

CITY OF MUSKEGON

CITY COMMISSION MEETING

OCTOBER 26, 2004

CITY COMMISSION CHAMBERS @ 5:30 P.M.

AGENDA

- ❑ CALL TO ORDER:
- ❑ PRAYER:
- ❑ PLEDGE OF ALLEGIANCE:
- ❑ ROLL CALL:
- ❑ HONORS AND AWARDS:
 - A. Annual Service Awards. CIVIL SERVICE
- ❑ INTRODUCTIONS/PRESENTATION:
- ❑ CONSENT AGENDA:
 - A. Approval of Minutes. CITY CLERK
 - B. Approval of Contractor for Rehabilitation of the House at 510 Creston. COMMUNITY & NEIGHBORHOOD SERVICES
 - C. Lead Based Paint Abatement at 510 Creston. COMMUNITY & NEIGHBORHOOD SERVICES
- ❑ PUBLIC HEARINGS:
- ❑ COMMUNICATIONS:
- ❑ CITY MANAGER'S REPORT:
- ❑ UNFINISHED BUSINESS:
 - A. SECOND READING: Muskegon Boiler Works Study Committee Final Report. PLANNING & ECONOMIC DEVELOPMENT
- ❑ NEW BUSINESS:
 - A. FIRST READING: Adoption of Alternative Provision of City Income Tax Act (Act 284 of 1964. INCOME TAX
 - B. Approval of Subordination Agreement with Crestmark Bank in Regards to Michigan Steel. TREASURER

C. Sale of Parcel at 1537 S. Getty.
DEVELOPMENT

PLANNING & ECONOMIC

❑ 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 GAIL A. KUNDINGER, CITY CLERK, 933 TERRACE STREET, MUSKEGON, MI 49440 OR BY CALLING (231) 724-6705 OR TDD: (231) 724-4172.



MEMO

TO: City Commission
Bryon Mazade
Lee Slaughter

FROM: Linda Potter, Clerk's Office

DATE: October 18, 2004

RE: October 26, 2004, Commission Meeting

Commissioner Davis has an appointment in Ann Arbor on Tuesday, October 26, and may not be back in time for the Commission Meeting.

Date: October 26, 2004
To: Honorable Mayor and City Commissioners
From: Gail A. Kunding, City Clerk
RE: Approval of Minutes

SUMMARY OF REQUEST: To approve the minutes of the Commission Worksession that was held on Monday, October 11, 2004; and the Regular Commission Meeting that was held on Tuesday, October 12, 2004.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

CITY OF MUSKEGON

CITY COMMISSION MEETING

OCTOBER 26, 2004

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, October 26, 2004.

Mayor Warmington opened the meeting with a prayer from Pastor Anderson of the Philadelphia Baptist Church 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 Bill Larson, Commissioner Chris Carter, Stephen Gawron, Clara Shepherd, Lawrence Spataro, City Manager Bryon Mazade, City Attorney John Schrier, and City Clerk Gail Kundinger.

Absent: Commissioner Kevin Davis (excused).

2004-94 HONORS AND AWARDS:

A. Annual Service Awards. CIVIL SERVICE

The service awards were presented by Ray Murdaugh.

2004-95 CONSENT AGENDA:

A. Approval of Minutes. CITY CLERK

SUMMARY OF REQUEST: To approve the minutes of the Commission Worksession that was held on Monday, October 11, 2004; and the Regular Commission Meeting that was held on Tuesday, October 12, 2004.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

B. Approval of Contractor for Rehabilitation of the House at 510 Creston. COMMUNITY & NEIGHBORHOOD SERVICES

SUMMARY OF REQUEST: To approve the contract with Top Notch Design, 4740

Jension Rd., Fruitport, MI for the rehabilitation of the home at 510 Creston for the cost of \$53,890. The only other bid received was from Lewis Johnson for \$58,750 of 16076 Bonita Court, Grand Haven, MI. After the rehabilitation is completed, the home will be sold to a qualified first-time homebuyer continuing the City's aggressive neighborhood revitalization efforts under the Operation "Crest to Success".

FINANCIAL IMPACT: The funding for the project will be taken from the City's 2003 HOME funds.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the contract with Top Notch Design and direct the Mayor and Clerk to sign the contract.

C. Lead Based Paint Abatement at 510 Creston. COMMUNITY & NEIGHBORHOOD SERVICES

SUMMARY OF REQUEST: To approve the bid with Success Builders, 2722 E. Broadway for the lead base paint abatement of the city-owned home at 510 Creston for \$18,500. The other bids received were from West Michigan Construction, 2600 Patterson S.E., Grand Rapids, MI; and A-1 Professional Construction for \$19,900 and \$21,925 respectfully. After the lead base paint abatement is complete, the structure will be totally rehabilitated and then sold to a qualified low to moderate-income homebuyer.

FINANCIAL IMPACT: Cost of the abatement will be allocated from the 2002 HOME budget for lead based paint abatement.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the bid and authorize staff to contract the work with Success Builders of Muskegon.

Motion by Commissioner Gawron, second by Commissioner Shepherd to approve the Consent Agenda as read.

ROLL VOTE: Ayes: Warmington, Carter, Gawron, Larson, Shepherd, Spataro

Nays: None

MOTION PASSES

2004-96 UNFINISHED BUSINESS:

A. SECOND READING: Muskegon Boiler Works Study Committee Final Report. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: The Muskegon Boiler Works Study Committee, which was appointed by the City Commission on June 22, 2004 to study the historic significance of the Boiler Works property and make a recommendation regarding the establishment of an historic district, has developed a final report.

The property is located at 1204 Eighth Street (described as City of Muskegon Revised Plat of 1903 Block 317, Lots 9-13). To finalize its duties, the Study Committee is forwarding on the final report with a recommendation to the City Commission to establish the Boiler Works Historic District and to amend Chapter 11 of the Code of Ordinances concerning Historic Districts and the Historic District Commission, to reflect the addition of the new district.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To accept the Muskegon Boiler Works Study Committee report and recommendation and authorize the Clerk to sign the Ordinance amending Chapter 11 of the Code of Ordinances concerning Historic Districts and the Historic District Commission.

COMMITTEE RECOMMENDATION: The Muskegon Boiler Works Study Committee recommends approval of the establishment of an historic district for the Boiler Works property. The Planning Commission recommended approval to the City Commission at their August 12, 2004 meeting.

Motion by Vice Mayor Larson, second by Commissioner Carter to approve the establishment of an historic district for the Boiler Works property and amend Chapter 11 of the Code of Ordinances.

ROLL VOTE: Ayes: Carter, Larson, Shepherd, Warmington

Nays: Gawron, Spataro

MOTION PASSES

2004-97 NEW BUSINESS:

A. FIRST READING: Adoption of Alternative Provision of City Income Tax Act (Act 284 of 1964). INCOME TAX

SUMMARY OF REQUEST: The adoption of the alternative provision of the City Income Tax Act, (Act 284 of 1964), Chapter 3, Section 141.760 which will require employers over the one hundred dollar monthly withholding threshold to pay to the City the full amount of tax withheld on or before the last day of the month following the close of each calendar month. Effective January 1, 2005.

FINANCIAL IMPACT: The adoption of this provision will allow the city to collect revenue faster. Also, it will enhance our ability to forecast economic trends from a quarterly to a monthly basis.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval recommended.

Motion by Commissioner Spataro, second by Commissioner Carter to adopt the alternative provision of City Income Tax Act.

ROLL VOTE: Ayes: Gawron, Larson, Shepherd, Spataro, Warmington, Carter

Nays: None

MOTION PASSES (REQUIRES SECOND READING)

B. Approval of Subordination Agreement with Crestmark Bank in Regards to Michigan Steel. TREASURER

SUMMARY OF REQUEST: Michigan Steel purchased the assets of West Michigan Steel through section 363-bankruptcy sale, which extinguished all liens on the personal property. In an attempt to retain some interest in the personal property for those tax years, the City of Muskegon City Commission approved and signed a promissory note and security agreement with Michigan Steel for repayment of delinquent personal property taxes in November 2003.

Michigan Steel is refinancing through Crestmark Bank who is now requesting to enter into a subordination agreement with the City of Muskegon. This agreement only affects the previous tax years covered in the bankruptcy proceeding. The City of Muskegon retains all superior tax lien rights for future tax years. This would essentially be a continuation of the original subordination agreement with Prairie Financial.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: The staff recommends approval of the subordination agreement with Crestmark Bank.

Motion by Commissioner Gawron, second by Commissioner Spataro to approve the Subordination Agreement with Crestmark Bank in regards to Michigan Steel.

ROLL VOTE: Ayes: Gawron, Larson, Shepherd, Spataro, Warmington, Carter

Nays: None

MOTION PASSES

C. Sale of Parcel at 1537 S. Getty. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: To approve the sale of 1537 S. Getty Street to R. Walker Construction Company, 3765 S. 41 Road, Cadillac, MI 49601. This company will construct a 7,500 sq. ft. industrial building that will be occupied by Fastenal Company, currently located at 1590 Creston Street. Fastenal is a warehouse wholesaler to the manufacturing industry. The property is zoned I-1, Light Industrial, which allows for this use as a principal use. Fastenal will purchase the building after completion from R. Walker Construction Company. The purchase price is \$30,000, which is the full asking price. Fastenal will employ 10-12 employees. The purchase agreement contains a condition, which will require the company to construct the building within 18 months.

FINANCIAL IMPACT: The sale of this lot will put the property back on the tax roles, and bring additional income tax revenue from those employed at the company.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the resolution and to authorize both the Mayor and the Clerk to sign said resolution, deed, and any other necessary documents.

Motion by Commissioner Spataro, second by Commissioner Shepherd to approve the sale of 1537 S. Getty Street to R. Walker Construction Company.

ROLL VOTE: Ayes: Larson, Shepherd, Spataro, Warmington, Carter, Gawron

Nays: None

MOTION PASSES

D. Opposing House Bill 4358 – Michigan Vehicle Code Amendment.

PUBLIC WORKS

Motion by Commissioner Spataro, second by Vice Mayor Larson to adopt the resolution.

ROLL VOTE: Ayes: Spataro, Warmington, Carter, Gawron, Larson

Nays: None

Absent: Shepherd (stepped out of the room)

MOTION PASSES

The City Commission Meeting adjourned at 6:05 p.m.

Respectfully submitted,



Gail A. Kunderger, MMC
City Clerk

Commission Meeting Date: August 12, 2003

Date: September 20, 2004
To: Honorable Mayor & City Commission
From: Community and Neighborhood Services
Department
RE: Approval of Contractor for rehabilitation of the
House at 510 Creston.

SUMMARY OF REQUEST: To approve the contract with Top Notch Design, 4740 Jension Rd, Fruitport MI for the rehabilitation of the home at 510 Creston for the cost of \$53,890. The only other bid received was from Lewis Johnson for \$58,750 of 16076 Bonita Court Grand Haven , MI. After the rehabilitation is completed, the home will be sold to a qualified first-time homebuyer continuing the City's aggressive neighborhood revitalization efforts under the Operation "Crest to Success."

FINANCIAL IMPACT: The funding for the project will be taken from the City's 2003 HOME funds.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve the contract with Top Notch Design and direct the Mayor and Clerk to sign the contract.

COMMITTEE RECOMMENDATION: None needed.



Commission Meeting Date: September 20, 2004

Date: September 20, 2004
To: Honorable Mayor & City Commission
From: Community and Neighborhood Services
Department
RE: Lead Based Paint abatement at 510 Creston

SUMMARY OF REQUEST: To approve the bid with Success Builders 2722 E. Broadway for the lead base paint abatement of the city-owned home at 510 Creston for \$18,500. The other bids received were from West Michigan Construction 2600 Patterson S.E. Grand Rapids, MI. and A-1 Professional Construction for \$19,900 and \$21 925 respectfully.

After the lead base paint abatement is complete the structure will be totally rehabilitated and then sold to a qualified low to moderate-income homebuyer.

FINANCIAL IMPACT: Cost of the abatement will be allocated from the 2002 HOME budget for lead based paint abatement.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve the bid and authorize staff to contract the work with Success Builders of Muskegon.

COMMITTEE RECOMMENDATION: None



510

HUD HOME FOR SALE
This property is being sold by HUD as part of a foreclosure sale. The property is being sold "AS IS" and the buyer is responsible for all repairs and maintenance. For more information, call 1 (888) 622-7361.

CAUTION

LEAD BASE PAINT ABATEMENT AGREEMENT

This Lead Abatement Construction Agreement made as of the 27th day of July 2003 between the City of Muskegon (the "Owner") and West Michigan Construction ("Lead Abatement Contractor").

BACKGROUND

A. Lead Abatement Contractor (LAC) and Owner agree that LAC shall abate the lead based paint hazards in the Bid Proposal for **510 Creston** a single family residence (the "Residence") attached as Exhibit C pursuant to the Infill Program, according to terms of this Agreement.

THEREFORE, the parties agree as follows:

1. **Price.** The price for Lead Abatement Construction shall be Eighteen Thousand Five Hundred Dollars (\$18,500). **The Price may change in the event the LAC and Owner, agree to change orders, modifications or extras, as defined below, in writing and signed by all the above.**

2. **Costs Included.** The Price shall include the cost of the building permit and all sales taxes incurred by Lead Abatement Contractor for materials purchased and installed in the Residence. The Price shall not include any other costs whatsoever associated with the construction of the Residence, including, but not limited to, utility bills, heating costs, sewer or water hook-up charges, trunkage fees, regional fees, or any other water, sewer or property tax assessments, each of which shall be Purchaser's sole responsibility.

3. **Payment of the Price.** The Price shall be paid in accordance with the following schedule ("Payment Schedule").

LAC may request draws from City of Muskegon acting as escrow agent. Draws may be requested no more than once per month. Requests for draws and documentation required will be in a format acceptable to the City, and shall include at a minimum lien waivers. The total amount of a draw may never exceed the percentage of completion, less a 10% holdback. The balance owed on the contract, including any holdback, shall be paid upon satisfactory results from a Full Clearance Assessment.

4. **Modifications/Extras.** No modifications to the Plans ("Modifications") or requests for additional construction ("Extras") shall be binding upon either party, unless the Modifications and/or Extras are set forth on a written change order that is signed by Lead Abatement Contractor and, City of Muskegon. The Change Order must provide a detailed description of the Modifications and/or Extras and the cost or credit to be charged. Where a Change Order increases or decreases the Price ("Adjusted Price"), the Adjusted Price shall be paid according to the remaining portion of the Payment Schedule.

5. **Possession.** Purchaser shall be entitled to possession of the Residence upon payment of the Price or Adjusted Price in full. Upon payment in full, Lead Abatement Contractor shall deliver to Owner a Full Clearance Assessment at contractor's expense a completed sworn statement and a full unconditional waiver of lien. Payment of the Price or Adjusted Price by Purchaser shall constitute the acceptance of the Residence.

6. **Estimated Completion Date.** Lead Abatement Contractor shall commence construction of the Residence within 30 days from the date the parties signs this agreement ("Commencement Date"). Lead Abatement Contractor shall endeavor to complete the Residence within 4 weeks of the Commencement Date ("Completion Date"). Provided, that both the Commencement Date and the Completion Date may be extended as a result of circumstances beyond the control of General Contractor, including, but not limited to, delays caused by suppliers or subcontractors, delays for utility hook-ups, Acts of God, labor disputes, governmental inspections, regulations, or permit processes, material back orders, Purchaser's requests for Change Orders, fire, injury or disability to General Contractor or weather.

7. **General Contractor Conditions.** This Agreement is subject to and includes all of the Contractor Conditions attached to this Agreement as Exhibit A.

Dated: _____, _____

General Contractor—Success Enterprise

By: Cyndi Nedry
Cyndi Nedry
Its: Authorized Signer

Dated: October 29, 2004

Owner—City of Muskegon

By: Wilmern G. Griffin
Wilmern G. Griffin
It's: Director of CNS

Dated: _____, _____

Witness

By: Arayne S. Haker

EXHIBIT A

CONTRACTORS CONDITIONS

1. **General Contractor's Warranties.** All building materials used in the construction of the Residence shall be new. General Contractor guarantees its workmanship for a period of one year from the date of final completion. Within that period, General Contractor may replace, at its option, any materials incorporated into the Residence which are defective, provided the manufacturer's warranty is still in full force and effect and, in fact, the manufacturer honors that warranty. To make a claim under this warranty, Purchaser must give General Contractor written notice of any such defect in the workmanship and/or materials promptly upon discovery and not later than expiration of the one year warranty period. This warranty does not apply to workmanship or materials requiring repair or replacement because of normal wear and tear or natural settling. General Contractor shall turn over and transfer to City all manufacturers' warranties that are delivered directly to General Contractor by the manufacturer. All warranties under this agreement shall transfer upon the date of sale to Buyer as the City's successor in interest.

2. **License.** General Contractor is a residential General Contractor and a residential maintenance and alteration contractor and is required to be licensed under article 24 of Act 299 of the Public Acts of 1980, as amended, being sections 339.2401 to 399.2412 of the Michigan Compiled Laws. An electrician is required to be licensed under Act No. 217 of the Public Acts of 1956, as amended, being sections 338.881 to 338.892 of the Michigan Compiled Laws. A Plumber is required to be licensed under Act No. 266 of the Public Acts of 1929, as amended being sections 338.901 to 338.917 of the Michigan Compiled Laws. General Contractor is licensed by the State of Michigan as a licensed Michigan Contractor and maintains its license in good standing. General Contractor's License and ID numbers are _____ and _____, respectively.

3. **Laws, Ordinances and Regulations.** In connection with the construction of the Residence, General Contractor shall meet and comply with all applicable laws, ordinances, and regulations.

4. **Notice of Commencement.** Purchaser shall deliver a Notice of Commencement in accordance with the Michigan Construction Lien Act within ten days of this Agreement.

5. **Diligent Pursuit.** General Contractor shall diligently pursue its obligations under this Agreement. If Purchaser believes that General Contractor has failed to comply with this paragraph, it shall provide General Contractor not less than 15 days written notice of such non-compliance, a list of City specific complaints, and a reasonable time within which General Contractor shall cure any such reasonable complaints. Until City fully complies with the notice provisions set forth in this paragraph,

6. **Insurance.** City shall procure and maintain an "all risk" insurance policy and shall name General Contractor as an additional named insured. City shall provide General Contractor with evidence of such insurance upon request. General Contractor shall maintain a policy of General Contractor's insurance fully insuring the Residence from the date construction commences until the date of substantial completion. General Contractor shall provide Purchaser with evidence of such insurance upon request. Purchaser and General Contractor waive all rights against each other for damages caused by fire or other perils to the extent covered by insurance provided under this paragraph.

7. **Miscellaneous.**

7.1 Applicable Law. This Agreement is executed in, shall be governed by, and construed and interpreted in accordance with the laws of the State of Michigan.

7.2 Binding Effect. This Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties and their respective legal representatives, successors, and assigns.

7.3 Full Execution. This Agreement requires the signature of both parties. Until fully executed on a single copy or in counterparts, this Agreement is of no binding force or effect, and if not fully executed, this Agreement is void.

7.4 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original as against any party whose signature appears thereon, and all of which together shall constitute one and the same instrument. This Agreement shall become binding upon the parties when one or more counterparts, individually or taken together, shall bear the signatures of all parties.

7.5 Non-Waiver. No waiver by any party of any provision of this Agreement shall constitute a waiver by such party of such provision on any other occasion or a waiver by such party of any other provision of the Agreement.

7.6 Severability. Should any one or more of the provisions of this Agreement be determined to be invalid, unlawful, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be impaired or affected.

7.7 No Discrimination. Discrimination on the basis of religion, race, creed, color, national origin, age, sex, marital status, or handicapped condition by either party in respect to the construction of the Residence is prohibited.

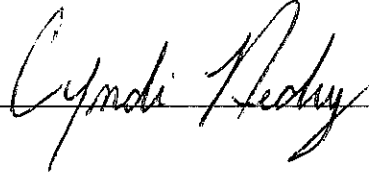
7.8 Assignment or Delegation. Neither General Contractor nor Purchaser may assign all or any part of this Agreement. Provided, that General Contractor may delegate all or any part of its obligations to perform the services under this Agreement, to any persons or entities that General Contractor, in its sole discretion, deems appropriate, including sub-contractors. Such delegation shall be at the sole expense of General Contractor unless otherwise provided.

7.9 Notices. All required or permitted written notices shall be deemed effective and duly given when: (i) personally delivered; (ii) sent by fax; (iii) one day after depositing in the custody of a nationally recognized receipted overnight delivery service; or (iv) two days after posting in the U.S. first class, registered or certified mail, postage prepaid, to the recipient party at the address as set forth at the outset of this Agreement, or to such other address as the recipient party shall have furnished to the sender in accordance with the requirements for the giving of notice.

7.10 Pronouns. For convenience, Purchaser has been referred to this Agreement sometimes in the singular and at other times in the plural.

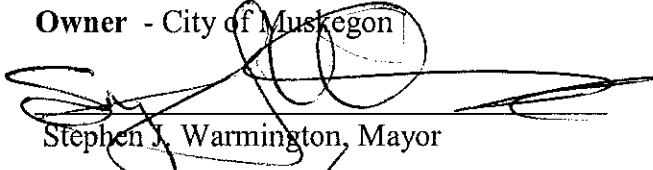
**Lead Abatement Contractor –Success
Enterprise LTD**

Dated: _____, _____



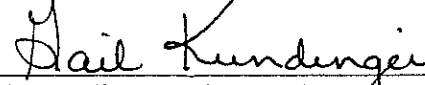
Dated: _____, _____

Owner - City of Muskegon



Stephen J. Warmington, Mayor

Dated: _____, _____



Gail Kunderger, City Clerk MMC

EXHIBIT B
Legal Description

Lot 349, Muskegon -Urban Renewal Plat No. 2, according to the recorded plat thereof

As recorded in Liber 19 of Plats, pages 13-15, inclusive

EXHIBIT C
Plans and Specifications

Commission Meeting Date: October 12, 2004

2nd Reading

Date: September 29, 2004
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development CBL
RE: Muskegon Boiler Works Study Committee Final Report

SUMMARY OF REQUEST:

The Muskegon Boiler Works Study Committee, which was appointed by the City Commission on June 22, 2004 to study the historic significance of the Boiler Works property and make a recommendation regarding the establishment of an historic district, has developed a final report. The property is located at 1204 Eighth Street (described as *City of Muskegon Revised Plat of 1903 Block 317, Lots 9-13*). To finalize its duties, the Study Committee is forwarding on the final report with a recommendation to the City Commission to establish the Boiler Works Historic District and to amend Chapter 11 of the Code of Ordinances concerning Historic Districts and the Historic District Commission, to reflect the addition of the new district.

FINANCIAL IMPACT:

None.

BUDGET ACTION REQUIRED:

None.

STAFF RECOMMENDATION:

To accept the Muskegon Boiler Works Study Committee report and recommendation and authorize the Clerk to sign the Ordinance amending Chapter 11 of the Code of Ordinances concerning Historic Districts and the Historic District Commission.

COMMITTEE RECOMMENDATION:

The Muskegon Boiler Works Study Committee recommends approval of the establishment of an historic district for the Boiler Works property. The Planning Commission recommended approval to the City Commission at their August 12, 2004 meeting.

Muskegon Boiler Works Historic District Study Committee
July 22, 2004

By state statute and local ordinance, historic preservation has been declared a "public good" because historic preservation safeguards local history, stabilizes and improves property values, fosters civic beauty, and strengthens the local economy. To that end, the HDC Construction Company has approached the Planning Department of the City of Muskegon asking that the former Muskegon Boiler Works (MBW) site be established as a single site Historic District within the City of Muskegon.

In compliance with state statute, the Muskegon Boiler Works Historic District Study Committee has been charged to consider this request. This committee was appointed by the City of Muskegon City Commission on June 22, 2004.

This committee of three, two current members and one past member of the City of Muskegon Historic District Commission, is using information compiled by Past Perfect, Inc. and our collective knowledge of the area in question to complete the task.

Muskegon Boiler Works (City of Muskegon, Revised Plat 1903, Lots 9 thru 13, Blk 317, parcel #24-205-317-0009-00) is locally significant because boilers produced there were used in local lumber mills at a time when Muskegon was an important center for the lumber industry. After the decline of lumbering, MBW became a nationwide supplier of boilers and other pressure vessels used in oil refineries; paper mills; blast furnaces; paper and sugar mills; and power plants. (National Register Criterion "A") The buildings themselves, designed by an engineer who worked for the firm (National Register Criterion "C"), are thoroughly "modern" for their purpose, yet they relate directly to earlier brick buildings in the area.

The boundaries recommended for the proposed district are the historic boundaries of MBW. Using these boundaries, 100 % of the resources on the site are "historic".

The unanimous recommendation of the Muskegon Boiler Works Historic District Study Committee is that the Muskegon City Commission should designate the Muskegon Boiler Works site as a single site historic district. The City of Muskegon Planning Commission has also made the recommendation to the City Commission for approval of the request to designate the Muskegon Boiler Works site as an historic district.

Respectfully submitted,

Jon G. Colburn
Chair

Dan Chambers
Annette Medema

Muskegon Boiler Works Historic District Study Committee Members

Annette Medema: Muskegon Historic District Commissioner, Local Realtor, experience in commercial development in historic properties.

Dan Chambers: Muskegon Historic District Commission- Chair; Resident of Muskegon's Heritage Village, an historic area recognized at the local, state, and national levels.

Jon Colburn: BS degree in Historic Preservation. President of the Muskegon Heritage Assoc

CITY OF MUSKEGON
MUSKEGON COUNTY, MICHIGAN

ORDINANCE NO. 2140

An ordinance amending Chapter 11 of the Code of Ordinances concerning Historic Districts and the Historic District Commission.

RECITAL

The City Commission of the City of Muskegon having been approached for the purpose of establishing a historic district for the Boiler Works building, Parcel Number 24-205-317-0009-00. The City Commission having appointed a historic study committee, which recommends the creation of a historic district for such property.

THE CITY OF MUSKEGON HEREBY ORDAINS:

Chapter 11 of the Code of Ordinances is amended to read as follows:

1. Section 38-35 of the Historic District Ordinance entitled "Creation and boundaries of districts" is amended to read in it entirety as follows:

Section 38-35 Creation and boundaries of districts.

The following historic districts are hereby created:

- (1) *Houston Historic District* – All land located within an area described by blocks 336, 337, 348, 349, 350, 351; block 367, lots 3-10; block 368.
- (2) *Campus Historic District* – All land located within an area described by blocks 396, 397, 399.
- (3) *McLaughlin Historic District* – All land located within an area described by blocks 226, lots 1-5, and 12; blocks 227, 228, 229, block 230, lots 1-5 and 14; block 238, lots 1-5 and 12; blocks 239, 240, 241, block 242, lots 7-10; blocks 243, 253, block 254, easterly 66 feet of lots 7-10, block 362, lots 10-19; block 383, lots 7-12, block 394, lots 9-16.
- (4) *Clinton-Peck Historic District* – All land located within an area described by block 275, lots 1-9; block 276, lots 7-14; block 277, block 278, lots 1-6; blocks 288, 289, block 300, lots 1-6; block 423, lots 7-12; block 424, lots 7-12; block 444, lots 7-12; block 445, lots 7-12.

- (5) *Jefferson Historic District* – All land located within an area described by block 425, lots 1-6; block 426, lots 8-14; block 442, lots 8-14; block 443, lots 1-6; block 446, W 162 feet lot 1, N 74-1/2 feet of W 154 feet lot 2, and N 75 feet of S 149-1/2 feet of W 154 feet lot 2; block 447, lots 8-14; block 463, lots 7-9 and E 105.1 feet lot 10; block 464, lots 1-4.
- (6) *Clay-Western Historic District* – All land located within an area described by blocks 314, 315, 316, 323, 568 and 570, and lots 9-13 of Block 317.
- (7) *National Register Historic District* – All land located within an area described by blocks 324, 325, 326; block 327, lots 4-9; block 334, lots 4-9; block 335.
- (8) *Boiler Works Historic District* – All land located within an area described by block 217, lots 9-13.
- (9) *Other areas.* The following land area is hereby included within the historic districts: Block 313, lots 1, 2 and the east 20 feet of lot 3; block 327, lots 10, 11; block 334, lots 1-3 and 10-12.

This ordinance adopted:

Ayes: Carter, Larson, Shepherd, Warmington

Nays: Gawron, Spataro

Adoption Date: October 26, 2004

Effective Date: November 9, 2004

First Reading: October 12, 2004

Second Reading: October 26, 2004

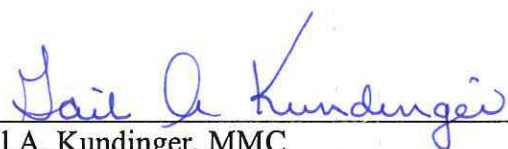
CITY OF MUSKEGON

By: Gail A. Kunding
Gail A. Kunding, MMC
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 26th day of October, 2004, 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: October 26, 2004



Gail A. Kunderger, MMC
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

TO: ALL PERSONS INTERESTED

Please take notice that on October 26, 2004, the City Commission of the City of Muskegon adopted amendments to Code of Ordinances concerning Historic Districts and the Historic District Commission, summarized as follows:

1. Chapter 11, Section 38-35 shall be amended to establish a Boiler Works Historic District.

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 (10) days from the date of this publication.

CITY OF MUSKEGON

Published October 30, 2004

By _____
Gail A. Kunding, MMC, Its Clerk

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

AGENDA ITEM NO. _____
CITY COMMISSION MEETING _____

TO: HONORABLE MAYOR AND CITY COMMISSIONERS
FROM: Kenneth D. Grant, Income Tax Administrator
DATE: October 11, 2004
RE: Adoption of alternative provision of City Income Tax Act (Act 284 of 1964)

SUMMARY OF REQUEST:

The adoption of the alternative provision of the City Income Tax Act, (Act 284 of 1964), Chapter 3, Section 141.760 which will require employers over the one hundred dollar monthly withholding threshold to pay to the city the full amount of tax withheld on or before the last day of the month following the close of each calendar month. Effective January 1, 2005.

FINANCIAL IMPACT:

The adoption of this provision will allow the city to collect revenue faster. Also, it will enhance our ability to forecast economic trends from a quarterly to a monthly basis.

BUDGET ACTION REQUIRED:

NONE

STAFF RECOMMENDATION:

APPROVAL RECOMMENDED

COMMITTEE RECOMMENDATION:

Date: October 19, 2004

To: Honorable Mayor and City Commissioners

From: City Treasurer

RE: Approval of Subordination Agreement with Crestmark Bank in regards to Michigan Steel.

SUMMARY OF REQUEST:

Michigan Steel purchased the assets of West Michigan Steel through section 363-bankruptcy sale, which extinguished all liens on the personal property. In an attempt to retain some interest in the personal property for those tax years, the City of Muskegon City Commission approved and signed a promissory note and security agreement with Michigan Steel for repayment of delinquent personal property taxes in November 2003.

Michigan Steel is refinancing through Crestmark Bank who is now requesting to enter into a subordination agreement with the City of Muskegon. This agreement only affects the previous tax years covered in the bankruptcy proceeding. The City of Muskegon retains all superior tax lien rights for future tax years. This would essentially be a continuation of the original subordination agreement with Prairie Financial.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

The staff recommends the approval of the subordination agreement with Crestmark Bank.

COMMITTEE RECOMMENDATION:

N/A

SUBORDINATION AGREEMENT

This Subordination Agreement dated as of October 26, 2004 (the "Effective Date"), is made by **The City of Muskegon**, a Michigan municipal corporation, of 933 Terrace Street, Muskegon, Michigan 49442 ("Subordinated Creditor"), **Crestmark Bank**, a Michigan banking corporation, with offices at 850 Long Lake Road, Troy MI 48085 ("Senior Creditor") and **Michigan Steel, Inc.**, a Michigan corporation, of 1148 West Western Avenue, Muskegon, Michigan 49441 ("Borrower") with reference to the following facts:

Background

A. To induce the Senior Creditor to make loans or otherwise extend credit to the Borrower, Subordinated Creditor agrees that all obligations of Borrower to Subordinated Creditor evidenced by the instruments described on Exhibit A and any amendment, modification and/or restatement thereof ("Junior Obligations"), shall be subject to the terms of this Agreement.

B. Assisting Borrower in obtaining credit accommodations from Senior Creditor and subordinating its interests pursuant to the terms of this Agreement are in Subordinated Creditor's best interest.

C. Senior Creditor, Borrower, and Subordinated Creditor agree that, notwithstanding any other provision of this Agreement, any obligation of Borrower to Subordinated Creditor for the payment of personal property taxes, special assessments, or any other obligations that may be placed on the tax roll for collection, or to any other municipal entities for whom Subordinated Creditor collects taxes of any kind, for Tax Year 2003 and all future Tax Years ("the Tax Obligations"), shall be secured by a paramount lien of the highest priority on all personal property of the Borrower in favor of Subordinated Creditor pursuant to the General Property Tax Act, MCL 211.8 et seq.

Therefore, for good and valuable consideration, the parties agree as follows:

1. **SUBORDINATION.** The payment of all of the Junior Obligations is expressly subordinated to the extent and in the manner hereinafter set forth to the payment in full of all obligations of Borrower to Senior Creditor evidenced by the instruments described on Exhibit B and any amendment, extensions, modifications, renewals or restatements thereof ("Senior Obligations"); and regardless of any priority otherwise available to the Subordinated Creditor by

law or by agreement and until all of the Senior Obligations have been paid in full and the Senior Creditor has no further commitment to make loans or grant other financial accommodations to the Borrower under any of the Senior Obligations, the Senior Creditor shall hold a first priority security interest in the collateral described on Exhibit C ("Collateral"), and any security interest claimed therein (including any proceeds thereof) by the Subordinated Creditor, except any lien arising by law from the Tax Obligations, shall be and remain fully subordinate for all purposes to the security interest of the Senior Creditor herein.

2. **PAYMENTS.** So long as the Subordinated Creditor has no knowledge that a Borrower Default has occurred (as defined below) and is continuing or will occur as a result of or immediately following such payment, the Subordinated Creditor may accept: (i) scheduled monthly payments of principal and interest required to be paid under the Subordinated Note (as described on Exhibit A), each of which payments shall be in an amount not exceeding One Thousand, Nine Hundred, Five and 77/100 Dollars (\$1,905.77), as described in the Subordinated Note. For purposes of this Agreement, "Borrower Default" means a Default or Event of Default as defined in any agreement or instrument evidencing, governing, or issued in connection with the Senior Obligations.

3. **ACTION ON SUBORDINATED DEBT.** The Subordinated Creditor will not commence any action or proceeding against the Borrower to recover all or any part of the Junior Obligations, or join with any creditor (unless the Senior Creditor shall so join) in bringing any proceeding against the Borrower under any bankruptcy, reorganization, readjustment of debt, arrangement of debt receivership, liquidation or insolvency law or statute of the federal or any state government, or take possession of, sell, or dispose of any Collateral, or exercise or enforce any right or remedy available to the Subordinated Creditor with respect to any such Collateral, except upon any lien arising from the Tax Obligations, unless and until the Senior Creditor consents (which consent shall not be unreasonably withheld) or the Senior Obligations have been paid in full and the Senior Creditor has no further commitment to make loans or grant other financial accommodations to the Borrower under the Senior Obligations.

4. **ACTION CONCERNING COLLATERAL.** The Senior Creditor may take possession of, sell, dispose of, or otherwise deal with all or any part of the Collateral, and may enforce any right or remedy available to it with respect to the Collateral. Neither the Senior Creditor nor the Subordinated Creditor shall have any duty to preserve, protect, care for, insure, take possession of, collect, dispose of, or otherwise realize upon any of the Collateral, and in no event shall either party be deemed the agent of the other with respect to the Collateral. All proceeds received by the Senior Creditor with respect to any Collateral may be applied, first, to pay any Tax Obligations, second, to pay or reimburse the Senior Creditor for all costs and expenses (including reasonable attorneys' fees) incurred by the Senior Creditor in connection with the collection of such proceeds, and, third, to the Senior Obligations secured by the Senior Creditor's security interest in that Collateral. Upon payment in full of the Senior Obligations, the Senior Creditor shall remit all proceeds received by the Senior Creditor to the Subordinated Creditor unless and until the Junior Obligations have been paid in full.

5. **CONTINUING EFFECT; REFINANCING.** This Agreement shall constitute a continuing agreement of subordination. The Senior Creditor may, at any time and from time to

time, without the consent of or notice to the Subordinated Creditor and without incurring responsibility to the Subordinated Creditor or impairing or releasing any of the Senior Creditor's rights or any of the Subordinated Creditor's obligations hereunder: (i) change the interest rate or change the amount of payment or extend the time for payment of the Senior Obligations; (ii) release anyone liable in any manner for the payment or collection of the Senior Obligations or any part thereof; (iii) exercise or refrain from exercising any right against the Borrower or any other person (including the Subordinated Creditor); and (iv) apply any sums received by the Senior Creditor, by whomsoever paid and however realized, to the Senior Obligations in such manner as the Senior Creditor shall deem appropriate. In addition, the Subordinated Creditor shall execute any documents and take such steps reasonably requested by Borrower (at no cost to Subordinated Creditor) to enable the Borrower to refinance, amend, extend, modify, renew or restate the Senior Obligations, whether with Senior Creditor or any other lender, so long as: (i) such refinancing, amendment, extension, modification, renewal or restatement does not change the amount of payment or extend the time for payment of the Junior Obligations.

6. **NOTICE.** All notices and other communications hereunder shall be in writing and shall be (i) personally delivered, (ii) transmitted by registered mail, postage prepaid, or (iii) transmitted by facsimile, in each case addressed to the party to whom notice is being given at its address as set forth below, or at such other address as may hereafter be designated in writing by that party. All such notices or other communications shall be deemed to have been given on (i) the date received if delivered personally, (ii) the date of posting if delivered by mail, or (iii) the date of transmission if delivered by facsimile.

7. **NO WAIVER.** No waiver shall be deemed to be made by the Senior Creditor of any of its rights hereunder unless the same shall be in writing signed on behalf of the Senior Creditor, and each such waiver, if any, shall be a waiver only with respect to the specific matter or matters to which the waiver relates and shall in no way impair the rights of the Senior Creditor or the obligations of the Subordinated Creditor to the Senior Creditor in any other respect at any time.

8. **BINDING EFFECT; ACCEPTANCE.** This Agreement shall be binding upon and inure to the benefit of the parties and their heirs, legal representatives, successors and assigns.

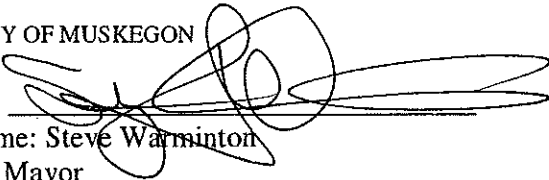
9. **MISCELLANEOUS.** The paragraph headings herein are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

10. **GOVERNING LAW; CONSENT TO JURISDICTION AND VENUE; WAIVER OF JURY TRIAL.** This Agreement shall be governed by and construed in accordance with the substantive laws (other than conflict laws) of the State of Michigan. Each party consents to the personal jurisdiction of the state and federal courts located in the State of Michigan in connection with any controversy related to this Agreement, waives any argument that venue in any such forum is not convenient, and agrees that any litigation initiated by any of them in connection with this Agreement shall have a venue in either the state or federal courts located in Muskegon County, Michigan.

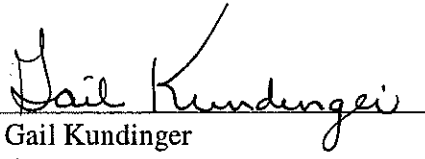
The parties have executed this Agreement as of the Effective Date set forth above.

SUBORDINATED CREDITOR:

CITY OF MUSKEGON

By: 
Name: Steve Warmington
Its: Mayor

And

By: 
Name: Gail Kunderger
Its: Clerk
Dated: November 3, 2004

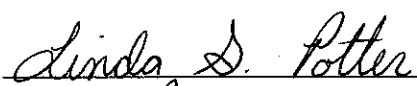
BORROWER:

MICHIGAN STEEL, INC.

By: _____
Name: Vaughn W. Makary
Its: President/CEO
Dated: _____, 2004

STATE OF MICHIGAN)
COUNTY OF MUSKEGON)

The foregoing instrument was acknowledged before me this 3rd day of November, 2004, by Steve Warmington, Mayor, and Gail Kunderger, Clerk, City of Muskegon.


Linda S. Potter, Notary Public
Muskegon County, Michigan
Acting in the County of Muskegon
My commission expires: 9-25-06

STATE OF MICHIGAN)
COUNTY OF MUSKEGON)

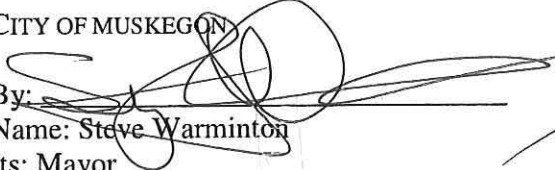
The foregoing instrument was acknowledged before me this _____ day of _____, 2004, by Vaughn W. Makary, President/CEO of Michigan Steel, Inc.

_____, Notary Public

The parties have executed this Agreement as of the Effective Date set forth above.

SUBORDINATED CREDITOR:

CITY OF MUSKEGON

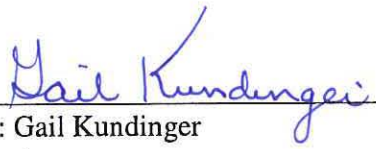
By: 
Name: Steve Warminton
Its: Mayor

SENIOR CREDITOR:

CRESTMARK BANK

By: _____
Name: Michael K. Goik
Its: First Vice President
Dated: _____, 2004

And

By: 
Name: Gail Kunderger
Its: Clerk
Dated: November 3, 2004

BORROWER:

MICHIGAN STEEL, INC.

By: _____
Name: Vaughn W. Makary
Its: President/CEO
Dated: _____, 2004

STATE OF MICHIGAN)
COUNTY OF MUSKEGON)

The foregoing instrument was acknowledged before me this 3rd day of November, 2004, by Steve Warminton, Mayor, and Gail Kunderger, Clerk, City of Muskegon.


Linda S. Potter, Notary Public
Muskegon County, Michigan
Acting in the County of Muskegon
My commission expires: 9-25-06

STATE OF MICHIGAN)
COUNTY OF MUSKEGON)

The foregoing instrument was acknowledged before me this _____ day of _____, 2004, by Vaughn W. Makary, President/CEO of Michigan Steel, Inc.

_____, Notary Public

Muskegon County, Michigan
Acting in the County of Muskegon
My commission expires: _____

STATE OF MICHIGAN)
COUNTY OF MUSKEGON)

The foregoing instrument was acknowledged before me this 12 day of
November, 2004, by Michael K. Goik, First Vice President of Crestmark Bank.

KELLY DOMBROWSKY
Notary Public, Wayne County, MI
My Commission Expires Jul. 12, 2007

Kelly Dombrowsky
_____, Notary Public
Wayne County, Michigan
Acting in the County of Oakland
My commission expires: 7-12-07

Prepared by and when recorded return to:
James R. Scheuerle
Parmenter O'Toole
P.O. Box 786
Muskegon, MI 49443-0786

EXHIBIT A
Junior Obligations

1. "Subordinated Note" means the Borrower's Promissory Note, dated as of December 14, 2003, payable to the order of The City of Muskegon, in the original principal amount of Seventy-Eight Thousand, Sixty-Three and 93/100 Dollars (\$78,063.93), together with all renewals, extensions and modifications thereof and any note or notes issued in substitution therefor.

EXHIBIT B
Senior Obligations

“Senior Obligations” means all obligations arising under the Senior Note, together with all interest and all fees, costs and other charges related to the collection thereof.

“Senior Note” means the Borrower’s Promissory Note Line of Credit, dated October 13, 2004, payable to Crestmark Bank in the original principal amount of Two Million, Five Hundred Thousand Dollars (\$2,500,000.00), together with all renewals, extensions and modifications thereof and any note or notes issued in substitution therefor.

EXHIBIT C
Collateral

“Collateral” means all assets of the borrower, now existing or hereafter arising, including all accounts receivable, inventory, equipment, and all proceeds thereof.

Commission Meeting Date: October 18 2004

Date: October 26, 2004
To: Honorable Mayor & City Commission
From: Planning & Economic Development Department
RE: Sale of Parcel at 1537 S. Getty Street

SUMMARY OF REQUEST:

To approve the sale of 1537 S. Getty Street (see attached map) to R. Walker Construction Company, 3765 S. 41 Road, Cadillac, MI 49601. This company will construct a 7,500 sq. ft. industrial building that will be occupied by Fastenal Company, currently located at 1590 Creston Street. Fastenal is a warehouse wholesaler to the manufacturing industry. The property is zoned I-1, Light Industrial, which allows for this use as a principal use. Fastenal will purchase the building after completion from R. Walker Construction Company. The purchase price is \$30,000, which is the full asking price. Fastenal will employ 10-12 employees. The purchase agreement contains a condition, which will require the company to construct the building within 18 months.

FINANCIAL IMPACT:

The sale of this lot will put the property back on the tax roles, and bring additional income tax revenue from those employed at the company.

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

To approve the attached resolution and to authorize both the Mayor and the Clerk to sign said resolution, deed, and any other necessary documents.

COMMITTEE RECOMMENDATION:

10/18/04

Resolution No. 2004-97(c)

MUSKEGON CITY COMMISSION

**RESOLUTION APPROVING THE SALE OF 1537 S. GETTY STREET TO
R WALKER CONSTRUCTION COMPANY**

WHEREAS, the City of Muskegon has ownership of the property at 1537 S. Getty Street, Muskegon, Michigan, designated as parcel numbers 24-205-098-0001-20; and

WHEREAS, R. Walker Construction Company, 3765 41 Road, Cadillac, MI, has made a legitimate offer to purchase the subject property; and

WHEREAS, both the Seller (City of Muskegon) and Buyer (R. Walker Construction) agree to the terms of the purchase as outlined in the attached purchase agreement; and

WHEREAS, the sale would generate additional tax revenue for the City and relieve the City of further maintenance costs; and

WHEREAS, the redevelopment of the subject property is consistent with the City's objective of development of industrial properties.

NOW THEREFORE BE IT RESOLVED, that the Muskegon City Commission approves the sale of the property known at 1537 S. Getty Street to R. Walker Construction Company for the sum of \$30,000.

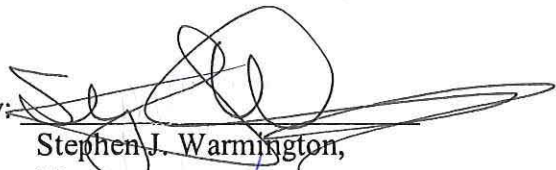
**CITY OF MUSKEGON REVISED PLAT OF 1903 PART OF BLK 98 COM AT THE NE
COR LOT 15 BLK 2 MUSKEGON VALLEY FURNITURE CO SUB TH S 57D 55M 00S
E ALG SLY LINE LOUIS ST 15 FT TH S 00D 25M 00S E ALG W ROW GETTY ST
393.12 FT FOR POB TH N 80D 04M 56S W 202.84 FT TH N 50D 09M 32S W 228.02 FT
TH S 39D 32M 00S W 200.88 FT TH S 50D 19M 42S E 662.54 FT TH N ALG W ROW
GETTY ST TO POB SBJT TO EAMT RECOR'D 3609/630.**

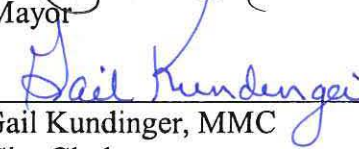
Adopted this 26th day of October, 2004

Ayes: Larson, Shepherd, Spataro, Warmington, Carter, and Gawron

Nays: None

Absent None

By: 
Stephen J. Warmington,
Mayor

Attest: 
Gail Kunderger, MMC
City Clerk

2004-97(c)
CERTIFICATION

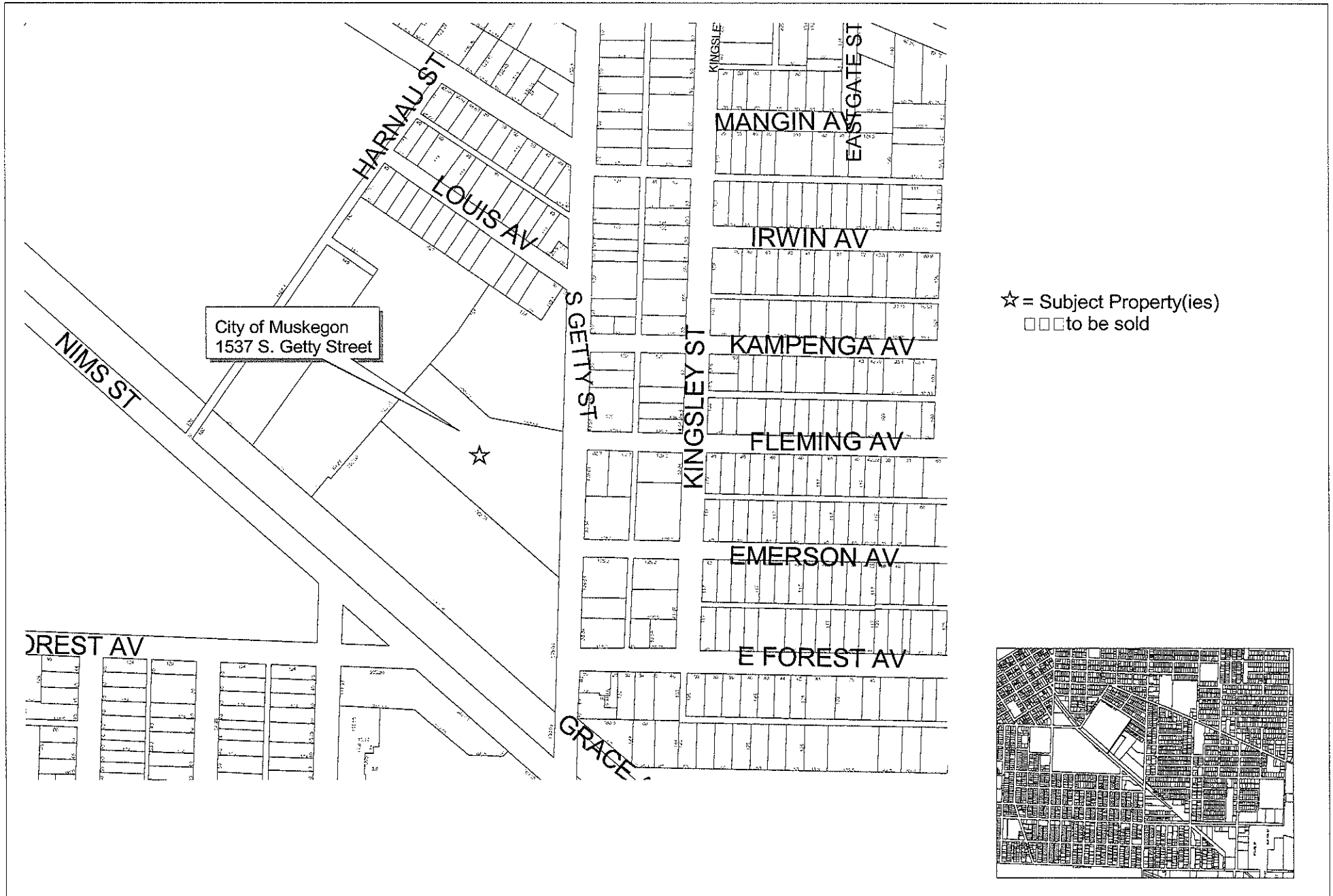
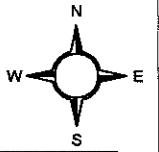
I hereby certify that the foregoing constitutes a true and complete copy of a resolution adopted by the City Commission of the City of Muskegon, County of Muskegon, Michigan at a regular meeting held on October 26, 2004.

By: _____



Gail Kunding, MMC
City Clerk

Vacant Industrial City-Owned Lot 1537 S. Getty Street



QUIT-CLAIM DEED

KNOW ALL MEN BY THESE PRESENTS: That the **CITY OF MUSKEGON**, a municipal corporation, of 933 Terrace Street, Muskegon, Michigan 49440,

QUIT CLAIMS to **R. WALKER CONSTRUCTION COMPANY**, of 3765 S. 41st Road, Cadillac, Michigan 49601,

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

SEE ATTACHED EXHIBIT A

for the sum of: Thirty Thousand Dollars (\$30,000)

PROVIDED, HOWEVER, Grantee, or its assigns, shall complete construction of an industrial facility on the premises herein conveyed within eighteen (18) months after the date hereof, contingent upon approval of the site plan by the City of Muskegon Planning Commission. In default of such construction, title to that lot shall revert to the City of Muskegon free and clear of any claim of Grantee or its assigns. In addition, the City of Muskegon may retain the consideration for this conveyance free and clear of any claim of Grantee or its assigns. Buyer shall remove only those trees necessary for construction of the industrial facility and driveway. "Complete construction" means: (1) issuance of an industrial facility building permit by the City of Muskegon; and, (2) in the sole opinion of the City of Muskegon's Deputy Director of Public Safety, substantial completion of the dwelling described in the said building permit. In the event of reversion of title, improvements made thereon shall become the property of Grantor. These covenants and conditions shall run with the land.

This deed is exempt from real estate transfer tax pursuant to the provisions of MCLA 207.505(h)(i) and MCLA 207.526 Sec. 6(h)(i).

Dated this 1st day of November, 2004.

Signed in the presence of:

Linda Potter
Linda Potter

Irene Dempsey
Irene Dempsey

CITY OF MUSKEGON

By Stephen J. Warmington
Stephen J. Warmington, Its Mayor

and Gail A. Kunding
Gail A. Kunding, MMC, Its Clerk

EXHIBIT A

LEGAL DESCRIPTION

Premises situated in the City of Muskegon, County of Muskegon, State of Michigan, described as follows:

City of Muskegon Revised Plat of 1903, Part of Block 98, commencing at the Northeast corner of Lot 15 Block 2, Muskegon Valley Furniture Co. Subdivision; Thence South 57 degrees, 55 minutes, 00 seconds East along the Southerly line of Louis Street 15 feet; Thence South 00 degrees 25 minutes 00 seconds East along the West right-of-way of Getty Street 393.12 feet for point of beginning; Thence North 80 degrees 04 minutes 56 seconds West 202.84 feet; Thence North 50 degrees 09 minutes 32 seconds West 228.02 feet; Thence South 39 degrees 32 minutes 00 seconds West 200.88 feet; Thence South 50 degrees 19 minutes 42 seconds East 662.54 feet; Thence North along the West right-of-way of Getty Street to point of beginning.

Subject to easement recorded at Muskegon County Register of Deeds Office Liber 3609 Page 630.

(Common Address: 1537 S. Getty Street, Muskegon, Michigan)

Resolution #2004-97(d)

Opposing House Bill 4358 – Michigan Vehicle Code Amendment

WHEREAS, the City of Muskegon recognizes the importance of trucks to the Michigan economy and the need to transport goods and materials efficiently and economically; however, HB 4358 is fiscally irresponsible and poses a great threat to public safety; and to local government autonomy; and

WHEREAS, House Bill 4358 proposes to increase the length of trucks on Michigan roads from 59 to 65 feet, allow trucks to travel over any road in the state, and reduce the penalty of overweight trucks to \$250; and

WHEREAS, the State of Michigan and the City of Muskegon have billions of dollars invested in road infrastructure, local road repair and maintenance; allowing increased truck length and reducing the penalty for truck weight will accelerate the deterioration of state and local roads; and

WHEREAS, it is very expensive to design, construct, and maintain streets of adequate strength to handle the excessive weight of large trucks; one legal 80,000-pound tractor-trailer does as much damage to pavement as 9,600 cars damage that increases exponentially as a truck's weight rises. Many studies recognize that trucks do not pay their fair share of road taxes relative to the amount of damage they cause to road pavement; and

WHEREAS, many older roads, subdivision streets and intersections were designed for trucks 53 feet long or less, based on turning radius, and cannot accommodate significantly longer vehicles; and

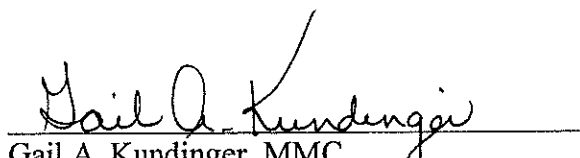
WHEREAS, the \$250 penalty set forth in HB 4358 will be virtually meaningless to most trucking companies and is out of balance with the damage done to state and local roadways by overweight trucks; penalties must be large enough to encourage truckers to stay on designated routes and observe weight limits; removing judicial review encourages repeat offenses and regular abuse of weight limitations; and

WHEREAS, local governments are in the best position to evaluate which roads can safely handle truck traffic. To restrict the ability of the City of Muskegon to control where trucks travel within our city is fiscally irresponsible and will endanger our citizens, and private and public property. And remove authority from the local governing body,

NOW, THEREFORE, BE IT RESOLVED that the City of Muskegon urges the Michigan legislature and the Governor to oppose HB 4358, a bill which is bad public policy and not in the interests of the citizens of Michigan.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to the Governor, the Senate Transportation Committee, the Senate Majority and Minority Leaders and members of the Michigan legislature who represent our residents.

This Resolution Adopted October 26, 2004.


Gail A. Kunderger, MMC
City Clerk

Potter, Linda

From: Kuhn, Bob
Sent: Tuesday, October 26, 2004 4:22 PM
To: Potter, Linda; Dempsey, Irene
Subject: special item to add to tonight's agenda

Bryon has given me the ok for me to bring this up under new business
Please give it to the commissioners at their desks as they arrive
thanks

Robert H. Kuhn

Director of Public Works

City of Muskegon Michigan

"We're #1 in the #2 Business

We always give you the Works"

10/26/2004

**Michigan Municipal League
State & Federal Affairs Division**

Fax Alert

**Senate Passes Bill That Endangers Public Safety,
Infrastructure and Local Control**

October 6, 2004

To: Mayor/President, Council, Manager and Legislative Director:

Is lame duck craziness starting early in Michigan? Usually the special interests in Lansing wait until after the general elections in November before they roll out their wish lists, but our friends in the trucking industry are getting a jump on the competition this year. On Tuesday, the Senate Transportation Committee passed **House Bill 4358**, sponsored by Rep. Gene DeRossett (R-Manchester) that increases allowable truck lengths on Michigan roads from 59 to 65 feet, decreases fines and penalties for overweight trucks and guts the ability of local governments to designate which roads these behemoth trucks can traverse. Aggregate carriers, the trucking industry, and the Michigan Road Builders Association have convinced both the House and Senate Transportation Committees that this is good public policy for our state.

Specifically, **HB 4358** will allow these lengthened 65 foot trucks to travel on ANY (yes, any) Michigan highway, road, or local street without respect to prior limitations placed on these roads by the local governments. In addition, any fine for operating an overweight truck will effectively be lowered to \$250, which renders the penalty virtually meaningless to most large trucking companies.

This legislation, the League argues, would have significant consequences in the areas of public safety, personal property damage, and infrastructure planning (just envision a 50-ton gravel truck rolling through one of your residential neighborhoods!).

While this bill may seem a bit over-the-top, we guarantee that it will be hotly debated in the Legislature in the coming months. Absent significant input from local government officials, **HB 4358** may even pass. Local officials are urged to contact Senate Transportation Committee Chair Jud Gilbert (R - Algonac) at (517) 373-7708 as well as your own State Senator and tell them to vote "NO" on **HB 4358**.

If you have any questions, please call Joe Fivas, Manager, Transportation and Environmental Affairs at (517) 485-1314.

THE SENATE
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GERALD VAN WOERKOM

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VICE-CHAIR: BANKING AND
FINANCIAL INSTITUTIONS
EDUCATION
NATURAL RESOURCES AND
ENVIRONMENTAL AFFAIRS

November 10, 2004

✓
Dear City Manager and Mayor:

Thank you for contacting my office about HB 4358, the bill to allow longer trucks on local roadways. Your comment was very helpful in my consideration of this legislation.

Senator Judson Gilbert, Chairman of the Transportation Committee, met with representatives of local government and the trucking industry on Monday, November 8th. The outcome of that meeting brought a compromise that resulted in support for the bill by the Michigan Municipal League and the County Road Association of Michigan. Based on that support, today I voted in favor of HB 4358.

Below are a list of the major changes reflected in the agreement:

- It allows only 59' trailers with a limited exception allowing 65' trailers for aggregate haulers who are traveling to and from their job site and place of business.
- Fine for axles under 4,000 pounds will be \$200.00 per axle, up to 3 axles. Fines for an axle over 4,000 pounds will continue using the current per penny/per pound fine schedule. In both cases, the commercial vehicle combinations must be within the legal gross vehicle combination weight.
- Since no agreement could be reached regarding lift-axles and a definition of "temporarily," an agreement was reached to continue allowing enforcement agencies to use their professional judgment on ton temporarily or reasonableness unless local government chooses to define "temporary" for the raising and lowering of lift-axles.

Additionally, I am also sending you a copy of a letter sent to all Senate members and distributed on the Senate floor this morning. This letter is from the MML and indicates their support for the substitute version of HB 4358 that was voted on today.

Again, thank you for your input on this issue, it was very helpful.

Sincerely,

Gerald Van Woerkom
State Senator
34th District



**MICHIGAN
MUNICIPAL
LEAGUE**

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Councilmember, Madison Heights

Vice President

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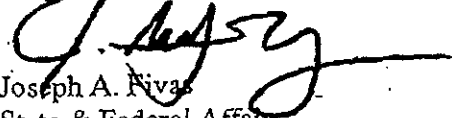
November 10, 2004

Dear Senate Member:

The Michigan Municipal League supports House Bill 4358 (S-1). Our support is contingent upon having one floor amendment recommended by MDOT, and no other changes to the negotiated agreement. Our agreement with MRBA, AUC, Senator Gilbert, and Representative DeRossett on HB 4358 is due to preserving local control of all of our road system by not increasing the length on all trucks to 65 feet. We are still concerned with increasing the grace weight on trucks from 1000 pounds to 4000 pounds due to the potential future damage to our road system. Our concern for this grace weight increase is mitigated by increasing the fines for these grace weight violations to allow an effective deterrent to the trucking industry.

Lastly, the Michigan Municipal League's tenacious opposition to House Bill 4358 over the last month was because we recognize that cities and villages do not have enough resources to preserve and protect its road system. We call upon the legislature to address these chronic funding issues at the earliest opportunity.

Respectfully,


Joseph A. Nivas
State & Federal Affairs
Michigan Municipal League



A member of the National League of Cities

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STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

JENNIFER M. GRANHOLM
GOVERNOR

JOHN D. CHERRY, JR.
LT. GOVERNOR

November 12, 2004



Ms. Gail A. Kunderer, City Clerk
City of Muskegon
933 Terrace Street, P.O. Box 536
Muskegon, MI 49443

Dear Ms. Kunderer:

Thank you for contacting Governor Granholm's Office to share Muskegon's resolution opposing House Bill 4358.

I understand your concerns over the change this bill would have to the Michigan Vehicle Code. Your worry for the safety of local citizens, possible damage to roads and decrease in the ability of local government to evaluate which roads could safely handle truck traffic is noted. I will be sure to share this with the Governor and the Executive Office staff. She has a keen interest in knowing how issues affect local governments and citizens across the state and is always appreciative of the time you take to express your opinions.

Again, thank you for contacting the Governor's Office. Please keep us updated on the issues affecting your community.

Respectfully,

Ric Martin, Director
Constituent Services

CSD/kb

*cc: Bryon Mazade
Bob Kuhn*