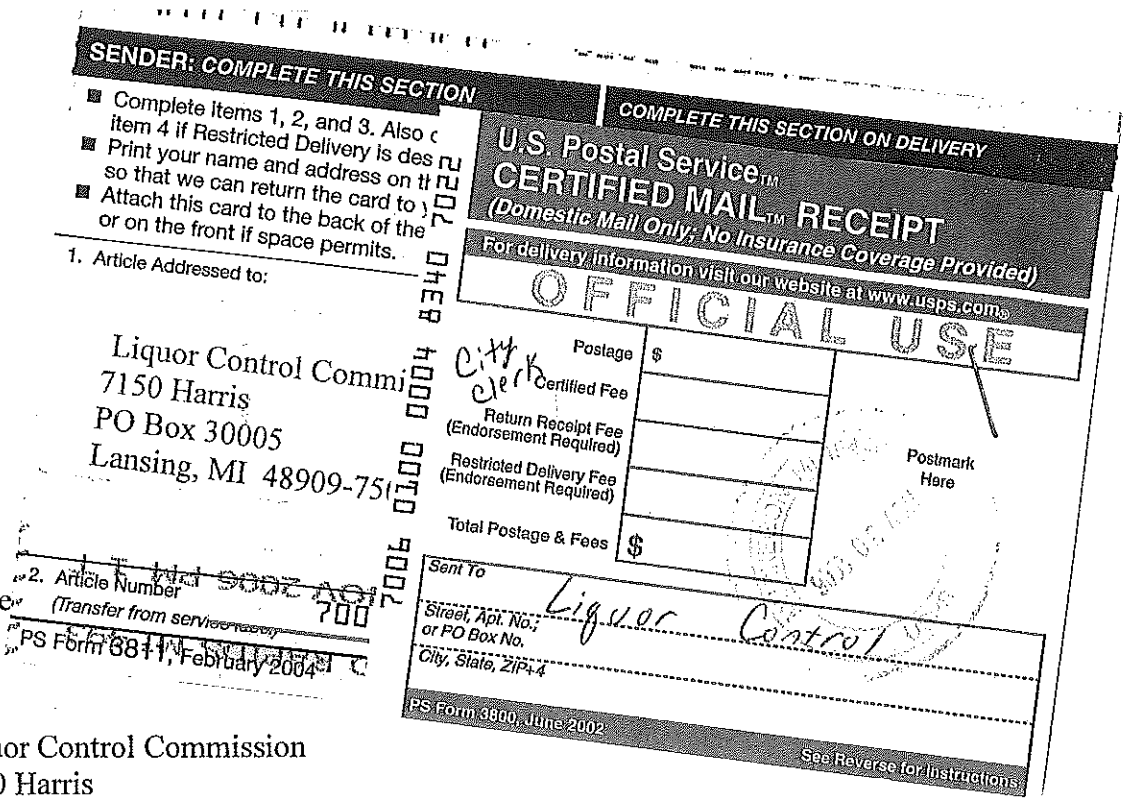

Liquor Control Commission
7150 Harris
PO Box 30005
Lansing, MI 48909-7505

REF: Req ID #376904
TPWS, Inc.
157 S. Getty
Muskegon, MI 49442

To Whom It May Concern:

Enclosed is the Police Investigation Report Form LC-1800 which has been approved by Tony Kleibecker, Public Safety Director. This was also recommended for approval contingent upon final inspection by the City Commission at their November 28, 2006, City Commission Meeting.

Please do not hesitate to call me at (231) 724-6705 if you have any questions.

Sincerely,

Linda Potter

Linda Potter
Acting Clerk

enc.

Date: **November 28, 2006**

To: **Honorable Mayor and City Commissioners**

From: **City Clerk**

RE: **Resolution for Charitable Gaming License**

SUMMARY OF REQUEST: USS LST 393 Preservation Association Inc. is requesting a resolution recognizing them as a non-profit organization operating in the City for the purpose of obtaining a gaming license. They have been recognized as a 501(c)(3) organization by the State.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Approval

This form is to recognize LST 393 as a non-profit legitimate org within the City of Muskegon. This is required so that we may have legal fund raisers with the blessings of the State Gaming Comm.

Duane Buckner
Dir LST 393
206-7448

Charitable Gaming Division
Box 30023, Lansing, MI 48909
OVERNIGHT DELIVERY:
101 E. Hillsdale, Lansing MI 48933
(517) 335-5780
www.michigan.gov/cg

LOCAL GOVERNING BODY RESOLUTION FOR CHARITABLE GAMING LICENSES

(Required by MCL.432.103(9))

2006-94(c)

At a Regular (REGULAR OR SPECIAL) meeting of the City Commission (TOWNSHIP, CITY, OR VILLAGE COUNCIL/BOARD)

called to order by Mayor Warmington on November 28, 2006 (DATE)

at 5:30 (TIME) ~~a.m.~~/p.m. the following resolution was offered:

Moved by Commissioner Carter and supported by Commissioner Shepherd

that the request from USS LST 393 Preservation Association Inc. (NAME OF ORGANIZATION) of Muskegon (CITY),

county of Muskegon (COUNTY NAME), asking that they be recognized as a

nonprofit organization operating in the community for the purpose of obtaining a charitable

gaming license, be considered for Approval (APPROVAL/DISAPPROVAL).

APPROVAL		DISAPPROVAL	
Yeas:	7	Yeas:	
Nays:	0	Nays:	
Absent:	0	Absent:	

I hereby certify that the foregoing is a true and complete copy of a resolution offered and

adopted by the City Commission (TOWNSHIP, CITY, OR VILLAGE COUNCIL/BOARD) at a Regular (REGULAR OR SPECIAL)

meeting held on November 28, 2006 (DATE).

SIGNED: Linda Potter (TOWNSHIP, CITY, OR VILLAGE CLERK)

Linda Potter, Acting Clerk (PRINTED NAME AND TITLE)

933 Terrace, Muskegon, MI 49440 (ADDRESS)

COMPLETION: Required.
PENALTY: Possible denial of application.

BSL-CG-1153(R7/02)

Affirmative Action
(231)724-6703
FAX (231)722-1214

Assessor
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FAX (231)726-5181

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Water Filtration
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FAX (231)755-5290

MUSKEGON

West Michigan's Shoreline City

November 30, 2006

Britton & Bossenbroek, P.C.
Post Office Box 957
Muskegon, MI 49443-0957

Dear Sir:

Enclosed are two resolutions for Charitable Gaming Licenses. This was approved by the City of Muskegon Commission at their November 28th meeting.

If you have any questions, please call me at (231)724-6915.

Thank you,

Linda Potter

Linda Potter
Acting Clerk

enc.

INTERNAL REVENUE SERVICE
P. O. BOX 2508
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date: MAY 20 2006

USS LST 393 PRESERVATION
ASSOCIATION INC

Employer Identification Number:
20-4531853
DLN:
17053110027036
Contact Person:
GARY MUTHERT ID# 31518
Contact Telephone Number:
(877) 829-5500
Accounting Period Ending:
December 31
Public Charity Status:
170(b)(1)(A)(vi)
Form 990 Required:
Yes
Effective Date of Exemption:
May 18, 2005
Contribution Deductibility:
Yes
Advance Ruling Ending Date:
December 31, 2009

Dear Applicant:

We are pleased to inform you that upon review of your application for tax exempt status we have determined that you are exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code. Contributions to you are deductible under section 170 of the Code. You are also qualified to receive tax deductible bequests, devises, transfers or gifts under section 2055, 2106 or 2522 of the Code. Because this letter could help resolve any questions regarding your exempt status, you should keep it in your permanent records.

Organizations exempt under section 501(c)(3) of the Code are further classified as either public charities or private foundations. During your advance ruling period, you will be treated as a public charity. Your advance ruling period begins with the effective date of your exemption and ends with advance ruling ending date shown in the heading of the letter.

Shortly before the end of your advance ruling period, we will send you Form 8734, Support Schedule for Advance Ruling Period. You will have 90 days after the end of your advance ruling period to return the completed form. We will then notify you, in writing, about your public charity status.

Please see enclosed Information for Exempt Organizations Under Section 501(c)(3) for some helpful information about your responsibilities as an exempt organization.

USS LST 393 PRESERVATION

We have sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,

Lois G. Lerner
Director, Exempt Organizations
Rulings and Agreements

Enclosures: Information for Organizations Exempt Under Section 501(c)(3)
Statute Extension

USS LST 393 PRESERVATION

INFORMATION FOR ORGANIZATIONS EXEMPT UNDER SECTION 501(c)(3)

WHERE TO GET FORMS AND HELP

Forms and instructions may be obtained by calling toll free 1-800-829-3676, through the Internet Web Site at www.irs.gov, and also at local tax assistance centers.

Additional information about any topic discussed below may be obtained through our customer service function by calling toll free 1-877-829-5500.

NOTIFY US ON THESE MATTERS

If you change your name, address, purposes, operations or sources of financial support, please inform our TE/GE EO Determinations Office at the following address: Internal Revenue Service, P.O. Box 2508, Cincinnati, Ohio 45201. If you amend your organizational document or by-laws, or dissolve, provide the EO Determinations Office with a copy of the amended documents. Please use your employer identification number on all returns you file and in all correspondence with the Internal Revenue Service.

FILING REQUIREMENTS

In your exemption letter we indicated whether you must file Form 990, Return of Organization Exempt From Income Tax. Form 990 (or Form 990-EZ) is filed with the Ogden Submission Processing Center, Ogden UT 84201-0027.

You are required to file a Form 990 only if your gross receipts are normally more than $25,000.

If your gross receipts are normally between $25,000 and $100,000, and your total assets are less than $250,000, you may file Form 990-EZ. If your gross receipts are over $100,000, or your total assets are over $250,000, you must file the complete Form 990. The Form 990 instructions show how to compute your "normal" receipts.

Form 990 Schedule A is required for both Form 990 and Form 990-EZ.

If a return is required, it must be filed by the 15th day of the fifth month after the end of your annual accounting period. There are penalties for failing to timely file a complete return. For additional information on penalties, see Form 990 instructions or call our toll free number.

If your receipts are below $25,000, and we send you a Form 990 Package, follow the instructions in the package on how to complete the limited return to advise us that you are not required to file.

If your exemption letter states that you are not required to file Form 990, you are exempt from these requirements.

USS LST 393 PRESERVATION

UNRELATED BUSINESS INCOME TAX RETURN

If you receive more than $1,000 annually in gross receipts from a regular trade or business you may be subject to Unrelated Business Income Tax and required to file Form 990-T, Exempt Organization Business Income Tax Return. There are several exceptions to this tax.

1. Income you receive from the performance of your exempt activity is not unrelated business income.

2. Income from fundraisers conducted by volunteer workers, or where donated merchandise is sold, is not unrelated business income.

3. Income from routine investments such as certificates of deposit, savings accounts, or stock dividends is usually not unrelated business income.

There are special rules for income derived from real estate or other investments purchased with borrowed funds. This income is called "debt financed" income. For additional information regarding unrelated business income tax see Publication 598, Tax on Unrelated Business Income of Exempt Organizations, or call our toll free number shown above.

PUBLIC INSPECTION OF APPLICATION AND INFORMATION RETURN

You are required to make your annual information return, Form 990 or Form 990-EZ, available for public inspection for three years after the later of the due date of the return, or the date the return is filed. You are also required to make available for public inspection your exemption application, any supporting documents, and your exemption letter. Copies of these documents are also required to be provided to any individual upon written or in person request without charge other than reasonable fees for copying and postage. You may fulfill this requirement by placing these documents on the Internet. Penalties may be imposed for failure to comply with these requirements. Additional information is available in Publication 557, Tax-Exempt Status for Your Organization, or you may call our toll free number shown above.

FUNDRAISING

Contributions to you are deductible only to the extent that they are gifts and no consideration is received in return. Depending on the circumstances, ticket purchases and similar payments in conjunction with fundraising events may not qualify as fully deductible contributions.

CONTRIBUTIONS OF $250 OR MORE

Donors must have written substantiation from the charity for any charitable contribution of $250 or more. Although it is the donor's responsibility to obtain written substantiation from the charity, you can assist donors by providing a written statement listing any cash contribution or describing any

donated property.

This written statement must be provided at the time of the contribution. There is no prescribed format for the written statement. Letters, postcards and electronic (e-mail) or computer-generated forms are acceptable.

The donor is responsible for the valuation of donated property. However, your written statement must provide a sufficient description to support the donor's contribution. For additional information regarding donor substantiation, see Publication 1771, Charitable Contributions - Substantiation and Disclosure Requirements. For information about the valuation of donated property, see Publication 561, Determining the Value of Donated Property.

CONTRIBUTIONS OF MORE THAN $75 AND CHARITY PROVIDES GOODS OR SERVICES

You must provide a written disclosure statement to donors who receive goods or services from you in exchange for contributions in excess of $75.

Contribution deductions are allowable to donors only to the extent their contributions exceed the value of the goods or services received in exchange. Ticket purchases and similar payments in conjunction with fundraising events may not necessarily qualify as fully deductible contributions, depending on the circumstances. If your organization conducts fundraising events such as benefit dinners, shows, membership drives, etc., where something of value is received, you are required to provide a written statement informing donors of the fair market value of the specific items or services you provided in exchange for contributions of more than $75.

You should provide the written disclosure statement in advance of any event, determine the fair market value of any benefit received, determine the amount of the contribution that is deductible, and state this information in your fundraising materials such as solicitations, tickets, and receipts. The amount of the contribution that is deductible is limited to the excess of any money (and the value of any property other than money) contributed by the donor less the value of goods or services provided by the charity. Your disclosure statement should be made, no later than, at the time payment is received. Subject to certain exceptions, your disclosure responsibility applies to any fundraising circumstances where each complete payment, including the contribution portion, exceeds $75. For additional information, see Publication 1771 and Publication 526, Charitable Contributions.

EXCESS BENEFIT TRANSACTIONS

Excess benefit transactions are governed by section 4958 of the Code. Excess benefit transactions involve situations where a section 501(c)(3) organization provides an unreasonable benefit to a person who is in a position to exercise substantial influence over the organization's affairs. If you believe there may be an excess benefit transaction involving your organization, you should report the transaction on Form 990 or 990-EZ. Additional information can be found in the instructions for Form 990 and Form 990-EZ, or you may call our

toll free number to obtain additional information on how to correct and report this transaction.

EMPLOYMENT TAXES

If you have employees, you are subject to income tax withholding and the social security taxes imposed under the Federal Insurance Contribution Act (FICA). You are required to withhold Federal income tax from your employee's wages and you are required to pay FICA on each employee who is paid more than $100 in wages during a calendar year. To know how much income tax to withhold, you should have a Form W-4, Employee's Withholding Allowance Certificate, on file for each employee. Organizations described in section 501(c)(3) of the Code are not required to pay Federal Unemployment Tax (FUTA).

Employment taxes are reported on Form 941, Employer's Quarterly Federal Tax Return. The requirements for withholding, depositing, reporting and paying employment taxes are explained in Circular E, Employer's Tax Guide, (Publication 15), and Employer's Supplemental Tax Guide, (Publication 15-A). These publications explain your tax responsibilities as an employer.

CHURCHES

Churches may employ both ministers and church workers. Employees of churches or church-controlled organizations are subject to income tax withholding, but may be exempt from FICA taxes. Churches are not required to pay FUTA tax. In addition, although ministers are generally common law employees, they are not treated as employees for employment tax purposes. These special employment tax rules for members of the clergy and religious workers are explained in Publication 517, Social Security and Other Information for Members of the Clergy and Religious Workers. Churches should also consult Publications 15 and 15-A. Publication 1828, Tax Guide for Churches and Religious Organizations, also discusses the various benefits and responsibilities of these organizations under Federal tax law.

PUBLIC CHARITY STATUS

Every organization that qualifies for tax-exemption as an organization described in section 501(c)(3) is a private foundation unless it falls into one of the categories specifically excluded from the definition of that term [referred to in section 509(a)(1), (2), (3), or (4)]. In effect, the definition divides these organizations into two classes, namely private foundations and public charities.

Public charities are generally those that either have broad public support or actively function in a supporting relationship to those organizations.

Public charities enjoy several advantages over private foundations. There are certain excise taxes that apply to private foundations but not to public charities. A private foundation must also annually file Form 990-PF, Return of Private Foundation, even if it had no revenue or expenses.

The Code section under which you are classified as a public charity is shown in the heading of your exemption letter. This determination is based on the information you provided and the request you made on your Form 1023 application. Please refer to Publication 557 for additional information about public charity status.

GRANTS TO INDIVIDUALS

The following information is provided for organizations that make grants to individuals. If you begin an individual grant program that was not described in your exemption application, please inform us about the program.

Funds you distribute to an individual as a grant must be made on a true charitable basis in furtherance of the purposes for which you are organized. Therefore, you should keep adequate records and case histories that demonstrate that grants to individuals serve your charitable purposes. For example, you should be in a position to substantiate the basis for grants awarded to individuals to relieve poverty or under a scholarship or education loan program. Case histories regarding grants to individuals should show names, addresses, purposes of grants, manner of selection, and relationship (if any) to members, officers, trustees, or donors of funds to you.

For more information on the exclusion of scholarships from income by an individual recipient, see Publication 520, Scholarships and Fellowships.

Part X Public Charity Status *(Continued)*

e 509(a)(4)—an organization organized and operated exclusively for testing for public safety. ☐

f 509(a)(1) and 170(b)(1)(A)(iv)—an organization operated for the benefit of a college or university that is owned or operated by a governmental unit. ☐

g 509(a)(1) and 170(b)(1)(A)(vi)—an organization that receives a substantial part of its financial support in the form of contributions from publicly supported organizations, from a governmental unit, or from the general public. ☑

h 509(a)(2)—an organization that normally receives not more than one-third of its financial support from gross **investment income** and receives more than one-third of its financial support from contributions, membership fees, and gross receipts from activities related to its exempt functions (subject to certain exceptions). ☐

i A publicly supported organization, but unsure if it is described in 5g or 5h. The organization would like the IRS to decide the correct status. ☐

6 If you checked box g, h, or i in question 5 above, you must request either an **advance** or a **definitive ruling** by selecting one of the boxes below. Refer to the instructions to determine which type of ruling you are eligible to receive.

a **Request for Advance Ruling:** By checking this box and signing the consent, pursuant to section 6501(c)(4) of the Code you request an advance ruling and agree to extend the statute of limitations on the assessment of excise tax under section 4940 of the Code. The tax will apply only if you do not establish public support status at the end of the 5-year advance ruling period. The assessment period will be extended for the 5 advance ruling years to 8 years, 4 months, and 15 days beyond the end of the first year. You have the right to refuse or limit the extension to a mutually agreed-upon period of time or issue(s). Publication 1035, *Extending the Tax Assessment Period*, provides a more detailed explanation of your rights and the consequences of the choices you make. You may obtain Publication 1035 free of charge from the IRS web site at *www.irs.gov* or by calling toll-free 1-800-829-3676. Signing this consent will not deprive you of any appeal rights to which you would otherwise be entitled. If you decide not to extend the statute of limitations, you are not eligible for an advance ruling. ☑

Consent Fixing Period of Limitation Upon Assessment of Tax Under Section 4940 of the Internal Revenue Code

For Organization

Dan Weikel
(Signature of Officer, Director, Trustee, or other authorized official)

Dan Weikel
(Type or print name of signer)

4-17-06
(Date)

President
(Type or print title or authority of signer)

For Director, Exempt Organizations

By Chris P. Hansen Date MAY 11 2006

b **Request for Definitive Ruling:** Check this box if you have completed one tax year of at least 8 full months and you are requesting a definitive ruling. To confirm your public support status, answer line 6b(i) if you checked box g in line 5 above. Answer line 6b(ii) if you checked box h in line 5 above. If you checked box i in line 5 above, answer both lines 6b(i) and (ii). ☐

(i) (a) Enter 2% of line 8, column (e) on Part IX-A, Statement of Revenues and Expenses. _____

(b) Attach a list showing the name and amount contributed by each person, company, or organization whose gifts totaled more than the 2% amount. If the answer is "None," check this box. ☐

(ii) (a) For each year amounts are included on lines 1, 2, and 9 of Part IX-A, Statement of Revenues and Expenses, attach a list showing the name of and amount received from each **disqualified person.** If the answer is "None," check this box. ☐

(b) For each year amounts are included on line 9 of Part IX-A, Statement of Revenues and Expenses, attach a list showing the name of and amount received from each payer, other than a disqualified person, whose payments were more than the larger of (1) 1% of line 10, Part IX-A, Statement of Revenues and Expenses, or (2) $5,000. If the answer is "None," check this box. ☐

7 Did you receive any unusual grants during any of the years shown on Part IX-A, Statement of Revenues and Expenses? If "Yes," attach a list including the name of the contributor, the date and amount of the grant, a brief description of the grant, and explain why it is unusual. ☐ Yes ☑ No

Commission Meeting Date: November 28, 2006

Date: **November 17, 2006**

To: **Honorable Mayor and City Commissioners**

From: **Planning & Economic Development** CBC

RE: **Zoning Ordinance Amendment – Preamble**

SUMMARY OF REQUEST:

Request to amend Preamble to the Zoning Ordinance regarding the reference to the Michigan Zoning Enabling Act.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Staff recommends amendment of the Zoning Ordinance to amend the Preamble.

COMMITTEE RECOMMENDATION:

The Planning Commission recommended approval of the request at their 11/16 meeting. The vote was unanimous with B. Smith absent.

Staff Report (EXCERPT)
CITY OF MUSKEGON
PLANNING COMMISSION
REGULAR MEETING

November 16, 2006

Hearing; Case 2006-51: Staff initiated request to amend the Preamble to the Zoning Ordinance regarding the reference to the Michigan Zoning Enabling Act.

BACKGROUND

Earlier this year the Michigan Zoning Enabling Act of 2006 was passed. In order to bring our zoning ordinance into compliance with this Act, some amendments must be made. Three amendments were recommended to City Commission for approval by Planning Commission in October. Other changes will be coming forward at future meetings.

This particular amendment is merely a correction to the Preamble of the Zoning Ordinance so it now references the new Michigan Zoning enabling Act.

NEW LANGUAGE

Deletions are ~~crossed out~~ and additions are in **bold.**

PREAMBLE

An ordinance enacted under the provisions and authority of the Public Acts of the State of Michigan to establish districts and zones within which the use of land and structures, the height, area, size, and location of buildings are regulated, and within which districts, zone regulations are established for the light and ventilation of such buildings, and within which districts, density of population is regulated; to provide for the acquisition by purchase, condemnation, or otherwise, of private property which does not conform to the regulations and restrictions of the various zones or districts provided; to provide for the administering of this Ordinance; to provide for amendments, supplements, or changes hereto; all in accordance with an adopted Land Use Plan and Housing Plan as provided in **Public** Act ~~285~~ **110**, ~~Public Acts of~~ ~~1931~~ **of 2006**, ~~the Municipal Planning Act,~~ as amended**, being the Michigan Zoning Enabling Act, M.C.L. 125.3101, et seq. hereinafter referred to as the "Zoning Act".**

DELIBERATION

I move that the amendment to the Preamble of the City of Muskegon Zoning Ordinance, be recommended to the City Commission for (approval/denial).

CITY OF MUSKEGON

MUSKEGON COUNTY, MICHIGAN

ORDINANCE NO. 2209

An ordinance to amend the Preamble to the Muskegon Zoning Ordinance regarding the reference to the Michigan Zoning Enabling Act.

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

The Preamble to the Muskegon Zoning Ordinance shall be amended, as follows:

PREAMBLE

An ordinance enacted under the provisions and authority of the Public Acts of the State of Michigan to establish districts and zones within which the use of land and structures, the height, area, size, and location of buildings are regulated, and within which districts, zone regulations are established for the light and ventilation of such buildings, and within which districts, density of population is regulated; to provide for the acquisition by purchase, condemnation, or otherwise, of private property which does not conform to the regulations and restrictions of the various zones or districts provided; to provide for the administering of this Ordinance; to provide for amendments, supplements, or changes hereto; all in accordance with an adopted Land Use Plan and Housing Plan as provided in Public Act 110, of 2006, as amended, being the Michigan Zoning Enabling Act, M.C.L. 125.3101, et seq. hereinafter referred to as the "Zoning Act".

This ordinance adopted:

Ayes: Shepherd, Spataro, Warmington, Wierengo, Carter, Davis, Gawron

Nayes: None

Adoption Date: November 28, 2006

Effective Date: December 12, 2006

First Reading: November 28, 2006

Second Reading: N/A

CITY OF MUSKEGON

By: Linda S. Potter
Linda S. Potter, CMC, Acting City Clerk

CERTIFICATE

The undersigned, being the duly qualified clerk of the City of Muskegon, Muskegon County, Michigan, does hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the 28th day of November, 2006, at which meeting a quorum was present and remained throughout, and that the original of said ordinance is on file in the records of the City of Muskegon. I further certify that the meeting was conducted and public notice was given pursuant to and in full compliance with Act No. 267, Public Acts of Michigan of 1976, as amended, and that minutes were kept and will be or have been made available as required thereby.

DATED: November 29, 2006.

Linda S. Potter

Linda S. Potter, CMC
Acting Clerk, City of Muskegon

Publish: Notice of Adoption to be published once within ten (10) days of final adoption.

CITY OF MUSKEGON
NOTICE OF ADOPTION

Please take notice that on November 28, 2006, the City Commission of the City of Muskegon adopted an ordinance to amend the Preamble to the City of Muskegon Zoning Ordinance.

Copies of the ordinance may be viewed and purchased at reasonable cost at the Office of the City Clerk in the City Hall, 933 Terrace Street, Muskegon, Michigan, during regular business hours.

This ordinance amendment is effective ten days from the date of this publication.

Published December 2, 2006

CITY OF MUSKEGON

By _____
Linda S. Potter, CMC
Acting City Clerk

PUBLISH ONCE WITHIN TEN (10) DAYS OF FINAL PASSAGE.

Account No. 101-80400-5354

Commission Meeting Date: November 28, 2006

Date: **November 17, 2006**

To: **Honorable Mayor and City Commissioners**

From: **Planning & Economic Development** CBC

RE: **Zoning Ordinance Amendment – Malfeasance**

SUMMARY OF REQUEST:

Request to amend Section 2501, Creation and Membership, paragraph 4 of Article XXV, Zoning Board of Appeals, regarding the removal of a ZBA member for malfeasance.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Staff recommends amendment of Section 2501, paragraph 4 of Article XXV.

COMMITTEE RECOMMENDATION:

The Planning Commission recommended approval of the request at their 11/16 meeting. The vote was unanimous with B. Smith absent.

Staff Report (EXCERPT)
CITY OF MUSKEGON
PLANNING COMMISSION
REGULAR MEETING

November 16, 2006

Hearing; Case 2006-52: Staff initiated request to amend the Section 2501, (Creation and Membership, paragraph 4) of Article XXV, Zoning Board of Appeals, regarding the removal of a ZBA member for malfeasance.

BACKGROUND

Once again, this is an amendment to our zoning ordinance in order to bring it into compliance with the new Michigan Zoning Enabling Act of 2006. In this case, it is required by the Act that language be included in the ordinance that provides for removal of Zoning Board of Appeals members for "malfeasance", rather than just "misconduct". The zoning ordinance already addressed nonperformance of duty, so this amendment will remove "misconduct" and add "malfeasance" as a reason that a ZBA member "shall" be removed. The removal carries the condition that written charges are made and a public hearing held.

NEW LANGUAGE

Deletions are ~~crossed-out~~ and additions are in **bold.**

A member shall disqualify himself or herself from a vote in which the member has a conflict of interest. Failure of a member to disqualify himself or herself from a vote in which the member has a conflict of interest constitutes malfeasance in office. ~~Misconduct~~ **Malfeasance** shall include but not be limited to failure of members to disqualify themselves from a vote in which that member has a conflict of interest. The City Commission ~~may~~ **shall** remove a member of the ZBA for non-performance of duty or ~~misconduct~~ **malfeasance** in office, **upon written charges and after public hearing.**

DELIBERATION

I move that the amendment to Section 2501, (Creation and Membership, paragraph #4) of Article XXV, (Zoning Board of Appeals), of the City of Muskegon Zoning Ordinance, be recommended to the City Commission for (approval/denial).

CITY OF MUSKEGON

MUSKEGON COUNTY, MICHIGAN

ORDINANCE NO. 2210

An ordinance to amend Section 2501 (Creation and Membership, paragraph 4) of Article XXV, Zoning Board of Appeals of the Muskegon Zoning Ordinance regarding the removal of a ZBA member for malfeasance.

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

Section 2501, of Article XXV of the Muskegon Zoning Ordinance shall be amended, as follows:

A member shall disqualify himself or herself from a vote in which the member has a conflict of interest. Failure of a member to disqualify himself or herself from a vote in which the member has a conflict of interest constitutes malfeasance in office. Malfeasance shall include but not be limited to failure of members to disqualify themselves from a vote in which that member has a conflict of interest. The City Commission shall remove a member of the ZBA for non-performance of duty or malfeasance in office, upon written charges and after public hearing.

This ordinance adopted:

Ayes: Shepherd, Spataro, Warmington, Wierengo, Carter, Davis, Gawron

Nayes: None

Adoption Date: November 28, 2006

Effective Date: December 12, 2006

First Reading: November 28, 2006

Second Reading: N/A

CITY OF MUSKEGON

By: Linda S. Potter
Linda S. Potter, CMC, Acting City Clerk

CERTIFICATE

The undersigned, being the duly qualified clerk of the City of Muskegon, Muskegon County, Michigan, does hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the 28th day of November, 2006, at which meeting a quorum was present and remained throughout, and that the original of said ordinance is on file in the records of the City of Muskegon. I further certify that the meeting was conducted and public notice was given pursuant to and in full compliance with Act No. 267, Public Acts of Michigan of 1976, as amended, and that minutes were kept and will be or have been made available as required thereby.

DATED: November 29, 2006.

Linda S. Potter

Linda S. Potter, CMC
Acting Clerk, City of Muskegon

Publish: Notice of Adoption to be published once within ten (10) days of final adoption.

CITY OF MUSKEGON
NOTICE OF ADOPTION

Please take notice that on November 28, 2006, the City Commission of the City of Muskegon adopted an ordinance to amend Section 2501, paragraph 4 of Article XXV of the City of Muskegon Zoning Ordinance.

Copies of the ordinance may be viewed and purchased at reasonable cost at the Office of the City Clerk in the City Hall, 933 Terrace Street, Muskegon, Michigan, during regular business hours.

This ordinance amendment is effective ten days from the date of this publication.

Published December 2, 2006

CITY OF MUSKEGON

By _____
Linda S. Potter, CMC
Acting City Clerk

PUBLISH ONCE WITHIN TEN (10) DAYS OF FINAL PASSAGE.

Account No. 101-80400-5354

Date: November 28, 2006

To: Honorable Mayor and City Commissioners

From: Engineering

RE: Engineering Services Agreement with:
Hubbell, Roth & Clark, Inc.

SUMMARY OF REQUEST:

Enter into an engineering services agreement with Hubbell, Roth & Clark, Inc. out of Grand Rapids to perform route study and design for a none motorize connector between the Musketawa trail and the City's trail system along both, Laketon & Shoreline Dr. The design phase of this agreement is limited to the Laketon connection for a not to exceed fee of $52,517.

FINANCIAL IMPACT:

The fee will paid for though a grant the City had secured from the Michigan Department of Natural Resources (MDNR) and the West Michigan Trails and Greenways Coalition.

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Enter into an Engineering Services Agreement with Hubbell, Roth & Clark, Inc. This recommendation is the result of reviewing and evaluating six (6) proposals by City and MDNR staff. The evaluations were based on interviews (top two candidates), qualifications, fee and hours submitted.

COMMITTEE RECOMMENDATION:

2006-94(h)

CITY OF MUSKEGON
CONSULTING ENGINEERING AGREEMENT

Musketawa Trail Connector Corridor
PROJECT NAME

THIS AGREEMENT, made and entered into as of this 28th day of November, 2006, A.D., by and between **Hubbell, Roth & Clark, Inc., Consulting Engineers, of 801 Broadway N.W., Suite 215, Grand Rapids, Michigan 49504**, hereinafter referred to as the "CONSULTANT", And the City of Muskegon, a Public Body Corporation, hereinafter referred to as the CITY.

WITNESSETH:

WHEREAS, the CITY desires to engage the professional services of the CONSULTANT to perform certain engineering and other related services required in connection with the project as defined by the Work Plan Outline referred to as the "PROJECT".

WHEREAS, the CONSULTANT is willing to render the services desired by the CITY for the consideration hereinafter expressed; and

WHEREAS, the parties hereto have reached an understanding regarding the performance of the PROJECT work and desire to set forth this understanding in the form of a written agreement.

NOW THEREFORE, IT IS HEREBY AGREED by and between the parties hereto that:

I. THE CONSULTANT SHALL, perform professional services in connection with the PROJECT as hereinafter stated.

THE CONSULTANT SHALL, serve as the CITY'S Professional Representative in all of the Phases of the PROJECT, and will give consultation and advice to the CITY during the performance of his services as follows:

WORK PLAN OUTLINE

The work will consist of the following steps:

ENGINEERING SERVICES WORK PLAN

UNDERSTANDING OF THE PROJECT

HRC's understanding of the requirements of this project is based on the Request for Proposal, field visits to the site, attending the Information Meeting and the right-of-way (ROW) delineation update provided to the consultants on October 16, 2006 plus the follow up e-mail of Thursday, October 19, 2006. This understanding is fully outlined in the Technical Approach for Tasks 1 through 4 within this section. Please see the Additional Information Section for more information regarding this Proposal.

HRC understands that the City, in partnership with the Michigan Department of Natural Resources (MDNR) intends to construct a non-motorized trail between the current termination of the Musketawa Trail at Black Creek Road near Olthoff Road and the existing Shoreline Trail, which runs along the shoreline of Muskegon Lake. It is the general intent to construct the trail along former railroad ROWs and to utilize the existing Laketon Avenue Trail previously constructed by the City as part of its trail network within the City. It is intended to construct the trail in two phases. The first phase would extend from the end of the existing Musketawa Trail at Black Creek and Olthoff Roads to the end of the existing Laketon Trail on Laketon Avenue at Creston Street. The second phase would start at the existing Laketon Trail on Laketon Avenue at Madison Street and extend northwesterly along the abandoned railroad grade to the existing Shoreline Trail just west of the CSX Railroad tracks at Giddings Avenue. We understand that it is desired to follow off street routes wherever possible. However, following along street ROWs may be unavoidable in certain areas due to ROW issues, safety crossings, etc.

Based on the information discussed at the Pre-proposal Meeting, we understand that qualifications will be the primary means of selection with the proposed fee for the study and the design of the Phase I portion of the trail also being a factor. Since there are several alternatives and many more unknowns in the Phase II portion of the trail, the design fee for that portion will not be a factor in the selection but the price submitted will be utilized as a starting point for negotiating a final fee for design of that trail portion.

Several design challenges exist including the following:

- Securing Right-of Way or trail easements in a few isolated locations
- Crossing the arterial streets carrying significant traffic volumes including Laketon Avenue, Getty Street, Apple Avenue and the US-31 BR (Muskegon/Webster one-way pair or Moses Jones Parkway)
- Crossing the CSX active railroad tracks

There are appropriate and cost-effective solutions to all of these challenges. Identifying the feasible alternatives and developing a methodology for evaluating and selecting the most appropriate alternative will be a task of the design study.

Preliminary Design & Study

The Preliminary Design & Study will consist of the evaluation of several of the trail segment alternatives that can be used to connect the trail from point to point. A preliminary cost will be determined for each of the trail segments along with other non-cost factors such as

- The number of driveway crossings for the segment
- The number of street crossings for the segment
- Wetland impacts (decking required?)
- The trail quality (along or on the street vs. through a park-like setting, etc.)
- The difficulty of obtaining ownership or easement for a segment
- The trail grade required (steep (5% max) vs. relatively flat, etc.)

After development of all of the segments, a number of route alternatives will become apparent based on a particular set of individual trail segments. Each of the routes will be evaluated based on cost and non-cost factors identified above. From this, a matrix evaluation system will be developed to rank the various route alternatives. This approach has been used before with a great deal of success on a very similar study for the Paul Henry non-motorized trail for the Grand Valley Metro Council (GVMC). We cite as a project reference, Mr. Chris Dingman, Senior Transportation Planner of GVMC (616-776-7669). Both HRC Project Manager, Dennis Benoit and HRC CADD Designer John Ensley worked on this study and subsequent design efforts. A brief description of this methodology is described below.

Trail Segment Ranking System

In order to evaluate the various trail route alternatives, a number of factors would be compared between each of the alternatives in order to provide a distinctive factor between each. The trail quality can be compared by the percentage of its length that runs along a roadway versus the percentage that would run through residential areas or park land. The total length of each of these categories would be summarized for each of the trail alternatives and a point value would be assigned for each of these categories. For the trail length along high traffic roadways, a lower value would be assigned since the aspect of noise and vehicles makes the high traffic roadway route somewhat less desirable. For a segment along lower traffic public streets, a higher point value would be assigned since the noise level is generally lower. However, the trail user will still need to contend with turning traffic and driveway interferences along this type of a route. For sections of the trail that are off-road or away from public roads (such as along a former railroad grade, through parks or school property), a higher value would be assigned since this type of trail is

generally more pleasant to use since noise levels are lower and the potential for interfering traffic is substantially reduced. From the above three categories, an overall trail quality factor can be determined for each segment. Generally, those trails with substantial portions that are off-road or away from the high traffic roadways will receive relatively high values.

In order to determine the impact of public road crossings and driveway crossings on the overall trail quality, a small negative point valve would be assigned for driveway crossings and a higher negative value would be assigned for public road crossings. Since crossings are considered a negative to trail usage, the point value for the appropriate number of crossings would be subtracted from the overall score.

In addition to the overall trail quality, the project cost of each trail alternative needs to be factored in to its overall score. A point value of range would be chosen to compare the project cost of the various trail route alternatives. The point values would be higher for lower project cost alternatives and lower for the higher project cost alternatives. This rating penalizes the trail alternatives with a higher cost. The trail project cost for the alternatives being considered would be selected in an appropriate range to add to the point value for each of the alternatives, so that the project cost could be factored into its overall score.

Once the overall point value for trail quality, crossings and project cost are determined, an adjusted score for each of the trail alternatives would be summarized.

Since the assignment of point values can be relatively subjective, it may be difficult to provide a clear recommendation for trail route alternatives with fairly close scores after completion of this process. Subsequent discussion between members of the design team can be utilized in order to formalize a clear recommendation or to decide a close score between alternatives.

Phase I Preliminary Route

Our understanding of the most logical location for the Phase I portion of the trail and the basis for the trail design fee is described as follows. At the pre-proposal meeting, this preliminary route was discussed and it was agreed that this route would be used as a basis for pricing of the Phase I trail design. This route was chosen as potentially the least problematic and thus easiest to accomplish. The route would begin at the end of the existing trail just east of Black Creek Road and extend along the former railroad ROW up to the bridge over US-31. We understand that ownership of the railroad grade is questionable from west of Black Creek road to the US-31 ROW. We also understand that using the existing railroad bridge to cross US-31 is probably not feasible since MDOT will most likely want to remove the bridge and redesign the freeway in this location in order to avoid the low point in the freeway along with the attendant problems associated with storm water pumping, narrowed cross section, etc that the bridge causes. At the point where the

modification along Superior Street (modification of parking lanes, widening of existing sidewalks, etc.) to accommodate the trail between Laketon Avenue and the former railroad ROW.

From Getty Street to Apple Avenue, it appears that there is adequate ownership of the former railroad ROW to accommodate the trail. The trail could run along the northeast side of Nims Avenue to Wood Street and then along the southwest side of Ambrosia Street to Apple Avenue. For the Apple Avenue Crossing, it appears as though there is not adequate room within the existing ROW to construct an adequate size refuge island without impacting existing structures. Other means of traffic calming could be incorporated or a traffic signal could be considered for the trail crossing if it meets the warrants. If a simple crossing with warning signs is not sufficient, another alternative would be for the trail to follow along in front of, through or around the County Office Campus south of Apple Avenue to the signal at Pine Street and cross Apple Avenue at that signal but then the trail would need to run along street ROWs to connect back to the former railroad grade or possibly follow along another route.

From Apple Avenue to the Shoreline Trail, there are several alternative locations for the proposed trail as follows:

- Follow the former railroad grade to Muskegon Avenue (Moses Jones Parkway (US-31 BR)), then follow along the east edge of the US-31 BR northwest to Marquette Avenue, and then follow either Western avenue ROW or Ottawa Street to Giddings and then cross the CSX railroad to connect with the Shoreline Trail. It appears that there may be a vacated alley (approximately 30' wide) behind the properties on the west side of Yuba Street, which could be used for the trail along the east side of the US-31 BR.
- At grade crossings of the US-31 BR could be considered in conjunction with the above alternative. The existing traffic signal could possibly be used along with timing adjustments to cross the southbound US-31 BR and the northbound Shoreline Drive. Crossing the northbound US-31 BR and the southbound Shoreline Drive are not impeded by a traffic signal but adequate gaps may be created by the existing signals at Marquette Avenue and Terrace Street. MDOT may not permit an at-grade crossing since most of the current ROW has restricted pedestrian access from Spring Street to Marquette Avenue.
- Follow the former railroad grade from Apple Avenue to Yuba Street, then follow along the west edge of Yuba Street southeast to Spring Street, cross Muskegon Avenue (NB US-31 BR) at the traffic light, follow Spring Street across Webster Avenue (SB US-31 BR) to Western Avenue. At this location, there is a planned development (Terrace Lots), which will be constructing a non-motorized trail to Terrace Street. From the development, the trail could cross Shoreline Drive and the CSX railroad at the existing traffic signal to connect with the Shoreline Trail at that location.

- Follow Pine Street from Apple Avenue to Western Avenue. At this location, follow the trail through the proposed development as referred to above.
- A prefabricated trail bridge over Moses Jones Parkway (US-31 BR) could be considered along with the first alternative above roughly in line with the Hall Street ROW if that would be less costly than the additional trail length required to extend to the north or south as discussed above.

Project Schedule

HRC has provided a detailed schedule for Tasks 1 and 2, Preliminary Design and Study and Final Design. The detailed schedule for Tasks 3 and 4, Construction Services would be determined by the selected contractor. However, the overall time frame for construction will be dictated by the bidding documents and will be dependent on the final project funding.

For the schedule, we have provided a detailed breakdown based on our Technical Approach and Understanding of the Project which highlights deliverables, decision points and meetings.

TECHNICAL APPROACH

HRC's technical approach to accomplishing this project is divided into two primary tasks as requested in the RFP. The first task, Preliminary Design & Study, will begin with the Project Start meeting and end when a trail route is determined. The second task, Final Design, would begin after the determination of the preferred route and end with the completion of Final Plans and Specifications. The Final Design task is further subdivided into two Phases. The First Phase represents the portion of the trail from Black Creek Road to the existing Laketon Trail and the Second Phase would begin at the Laketon Trail and end at the Shoreline Trail. The Second Phase of the Final Design as well as the third and fourth tasks are not included within the scope of this contract. The following work plan summarizes the method by which the scope of services for Task 1 and 2 would be delivered.

Task 1: Preliminary Design & Study

The City of Muskegon in conjunction with and support by the Michigan Department of Natural Resources (MDNR) has undertaken a process to construct a continuation of the Musketawa Trail. This trail will eventually run between Grand Rapids and Muskegon and is also proposed to eventually connect to the Hart-Montague Trail through Whitehall. Completing the section through Muskegon will also allow trail users access to the existing City-owned trail network along Muskegon Lake and Lake Michigan.

Project Start Meeting

HRC proposes to hold a meeting to review the needs and scope of the trail with the City and MDNR. We understand that the City and MDNR are also considering an application for Enhancement Grant Funding through MDOT. If possible, representatives from the Muskegon TSC could also attend to discuss the project schedule and requirements should funding be realized. HRC would want to discuss the City's desires for progress updates and stakeholders to be included. In addition, budgeting, right-of-way acquisition, the environmental assessment and the project schedule would be discussed. This meeting also provides an opportunity to discuss sensitive design issues that could be implemented with the project.

- Deliverables: Meeting Summary
- Meetings: Project Start Meeting

Preliminary Design Concepts

Developing preliminary design concepts will be lead by HRC's Project Manager, Dennis Benoit, P.E. and Transportation Director, Richard Beaubien, P.E., P.T.O.E. Under their direct supervision, HRC's traffic engineers and transportation planner will thoroughly review the critical issues for the trail including the right-of-way and tax parcel information, vehicle counts, crash data and pedestrian access information along the critical crossing locations.

Based on these results, HRC's Project Manager will work jointly with HRC transportation staff to develop and analyze alternatives for design. HRC expects to develop and analyze several different route alternatives as discussed previously. HRC will provide the City the Preliminary Design Concept report with a cost estimate, preliminary ROW requirements, options for maintaining traffic during any necessary roadway improvements, utility impacts, and access management recommendations for each alternative. Existing aerial photo plans and property description information will be utilized during the study phase to assess the route options and develop preliminary costs.

The alternatives will be presented to the City in a workshop for a comprehensive discussion and evaluation of the benefits and costs of each alternative. A ranking system for each alternative will be developed to compare cost and non-cost factors as discussed earlier. The level of detail and research for this task is critical in order to provide the City with accurate information so that sound decisions can be made regarding the future of this trail corridor. While MDNR and the City owns significant property along the former railroad ROW, it is imperative to the Project Schedule that ROW needs are identified as early as possible. A Preliminary identification of potential ROW needs will be included within the Preliminary Design Study. At the conclusion of this workshop, the City is expected to give HRC approval to proceed with a preferred design concept and preliminary horizontal alignment.

At this time, it would also to solicit public input on the preferred trail route so that adjustments can be made before proceeding into Final Design. If desired, we could present the preferred concept plan.

- Deliverables: Preliminary Design Concept Report, Meeting Summary
- Meetings: Design Concept Review and Selection (Coordinate with Public Information Meeting)

Task 2: Final Design

HRC's design approach for this task will be broken up into three steps: Base Plan, Preliminary and Final Engineering. This methodology is based on the MDOT Program/Project Management System (PPMS) Tasks for plan development. The MDOT tasks have proven to be a very effective method to achieve the desired outcome in a timely and thorough manner. While using the MDOT PPMS Tasks as a guideline, HRC puts special early emphasis on items that directly impact the project schedule and cost. For this project, these items would include assessment of right-of-way impacts, and MDOT permitting for the trail location including any required clear zone determination. HRC has had success with the early coordination of these items on other projects. The three steps would be similar for each of the two Phases of this project and it is intended that the design for these two phases would be completed concurrently so as to improve efficiency.

Step I – Base Plan Engineering

Conduct Topographic Survey for Design

Prior to conducting the topographic survey the Project Manager, Design Engineer and the Survey Subconsultant will meet to further discuss and identify the project scope and project requirements.

The survey will be performed under the direct supervision of Meyers, Beuche & Nies, P.C. (MBN) MBN Professional Surveyors, licensed with the State of Michigan, have worked together with HRC on several projects and we are familiar with and comfortable with their level of detail and quality of work product. Prior to commencement, all factors that will affect the design product will be taken into consideration and a pre-survey records research will be made to furnish the survey field crew with sufficient supporting information to assure an efficient and complete topographic design survey. HRC will contact utility companies for location maps, research land records and attempt to obtain any development plans which may be available. Other research may include available records of horizontal and vertical control and Land Corner Recordation Certificates to aid in the locating and preservation of sectional control within the limits of influence. It is not anticipated that wetland will be an issue on this project as the route is following along improved or previously improved roadways. If the preferred route at the conclusion of the study deviates from the originally intended route, the need for wetland delineation will be determined. Similarly,

it is not anticipated that soil borings will be necessary since the route will follow along previously used roadbeds. If it is determined that additional geotechnical information is necessary due to a change in route, geotechnical information can be obtained by hand auger borings at a very modest cost. If these are necessary, their locations will be surveyed so they can be accurately located on the plans.

The survey will be conducted utilizing a combination of Global Positioning System (GPS) technology and Total Station data collection. All topographic information will be collected, coded and elevated by these processes. The topographic data will be post-processed by qualified office technicians and will be subjected to our quality assurance and quality control (QA/QC) procedure prior to submitting the information for design. The survey will be conducted "on the ground" and will not incorporate the use of aerial mapping. This is the most accurate method of surveying. The topographic limits will be determined by the preferred route selected at the conclusion of the study.

As an alternate, if MDOT Enhancement Grant Funding is not utilized on a specific Phase of the Project, we suggest that a significant portion of the trail could be constructed without a detailed topographic survey. In these locations, where there is little elevation change, property boundaries are very well defined and drainage would not likely be problematic, the trail could be constructed utilizing aerial photographic backgrounds as the plan medium along with typical cross sections. This technique has been utilized with success before and should provide cost savings for the project. Detailed elevations and topographic information would still be provided where necessary for permits such as along MDOT trunklines. Our proposed price includes a deduct for elimination of a portion of the topographic survey should this option be exercised.

For the duration of the survey the MBN crews will practice safety standards in conjunction with their safety procedures and manual and that of local and state regulatory agencies.

Horizontal and Preliminary Vertical Alignment

Task 1, Preliminary Design & Study, will produce the proposed horizontal alignment. The preliminary vertical alignment would be developed utilizing the horizontal alignment and design survey. In most areas, little change in existing grades are anticipated. However, there will be some areas where changes in the vertical grade will be necessary so that the trail will be visible to motorists and drainage issues can be avoided. This final horizontal alignment, along with the preliminary vertical alignment, would be the basis of the preparation of the Identification of Right-of-Way Needs.

Identification of Right-of-Way Needs

While MDNR and the City owns significant property along the former railroad ROW, it is imperative to the Project Schedule that ROW needs are identified as early as possible. A Preliminary identification of potential ROW needs will be included within the Preliminary Design and Study. The Final ROW limits should be known at this point of design and the affected parcels will be identified. Identifying parcels needing acquisition would allow for any title work and appraisals to begin. HRC has found that beginning the title and appraisal work early in the ROW process helps keep the project on the desired schedule.

- Deliverables: List of Affected Parcels

Prepare Base Plans

HRC would prepare site condition plans utilizing electronic topographic data collected, and utility location information as received from utility companies and governmental agencies. Other information, as obtained from record drawings, if available, would be included. The work product at this stage consists of plans that accurately display existing site conditions.

The HRC Project Manager would coordinate the preparation of Base Plans with the Design Engineer, and at this point, the plans would reflect the design parameters discussed at the Project Start Meeting, including horizontal and preliminary vertical alignment.

Utility coordination and relocation would begin in this Phase of the project. An initial contact would be made with the utility companies to inform them of the project scope and schedule. During this phase, potential conflicts will be identified along with the review of any utilities that occupy easements outside of the ROW. This information is crucial to the identification of the ROW needs and the Project's budget.

HRC would also identify preliminary permit needs for the project. This enables contact to be made with the appropriate agencies to notify them of the project and to determine, up front, if any special considerations will be needed.

The Base Plans would be submitted to the QA/QC Engineer, David Wilcox, P.E., for review and approval prior to submittal to the City. Mr. Wilcox is in charge of HRC's Field Operations which includes surveying, construction engineering and observation and testing. The QA/QC review would include a thorough field visit to ensure the topographic survey is complete and to identify special conditions. The review would also include ensuring the Base Plans are of the highest quality and accuracy. A Base Plan Review Meeting would be held with the City to go over any comments the City may have.

- Deliverables: Base Plans, Meeting Summary
- Meetings: Base Plan Review Meetings

Step II – Preliminary Engineering

Private Utility Evaluation and Coordination

During this Phase, HRC would continue to evaluate the locations of and impacts to existing private utilities (gas, oil, electric, telephone, fiber optic, etc.). As part of this evaluation, HRC would contact the utility companies and identify critical areas where additional information (i.e. elevations), or relocations would be needed. As mentioned previously, HRC schedules an early Utility Meeting during Base Plan Preparation. After this meeting, revisions to the plans are made based on additional information provided by the utility companies. During the Preliminary Engineering Phase, individual meetings can be scheduled with the utility companies wherever significant relocations are anticipated.

HRC has extensive experience in coordinating relocations with a variety of utility companies such as AT&T, Michigan Consolidated Gas, Detroit Edison, Consumers Energy, and miscellaneous fiber optic companies. Our office is familiar with the review and understanding of private utility plans as well as the processes and scheduling needed for relocations or coordination.

Develop the Construction Zone Traffic Control Plan

If significant changes are proposed for the crossings along the arterial streets (Apple Avenue, Getty Street, Marquette Avenue, Muskegon Avenue, Webster Avenue, etc) preparing a construction zone traffic control plan will be necessary. Special attention would be given at this time to the City, MDOT and local issues. HRC would be in contact with various agencies and pertinent information on special events, or local ordinance requirements that impact the construction schedule, operations, or traffic control would be obtained. Also, pedestrian access and needs would also be critical.

HRC would suggest that Maintaining Traffic would be a part of the Grade Inspection (GI) meeting if significant changes to the streets such as a refuge island are included. At this meeting items discussed would include scheduling of construction and utility relocation, right-of-way acquisition needed for utility relocations and major items of concern with respect to Maintaining Traffic.

The Construction Zone Traffic Control Plan would be revised as necessary based on comments received at the GI meeting. The HRC Project Manager and Design Engineer would coordinate preparation of the Plan. The revised Construction Zone Traffic Control Plan would be submitted, following a QA/QC review, with the Preliminary Plan package to the City for review and discussion at the GI meeting.

Develop Right-of-Way/Easement Documentation (if necessary)

Additional items involved in this Phase that are not previously discussed would include, but not be limited to:

- Permanent and temporary soil erosion and sedimentation control design
- Design for any connecting sidewalk reconstruction or filling of gaps
- Engineer's estimate of construction
- Special provisions

Preliminary plans reflecting all revision comments and recommendations made at the Base Plan Review Meeting would be assembled by HRC and given a QA/QC review. Preliminary plans and all special provisions and estimate would be submitted to the City by the HRC Project Manager. HRC would be in contact with the City as necessary to provide assurances that the project is progressing according to the schedule. This involvement by the City is imperative for a successful project.

QA/QC and Constructability Review

HRC would have the QA/QC Engineer review the plans for quality, consistency, and constructability. This would include a thorough field review of the site. This review would include, but not be limited to, reviewing the plans, specifications, and bid items to resolve errors and omissions. In addition, permits that are needed from Local and State agencies would be confirmed. Also, bid quantities, clarity of the specifications and plans, and constructability would be reviewed. The constructability review would include assessing conflicts with both above and below ground utilities, appraise the traffic staging plans with respect to balancing the needs of the public with the needs of the contractor, safety, and to review the entire design for potential cost overruns and construction delays.

Once corrections have been made based on the QA/QC review, preliminary plans, special provisions, and estimate would be submitted for the Grade Inspection Meeting to the City by the HRC Project Manager.

Permitting

HRC would perform all design and support services necessary to obtain the permits required for this project. These permits would include MDOT and MDEQ Soil Erosion and Sedimentation Control, if necessary. The permit application process is a vital step in the Preliminary Engineering Phase due to its impact to the schedule and the design implications of permit approval. HRC would schedule preliminary meetings with key agencies prior to permit application submittal to address any concerns and answer questions that otherwise could delay permit issuance. For the City's portion of the project, MDEQ Permits may be issued through the Transportation Unit of the Land and Water Management Division and not through the District Office of the Land and Water management Division. HRC has a great working

relationship with the Transportation Unit and anticipates no difficulties in obtaining the MDEQ permits either for the wetland impacts or the enclosure of the Drain.

Review Preliminary Plans (Grade Inspection)

The Grade Inspection meeting (GI) would be scheduled by the MDOT Project Manager to review the preliminary plans. This important meeting produces technical review comments and guidance to the design team in producing final plans and specifications. The GI meeting would produce plan markups that are vital to the production of final plans.

- Deliverables: Preliminary Plans, Meeting Summary
- Meetings: Grade Inspection (Preliminary Plan Review)

Step III Final Engineering

Develop Final Plans and Specifications

The HRC Project Manager and Design Engineer would coordinate the preparation of Final Plans and Specifications. The plans would be developed based on comments from the GI meeting, along with any additional comments that are received. Also, requirements and consideration needed based on right-of-way negotiations would also be addressed at this point. Permitting requirements would also be incorporated into the plans and specifications. All previous items discussed would be updated.

The HRC Project Manager and the QA/QC Engineer will review the Final Plans and Specifications. Among the items included in the submittal package would be reproducible plan sheets, approved special provisions and supplemental specifications, engineer's estimate, and written responses to Preliminary Plan Review comments.

- Deliverables: Final Plans and Specifications and Engineer's Cost Estimate

WORK PLAN SUMMARY

HRC Responsibilities During Execution of Work Plan

- All meeting summaries are prepared and distributed to all meeting attendees within one week of the meeting.
- Attend public hearings, information meetings, open houses, etc., and provide display materials as required. HRC anticipates this may be done twice during the duration of the project.
- HRC prepares and submits all necessary information as needed for permit applications to the appropriate agency. These agencies would include, but are not limited to, MDOT, MDEQ and Soil Erosion and Sedimentation Control.

- Whenever design alternatives or discoveries change the scope, limits, quantities, costs, or right-of-way, HRC would contact the City immediately.
- Preparation of Preliminary Design Concept.
- Preparation of plans, specifications and estimates for bidding.

Submittals

Throughout the project various submittals shall be made to the City for review and approval, or comment. These would include the following:

- Prepare and submit Preliminary Design Concept.
- Prepare and submit MDOT Programming Application.
- Prepare and submit the preliminary horizontal and vertical alignments to the City for review.
- Prepare and submit plans, cross-sections, specifications and estimates, as necessary, prior to each review meeting.
- Prepare and submit right-of-way and easement acquisition documents to the City so that they may acquire the needed properties. Title Commitments will be coordinated by HRC and paid for separately by the City.
- Prepare and submit all permit applications.
- Prepare and submit sets of construction drawings, supplemental specifications and special provisions, and engineer's estimate for the Owner's review prior to the Base Plan Review meeting, Preliminary Engineering (GI) meeting, and other review meetings.
- Final bid documents, Engineer's Estimate, copies of the Proposal and any other information required for bidding.
- Prepare and submit all construction estimates.

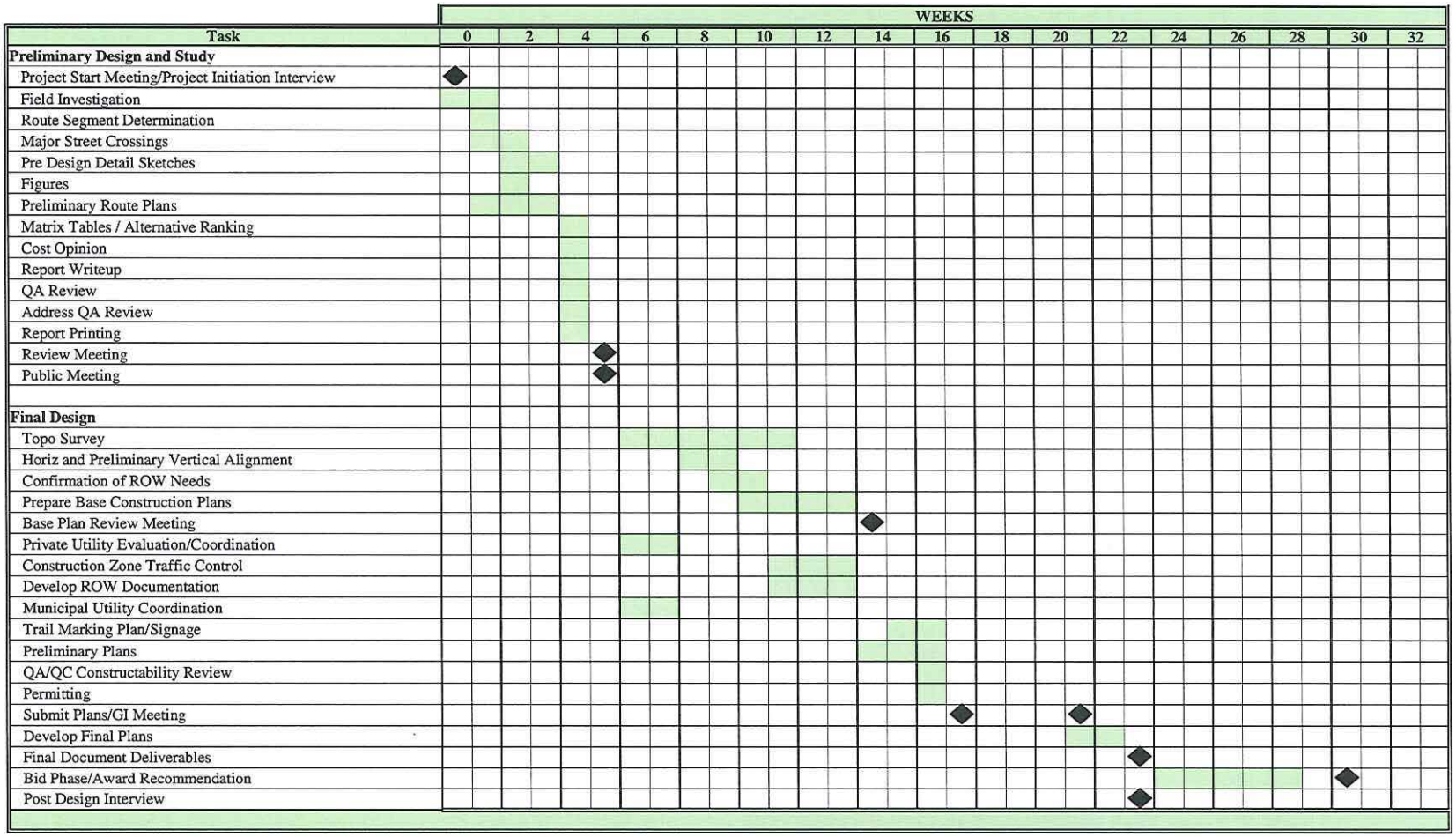
Owner Responsibilities

We understand the City will be responsible for the wetland mitigation site selection and for title work, appraisals and ROW/easement acquisition. The City will be issuing the plans for Bidding.

Schedule

HRC has provided schedules for the Preliminary Design & Study and Final Design (Tasks 1 and 2) as part of this proposal on the following page.

Schedule
Study and Design Services for
Musketawa-Shoreline Non-Motorized Trail Connector
City of Muskegon



FEE SCHEDULE

ASSUMPTIONS REGARDING WORK INCLUDED IN BASE PRICE

- The Phase I trail will be constructed along the existing former railroad grade to US-31 and along US-31 to Laketon and then west to Creston.
- Assumes that work will be authorized in November 2006 and that design work will be completed in 2007.
- City will act as Project Engineer for the MDOT funded Enhancement Projects.
- Title Searches will be paid for by the City directly to title insurance company with coordination by HRC.
- Costs for Parcel Acquisition and Negotiations with Property Owners will be by others.
- Costs for Legal Descriptions and Exhibits needed for parcel or easement acquisition will be determined on a price for each parcel.
- Route for trail design will follow the assumed trail routes.
- Traffic signal design or other electrically energized traffic control devices are not included.
- Design of Bridge Footings is not included.

FEE SCHEDULE

The fee schedule for this project is outlined below:

• Preliminary Design and Study	$18,362.00
• Final Design (Phase I)	$34,155.00
• Total	$52,517.00

GENERAL PROVISIONS

The CONSULTANT shall:

1. Follow standard accounting practices and permit the CITY to inspect its PROJECT books and records at any reasonable time. Such records are to be kept available for three (3) years from the date of the final payment for work conducted under this Agreement.

2. Have in its employ a sufficient number of qualified employees available to complete the PROJECT in accordance with the schedule established upon the authorization of the services as outlined herein.

3. Show evidence of Workmen's Compensation Insurance, said insurance to be required by law. Maintain and show evidence of Professional Liability Insurance in the amount of **$500,000**, maintain General Liability Insurance with a limit of liability not less than **$500,000**, and name the CITY OF MUSKEGON as additional insured with policy(ies) not being cancelled or materially altered without at least thirty (30) days notice to the CITY.

4. Commence work on the PROJECT as set forth in this Agreement only upon receipt of written notice from the CITY.

5. During the performance of the services herein provided for, be responsible for any loss or damage to the documents, hereinafter enumerated as belonging to the CITY, while they are in its possession. Restoration of lost or damaged documents shall be at the CONSULTANT'S expense.

6. The CONSULTANT will perform all work on this project with its own employees except as noted herein, or as approved by the CITY.

7. CITY INCOME TAX WITHHOLDING. The CONSULTANT shall withhold Muskegon City income taxes from each and every employee who is subject to same, and shall pay the income tax due, if any. CONSULTANT shall further require the same of each subconsultant or other party with whom CONSULTANT works or from whom CONSULTANT obtains goods or services for the project. Payroll submissions required by this agreement shall include full information showing said withholding. The CITY may withhold payments otherwise due to the CONSULTANT to assure compliance with this agreement or cure noncompliance.

II. THE CITY WILL:

A. Provide to CONSULTANT existing data as it is available from its files.

B. Pay for and in consideration of the services rendered by the CONSULTANT in carrying out the PROJECT on the basis of costs as outlined in the proposal under the sections entitled "ENGINEERING SERVICES WORK PLAN" and "CURRENT FEE SCHEDULE" shall not exceed **$52,517**. Any increase in the

amount to be paid to the CONSULTANT shall be by amendment to this Agreement. CONSULTANT shall render monthly billings based on an hourly rate times a multiplier up to the not to exceed amount. CITY will make payment of these invoices within thirty (30) days of receipt.

C. Determine actual costs for the PROJECT work required and performed in accordance with the following terms:

1. Direct Salary Costs: Actual Direct Salary costs of members of the firm and staff personnel on the basis of salary, on an hourly basis (without markup) actually expended for said personnel for the time such personnel are directly utilized on the PROJECT.

2. Other Direct Costs: Actual cost of other material and services as may be required hereunder but which are not normally provided as part of the overhead of the CONSULTANT. All actual costs shall be itemized and certified as paid to specifically named firms or individuals, and shall be supported by proper receipts. Examples of items normally treated as direct costs are as follows.

Computer services, travel, transportation, printing and telephone costs related to the PROJECT work performed. Engineering services (by others) such as surveys, professional engineering services, etc., and items other than engineering services related to the PROJECT.

3. Overhead, Indirect Costs and Profit: The overhead and indirect costs incurred by the CONSULTANT during performance of the PROJECT work. The amount of overhead, indirect costs and profit payment, including payroll overhead, will be calculated as a percentage of all direct salary costs related to staff personnel. Overhead and indirect costs shall include those costs which, because of the incurrence for common or joint objectives are not readily subject to treatment as a direct cost. **The percentage rate, for Payroll Overhead (Direct Salary Costs), Firm Overhead and Profit, which will be applied to direct labor costs for progress payments, is 290%**

It is agreed that this rate is the final overhead rate and will be used for all work related to the PROJECT.

D. Make payments to the CONSULTANT in accordance with the following procedures:

1. Progress payments shall be made for reimbursement of amount earned to date and shall include direct salary costs, other direct costs, calculated amounts for overhead, indirect costs and profit using the aforementioned rate.

2. Partial payments will be made upon the submissions by the CONSULTANT of an Invoice Voucher, accompanied by properly completed reporting forms and such other evidence of progress as may be

required by the CITY. Partial payments shall be made only once a month and within thirty (30) days of receipt by the CITY.

3. Final billing under this contract shall be submitted in a timely manner but not later than six months after completion of the work. Billings for work submitted later than six months after completion of the work will not be paid. Final payment will be made upon completion satisfactory to the CITY.

E. If work on the Agreement is terminated before completion, pay the CONSULTANT actual costs incurred for the work up to the time of termination of this Agreement, compensate the CONSULTANT in full for all overhead costs defined above and prorated profit on work completed. The aforesaid payment shall be an amount which can be established by the CONSULTANT from his accounts and records, and verified by the CITY. In no case shall the amount paid to the CONSULTANT for partial completion of work under this Agreement exceed the amount the CONSULTANT would receive had all work be completed.

III. IT IS FURTHER AGREED THAT:

A. Upon completion or termination of this Agreement, all documents prepared by the CONSULTANT, including tracings, drawings, estimates, specifications, field notes, investigations, studies, etc., as instruments of service, shall become the property of the CITY. The CONSULTANT may keep a copy of materials developed through this contract.

B. No portion of the PROJECT work, hereto before defined, shall be sublet, assigned, or otherwise disposed of except as herein provided or with the prior written consent of the CITY. Consent to sublet, assign or otherwise dispose of any portion of said work shall not be construed to relieve the CONSULTANT of any responsibility for the fulfillment of this Agreement.

C. All questions which may arise as to the quality and acceptability of work, the manner of performance and rate of progress of work, and the interpretation of plans and specifications shall be addressed by the CONSULTANT to the satisfaction of the CITY. All questions as to the satisfactory completion shall be decided by the CITY.

D. Any change in work to be performed by the CONSULTANT involving extra compensation must be authorized in writing by the CITY prior to the performance thereof by the CONSULTANT.

E. The CONSULTANT agrees that it has not employed or retained any company or person other than bona fide employees working solely for the CONSULTANT, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than bona fide employees working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon, or resulting from the award or making of the Agreement. For breach or violation of this warranty, the CITY shall have the right to annul this Agreement without

liability or, at its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

F. The CONSULTANT specifically agrees that in the performance of engineering services herein enumerated, by him, or by an approved subcontractor, or anyone acting in its behalf, they will comply with any and all State, Federal, and Local statutes, ordinances and regulations and obtain all permits that are applicable to the entry into and the performance of this Agreement.

G. No charges or claims for damages shall be made by the CONSULTANT for delays or hindrances from any cause whatsoever during the progress of any portions of the services specified in this Agreement, except as hereinafter provided.

In case of a substantial delay on the part of the CITY in providing to the CONSULTANT access to the site, necessary information or approval to proceed with the work, resulting, through no fault of the CONSULTANT, in delays of such extent as to require the CONSULTANT to perform his work under changed conditions not contemplated by the parties, the CITY will provide supplemental compensation limited to increased costs incurred as a direct result of such delays. Any claim of supplemental compensation must be in writing and accompanied by substantiating data. Authorization of such supplemental compensation shall be by an amendment to this Agreement. When delays are caused by circumstances or conditions beyond the control of the CONSULTANT, as determined by the CITY, the CONSULTANT shall be granted an extension of time for such reasonable period as may be mutually agreed upon between the parties, it being understood, however, that the permitting of the CONSULTANT to proceed to complete any services, or part of them, after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of the CITY of any of its rights herein set forth.

H. In case the CONSULTANT deems extra compensation will be due them for work or materials not clearly covered in this Agreement, or not ordered by the CITY as a change, or due to changed conditions, the CONSULTANT shall notify the CITY in writing of his intention to make claim for such extra compensation before they begin such work.

Failure on the part of the CONSULTANT to give such notification will constitute a waiver of the claim for such extra compensation. The filing of such notice by the CONSULTANT shall not in any ways be construed to establish the validity of the claim. Such extra compensation shall be provided only by amendment to this Agreement.

I. The CONSULTANT agrees to comply with the following insurance and indemnity requirements:

1. Hold Harmless Agreements: The CONSULTANT agrees to the fullest extent permitted by law, to indemnify and hold harmless the CITY, its elected and appointed officials, employees, volunteers, and others working on behalf of the CITY (collectively, CITY) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the CONSULTANTS negligent performance of professional services under this agreement and that of its subconsultants or anyone for whom the CONSULTANT is legally liable. The obligation to defend and hold harmless extends to CONSULTANT'S employees, agents, subcontractors, assigns and successors.

   The CITY agrees, to the fullest extent permitted by law, to indemnify and hold harmless the CONSULTANT, its elected and appointed officers, Directors, employees and subcontractors (collectively, CONSULTANT) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the CITYS negligent acts in connection with the project and the acts of its contractors, subcontractors or consultants or anyone for whom the CITY is legally liable. The obligation to defend and hold harmless extends to CITYS employees, agents, subcontractors, assigns and successors.

   Neither the CONSULTANT nor the CITY shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.

2. Consultant Insurance Requirements: CONSULTANT shall not commence work under this contract until obtaining the insurance required under this paragraph. All coverage's shall be with insurance companies licensed and admitted to do business in the State of Michigan and Best Rated A VIII. All coverage shall be with insurance carriers acceptable to the CITY.

3. Workers' Compensation Insurance: The CONSULTANT shall procure and maintain during the life of this contract, Workers' Compensation Insurance, including Employer's Liability coverage, in accordance with all applicable Statutes of the State of Michigan.

4. General Liability Insurance: The CONSULTANT shall procure and maintain during the life of this contract, commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than **$500,000** per occurrence and/or aggregate combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: (a) Contractual Liability; (b) Products and Completed Operations; (c) Independent Contractor's Coverage; (d) Broad Form General Liability Extensions or equivalent.

5. Motor Vehicle Liability: The CONSULTANT shall procure and maintain during the life of this contract Motor Vehicle Liability Insurance, including Michigan No-Fault Coverage's, with limits of liability of not less than **$500,000** per occurrence or combined single

limit Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles.

6. Professional Liability Insurance: The CONSULTANT shall procure and maintain during the life of this contract and during the performance of all services, Professional Liability Insurance covering all performances from the beginning of the Consultant's services on a "claims made basis" and shall maintain coverage from commence of this contract until six (6) months following completion of the Consultant's work with limits of liability not less than **$500,000** per occurrence.

7. Additional Insured: Commercial General Liability and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating the following shall be "Additional Insured": The CITY OF MUSKEGON, all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof and The State of Michigan Department of Natural Resources (MDNR).

8. Cancellation Notice: Workers' Compensation Insurance, General Liability Insurance, Motor Vehicle Liability Insurance, and Professional Liability Insurance, as described above, shall include an endorsement stating the following: It is understood and agreed that Thirty (30) Days Advance Written Notice of Cancellation, Non-Renewal, Reduction and/or Material Change shall be sent to: CITY OF MUSKEGON ENGINEERING DEPARTMENT.

9. Proof of Insurance Coverage: The CONSULTANT shall provide the CITY at the time of the contracts are returned by him for execution, certificates and policies as listed below:

   (a) Two (2) copies of Certificate of Insurance for Workers' Compensation Insurance.

   (b) Two (2) copies of Certificate of Insurance for Commercial General Liability Insurance.

   (c) Two (2) copies of Certificate of Insurance for Vehicle Liability Insurance.

   (d) Two (2) copies of Certificate of Insurance for Professional Liability Insurance.

   (e) If so requested, certified copies of all policies mentioned above will be furnished.

   If any of the above coverage's expire during the term of this contract, the CONSULTANT shall deliver renewal certificates and/or policies to the CITY as soon as is practical prior to the expiration date.

J. This Agreement shall be terminated upon advisement to the CONSULTANT by the CITY that the PROJECT work is completed and accepted, with the exception that the Professional Liability Insurance at the identified limits of coverage shall remain in effect for a period of six (6) months following the date of said advisement of termination.

K. Upon execution of this Agreement by the parties hereto, the same shall become binding on the parties hereto and their successors and assigns.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals by their duly authorized agents and representatives the day and year first above written.

HUBBELL, ROTH & CLARK, INC.

Tamara G. Bishop — 1-30-07

Witness — Thomas M. Doran, Vice President — Date

CITY OF MUSKEGON

Witness — Stephen J. Warmington, Mayor — Date

Irene Dempsey — Linda Potter

Witness Irene Dempsey — Linda Potter, Acting City Clerk — Date

Commission Meeting Date: November 28, 2006

Date: **November 17, 2006**

To: **Honorable Mayor and City Commissioners**

From: **Planning & Economic Development** CbC

RE: **Zoning Ordinance Amendment – Multiple Family Uses in B-3**

SUMMARY OF REQUEST:

Request to amend Section 1201, Special Land Uses Permitted, # 7 of Article XII, B-3, Central Business District, to allow multiple family developments with a special use permit.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Staff recommends the amendment of Section 1201, # 7 of Article XII.

COMMITTEE RECOMMENDATION:

The Planning Commission recommended approval of the request at their 11/16 meeting. The vote was unanimous with B. Smith absent.

Staff Report (EXCERPT)
CITY OF MUSKEGON
PLANNING COMMISSION
REGULAR MEETING

November 16, 2006

Hearing; Case 2006-53: Staff initiated request to amend Section 1201 (Special Land Uses Permitted, #7) of Article XII (B-3, Central Business District) to allow multiple family developments with a special land use permit.

BACKGROUND

Our downtown area is developing very quickly and the residential element is becoming very important to the "new" downtown. Presently, the only residential uses allowed are those that are part of a building. No newly constructed residential buildings are allowed. Planning staff believes that multiple family residential uses should be added to the B-3, Central Business District as a special land use, where the design can be guided by the Planning Commission. The proposed language is very similar to that used in the H, Heritage zoning district for multifamily residential uses.

NEW LANGUAGE

Deletions are ~~crossed out~~ and additions are in **bold.**

New #7

7. **Multiple family residential uses of various types and densities. Any new multiple family construction shall be compatible and/or complementary to the character of the surrounding area as determined by the Planning Commission.**

DELIBERATION

I move that the amendment to Section 1201, (Special Land Uses Permitted, #7), of Article XII, (B-3, Central Business District), of the City of Muskegon Zoning Ordinance, be recommended to the City Commission for (approval/denial).

CITY OF MUSKEGON

MUSKEGON COUNTY, MICHIGAN

ORDINANCE NO. 2211

An ordinance to amend Section 1201 (Special Land Uses Permitted, #7) of Article XII, B-3, Central Business District, of the Muskegon Zoning Ordinance regarding to allow multiple family developments with a special land use permit.

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

Section 1201, of Article XII of the Muskegon Zoning Ordinance shall be amended, as follows:

(New #7)

7. Multiple family residential uses of various types and densities. Any new multiple family construction shall be compatible and/or complementary to the character of the surrounding area as determined by the Planning Commission.

(Renumbering)

8. Accessory buildings and accessory uses customarily incidental to any of the above Special Land Uses Permitted.

9. Uses similar to the above Special Land Uses Permitted.

This ordinance adopted:

Ayes: Spataro, Warmington, Wierengo, Carter, Davis, Gawron, Shepherd

Nayes: None

Adoption Date: November 28, 2006

Effective Date: December 12, 2006

First Reading: November 28, 2006

Second Reading: N/A

CITY OF MUSKEGON

By: Linda S. Potter
Linda S. Potter, CMC, Acting City Clerk

CERTIFICATE

The undersigned, being the duly qualified clerk of the City of Muskegon, Muskegon County, Michigan, does hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the 28th day of November, 2006, at which meeting a quorum was present and remained throughout, and that the original of said ordinance is on file in the records of the City of Muskegon. I further certify that the meeting was conducted and public notice was given pursuant to and in full compliance with Act No. 267, Public Acts of Michigan of 1976, as amended, and that minutes were kept and will be or have been made available as required thereby.

DATED: November 29, 2006.

Linda S. Potter

Linda S. Potter, CMC
Acting Clerk, City of Muskegon

Publish: Notice of Adoption to be published once within ten (10) days of final adoption.

CITY OF MUSKEGON
NOTICE OF ADOPTION

Please take notice that on November 28, 2006, the City Commission of the City of Muskegon adopted an ordinance to amend Section 1201, # 7 of Article XII of the City of Muskegon Zoning Ordinance.

Copies of the ordinance may be viewed and purchased at reasonable cost at the Office of the City Clerk in the City Hall, 933 Terrace Street, Muskegon, Michigan, during regular business hours.

This ordinance amendment is effective ten days from the date of this publication.

Published December 2, 2006

CITY OF MUSKEGON

By _____
Linda S. Potter, CMC
Acting City Clerk

PUBLISH ONCE WITHIN TEN (10) DAYS OF FINAL PASSAGE.

Account No. 101-80400-5354

Commission Meeting Date: November 28, 2006

Date: **November 17, 2006**

To: **Honorable Mayor and City Commissioners**

From: **Planning & Economic Development** CBC

RE: **Zoning Ordinance Amendment – Eliminate Minimum Lot Size in B-3**

SUMMARY OF REQUEST:

Request to amend Section 1200, (Principal Uses Permitted, # 9) of Article XII, B-3, Central Business District, to eliminate the minimum lot requirements for residential uses.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Staff recommends the amendment of Section 1200, # 9 of Article XII.

COMMITTEE RECOMMENDATION:

The Planning Commission recommended approval of the request at their 11/16 meeting. The vote was unanimous with B. Smith absent.

Staff Report (EXCERPT)
CITY OF MUSKEGON
PLANNING COMMISSION
REGULAR MEETING

November 16, 2006

Hearing; Case 2006-54: Staff initiated request to amend Section 1200 (Principal Uses Permitted, Article XII (B-3, Central Business District) to eliminate the minimum lot requirements for residential uses.

BACKGROUND

Presently, our zoning requires a minimum lot size of 21,780 sq. ft., which is half an acre, for residential uses as part of a building in a B-3 zoning district. Considering the size of most downtown parcels, this requirement seems way too large for a central business district. Since we have been encouraging more residential downtown, it seems appropriate to remove this requirement to make residential development as part of a building easier to accomplish, as well as encourage construction of new residential units.

NEW LANGUAGE

Deletions are ~~crossed out~~ and additions are in **bold.**

9. Residential uses as part of a building in this business zone shall be allowed upon issuance of a Certificate of Occupancy from the Department of Inspections.~~, but provided that the minimum lot requirements of the RM-3 District are met.~~

DELIBERATION

I move that the amendment to Section 120, (Principal Uses Permitted, #9), of Article XII, (B-3, Central Business District), of the City of Muskegon Zoning Ordinance, be recommended to the City Commission for (approval/denial).

CITY OF MUSKEGON

MUSKEGON COUNTY, MICHIGAN

ORDINANCE NO. 2212

An ordinance to amend Section 1200 (Principal Uses Permitted, #9) of Article XII, B-3, Central Business District, of the Muskegon Zoning Ordinance regarding to eliminate the minimum lot requirements for residential uses.

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

Section 1200, of Article XII of the Muskegon Zoning Ordinance shall be amended, as follows:

9. Residential uses as part of a building in this business zone shall be allowed upon issuance of a Certificate of Occupancy from the Department of Inspections.

This ordinance adopted:

Ayes: Warmington, Wierengo, Carter, Davis, Gawron, Shepherd, Spataro

Nayes: None

Adoption Date: November 28, 2006

Effective Date: December 12, 2006

First Reading: November 28, 2006

Second Reading: N/A

CITY OF MUSKEGON

By: Linda S. Potter
Linda S. Potter, CMC, Acting City Clerk

CERTIFICATE

The undersigned, being the duly qualified clerk of the City of Muskegon, Muskegon County, Michigan, does hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the 28th day of November, 2006, at which meeting a quorum was present and remained throughout, and that the original of said ordinance is on file in the records of the City of Muskegon. I further certify that the meeting was conducted and public notice was given pursuant to and in full compliance with Act No. 267, Public Acts of Michigan of 1976, as amended, and that minutes were kept and will be or have been made available as required thereby.

DATED: November 29, 2006.

Linda S. Potter

Linda S. Potter, CMC
Acting Clerk, City of Muskegon

Publish: Notice of Adoption to be published once within ten (10) days of final adoption.

CITY OF MUSKEGON
NOTICE OF ADOPTION

Please take notice that on November 28, 2006, the City Commission of the City of Muskegon adopted an ordinance to amend Section 1200, # 9 of Article XII of the City of Muskegon Zoning Ordinance.

Copies of the ordinance may be viewed and purchased at reasonable cost at the Office of the City Clerk in the City Hall, 933 Terrace Street, Muskegon, Michigan, during regular business hours.

This ordinance amendment is effective ten days from the date of this publication.

Published December 2, 2006

CITY OF MUSKEGON

By _____
Linda S. Potter, CMC
Acting City Clerk

PUBLISH ONCE WITHIN TEN (10) DAYS OF FINAL PASSAGE.

Account No. 101-80400-5354

Commission Meeting Date: November 28, 2006

Date:	**November 20, 2006**
To:	**Honorable Mayor & City Commission**
From:	**Leisure Services – Lee Slaughter**
RE:	**Leisure Services Master Plan of 2003 amendments.**

SUMMARY OF REQUEST:

To adopt the Leisure Services Master Plan of 2003 amendments. The amendments were completed under the "Action Plan and Assessment" and the "Capital Improvements Schedule" sections. This is needed in order to apply for the Michigan Natural Resources Trust Fund (MNRTF) by the application deadline of April 1, 2007.

FINANCIAL IMPACT:

None.

BUDGET ACTION REQUIRED:

None.

STAFF RECOMMENDATION:

To approve.

COMMITTEE RECOMMENDATION:

The Leisure Services Board held the public hearing at their regular meeting of November 20, 2006. The Leisure Services Board recommended approval at their special meeting of November 28, 2006.

Memorandum

To: Mayor and City Commissioners

From: Hope Mitchell (City of Muskegon Planning Department)

Date: 11/20/2006

Re: Amendment to the 2003 Leisure Services Master Plan

PROPOSED CHANGES MADE TO THE MASTER PLAN

ACTION PLAN AND ASSESSMENT

P. 53 – Action Step II – Change 'install' to 'instill'

P. 54 – Action Step III – Add the word 'in' and remove 'can'
P. 54 – Action Step IV – Due to the completion of Kearney Park, the sentence '*The fountains at Root Park and Kearney Park need to be renovated and put in working order*' was revised to read '*The fountain at Root Park needs to be renovated and put in working order.*' The sentence '*The Urry Arch also needs to be restored.*' was eliminated due to the completion of that project.

P. 55 – Action Step VI – The sentence '*A master offering's brochure for each Department will be developed for public distribution*' was eliminated due to the fact that a common City-wide booklet has been created to address that point.

P. 57 – Action Step IX – The word '*to*' was eliminated from the last sentence of this paragraph.

CAPITAL IMPROVEMENTS SCHEDULE

- Lakeshore Trail (Laketon to Musketawa): The initial amount of the project, *$1,800,000* was changed to *$600,000.*
- Smith-Ryerson: The initial amount of the project, *$2,230,000* was changed to *$2,091,500.*
- Sheldon Park: The initial funding source Urban Park and Recreation Recovery (UPARR) was changed to the MNRTF due to the depletion of that grant source.
- Joe Clifford Park: This is an addition to the proposed revised Master Plan.
- All earlier stated years within the Plan were adjusted accordingly.

RESOLUTION NO. 2006-96(a)
MUSKEGON CITY COMMISSION

RESOLUTION ADOPTING THE MUSKEGON LEISURE SERVICES MASTER PLAN OF 2003 AMENDMENTS

WHEREAS, the City Commission of the City of Muskegon has undertaken a Leisure Services Plan amendments which describes changes to the Five Year Leisure Services Plan originally adopted in 2003 and indicates actions to be taken to improve and maintain recreation facilities during the same five year period, and

WHEREAS, a public comment session was held November 28, 2006 at the Muskegon City Commission Chambers to provide an opportunity for citizens to express opinions, ask questions, and discuss all aspects of the Leisure Services Plan amendments, and

WHEREAS, the City Commission of the City of Muskegon has developed the plan for the benefit of the entire community and to adopt the plan amendments would assist in meeting the recreation needs of the community, and

WHEREAS, after the public hearing, the City Commission of the City of Muskegon voted to adopt said Leisure Services Plan amendments.

NOW, THEREFORE BE IT RESOLVED that the City Commission of the City of Muskegon hereby adopts the City of Muskegon Leisure Services Master Plan 2003 amendments as a guideline for improving the recreation for the residents of the City of Muskegon.

Adopted this 28th day of November, 2006

Ayes: Wierengo, Carter, Davis, Gawron, Shepherd, Spataro, and Warmington

Nays: None

Excused: None

By: _____
Stephen J. Warmington, Mayor

Attest: Linda Potter
Linda Potter, Acting City Clerk

I, Linda Potter, the City of Muskegon Acting Clerk, do hereby certify that the foregoing is a true and original copy of a resolution adopted by the City Commission of the City of Muskegon at a regular meeting thereof held on November 28, 2006.

By: Linda Potter
Linda Potter, Acting City Clerk

INTRODUCTION

In May of 2002, the Leisure Services Board adopted a mission statement and long range goals to guide the Department in the development of the Citywide Recreation and Park system. The Mission Statement and Goals as adopted are as follows:

Mission Statement

The City of Muskegon Department of Leisure Services will provide quality programs, facilities, and parks for the benefit and enjoyment of City residents and guests.

Goals

1. Provide recreational facilities and activities, which contribute to family and neighborhood stability.

2. Provide City parks to enhance and contribute to the urban living environment.

3. Provide accessible, enriching recreational opportunities and experiences for all people.

4. Preserve the natural resources of the City for present and future generations.

5. Practice and promote good stewardship of parklands.

6. Maximize the use of Muskegon's waterfront for recreational purposes.

7. Develop partnerships to maximize the use of recreational facilities within the City.

8. Provide for a safe environment for Park users.

9. Preserve and promote the historical and cultural heritage of the City.

10. Promote City Recreational facilities and programs to residents and guests.

These goals form the basis of the Action Plan.

ACTION PLAN AND ASSESSMENT

Goal #1. Provide recreational facilities and activities, which contribute to family and neighborhood stability.

Many of the City neighborhoods are older with many homes needing repair. The City Commission is currently working to clean up and rehabilitate the inner City neighborhoods. They have established the elimination of blight as their number one priority.

The needs of the Family unit need also be addressed. There are too many homes with only one parent. Many homes have both parents working and children come home from school to an empty house. Grandparents are raising their grandchildren. There are many tough issues facing today's families.

The issue is how can the Department provide both programs and facilities to improve the quality of City neighborhoods and improve family stability?

Action Step I:

Departmental Staff and Board Members will meet with the various neighborhood organizations. Each neighborhood has different characteristics, available facilities, and different needs. The Department will endeavor to work with each neighborhood providing new programs and/or activities designed to meet neighborhood needs. Using the resources of the City, the neighborhood and other agencies, facilities, equipment, money and manpower will be found, which will help build neighborhood stability.

Action Step II:

The level of maintenance in neighborhood parks will be improved. A well-maintained park can make a positive influence on how people view their own neighborhood.

Fertilizer will continue to be used annually to kill weeds and improve the quality of the turf. All grass areas should have an automatic irrigation system. Trees need to be better maintained and shrubs need to be pruned annually. Gravel parking lots need to be paved and sidewalks need to be repaired or replaced. Trees and flowers should be added where appropriate. All buildings need to be vandal-proofed, repaired, and made accessible. Encouraging neighborhoods to adopt-a-park can lead to a higher level of maintenance and ~~install~~ **instill** an atmosphere of "ownership" into neighborhood residents.

Kruse Park to Duck Lake State Park would be an interesting new facility. Lakeshore Trail will be completed. The sports complex on the Consumer's Energy Property needs to be completed. Spray parks should be added to several parks throughout the City. The reuse, or better use, of the annex at the arena should also be explored. A dirt bike track should also be provided. These and other new options would enhance the current recreational offerings and facilities within the community.

Goal #3. Provide accessible, enriching recreational opportunities and experiences for all people.

While the City does a good job with the current program offerings, the variety and type of programs simply do not meet the community needs. There are very few programs for youth or senior citizens and no programs for pre-schoolers, teenagers, and the handicapped or special populations. Even the fee supported adult programs can limit participation from those who cannot afford them.

Further, the City needs to look at better ways of letting people know just what is offered and where. While individual flyers are prepared for each activity, the master brochure or activity guide is currently not easily made available to all people. People can't participate in programs that they don't know exist.

Facilities also must be accessible to the participants. Not only must the facilities be barrier free, but also people must be able to get to the facility. Either individual programs need to be within neighborhoods, or a public transportation system needs to be in place, which services the facility.

The issue is how can the City provide accessible, enriching recreational opportunities for all people who live in or visit the City of Muskegon?

Action Step VI:

The City will establish a recreational marketing program to better inform residents of available programs. Staff will continue to work with the media to increase public information about programs and facilities. The Web page will be upgraded regularly and the Leisure Services website added to all information and program brochures. *A master offering's brochure for each Department will be developed for public distribution (would this be the 'This is your City' booklet?).* The Department will continue to provide individual flyers to be distributed to target markets.

Action Step VII:

The City shall continue to work with neighborhood groups, special interest groups, and others to find ways to better service people's recreational needs and to develop

new programs to meet these needs. Full-service Community Centers need to be developed to provide indoor facilities to provide flexibility in programming. The Department will continue to seek alternative funding sources including local, state, and federal grants. The department will continue to work with local service groups, the schools systems, local agencies, and other groups and governmental agencies to develop new programs, strengthen existing programs, and to better meet the recreational needs of the community.

Goal #4. Preserve the natural resources of the City for present and future generations.

Muskegon is blessed with an abundance of natural resources. With Muskegon Lake, Lake Michigan and the many rivers, streams and wetlands, Muskegon is rich in water resources. The barrier dunes along Lake Michigan are a unique natural phenomenon. The beach at Pere Marquette is one of the finest anywhere. With the opening of the County Wastewater system many years ago, Muskegon took a giant step toward improving the water quality in Muskegon Lake. Since that time, Muskegon Lake has become suitable for boating and swimming and the fishing has become one of the best fresh-water spots anywhere.

Much of what can be done to preserve the natural environment needs to be done through the Citywide planning process and the zoning ordinances. The City's Master Land Use Plan identifies many areas in the community as environmentally sensitive areas and has designated them as OPEN SPACE CONSERVATION. Open Space Conservation Districts are intended to provide for permanent open spaces in the community, and the protection of sand dunes and other natural features.

Another classification is OPEN SPACE RECREATION DISTRICTS. These districts are intended to provide for permanent open spaces in the City and are designed to provide recreational activities. These districts are further intended to safeguard the natural features of the City.

While these are areas that have been identified, the issue is what can the City do to advocate the preservation of these and other natural environmental resources for present and future generations?

Action Step VIII:

In order to preserve natural environmental resource areas, all lands within the City, which have sensitive environmental characteristics, will be identified. Once identified, appropriate zoning should be attached to that property to limit the types of development allowed on the property. If, as in the case of privately owned land, a change in zoning is not possible because of current land uses, the City should initiate policies and procedure which would insure that future development of these properties

address environmental concerns, or the City should initiate options to purchase the land. The City will also continue to work with environmental groups to find ways of improving the environmentally sensitive areas throughout the City.

Goal #5. Practice and promote good stewardship of park lands

One of the problems with any park system is the inappropriate behavior of many park users. Vandalism is the most common example of this type of behavior. The needless and senseless destruction of public property costs the City thousands of dollars annually. Graffiti, broken park equipment and shattered restroom fixtures are the most frequent problems.

Littering is another common occurrence. While the Bottle Bill has all but eliminated cans and bottles from the parks, trash is still prevalent in many park areas. Too many people seem to be unwilling to walk the few extra feet necessary to deposit garbage into the trash receptacles that are provided throughout the parks system.

Pet owners also create problems for park users and staff, as they do not pick up after their animals when walking in the City parks. A deposit on water bottles would also help keep trash down.

The issue is how does the City promote the proper use and care for its park facilities?

Action Step IX:

A major part of promoting good stewardship is accomplished by setting a good example. This can be done is several ways. First, the City will repair any damage done immediately. Fewer people will see the damage and more people will see well-maintained equipment and grounds. Secondly, the City will do a better job of maintaining the parks. While this was covered earlier under facility maintenance, it bears repeating here. Thirdly, the City will develop a marketing strategy that would better educate Community residents on the effects of vandalism and improper use of City facilities. As a last resort, additional park rangers could be added to enforce to various laws now in effect.

Residents need to develop an ownership feeling for the system so that they will take care of their parks just as they would take care of their own homes. New signage encouraging positive behavior should be developed.

Goal #6. Maximize the use of Muskegon's waterfront for recreational purposes.

While the properties owned by the City along Lake Michigan have been developed and are being utilized, the properties owned by the City along the Muskegon Lake lakeshores have been underutilized for years. In recent years, however, recreational

development along the shoreline of Muskegon Lake has increased tremendously. Two new marinas are in the planning stages. The development of the Teledyne property including a proposed marina will greatly clean up and make available the shores of Muskegon Lake. The Lakeshore Trail will add significant access to Muskegon Lake.

The City needs to continue to stimulate the recreational development of the lakeshore. In doing so, the City should also look at providing a variety of options for residents.

Not everyone owns a boat or enjoys lying on the beach. More people will use the facilities if additional opportunities such as picnic facilities, dune walkways, fishing piers, paddle boats and Jet Ski rentals, beach equipment rentals, fishing piers, etc. are developed.

The issue is how can the City provide a broad range of waterfront recreational activities to attract a wider range of users to waterfront facilities, and get underdeveloped lakefront property developed for public use?

Action Step X:

The City will seek to develop public/private partnerships to both develop public lands and to provide additional support facilities and activities on the City's waterfront properties. Such activities as jet skiing, parasailing, paddleboat rentals, etc. should be added to the system through concession contracts with private businesses. Further, management contracts for facilities like Fisherman's Landing, should be explored. These types of agreements can provide a better way to manage facilities, while encouraging private development of public properties to the benefit of the whole community.

The proposed moving of Fisherman's Landing to the Hartshorn Center property also needs to continue to move forward. The goal of improving facilities for fisherman, increasing camping opportunities, and providing greater public access to the lake will help provide additional activities for residents and visitors.

Action Step XI:

The City will also promote and encourage the recreational development of privately owned lakefront property. Lakefront companies should be approached to discuss current uses of the lakefront and how the City can work with them to beautify and possibly redevelop at least the first 150' of the frontage. New strategies must be developed that will encourage private owners to improve access to Muskegon Lake frontage.

Goal #7. Develop partnerships to maximize the use of recreational facilities within the City.

Partnerships are an agreement between two or more parties, which benefits all parties. The key to a successful partnership is determining just what the needs of each of the partners are and developing an agreement that meets each of those needs.

All too often in the past, communities in urban areas have built facilities or instituted and run programs to meet the needs of its own residents. Often a duplication of services has resulted as other communities or agencies have adequately serviced these residents. In today's marketplace, it makes more sense to pool resources and run cooperative programs to best utilize the facilities and services available.

The issue is how can the City develop partnerships to maximize the use of available recreational facilities in the City for the benefit of the community?

Action Step XII:

The City will look at areas where facilities are underutilized or programs are not well attended. Options will be explored as to what can be done to improve and maximize the use of the facility. Options will include possible partners that could benefit from the service, or who could help provide some element of the service that would make the facility/program more attractive to user groups. Partnerships that will help improve the quality of service and/or the level of service provided will be sought out in all areas of the department.

Goal #8. To provide for a safe environment for Park users.

For people to utilize public properties on a regular basis they must feel safe and welcome. Park visitors must not fear for their personal safety or the safety of their vehicles. People should be able to relax and enjoy their experiences at City of Muskegon facilities.

The issue is how can the City provide a safe environment for people using City of Muskegon Leisure Services facilities?

Action Step XIII:

The City will work with neighborhood associations to evaluate the perceived level of safety in the parks. The City will expand its current Park Ranger program to include rangers or supervisors in parks where there is a less than acceptable level of user safety. Community Police Officers will be involved in programming whenever possible.

Action Step XIV:

The City will continue to evaluate playground equipment and other safety sensitive areas within the parks system. Playground equipment and other equipment will be repaired and/or replaced, if deemed to be unsafe. Hazardous areas such as the drop off areas at Harbour Town beach will be identified and signed appropriately to warn people of the danger.

Goal #9. To preserve and promote the historical and cultural heritage of the City.

The cultural, social and economic history of the City provides potential economic opportunities, particularly in the downtown area. Heritage Village and the entire National Register Historic District contain a variety of architectural treasures from the City's past. Cooperation with various historic and civic groups will be instrumental in the preservation and restoration of parkland of historic value within the downtown and other areas within the City.

The issue is how can the City preserve and promote its historical and cultural heritages?

Action Step XV:

As a focal point of Downtown Muskegon, Hackley Park is the site of many community events including Summer Celebration and the Parties-in-the-Park. These and other events attract thousands to this 100+ year old park. The City will work toward the completion of the historical restoration plan for the park. Additionally, Muskegon's history and other historic sites will be included in recreational programs whenever possible. The City will also work with the White Pines group to map the history of Muskegon on the Lakeshore Trail.

Action Step XVI:

The City will work to encourage and develop other historical/tourist facilities in the City. While not a part of Muskegon's history, the development of the Great Lakes Naval Memorial and Museum including the Silverside's Submarine and LST and it's move to downtown will be supported.

Goal #10. Promote City recreational facilities and programs to residents and guests

With one of the finest beaches in Michigan, the sand dunes, the Silverside's and LST, the many festivals and special events, and the many marina and waterfront facilities, the City of Muskegon has a variety of facilities and activities that are attractive to people from everywhere.

The Chamber of Commerce and the Convention and Visitors Bureau promote

activities and facilities throughout the region. However, their focus is not specific to the City of Muskegon.

The issue is how can the City of Muskegon promote the City's recreational facilities and programs to all people?

Action Step XVII:

The City will develop brochures highlighting City tourist or regional facilities such as the Farmer's Market and for distribution to rest stops, hotels, and other appropriate locations in conjunction with the Convention and Visitors Bureau and the Chamber of Commerce.

Action Step XVIII:

The City will review directional signage to public facilities throughout the City and upgrade and improve the signage to insure easy access for visitors to the City.

EVALUATION AND UPDATING

To ensure public access to the development plan, copies will be made available for public viewing at the following locations:

1. Department of Leisure Services - Muskegon City Hall
2. Hackley Public Library
3. Muskegon Community College Library

The plan itself will be monitored and evaluated on a yearly basis incorporating the following procedure:

1. Year-end review by Department Staff of the plan and all projects started, completed or delayed during the past year (Director's Report).
2. Presentation of Director's Report to the Board of Leisure Services before a public hearing (February meeting).
3. Review of the plan by the Board consisting of:
   a. Review of projects and programs started, completed, or delayed during the past year.
   b. Public comments.
   c. Revisions to plan schedule (if necessary).
   d. Priority revisions (if necessary).

Budgets for the next year's programs and projects are prepared and presented to the Board in June. Further updating of the implementation plan will be made at this time to eliminate any deficiencies that may have developed.

CAPITAL IMPROVEMENT SCHEDULE

RANK	PROJECT	TOTAL COST	SOURCE OF FUNDS	BUDGET YEAR
1.	LAKESHORE TRAIL			
	(Laketon to Musketawa)	$ 600,000	MNRTF	2007
	TOTAL	$ 600,000		
2.	SMITH-RYERSON			
	Enlarge Parking Area	$ 65,000	MNRTF	2007
	Irrigation	60,000	MNRTF	2007
	Restrooms/Shelter	87,500	MNRTF	2007
	Pave BB/tennis courts	89,000	MNRTF	2007
	Rebuild football field	150,000	MNRTF	2007
	Enlarge Gymnasium	1,600,000	Unknown	Future
	Nature Trails	40,000	MNRTF	Future
	TOTAL	$2,091,500		
3.	JOE CLIFFORD PARK			
	Irrigation	$ 50,000	MNRTF	2007
	Universal Sports Field	150,000	MNRTF	2007
	Restroom	100,000	MNRTF	2007
	TOTAL	$ 300,000		
4.	SHELDON			
	Sidewalks	$ 50,000	MNRTF	Future
	Irrigation	35,000	MNRTF	Future
	Playground Equip. Surf.	55,000	MNRTF	Future
	Pave Parking	50,000	MNRTF	Future
	Picnic Shelter/Restroom	150,000	MNRTF	Future
	Basketball Court	35,000	MNRTF	Future
	TOTAL	$ 375,000		
5.	PERE MARQUETTE PARK			
	Bike/Walkways	$ 400,000	MNRTF	Future
	TOTAL	$ 400,000		

6.	McCREA			
	Playground Equip.	$ 50,000	CDBG	Future
	Picnic Shelter	25,000	CDBG	Future
	TOTAL	$ 75,000		
7.	REESE			
	Pave Parking	$ 100,000	General Fund	Future
	Picnic Shelter	20,000	Reese Trust	Future
	Spray Park	100,000	Donation	Future
	TOTAL	$ 220,000		
8.	McGRAFT			
	Pave Parking	$ 100,000	General Fund	Future
	Irrigation	50,000	General Fund	Future
	New Picnic Shelter	30,000	General Fund	Future
	Community Building	3,000,000	Unknown	Future
	TOTAL	$3,180,000		
9.	BEUKEMA			
	Pave parking	$ 40,000	CDBG	Future
	Picnic Shelter	25,000	CDBG	Future
	TOTAL	$ 65,000		
10.	KRUSE PARK			
	Dune Walkways	$ 200,000	MNRTF/CZM	Future
	Campgrounds	350,000	Private Dev.	Future
	TOTAL	$ 550,000		
11.	HACKLEY PARK			
	Restore fence	$ 25,000	General Fund	Future
	TOTAL	$ 25,000		
12.	HARTSHORN MARINA			
	Breakwall	$1,500,000	Waterways	Future
	Shoreline Protection	300,000	Waterways	Future
	Electrical Improvements	250,000	Waterways	Future
	TOTAL	$2,050,000		
13.	COMMUNITY CENTER			
	Park Ave.	$2,800,000	Unknown	Future
	TOTAL	$2,800,000		

14.	FISHERMAN'S LANDING			
	Restroom building	$ 250,000	MNRTF/Don.	Future
	Landscaping	50,000	MNRTF/Don.	Future
	Campgrounds	200,000	MNRTF/Don.	Future
	New Docks	50,000	MNRTF/Don.	Future
	TOTAL	$ 550,000		
15.	CAUSEWAY-VETERANS PARK			
	Shoreline protection	$ 500,000	Special Millage/	Future
	TOTAL	$ 500,000	Vets	
16.	SPORTS COMPLEX			
	Purchase	$ 900,000	MNRTF	Future
	Phase I	$ 800,000	MNRTF	Future
	Phase II	$ 800,000	MNRTF	Future
	Phase III	$ 800,000	MNRTF	Future
	TOTAL	$3,300,000		

Total Costs Per Year

2007	$ 2,791,500
Future	$15,730,000
TOTAL	$18,521,500

RESOLUTION
LEISURE SERVICES BOARD

RESOLUTION RECOMMENDING THE ADOPTION OF THE MUSKEGON LEISURE SERVICES MASTER PLAN OF 2003 AMENDMENTS

WHEREAS, the Leisure Services Board of the City of Muskegon has undertaken Leisure Services Plan amendments which describes changes to the Five Year Leisure Services Plan originally adopted in 2003 and indicates actions to be taken to improve and maintain recreation facilities during the five year period, and

WHEREAS, a public comment session was held November 20, 2006 at the Leisure Services Board meeting to provide an opportunity for citizens to express opinions, ask questions, and discuss all aspects of the Leisure Services Plan amendments, and

WHEREAS, the Leisure Services Board of the City of Muskegon has developed the plan amendments for the benefit of the entire community and to adopt the plan as a document to assist in meeting the recreation needs of the community, and

WHEREAS, after receiving public comment, the Leisure Services Board of the City of Muskegon voted to recommend at their special meeting of November 28, 2006, said Leisure Services Master Plan amendments to the City Commission for adoption.

NOW, THEREFORE BE IT RESOLVED that the Leisure Services Board of the City of Muskegon hereby recommends the City of Muskegon Leisure Services Master Plan 2003 Amendments as a guideline for improving the recreation for the residents of the City of Muskegon to the City Commission of the City of Muskegon for approval.

Adopted this 28th day of November, 2006

Ayes: Strach, Jensen, Shepherd, Carter

Nays: None

Excused: Roberts, Flowers

By: Chris Jensen
Chris Jensen, Chair

Attest: Linda Potter
Linda Potter, Acting City Clerk

I, Linda Potter, the City of Muskegon Acting Clerk, do hereby certify that the foregoing is a true and original copy of a resolution adopted by the Leisure Services Board of the City of Muskegon at a regular meeting thereof held on November 28, 2006.

By: Linda Potter
Linda Potter, Acting City Clerk

Commission Meeting Date: November 28, 2006

Date: **November 20, 2006**

To: **Honorable Mayor & City Commission**

From: **Planning & Economic Development Department** CBC

RE: **869 and 875 Marquette Avenue (Property Exchange)**

SUMMARY OF REQUEST:

Kelly Hicks owns the home with an address of 869 Marquette. Unfortunately, her home is located on the adjacent City owned property at 875 Marquette. The City Attorney and Staff have worked with Ms. Hicks, her mortgage companies, and the title office to rectify the situation. The easiest way to rectify this is to exchange legal descriptions through deeds. The City will provide a Quit Claim deed to Kelly Hicks for the legal description of the property where her home is located. Ms. Hicks will provide a Warranty Deed to the City for the legal description of the property her home was supposed to be built. Both of the properties are the same size and the City would still maintain a buildable lot. (A memo is attached regarding the history of the problem.)

FINANCIAL IMPACT:

None.

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

To approve the attached resolution and to authorize both the Mayor and the Clerk to sign said resolution and deed.

COMMITTEE RECOMMENDATION:

None.

To: Mayor and City Commission

From: Hope Mitchell and John Schrier

Date: November 17, 2006

Re: 869 Marquette and 875 Marquette

A problem exists concerning 869 Marquette and 875 Marquette. About a year ago, it came to the attention of the City staff that there is an error in the legal descriptions relating to property owned by Kelly Hicks. The property is subject to a first mortgage held by Option One Mortgage and a second mortgage held by American Servicing Company.[1]

BACKGROUND

During the 1960's the City acquired the property with the current addresses of 869 Marquette and 875 Marquette. After acquisition by the City, the legal descriptions were changed. Lot 626 is the legal lot where both 869 Marquette and 875 Marquette are located.

East ½ of Lot 626

In July of 1967, the City acquired the following property:

> The East 40 feet of Lot 2 of Block 2 of Ducey's Addition to the City of Muskegon as per plat of record in the office of the Register of Deeds for said County.

As part of the City's Urban Renewal Plan, the property was replatted, and the legal description of the property changed to:

> The East ½ of Lot 626, Muskegon Urban Renewal No. 3, as recorded in Liber 19 of Plats, Page 16, Muskegon County Records.

The property is presently owned by the City. *Unfortunately, the house Kelly J. Hicks lives in is located on this property.*

West ½ of Lot 626

In October of 1961, the City acquired the following property:

> Lot One (1), the West Twenty Six (26) feet of Lot Two (2) and all of Lot Twelve (12) of Block Two (2) of Ducey's Addition to the City of Muskegon, Muskegon County, Michigan, according to the recorded plat thereof in the office of the Register of Deeds for said County.

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[1] Both Option One Mortgage and American Servicing Company indicate that American Servicing Company is the holder of the second mortgage. The most recent title history obtained by the City does not reflect a recorded assignment.

As part of the City's Urban Renewal Plan, the property was replatted, and the legal description changed to:

> The West ½ of Lot 626, Muskegon Urban Renewal No. 3, as recorded in Liber 19 of Plats, Page 16, Muskegon County Records.

The property was then transferred as follows:

1. A Quit Claim Deed was provided by the City of Muskegon to the Muskegon Housing Commission;
2. A Warranty Deed was provided by the Muskegon Housing Commission to Ali and Wilma Thomas;
3. Sheriff's Deed on Mortgage Sale was provided to Deutsche Bank National Trust Company;
4. Covenant Deed was provided by Deutsche Bank Nation Trust Company to Kelly J. Hicks.

It is upon this legal description that Option One Mortgage took two mortgages, the second mortgage then being sold to American Servicing Company. Unfortunately, the house that Kelly J. Hicks lives in and, presumably, the house Option One intended to have mortgages on is not on this property. This property is a vacant lot.

RECOMMENDATION FOR RESOLUTION

Representatives of the City, Option One, American Servicing Company, Metropolitan Title, and Kelly Hicks have been discussing how to resolve this issue. The resolution appears to be, and City staff recommends, as follows:

1) the City will provide a Quit Claim Deed to Kelly J. Hicks for the East ½ of Lot 626;

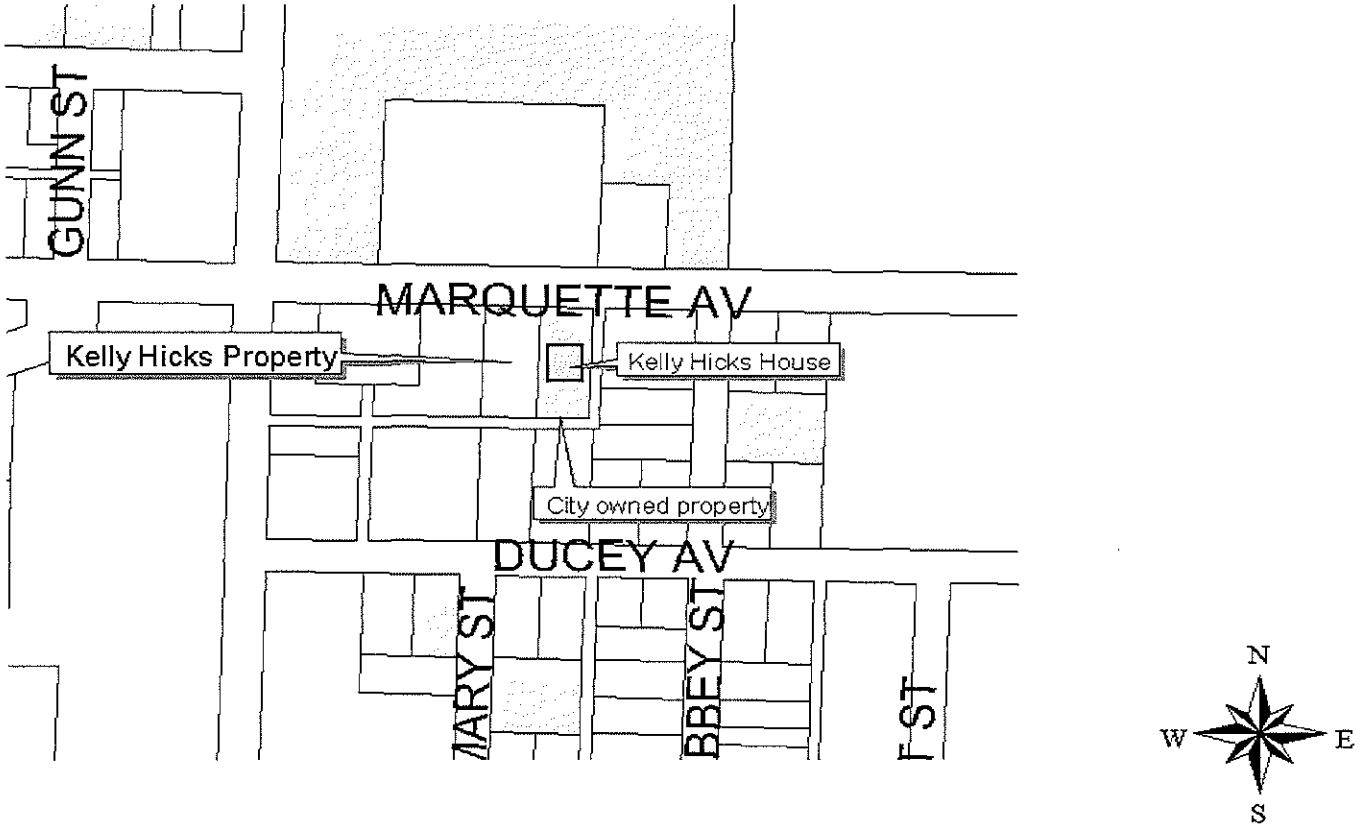
2) Kelly J. Hicks will provide a Warranty Deed to the City for the West ½ of Lot 626;

3) Option One will revise its mortgages to correct the legal description; and

4) American Servicing Company will revise its mortgages to correct the legal description.

Most documents will be executed prior to the closing and will be forwarded to Metropolitan Title prior to the closing. This arrangement is dependent on Ms. Hicks appearing at a closing at Metropolitan Title and executing necessary documents.

869 & 875 Marquette Avenue



Resolution No. 2006-97(a)

MUSKEGON CITY COMMISSION

RESOLUTION APPROVING THE EXCHANGE OF LEGAL DESCRIPTIONS FOR THE PROPERTIES LOCATED AT 869 AND 875 MARQUETTE AVENUE IN MARQUETTE NEIGHBORHOOD.

WHEREAS, Kelly Hicks owns the home addressed as 869 Marquette (24-612-000-0626-00), which is located on the legal description for 875 Marquette (24-612-000-0626-10), which is City owned; and

WHEREAS, both properties are the same size; and

WHEREAS, the exchange would place the home on the proper legal description; and

NOW THEREFORE BE IT RESOLVED, that parcel number 24-612-000-0626-10, located at 875 Marquette Avenue be exchanged with parcel number 24-612-000-0626-00, located at 869 Marquette.

869 Marquette
CITY OF MUSKEGON URBAN RENEWAL PLAT NO 3 W ½ OF LOT 626

875 Marquette
CITY OF MUSKEGON URBAN RENEWAL PLAT NO 3 E ½ OF LOT 626

Adopted November 28, 2006.

Ayes: Carter, Davis, Gawron, Shepherd, Spataro, Warmington, and Wierengo

Nays: None

Absent: None

By: _____
Stephen J. Warmington
Mayor

Attest: Linda Potter
Linda Potter, Acting City Clerk

CERTIFICATION

I hereby certify that the foregoing constitutes a true and complete copy of a resolution adopted by the City Commission of the City of Muskegon, County of Muskegon, Michigan at a regular meeting held on November 28, 2006.

By: Linda Potter
Linda Potter, Acting City Clerk

QUIT-CLAIM DEED

KNOW ALL MEN BY THESE PRESENTS: That the **CITY OF MUSKEGON**, a municipal corporation, whose address is 933 Terrace Street, Muskegon, MI 49440,

QUIT CLAIMS TO: **KELLY J. HICKS**, a single woman, of 869 Marquette Avenue, Muskegon, MI 49442,

the following described premises situated in the City of Muskegon, County of Muskegon, State of Michigan, to wit:

THE EAST ½ OF LOT 626, MUSKEGON URBAN RENEWAL NO. 3, AS RECORDED IN LIBER 19 OF PLATS, PAGE 16, MUSKEGON COUNTY RECORDS.

for the sum of One and no/100 Dollars ($1.00).

This deed is exempt from real estate transfer tax pursuant to the provisions of MCL 207.505 (a) and (h)(i) and MCL 207.526 (a) and (h)(i).

Dated this 5 day of December 2006

CITY OF MUSKEGON

Stephen J. Warmington, Mayor

Linda S. Potter

Linda S. Potter, Acting Clerk

STATE OF MICHIGAN
COUNTY OF MUSKEGON

The foregoing instrument was acknowledged before me this 5 day of December 2006, by Stephen J. Warmington and Linda S. Potter, Mayor and Acting Clerk, respectively, of the CITY OF MUSKEGON, a municipal corporation, on behalf of the City.

JoAnn M. Krukowski

JoAnn M Krukowski, Notary Public
Muskegon County, Michigan
My commission expires: 05-13-2012
Acting in Muskegon County, Michigan

PREPARED BY:
John C. Schrier
Parmenter O'Toole
601 Terrace St., P. O. Box 786
Muskegon, MI 49443-0786
Telephone: 231.722.1621
SEND SUBSEQUENT TAX BILLS TO: Grantee
WHEN RECORDED RETURN TO: Grantee

Date: November 28, 2006

To: Honorable Mayor and City Commissioners

From: Finance Director

RE: Replacement of Copiers/Document Printing Contract

SUMMARY OF REQUEST: As described more fully in the attached memo, staff is recommending that the City enter into a five-year agreement with CEC for replacement and maintenance of all City copy machines, print devices and fax machines. CEC was the successful bidder for the Muskegon County copier contract and we will be piggybacking onto the County contract. Also, CEC has had the City's contract for the last twelve years and we have had a very satisfactory and successful relationship with the company.

FINANCIAL IMPACT: We *conservatively* estimate our current cost per page (including copies, printing, faxes) to be $0.0449. Under the new contract we will pay $0.0398 per page, a savings of 11.4%, or $62,000 over the life of the contract. Significant other savings will come from the fact that IT staff will no longer be responsible for analyzing/repairing problem printers or fax machines and from the widespread deployment of more efficient technologies (such as scan to e-mail and greater in-house printing/publishing capabilities).

BUDGET ACTION REQUIRED: None. Funds are budgeted for these costs.

STAFF RECOMMENDATION: Approval of 5-year cost-per-page contract with CEC.

COMMITTEE RECOMMENDATION: None.

Finance Administration

Memo

To: City Commission

From: Finance Director

Date: November 22, 2006

Re: Replacement of Copiers

It is again time to replace the city's copy machine fleet. For the last twelve years, the city has awarded a series of four-year contracts for copiers and related maintenance to a single vendor. This has assured standardization of equipment as well as city-wide, volume-based pricing on both equipment and service. Comme rcial Equipment Company (CEC) has won the City's bid three consecutive times. (Prior to this we had multiple vendors servicing different departments under widely disparate terms.)

This time staff proposes a different approach:

1. in lieu of bidding copier equipment ourselves, we recommend piggybacking on the Muskegon County contract which was awarded to CEC earlier this year; and

2. in lieu of replacing just copy machines, we recommend expanding the scope of the contract to include all copy, printing, scanning and fax devices. (This is also a component of the County contract.)

The first item is consistent with our goal of improving intergovernmental cooperation and will save many City staff hours. CEC has done a ve ry good job for us over the past twelve years and maintains a local office in the City (1050 West Western Avenue).

Staff believes the second item – expanding the contract scope – will result in significant operational efficiencies:

1. *Volume pricing on supplies* - toner and other supplies for non-copier devices is currently purchased on a piecemeal basis by individual departments. The proposed contract incorporates supplies (other than paper) into a standard cost per page based on city-wide volumes.

2. *Staff time* - currently, we have more than 70 non-copy machine devices scattered throughout the City. When something goes wrong with one of these devices, IT/DPW staff is typically dispatched to assess the problem, make necessary repairs or procure a replacement. Under the proposed contract, these functions become the responsibility of CEC, allowing IT/DPW staff to focus on other matters.

3. *Better technology* – the new copiers have many features that will improve productivity. For example, the ability to scan then e-mail documents (as opposed to printing then faxing) will be more widely avail able to employees. Similarly, many print jobs now outsourced will be able to be done cost-effectively in-house, including color printing.

4. *Elimination of some equipment* - with expanded capabilities of the new copiers, many of the standalone devices can be eliminated. We presently believe the total number of devices can be reduced from 94 to 47, although this figure may be adjusted.

5. *Known controllable costs* – recently CEC staff conducted a city-wide inventory of both copier and non-copier devices and the monthly usage for each. Prior to this, we did not have a good handle on the number of *non-copier* devices nor their true costs. Based on CEC's survey and discussions with City staff we conservatively estimate total current costs (equipment, toner/other non-paper supplies, maintenance, etc.) to be $0.0449 per page based on our volumes. The proposed contract will guarantee a rate of $0.0398 for five years.

	Current	Proposed Rate - 5 Years
Monthly Volume	204,166	204,166
Cost Per Page	$0.0449	$0.0398
Total Annual Cost	$110,005	$97,510

The actual charge to departments will be less because over the last four years we have built up a reserve of about $88,000 in anticipation of replacing copy machines. Additionally, under the current contract, CEC agrees to buy back our equipment at the end of the four years for 20% of the original purchase cost. This amounts to $24,000. The total $112,000 will be rebated to departments by lowering the per page rate charged.

Please let me know if you have any questions regarding this matter.

Thank you.

usbank
Five Star Service Guaranteed

Cost Per Copy Agreement

APPLICATION NUMBER	CONTRACT NUMBER

1310 Madrid Street, Suite 101 • Marshall, MN 56258 • Phone: (800) 328-5371 • Fax: (800) 328-9092

This document is written in "Plain English". The words **you** and **your** refer to the customer. The words **Owner, we, us** and **our** refer to **U.S. Bank Business Equipment Finance Group.** Every attempt has been made to eliminate confusing language and create a simple, easy-to-read document.

CUSTOMER INFORMATION

FULL LEGAL NAME | STREET ADDRESS

CITY | STATE | ZIP | PHONE | FEDERAL TAX I.D #

BILLING NAME (IF DIFFERENT FROM ABOVE) | BILLING STREET ADDRESS

CITY | STATE | ZIP | E-MAIL

EQUIPMENT LOCATION (IF DIFFERENT FROM ABOVE)

SUPPLIER INFORMATION

NAME OF SUPPLIER | STREET ADDRESS

CITY | STATE | ZIP | PHONE | FAX

EQUIPMENT WITH CONSOLIDATED MINIMUMS

	Make/Model/Accessories	Serial #	Starting Meter
1			
2			
3			
4			
5			
6			
7			
8			

Cost Per Copy - B&W* _____ Monthly Minimum Number of B&W Copies _____

Cost Per Copy - Color* _____ Monthly Minimum Number of Color Copies _____ ** plus applicable taxes*

TERM AND PAYMENT SCHEDULE

Number of Months _____ *Security Deposit $* _____ *(plus applicable taxes)*

THIS IS A NONCANCELABLE / IRREVOCABLE AGREEMENT, THIS AGREEMENT CANNOT BE CANCELED OR TERMINATED.

OWNER ACCEPTANCE

U.S. Bank
Business Equipment Finance Group

DATED | OWNER | SIGNATURE | TITLE

CUSTOMER ACCEPTANCE

You certify that all conditions and terms of this Agreement including the terms on the reverse side have been reviewed and agreed to. The Agreement shall commence on the day that the Equipment is delivered to you and the Agreement shall be irrevocable and non cancelable in all respects thereafter. You understand and agree that we will purchase the Equipment from Supplier in reliance on your acceptance and you may contact the Supplier for warranty rights.

X

DATED | CUSTOMER | SIGNATURE | TITLE

GUARANTY

As additional inducement for us to enter into the Agreement, the undersigned ("you") unconditionally, jointly and severally, personally guarantees that the customer will make all payments and meet all obligations required under this Agreement and any supplements fully and promptly. You agree that we may make other arrangements including compromise or settlement with the customer and you waive all defenses and notice of those changes and will remain responsible for the payment and obligations of this Agreement. We do not have to notify you if the customer is in default. If the customer defaults, you will immediately pay in accordance with the default provision of the Agreement all sums due under the terms of the Agreement and will perform all the obligations of the Agreement. If it is necessary for us to proceed legally to enforce this guaranty, you expressly consent to the jurisdiction of the court set out in paragraph 15 and agree to pay all costs, including attorneys fees incurred in enforcement of this guaranty. It is not necessary for us to proceed first against the customer before enforcing this guaranty. By signing this guaranty, you authorize us to obtain credit bureau reports for credit and collection purposes.

X

PRINT NAME OF GUARANTOR | SIGNATURE | DATED

1. AGREEMENT: You agree to rent from us the personal property described under "ITEM DESCRIPTION" and as modified by supplements to this Master Agreement from time to time signed by you and us (such property and any upgrades, replacements, repairs and additions referred to as "Equipment") for business purposes only. You agree to all of the terms and conditions contained in this Agreement and any supplement, which together are a complete statement of our Agreement regarding the listed equipment ("Agreement") and supersedes any purchase order or outstanding invoice. This Agreement may be modified only by written agreement and not by course of performance. This Agreement becomes valid upon execution by us and will begin on the rent commencement date and will continue from the first day of the following month for the number of consecutive months shown. The term will be extended automatically for successive 12 month terms unless you send us written notice you do not want it renewed at least ninety (90) days before the end of any term. If any provision of this Agreement is declared unenforceable in any jurisdiction, the other provisions herein shall remain in full force and effect in that jurisdiction and all others.

2. RENT: Rent will be payable in installments, each in the amount of the basic rental payment shown plus any applicable sales tax, use tax, plus 1/12th of the amount estimated by us to be personal property tax on the Equipment for each year of this Agreement. You will pay the security deposit on the date you sign this Agreement. Subsequent installments will be payable on the first day of each rental payment period shown beginning after the first rental payment period. The rent payable for the month of rent commencement shall be prorated from the monthly rental amount set forth above. We will have the right to apply all sums received from you, to any amounts due and owed to us under the terms of this Agreement. In the event this Agreement is not fully completed, the security deposit will be retained by us to compensate us for our documentation, processing and other expenses. If for any reason, your check is returned for nonpayment, a $20.00 bad check charge will be assessed.

3. MAINTENANCE AND SUPPLIES: The charges established by this Agreement include payment for the use of the designated Equipment and accessories, maintenance (during normal business hours); inspection, adjustment, parts replacement, drums and cleaning material required for the proper operation, as well as black toner and developer. Paper must be separately purchased by customer. Color toner, not included in this Agreement will be billed separately. If necessary, the service and supply portion of this Agreement may be assigned.

4. OWNERSHIP OF EQUIPMENT: We are the Owner of the equipment and have sole title to the equipment (excluding software). You agree to keep the equipment free and clear of all liens and claims.

5. WARRANTY DISCLAIMER: WE MAKE NO WARRANTY EXPRESS OR IMPLIED, INCLUDING THAT THE EQUIPMENT IS FIT FOR A PARTICULAR PURPOSE OR THAT THE EQUIPMENT IS MERCHANTABLE. YOU AGREE THAT YOU HAVE SELECTED THE SUPPLIER AND EACH ITEM OF EQUIPMENT BASED UPON YOUR OWN JUDGMENT AND DISCLAIM ANY RELIANCE UPON ANY STATEMENTS OR REPRESENTATIONS MADE BY US OR ANY SUPPLIER. WE DO NOT TAKE RESPONSIBILITY FOR THE INSTALLATION OR PERFORMANCE OF THE EQUIPMENT. THE SUPPLIER IS NOT AN AGENT OF OURS AND NOTHING THE SUPPLIER STATES CAN AFFECT YOUR OBLIGATION UNDER THE AGREEMENT. YOU WILL CONTINUE TO MAKE ALL PAYMENTS UNDER THIS AGREEMENT REGARDLESS OF ANY CLAIM OR COMPLAINT AGAINST SUPPLIER.

6. LOCATION OF EQUIPMENT: You will keep and use the equipment only at your address shown above and you agree not to move it unless we agree to it. At the end of the Agreement's term, you will return the Equipment to a location we specify at your expense, in retail resaleable condition, full working order, and in complete repair.

7. LOSS OR DAMAGE: You are responsible for the risk of loss or for any destruction of or damage to the equipment. No such loss or damage relieves you from the payment obligations under this Agreement. You agree to promptly notify us in writing of any loss or damage and you will then pay to us the present value of the total of all unpaid rental payments for the full rental term plus the estimated fair market value of the Equipment at the end of the originally scheduled term, all discounted at six percent (6%) per year. Any proceeds of insurance will be paid to us and credited, at our option, against any loss or damage.

8. COLLATERAL PROTECTION AND INSURANCE: You agree to keep the equipment fully insured against loss with us as loss payee in an amount not less than replacement cost until this Agreement is terminated. You also agree to obtain a general public liability insurance policy from anyone who is acceptable to us and to include us as an insured on the policy. You agree to provide us certificates or other evidence of insurance acceptable to us, before this Agreement begins or, we will enroll you in our property damage coverage program and bill you a property damage surcharge as a result of our increased administrative costs and credit risk. As long as you are current at the time of the loss (excluding losses resulting from acts of God), the replacement value of the equipment will be applied against any loss or damage as per paragraph 7. You must be current to benefit from the property damage surcharge program. NOTHING IN THIS PARAGRAPH WILL RELIEVE YOU OF YOUR RESPONSIBILITY FOR LIABILITY INSURANCE COVERAGE ON THIS EQUIPMENT.

9. INDEMNITY: We are not responsible for any loss or injuries caused by the installation or use of the equipment. You agree to hold us harmless and reimburse us for loss and to defend us against any claim for losses or injury caused by the Equipment.

10. TAXES AND FEES: You agree to pay when due all taxes (including personal property tax, fines and penalties) and fees relating to this Agreement or the Equipment. If we pay any of the above for you, you agree to reimburse us and to pay us a processing fee for each payment we make on your behalf. You also agree to pay us any filing fees prescribed by the Uniform Commercial Code or other law and reimburse us for all costs involved in completing this transaction. You further agree to pay us $75.00 on the date the first rental payment is due to cover the expense of originating the Agreement.

11. ASSIGNMENT: **YOU HAVE NO RIGHT TO SELL, TRANSFER, ASSIGN OR SUBLEASE THE EQUIPMENT OR THIS AGREEMENT.** We may sell, assign, or transfer this Agreement without notice. You agree that if we sell, assign, or transfer this Agreement, the new Owner will have the same rights and benefits that we have now and will not have to perform any of our obligations. You agree that the rights of the new Owner will not be subject to any claims, defenses, or set offs that you may have against us.

12. DEFAULT AND REMEDIES: If you do not pay any lease payment or other sum due to us or other party when due or if you break any of your promises in this Agreement or any other Agreement with us, you will be in default. If any part of a payment is late, you agree to pay a late charge of 10% of the payment which is late or if less, the maximum charge allowed by law. If you are ever in default, we may retain your security deposit and at our option, we can terminate or cancel this Agreement and require that you pay (1) the accelerated unpaid balance of this Agreement (discounted at 6%), (2) the amount of any purchase option and if none is specified, 20% of the original equipment cost which represents our anticipated residual value in the equipment; (3) and return the equipment to us to a location designated by us. We may recover interest on any unpaid balance at the rate of 6% per annum. We may also use any of the remedies available to us under Article 2A of the Uniform Commercial Code as enacted in the State of Minnesota or any other law. You agree to pay our reasonable attorney's fees and actual court costs. If we have to take possession of the equipment, you agree to pay the cost of repossession. The net proceeds of the sale of any repossessed Equipment will be credited against what you owe us relating to any claim arising under this Agreement including, but not limited to, or referral for collection. YOU AGREE THAT WE WILL NOT BE RESPONSIBLE TO PAY YOU ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES FOR ANY DEFAULT BY US UNDER THIS AGREEMENT. You agree that any delay or failure to enforce our rights under this Agreement does not prevent us from enforcing any rights at a later time. It is further agreed that your rights and remedies are governed exclusively by this Agreement and you waive lessee's rights under Article 2A (508-522) of the UCC.

13. UCC FILINGS: You grant us a security interest in the equipment if this Agreement is deemed a secured transaction and you authorize us to record a UCC-1 financing statement or similar instrument, and appoint us your attorney-in-fact to execute and deliver such instrument, in order to show our interest in the equipment.

14. SECURITY DEPOSIT: The security deposit is non interest bearing and is to secure your performance under this Agreement. Any security deposit made may be applied by us to satisfy any amount owed by you, in which event you will promptly restore the security deposit to its full amount as set forth above. If all conditions herein are fully complied with and provided you have not ever been in default of this Agreement per paragraph 12, the security deposit will be refunded to you after the return of the equipment in accordance with paragraph 6.

15. LAW: This Agreement will be deemed fully executed and performed in the State of Minnesota upon signing by the Owner and will be governed by and construed in accordance with Minnesota law. You expressly consent to jurisdiction and venue of any state or federal court in the State of Minnesota and waive right to trial by jury for any claim or action arising out of or relating to this Agreement or the Equipment. You waive right of defense of inconvenient forum.

16. OVERAGES AND COST ADJUSTMENTS: You agree to comply with any billing procedures designated by us, including notifying us of the meter reading at the end of each month. At the end of the first year of this Agreement and once each successive twelve month period, we may increase the base usage charge per copy and the per copy charge over the base minimum by a maximum of 15% of the existing charge.

17. UPGRADE/DOWNGRADE PROVISION: AFTER INCEPTION OF THE AGREEMENT AND UPON YOUR REQUEST, WE MAY REVIEW YOUR COPY VOLUME AND PROPOSE OPTIONS FOR UPGRADING OR DOWNGRADING TO ACCOMMODATE YOUR NEEDS.

FOR MUNICIPALITIES ONLY

18-A. CUSTOMER COVENANTS: the Customer covenants and warrants that (1) it has, in accordance with the requirements of law, fully budgeted and appropriated sufficient funds for the current budget year to make the payments scheduled to come due and to meet its other obligations under the Agreement and such funds have not been expended for other purposes; and
(2) that there is no action, suit, proceeding or investigation pending, or threatened in any court or other tribunal or competent jurisdiction, state or federal or before any public board or body, which in any way would (a) restrain or enjoin the delivery of the Agreement or the ability of the Customer to make its Base Payments (as set out above); (b) contest or affect the authority for the execution or delivery of, or the validity of, the Agreement; or (c) contest the existence and powers of the Customer; nor is there any basis for any such action, suit, proceeding or investigation; and
(3) that the equipment will be operated and controlled by the Customer and will be used for essential government purposes and will to be essential for the term of the Agreement.
(4) Customer has not previously terminated a lease for non-appropriation, except as specifically described in a letter appended hereto.
18-B. SIGNATURES: Each signer (two if monthly payment exceeds $1,200) warrants that he/she is fully conversant with the governing relevant legal and regulatory provisions and has full power and authorization to bind Customer. Signer(s) for Customer further warrant(s) its governing body has taken the necessary steps, including any legal bid requirements, under applicable law to arrange for acquisition of the Equipment; the approval and execution has been in accordance with all applicable open meeting laws; and that a resolution of the governing body of Customer authorizing execution of the Agreement has been duly adopted and remains in full force and effect.
18-C. NON APPROPRIATION. In the event Customer is in default under the Agreement because:
1. Funds are not appropriated for a fiscal period subsequent to the one in which the Agreement was entered into which are sufficient to satisfy all of Customer's obligations under the Agreement during said fiscal period;
2. Such non-appropriation did not result from any act or failure to act of customer;
3. Customer has exhausted all funds legally available for all payment due under the Agreement; and
4. There is no other legal procedure by which payment can be made to Owner.
Then, provided that (a) Customer has given Owner written notice of the occurrence of paragraph 1 above thirty (30) days prior to such occurrence; (b) Owner has received a written opinion from Customer's counsel verifying the same within ten (10) days thereafter; and (c) the Customer does not directly or indirectly purchase, lease or in any way acquire any services or equipment supplied or provided for hereunder; upon receipt of the equipment delivered to a location designated by Owner, at Customer's expense, Owners remedies for such default shall be to terminate the Lease at the end of the fiscal period during which notice is given, retain the advance payments, if any; and/or sell, dispose of, hold, use or rent the equipment as Owner in its sole discretion may desire, without any duty to account to Customer.

X

DATED CUSTOMER SIGNATURE TITLE

Commission Meeting Date: November 28, 2006

Date: **November 16, 2006**

To: **Honorable Mayor & City Commission**

From: **Planning & Economic Development Department** CBC

RE: **Tool & Die Recovery Zone Status for Aero Foil International, Inc**

SUMMARY OF REQUEST: To approve the attached Development Agreement and Resolution establishing a Tool & Die Recovery Zone for Aero Foil International, Inc., which is moving from 1839 Sixth Street to 1920 Port City Boulevard. The Commission previously passed a resolution supporting a Tool and Die recovery Zone for Aerofoil for it's Sixth Street address. Due to environmental contamination it is necessary for the company to move.

FINANCIAL IMPACT: The City will forgo approximately $415,017 in taxes for the 15 year period of the zone. In addition any future investments would be tax exempt also.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the Development Agreement and Resolution establishing a Tool & Die Recovery Zone, and authorize the Mayor and Clerk to sign.

COMMITTEE RECOMMENDATION: None.

2006-97(c)

Resolution to Request a Renaissance Recovery Zone

WHEREAS, the City of Muskegon desires to promote economic activity and maintain/increase the number of jobs available to residents of the area, and;

WHEREAS, certain industries in the state are facing difficult times and the tool and die industry, in particular, has sustained losses due to foreign competition and increased productivity;

WHEREAS, the designation of a Renaissance Recovery Zone will temporarily reduce the tax burden paid by the business enabling it to reposition itself to compete globally, and;

WHEREAS, the business has entered into a collaborative agreement with other business entities having the appropriate North American industrial classification, and;

WHEREAS, the qualified tool and die business property is property leased or owned by a tool and die business and used primarily for tool and die operations;

WHEREAS, should the area be designated a Renaissance Recovery Zone, property within that zone will be exempt from taxes levied by the city, county, and other units of government as provided under this Act, and;

WHEREAS, we estimate that the tax revenue lost, which is estimated on the attached schedule, would be a small fraction of the benefits the designation of a Renaissance Recovery Zone will bring the community.

THEREFORE BE IT RESOLVED, that the City of Muskegon requests that the State of Michigan designate Aero Foil International, Inc., 1920 Port City Blvd., Muskegon, MI 49442, Property ID # 24-691-000-0005-00 , identified by the resolution a Renaissance Recovery Zone under Public Act 376 of 1996 for a duration of 15 years.

Adopted this 28th day of November 2006.

Ayes: Gawron, Shepherd, Spataro, Warmington, Wierengo, Carter, and Davis

Nays: None

Absent: None

BY: _____
Stephen J. Warmington
Mayor

ATTEST: Linda Potter
Linda Potter, Acting City Clerk

CERTIFICATION

I hereby certify that the foregoing constitutes a true and complete copy of a resolution adopted by the Muskegon City Commission, County of Muskegon, Michigan at a regular meeting held on November 28, 2006.

Linda Potter

Linda Potter, Acting City Clerk

2006-97(c)

DEVELOPMENT AGREEMENT

CITY OF MUSKEGON TOOL AND DIE RENAISSANCE RECOVERY ZONE

THIS IS AN AGREEMENT between the CITY OF MUSKEGON, a municipal corporation, of 933 Terrace Street, Muskegon, Michigan 49443 ("City") and Aero Foil International a Tool & Die Manufacturing company located at 1920 Port City Blvd, Muskegon, MI.

Recitals:

A. The City has received a request from the Company and intends to consider the location designation of a Tool and Die Renaissance Recovery Zone, and as a condition thereof this Agreement must be approved and executed by the Company prior to the establishment of the Tool and Die Renaissance Recovery Zone. Upon approval of Tool and Die Renaissance Recovery Zone status for the Property, the City will sign this Agreement. The City deems this Agreement to constitute a necessary element in the City's determination regarding the location of Company in the Tool and Die Renaissance Recovery Zone, and the City relies upon the undertakings of Company in the Agreement to allow and to continue the Tool and Die Renaissance Recovery Zone status of the Company.

B. The Company intends to install the projects set forth in its Application for the Tool And Die Recovery Zone. The Company understands that the City relies upon the undertakings of the Company in the Agreement to establish and to continue the Company's status as a Tool And Die Renaissance Recovery Zone Company.

NOW THEREFORE THAT PARTIES AGREE:

1. DOCUMENTS ATTACHED. Included in this Agreement are the following documents which have been collected and relied upon by the parties:

   1.1 Copy of the Michigan Renaissance Zone Act, as amended to date.

2. COMPANY AGREEMENT. The Company agrees to the following commitments which it shall perform in a timely and reasonably acceptable manner.

   2.1 Maintain the current level of employment at the same level.

3. AGREEMENT BY THE CITY. Provided this Agreement has been executed and further provided all applications concerning Tool and Die Renaissance Recovery Zone status have been properly filed, the City shall, in a timely manner, proceed with the appropriate meetings or applications including as necessary with the State of Michigan and with all local review entities by law. The City may consider this agreement in a meeting separate from and prior to the meeting in which the City or any entity considers the approval of the applicant for Tool and Die Renaissance Recovery Zone status.

4. EVENTS OF DEFAULT. The following actions or failures to comply shall be considered events of default by the Company.

   4.1 Failure to meet any of the commitments set forth above.

   4.2 Failure to afford to the City the documentation and reporting required.

4.3 The failure to pay any taxes other than those exempted by the Michigan Renaissance Zone Act, and the failure to pay any special assessments levied on the Company's property timely after levy or final appeal.

4.4 The violation of any provisions, promises, commitments, considerations or covenants of this Agreement.

4.5 Relocation of the Company to a location outside of the City limits of the City of Muskegon.

5. REMEDIES ON DEFAULT. In the event of any of the above defaults the City shall have the following remedies which it may invoke without notice, except as may be reasonably required by the Company's rights to due process.

5.1 Failure to Install Improvements. In the event the improvements, renovations and the equipment have not been completed or installed by the time set forth in the attachments, the City will petition the State to revoke the Tool and Die Renaissance Zone status from the Company.

5.2 Failure to Expend the Funds Represented. Whether or not the installations have been completed, if the Company has not expended the funds it has represented on its application that it would invest, the City will petition the State to revoke the Tool and Die Renaissance Recovery Zone status from the Company.

5.3 Failure to Maintain the Current level of employment. Whether or not the installations have been completed, if the Company has not maintained the number of employees at the same level as when the application for Industrial Facility Tax Abatement was submitted, the City will petition the State to revoke the Tool and Die Renaissance Recovery Zone status from the Company

5.4 Relocation of the Company to a location outside of the City limits of the City of Muskegon. In the event the Company relocates outside of the City of Muskegon, the City will petition the State to revoke the Tool and Die Renaissance Zone status from the Company.

5.5 Other Violations. For any material violations of this Agreement, the City reserves the right to seek declaration by a court or entity with authority.

5.6 City Considerations for Determination in Matters of Default. The City shall not unreasonably take any action which may result in invocation of the remedies above. It shall take the following factors into consideration:

5.6.1 The economic conditions, if any, reasonably known to the City, which are found to be directly related to the default or circumstance causing the proposed action by the City.

5.6.2 The performance of the Company in meeting the commitments and requirements of the Application, the submitted materials, and the provisions of the Certificate and this Agreement.

5.6.3 Whether the effect on the City's finances of the Company's actions is material and substantial.

5.6.4 Whether the circumstances affecting the status of the company was created by occurrences beyond the control of the Company or could have been avoided, and, in particular, whether the Company could economically and feasibly continue to perform as required by this Agreement.

6. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Michigan applicable to contracts made and to be performed within the State of Michigan, and in particular the Michigan Renaissance Zone Act of the State, as amended.

7. Counterparts. This Agreement may be executed in one or more counterparts. Notwithstanding such execution all such counterparts shall constitute one and the same Agreement.

8. Benefits. This Agreement shall be binding upon and inure to the benefit of the respective parties, their successors assigns and personal representatives.

9. Effective Date. This Agreement shall be effective on the date the State of Michigan grants the Tool and Die Renaissance Recovery Zone designation.

10. Invalidity. In the event any provision of this agreement is declared invalid by a court or tribunal having competent jurisdiction, the remainder of the agreement shall remain in full force and effect.

CITY OF MUSKEGON,
a municipal corporation

By _____
Stephen Warmington, Mayor

and Linda Potter
Linda Potter, Acting City Clerk

Dated: December 4, 2006

Aero Foil International

By _____
Stephen Kutches
Its President

and _____
Its _____

Dated: _____, 2006

Abated Taxes - Aerofoil

Year	Abated taxes - Real property	Abated taxes - Personal property	
2008	$12,216	$18,526	
2009	$12,216	$18,526	
2010	$12,216	$18,526	
2011	$12,216	$18,526	
2012	$12,216	$18,526	
2013	$12,216	$18,526	
2014	$12,216	$18,526	
2015	$12,216	$18,526	
2016	$12,216	$18,526	
2017	$12,216	$18,526	
2018	$12,216	$18,526	
2019	$12,216	$18,526	
2020	$9,162	$13,895	
2021	$6,108	$9,263	
2022	$3,054	$4,632	
Total Abated Taxes	$164,916	$250,101	$415,017

Commission Meeting Date: November 28, 2006

Date: **November 17, 2006**

To: **Honorable Mayor and City Commissioners**

From: **Planning & Economic Development** CBC

RE: **Request for Final Planned Unit Development approval for a Residential Development near Sherman Boulevard and Barclay Street**

SUMMARY OF REQUEST:

The request for Final Planned Unit Development (PUD) approval for a mixed use commercial and residential development for the southerly portion of 1266 W. Sherman Boulevard, the northerly portion of 1228 W. Sherman, a portion of 1254 W. Sherman and a portion of 2495 Barclay Street. The request is by Hazel Churchley, Exit Your Way, LLC.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Staff recommends final approval of the PUD provided that the conditions listed in the attached resolution are met.

COMMITTEE RECOMMENDATION:

The Planning Commission recommended approval of the final PUD, with the conditions listed on the attached resolution, at their November 16, 2006 meeting. The vote was approved by unanimous vote, with B. Smith absent.

CITY OF MUSKEGON

RESOLUTION #2006-97(d)

RESOLUTION FOR FINAL PLANNED UNIT DEVELOPMENT APPROVAL FOR THE SOUTHERLY PORTION OF 1266 W SHERMAN BOULEVARD, THE NORTHERLY PORTION OF 1228 W SHERMAN, A PORTION OF 1254 W SHERMAN AND A PORTION OF 2495 BARCLAY STREET.

WHEREAS, a petition for a planned unit development was received from Hazel Churchley, Exit Your Way, LLC; and,

WHEREAS, a planned unit development will allow a mixed use commercial and residential development; and,

WHEREAS, proper notice was given by mail and publication and public hearings were held by the City Planning Commission and by the City Commission to consider said petition, during which all interested persons were given an opportunity to be heard in accordance with provisions of the Zoning Ordinance and State Law; and

WHEREAS, the Planning Commission and staff have recommended approval of the Final Planned Unit Development and associated site plan, with conditions as follows:

1. No trees be removed from the site without Zoning Administrator permission.
2. All DEQ permits be obtained before construction begins.
3. The Arborvitae screening along the westerly property line be extended to the south to include screening of the cul-de-sac..

NOW, THEREFORE, BE IT RESOLVED that the recommendation by staff and the City Planning Commission be accepted and the final planned unit development is hereby approved.

Adopted this 28th day of November, 2006

Ayes: Shepherd, Spataro, Warmington, Wierengo, Carter, Davis, Gawron

Nays: None

Absent: None

By: _____
Stephen J. Warmington
Mayor

Attest: Linda S. Potter
Linda S. Potter , CMC
Acting City Clerk

CERTIFICATE (Final PUD Sherman and Barclay.)

The undersigned, being the duly qualified clerk of the City of Muskegon, Muskegon County, Michigan, does hereby certify that the foregoing is a true and complete copy of a resolution adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the 28th day of November, 2006, at which meeting a quorum was present and remained throughout, and that the original of said ordinance is on file in the records of the City of Muskegon. I further certify that the meeting was conducted and public notice was given pursuant to and in full compliance with Act No. 267, Public Acts of Michigan of 1976, as amended, and that minutes were kept and will be or have been made available as required thereby.

DATED: December 1, 2006.

Linda S. Potter

Linda S. Potter, CMC
Acting City Clerk, City of Muskegon

Staff Report [EXERPT]
CITY OF MUSKEGON
PLANNING COMMISSION
REGULAR MEETING

November 16, 2006

Hearing; Case 2006-44: Request for final Planned Unit Development approval for a mixed use commercial and residential development for the southerly portion of 1266 W. Sherman Boulevard, the Northerly portion of 1228 W. Sherman, a portion of 1254 W. Sherman, and a portion of 2495 Barclay Street, by Hazel Churchley, Exit Your Way, LLC. – **Referred back by City Commission for revisions to site plan.**

BACKGROUND

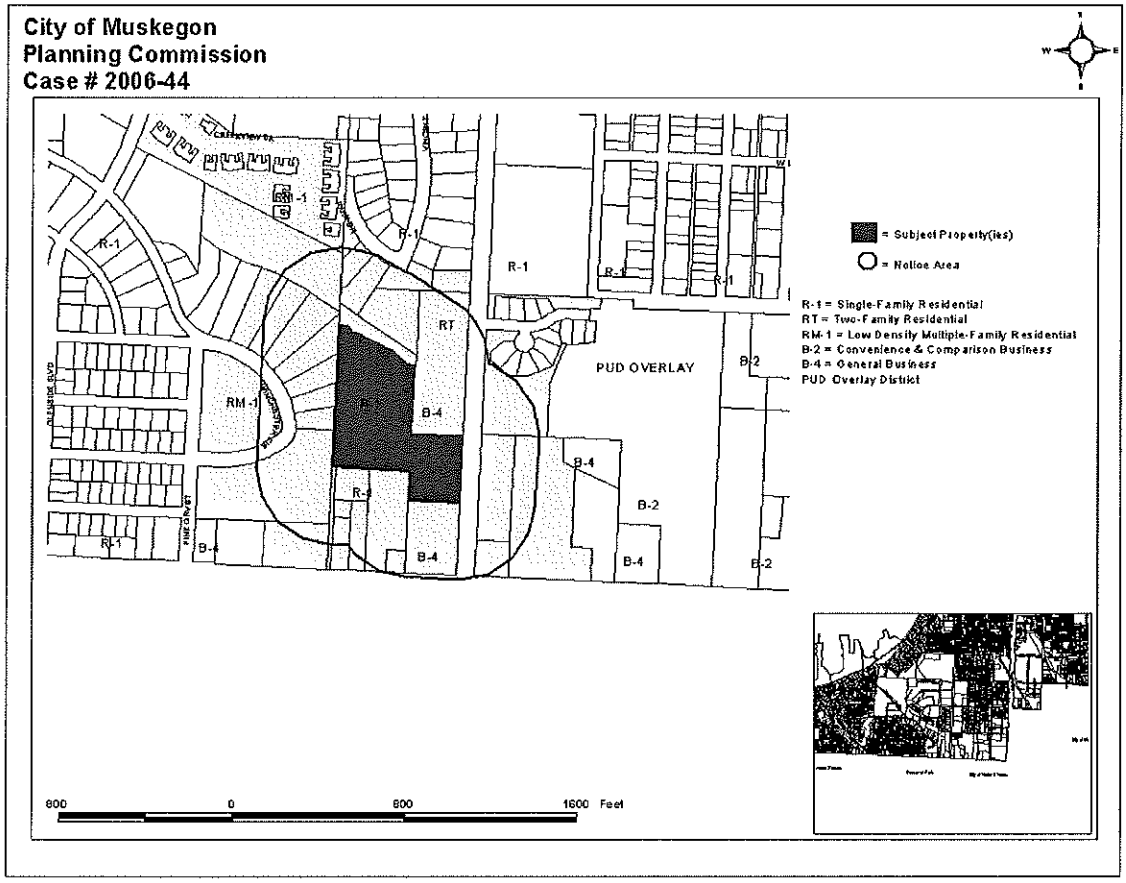
Applicant:	Hazel Churchley, Exit Your Way, LLC
Property Address/Location:	Portions of 1266, 1254, 1228 W. Sherman Boulevard and a portion of 2495 Barclay Street
Request:	Final Planned Unit Development (PUD)
Present Land Use:	Vacant
Zoning:	R-1, One Family Residential and B-4, General Business

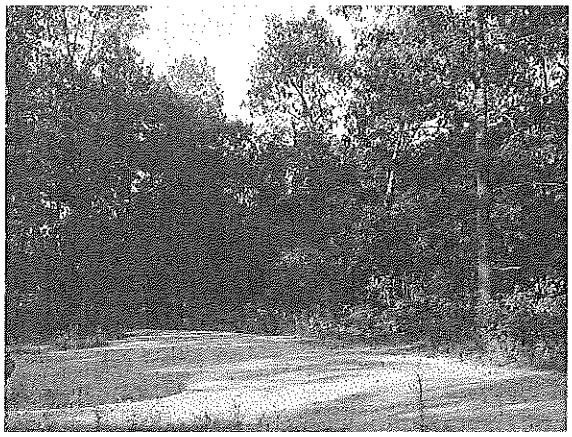
STAFF OBSERVATIONS

1. The applicant received approval of the Preliminary and Final PUD for this property at the August Planning Commission meeting.
2. When this request was about to be heard at the City Commission meeting, the developer asked to have time to revise the site plan and resubmit it to the Planning Commission for further review. They realized there were concerns from the public that needed to be addressed, as well as the concerns from the MDEQ. Therefore, the City Commission voted to send the request back to Planning Commission.
3. The portion of the property along Barclay Street is zoned B-4, General Business. The remainder of the site is zoned R-1, One Family Residential.
4. The site is approximately 7 acres of property that is proposed to be developed as 20 residential units constructed as duplexes and one single unit model home. The homes will have basements; some of them along the slope to Ruddiman Creek will have walk-out basements.
5. Properties to the north and west are zoned R-1, the properties to the east are zoned RT, Two Family Residential, and B-4. The properties to the south are also zoned B-4.
6. The site is rather wooded, with a clearing toward the rear along the creek. There is presently an access road off of Barclay Street that was used during the recent clean-up of Ruddiman Creek.
7. After key staff met with the developers and architect, some elements were changed and the site plan was revised to amend several concerns (see 10/26/06 letter from Westshore Consulting included with this packet). Key elements that were addressed are as follows:

a. A landscape plan was submitted and is acceptable to the Planning Department.
b. The buildings have been reconfigured somewhat on the site for a couple of reasons. The space between units 10 and 12 is now approximately 22 feet to accommodate the City's Water/Sewer Departments equipment in maintaining the sanitary sewer drain over the edge of the bank. Each of the buildings were also staggered somewhat to give a more residential neighborhood feel, rather than appearing like row houses.
c. All of the previous site plan concerns have been corrected.

8. The Fire Department had their site plan concerns corrected on the site plan.
9. DPW had their concerns addressed, and approved the new site plan.
10. Engineering's comments are as follows:
    a. The developers "need a permit from the DEQ for storm water outlet and permit from the County for soil erosion control".
11. No comments have been received by staff at the time of this staff report.





Rear of the Sherman Boulevard property near Ruddiman Creek.

View looking north from Van's Car Wash.

Property located on Barclay Street.

STAFF RECOMMENDATION

Staff recommends approval of the request for a final PUD for portions of 1266, 1254, & 1228 W. Sherman Boulevard and 2495 Barclay Street.

DELIBERATION

Standards for discretionary uses: (emphasis provided)

1. Give due regard to the nature of all adjacent uses and structures and the consistency with the adjacent use and development.

2. Find that the proposed use or activity would not be offensive, or a nuisance, by reason of increased traffic, noise, vibration, or light.

3. Adequate water and sewer infrastructure exists or will be constructed to service the activity.

4. The proposed site plan complies with section 2331of the ordinance and has:
    a. proper ingress and egress
    b. sufficient parking areas, streets, roads and alleys
    c. screening walls and/or fences
    d. adequate fire and police protection
    e. provisions for disposal of surface water run-off, sanitary sewage
    f. adequate traffic control and maintenance services
    g. preserves property values to related or adjoining properties.

MOTION FOR CONSIDERATION

I move that the final PUD for a mixed-use residential and commercial development on the southerly portion of 1266 W. Sherman Boulevard, the northerly portion of 1228 W. Sherman Boulevard, and a portion of 1254 W. Sherman Boulevard along with a portion of 2495 Barclay Street be recommended for (approval/denial) to the City Commission pursuant to the determination of (compliance/lack of compliance) with the intent of the City Zoning Ordinance and City Master Land Use Plan, with the following condition:

1. No trees be removed from the site without Zoning Administrator permission.
2. All DEQ permits be obtained.

Date: **November 28, 2006**

To: **Honorable Mayor and City Commissioners**

From: **Engineering**

RE: **City – MDOT Agreement for: Western Ave. Landscaping between Third & Terrace**

SUMMARY OF REQUEST:

To approve the attached contract & resolution with MDOT for the Jobs Today funds for the construction of decorative concrete, streets lights & roundabout along Western Ave. between Third & Terrace. This contract outlines the terms and conditions under which the state made funds available to the City to offset the local match of the federal funds used to construct the aforementioned items.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Approve the attached contract and resolution and authorize the mayor & clerk to sign both.

COMMITTEE RECOMMENDATION:

RESOLUTION 2006-97(e)

RESOLUTION FOR APPROVAL OF A CONTRACT AGREEMENT BETWEEN THE MICHIGAN DEPARTMENT OF TRANSPORTATION AND THE CITY OF MUSKEGON FOR THE STREETSCAPING WORK ALONG WESTERN AVENUE FROM THIRD TO TERRACE (CONSTRUCTION OF A ROUNDABOUT & DECORATIVE SIDEWALKS AND STREETS LIGHTS PURCHASE AND INSTALLATION) TOGETHER WITH OTHER NECESSARY RELATED WORK AND AUTHORIZATION FOR MAYOR STEPHEN J. WARMINGTON AND ACTING CITY CLERK LINDA POTTER TO EXECUTE SAID CONTRACT

Moved by Commissioner Shepherd and supported by

Commissioner Carter that the following Resolution be adopted:

WHEREAS, entry by the City of Muskegon into Contract no. **06-5533** between the Michigan Department of Transportation and the City of Muskegon for the STREETSCAPING WORK ALONG WESTERN AVENUE FROM THIRD TO TERRACE within the City is in the best interests of the City of Muskegon.

RESOLVED, that entry by the City into Contract Agreement Number **06-5533** be and the same is hereby authorized and approved and the Mayor and Clerk are authorized to execute said contract for and on behalf of the City of Muskegon.

Adopted this 28th day of November, 2006.

BY _____
Stephen J. Warmington, Mayor

ATTEST Linda S. Potter
Linda S. Potter, Acting City Clerk

CERTIFICATION

This resolution was adopted at a meeting of the City Commission, held on November 28, **2006**. The meeting was properly held and noticed pursuant to the Open Meetings Act of the State of Michigan, Act 267 of the Public Acts of 1976.

CITY OF MUSKEGON

By Linda Potter
Linda Potter, Acting City Clerk

CAB

AMENDMENT TO CONTRACT 06-5195

Control Section	HPSL 61407
Job Number	87289
Project	HPSL 0661(016)
Federal Item No.	RR 5086
CFDA No.	20.205 (Highway Research Planning & Construction)
Contract No.	06-5533

THIS AMENDATORY CONTRACT is made and entered into this date of DEC 1 1 2006, by and between the MICHIGAN DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the "DEPARTMENT"; and the CITY OF MUSKEGON, a Michigan municipal corporation, hereinafter referred to as the "REQUESTING PARTY"; for the purpose of fixing the rights and obligations of the parties in agreeing to this Amendment to CONTRACT #06-5195.

WITNESSETH:

WHEREAS, the parties to the Amendment have heretofore, by a Contract dated June 6, 2006, hereinafter referred to as "CONTRACT 06-5195" provided for the construction and financing of that which is hereinafter referred to as the "PROJECT" and is described as follows:

Streetscaping work along Western Avenue from Third Street to Terrace Street; and all together with necessary related work.

WHEREAS, the PROJECT has been approved for financing in part with State Local Jobs Today Program Funds; and

WHEREAS, the DEPARTMENT and the REQUESTING PARTY having appropriate authority desire to amend CONTRACT 06-5195 to provide for State Local Jobs Today Funds to be applied to the eligible items of the PROJECT COST.

NOW, THEREFORE, it is hereby agreed by and between the parties hereto that:

1. Section 5 of CONTRACT 06-5195 is revised to read as follows:

5. The PROJECT COST shall be met in part by contributions from the Federal High Priority Project Program–SAFETEA LU and the State Local Jobs Today Program.

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Subtitle G - High Priority Projects, authorizes High Priority Project funding and establishes the maximum amount of funding for the PROJECT and associated phases under SAFETEA-LU Number 320 to be $2,320,000. It is understood that this amount may be subject to obligational authority limitation and after applying that estimated limitation only $1,983,600 may be available for the PROJECT and associated phases. It is further understood that according to SAFETEA-LU, funds for the PROJECT and associated phases are to be allocated over a period of 5 years.

Federal High Priority Project – SAFETEA LU Funds shall be applied to the eligible items of the PROJECT COST at the established Federal participation ratio equal to 80 percent up to an amount not to exceed $960,000. In accordance with the above, the current available Federal High Priority Project–SAFETEA LU Funds for this PROJECT are established to be $796,803, consisting of allocations for fiscal years 2005 and 2006. State Local Jobs Today Grant Funds shall be applied to the eligible items of the PROJECT COST at a participation ratio equal to 20 percent up to an amount not to exceed $240,000. The balance of the PROJECT COST, after deduction of Federal Funds and State Funds, shall be paid by the REQUESTING PARTY. The PROJECT COST and the cost participation are estimated to be as follows:

	ESTIMATED COST	Federal High Priority Project - SAFETEA LU Funds (Current Fiscal Year)	Federal High Priority Project - SAFETEA LU Funds (Advance Construction) Future Fiscal Year	State Local Jobs Today Grant Funds	REQUESTING PARTY'S SHARE (Future Fiscal Year)
Contracted Work	$ 930,000	$744,000	$ -0-	$186,000	$-0-
Force Account Work	$ 170,000	$ 52,803	$ 83,197	$ 34,000	$-0-
Construction Eng & Inspection	$ 95,000	$ -0-	$ 76,000	$ 19,000	$-0-
Total	$1,195,000	$796,803	$159,197	$239,000	$-0-

Contingent upon availability of Federal Funds and Federal approval, Federal High Priority Project–SAFETEA LU Funds, for future fiscal years, may be applied to the cost incurred as advance construction, in an amount such that the Federal Funds equal a participation ratio of 80 percent, subject to the obligational authority limit for the Federal High Priority Project–SAFETEA LU Funds for this PROJECT.

Upon completion and final accounting of this PROJECT and associated phases under SAFETEA–LU Number 320, Federal High Priority Project–SAFETEA LU Funds may be adjusted among all phases such that the total Federal High Priority–SAFETEA LU Funds does not exceed $2,230,000 subject to the obligational authority limit.

Any items of PROJECT COST not reimbursed by Federal Funds or State Funds shall be the sole responsibility of the REQUESTING PARTY.

2. Except as amended by the provisions herein, all of the provisions, covenants, and obligations of the parties contained in CONTRACT 06-5195 shall remain in full force and effect.

3. The REQUESTING PARTY waives any and all claims it has or may have against the DEPARTMENT which arise out of the need to amend CONTRACT 06-5195.

4. This Amendatory contract shall become binding on the parties hereto and of full force and effect upon the signing thereof by the duly authorized officials for the parties hereto; upon the adoption of the necessary resolution approving said contract and authorizing the signatures thereto of the respective officials of the REQUESTING PARTY, a certified copy of which resolution shall be attached to this contract.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed the day and year first above written.

CITY OF MUSKEGON

By _____
Title: Mayor

By Linda Potter
Title: Acting City Clerk

MICHIGAN DEPARTMENT
OF TRANSPORTATION

By _____
for Department Director MDOT

10/30/06

REVIEWED 10-12-06 CONTRACT/AGENCY

2/4/87 amend.for 10/11/06

MUSKEGON

West Michigan's Shoreline City
www.shorelinecity.com

DATE: **November 21, 2006**

TO: **Honorable Mayor and City Commissioners**

FROM: **Leisure Services Board thru**
Assistant Manager, Lee Slaughter

RE: **Christmas in Hackley Park by Fun Inc.**

SUMMARY OF REQUEST: Family Christmas in Hackley Park has been a community tradition in Hackley Park for over 15 years.

At their November 20th meeting, the Leisure Services Board recommended that the application fee for Fun Inc. be waived for the 2006 event and all future Hackley Park Christmas events hosted by Fun Inc. This event is a grandfathered event.

FINANCIAL IMPACT: $50.00 per year (Special Event Application Fee)

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Staff approves this request

AGENDA ITEM NO. _____

CITY COMMISSION MEETING _____

TO: Honorable Mayor and City Commissioners

FROM: Bryon L. Mazade, City Manager

DATE: November 21, 2006

RE: East Muskegon Little League Tag Sale Request

SUMMARY OF REQUEST:
East Muskegon Little League is requesting to hold a fund raiser tag sale using City streets.

FINANCIAL IMPACT:
None.

BUDGET ACTION REQUIRED:
None.

STAFF RECOMMENDATION:
To deny the request as it is contrary to the City's Special Events Policy.

COMMITTEE RECOMMENDATION:
None.

November 13,2006:
City Manager:
Bryon Mazade:

East Muskegon Little League is requesting that they be included on the agenda for the November 28th 2006 City Commission meeting.

We would like to discuss a fund raiser tag sale. We will have two representative's attend the commission meeting.

Please reply.

Thank you,

Ralph Burr

Ralph Burr
1275 Emerson Avenue
Muskegon, Michigan 49442
231-773-5292

RECEIVED
NOV 14 2006
MUSKEGON
CITY MANAGER'S OFFICE

RECEIVED
NOV 03 2006
MUSKEGON
CITY MANAGER'S OFFICE

November 2, 2006:

City Manager:
Brian Mazade:

Dear Sir:

I represent the East Muskegon Little League youth softball and baseball program. Last season we had over 200 youth participate. We use Sheldon Park and Reese Park for our program.

We are continuing to have finical difficulties, unable to get enough team sponsors and donations. We do charge a player fee, but do not turn any child away if they can not pay. In prior years we did receive a grant from Leisure Service, but that has been eliminated.

We have tried many different fund raising projects. One suggestion was to have a one day tag sale. We would only be in the East Muskegon area and have plenty of supervision.

Who do we have to talk to in regards to this sale? We would appreciate any help we could get.

Thank You:

Ralph Burr

Ralph Burr
1275 Emerson Avenue
Muskegon, Mi. 49442
231-773-5292

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NEWS BULLETIN

Ramifications of affirmative action ban depends on institutions experts say

November 28, 2006

BY ZACHARY GORCHOW
FREE PRESS STAFF WRITER

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The impact of the voter-approved ban on affirmative action programs could depend on how the state's public universities and governments that employ those programs decide to respond.

Two attorneys from a prominent Detroit law firm, who have analyzed the potential impact of the passage of Proposal 2 on Nov. 7, told a panel Tuesday that the impact on programs in California and Washington state was vastly different, in large part because the leaders of those states took different tacks.

In the run-up to the vote in Michigan, most assessments of the proposal's potential impact drew upon the experiences in California, which approved a similar measure in 1996.

In California, after the 1996 passage of Proposition 209, then-Gov. Pete Wilson acted to dismantle that state's affirmative action programs in public employment, public education and public contracting.

But in Washington state, there was a mixed approach after the 1998 approval of State Initiative 200. The University of Washington immediately scrapped its affirmative action programs in admissions. The state ended a program that gave preferences in state employment to women and racial and ethnic minorities.

But recruiting and outreach programs remained in place and there have been no lawsuits against state and local government hiring practices alleging those methods violate the affirmative action ban.

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