CITY OF MUSKEGON

CITY COMMISSION MEETING

AUGUST 27, 2002

CITY COMMISSION CHAMBERS @ 5:30 P.M.

AGENDA

- **CALL TO ORDER:**
- **PRAYER:**
- **PLEDGE OF ALLEGIANCE:**
- **ROLL CALL:**
- **HONORS AND AWARDS:**
- **CONSENT AGENDA:**
    a. **Approval of Minutes.** CITY CLERK
    b. **Liquor License Transfer Request, 1157 Third St. (Downtown Muskegon Inc.)** CITY CLERK
    c. **FIRST READING, Zoning Ordinance Amendment to Repeal and Reserve Section 2318 (Keeping of Animals).** PLANNING AND ECONOMIC DEVELOPMENT
    d. **Vacation of portions of Simpson Avenue and Nelson Street..** PLANNING & ECONOMIC DEVELOPMENT
    e. **MDOT Contract for Laketon Trail/Pathway Phase II.** LEISURE SERVICES/ENGINEERING
    f. **Flying of Mexican Flag.** AFFIRMATIVE ACTION/CLERK
    g. **Sale of Buildable Vacant Lot on Ducey Avenue.** PLANNING & ECONOMIC DEVELOPMENT
    h. **Consideration of Bids, Seaway Industrial Park.** ENGINEERING
    i. **Request for Encroachment Agreement, U S Signal Corp.** ENGINEERING
    j. **Approval of 2002-2003 Subrecipient and Community Housing Development Organization Agreements.** COMMUNITY AND NEGHBORHOOD SERVICES
    k. **Approval of Sale of Property, the South 20 Feet of Lot 18.** COMMUNITY AND NEIGHBORHOOD SERVICES
- **PUBLIC HEARINGS:**
    a. **Soil Removal, Stripping & Dumping (SRSD) Permit Application for**

Fisher Steel. ENGINEERING

b. **Reviewing 2001-2002 consolidated Annual Performance Evaluation Report (CAPER).** COMMUNITY AND NEIGHBORHOOD SERVICES

- **COMMUNICATIONS:**
- **CITY MANAGER'S REPORT:**
- **UNFINISHED BUSINESS:**

a. **Big Red Football Request.** LEISURE SERVICES

b. **Transfer of Property from Lakefront LLC to City of Muskegon** PLANNING & ECONOMIC DEVELOPMENT

c. **Resolution Pledging City's Full Faith and Credit to Smartzone Bonds.** FINANCE

d. **Liquor License Transfer Request, Pine Street Tavern, Inc. @ 978 Pine St.** CITY CLERK

e. **FIRST READING, Zoning Ordinance Amendment to allow recording studios in the B-2, Convenience and Comparison Business District and to allow live music concert halls as special uses in the B-f2, Convenience and Comparison Business, B-3, Central Business and B-4, General Business Districts.** PLANNING & ECONOMIC DEVELOPMENT

f. **Request for Preliminary Planned Unit Development approval for 1350 Hackley Avenue (Hackley Glen).** PLANNING & ECONOMIC DEVELOPMENT

g. **Amendment to National City Purchase Agreement.** PLANNING & ECONOMIC DEVELOPMENT

h. **Renaissance Zone Notices of Intent.** PLANNING & ECONOMIC DEVELOPMENT

i. **Request for amendment to Planned Unit Development for Balcom's Cove.** PLANNING & ECONOMIC DEVELOPMENT

- **ANY OTHER BUSINESS:**
- **PUBLIC PARTICIPATION:**
- **CLOSED SESSION: Labor Negotiations**

- ***Reminder: Individuals who would like to address the City Commission shall do the following:***
- 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.

Date: **August 27, 2002**

To: **Honorable Mayor and City Commissioners**

From: **Gail A. Kundinger, City Clerk**

RE: **Approval of Minutes**

SUMMARY OF REQUEST: To approve the minutes of the Special Commission Meeting that was held on Monday, August 5, 2002; the City Commission Worksession that was held on Monday, August 12, 2002; and the Regular Commission Meeting that was held on Tuesday, August 13, 2002.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

CITY OF MUSKEGON

CITY COMMISSION MEETING

AUGUST 27, 2002

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 5:30pm, Tuesday, August, 27, 2002.

Mayor Warmington opened the meeting with a prayer from Pastor Richard Bennett from the First Wesleyan Church, after which members of the City Commission and members of the public joined in reciting the Pledge of Allegiance to the Flag.

ROLL CALL FOR THE REGULAR COMMISSION MEETING:

Present: Mayor Stephen Warmington; Vice-Mayor Karen Buie: Commissioners Stephen Gawron, William Larson, Robert Schweifler, Clara Shepherd and Lawrence Spataro; City Manager Bryon Mazade, City Attorney John Schrier and City Clerk Gail Kundinger

2002-96 CONSENT AGENDA:

a. **Approval of Minutes.** CITY CLERK

SUMMARY OF REQUEST: To approve the minutes of the Special Commission Meeting that was held on Monday, August 5, 2002; the City Commission Worksession that was held on Monday, August 12, 2002; and the Regular Commission Meeting that was held on Tuesday, August 13, 2002.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Approval of the minutes.

c. **FIRST READING, Zoning Ordinance Amendment to Repeal and Reserve Section 2318 (Keeping of Animals).**
PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Request to repeal and reserve Section 2318 (Keeping of Animals) of Article XXIII (General Provisions) of the City's Zoning Ordinance since these requirements are now wholly contained in the City's General Code of Ordinances, Chapter 6 (Animals).

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Staff recommends amendment of the Zoning Ordinance to repeal and reserve the section described above.

COMMITTEE RECOMMENDATION: The Planning Commission recommended approval of the request at their 8/15 meeting. The vote was unanimous.

d. <u>Vacation of portions of Simpson Avenue and Nelson Street</u>. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Request for the vacation of Nelson St. (from Simpson Ave. to the south property line of 1505 Nelson St.) and of Simpson Ave. (east of Nelson St.).

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Staff recommends vacation of the portions of Simpson Ave. and Nelson St., with the condition that any City easement rights be retained.

COMMITTEE RECOMMENDATION: The Planning Commission recommended the vacations at their 8/15 meeting, with the condition as listed above. The vote was unanimous.

e. <u>MDOT Contract for Laketon Trail / Pathway Phase II</u>. LEISURE SERVICES / ENGINEERING

SUMMARY OF REQUEST: To approve the Contract with MDOT for construction of phase II of the Laketon Trail.

FINANCIAL IMPACT: $200,000 grant

$81,690 plus engineering costs, to be paid from the golf course fund

$25,000 design paid by Hackley Hospital

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Approve.

f. <u>Flying of Mexican Flag</u>. AFFIRMATIVE ACTION / CLERK

SUMMARY OF REQUEST: Latinos Working for the Future, have requested permission to fly the Mexican Flag in honor of Mexican Independence Day. They request flying the flag Saturday, September 14th, through Tuesday, September 17th.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Staff recommends approval.

h. <u>Consideration of Bids, Seaway Industrial Park</u>. ENGINEERING

SUMMARY OF REQUEST: Award the contract for the construction of streets, water mains, sanitary sewers and storm sewers within the proposed Seaway Industrial Park to Jackson-Merkey Contractors, Inc. out of Muskegon. JMC were the lowest,(see bid tabulation) responsible bidder with a bid price of $479,920.30. The bid price includes the alternate bid items which calls for the use of Clay pipe for the proposed sanitary sewer instead of the PVC shown in the base bid. The change in the type of material is due to the designation of that area as a Light Industrial. Furthermore, it is respectfully requested that the awarded, if granted, be contingent on the necessary EDA approval.

FINANCIAL IMPACT: The construction cost of $479,920.30 plus associated engineering costs.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Award the contract to Jackson-Merkey Contractors Inc. This recommendation is contingent upon approval from EDA.

i. <u>Request for Encroachment Agreement, U S Signal Corp</u>. ENGINEERING

SUMMARY OF REQUEST: U.S. Signal Corporation has submitted the encroachment agreement for requesting your permission to install a combination of underground and Ariel fiber optic cables within the following streets right of way (see Maps);

1. Pine Street from Muskegon Ave. to Clay
2. Jefferson from Apple to Terrace (through the alley between Muskegon & Webster)
3. Clay from Terrace to Pine.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve the encroachment agreement with the supplemental conditions.

k. <u>Approval of Sale of Property, the south 20 feet of Lot 18 Block 3 Terrace Street Addition.</u> COMMUNITY AND NEIGHBORHOOD SERVICES

SUMMARY OF REQUEST: To approve the sale of the parcel described as 20 feet of lot 18, block 3, Terrace Street addition to Mr. Johnnie Robinson, 1946

Hoyt, Muskegon, Mi for $100.00. The aforementioned parcel is a split from the parcel originally described as lot 18 through 20 block 3 Terrace Street addition that was donated to the City last year. The CNS office demolished the structure that was on the site and is currently planning to construct an Infill home on the remaining parcel that is 130' X 125'.

Mr. Robinson would like to combine the split parcel (20' X 125') to his present yard at 1946 Hoyt in order to build a two car garage.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve the sale of the split property to Mr. Robinson.

Motion by Commissioner Schweifler, second by Vice Mayor Buie to approve the Consent Agenda with the exception of items b, g, & j.

ROLL VOTE: Ayes: Shepherd, Schweifler, Spataro, Warmington, Buie, Gawron, Larson

Nays: None

MOITON PASSES

2002-97 ITEMS REMOVED FROM AGENDA

b. <u>Liquor License Transfer Request, 1157 Third Street (Downtown Muskegon, Inc.)</u>. CITY CLERK

SUMMARY OF REQUEST: The Liquor Control Commission seeks local recommendation on a request from Farouk Y. Sitto, to transfer all stock interest in the 2001 SDD and SDM licensed business to new stockholder, Christian A. Kado.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: All Departments are recommending approval.

Motion by Commissioner Larson, second by Commissioner Schweifler to approve transfer of all stock interest in the 2001 SDD and SDM licensed business from Farouk Y. Sitto to new stockholder, Christian A. Kado.

ROLL VOTE: Ayes: Spataro, Warmington, Gawron, Schweifler, Shepherd

Nays: Buie, Shepherd

MOTION PASSES

g. **Sale of Buildable Vacant Lot on Ducey Avenue.**
PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: To approve the sale of a vacant buildable lot at 1276 Ducey Avenue (designated as parcel number 24-611-000-0430-00) described as CITY OF MUSKEGON URBAN RENEWAL PLAN NO. 2, LOT 430 AND 429 EX W 38.84 FT to Randall Schaab, of 4316 Fenner Road, Muskegon, MI. The lot is 116.4 x 131.9 ft and is being offered to Mr. Schaab for $9,005. He plans to use the land for the construction of a 1,300+ sq. ft. single-family home. The home will contain 3 bedrooms, a full basement, and a 2-stall attached garage. The appraised value of the lot is $9,005 and that Mr. Schaab submitted the only bid of $9,005.

FINANCIAL IMPACT: The sale of this lot for construction of a new home will generate additional tax revenue for the City and will place the property back on the City's tax rolls thus relieving the City of continued maintenance costs.

BUDGET ACTION REQUIRED: None

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

Motion by Commissioner Spataro, second by Vice Mayor Buie to approve the resolution for the sale of a vacant lot at 1276 Ducey Avenue to Mr. Schaab for $9,005.

ROLL VOTE: Ayes: Warmington, Buie, Gawron, Larson, Schweifler, Shepherd, Spataro

Nays: None

MOTION PASSES

j. **Approval of 2002-2003 Subrecipient and Community Housing Development Organization Agreements.**
COMMUNITY AND NEIGHBORHOOD SERVICES

SUMMARY OF REQUEST: To direct staff to have the subrecipient agreements for the following agencies signed by the Mayor and Clerk. The funding allocations were approved by the City Commission in April of this year.

1.	Muskegon Community Health Project	$5,000
2.	West Michigan Veterans	$5,000
3.	Child Abuse Council	$5,000
4.	HealthCARE Project	$6,453
5.	American Red Cross	$5,000
6.	Volunteer Muskegon	$10,000

7.	Legal Aid of West Michigan	$10,000
8.	Family Service Center	$10,000
9.	Oakview Neighborhood Association	$3,000
10.	Higher Achievement Learning Center	$12,000
11.	Muskegon Retirement Apartment Inc.	$10,000

Also to have the CHDO agreements signed for the following agencies:

1.	Neighborhood Investment Corp.	$75,000
2.	Bethany Housing Ministries	$60,000
3.	Trinity Village Non-Profit Housing Corp.	$30,000

FINANCIAL IMPACT: Funding will be allocated from the 2002-2003 CDBG/HOME funds as directed by the City Commission.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To direct staff to have the documents signed by the Mayor and the Clerk.

COMMITTEE RECOMMENDATION: All of the allocations were previously approved by the Commission.

Motion by Commissioner Spataro, second by Commission Larson to direct staff to have the subrecipient agreements signed by the Mayor and Clerk.

ROLL VOTE: Ayes: Buie, Gawron, Larson, Schweifler, Shepherd, Spataro, Warmington

Nays: None

MOTION PASSES

2002-98 PUBLIC HEARINGS:

a. **Soil Removal, Stripping & Dumping (SRSD) Permit Application for Fisher Steel.** ENGINEERING

SUMMARY OF REQUEST: To hold a public hearing to consider the request from Fisher Steel Investment to place a total of 1,900 cubic yards of clean fill material over 1.5 acres (7" in depth) on the north westerly part of parcel number 24-205-549-0002-00 (Fisher Steel property). The public hearing is a result of the enclosed fill application. As outlined in SEC. 26-187, notices were sent to property owners within the 300' of the subject site, a copy of said notice is attached for your review.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Approval of the Soil Removal, Stripping and

Disposal Permit.

The Public Hearing opened at 5:55pm to hear and consider any comments from the public. No comments were heard from the public.

Motion by Commissioner Schweifler, second by Commissioner Shepherd to close the Public Hearing at 5:58pm and to approve the request for soil removal, stripping and disposal permit.

ROLL VOTE: Ayes: Gawron, Larson, Schweifler, Shepherd, Spataro, Warmington, Buie

Nays: None

MOTION PASSES

b. <u>Review 2001-2002 Consolidated Annual Performance Evaluation Report (CAPER).</u> COMMUNITY AND NEIGHBORHOOD SERVICES

SUMMARY OF REQUEST: To conduct a public hearing on August 27, 2002 to receive comments from the public concerning the 2001 – 2002 CAPER developed by the Community and Neighborhood Services Department.

After the public hearing has been conducted and all the comments have been documented, the CNS office request that the Commission direct the CNS staff to submit the required documents to HUD in compliance with 24 CFR 91.520, by no later than August 31, 2002.

FINANCIAL IMPACT: The City required to submit the CAPER report in order to continue receiving CDBG and HOME funding.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To direct staff to gather comments from the public and to submit the CAPER to HUD.

The Public Hearing opened at 5:58pm to hear and consider any comments from the public. Comments were heard from Pat Montney of 925 Irwin St., Muskegon and Steve Boersler of 1255 Fleming, Muskegon.

Motion by Vice Mayor Buie, second by Commissioner Schweifler to close the Public Hearing at 6:13pm and approve the CNS staff to submit the CAPER to HUD.

ROLL VOTE: Ayes: Larson, Schweifler, Shepherd, Spataro, Warmington, Buie, Gawron

Nays: None

MOTION PASSES

2002-99 NEW BUSINESS:

a. **Big Red Football Request**. LEISURE SERVICES

SUMMARY OF REQUEST: The Big Red Football program has requested that they be allowed to have a sale on City Streets.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Denial based on the current City Commission policy.

COMMITTEE RECOMMENDATION: The Leisure Services Board recommended approval for this year with the policy going to the Legislative Committee for review.

Motion by Vice Mayor Buie, second by Commissioner Larson to approve a sale on City Streets for the Big Red Football program for one year with the policy going to Legislative Committee for review.

ROLL VOTE: Ayes: Schweifler, Shepherd, Spataro, Warmington, Buie, Gawron, Larson

Nays: None

MOTION PASSES

b. **Transfer of Property from Lakefront LLC to City of Muskegon.** PLANNING & ECONOMIC DEVELOPMENT

Item removed per staff request.

c. **Resolution Pledging City's Full Faith and Credit to Smartzone Bonds.** FINANCE

Item removed per staff request.

d. **Liquor License Transfer Request, Pine Street Tavern, Inc. @ 978 Pine Street**. CITY CLERK

SUMMARY OF REQUEST: The Liquor Control Commission seeks local recommendation on a request from Pine Street Tavern, Inc., to transfer ownership of the 2002 Class C licensed business with dance-entertainment permit from Brutters, Inc.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: The City Income Tax Department and the Treasurer's Office are recommending disapproval due to monies owed the City.

Motion by Commissioner Spataro, second by Commissioner Gawron to deny request.

Motion by Commissioner Spataro, second by Commissioner Larson to table item to next meeting of September 10, 2002.

ROLL VOTE: Ayes: Spataro, Warmington, Buie, Gawron, Larson, Schweifler, Shepherd

Nays: None

MOTION PASSES

e. **FIRST READING, Zoning Ordinance Amendment to allow recording studios in the B-2, Convenience and Comparison Business District and to allow live music concert halls as special uses in the B-2, Convenience and Comparison Business, B-3, Central Business and B-4, General Business Districts.** PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Request to amend Section 1100 (Principal Uses Permitted) of Article XI (B-2, Convenience & Comparison Business) of the City's Zoning Ordinance to allow recording studios; and to amend Sections 1101, 1201 and 1301 (Special Land Uses Permitted) of Articles XI (B-2, Convenience and Comparison Business), XII (B-3, Central Business), and XIII (B-4, General Business) of the City's Zoning Ordinance to allow live music concert halls, under certain conditions.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Staff recommends amendment of the Zoning Ordinance to add the proposed language in the articles and sections described above.

COMMITTEE RECOMMENDATION: The Planning Commission recommended approval of the request at their 8/15 meeting. The vote was unanimous.

Motion by Commissioner Schweifler, second by Vice Mayor Buie to adopt the ordinance as submitted.

ROLL VOTE: Ayes: Warmington, Buie, Gawron, Larson, Schweifler, Shepherd, Spataro

Nays: None

MOTION PASSES

f. **Request for preliminary Planned Unit Development approval for 1350 Hackley Avenue (Hackley Glen).**
PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Request for preliminary Planned Unit Development approval for the current Hackley Glen property, for a mixed-use residential development, containing senior, family apartment and possible future condominium units. The request is from Ruddiman Associates Limited Partnership.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

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

COMMITTEE RECOMMENDATION: The Planning Commission recommended preliminary approval of the PUD, with the conditions listed on the resolution at their 8/15 meeting. The vote was unanimous.

Motion by Commissioner Larson, second by Commissioner Spataro to approve request for preliminary approval of the Planned Unit Development provided the conditions listed on the resolution are met.

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

Nays: None

Absent: Schweifler

MOTION PASSES

g. **Amendment to National City Purchase Agreement.**
PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: To approve amendments to the "Real Estate Purchase Agreement" between the Westwood Group, LLC and the City of Muskegon. The purchase agreement, signed October 12, 2002, included two parcels of property. One of the parcels was formerly owned by Rick Perlman (known as the Terrace Lots) and was approximately 6 acres. The other was formerly part of the Teledyne property, and was purchased by the City as an "uneconomic remainder" when the property was purchased for Shoreline Drive (approximately 3 acres). Westwood is requesting that the portion of property where National City is being constructed (approximately 2 acres) be separated out from the 6-acre site. They are also requesting an extension on the closing dates for the remaining 4 acres of the former Terrace Lots (originally October 2001, later amended to February 28, 2002), as well as the closing date for the former Teledyne piece (scheduled to close on August 31, 2002).

FINANCIAL IMPACT: Time delay on the City receiving funds from the purchase of this property by Westwood.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve the amendment to the Purchase Agreement, and authorize the Mayor and Clerk to sign.

Motion by Commissioner Gawron, second by Commissioner Larson to approve amendment to the Purchase Agreement and authorize the Mayor and Clerk to sign.

ROLL VOTE: Ayes: Gawron, Larson, Shepherd, Schweifler, Warmington, Buie

Nays: None

Absent: Spataro

MOTION PASSES

h. <u>Renaissance Zone Notices of Intent.</u> PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: To authorize staff to notify the State of Michigan that the City of Muskegon intends to designate three new subzones and amend the boundaries of the two existing sub-zones, as consistent with the attachment describing the current state of negotiations. Also requested is the authorization to have the City Manager or Director of Community and Economic Development to sign the Notice of intent documents. This does not obligate the City to grant all of the applicants' Renaissance Zone status, but does leave that possibility open.

FINANCIAL IMPACT: At this time there will be no financial impact. When Zones are created or expanded there will be an impact, which will consist of the amount of abated taxes.

BUDGET ACTION REQUIRED: None at this time.

STAFF RECOMMENDATION: To notify the State of Michigan that the City of Muskegon intends to designate three new sub-zones and amend the boundaries of the two existing sub-zones.

Motion by Commissioner Gawron, second by Vice Mayor Buie to authorize staff to notify the State of Michigan that the City of Muskegon intends to designate three new sub-zones and amend the boundaries of the two existing sub-zones.

ROLL VOTE: Ayes: Larson, Schweifler, Shepherd, Spataro, Warmington, Buie, Gawron

Nays: None

MOTION PASSES

Motion by Commissioner Spataro, second by Commissioner Larson to amend the first vote to include the Medical Arts Building at 315 Clay St to the Muskegon Mall Renaissance Zone.

ROLL VOTE: Ayes: Schweifler, Shepherd, Spataro, Warmington, Buie, Gawron, Larson

Nays: none

MOTION PASSES

Motion by Commissioner Schweifler, second by Mayor Warmington to amend the first vote to include the Morris St. Lots to the Muskegon Mall Renaissance Zone.

ROLL VOTE: Ayes: Shepherd, Warmington, Buie, Schweifler

Nays: Spataro, Gawron, Larson

MOTION PASSES

i. **Request for amendment to Planned Unit Development for Balcom's Cove.** PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Request to amend the Planned Unit Development for Balcom's Cove, 2964 Lakeshore Dr., to allow changes in the site plan.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Staff recommends that something be done to mitigate this situation, no matter the reasoning behind the changes. Various options were presented to the Planning Commission, and their recommendation is stated below.

COMMITTEE RECOMMENDATION: The Planning Commission recommended approval of a portion of the PUD amendment, with the conditions listed on the resolution. The motion to approve passed on a 5-4 vote with B. Smith, B. Mazade, S. Warmington, P. Velkamp, and L. Spataro voting yes and P. Sartorius, J. Aslakson, J. Stewart, and M. Kleaveland voting nay.

Motion by Commissioner Larson, second by Commissioner Spataro to approve the request to amend the Planned Unit Development for Balcom's Cove to allow changes in the site plan.

ROLL VOTE: Ayes: Spataro, Warmington, Buie, Gawron, Larson, Schweifler, Shepherd

Nays: None

MOITON PASSES

2002-100 CLOSED SESSION: To discuss pending litigation.

Motion by Commissioner Schweifler, second by Commissioner Larson to go into close session at 9:39pm to discuss pending litigation.

ROLL VOTE: Ayes: Warmington, Buie, Gawron, Larson, Schweifler, Shepherd, Spataro

Nays: None

MOTION PASSES

Motion by Commissioner Schweifler, second by Commissioner Spataro to go into close session at 9:39pm to discuss property acquisition.

ROLL VOTE: Ayes: Buie, Gawron, Larson, Schweifler, Shepherd, Spataro, Warmington

Nays: None

MOTION PASSES

Motion by Commissioner Shepherd, second by Commissioner Gawron to go to open session at 10:15pm.

ROLL VOTE: Ayes: Gawron, Larson, Schweifler, Shepherd, Spataro, Warmington, Buie

Nays: None

MOTION PASSES

ADJOURNMENT: The Regular Commission Meeting for the City of Muskegon was adjourned at 10:16pm.

Respectfully submitted,

Gail Kundinger

Gail Kundinger, CMC/AAE

Commission Meeting Date: August 27, 2002

Date: **August 21, 2002**

To: **Honorable Mayor and City Commissioners**

From: **Planning & Economic Development**

RE: **Zoning Ordinance Amendment to Repeal and Reserve Section 2318 (Keeping of Animals)**

SUMMARY OF REQUEST:

Request to repeal and reserve Section 2318 (Keeping of Animals) of Article XXIII (General Provisions) of the City's Zoning Ordinance since these requirements are now wholly contained in the City's General Code of Ordinances, Chapter 6 (Animals).

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Staff recommends amendment of the Zoning Ordinance to repeal and reserve the section described above.

COMMITTEE RECOMMENDATION:

The Planning Commission recommended approval of the request at their 8/15 meeting. The vote was unanimous.

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

August 15, 2002

Hearing; Case 2002-40: Staff-initiated request to amend the zoning ordinance to amend or repeal/reserve Section 2318 (Keeping of Animals).

BACKGROUND

In April of this year a new Animal Control Ordinance went into effect in the City of Muskegon. The reason behind the enactment of this ordinance was to deal with the large numbers of stray cats within the City. This new, stand-alone ordinance (not part of the Zoning Ordinance) addresses all of the animal issues are currently contained in Section 2318 of the Zoning Ordinance. The new ordinance is enforced by Animal Control, rather than City of Muskegon staff. Therefore, staff would like to repeal and reserve this section of the ordinance.

ORDINANCE EXCERPT (proposed deletions in ~~strikethru~~, proposed changes in *italics*)

~~SECTION 2318: KEEPING OF ANIMALS~~ *SECTION 2318 [RESERVED]*

~~1. Wild Animals: No wild animal shall be kept permanently or temporarily in any district in the City unless affiliated with a bona fide transient circus or carnival.~~

~~2. Livestock: No livestock shall be kept permanently or temporarily in any district in the City unless affiliated with a bona fide stable.~~

~~3. Household pets: The keeping of household pets, including dogs cats, fish, birds, hamsters and other animals generally regarded as household pets is permitted as an accessory use in Residential Zoning Districts provided that:~~

~~a. There are not more than three adult dogs and three adult cats permanently kept~~

~~b. The animals have adequate shelter~~

~~c. The animals do not constitute a nuisance to the neighborhood~~

CITY OF MUSKEGON

MUSKEGON COUNTY, MICHIGAN

ORDINANCE NO. 2086

An ordinance to repeal and reserve Section 2318 (Keeping of Animals), of Article XXIII (General Provisions) of the City's Zoning Ordinance.

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

Section 2318 (Keeping of Animals), of Article XXIII (General Provisions) of the Zoning Ordinance of the City of Muskegon is hereby repealed and reserved, as these requirements are now wholly contained within the City's General Code of Ordinances, Chapter 6 (Animals).

This ordinance adopted:

Ayes: Shepherd, Spataro, Warmington, Buie, Gawron, Larson, Schweifler

Nayes: None

Adoption Date: August 27, 2002

Effective Date: September 15, 2002

First Reading: August 27, 2002

Second Reading: N/A

CITY OF MUSKEGON

By: Gail A. Kundinger

Gail A. Kundinger, 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 27th day of August, 2002, 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: August 27, 2002.

Gail Kundinger

Gail Kundinger, CMC/AAE
Clerk, City of Muskegon

CITY OF MUSKEGON
NOTICE OF ADOPTION

Please take notice that on August 27, 2002, the City Commission of the City of Muskegon adopted an ordinance to repeal and reserve Section 2318 (Keeping of Animals), of Article XXIII (General Provisions) of the City's Zoning Ordinance, as these requirements are now wholly contained in the City's General Code of Ordinances, Chapter 6 (Animals).

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 September 5, 2002

CITY OF MUSKEGON

By _____
Gail A. Kundinger
Its Clerk

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

Account No. 101-80400-5354

Commission Meeting Date: August 27, 2002

Date: **August 16, 2002**

To: **Honorable Mayor and City Commissioners**

From: **Planning & Economic Development**

RE: **Vacation of portions of Simpson Ave. and Nelson St.**

SUMMARY OF REQUEST:

Request for the vacation of Nelson St. (from Simpson Ave. to the south property line of 1505 Nelson St.) and of Simpson Ave. (east of Nelson St.).

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Staff recommends vacation of the portions of Simpson Ave. and Nelson St., with the condition that any City easement rights be retained.

COMMITTEE RECOMMENDATION:

The Planning Commission recommended the vacations at their 8/15 meeting, with the condition as listed above. The vote was unanimous.

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

August 15, 2002

Hearing; Case 2002-33: Request for vacation of portions of Nelson and Simpson Streets. (where they intersect), by Janet Steiner.

BACKGROUND

The applicant lives at the 'corner' of Simpson Ave. and Nelson St., although the 'corner' does not physically exist. Simpson Ave. is currently a dead-end street off of Beach St., and contains five residences. Simpson Ave. is gravel, not a paved, improved street, and dead-ends at the applicant's property (1505 Nelson St.). Nelson St. also is a dead-end street, off of Indiana Ave. and also contains five residences. Nelson St. is paved and dead-ends at 1516 & 1523 Nelson St. The 'intersection' of these two streets therefore does not physically exist.

The applicant would like to vacate portions of both streets near where they 'intersect'. Nelson St. would be vacated from the north ROW line of Simpson Ave. to the south property line of the applicant's property. The portion of Simpson Ave. located east of the west ROW line of Nelson St. would also be vacated (see attached map).

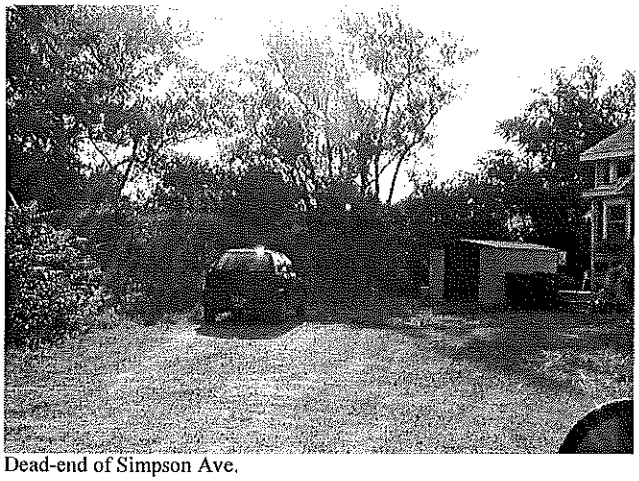
Although the applicant's property would no longer have legal access to Nelson St., it would retain access to Simpson Ave., which is where the physical access is currently. The property to the north of the affected portion of Simpson Ave. is part of the Harbour Towne condominium development and therefore takes its access from W. Harbour Towne Circle. All other existing properties on Simpson Ave. would retain access to the existing portion of street.

The existing properties on Nelson St. would also retain access to the street. There is a small portion of legal ROW that would be retained as public street just north of where the physical street dead-ends. The property located at 1517 Nelson St. currently has 'legal' access to Nelson St., but no physical access. This request would not change that situation and would leave the door open for Nelson St. to be expanded to the north to provide access to that property in the future if so desired.

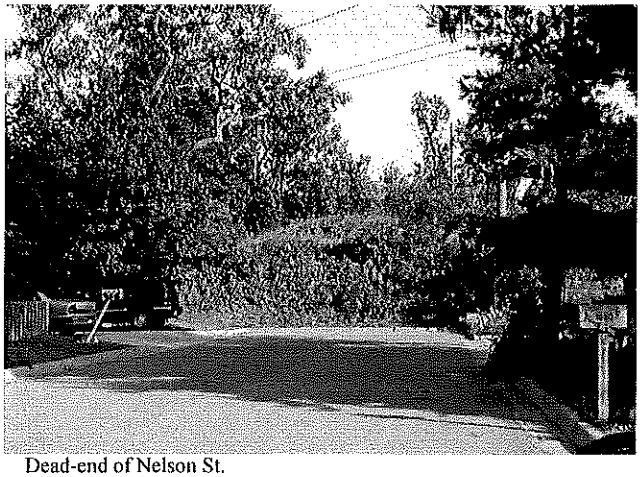
The Department of Public Works has stated that the City has no utilities in these portions of street and therefore has no objections to vacating them. The Fire Marshal also has no objection to the proposed vacations.

Staff has spoken to the owner of the property located at 1516 Nelson St. He had questions about the widths of the street rights-of-way, what happens to the ROWs when vacated, and what Harbour Towne's future plans for that area are. He is in favor of the current vacation request. Staff has also spoken to Linda O'Connor who owns property on Nelson St. She had questions about the proposed vacation and whether it would cost her any money. She did not state an opinion.

PHOTOS



Dead-end of Simpson Ave.



Dead-end of Nelson St.

CITY OF MUSKEGON

RESOLUTION #2002- 96(d)

RESOLUTION TO VACATE PORTIONS OF PUBLIC STREETS

WHEREAS, a petition has been received to vacate Nelson St. (from Simpson Ave. to the south property line of 1505 Nelson St.) and Simpson Ave. (east of Nelson St. only).; and

WHEREAS, the Planning Commission held a public hearing on August 15, 2002 to consider the petition and subsequently recommended the vacations; and

WHEREAS, due notice had been given of said hearing as well as the August 27, 2002 City Commission meeting to consider the recommendation of the Planning Commission;

NOW, THEREFORE, BE IT RESOLVED that the City Commission deems it advisable for the public interest to vacate and discontinue Nelson St. (from Simpson Ave. to the south property line of 1505 Nelson St.) and Simpson Ave. (east of Nelson St. only);

BE IT FURTHER RESOLVED that the City Commission does hereby declare the said portions of streets vacated and discontinued provided, however, that this action on the part of the City Commission shall not operate so as to conflict with any fire access or the utility rights heretofore acquired by the City or by any public service utility in the City of Muskegon, operating in, over and upon said portion of street hereby vacated, and it is hereby expressly declared that any such rights shall remain in full force and effect;

BE IT FURTHER RESOLVED that after any maintenance and repair by the City, the city shall restore the disturbed area to the grade and paving in existence at the time of vacation. The City shall not be responsible to replace special planting, landscaping, fences or any structure. No structure shall be placed in the easement which, in the sole judgment of the City, will interfere with the repair or maintenance of utilities in the easement, public or private.

Adopted this 27th day of August, 2002.

Ayes: Shepherd, Spataro, Warmington, Buie, Gawron, Larson, Schweifler

Nays: None

Absent: None

By: _____
Steve Warmington, Mayor

Attest: Gail A. Kundinger
Gail A. Kundinger, Clerk

CERTIFICATE (Vacations of portions of Nelson St. and Simpson Ave.)

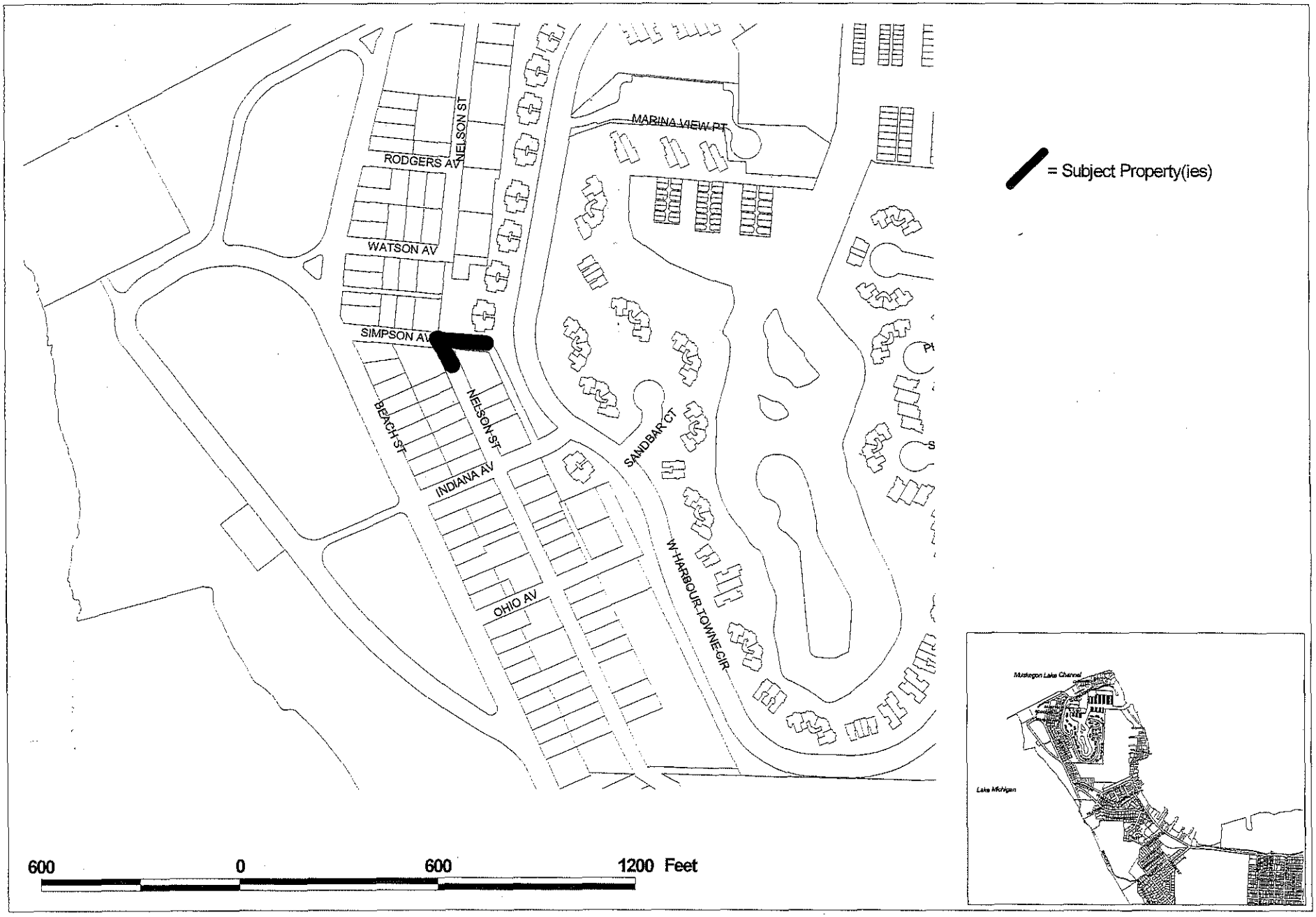
2002-96(d)

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 August 27, 2002.

Gail Kundinger

Gail Kundinger, CMC/AAE
Clerk, City of Muskegon

City of Muskegon
Planning Commission
Case # 2002-33



Date: August 19, 2002

To: Honorable Mayor and City Commissioners

From: Ric Scott

RE: MDOT Contract for Laketon Phase II

SUMMARY OF REQUEST:

To approve the Contract with MDOT for construction of phase II of the Laketon Trail

FINANCIAL IMPACT:

$200,000 grant

$ 81,690 plus engineering costs, to be paid from the golf course fund

$25,000 design paid by Hackley Hospital

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Approve

COMMITTEE RECOMMENDATION:

Affirmative Action
231/724-6703
FAX/722-1214

Assessor
231/724-6708
FAX/726-5181

Cemetery
231/724-6783
FAX/726-5617

Civil Service
231/724-6716
FAX/724-4405

Clerk
231/724-6705
FAX/724-4178

Comm. & Neigh. Services
231/724-6717
FAX/726-2501

Engineering
231/724-6707
FAX/727-6904

Finance
231/724-6713
FAX/724-6768

Fire Dept.
231/724-6792
FAX/724-6985

Income Tax
231/724-6770
FAX/724-6768

Info. Systems
231/724-6744
FAX/722-4301

Leisure Service
231/724-6704
FAX/724-1196

Manager's Office
231/724-6724
FAX/722-1214

Mayor's Office
231/724-6701
FAX/722-1214

Inspection Services
231/724-6715
FAX/726-2501

Planning/Zoning
231/724-6702
FAX/724-6790

Police Dept.
231/724-6750
FAX/722-5140

Public Works
231/724-4100
FAX/722-4188

Treasurer
231/724-6720
FAX/724-6768

Water Billing Dept.
231/724-6718
FAX/724-6768

Water Filtration
231/724-4106
FAX/755-5290

MUSKEGON

West Michigan's Shoreline City

Date: August 19, 2002

To: Honorable Mayor and City Commissioners

From: Ric Scott

Re: MDOT Contract for Laketon Phase II

Attached is the contract with MDOT for the construction of phase II of the Laketon Trail. The agreement gives the City $200,000 for the construction of the trail with the city match being $81,690. Hackley Hospital has contributed $25,000 for the design costs, which is not included in the match.

I would ask that you authorize the Mayor and Clerk to sign the agreement. The project is ready to bid out. Construction should start this fall and be completed by the end of May next spring.

Thank you for your consideration.

STATE OF MICHIGAN
DEPARTMENT OF TRANSPORTATION
LANSING

JOHN ENGLER
GOVERNOR

GREGORY J. ROSINE
DIRECTOR

September 13, 2002

RECEIVED
SEP 18 2002
City Clerks Office

Ms. Gail Kundinger, Clerk
933 Terrace Street
PO Box 536
Muskegon, MI 49443-0536

Dear Ms. Kundinger:

RE: MDOT Contract Number: 02-5431
Control Section: STE 61407
Job Number: 54885

Enclosed is a fully executed copy of the above noted agreement.

Sincerely,

Vanessa Strzyn for JB.

Jackie Burch
Contract Processing Specialist
Design Division

Enclosure

cc: L. Strzalka, Design Division
A. Christensen, Financial Operations Division
Grand Engineer

TRANSPORTATION ENHANCEMENT
NON-TRUNKLINE
FEDERAL-AID
CONSTRUCTION BY LOCAL
AGENCY

DAB

Project	STP 0161 (224)
Job Number	54885
Control Section	STE 61407
Fed Item #	TT 0096
Contract No.	02-5431

THIS CONTRACT is made and entered into this date of SEP 1 3 2002, 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 the following improvements, hereinafter referred to as the "PROJECT":

Non-motorized path work along Laketon Avenue from Leahy Street to Seventh Street and along abandoned railroad right–of-way from Seventh Street to Southern Avenue; including bituminous paving, grading, pavement markings, landscaping, fencing, signing, benches, and trash receptacles work; and all together with necessary related work.

WITNESSETH:

WHEREAS, pursuant to Federal law, monies have been provided for the performance of transportation enhancement activities; and

WHEREAS, it has been determined that the PROJECT qualifies for such funding by virtue of its direct relationship with the intermodal transportation system; and

WHEREAS, the PROJECT, at the request of the REQUESTING PARTY, is being programmed with the United States Department of Transportation, Federal Highway Administration, hereinafter referred to as the "FHWA", for implementation with the use of Federal Funds under the following Federal program(s) or funding:

TRANSPORTATION ENHANCEMENT ACTIVITIES
SURFACE TRANSPORTATION PROGRAM

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

NOW, THEREFORE, in consideration of the premises and of the mutual undertakings of the parties and in conformity with applicable law, it is agreed:

1. The parties hereto shall undertake and complete the PROJECT in accordance with the terms of this contract.

2. The term "PROJECT COST", as herein used, is hereby defined as the cost of the physical construction necessary for the completion of the PROJECT.

The costs incurred by the REQUESTING PARTY for preliminary engineering, right-of-way, construction engineering and inspection, legal, financing, audit, contract advertising and construction contract administration are excluded from the PROJECT COST as defined by this contract.

3. The DEPARTMENT is authorized by the REQUESTING PARTY to perform such administration of the PROJECT as is necessary to assist the REQUESTING PARTY to qualify the PROJECT for Federal Aid. Such administration shall include programming the available Federal funds for the PROJECT with the FHWA and performing such review and oversight activities as are necessary to assist the REQUESTING PARTY in meeting applicable Federal and State requirements.

The DEPARTMENT shall authorize the REQUESTING PARTY to proceed with the PROJECT work in the following phases:

PHASE I:	ADVERTISING OF CONSTRUCTION CONTRACT
PHASE II:	AWARD OF CONSTRUCTION CONTRACT

The REQUESTING PARTY shall neither advertise nor award the construction contract for the PROJECT prior to receipt of written authorization from the DEPARTMENT to proceed.

The DEPARTMENT shall make a final acceptance inspection of the PROJECT as necessary to meet Federal Aid requirements. No charges will be made by the DEPARTMENT to the PROJECT for any inspection work or construction engineering.

4. The REQUESTING PARTY shall perform or cause to be performed all the PROJECT work. It is understood that portions or all of the PROJECT work will be placed under contract by the REQUESTING PARTY. The performance of the PROJECT work will be subject to the "General Agreement Provisions for Federal Aid Projects", attached hereto as "EXHIBIT I", pages 1 through 5, and made a part hereof, and the following conditions:

A. The REQUESTING PARTY will, at no cost to the DEPARTMENT or the PROJECT, design, or cause to be designed, the PROJECT, and shall accept full responsibility for that design. Any review undertaken by the DEPARTMENT are for its own purposes and are not to nor do they relieve the REQUESTING PARTY of liability for any claims, causes of action or judgments arising out of the design of the PROJECT.

B. The REQUESTING PARTY, prior to receiving authorization from the DEPARTMENT to advertise the construction contract, shall certify to the DEPARTMENT that the plans, specifications, and estimates for the PROJECT have been prepared in compliance with applicable State and Federal standards and regulations.

C. The REQUESTING PARTY shall secure the DEPARTMENT'S approval of the contracting procedures to be followed by the REQUESTING PARTY in connection with the administration of the construction contract for the PROJECT. It is understood that the construction contract(s) for the PROJECT shall be publicly advertised and awarded on the basis of the lowest responsive bid in accordance with current FHWA and DEPARTMENT procedures.

D. The REQUESTING PARTY, prior to receipt of authorization from the DEPARTMENT to award the construction contract, shall certify to the DEPARTMENT that the selection of the contractor was made in accordance with the terms of this contract and applicable Federal, State and local statutes, regulations, and ordinances.

E. The REQUESTING PARTY will comply with all applicable State, Federal and local statutes, ordinances and regulations, including, but not limited to those specifically relating to construction contract administration, and obtain all permits, approvals, and give appropriate notifications that are required for the performance of the PROJECT work.

The REQUESTING PARTY agrees to comply with all applicable requirements of Part 91, Soil Erosion and Sedimentation Control of the Natural Resources and Environmental Protection Act, 1994 PA 451 as amended by 1995 PA 60, MCL 324.9101 et. seq., for all PROJECT work performed under this contract, and the REQUESTING PARTY shall require its contractors and subcontractors to comply with the same.

F. All work in connection with the PROJECT shall be performed in conformance with the Michigan Department of Transportation Standard Specifications for Construction, special provisions and the supplemental specifications and plans pertaining to the PROJECT and all materials furnished and used in the construction of the PROJECT shall conform to the aforesaid specifications. The REQUESTING PARTY shall neither seek nor receive reimbursement for any extra work.

G. The REQUESTING PARTY, at no cost to the PROJECT or to the DEPARTMENT, shall appoint a project engineer who shall be in responsible

charge of the PROJECT and ensure that the plans and specifications are followed, and shall perform or cause to be performed the construction engineering and inspection services necessary for the completion of the PROJECT.

Should the REQUESTING PARTY elect to use consultants for construction engineering and inspection, the REQUESTING PARTY shall provide a full-time project manager employed by the REQUESTING PARTY who shall ensure that the plans and specifications are followed.

H. The REQUESTING PARTY, at no cost to the PROJECT or the DEPARTMENT, shall make such arrangements or secure any and all necessary permits with railway companies, utilities, concerned state, federal, and local agencies etc., as may be necessary for the performance of work required for the PROJECT, and will forward same to the DEPARTMENT for such reviews and approvals as may be required.

I. The REQUESTING PARTY shall require the contractor who is awarded the contract for the construction of the PROJECT to provide, as a minimum, insurance in the amounts specified in and in accordance with the DEPARTMENT'S current standard specifications for construction, and to:

(1) Maintain bodily injury and property damage insurance for the duration of the PROJECT.

(2) Provide owner's protective liability insurance naming as insureds the State of Michigan, the Michigan State Transportation Commission, the DEPARTMENT and its officials, agents and employees, the REQUESTING PARTY and any other party with jurisdiction for the roadway being constructed as the PROJECT, and their employees, for the duration of the PROJECT and to provide copies of certificates of insurance to the insureds. It is understood that the DEPARTMENT does not assume either ownership of any portion of the PROJECT or jurisdiction of any REQUESTING PARTY highway as a result of being named as an insured on the owner's protective liability insurance policy.

(3) Comply with the requirements of notice of cancellation and reduction of insurance set forth in the current standard specifications for construction and to provide copies of notices and reports prepared to those insured.

J. (1) The REQUESTING PARTY shall, within 10 days of any ceremony to be held in connection with the PROJECT, notify the DEPARTMENT.

(2) The REQUESTING PARTY shall, when issuing any news release or promotional material regarding the PROJECT, give the DEPARTMENT and FHWA credit for participation in the PROJECT.

(3) Upon completion of all PROJECT work, the REQUESTING PARTY shall, within 60 days of said completion, prepare and submit a project report in accordance with current DEPARTMENT requirements. Said report & notification shall be submitted to:

Jacqueline G. Shinn, Transportation Enhancement Administrator
Office of Economic Development
425 West Ottawa, P.O. Box 30050
Lansing, Michigan 48909
Phone (517) 335-1069

K. Upon completion of all PROJECT work, the REQUESTING PARTY shall so notify the DEPARTMENT and shall request a final acceptance inspection thereof. In the event that there is disagreement between the parties with respect to final acceptance, the DEPARTMENT'S decision shall be final and binding.

5. The PROJECT COST shall be met in part by contributions from agencies of the Federal Government. Federal Funds shall be applied to the eligible items of PROJECT COST at a participation ratio equal to 71 percent up to an amount not to exceed $200,000. The balance of the PROJECT COST shall be paid by the REQUESTING PARTY. The PROJECT COST and the cost participation are estimated to be as follows:

ESTIMATED COST	FEDERAL FUNDS*	REQUESTING PARTY FUNDS
$281,690	$200,000	$81,690

*The Federal Funds which shall be applied to the eligible items of PROJECT COST are limited to the amount provided herein. Any items of PROJECT COST not reimbursed by Federal Funds will be the sole responsibility of the REQUESTING PARTY.

6. The REQUESTING PARTY shall be responsible for the payment of all costs and expenses incurred in the performance of PROJECT work. Billings for costs incurred by the REQUESTING PARTY under the terms of this contract shall be prepared and submitted to the DEPARTMENT by the REQUESTING PARTY for reimbursement with Federal Funds in accordance with the procedures of the DEPARTMENT. Progress billings may be submitted bi-

monthly during the time work is being performed provided, however, that no bill of a lesser amount than $1,000.00 shall be submitted unless it is a final or end of fiscal year billing. All billings shall be labeled either "Progress Bill Number _____" or Final Billing".

The REQUESTING PARTY shall not request reimbursement of more than 95 percent of its eligible costs until final acceptance of the PROJECT. The REQUESTING PARTY shall request a final acceptance inspection of the PROJECT in accordance with the provisions of Section 4 of this contract. Final acceptance shall be secured by the REQUESTING PARTY within six (6) months of the completion date set in the REQUESTING PARTY'S construction contract or subsequent extension approved by the DEPARTMENT. Should the REQUESTING PARTY fail to secure final acceptance of the PROJECT by the deadline as specified herein, the REQUESTING PARTY shall repay all Federal funds reimbursed for the PROJECT. Upon final acceptance of the PROJECT by the DEPARTMENT in accordance with the provisions of Section 4 of this contract and DEPARTMENT procedures, the REQUESTING PARTY may request final reimbursement.

7. The REQUESTING PARTY shall maintain accurate records and accounts relative to the cost of the PROJECT. Said accounts shall be retained for a period of three (3) years after final payment by the DEPARTMENT and shall be available for audit by the DEPARTMENT and the FHWA.

The REQUESTING PARTY, upon completion of the PROJECT and payment of all items of PROJECT COST related thereto, shall make a final accounting to the DEPARTMENT.

Reimbursement of any cost pursuant to this contract shall not constitute a final determination by the DEPARTMENT of the allowability of such cost and shall not constitute a waiver by DEPARTMENT of any violation of the terms of this contract committed by the REQUESTING PARTY. Final settlement of costs shall be made upon completion of all PROJECT work and the DEPARTMENT'S acceptance of an audit performed by a certified public accountant in accordance with 49 CFR Part 18.26, and OMB Circular A-133, and/or final audit by the DEPARTMENT. The REQUESTING PARTY promises to promptly repay the DEPARTMENT for any disallowed items of cost previously disbursed by the DEPARTMENT. The REQUESTING PARTY pledges its future receipts from the Michigan Transportation Fund for repayment of all disallowed items and, upon failure to make repayment for any disallowed items within ninety (90) days of demand by the DEPARTMENT, the DEPARTMENT is hereby authorized to withhold an equal amount from the REQUESTING PARTY'S share of any future distribution of Michigan Transportation Fund in settlement of said claim.

8. It is understood that the REQUESTING PARTY is the owner of the facilities constructed as the PROJECT, and that said facilities may require special or unusual operation and/or maintenance. The REQUESTING PARTY certifies, by execution of this contract, that upon completion of construction and at no cost to the PROJECT or the DEPARTMENT, it will properly maintain or provide for the maintenance and operation of the PROJECT, making ample provisions each year for the performance of such maintenance work as may be required.

On projects for the construction of bikeways, the REQUESTING PARTY will enact no ordinances or regulations prohibiting the use of bicycles on the facility hereinbefore described as the PROJECT, and will amend any existing restrictive ordinances in this regard so as to allow use of this facility by bicycles. No motorized vehicles shall be permitted on such bikeways or walkways constructed as the PROJECT except those for maintenance purposes.

On projects involving the restoration of historic facilities, the REQUESTING PARTY agrees that the project will not be advertised for bids until the owner of such facilities has granted an historic preservation easement to the State of Michigan in accordance with 1995 PA 60, for the purpose of insuring that the historic property will be preserved. The REQUESTING PARTY also agrees that such facilities shall be maintained and repaired by the REQUESTING PARTY or owner, as applicable, at no cost to the DEPARTMENT or the PROJECT, in such a manner as to preserve the historical integrity of features, materials, appearance, workmanship, and environment.

On projects which include landscaping, the REQUESTING PARTY agrees to perform, or cause to be performed, at no cost to the DEPARTMENT, the watering and cultivating necessary to properly establish the plantings for a period of two growing seasons, in general conformance with Section 6.50.13 of the DEPARTMENT'S Standard Specifications for Construction. The REQUESTING PARTY shall maintain all plantings following completion of said period of establishment.

Failure of the REQUESTING PARTY to fulfill its responsibilities as outlined herein may disqualify the REQUESTING PARTY from future Federal-aid participation in Transportation Enhancement projects or in other projects on roads or streets for which it has maintenance responsibility. Federal Aid may be withheld until such time as deficiencies in regulations have been corrected, and the improvements constructed as the PROJECT are brought to a satisfactory condition of maintenance.

9. In addition to any protection afforded by a policy of insurance, the REQUESTING PARTY agrees to indemnify and save harmless the State of Michigan, the Michigan State Transportation Commission, the DEPARTMENT and all officers, agents, and employees thereof:

A. From any and all claims by persons, firms, or corporations for labor, materials, supplies or services provided to the REQUESTING PARTY in connection with the contract which the REQUESTING PARTY shall perform under the terms of this contract; and

B. From any and all claims for injuries to, or death of, any and all persons, for loss of or damage to property, environmental damage, degradation, response and cleanup costs, and attorney fees or other related costs, arising out of, under, or by reason of this Agreement, including the design of the PROJECT, except claims resulting from the sole negligence or wilful acts or omissions of said indemnitee, its agents or employees.

The DEPARTMENT shall not be subject to any obligations or liabilities by contractors of the REQUESTING PARTY or their subcontractors or any other person not a party to this contract without its specific consent and notwithstanding its concurrence in or approval of the award of any contract or subcontract or the solicitation thereof.

It is expressly understood and agreed that the REQUESTING PARTY shall take no action or conduct which arises either directly or indirectly out of its obligations, responsibilities, and duties under this contract, which results in claims being asserted against or judgments being imposed against the State of Michigan, the DEPARTMENT, and/or the Michigan State Transportation Commission.

In the event that the same occurs, for the purpose of this contract it will be considered as a breach of this contract thereby giving the State of Michigan, the DEPARTMENT, and/or the Michigan State Transportation Commission a right to seek and obtain any necessary relief or remedy, including but not by way of limitation, a judgment for money damages.

10. The DEPARTMENT'S sole reason for entering into this contract is to enable the REQUESTING PARTY to obtain and use funds provided by the Federal Highway Administration pursuant to Title 23 of the United States Code.

Any and all approvals of, reviews of, and recommendations regarding contracts, agreements, permits, plans, specifications, or documents, of any nature, or any inspections of work by the DEPARTMENT pursuant to the terms of this contract are done to assist the REQUESTING PARTY in meeting program guidelines in order to qualify for available funds. Such approvals, reviews, inspections and recommendations by the DEPARTMENT shall not relieve the REQUESTING PARTY of its ultimate control and shall not be construed as a warranty of their propriety or that the DEPARTMENT is assuming any liability, control or jurisdiction.

The providing of recommendations or advice by the DEPARTMENT does not relieve the REQUESTING PARTY of its exclusive jurisdiction of any of its highways and responsibility under MCL 691.1402, MSA 3.996(102).

When providing approvals, reviews, inspections and recommendations under this contract, the DEPARTMENT is performing a governmental function, as that term is defined in MCL 691.1401; MSA 3.996(101), which is incidental to the completion of the PROJECT.

11. The DEPARTMENT, by executing this contract, and rendering services pursuant to this contract, has not and does not assume either: (1) jurisdiction of any REQUESTING PARTY highway for purposes of MCL 691.1402; MSA 3.996(102), or (2) ownership and control of any public building for purposes of MCL 691.1406; MSA 3.996(106). Exclusive jurisdiction of such highway for the purposes of MCL 691.1402; MSA 3.996(102) rests with the REQUESTING PARTY.

12. The REQUESTING PARTY agrees that the costs reported to the DEPARTMENT for this contract will represent only those items that are properly chargeable in accordance with this contract. The REQUESTING PARTY also certifies that it has read the contract terms and has made itself aware of the applicable laws, regulations, and terms of this contract that apply to the reporting of costs incurred under the terms of this contract.

13. In connection with the performance of PROJECT work under this contract the parties hereto (hereinafter in Appendix "A" referred to as the "contractor") agree to comply with the State of Michigan provisions for "Prohibition of Discrimination in State Contracts", as set forth in Appendix A, attached hereto and made a part hereof. The parties further covenant that they will comply with the Civil Rights Acts of 1964, being P.L. 88-352, 78 Stat. 241, as amended, being Title 42 U.S.C. Sections 1971, 1975a-1975d, and 2000a-2000h-6 and the Regulations of the United States Department of Transportation (49 C.F.R. Part 21) issued pursuant to said Act, including Appendix "B", attached hereto and made a part hereof, and will require similar covenants on the part of any contractor or subcontractor employed in the performance of this contract.

14. The parties will carry out the applicable requirements of the DEPARTMENT'S Disadvantaged Business Enterprise (DBE) program and 49 CFR, Part 26, including, but not limited to, those requirements set forth in Appendix C.

15. This 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 and 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: Steve Warmington, Mayor

By Gail Kundinger
Title: Gail Kundinger, City Clerk

MICHIGAN DEPARTMENT
OF TRANSPORTATION

By_____

FORM APPROVED
5/12/02
ASSISTANT
ATTORNEY
GENERAL

REVIEWED
8-5-02
CONTRACT ADMIN

RESOLUTION_____

RESOLUTION FOR APPROVAL OF A CONTRACT AGREEMENT BETWEEN THE MICHIGAN DEPARTMENT OF TRANSPORTATION AND THE CITY OF MUSKEGON FOR THE CONSTRUCTION OF PHASE II OF THE LAKETON TRAIL TOGETHER WITH NECESSARY RELATED WORK AND AUTHORIZATION FOR MAYOR STEPHEN J. WARMINGTON AND CITY CLERK GAIL A KUNDINGER TO EXECUTE SAID CONTRACT

Moved by Commissioner Schweifler and supported by

Commissioner Buie that the following Resolution be adopted:

WHEREAS, entry by the City of Muskegon into Contract no. **02-5431** between the Michigan Department of Transportation and the City of Muskegon for the resurfacing & widening of the southbound exit ramp at US-31 and Sherman Blvd. within the City is in the best interests of the City of Muskegon.

RESOLVED, that entry by the City into Contract Agreement Number **02-5431** 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 27th day of August, 2002.

BY _____
Stephen J. Warmington, Mayor

ATTEST Gail A. Kundinger
Gail A. Kundinger, City Clerk

CERTIFICATION

This resolution was adopted at a meeting of the City Commission, held on Aug 27th, **2002**. 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 Gail A. Kundinger
Gail A. Kundinger, Clerk

EXHIBIT I

GENERAL AGREEMENT PROVISIONS FOR FEDERAL AID PROJECTS

1. General Provisions:

   A. The REQUESTING PARTY will comply with all FHWA requirements concerning special requirements of law, program requirements and other administrative requirements.

   B. To qualify for eligible cost, all work shall be documented in accordance with the requirements and procedures of the DEPARTMENT.

   C. Those projects funded with Federal monies will be subject to inspection at all times by the DEPARTMENT and the FHWA.

2. Federal Clean Air Act of 1970: The political subdivisions which are a party to this contract, on those Federally funded projects which exceed a total cost of $100,000.00 stipulate the following with respect to their specific jurisdictions:

   A. That any facility to be utilized in performance under or to benefit from this contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant to the requirements of the Federal Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended.

   B. That they each agree to comply with all of the requirements of Section 114 of the Federal Clean Air Act and Section 308 of the Federal Water Pollution Control Act, and all regulations and guidelines issued thereunder.

   C. That as a condition of Federal aid pursuant to this contract they shall notify the DEPARTMENT of the receipt of any advice indicating that a facility to be utilized in performance under or to benefit from this contract is under consideration to be listed on the EPA List of Violating Facilities.

3. Other Regulatory Requirements:

   A. The REQUESTING PARTY hereby assures and certifies that it will comply with the regulations, policies, guidelines and requirements of 49 CFR Part 18 (U.S. DOT Implementation of the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments or "Common Rule") as they relate to the application, acceptance and use of Federal Funds for this federally-assisted project.

B. The REQUESTING PARTY shall be responsible for the accurate and detailed accounting of the costs and expenses incurred in the performance of any part of the PROJECT work it agrees to undertake as provided within this contract. Said accounts shall be maintained in accordance with generally accepted government accounting principles and 49 CFR Part 18. Said accounts shall be made available for review and audit by the DEPARTMENT and, as required, by the FHWA and appropriate U.S. governmental agencies and shall be retained on file for a period of not less than three years from the date of the final payment for work conducted under this contract.

C. The REQUESTING PARTY shall comply with the Single Audit Act of 1984, P.L. 98-502, and OMB Circular A-133. All such audits are subject to the review and approval of the DEPARTMENT, the FHWA, and the Office of the Inspector General.

(1) Agencies expending a total of $300,000 or more in federal funds, from one or more funding sources in its fiscal year, shall comply with the requirements of the federal Office of Management and Budget (OMB) Circular A-133, as revised or amended.

The agency shall submit two copies of:

The Reporting Package
The Data Collection Form
The management letter to the agency, if one issued by the audit firm

The OMB Circular A-133 audit must be submitted to the address below in accordance with the time frame established in the circular, as revised or amended.

(2) Agencies expending less than $300,000 in federal funds must submit a letter to the Department advising that a circular audit was not required. The letter shall indicate the applicable fiscal year, the amount of federal funds spent, the name(s) of the Department federal programs, and the CFDA grant numbers(s). This information must also be submitted to the address below.

(3) Address: Michigan Department of Transportation
Bureau of Highways Technical Services
425 W. Ottawa, P.O. Box 30050
Lansing, MI 48909

(4) Agencies must also comply with applicable State laws and regulations relative to audit requirements.

(5) Agencies shall not charge audit costs to Department's federal programs which are not in accordance with the OMB Circular A-133 reqirements.

(6) All agencies are subject to the federally required monitoring activities, which may include limited scope reviews and other on-site monitoring.

4. Retention and Custodial Requirements for Records:

A. Financial records, supporting documents, statistical records and all other records pertinent to this instrument shall be retained for a period of 3 years, with the following exception:

(1) If any litigation, claim or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation claims, or audit findings involving the records have been resolved.

(2) Records for nonexpendable property, if any, required with Federal Funds shall be retained for 3 years after its final disposition.

(3) When records are transferred to or maintained by FHWA, the 3-year retention requirement is not applicable to the recipient.

B. The retention period starts from the date of the submission of the final expenditure report.

C. The Secretary of Transportation and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers and records of the recipient, and its contractors and subcontractors, to make audits, examinations, excerpts and transcripts.

5. Equal Employment Opportunity:

A. The REQUESTING PARTY agrees to incorporate in all contracts having a value of over $10,000, the provisions requiring compliance with Executive Order 11246, as amended, and implementing regulations of the United States Department of Labor at 41 CFR 60, the provisions of which, other than the standard EEO clause and applicable goals for employment of minorities and women, may be incorporated by reference.

B. The REQUESTING PARTY agrees to ensure that its contractors and subcontractors, regardless of tier, awarding contractors and/or issuing purchase orders for material, supplies, or equipment over $10,000 in value will incorporate the required EEO provisions in such contracts and purchase orders.

C. The REQUESTING PARTY further agrees that its own employment policies and practices will be without discrimination based on race, color, religion, sex, national origin, handicap, or age; and that it has an affirmative action plan consistent with the Uniform Guidelines on Employee Selection Procedures, 29 CFR 1607, and the Affirmative Action Guidelines, 29 CFR 1608.

6. Copeland Act: All contracts in excess of $2,000 for construction or repair awarded by the REQUESTING PARTY and its contractors or subcontractors shall include a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). This Act provides that each contractor or subcontractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, or give up any part of the compensation to which he is otherwise entitled. The REQUESTING PARTY shall report all suspected or reported violations to the DEPARTMENT.

7. Davis-Bacon Act: When required by the Federal program legislation, all construction contracts awarded by the REQUESTING PARTY and its contractors or subcontractors of more than $2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR, Part 5). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The REQUESTING PARTY shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The REQUESTING PARTY shall report all suspected or reported violations to the DEPARTMENT.

8. Contract Work Hours and Safety Standards Act: Where applicable, all contracts awarded by the REQUESTING PARTY in excess of $2,500 that involve the employment of mechanics or laborers, shall include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR, Part 5). Under section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard workday of 8 hours and a standard workweek of 40 hours. Work in excess of the standard workday or workweek is permissible provided that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in the workweek. Section 107 of the Act, if applicable to construction work, provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or

contracts for transportation or transmission of intelligence.

9. Access to Records: All negotiated contracts (except those of $25,000 or less) awarded by the REQUESTING PARTY shall include a provision to the effect that the recipient, FHWA, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

10. Civil Rights Act: The REQUESTING PARTY shall comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352), and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity for which the recipient received Federal financial assistance and shall immediately take any measures necessary to effectuate this Agreement. It shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) prohibiting employment discrimination where:

    A. The primary purpose of and instrument is to provide employment, or

    B. Discriminatory employment practices will result in unequal treatment of persons who are or should be benefiting from the grant-aided activity.

11. Nondiscrimination: The REQUESTING PARTY hereby agrees that, as a condition to receiving any Federal financial assistance from the Department of Transportation, it will comply with Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. 2000d), related nondiscrimination statutes, and applicable regulatory requirements to the end that no person in the United States shall, on the ground of race, color, national origin, sex, handicap, or age, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity for which the REQUESTING PARTY receives Federal financial assistance. The specific requirements of the United States Department of Transportation standard Civil Rights assurances with regard to the States' highway safety programs (required by 49 CFR 21.7 and on file with the U.S. DOT) are incorporated in this grant agreement.

12. Rehabilitation Act: The REQUESTING PARTY shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, (29 U.S.C. 794, P.L. 93-112), and all requirements imposed by or pursuant to the regulations of the Department of Health, Education and Welfare (45 CFR, Parts 80, 81 and 84), promulgated under the foregoing statute. It agrees that, in accordance with the foregoing requirements, no otherwise qualified handicapped person, by reason of handicap, shall be excluded from participation in, be denied the benefit of, or be subject to discrimination under any program or activity receiving Federal financial assistance, and that it shall take any measures necessary to effectuate this Agreement.

APPENDIX A
PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS

In connection with the performance of work under this contract; the contractor agrees as follows:

1. In accordance with Act No. 453, Public Acts of 1976, the contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or as a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, or marital status. Further, in accordance with Act No. 220, Public Acts of 1976 as amended by Act No. 478, Public Acts of 1980 the contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. A breach of the above covenants shall be regarded as a material breach of this contract.

2. The contractor hereby agrees that any and all subcontracts to this contract, whereby a portion of the work set forth in this contract is to be performed, shall contain a covenant the same as hereinabove set forth in Section 1 of this Appendix.

3. The contractor will take affirmative action to insure that applicants for employment and employees are treated without regard to their race, color, religion, national origin, age, sex, height, weight, marital status or a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

4. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, age, sex, height, weight, marital status or disability that is unrelated to the individual's ability to perform the duties of a particular job or position.

5. The contractor or his collective bargaining representative will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the contractor's commitments under this appendix.

6. The contractor will comply with all relevant published rules, regulations, directives, and orders of the Michigan Civil Rights Commission which may be in effect prior to the taking of bids for any individual state project.

7. The contractor will furnish and file compliance reports within such time and upon such forms as provided by the Michigan Civil Rights Commission, said forms may also elicit information as to the practices, policies, program, and employment statistics of each subcontractor as well as the contractor himself, and said contractor will permit access to his books, records, and accounts by the Michigan Civil Rights Commission and/or its agent, for purposes of investigation to ascertain compliance with this contract and relevant with rules, regulations, and orders of the Michigan Civil Rights Commission.

8. In the event that the Civil Rights Commission finds, after a hearing held pursuant to its rules, that a contractor has not complied with the contractual obligations under this agreement, the Civil Rights Commission may, as part of its order based upon such findings, certify said findings to the Administrative Board of the State of Michigan, which Administrative Board may order the cancellation of the contract found to have been violated and/or declare the contractor ineligible for future contracts with the state and its political and civil subdivisions, departments, and officers, and including the governing boards of institutions of higher education, until the contractor complies with said order of the Civil Rights Commission. Notice of said declaration of future ineligibility may be given to any or all of the persons with whom the contractor is declared ineligible to contract as a contracting party in future contracts. In any case before the Civil Rights Commission in which cancellation of an existing contract is a possibility, the contracting agency shall be notified of such possible remedy and shall be given the option by the Civil Rights Commission to participate in such proceedings.

9. The contractor will include, or incorporate by reference, the provisions of the foregoing paragraphs (1) through (8) in every subcontract or purchase order unless exempted by the rules, regulations or orders of the Michigan Civil Rights Commission, and will provide in every subcontract or purchase order that said provisions will be binding upon each subcontractor or seller.

(Rev. 03/92)

APPENDIX B

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. Compliance with Regulations: The contractor shall comply with the Regulations relative to nondiscrimination in Federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 27, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

2. Nondiscrimination: The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or natural origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

4. Information and Reports: The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Michigan Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the Michigan Department of Transportation, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Michigan Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

   (a) Withholding of payments to the contractor under the contract until the contractor complies, and/or

   (b) Cancellation, termination, or suspension of the contract, in whole or in part.

6. Incorporation of Provisions: The contractor shall include the provisions of paragraphs 1 through 6 of every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Michigan Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Michigan Department of Transportation to enter into such litigation to protect the interests of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

APPENDIX C

TO BE INCLUDED IN ALL FINANCIAL ASSISTANCE AGREEMENTS WITH LOCAL AGENCIES

Assurance that Recipients and Contractors Must Make (Excerpts from US DOT Regulation 49 CFR 26.13)

A. Each financial assistance agreement signed with a DOT operating administration (or a primary recipient) must include the following assurance:

> The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any US DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of US DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26 and as approved by US DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

B. Each contract MDOT signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

> The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of US DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

Date: August 20, 2002

To: Honorable Mayor and City Commissioners

From: Affirmative Action Dept.

Re: Flying of Mexican Flag @ City Hall

Summary of Request:

Latinos Working for the Future, have requested permission to fly the Mexican Flag in honor of Mexican Independence Day. They request flying the flag Saturday, September 14th, through Tuesday, September 17th.

Financial Impact:

NONE

Budget Action Required:

NONE

Staff Recommendation:

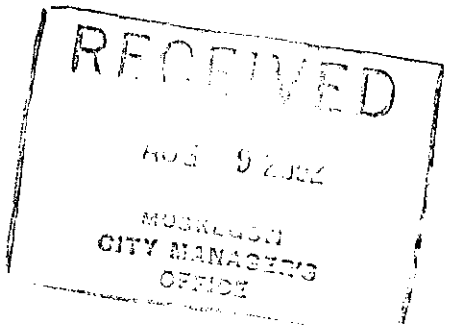
Staff recommends approval

Committee Recommendation:

NA

La Villita Arts & Culture Center

Latinos Working For the Future
1218 Ransom Street
Muskegon, MI 49441



August 7, 2002

Latinos Working for the Future
1218 Ransom Street
Muskegon, MI 49441

Muskegon City Hall
933 Terrace Street
Muskegon, MI 49442

Mayor Steve Warmington and Muskegon City Commisioners,

Latinos Working for the Future is again requesting permission from the City of Muskegon to raise the Mexican Flag on Saturday the fourteenth day of September since the sixteenth falls on a Monday. As in past years we do this in honor of Mexican Independence Day.

We thank you ahead of time and invite you and the City Commissioners to join with us on this day. We hope to hear from you in the forthcoming days so we can plan accordingly.

Respectfully,

Connie Navarro

Connie Navarro

FLAG FLYING AT CITY HALL POLICY

A. Purpose

To provide a procedure to review and make a determination on requests to fly flags at City Hall.

B. Review Process

1. Request

A request to fly at City Hall must be submitted to the City Manager for review and a determination. Group requesting must submit the request at least two weeks prior to when the flag would be raised. The following considerations are to be given when reviewing a request:

a) Appropriateness of the requesting organization and flag.

b) When more than one request is received for the same dates, the first request received will be given priority provided it meets other criteria of the policy.

2. City Commission

Once a determination is made on a request, the Manager will forward the same to the City Commission at least one day prior to notification to the requesting organization. The requirement will be waived if the requesting organization does not follow the filing timeline and thereby rendering it impossible to meet the deadline.

2. Appeals

Any organization may appeal the decision of the City Manager to the City Commission. These

appeals will be heard at a regular Commission Meeting and is subject to the timing of the Commission Meetings.

Date: August 27, 2002

To: Honorable Mayor and City Commissioners

From: Engineering

RE: Consideration of Bids
Seaway Industrial Park

SUMMARY OF REQUEST:

Award the contract for the construction of streets, water mains, sanitary sewers and storm sewers within the proposed Seaway Industrial Park to Jackson - Merkey Contractors, Inc. out of Muskegon. JMC were the lowest (see bid tabulation) responsible bidder with a bid price of $479,920.30. The bid price includes the alternate bid items which calls for the use of Clay pipe for the proposed sanitary sewer instead of the PVC shown in the base bid. The change in the type of material is due to the designation of that area as a Light Industrial. furthermore, it is respectfully requested that the awarded, if granted, be contingent on the necessary EDA approval.

FINANCIAL IMPACT:

The construction cost of $479,920.30 plus associated engineering costs.

BUDGET ACTION REQUIRED:

None.

STAFF RECOMMENDATION:

Award the contract to Jackson - Merkey Contractors Inc. This recommendation is contingent upon approval from EDA.

COMMITTEE RECOMMENDATION:

BID TABULATION

CITY OF MUSKEGON, SEAWAY INDUSTRIAL PARK
UTILITY AND ROADWAY IMPROVEMENTS
U.S. Department of Commerce; Economic Development Administration Project No. 0601-04404

August 20,2002; 2p.m.

				Jackson-Merkey		Felco Contractors		Geocon Inc.	
No	Item	Amount	Unit	Unit Price	Total	Unit Price	Total	Unit Price	Total
1.	6" Valve & Box	5	ea.	$550.00	2,750.00	$595.00	$2,975.00	$500.00	$2,500.00
2.	Fire Hydrant Assembly	7	ea.	$1,235.00	8,645.00	$1,750.00	$12,250.00	$1,400.00	$9,800.00
3.	1" Water Service	70	l.f.	$8.50	595.00	$22.00	$1,540.00	$9.00	$630.00
4.	6" DI Watermain	135	l.f.	$23.50	3,172.50	$21.00	$2,835.00	$27.00	$3,645.00
5.	6" DI Long Sleeve	3	ea.	$325.00	975.00	$180.00	$540.00	$200.00	$600.00
6.	6" DI Plug	8	ea.	$75.00	600.00	$95.00	$760.00	$150.00	$1,200.00
7.	8" x 8" x 6" DI Tee	1	ea.	$210.00	210.00	$190.00	$190.00	$300.00	$300.00
8.	8" DI Watermain	415	l.f.	$25.30	10,499.50	$24.00	$9,960.00	$30.00	$12,450.00
9.	8" DI Plug	8	ea.	$80.00	640.00	$105.00	$840.00	$250.00	$2,000.00
10.	8" DI Long Sleeve	1	ea.	$380.00	380.00	$180.00	$180.00	$500.00	$500.00
11.	8"x 8" x 8" DI Tee	1	ea.	$260.00	260.00	$190.00	$190.00	$350.00	$350.00
12.	8" Valve & Box	4	ea.	$700.00	2,800.00	$700.00	$2,800.00	$700.00	$2,800.00
13.	12" x 12" x 12" DI Tee	1	ea.	$460.00	460.00	$600.00	$600.00	$600.00	$600.00
14.	12" x 8" DI Reducer	1	ea.	$160.00	160.00	$150.00	$150.00	$500.00	$500.00
15.	12" Valve & Box	2	ea.	$1,025.00	2,050.00	$1,100.00	$2,200.00	$1,250.00	$2,500.00
16.	12" x 6" DI Reducer	1	ea.	$150.00	150.00	$150.00	$150.00	$350.00	$350.00
17.	12" x 12" x 6" DI Tee	1	ea.	$335.00	335.00	$380.00	$380.00	$550.00	$550.00

No	Item	Amount	Unit	Jackson-Merkey Unit Price	Jackson-Merkey Total	Felco Contractors Unit Price	Felco Contractors Total	Geocon Inc. Unit Price	Geocon Inc. Total
18.	12" DI Watermain	1086	l.f.	$29.80	32,362.80	$38.00	$41,268.00	$34.00	$36,924.00
19.	24"x12" Tapping sleeve and valve	1	ea.	$2,370.00	2,370.00	$2,900.00	$2,900.00	$2,900.00	$2,900.00
20.	24" x 6" Tapping sleeve and valve	3	ea.	$1,550.00	4,650.00	$1,900.00	$5,700.00	$1,900.00	$5,700.00
21.	24"x 8" Tapping sleeve and valve	3	ea.	$1,780.00	5,340.00	$2,200.00	$6,600.00	$2,200.00	$6,600.00
22.	30"x8" Tapping sleeve and valve	1	ea.	$1,950.00	1,950.00	$2,800.00	$2,800.00	$3,500.00	$3,500.00
23.	6"x6" Tapping sleeve and valve	2	ea.	$1,350.00	2,700.00	$1,050.00	$2,100.00	$1,450.00	$2,900.00
24.	12"x12"x8" DI Tee	4	ea.	$360.00	1,440.00	$350.00	$1,400.00	$550.00	$2,200.00
25.	12" 45° DI Bend	2	ea.	$395.00	790.00	$340.00	$680.00	$450.00	$900.00
26.	4' dia. Catch basin	12	ea.	$1,545.00	18,540.00	$1,400.00	$16,800.00	$1,400.00	$16,800.00
27.	18" Storm sewer	40	l.f.	$31.00	1,240.00	$32.00	$1,280.00	$32.00	$1,280.00
28.	24" Storm sewer	728	l.f.	$36.25	26,390.00	$41.00	$29,848.00	$37.00	$26,936.00
29.	30" Storm sewer	79	l.f.	$49.50	3,910.50	$50.00	$3,950.00	$50.00	$3,950.00
30.	12" Storm sewer	418	l.f.	$24.00	10,032.00	$21.00	$8,778.00	$27.00	$11,286.00
31.	4' dia. Storm Manhole	3	ea.	$1,550.00	4,650.00	$1,300.00	$3,900.00	$1,500.00	$4,500.00
32.	5' dia. Storm Manhole	1	ea.	$2,090.00	2,090.00	$2,100.00	$2,100.00	$1,900.00	$1,900.00
33.	6' dia. Storm Manhole	1	ea.	$3,000.00	3,000.00	$3,100.00	$3,100.00	$2,400.00	$2,400.00
34.	Connect to existing storm manhole	3	ea.	$580.00	1,740.00	$700.00	$2,100.00	$350.00	$1,050.00
35.	4' dia. Sanitary manhole	6	ea.	$1,735.00	10,410.00	$1,480.00	$8,880.00	$1,600.00	$9,600.00
36.	4' dia. Sanitary manhole > 10' depth	20.3	v.ft.	$150.00	3,045.00	$68.00	$1,380.40	$200.00	$4,060.00
37.	8" Sanitary sewer, PVC SDR 35	1370	l.f.	$29.50	40,415.00	$34.00	$46,580.00	$27.00	$36,990.00
38.	8" Sanitary plug	6	ea.	$75.00	450.00	$45.00	$270.00	$100.00	$600.00

No	Item	Amount	Unit	Jackson-Merkey Unit Price	Jackson-Merkey Total	Felco Contractors Unit Price	Felco Contractors Total	Geocon Inc. Unit Price	Geocon Inc. Total
39.	6" Sanitary Plug	1	ea.	$60.00	60.00	$45.00	$45.00	$80.00	$80.00
40.	6" Sanitary lateral, PVC SDR 35	110	l.f.	$17.00	1,870.00	$24.00	$2,640.00	$35.00	$3,850.00
41.	8" x 6" Sanitary wye, PVC SDR 35	2	ea.	$60.00	120.00	$60.00	$120.00	$75.00	$150.00
42.	8"x 8" Sanitary wye, PVC SDR 35	2	ea.	$100.00	200.00	$75.00	$150.00	$100.00	$200.00
43.	Connect to existing sanitary sewer with a	2	ea.	$2,320.00	4,640.00	$2,100.00	$4,200.00	$2,000.00	$4,000.00
44.	Connect to existing sanitary manhole	1	ea.	$590.00	590.00	$565.00	$565.00	$450.00	$450.00
45.	Subbase Class II Fill, 2.5' Compacted in Place	2000	sy.	$4.00	8,000.00	$1.80	$3,600.00	$6.50	$13,000.00
46.	Excavation, Removal, and Disposal of Gypsum	1000	cy	$9.25	9,250.00	$17.10	$17,100.00	$25.00	$25,000.00
47.	Undercut, Remove, and Place existing subsoils within excavation or Lemuel R.O.W.	2000	cy	$1.80	3,600.00	$3.90	$7,800.00	$4.00	$8,000.00
48.	Machine Grading	18.3	sta	$1,330.00	24,339.00	$690.00	$12,627.00	$1,600.00	$29,280.00
49.	Aggregate base course, 22A, 7" compacted in place	7400	sy.	$4.45	32,930.00	$5.05	$37,370.00	$4.75	$35,150.00
50.	Concrete curb and gutter	3930	l.f	$8.40	33,012.00	$9.05	$35,566.50	$8.50	$33,405.00
51.	Bituminous mix 11A @ 440 lb/syd	1450	ton	$32.50	47,125.00	$33.05	$47,922.50	$34.00	$49,300.00
52.	Bituminous mix 3C @ 165 lb/syd	550	ton	$36.75	20,212.50	$38.25	$21,037.50	$43.00	$23,650.00
53.	Bituminous mix 4C @ 165 lb/syd	550	ton	$40.00	22,000.00	$40.30	$22,165.00	$45.00	$24,750.00
54.	Pavement removal	370	sy.	$5.00	1,850.00	$2.50	$925.00	$4.00	$1,480.00
55.	Bituminous patching	290	sy.	$15.30	4,437.00	$15.88	$4,605.20	$18.50	$5,365.00
56.	Tree removal 6" - 18"	1	ea.	$245.00	245.00	$450.00	$450.00	$200.00	$200.00
57.	Tree removal 19" - 36"	2	ea.	$715.00	1,430.00	$800.00	$1,600.00	$600.00	$1,200.00
58.	Tree removal > 36"	3	ea.	$1,100.00	3,300.00	$1,500.00	$4,500.00	$1,200.00	$3,600.00

No	Item	Amount	Unit	Jackson-Merkey Unit Price	Jackson-Merkey Total	Felco Contractors Unit Price	Felco Contractors Total	Geocon Inc. Unit Price	Geocon Inc. Total
59.	Concrete curb and gutter removal	215	l.f.	$5.00	1,075.00	$3.50	$752.50	$4.00	$860.00
60.	Structure Removal	3	ea.	$525.00	1,575.00	$400.00	$1,200.00	$400.00	$1,200.00
61.	Traffic control	1	l.sum	$3,200.00	3,200.00	$6,200.00	$6,200.00	$4,000.00	$4,000.00
62.	Project Sign	1	ea.	$980.00	980.00	$1,200.00	$1,200.00	$400.00	$400.00
63.	4" Topsoil	8800	sy.	$1.60	14,080.00	$1.90	$16,720.00	$2.50	$22,000.00
64.	Seed, Fertilize, and Mulch	8800	sy.	$0.45	3,960.00	$0.42	$3,696.00	$0.40	$3,520.00
65.	Mulch Blanket	150	sy.	$1.75	262.50	$1.60	$240.00	$3.00	$450.00
66.	Remove existing fire hydrant or flushing pipe	6	ea.	$225.00	1,350.00	$600.00	$3,600.00	$400.00	$2,400.00
67.	Remove and Dispose of Debris Pile in Lemuel Street R.O.W.	1	lsum	$1,350.00	1,350.00	$300.00	$300.00	$1,200.00	$1,200.00
68.	Remove to 4' below grade and Dispose of foundation in Lemuel Street R.O.W.	1	lsum	$475.00	475.00	$500.00	$500.00	$800.00	$800.00
69.	Adjust Existing Storm Structure	1	ea.	$450.00	450.00	$425.00	$425.00	$350.00	$350.00
70.	Bituminous Approach	45	sy.	$16.00	720.00	$17.10	$769.50	$20.00	$900.00
71.	Concrete Approach	80	sy.	$25.00	2,000.00	$45.00	$3,600.00	$25.00	$2,000.00
72.	1" Corporation Stop	2	ea.	$195.00	390.00	$250.00	$500.00	$70.00	$140.00
73.	1" Curb Stop and Box	2	ea.	$235.00	470.00	$300.00	$600.00	$140.00	$280.00
	TOTAL BASE BID				**$463,745.30**		**$496,246.10**		**$526,861.00**

No	Item	Amount	Unit	Jackson-Merkey		Felco Contractors		Geocon Inc.	
				Unit Price	Total	Unit Price	Total	Unit Price	Total
	Alternate Items								
1a.	8" Sanitary Sewer, Vitrified	1370	l.f.	$40.50	55,485.00	$37.00	$50,690.00	$35.00	$47,950.00
2a.	6" Sanitary Lateral, Vitrified	110	l.f.	$25.50	2,805.00	$28.00	$3,080.00	$40.00	$4,400.00
3a.	8" x 6" Sanitary Wye, Vitrified	2	ea.	$110.00	220.00	$100.00	$200.00	$150.00	$300.00
4a.	8" x 8" Sanitary Wye, Vitrified	2	ea.	$135.00	270.00	$105.00	$210.00	$250.00	$500.00

Additional Bidders

Heyboer Excavating	$539,124.05
Milbocker & Sons	$542,456.00
MyCon Inc.	$564,040.40
Diversified Contractors	$584,871.00
Diversco Construction	$598,053.00
Kamminga & Roodvoets	$616,259.00

Date: **July 27, 2002**

To: **Honorable Mayor and City Commissioners**

From: **Engineering**

RE: **Request for Encroachment Agreement**
U. S. Signal Corporation

SUMMARY OF REQUEST:

U. S. Signal Corporation has submitted the attached encroachment agreement form requesting your permission to install a combination of underground and Ariel fiber optic cables within the following streets right of way (see attached Maps);

1. Pine street from Muskegon Ave. to Clay
2. Jefferson from Apple to Terrace (through the alley between Muskegon & Webster)
3. Clay from Terrace to Pine

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

To approve the encroachment agreement with the supplemental conditions.

COMMITTEE RECOMMENDATION:

US SIGNAL

RECEIVED
CITY OF MUSKEGON
JUL 22 2002

July 19, 2002

Mohammed S. Al-Shatel
City of Muskegon
933 Terrace Street
P.O. Box 536
Muskegon, MI 49333-0536

RE: U.S. Signal Corporation Encroachment Agreement

Dear Mr. Al-Shatel:

U.S. Signal Corporation (formerly RVP Fiber Company) has contracted with Turnkey Network Solutions, Inc. to install fiber optic cable in the city of Muskegon, Michigan. In that regard, and per our previous phone conversations, please find the enclosed executed Encroachment Agreement, the existing Consumers Energy Pole Attachment Agreement with U.S. Signal, a certificate of liability insurance, a check for $125.00, and our Engineering Plans. If you have any questions in this matter, please do not hesitate to call me at (616) 988-5303.

Sincerely,

Joe Andreen
Agent
U.S. Signal Corporation

20 N Monroe Ave NW Suite 450 Grand Rapids, MI 49503 866.2.SIGNAL Fax: 616.988.0414 www.ussignalcom.com

2002-96(.)
8-27-02

CITY OF MUSKEGON

ENCROACHMENT AGREEMENT AND PERMIT

THIS AGREEMENT is made and entered into this 16th day of JULY 2002, by and between the CITY OF MUSKEGON, a municipal corporation (hereinafter called CITY), and U.S. SIGNAL CORPORATION [dba RVP FIBER COMPANY, L.L.C.] (hereinafter called LICENSEE).

RECITALS

1. LICENSEE proposes to install, repair or maintain improvements or facilities ("the encroachment"), in or abutting a street, alley, sidewalk, park, terrace or other property controlled or owned by the City of Muskegon, the encroachment being described as

INSTALLATION OF FIBER OPTIC CABLE.

2. The City-owned or controlled property (herein "property") subject to the encroachment is described as:

[please insert a general description, and if required by the city, an accurate legal description]

STREET RIGHT-OF-WAY: JEFFERSON, TERRACE, PINE, CLAY.
PLEASE SEE ATTACHED PLANS.

3. The City is willing to grant such privilege upon the terms and conditions herein. This agreement shall constitute a permit under section 18-19 of the Code of Ordinances, but shall apply to any encroachment on public ways or property.

THEREFORE,

1. City does hereby grant unto LICENSEE the privilege of X constructing, X installing, X maintaining, X repairing X performing all necessary functions relating to the encroachment, and for that purpose to enter the property, for the term hereing stated. This

privilege shall be effective upon the issuance of an encroachment permit, which shall be issued only after approval of this agreement by the City Commission and delivery to the City of the required evidence of insurance coverages.

This grant is subject to the following special conditions: See attached

2. That LICENSEE shall pay to the City for the privilege hereby granted the sum of ONE HUNDRED TWENTY-FIVE Dollars ($125.00), such payment to be made upon the signing of this agreement to be dated as of the 16th day of JULY 2002, to the City Treasurer of the City of Muskegon, and the privilege hereby granted shall continue for a period to terminate the first day of May, _____, unless sooner terminated as hereinafter provided.

3. INDEMNIFICATION. The LICENSEE shall indemnify and save harmless said GRANTOR of and from any liability for claims, damages, costs, expenses, or fees, including any attorney fees, or fines or awards brought against or charged to the city by any person, firm or corporation on account of or arising from the privilege hereby granted to LICENSEE or the activities of the LICENSEE related to the encroachment or this privilege. This indemnification obligation shall include all liabilities for environmental damage or releases of hazardous substances subject to any governmental or third party action. "Hazardous substance" is defined as any material constituting a prohibited or regulated substance under governmental law, rule, statute or regulation in force at any time, including future times.

4. INSURANCE. LICENSEE shall at all times carry liability insurance in such amounts as are satisfactory to City, and issued by companies acceptable to the City, licensed in the State of Michigan, naming City as an additional insured on any such policy. LICENSEE will file with

City certificates or policies evidencing such insurance coverage. The insurance policies or certificates shall provide that the City shall be given thirty days written notice before a cancellation or change in coverage may occur. The types of coverage and coverage limits to be required shall be as follows:

_____

_____

_____

5. BONDING. Before this agreement/permit becomes valid, LICENSEE shall file with the city a bond conforming with the requirements of any ordinance, and shall keep same in force during the entire term of this agreement.

6. The privilege hereby granted may be canceled and revoked by the CITY at any time upon giving said LICENSEE _days of written notice of such cancellation and revocation.

7. LICENSEE may surrender up the privilege hereby granted at any time upon giving notice in writing to the city _____ days prior to such surrender; provided, however, that upon the voluntary relinquishment or abandonment of this privilege, or upon cancellation or revocation thereof by the City, the LICENSEE shall remove any structure(s) erected upon, within or overhanging the area of encroachment and restore the property at LICENSEE'S expense and in a manner satisfactory to City and in default thereof shall be liable to City for any cost, damage or expense the City may sustain in such restoration.

8. That should said LICENSEE fail or refuse to conform to any of the conditions on its part to be performed hereunder, the privilege hereby granted shall immediately terminate and become null and void.

9. This agreement shal be binding upon the respective heirs, representatives, successors and assigns of the parties hereto.

Witnesses:

Linda Potter
Linda Potter

Margaret M. Platt
Margaret M. Platt

AGENT US SIGNAL

CITY OF MUSKEGON

By _____

Steve Warmington, Mayor

And _____

Gail Kundinger, Clerk

LICENSEE:

VICE PRESIDENT US SIGNAL

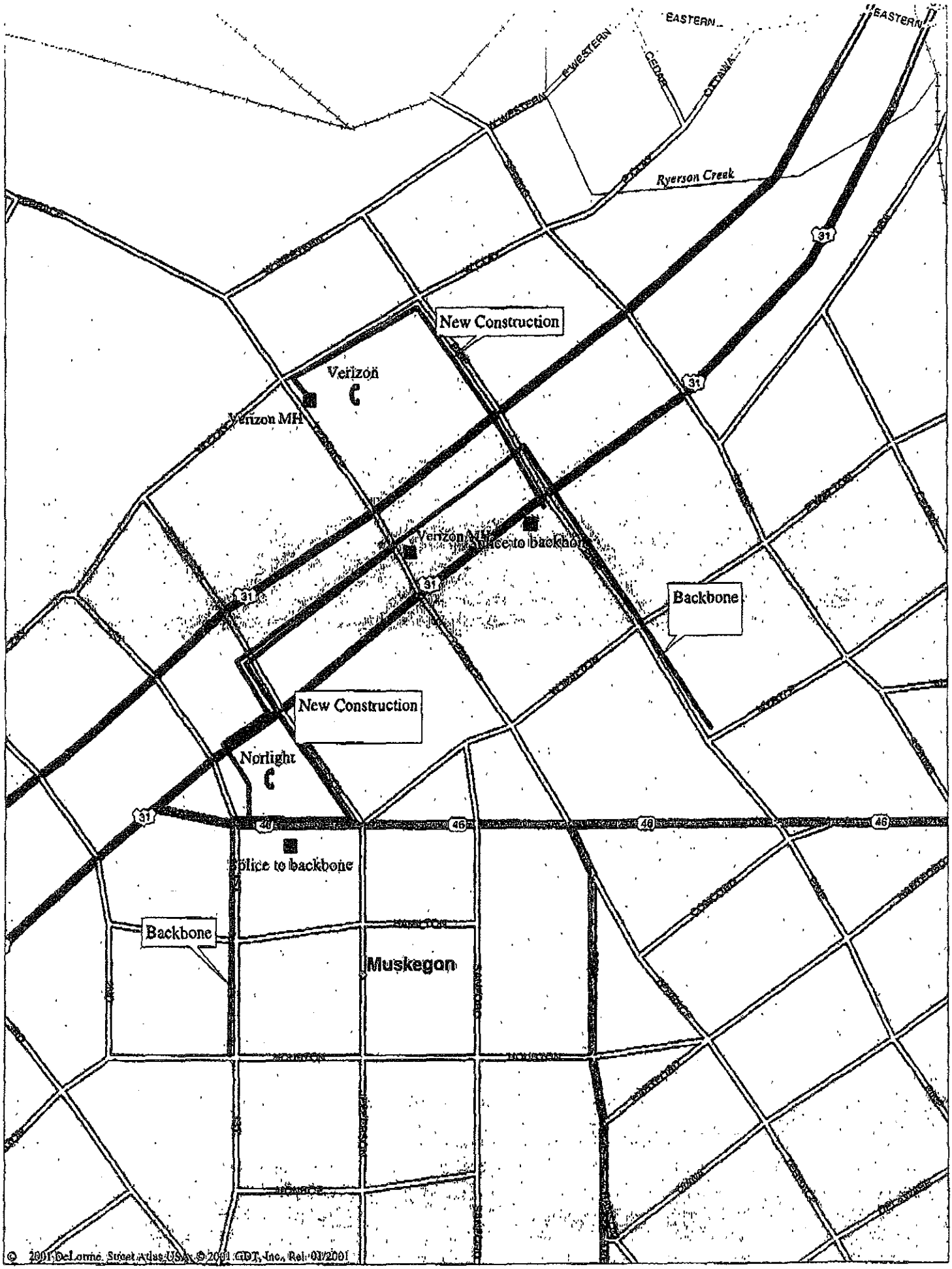
SUPPLEMENTAL CONDITIONS

1- The grantee shall be fully responsible for the maintenance of the cables/conduits and any removal or relocation that becomes necessary to facilitate other public improvements projects within said right of way (s).

2- Grantee will be responsible to maintenance and upkeep, for the duration of this agreement, a valid insurance coverage satisfactory to the City.

3- If approved (by City Commission), a permit to work in the right of way must be obtained from the Engineering Department before any work begins.

4- It shall be the responsibility of the owner to ensure that these facilities are a part of the miss dig system at all times.


EASTERN
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WESTERN
WESTERN
CEDAR
OTTAWA
Ryerson Creek
31
New Construction
Verizon
Verizon MH
Verizon MH
splice to backbone
31
31
Backbone
New Construction
Norlight
31
46
46
46
46
splice to backbone
Backbone
Muskegon
© 2001 DeLorme Street Atlas USA® © 2001 GDT, Inc., Rel. 01/2001

ACORD CERTIFICATE OF LIABILITY INSURANCE

OP ID KB RVPDE-1

DATE (MM/DD/YY) 07/15/02

PRODUCER

BUITEN-STEENSMA & ASSOC, INC.
5738 FOREMOST DRIVE, SE
GRAND RAPIDS MI 49546
Phone: 616-956-0040 Fax:616-956-8057

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

INSURED

RVP FIBRE COMPANY DBA
US SIGNAL COMPANY LLC
20 MONROE NW STE 450
GRAND RAPIDS MI 49503

INSURER A: TRAVELERS INSURANCE CO
INSURER B:
INSURER C:
INSURER D:
INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY X COMMERCIAL GENERAL LIABILITY CLAIMS MADE [X] OCCUR X CONTRACTUAL LIAB X PRODUCTS, XCU GEN'L AGGREGATE LIMIT APPLIES PER: POLICY PRO-JECT LOC	630710X4842	12/31/01	12/31/02	EACH OCCURRENCE FIRE DAMAGE (Any one fire) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1000000 $ 100000 $ 5000 $ 1000000 $ 2000000 $ 2000000
A	AUTOMOBILE LIABILITY X ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS X HIRED AUTOS X NON-OWNED AUTOS X AUTOMOBILE PHYSICAL DAMAGE	810-478K0805 $250 DED COMP $500 DED BR COLL	12/31/01	12/31/02	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 1000000 $ $ $
	GARAGE LIABILITY ANY AUTO				AUTO ONLY - EA ACCIDENT OTHER THAN AUTO ONLY: EA ACC AGG	$ $ $
A	EXCESS LIABILITY X OCCUR CLAIMS MADE DEDUCTIBLE X RETENTION $ 10000	CUP478K0817	12/31/01	12/31/02	EACH OCCURRENCE AGGREGATE	$ 10000000 $ 10000000 $ $ $
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	PKUB919W3569	12/31/01	12/31/02	X WC STATU-TORY LIMITS OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ 500000 $ 500000 $ 500000
A	OTHER FIBER OPTIC LINES	630710X4842	12/31/01	12/31/02	LIMIT DED	39,000,000 25,000

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

CERTIFICATE HOLDER | N | ADDITIONAL INSURED; INSURER LETTER: ___

MUSKEGO

CITY OF MUSKEGON
933 TERRACE STREET
PO BOX 536
MUSKEGON MI 49443

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

PAUL S BUITEN

©ACORD CORPORATION 1988

50413

TURN KEY NETWORK SOLUTIONS
637 - 76TH STREET SW
GRAND RAPIDS, MI 49509
PH. 616-455-9840

MERCANTILE BANK OF WEST MICHIGAN
GRAND RAPIDS, MI 49503
75-1382-724

7/19/2002

PAY TO THE ORDER OF City of Muskegon

$ **125.00

One Hundred Twenty-Five and 00/100********** DOLLARS

City of Muskegon

MEMO

Encroachment Agreement.

⑈050413⑈ ⑆072413829⑆ 1000281411⑈

Details on back.
Security Features Included.

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

Assessor/Equalization
(231)724-6708
FAX: (231)726-5181

Cemetery Department
(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

Community and
Neigh. Services
(231)724-6717
FAX: (231)726-2501

Computer Info.
Systems
(231)724-6744
FAX: (231)722-4301

Engineering Dept.
(231)724-6707
FAX: (231)727-6904

Finance Dept.
(231)724-6713
FAX: (231)724-6768

Fire Department
(231)724-6792
FAX: (231)724-6985

Income Tax
(231)724-6770
FAX: (231)724-6768

Inspection Services
(231)724-6715
FAX: (231)728-4371

Leisure Services
(231)724-6704
FAX: (231)724-1196

Mayor's Office
(231)724-6701
FAX: (231)722-1214

Planning/Zoning
(231)724-6702
FAX: (231)724-6790

Police Deptartment
(231)724-6750
FAX: (231)722-5140

Public Works Dept.
(231)724-4100
FAX: (231)722-4188

Treasurer's Office
(231)724-6720
FAX: (231)724-6768

Water Billing Dept.
(231)724-6718
FAX: (231)724-6768

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

MUSKEGON

West Michigan's Shoreline City

September 6, 2002

Mr. Joe Andreen
U.S. Signal Corporation
20 N. Monroe Ave. NW
Suite 450
Grand Rapids, MI 49503

Dear Mr. Andreen:

Enclosed is a copy of your encroachment agreement which was approved at the August 27, 2002, City Commission Meeting. Before you start, please contact the Engineering Department at (231) 724-6707 to see if you need any additional permits.

Thank you,

Linda Potter

Linda Potter
Deputy City Clerk

Enc.

Commission Meeting Date: August 27, 2002

Date: **August 20, 2002**

To: **Honorable Mayor & City Commission**

From: **Community and Neighborhood Services Department**

RE: **Approval of Sale of Property the South 20 feet of Lot 18 Block 3 Terrace Street Addition**

SUMMARY OF REQUEST: To approve the sale of the parcel described as 20 feet of lot 18, block 3 Terrace Street addition to Mr. Johnnie Robinson 1946 Hoyt, Muskegon, MI for $100.00. The aforementioned parcel is a split from the parcel originally described as lot 18 through 20 block 3 Terrace Street addition that was donated to the City last year. The CNS office demolished the structure that was on the site and is currently planning to construct an Infill home on the remaining parcel that is 130' x 125'.

Mr. Robinson would like to combine the split parcel (20' X 125') to his present yard at 1946 Hoyt in order to build a two car garage.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve the sale of the split property to Mr. Robinson

COMMITTEE RECOMMENDATION: None

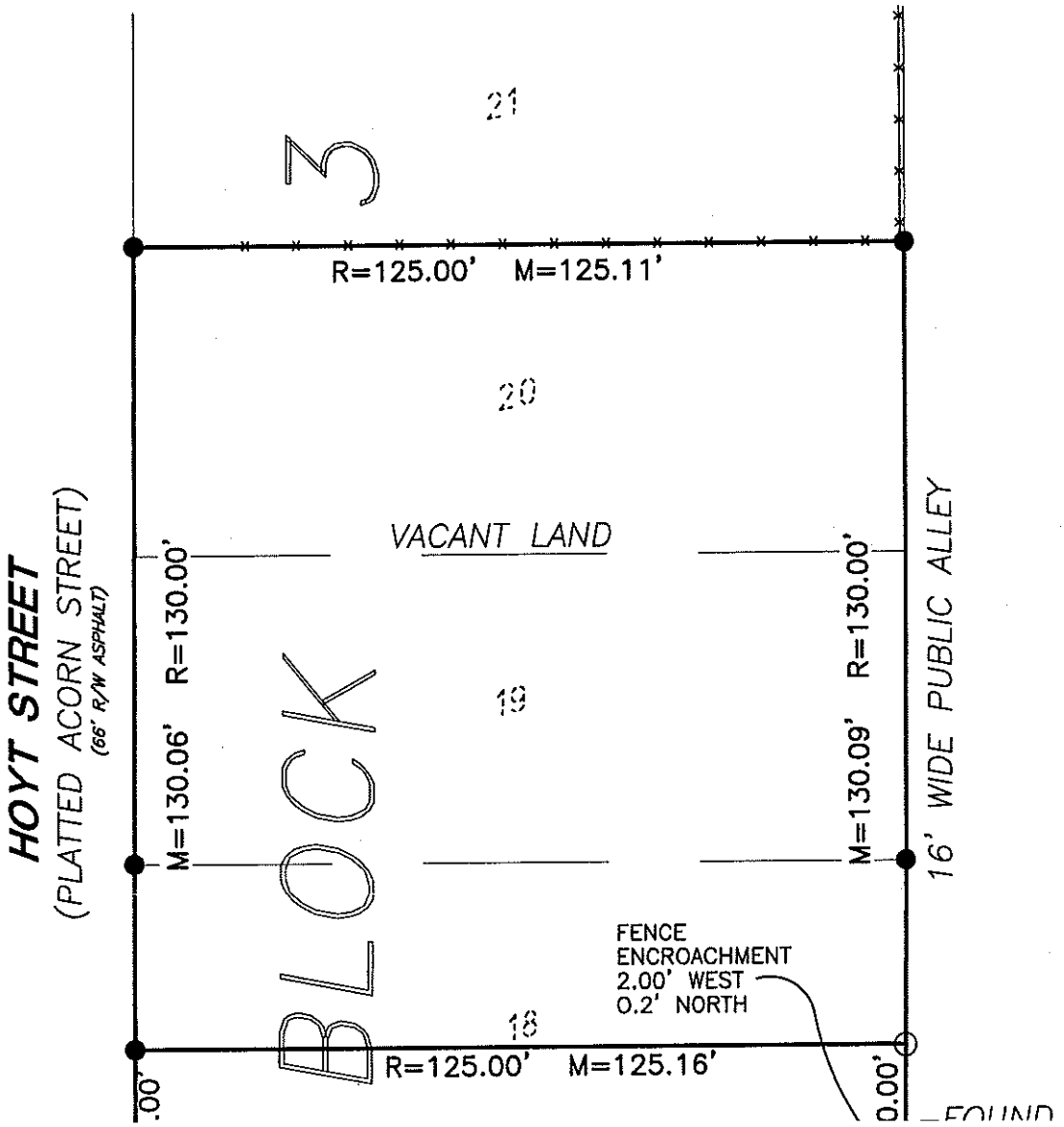
WESTSHORE
CONSULTING
Engineers ■ Scientists ■ Surveyors ■ Planners

CERTIFICATE OF SURVEY

NORTH

FOR: CITY OF MUSKEGON

FURNISHED DESCRIPTION: LOTS 18–20, BLOCK 3 TERRACE STREET ADDITION



WESTSHORE
CONSULTING
Engineers ■ Scientists ■ Surveyors ■ Planners

CERTIFICATE OF SURVEY

FOR: CITY OF MUSKEGON

NEW PARCEL

THE SOUTH 20.00 FEET OF LOT 18, BLOCK 3, TERRACE STREET ADDITION, AS RECORDED IN LIBER 3 OF PLATS, PAGE 32, MUSKEGON COUNTY RECORDS, CITY OF MUSKEGON, COUNTY OF MUSKEGON, STATE OF MICHIGAN.

REMAINDER PARCEL

LOTS 19, 20, AND LOT 18, EXCEPT THE SOUTH 20.00 FEET OF SAID LOT 18, BLOCK 3, TERRACE STREET ADDITION, AS RECORDED IN LIBER 3 OF PLATS, PAGE 32, MUSKEGON COUNTY RECORDS, CITY OF MUSKEGON, COUNTY OF MUSKEGON, STATE OF MICHIGAN.

RECEIVED
CITY OF MUSKEGON
AUG 13 2002
FINANCE DEPT.

Date: **August 27, 2002**

To: **Honorable Mayor and City Commissioners**

From: **Gail A. Kundinger, City Clerk**

RE: **Liquor License Request**
Downtown Muskegon, Inc.
1157 Third Street

SUMMARY OF REQUEST: The Liquor Control Commission seeks local recommendation on a request from Farouk Y. Sitto, to transfer all stock interest in the 2001 SDD and SDM licensed business to new stockholder, Christian A. Kado.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: All Departments are recommending approval.

Muskegon Police Department

Anthony L. Kleibecker

Chief of Police

980 Jefferson Street P.O. Box 536 Muskegon Michigan 49443-0536
(231) 724-6750 (231) 722-5140 *fax*
www.muskegonpolice.com

March 18, 2002

To: The City Commission through the City Manager

From: A. L. Kleibecker
Anthony L. Kleibecker, Chief of Police

Re: Transfer of stockholder at 1157 Third St., Muskegon, MI.

The Muskegon Police Department has received a request from the Michigan Liquor Control Commission for an investigation from applicant Downtown Muskegon, Inc. The investigation is in regards to a transfer of all stock interest in 2001 SDD/SDM licensed Corporation wherein sole stockholder, Farouk Y. Sitto, transfers 1,000 shares to new stockholder, Christian A. Kado.

The listed location is that of Family Foods located at 1157 Third Street. Mr. Christian Kado has been with the business since it was opened and is requesting this transfer due to Farouk Sitto now having responsibilities in Detroit. Mr. Christian Kado has been involved in the liquor retail business since at least February of 2000 when both he and a brother requested a transfer of license at 631 Southern Ave. At that time Mr. Kado went by the name of Saad Abdul Kado. Now he is using the name of Christian Abe Kado.

The only concerns are two incidents during which time alcohol was sold to minors. These incidents are dated 6/29/1998 and 5/9/01. The 2001 incident resulted in a local citation being issued for the sale to a minor.

A search of MPD records and a Michigan Criminal History Check was completed with no convictions.

TK/cmw

MEMO

To: Chief Tony Kleibecker

From: Det. Kurt Dykman

Date: 3-11-02

Re: Transfer of stockholder at 1157 Third St., Muskegon, MI.

Chief Kleibecker,

The Muskegon Police Department has received a request from the Michigan Liquor Control Commission for an investigation from applicant Downtown Muskegon, Inc. for transfer of all stock interest in 2001 SDD/SDM licensed Corporation wherein sole stockholder, Farouk Y. Sitto, transfers 1,000 shares to new stockholder, Christian A. Kado.

The listed location is that of Family Foods located at 1157 Third Street. Mr. Christian Kado has been with the business wince it was opened and is requesting this transfer due to Farouk Sitto now having responsibilities in Detroit. Mr. Christian Kado has been involved in the liquor retail business since at least 2/00 when both he and a brother requested a transfer of license at 631 Southern Ave. At that time Mr. Kado went by the name of Saad Abdul Kado; now the name of Christian Abe Kado is being used. The only concerns are two incidents during which time alcohol was sold to minors. These incidents are dated 6/29/1998 and 5/9/01. The 2001 incident resulted in a local citation being issued for the sale to a minor.

A search of MPD records and a Michigan Criminal History Check was completed with no convictions.

Respectfully submitted,

Det. Kurt Dykman

data/common/ckado

Mailed 2-20-02

State of Michigan
John Engler, Governor

Department of Consumer & Industry Services
Kathleen M. Wilbur, Director

Liquor Control Commission
7150 Harris Drive
P.O. Box 30005
Lansing, Michigan 48909-7505
(517) 322-1345
Fax: (517) 322-6137

POLICE INVESTIGATION REQUEST

(Authorized by MCL 436.1(4))

February 12, 2002

Chief of Police
Muskegon Police Department
980 Jefferson Street
PO Box 536
Muskegon, MI 49443-0536

Request ID #142222

Chief Law Enforcement Officer

Applicant: DOWNTOWN MUSKEGON, INC. REQUEST TRANSFER ALL STOCK INTEREST IN 2001 SDD AND SDM LICENSED CORPORATION LOCATED AT 1157 THIRD, MUSKEGON, MI 49441, MUSKEGON COUNTY WHEREIN SOLE STOCKHOLDER, FAROUK Y. SITTO, TRANSFERS 1,000 SHARES OF STOCK TO NEW STOCKHOLDER, CHRISTIAN A. KADO.

Please make an investigation of this 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 and recommendations of the applicant to the Licensing Division.

(N/A) Please include fingerprint card(s) and $30.00 for each card, and mail to the Michigan Liquor Control Commission.

If you have any questions, contact the Licensing Division at (517) 322-1400.

vlr

J6
J8
Hackley Park
Root Park
Nelson Place Apts.
Jefferson Towers Apts.
W CLAY AV
W WEBSTER AV
W MUSKEGON AV
WESTERN AV
1ST ST
2ND ST
3RD ST
4TH ST
5TH ST
JEFFERSON ST
HAMILTC
HOUSTON AV
MONROE AV
MERRILL AV
MASON AV

POLICE INSPECTION REPORT ON LIQUOR LICENSE REQUEST

(Authorized by MCL 436.7a)

Michigan Department of Consumer & Industry Services
LIQUOR CONTROL COMMISSION
7150 Harris Drive
P.O. Box 30005
Lansing, Michigan 48909-7505

Mailed 2-20-02 RA

Important: **Please conduct your investigation as soon as possible and complete all four sections of this report. Return the completed report and fingerprint cards to the Commission.** (vlr) RID #142222

BUSINESS NAME AND ADDRESS: (include zip code)

DOWNTOWN MUSKEGON, INC., 1157 THIRD, MUSKEGON, MI 49441 MUSKEGON COUNTY (231) 755-4892

REQUEST FOR: TRF ALL STOCK INTEREST IN '01 SDD/SDM LIC'D CORP WHEREIN SOLE STOCKHOLDER, FAROUK Y. SITTO, TRFS 1,000 SHARES TO NEW STOCKHOLDER, CHRISTIAN A. KADO.

Section 1. APPLICANT INFORMATION

APPLICANT #1:	APPLICANT #2:
CHRISTIAN A. KADO	
HOME ADDRESS AND AREA CODE/PHONE NUMBER: 2263 LAENEL, MUSKEGON MI 49441 (231) 755-0011-H, (231) 728-5259-W	HOME ADDRESS AND AREA CODE/PHONE NUMBER:
DATE OF BIRTH: 8-15-75	DATE OF BIRTH:
If the applicant is not a U.S. Citizen: o Does the applicant have permanent Resident Alien status? ☐ Yes ☐ No o Does the applicant have a Visa? Enter status:	If the applicant is not a U.S. Citizen: o Does the applicant have permanent Resident Alien status? ☐ Yes ☐ No o Does the applicant have a Visa? Enter status:
Date fingerprinted: NOT NECESSARY	Date fingerprinted:

Attach the fingerprint card and $15.00 for each card and mail to the 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

Can living quarters be reached from the inside of the establishment without going outside? ☐ Yes ☒ No

Does applicant intend to have dancing or entertainment?
☒ No ☐ Yes, complete LC-693N, Police Investigation Report: Dance/Entertainment Permit

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 this request be granted by the Commission? ☒ 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)

A. C. Kleiber 3-18-02

Signature (Sheriff or Chief of Police) Date

LC-1800 Rev. 06/97

(Mail white copy to the Commission, Keep yellow copy for your file)

Mailed 2-20-02

State of Michigan
John Engler, Governor

Department of Consumer & Industry Services
Kathleen M. Wilbur, Director

Liquor Control Commission
7150 Harris Drive
P.O. Box 30005
Lansing, Michigan 48909-7505
(517) 322-1345
Fax: (517) 322-6137

POLICE INVESTIGATION REQUEST

(Authorized by MCL 436.1(4))

February 12, 2002

Chief of Police
Muskegon Police Department
980 Jefferson Street
PO Box 536
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Request ID #142222

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Applicant: DOWNTOWN MUSKEGON, INC. REQUEST TRANSFER ALL STOCK INTEREST IN 2001 SDD AND SDM LICENSED CORPORATION LOCATED AT 1157 THIRD, MUSKEGON, MI 49441, MUSKEGON COUNTY WHEREIN SOLE STOCKHOLDER, FAROUK Y. SITTO, TRANSFERS 1,000 SHARES OF STOCK TO NEW STOCKHOLDER, CHRISTIAN A. KADO.

Please make an investigation of this 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 and recommendations of the applicant to the Licensing Division.

(N/A) Please include fingerprint card(s) and $30.00 for each card, and mail to the Michigan Liquor Control Commission.

If you have any questions, contact the Licensing Division at (517) 322-1400.

vlr

LIQUOR LICENSE REVIEW FORM

Business Name: Muskegon Family Food

AKA Business Name (if applicable): Downtown Muskegon, Inc.

Operator/Manager's Name: _____

Business Address: 1157 Third St.
Muskegon, MI

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 _____

Deadline for receipt of all information: 4-1-02

Police Department 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/Inspection Services Compliance ☐ Remaining Defects _____

_____

_____

Department Signature _____

Gail A. Kundinger, City Clerk
Liquor License Coordinator

LIQUOR LICENSE REVIEW FORM

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Other _____

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Income Tax Approved ☐ Owing ☐ Amount: _____

Treasurer Approved ☑ Owing ☐ Amount: _____

Zoning Approved ☐ Denied ☐ Pending ZBA ☐

Clerk's Approved ☐ Owing ☐ Amount: _____

Fire/Inspection Services Compliance ☐ Remaining Defects _____

_____

_____

Department Signature _____

Gail A. Kundinger, City Clerk
Liquor License Coordinator

RECEIVED
MAR 20 2002
CITY OF MUSKEGON
PLANNING DEPARTMENT

LIQUOR LICENSE REVIEW FORM

Business Name: Muskegon Family Food

AKA Business Name (if applicable): Downtown Muskegon, Inc.

Operator/Manager's Name: _____

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Muskegon MI

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Other _____

Deadline for receipt of all information: 4-1-02

Police Department Approved ☐ Denied ☐ No Action Needed ☐

Income Tax Approved ☐ Owing ☐ Amount: _____

Treasurer Approved ☐ Owing ☐ Amount: _____

Zoning Approved ☒ Denied ☐ Pending ZBA ☐ Property litter needs to be taken care of.

Clerk's Approved ☐ Owing ☐ Amount: _____

Fire/Inspection Services Compliance ☐ Remaining Defects _____

_____

_____

Department Signature Brenda Moore

Gail A. Kundinger, City Clerk
Liquor License Coordinator

LIQUOR LICENSE REVIEW FORM

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Operator/Manager's Name: _____

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

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

Other _____

Deadline for receipt of all information: 4-1-02

Police Department **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/Inspection Services **Compliance** ☐ **Remaining Defects** _____

_____

_____

Department Signature Allen TenBrink

Gail A. Kundinger, City Clerk
Liquor License Coordinator

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Other _____

Deadline for receipt of all information: 4-1-02

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Income Tax Approved ☐ Owing ☐ Amount: _____

Treasurer Approved ☐ Owing ☐ Amount: _____

Zoning Approved ☐ Denied ☐ Pending ZBA ☐

Clerk's Approved ☐ Owing ☐ Amount: _____

Fire/Inspection Services Compliance ☐ Remaining Defects Key Box for fire dept access, never completed on order by owner

OK per Mayor 8-19-02 Hotter

Department Signature Mayor Meter

Gail A. Kundinger, City Clerk
Liquor License Coordinator

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Police Department **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/Inspection Services **Compliance** ☒ **Remaining Defects** _____

_____

_____

Department Signature Robert B. Gabrielse

Gail A. Kundinger, City Clerk
Liquor License Coordinator

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

Assessor/Equalization
(231)724-6708
FAX: (231)726-5181

Cemetery Department
(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

Community and
Neigh. Services
(231)724-6717
FAX: (231)726-2501

Computer Info.
Systems
(231)724-6744
FAX: (231)722-4301

Engineering Dept.
(231)724-6707
FAX: (231)727-6904

Finance Dept.
(231)724-6713
FAX: (231)724-6768

Fire Department
(231)724-6792
FAX: (231)724-6985

Income Tax
(231)724-6770
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Inspection Services
(231)724-6715
FAX: (231)728-4371

Leisure Services
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FAX: (231)724-1196

Mayor's Office
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FAX: (231)722-1214

Planning/Zoning
(231)724-6702
FAX: (231)724-6790

Police Deptartment
(231)724-6750
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Public Works Dept.
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FAX: (231)722-4188

Treasurer's Office
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FAX: (231)724-6768

Water Billing Dept.
(231)724-6718
FAX: (231)724-6768

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

MUSKEGON

West Michigan's Shoreline City

August 21, 2002

Mr. Christian A. Kado
2263 Laenel
Muskegon, MI 49441

Dear Mr. Kado:

This letter is to inform you that your request to transfer all stock interest in the 2001 SDD/SDM licensed business from Farouk Y. Sitto, will be presented to the City Commission on August 27, 2002. This meeting begins at 5:30 p.m. and is located in the Commission Chambers, 933 Terrace, Muskegon, MI.

This request has also been sent to the Nelson 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.

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

Sincerely,

Linda Potter

Linda Potter
Deputy Clerk

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MUSKEGON

West Michigan's Shoreline City

August 21, 2002

Ms. Mary Jo McCann, President
Nelson Neighborhood Association
461 W. Webster
Muskegon, MI 49440

Dear Ms. McCann:

We have received a request from the Liquor Control Commission reference Downtown Muskegon, Inc., 1157 Third Street, desire to transfer all stock interest in the 2001 SDD/SDM license from sole stockholder Farouk Y. Sitto to new stockholder Christian A. Kado. On Tuesday, August 27, 2002, 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 August 27, 2002, 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

Linda Potter
Deputy Clerk

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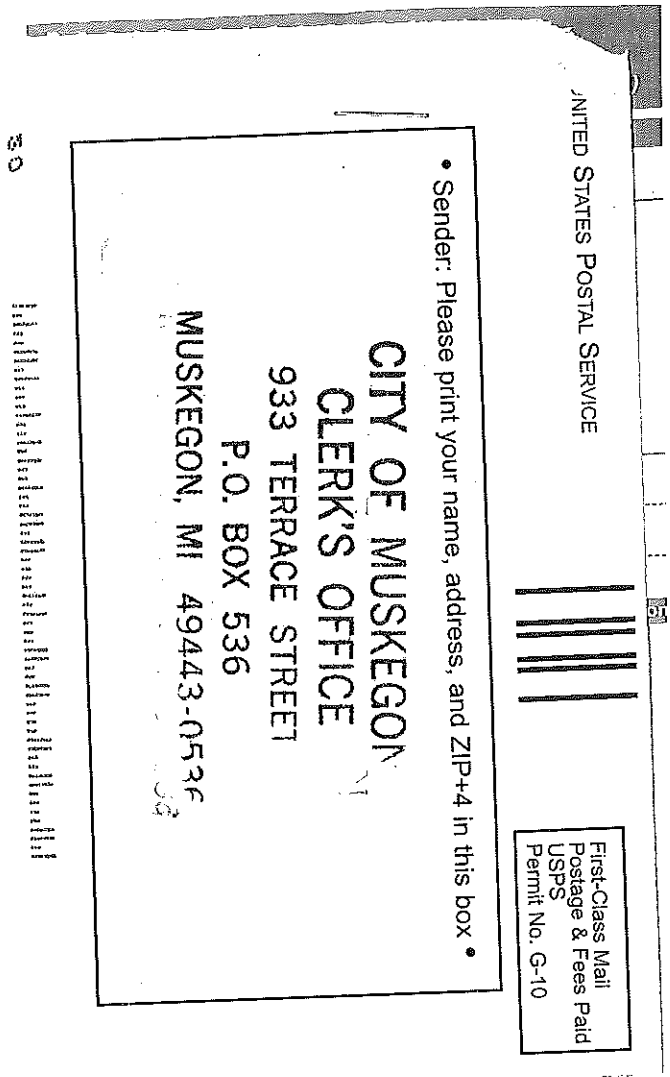
MUSKE
West Michigan's Shor



August 28, 2002

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

REF: RID #142222
1157 Third
Muskegon, MI 49441

To Whom It May Concern:

Enclosed is the police inspection report (LC-1800) for the liquor license change request mentioned above.

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

Sincerely,

Linda Potter

Linda Potter
Deputy Clerk

Enc.

SUPRA® Ordering Instructions

Fire Department Rapid Entry Systems

Phone: 800-545-7402
or
Fax: 503-375-9852

Mail To:
Supra Products
4001 Fairview Industrial Dr. SE
Salem, OR 97302

1. This form must accompany order and have the appropriate authorized signature from the fire department.
2. All KeyBoxes are shipped without keys. Contact the fire department for information concerning keys and lockup. Mounting insutructions for KeyBoxes included with order.
3. Please contact your fire department for specific mounting placement on your building.
4. Delivery: Approximately (2-3) weeks.
5. Payment: ☐ VISA or ☐ MasterCard (provide number below)
   ☐ C.O.D. (Additional C.O.D. charge added)
   ☐ Purchase Order # (if required)_____
6. Or make check payable to: Supra Products
   ☐ Check # Amt. $

Ship-To Location

Company:_____
Physical Street Address:_____
City/State/Zip:_____
Attention:_____
Phone:_____

Ordered By

Company:_____
Street Address:_____
City/State/Zip:_____
Name:_____
Phone:_____

VISA/MC #_____ Exp_____ Signature_____

Rapid Entry KeyBoxes

SupraSafe 2HS

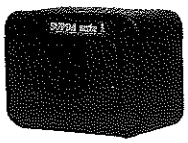
Heavy Duty - 1/4" steel wall construction, 1/2" solid steel lid, with vault reinforcement. Black polyester textured powder paint.
4"W x 5"H x 3 1/4" D.

	Qty.	Price	Total
SupraSafe 2HS Without tamper switch		$145.00	
SupraSafe 2HS-TS With tamper switch (ties into current building alarm)		$160.00	

SupraSafe 2HSR

Heavy Duty - 1/4" steel wall construction, 1/2" solid steel lid, with vault reinforcement. Black polyester textured powder paint.
4"W x 5"H x 3 1/4" D with 7 x 7 flange.

SupraSafe 2HSR Without tamper switch		$180.00	
SupraSafe 2HSR-TS With tamper switch (ties into current building alarm)		$195.00	



Recessed Mounting Kit
To be used with SupraSafe 2HSR only.

Simplifies mounting in new concrete or masonry		$60.00	

SupraSafe 1

1/8" steel wall construction
4"W x 3" H x 2" D

No tamper switch available on this model		$115.00	

Accessories

Additional fire alert decals (one provided with every KeyBox)		$1.00	

Registered Fire Department Information

Dept. Name: Muskegon Fire Dept
(Required)

City/State/Zip: Muskegon Michigan 49440

D-6163
Dept. System Code

Fire Department Authorized Signature:
(Order is not valid and will be returned without signature)

Subtotal	
Shipping & Handling per KeyBox: $9.00	
Applicable Sales Tax	
Grand Total	

Commission Meeting Date: August 27, 2002

Date: **August 20, 2002**

To: **Honorable Mayor & City Commission**

From: **Planning & Economic Development Department**

RE: **Sale of Buildable Vacant Lot on Ducey Avenue**

SUMMARY OF REQUEST:

To approve the sale of a vacant buildable lot at 1276 Ducey Avenue (designated as parcel number 24-611-000-0430-00) described as CITY OF MUSKEGON URBAN RENEWAL PLAT NO. 2, LOT 430 and 429 EX W 38.84 FT to Randall Schaab, of 4316 Fenner Road, Muskegon, MI. The lot is 116.4 x 131.9 ft. and is being offered to Mr. Schaab for $9,000. He plans to use the land for the construction of a 1,300+ sq. ft. single-family home. The home will contain 3 bedrooms, a full basement, and a 2-stall attached garage. The appraised value of the lot is $9,005 and the Mr. Schaab submitted the only bid of $9,005.

FINANCIAL IMPACT:

The sale of this lot for construction of a new home will generate additional tax revenue for the City and will place the property back on the City's tax rolls thus relieving the City of continued maintenance costs.

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

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

COMMITTEE RECOMMENDATION:

Resolution No. 2002-97(g)

MUSKEGON CITY COMMISSION

RESOLUTION APPROVING THE SALE OF A BUILDABLE LOT ON DUCEY AVENUE IN MARQUETTE NEIGHBORHOOD FOR $9,005.

WHEREAS, Randall Schaab has placed a $400 deposit for the parcel designated as parcel numbers 24-611-000-0430-00, located on Ducey Avenue;

WHEREAS, Randall Schaab has submitted the only bid of $9,005 for the parcel designated as parcel numbers 24-611-000-0430-00, located on Wesley Avenue;

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

WHEREAS, the sale is consistent with City policy regarding the disposition of buildable lots;

NOW THEREFORE BE IT RESOLVED, that parcel number 24-611-000-0430-00, located at 1276 Ducey Avenue be sold to the above-mentioned buyer.

CITY OF MUSKEGON REVISED PLAT OF 1903 URBAN RENEWAL PLAT NO. 2 LOT 430 & 429 EX W 38.84 FT;

Adopted this 27 day of August, 2002

Ayes: Warmington, Buie, Gawron, Larson, Schweifler, Shepherd, Spataro

Nays: None

Absent None

By: _____
Stephen J. Warmington, Mayor

Attest: Gail Kundinger
Gail Kundinger, Clerk

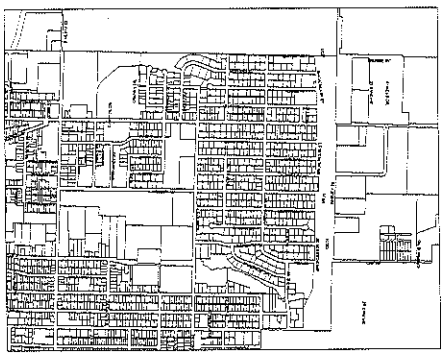
CERTIFICATION

I hearby 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 August 27, 2002.

By: Gail Kundinger
Gail Kundinger, Clerk

Vacant Buildable City-Owned Lot to be Sold
1276 Ducey Avenue

☆ = Subject Property(ies) to be sold



REAL ESTATE PURCHASE AGREEMENT

2002-97(g)

THIS AGREEMENT is made August 27, 2002, by and between the **CITY OF MUSKEGON**, a municipal corporation, with offices at 933 Terrace, Muskegon, Michigan 49440 (ASeller≅), and **RANDALL SCHAAB,** a married man, of 4316 Fenner Road, Muskegon, MI 49445 ("Buyer").

1. **General Agreement and Description of Premises.** Seller agrees to sell, and Buyer agrees to buy, marketable record title of real estate, and all improvements thereon, with all beneficial easements, and with all of Seller's right, title and interest in all adjoining public ways, the real property located in the City of Muskegon, Muskegon County, Michigan ("Premises"), and specifically described as:

CITY OF MUSKEGON URBAN RENEWAL PLAT
NO. 2, Lot 430 AND Lot 429, except the West 38.84 feet,
(1276 Ducey Avenue)

Subject to the reservations, restrictions and easements of record, provided said reservations, restrictions and easements of record are acceptable to Buyer upon disclosure and review of the same, and subject to any governmental inspections required by law.

2. **Purchase Price and Manner of Payment.** The purchase price for the Premises shall be Nine Thousand Five and no/100 Dollars ($9,005.00).

3. **Taxes and Assessments.** All taxes and assessments that are due and payable at the time of Closing shall be paid by Seller prior to or at Closing. All taxes and special assessments that become due and payable after Closing shall be the responsibility of Buyer.

4. **Title Insurance.** Seller agrees to deliver to Buyer's attorney, ten (10) days prior to closing, a commitment for title insurance, issued by Transnation Title Insurance Company, for an amount not less than the purchase price stated in this Agreement, guaranteeing title on the conditions required herein. In the event the reservations, restrictions or easements of record disclosed by said title commitment is, in the sole discretion of Buyer, deemed unreasonable, Seller shall have forty-five (45) days from the date Seller is notified in writing of such unreasonableness of restriction and such unmarketability of title, to remedy such objections. If Seller resolves such restrictions and remedies the title (by obtaining satisfactory title insurance or otherwise) within the time specified, Buyer agrees to complete this sale as herein provided, within ten (10) days of written notification thereof. If Seller fails to resolve such restrictions or remedy the title within the time above specified or fails to obtain satisfactory title insurance, this Agreement will be terminated at Buyer's option. The premium for the owner's title policy shall be paid by Seller.

5. **Covenant to Construct Improvements and Use.** Buyer acknowledges that, as part of the consideration inuring to the City, Buyer covenants and agrees to construct on the

premises a single-family home, up to all codes, within eighteen (18) months of the closing of this transaction. Buyer may only remove those trees necessary for construction of the home and driveway. The home shall be substantially completed within eighteen (18) months and, in the event said substantial completion has not occurred, or the restriction of this paragraph relating to tree removal is violated, in the sole judgment of the City, the property and all improvements then installed shall revert in title to the City, without any compensation or credit to Buyer. Buyer further covenants that the home shall be owner occupied for five (5) years after the closing. The covenants in this paragraph shall survive the closing and run with the land.

6. **Survey.** Buyer at its own expense may obtain a survey of the Premises, and Buyer or its surveyor or other agents may enter the Premises for that purpose prior to Closing. If no survey is obtained, Buyer agrees that Buyer is relying solely upon Buyer's own judgment as to the location, boundaries and area of the Premises and improvements thereon without regard to any representations that may have been made by Seller or any other person. In the event that a survey by a registered land surveyor made prior to closing discloses an encroachment or substantial variation from the presumed land boundaries or area, Seller shall have the option of effecting a remedy within thirty (30) days after disclosure, or tendering Buyer's deposit in full termination of this Purchase Agreement, and paying the cost of such survey. Buyer may elect to purchase the Premises subject to said encroachment or variation.

7. **Condition of Premises and Examination by Buyer.** NO IMPLIED WARRANTIES OF HABITABILITY, QUALITY, CONDITION, FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER IMPLIED WARRANTIES SHALL OPERATE BETWEEN SELLER AND BUYER, AND BUYER EXPRESSLY WAIVES ANY AND ALL SUCH IMPLIED WARRANTIES. BUYER UNDERSTANDS AND AGREES THAT THE PREMISES ARE TAKEN "AS IS," SUBJECT TO THE EXPRESS COVENANTS, CONDITIONS AND/OR EXPRESS WARRANTIES CONTAINED IN THIS PURCHASE AGREEMENT. BUYER FURTHER SAYS THAT HE HAS PERSONALLY INSPECTED THE PREMISES AND IS SATISFIED WITH THE CONDITION OF THE LAND, AND THE BUILDINGS AND IMPROVEMENTS THEREON, AND THAT THE PROPERTY IS BEING PURCHASED AS A RESULT OF SUCH INSPECTION AND INVESTIGATION AND NOT DUE TO ANY REPRESENTATIONS MADE BY OR ON BEHALF OF SELLER. SELLER KNOWS OF NO HAZARDOUS SUBSTANCES OR CONTAMINATION, AND BUYER WAIVES ANY CLAIM AGAINST SELLER IN THE EVENT SUCH STUBSTANCES ARE FOUND.

8. **Real Estate Commission.** Buyer and Seller both acknowledge and agree that neither has dealt with any real estate agents, brokers or salespersons regarding this sale, and that no agent, broker, salesperson or other party is entitled to a real estate commission upon the closing of this sale. Buyer and Seller both agree to indemnify and hold the other harmless from any liability, including reasonable attorney fees, occasioned by reason of any person or entity asserting a claim for a real estate commission arising from actions taken by the other party.

9. **Closing.** The closing date of this sale shall be on or before _____, 2002 ("Closing"). The Closing shall be conducted at Transnation Title Insurance Company, 570 Seminole Road, Ste. 102, Muskegon, MI 49444. If necessary, the parties shall execute an IRS closing report at the Closing.

10. **Delivery of Deed.** Seller shall execute and deliver a quit claim deed to Buyer at Closing for the Premises.

11. **Affidavit of Title.** At the Closing, Seller shall deliver to Buyer an executed Affidavit of Title.

12. **Date of Possession.** Possession of Premises is to be delivered to Buyer by Seller on the date of Closing.

13. **Costs.** Seller shall be responsible to pay the Michigan transfer tax, if any, in the amount required by law. In addition, Seller shall be responsible to pay for the recording of any instrument that must be recorded to clear title to the Premises, to the extent required by this Agreement.

Buyer shall pay for the cost of recording the deed to be delivered at Closing.

14. **General Provisions.**

a. **Paragraph Headings.** The paragraph headings are inserted in this Agreement only for convenience.

b. **Pronouns.** When applicable, pronouns and relative words shall be read as plural, feminine or neuter.

c. **Merger.** It is understood and agreed that all understandings and agreements previously made between Buyer and Seller are merged into this Agreement, which alone fully and completely expresses the agreement of the parties.

d. **Governing Law.** This Agreement shall be interpreted and enforced pursuant to the laws of the State of Michigan.

e **Successors.** All terms and conditions of this Agreement shall be binding upon the parties, their successors and assigns.

f. **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision(s) had never been contained herein.

QUIT-CLAIM DEED
2002-97(g)

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

QUIT CLAIMS to **RANDALL SCHAAB**, a married man, of 4316 Fenner Road, Muskegon, MI 49445,

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

CITY OF MUSKEGON URBAN RENEWAL PLAT NO. 2,
Lot 430 AND Lot 429, except the West 38.84 feet,

(1276 Ducey Avenue)

for the sum of Nine Thousand Five and no/100 Dollars ($9,005.00).

PROVIDED, HOWEVER, Grantee, or his assigns, shall commence construction of one (1) single family home on the premises herein conveyed within eighteen (18) months after the date hereof. In default of such construction, title to the premises shall revert to the City of Muskegon free and clear of any claim of Grantee or his assigns. In addition, the City of Muskegon may retain the consideration for this conveyance free and clear of any claim of Grantee or his assigns. Buyer shall remove only those trees necessary for construction of the home and driveway. "Complete construction" means: (1) issuance of a residential building permit by the City of Muskegon; and, (2) in the sole opinion of the City of Muskegon's Director of Inspections, substantial completion of the dwelling described in the said building permit. In the event of reversion of title of the above described premises, improvements made thereon shall become the property of Grantor. Provided, further, that Grantee covenants that the parcel described above shall be improved with not more than one (1) single family home, and it shall be owner-occupied for five (5) years after the date of this deed. 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 5th day of September, 2002.

Signed in the presence of:

Linda Potter
Linda Potter

Margaret M. Platt
Margaret M. Platt

CITY OF MUSKEGON

By
Stephen J. Warmington, Its Mayor

and Gail A. Kundinger
Gail A. Kundinger, Its Clerk

STATE OF MICHIGAN
COUNTY OF MUSKEGON

2002-97(g)

The foregoing instrument was acknowledged before me this 5th day of September, 2002, by STEPHEN J. WARMINGTON and GAIL A. KUNDINGER, Mayor and Clerk, respectively, of the CITY OF MUSKEGON, a municipal corporation, on behalf of the City.

Linda S. Potter
Linda S. Potter, Notary Public
Muskegon County, Michigan
My Comm. Expires: 9-25-02

PREPARED BY: John C. Schrier
Parmenter O'Toole
175 W. Apple Avenue/P.O. Box 786
Muskegon, MI 49443-0786
Telephone: 231/722-1621

WHEN RECORDED RETURN TO: Grantees

SEND SUBSEQUENT TAX BILLS TO: Grantees

SURVEY WAIVER

Date: September 6, 2002

RE: 421518

To: City of Muskegon

933 Terrace P.O. Box 536

Muskegon, MI 494430536

Property Address:

1276 Ducey

Muskegon, Michigan 49442

County: Muskegon

We, the undersigned, purchasers and sellers, of the above captioned property, acknowledge we have been strongly advised by you to obtain a land survey showing the dimensions of the property and the location of all buildings situated thereon.

We have decided, completely of our own volition, not to obtain a survey and wish to complete the transaction without the recommended survey.

We hereby release City of Muskegon and, its employees and/or agents, from any responsibility and/or liability concerning or pertaining to survey matters, including, but not limited to size of lot or land, location of boundary line, location of building and encroachments.

PURCHASER(S):

Randa M Schaab

SELLER(S):

City of Muskegon,

BY

Lonna Anguilm, Assistant Planner

AFFIDAVIT OF TITLE

STATE OF MICHIGAN }
} SS
COUNTY OF Muskegon }

Title Commitment # 421518

That City of Muskegon, a Municipal Corporation being first duly sworn on oath says that they are the true and lawful owner(s) of the premises located at:

1276 Ducey
Muskegon, Michigan 49442

AND

1. That on this date hereof there is no mechanic's lien on the property and that no work has been done, or materials furnished, out of which a mechanic's lien could ripen.

2. That no agreement is in effect which would adversely affect the title to the property such as a purchase agreement, lease, land contract, option, etc. other than the contract with the grantees in a certain deed of even date hereof.

3. That the parties in possession other than the affiant(s) are bona fide tenants only and have no other interest in the premises whatsoever.

4. That there are no judgments or liens against affiant(s), including income tax liens, adversely affecting the title to said property.

5. That there are no unpaid taxes, special assessments or water bills outstanding other than those shown on the closing statement.

6. That any overlooked, unknown, or misquoted taxes, special assessments, water bills, mortgage deficiencies, etc. shall be immediately paid by affiant(s) as soon as informed of such.

Seller(s):

City of Muskegon,

BY _____
Lonna Anguilm, Assistant Planner

Subscribed and sworn to, before me a Notary Public, this 6th day of September, 2002

_____
Notary Public _____ County

My Commission Expires: _____

KARRIE LEE KIEL
Notary Public, Muskegon County, MI

FILE # 421518
DATE: September 6th 2002
PROPERTY ADDRESS: 1276 Ducey

The undersigned hereby acknowledge receipt of a Request to Rescind/Withdraw Homestead Exemption form (Michigan Department of Treasury Form No. 2602) as same is required by Public Act 237 of 1994.

Please check one of the following:

___ The undersigned do not request Transnation Title Insurance Company to file the form on their behalf.

___ The undersigned have fully and properly completed the forms and request that Transnation Title Insurance Company file the form with the appropriate local tax collecting unit. The undersigned acknowledge and agree that the Company will mail the form by first class mail, and that the Company shall not be liable in the event that any of the information provided on said form is inaccurate or incomplete, or in the event that said form is not received or properly processed by the local tax collecting unit.

SELLER(S):

City of Muskegon,

BY _____
Lonna Anguilm, Assistant Planner

TRANSNATION TITLE INSURANCE COMPANY
570 Seminole Road
Muskegon MI 49444

Date: September 6, 2002
Escrow Number: 421518

Property Address: 1276 Ducey
Muskegon, Michigan 49442

SELLER'S STATEMENT	DEBIT	CREDIT
Purchase Price	$	$ 9,005.00
EXISTING LOAN		
Deposit of earnest money		
CLOSING FEES	250.00	
OWNERS PREMIUM	190.00	
Real Estate Commission		
Sub Total	$ 440.00	$ 9,005.00
Amount due Seller	$ 8,565.00	
TOTALS	$ 9,005.00	$ 9,005.00

****

The undersigned Sellers acknowledge Receipt of a copy of this statement and agree to the correctness thereof, and ratifies the disbursement of the funds as stated therein.

Seller(s) Signature(s):

City of Muskegon,

BY _____
Lonna Anguilm, Assistant Planner

Commission Meeting Date: August 27, 2002

Date: **August 19, 2002**

To: **Honorable Mayor & City Commission**

From: **Community and Neighborhood Services Department**

RE: **Signing of 2002-2003 Subrecipient and Community Housing Development Organization Agreements**

SUMMARY OF REQUEST: To direct staff to have the subrecipient agreements for the following agencies signed by the Mayor and Clerk. The funding allocations were approved by the City Commission in April on this year.

1. Muskegon Community Health Project	$5,000
2. West Michigan Veterans	$5,000
3. Child Abuse Council	$5,000
4. HealthCARE Project	$6,453
5. American Red Cross	$5,000
6. Volunteer Muskegon	$10,000
7. Legal Aid of West Michigan	$10,000
8. Family Service Center	$10,000
9. Oakview Neighborhood Association	$3,000

10. Higher Achievement Learning Center $12,000

11. Muskegon Retirement Apartment Inc. $10,000

Also to have the CHDO agreements signed for the following agencies:

1. Neighborhood Investment Corp $75,000

2. Bethany Housing Ministries $60,000

3. Trinity Village Non-Profit Housing Corp $30,000

FINANCIAL IMPACT: Funding will be allocated from the 2002-2003 CDBG/HOME funds as directed by the City Commission.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To direct staff to have the documents signed by the Mayor and the Clerk.

COMMITTEE RECOMMENDATION: All of the allocations were previously approved by the Commission.

SUBRECIPIENT AGREEMENT / CHDO AGREEMENT

This SUBRECIPIENT/CHDO AGREEMENT, made this 1st day of June, 2002, by and between the City of Muskegon, Michigan, A Municipal Corporation, (hereinafter "Recipient") and <*CO. NAME*> whose offices are located at <*CO. ADDRESS*>, (hereinafter "Subrecipient/CHDO"),

WITNESSETH:

WHEREAS, Subrecipient/CHDO will receive Community Development Block Grant (CDBG/HOME) funds from the Recipient, in the amount of $, to be used for the following:

_____

_____

_____

WHEREAS, the parties wish to set forth the conditions on which the funds are to be made available;

NOW THEREFORE, in consideration of the covenants herein contained, the parties do mutually agree as follow:

I. GENERAL CONDITIONS

1. Services to be delivered are eligible activities as defined in Section 570.200 and 570.201 of the CDBG Administrative Regulations (CFR 570). And or Section 92.205 and 92.206 of HOME Administrative Regulations (CFR 92)

2. The Subrecipient/CHDO certifies that the service is either:

   a. a new service or
   b. a quantifiable increase in the level of a service above the level which has been provided by or in behalf of the applicant from local revenue sources or State funds received by the applicant in the twelve (12) calendar months prior to submission of the proposal, or
   c. a continuation of a service that would otherwise be decreased due to events beyond the control of the Subrecipient.

3. The Subrecipient/CHDO is incorporated as a non-profit organization in good standing under Michigan Law.

4. The Subrecipient/CHDO warrants that a current copy of its charter (if applicable), Articles of Incorporation and By-Laws are on file with the Department of Community Development. The Subrecipient shall also keep a current list of its board members, its officers and their addresses on file with the Community Development Department.

5. By resolution, the Subrecipient's/CHDO's Board of Directors shall certify to the City a responsible contact person, who shall be considered their representative in all matters relating to this Agreement for communication and administrative purposes.

Until further written notice from the Subrecipient/CHDO, said contact person shall be:

_____

_____

_____

II. PERSONNEL

1. The Subrecipient/CHDO shall maintain direct control of all personnel employed by it and to provide the necessary training and supervision of its employees in carrying out contracted programs. However, implementation of the "project" must meet the requirement and approval of Community and Neighborhood Services.

2. In all work made possible by or resulting from this agreement, affirmative action will be taken to insure that low income persons, particularly minorities and women, are given maximum opportunity for training and employment; and that minority business concerns located in the area, to the greatest extent feasible, are awarded sub-contracts when permitted by this Agreement (Section 3, CDF 135).

3. Incorporated by reference are Title VI of the Civil Rights Act of 1964, Executive Order 11246 and OMB Circular A-102, Attachment O which relates to equal opportunity. Copies are available at the Community Development Office.

4. The Subrecipient/CHDO (including its membership body, Board of Directors, committees, and paid and other volunteer staff) agrees that it will comply with City policies and procedures concerning equal opportunity, affirmative action, and non-discrimination in employment practices because of age, religion, race, color, national origin, sex, education association, marital status or physical limitation.

III. SCOPE OF SERVICES

The Subrecipient/CHDO shall provide the services specified in Attachment "A", Scope of Services, in exchange for financial compensation detailed in Attachment "B".

IV. COMPENSATION AND METHOD OF PAYMENT

1. The maximum amount which the Subrecipient/CHDO may receive pursuant to this Agreement is $ _____.

2. The Subrecipient/CHDO warrants that its Board of Directors has approved a budget request to provide services detailed in this Agreement (attachment "B"). The budget total of $ _____, shall remain unchanged during the year unless amended as permitted in this Agreement. The Subrecipient/CHDO may not, without City Commission approval, make transfer between categories not exceeding 10% of the overall budget total, or $2,000.00, or whichever is greater.

3. Upon approval of Subrecipient's/CHDO request for payment, the Subrecipient/CHDO shall be reimbursed for expenses within a maximum of twenty (20 days.)

4. To receive payments, the Subrecipient/CHDO must complete and submit the following:

    a. Request for Payment
    b. Detailed Invoice for Actual Expenditures
    c. Quarterly Performance Reports

5. All program income, received by the Subrecipient, (if any) shall be disbursed by the Subrecipient prior to request for payments from the Recipient. Program income resulting from the project will be handled in accordance with the requirements of 24 CFR 570.503 applicable to CDBG Recipients and 24 CFR 92.503 for HOME CHDO's. All program income derived from the HOME activities by CHDO must be reinvested to the recipient (City) to the HOME Investment Trust Fund.

6. If at the end of the term of this Agreement there are unexpended portions of the contract amount set forth in this Agreement, the City may recapture said amount for reallocation to other purposes.

7. If Subrecipient fails to comply with terms specified in this Agreement or refused to accept and meet conditions imposed by the Department of Housing and Urban Development (HUD), the Recipient may immediately terminate payments to the

Subrecipient and recover any funds it has advanced. In the event of the inability of Subrecipient to perform or complete the project, or termination of the Agreement by the City Commission, Recipient will pay only invoices for work performed or satisfactorily completed.

8. The Recipient shall not be held liable for expenditures or obligations incurred in excess of the authorized total budget, nor shall the City be held liable for expenditures or obligations for ineligible cost pursuant to Section 570.200 and 570.201 of the Housing and Community Development Act. And 92.206, 92.207 and 92.208 of National Affordable Housing Act of 1990.

IV. FINANCING AUDITS AND INSPECTIONS

1. The Subrecipient/CHDO shall document the costs incurred with CDBG/HOME funds with the support of properly executed payrolls, time records, invoices, contracts, vouchers, receipts, or other official documentation that shows in proper detail the nature and propriety of charges. All such documents must be clearly identifiable and readily assessable during the term of the Agreement to City and HUD officials or their authorized representative for audit and examination as often as the City may deem necessary. Additionally, the Subrecipient agrees to securely maintain such documents for a period of three (3) years after termination of this Agreement.

2. The Subrecipient/CHDO is to act within thirty (30) days after the signing of this Agreement to establish a procedure for its accounting operation that will not be inconsistent with Federal Management Circular A-102, Attachment G, and can be certified auditable by the Accountant for the Community Development Department. The auditable procedure shall insure that monies provided by the Community Development Block Grant HOME program can be separately traced from other funds of the Subrecipient.

3. The Recipient shall provide the Subrecipient/CHDO with a copy of any account requirements established by HUD, and the Subrecipient shall thenceforth be responsible for compliance with such requirements.

4. Program Income earned by the Service Agency during the grant period shall be retained by the Subrecipient, and in accordance with OMB Circulars A-102, A-110 and A-122 shall be:

    a. Added to funds committed to the project by the City and the Subrecipeint/CHDO to be used to further eligible program objectives as defined in the scope of services of this Agreement (see Attachment A).
    b. Deduct from the total project costs for the purposes of determining the net costs on which the Federal (CDBG / HOME) share of the cost will be based.

5. No CDBG/ CHDO funds shall be disbursed under this Agreement by the Subrecipient or any others contracted by the Subrecipient/CHDO unless those contracted are in compliance with City and HUD requirements with regard to fiscal matter and civil rights to the extent such requirements are applicable. The Subrecipient/CHDO shall provide the Recipient with a copy of such contracts.

6. The Subrecipient/CHDO shall provide proof of Bonding Insurance for all employees who handle funds.

V. INSURANCE COVERAGE

The Subrecipient shall indemnify, defend, and hold the Recipient, its officers, and the employees harmless with respect to any damage claim arising out of activities specified by this Agreement. This Subrecipient shall maintain for the entire period of this Agreement a valid policy of liability insurance naming the City of Muskegon (Recipient) as an insured party with limits of not less than $300,000 per occurrence. The Subrecipient/CHDO shall also maintain coverage during the Agreement period for Workers' Compensation as required by law. The Subrecipient/CHDO shall submit proof of insurance and amount of coverage to the Community Development office prior to receiving any funds.

VI. REPORTS, MONITORING AND EVALUATION

1. The Subrecipient/CHDO agrees to cooperate fully with the Community and Neighborhood Services office, City and HUD officials, Citizen Committees, or any other individuals appointed by City Commission to evaluate and monitor the requirements and performance of programs financed with CDBG HOME funds. The Subrecipient agrees to provide to the same parties listed information and reports, oral or written, as may reasonably be required or requested during the term of this Agreement on mattes relating to program activities, performance, or contract compliance.

2. The Subrecipient agrees to complete and submit to the Community and Neighborhood Services Office in a timely manner a Quarterly Performance Report.

The report forms are to be provided by the City. The Subrecipient/CHDO agrees to collect and make available to the Community and Neighborhood Services Department the following information on its clients or program participants:

a. Street (only) address of the client: (inside or outside City);
b. Month and year of initial services;
c. Number of services units rendered to each client served under this agreement;
d. Age and sex of the client or participant;
e. Whether the client or participant is the head of household;
f. Whether client or participant is a member of a minority group (which group);
g. Family income by family size (which will be indicated by checking an income range category);
h. Whether client or participant head of household is handicapped;

The information is to be collected on a "Client Card" or tabulation sheets provided by the City. The form will state that the client/participant information being collected is required in order for the Subrecipient to receive Community Development Block Grant HOME funds from the City of Muskegon. Client information will be submitted quarterly with the Performance Reports.

Alternate systems of collecting data required in this section can be developed in consultation with the Community and Neighborhood Services Office. The Recipient retains the final right to approve any waiver of, or amendment to, this reporting requirement.

VII. CONTRACT AMENDMENT

That except as expressly provided elsewhere in this Agreement, any modifications or amendments to this Agreement may be made by mutual Agreement of the Subrecipient and the City Commission. It is expressly understood that this Agreement is subject to HUD Community Development Block Grant/HOME funding regulations. Should HUD act to make changes in regulations or suspend or terminate funding, such actions shall automatically amend this Agreement, if applicable.

VIII. ASSIGNABILTIY

The Subrecipient/CHDO shall not assign or transfer any interest in this Agreement without consent of the City Commission.

IX. POLITICAL ACTIVITIES

None of the funds, materials, property or services provided directly or indirectly under this Agreement shall be used for any partisan political activities, or to further the election or defeat of any candidate for office.

X. CONFLICT OF INTEREST

No employee, officer or agent of the Recipient shall participate in the award or administration of this Agreement if a conflict of interest real or apparent, would be involved, or any type of benefit financially, politically or asset wise. (i.e. obtain housing, illegal obtaining of contracts, etc.) See CFR 24.92.356 and CFR 570.611.

XI. CITY'S RIGHT TO ENFORCE

1. The community and Neighborhood Services Department may unilaterally suspend (on a temporary basis) or alter this Agreement, including the amount of funds allocated, for failure to comply with the terms and conditions of this Agreement or failure to comply with regulations for the U.S. Government, or directives of the Muskegon City Commission, some examples of which follow:

    a. Ineffective or improper use of the Community Development Block Grant/HOME funds:
    b. Failure to submit complete and correct performance or financial reports;
    c. Failure to provide services called for in the Scope of Services section within the time frame stated: and
    d. If for any reason, the program cannot be completed.

2. The City Commission may unilaterally terminate this Contract for failure to comply with the terms and conditions of the Agreement, the regulations of the U.S. government, or directives of the Muskegon City Commission.

3. The Community and Neighborhood Services Department office shall provide reasonable notice to the Subrecipient before action is taken to suspend, alter or terminate this Agreement. Such notice shall include the reasons for the contemplated action and the Subrecipient shall be give a right to protest.

4. In the event this Agreement is terminated by the City Commission, the Ownership of all documents, equipment and properties acquired by CDBG / HOME or Program Income funds shall revert to the Recipient with the decision for final disposition being left to the City Commission. However, the Subrecipient shall receive just compensation for any work satisfactorily completed prior to such termination.

XII. PURSUIT OF ADDITIONAL RESOURCES

The Subrecipient/CHDO shall make bona fide efforts to secure funds and resources from other sources. Further, the Subrecipient/CHDO shall cooperate with the Community and Neighborhood office, as requested, in its efforts to pursue additional or alternative funding. The Subrecipient shall report these efforts as part of the required Quarterly Performance Report.

XIII. TIME PERFORMANCE AGREEMENT TERM

All services rendered hereunder shall be completed by May 31, 2003. This Agreement automatically terminates at that time unless specifically extended by the City Commission. All funds allocated which are unspent or encumbered for services under this Agreement shall be repaid to the City within fifteen (15) days of this date.

XIV. OTHER

1. That it will comply with all requirements applicable to HUD Block Grant Subrecipients set forth in the CDBG Program Requirements contained in 24 Code of Federal Regulation Part 570. Such requirements pertain to, but are not limited to, compliance with OMB Circular A-102, reports and information, audits and inspection, unearned payment, non-discrimination, disposition of real property, and miscellaneous grant administration requirements.

2. That should the Subrecipient/CHDO utilize any portion of CDBG/HOME funds for acquisition of property or relocation of individuals, families, or businesses as a result of a project involving federal financial assistance from HUD, as defined in regulations at 24CFR Part 42.79, all acquisition and/or relocation shall conform to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91.646), and the regulations which implement the Act (24 CFR Part 42).

3. That except with respect to the rehabilitation of residential use for less than eight families, all contractors engaged under contracts in excess of $2000 for the construction prosecution, completion or repair of any building or work financed in whole or in part with assistance provided under this agreement, shall comply with HUD requirements pertaining to such Contracts and the applicable requirements of the regulations of the Department of Labor under 29 CFR Parts 2, 5, and 5a, governing the payment of wages and the ratio of apprentices and trainees to journeymen; provided, that if wage rates higher tan those required under such regulations are imposed by State or local law, nothing hereunder is intended to relieve the Subrecipient of its obligations, if any, to require payment of the higher rates. The Subrecipient shall require to be inserted in full in all such contracts subject to such regulations, provisions meeting the requirements of 29 CFR 5.5 and for such contracts in excess of $10,000, 29n CFR 5a.3.

4. The Subrecipient/CHDO agrees to abide by all other Federal requirements not highlighted in this Agreement, but included in the Community Development Block Grant regulations HOME Regulation available at the Community and Neighborhood Services Department, or other regulations subsequently supplied to the Subrecipeint.

5. That should the Subrecipient/CHDO funding involve construction work, the Subrecipient CHDO contractors(s) agree to allow access to the City or its representative for inspection purposes.

6. Should the Subrecipient/CHDO acquire any real or personal property with funds provided under this Agreement, it will not dispose of such property through sale or otherwise without written permission of Recipient. If property is disposed of without written permission, the proceeds shall be returned to the Recipient, and Subrecipient may be required to reimburse the Recipient for the Federal portion of participation in the project, subject to requirements in the Office of Management and Budget Circular A-102, Attachment N, Property Management Stands.

XV. CONTRACT CLOSEOUT

All contracts will be closed out in accordance with the procedures specified in OMB Circular A-102, Attachment L, and Portions of OMB Circulars A-110 and A-122 applicable to non-profit organizations.

In Witness Whereof, the parties hereto have caused this contract to be executed the day and year above written.

Signed In the Presence Of:

CITY OF MUSKEGON, MICHIGAN
A Municipal Corporation

Witness_____

By:_____
Steve Warmington, Mayor

Witness_____

By:_____
Gail Kundinger, City Clerk

_____
Agency Name

Witness_____

By:_____
It's President

Witness_____

By:_____
It's Secretary

ATTACHMENT "A"

SCOPE OF SERVICES

Subrecipient Name _____

SCOPE OF SERVICES

The Scope of Services section below lists the services to be provided under the terms of the Subrecipient/CHDO Agreement. This description shall establish the basis for the Community and Neighborhood Services Office assessment of actual program accomplishments.

I. Location and Hours

The Service Agency shall provide the contracted services at the following locations(s):

II. Eligible Clients

The Subrecipient/CHDO shall take affirmative action to insure that the primary beneficiaries of services rendered under this Agreement are eligible CDBG clients and HOME clients. Eligible clients are defined as those persons of household who:

a. Reside in the City of Muskegon and
b. Have household incomes less than or equal to 80 percent of the median of the City.

ATTACHMENT "A"

SCOPE OF SERVICES

III. Description and Quantity of Services to be provided

Describe and number each service to be provided separately. Include the job title of the person (s) who will primarily render the service, the time span, which the service will be offered, if less than the total contract year, and how the service will be rendered.

Estimated quantity of service to be provided (number of persons to be served).

ATTACHMENT "B"

BUDGET

REVENUES

CDBG/HOME FUNDS	$_____
*Other (Specify Below)	_____
Program Income	_____
TOTAL REVENUES	$_____

	Total Budgeted	Portion to be Funded by CDBG/HOME
EXPENDITURES		
Salaries & Fringes	$_____	$_____
Consultant & Contract Services	$_____	$_____
Office Supplies	$_____	$_____
Telephone	$_____	$_____
Rent & Related Expenses	$_____	$_____
Equipment	$_____	$_____
Office Furniture	$_____	$_____
Travel	$_____	$_____
Specific Assistance to Individuals	$_____	$_____
Miscellaneous (Specify)		
_____ $_____		
_____ $_____		
_____ $_____		
TOTAL EXPENDITURES	$_____	$_____

*LIST OTHER REVENURE SOURCES:

1. $_____
2. $_____
3. $_____
4. $_____
5. $_____

Date: August 27, 2002

To: Honorable Mayor and City Commissioners

From: Engineering

RE: Public Hearing: Soil Removal, Stripping and Dumping (SRSD) Permit Application for Fisher Steel

---

SUMMARY OF REQUEST:

To hold a public hearing to consider the request from Fisher Steel Investment to place a total of 1,900 cubic yards of clean fill material over 1.5 acres (7" in depth) on the north westerly part of parcel number 24-205-549-0002-00 (Fisher Steel property). The public hearing is a result of the enclosed fill application. As outlined in SEC. 26-187, notices were sent to property owners within the 300' of the subject site, a copy of said notice is attached for your review.

FINANCIAL IMPACT:

None.

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Approval of the Soil Removal, Stripping and Disposal Permit

COMMITTEE RECOMMENDATION:

.ffirmative Action
231)724-6703
AX: (231)722-1214

.ssessor/Equalization
231)724-6708
AX: (231)726-5181

'emetery Department
231)724-6783
'AX: (231)726-5617

'ity Manager
231)724-6724
'AX: (231)722-1214

'ivil Service
231)724-6716
AX: (231)724-4405

'lerk
231)724-6705
AX: (231)724-4178

'ommunity and
Neigh. Services
231)724-6717
'AX: (231)726-2501

'omputer Info.
Systems
231)724-6744
'AX: (231)722-4301

:ngineering Dept.
231)724-6707
'AX: (231)727-6904

'inance Dept.
231)724-6713
'AX: (231)724-6768

'ire Department
231)724-6792
'AX: (231)724-6985

ncome Tax
231)724-6770
'AX: (231)724-6768

nspection Services
231)724-6715
'AX: (231)728-4371

.eisure Services
231)724-6704
'AX: (231)724-1196

'layor's Office
231)724-6701
'AX: (231)722-1214

'lanning/Zoning
231)724-6702
'AX: (231)724-6790

'olice Department
231)724-6750
'AX: (231)722-5140

'ublic Works Dept.
231)724-4100
'AX: (231)722-4188

'reasurer's Office
231)724-6720
'AX: (231)724-6768

Water Billing Dept.
231)724-6718
'AX: (231)724-6768

Water Filtration
231)724-4106
'AX: (231)755-5290

MUSKEGON

West Michigan's Shoreline City

August 15, 2002

ABONMARCHE DEVELOPMENT
2108 SHAWNEE RD
BARODA MI 49101

SRSD Permit 2002-09
Permit Application
Fisher Steel

Dear Property Owner;

The City of Muskegon Engineering Department (Dept.) has received a City of Muskegon Ordinance, Chapter 17: Soil Removal, Stripping, and Dumping (SRSD) Permit Application for the above referenced Site.

The City of Muskegon is required by City Ordinance Chapter 17 to notify owners of property within 300 feet of the SRSD project. Based on the City of Muskegon tax records your property is identified within 300 feet to the project site Property #24-205-549-0002-00.

A public hearing for the SRSD Permit Application is scheduled at the City Commission meeting for Tuesday, August 27, 2002 at 5:30 P.M.

If you should have any questions please do not hesitate to call (231) 724-6707.

Sincerely,

Mohammed S. Al-Shatel P.E.
City Engineer

MSA:jp

CITY OF MUSKEGON, MICHIGAN

Permit SESC/SRSD No. 2002-10

CITY ENGINEER and/or DIRECTOR OF INSPECTIONS

Date Issued _____

Expiration Date _____

Application and Permit

SOIL EROSION AND SEDIMENTATION CONTROL and/or SOIL REMOVAL, STRIPPING AND DUMPING ORDINANCE

Please Type or Print in Ink

1. Name of Applicant: Fisher Investment Company
2. Mailing Address of Applicant: c/o of Parmenter O'Toole, Apple Ave, Muskegon, MI
3. Telephone Number: (231) 722-5427

In accordance with Ordinance No. 772 and Part 91 of Michigan Act 451, Public Acts of 1994 and the Rules promulgated thereunder, the above named herewith makes application for a Soil Erosion Control and/or a Soil Removal, Stripping and Dumping Permit for the proposed earth change described below.

4. Type and size of proposed earth change: The work will consist of placing a nominal combined depth of seven inches of fill and topsoil over the unvegetated portion of the property (1.5 acres) in preparation for the placement of native grasses and wildflowers.
5. Legal description and address of property: The legal description is presented as part of attached documentation.
6. If earth change involves a proposed subdivision, give name: Not applicable
7. Distance of proposed earth change from nearest lake or stream: 400 from Muskegon River
8. Date earth change is expected to commence: August 20, 2002
9. Attach soil erosion control plan for proposed earth change to this application.

Joseph L Berlen Engr 7/26/02

Signature of Applicant and date

City of Muskegon approval and date

THIS PERMIT DOES NOT OBVIATE THE NEED FOR OTHER STATE AND FEDERAL PERMITS.

Comm. Proc. Authorization Per Chapter 17 (SRSD) _____

List of Attachments

The following attachments are included in support of the proposed work.

- Attachment A: Description of Scope of Work
- Attachment B: Site Plans
  - Figure 1: Site Location Map
  - Figure 2: Site Plan
- Attachment C: Erosion control features as described in Attachment A
- Attachment D: Operation and Maintenance Program
  - Exhibit A: Operation and Maintenance Log
- Attachment E: Legal Description

ATTACHMENT A

Description of Scope of Work

ATTACHMENT A: DESCRIPTION OF SCOPE OF WORK

Section 16.5 Information

The work will consist of placing a nominal depth of fill and topsoil over the unvegetated portion of the property in preparation for planting with native grasses and wildflowers. The wildflower mix will focus on planting wildflowers to nurture and attract butterflies, especially monarch butterflies, and other wildlife. A butterfly mix, including perennial coreopsis and ironweed, will be handsown to maximize germination.

The fill and topsoil shall be placed in a manner to minimize slopes and to maintain a level and smooth surface. This will allow the site to keep its existing drainage patterns and further minimize the potential for soil erosion. Surface water overland flow will continue to flow to the south as it currently does but be attenuated during high precipitation events by the new vegetation and more permeable topsoil. The work does not include any excavation or cuts. The work does include very limited site preparation in the form of grading and the placement of a nominal seven- (7) inches of soil on the current grade. The property is not serviced by utilities; therefore, the work will not effect any utilities.

The proposed soil placement and grading will be approximately 1.5 acres over the unused property (Parcel: 61-24-205-549-0002-00) located near Ottawa Street and Cross Street in Muskegon, Michigan (see: Figure 1 in Attachment B). The proposed work area is located at least 400 feet south of the Muskegon River. The work area is vertically located above the 100-year floodplain (refer: Flood Insurance Study, City of Muskegon). No work will be done within the 100-year floodplain.

Interim soil erosion mitigation (ISEM) methods will include the placement of silt fences and hay bales to mitigate the potential effects of precipitation events during the ten-day project. ISEM methods and products are presented in Attachment C. A total of $4,500 is allocated for ISEM methods and a total of $9,800 is allocated for permanent soil erosion out of a total estimated completion cost of $59,000.

Contractor transport vehicles will unload soil in the unloading area only (see: Figure 2 in Attachment B) and not into the work area. A loader will transport material from the unloading area to mitigate any tracking of material onto public streets. Soil brought to the site shall be placed by the end of each workday. A grader will smooth soil placed by the loader to a nominal depth of seven (7) inches. A total of approximately 1,900 cubic yards of clean fill and topsoil will be placed at the site. Any soil tracked outside of the work area will be immediately cleaned up by the contractor.

Upon full germination of the grasses the ISEM appurtenances will be removed. To assure that the natural improvements are maintained an annual operation and maintenance program has been developed (see: Attachment D). As stipulated in the Contractor's contract, the Contractor is responsible for maintenance for the period through June 30, 2003.

A geotechnical soil analysis has not been undertaken since there are no immediate plans to develop or place a structure on the subject property.

Proposed Schedule:

Task	Schedule
Pre-construction meeting	August 26
Place erosion control appurtenances	August 27-28
Place Fill, Topsoil	August 29 – September 12
Seed, mulch	Within two weeks of completion of fill placement
Plant wildflowers	Late September-October

Chapter 17 Information

The grading will be done in a way to minimize disturbance of existing soils. Transport vehicles will unload soil in the unloading area only and not into the work area. A loader will transport material from the unloading area to mitigate any tracking of material outside the unloading area. A grader and/or bulldozer will smooth soil placed by the loader to a nominal depth of seven (7) inches. Any soil tracked outside of the work area will be immediately cleaned up by the contractor.

The soil will be placed in the soil unloading area (see: Figure 2 in Attachment B) by gravel trains. The gravel trains will exit Skyline Drive at Bayou or Marquette Street and travel Ottawa Street to the Padnos Iron & Metal Property at 259 Ottawa and then to the material placement location. Soil will be moved by a loader to the area designated for material placement as shown in Figure 2. The gravel trains shall not enter the site by any other means than the material unloading area.

The contractor is Diversified Contractors of Grand Haven, Michigan. Warren Dykehouse will be the person at Diversified in responsible charge for the soil placement and grading operations. Mr. Dykehouse has over 20 years of experience in the contracting business with many successful projects, including demolition projects for the City of Muskegon.

Mr. Dykehouse can be reached at the following location:

Mr. Warren Dykehouse
Diversified Contractors
6775 Harvey
Grand Haven, MI 49456
Phone: (231) 798-1601

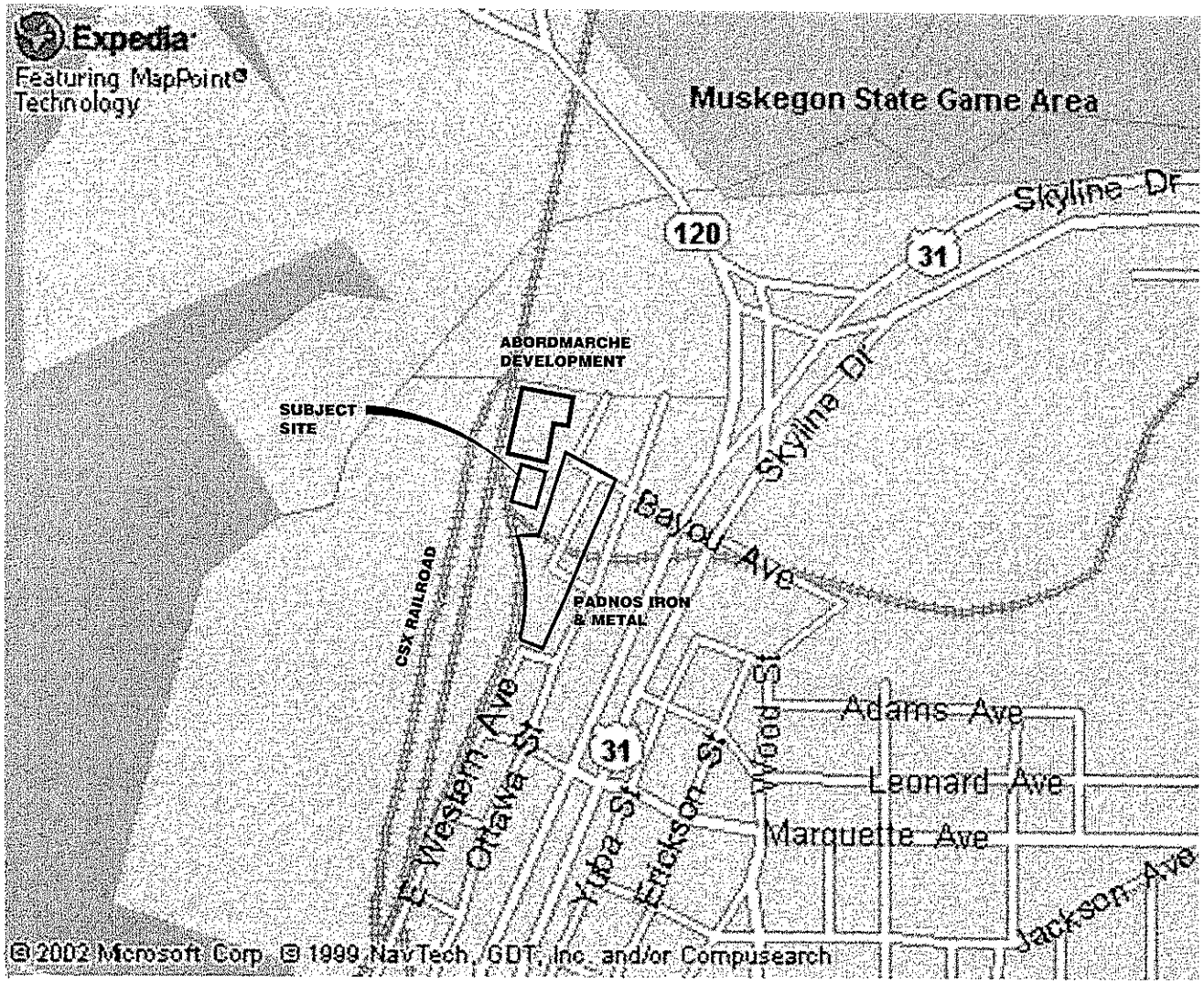
Mr. Joseph Berlin, P.E. is project-engineering manager for BLDI, Inc., the engineering firm. Mr. James Edelyn, P.E. is the project engineer and will be responsible for site documentation and inspection. BLDI staff can be reached at the following location.

BLDI, Inc.
150 Fountain NE
Grand Rapids, MI 49503
Phone: 616-459-3737
Joseph Berlin cell phone: 616-318-9180
James Edelyn cell phone: 616-318-9185

Certified by:

_____ Date:_____
Joseph W. Berlin, P.E. (#32517)

ATTACHMENT B
Site Plans



BR072502
FIG1-1.DWG-1.5

FIGURE 1

SITE LOCATION MAP

FISHER INVESTMENT CO.

PARCEL: 61-24-205-549-0002-00

JULY '02 020792

NO SCALE
NOT A LEGAL SURVEY

ATTACHMENT C

Erosion Control Features as Described in Attachment A

SECTION 02951

SITE AND SURFACE RESTORATION

PART 1: GENERAL

1.1 WORK INCLUDED

A. Repair and replace any public and access roads damaged by the Contractor.

B. Restore all surface areas after construction is complete.

1.2 REFERENCES

The following publication listed below forms a part of this specification to the extent referenced. The publication is referred to in the text by basic designation only.

Michigan Department of Transportation (MDOT) Standard Specifications for Construction, 1996 Edition.

PART 2: PRODUCTS

2.1 MATERIALS

A. Turf

The required topsoil, seed, fertilizer and mulch shall be in accordance with the MDOT Standard Specifications for Construction, Division 8, "MISCELLANEOUS CONSTRUCTION," Section 816 "Turf Establishment." Seeding classification shall be Roadside (100#/acre) for all slopes or erosion prone areas and Cereal Rye Seeding (56#/acre) for other areas, unless otherwise directed.

B. Erosion Control

As necessary, on side slopes, to minimize erosion as required in soil and sedimentation permit and MDOT Standard Specification 2.13 Soil Erosion and Sedimentation Control.

PART 3: EXECUTION

3.1 ROADWAY, SIDEWALKS, AND PARKING AREA RESTORATION

A. Roadway and Parking Areas Repairs

The Contractor is required to repair, in-kind or better, any areas in the Contractor's access road or any parking areas on the site disturbed as a result of the Contractors work or access. Where roadway and parking pavements are required to be removed to accomplish required work, the Contractor shall square cut all edges of the existing pavement at the removed section.

B. Asphalt Surfaces

Asphalt pavement shall be replaced to the same thickness as that which existed prior to removal, or 3 inches, whichever is greater. The placed asphalt material shall be properly compacted and the surface made flush with the existing pavement. The construction work shall be performed in accordance with Division 5 "BITUMINOUS CONSTRUCTION PRACTICES" of the MDOT Standard Specifications for Construction.

3.2 GROUND SURFACE RESTORATION

The Contractor shall restore all ground areas disturbed as a result of the work and access, excavation, and filling activities as indicated on the plans, using topsoil, seed, mulch, and fertilizer. Hydroseeding may be used for surface restoration. All ground surfaces shall be rough graded as to leave no ruts, pits, piles, or ridges and sloped as level to adjacent undisturbed areas. A minimum of six inches of topsoil shall be placed over all disturbed areas and clay cap.

3.3 DISPOSAL

The material to be removed and disposed of includes, all waste, excess, and unsatisfactory materials resulting from work required and shall be removed from the site and disposed of at an approved Type II/Type III disposal facility. The disposal cost under this Section is incidental to the project.

END OF SECTION

ATTACHMENT D

Operation and Maintenance Program

Attachment D: Operation and Maintenance Procedures

There are currently no operations on the subject property and none are anticipated. A soil cover being a nominal seven (7) inches thick will be constructed over the entire subject property and a visual documented inspection of the cover will be conducted annually to ensure that the cover is intact and supports the vegetative mass. In the event of erosion, the erosional area will be repaired as necessary.

Written records documenting inspections of the cover will be maintained by Fisher Investment Company. Refer to the Maintenance Log included as Exhibit A.

BLDI ENVIRONMENTAL MANAGEMENT

150 Fountain St. NE
Grand Rapids, MI 49503
Phone: 616.459.3737

Exhibit A: Operation and Maintenance Log

Site: 259 OTTAWA STREET
MUSKEGON, MICHIGAN
MAINTENANCE LOG

Inspected By: _____
Date of Inspection:_____

1. Observed Erosion: No Yes. (If yes, complete No. 3.)

_____
_____

2. Vegetative Cover Condition:

☐ Bare soil or erosion areas present (Complete No. 3.)
☐ Grass and vegetation covers entire fill area.
☐ Wildflowers present

3. Repairs Made to Cap or Vegetative Cover:

_____
_____
_____
_____

4. Date of Repairs (if any):

_____
_____
_____

Signature _____

Organization:_____ Date:_____

BLDI ENVIRONMENTAL AND SAFETY MANAGEMENT

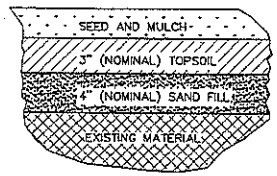
OWNER:
FISHER INVESTMENT COMPANY
C/O PARMENTER O'TOOLE
175 WEST APPLE AVE.
MUSKEGON, MI.
(231)722-5427

CONTRACTOR:
DIVERSIFIED CONTRACTORS
6775 HARVEY
SPRING LAKE, MI. 49456
(231) 798-1601

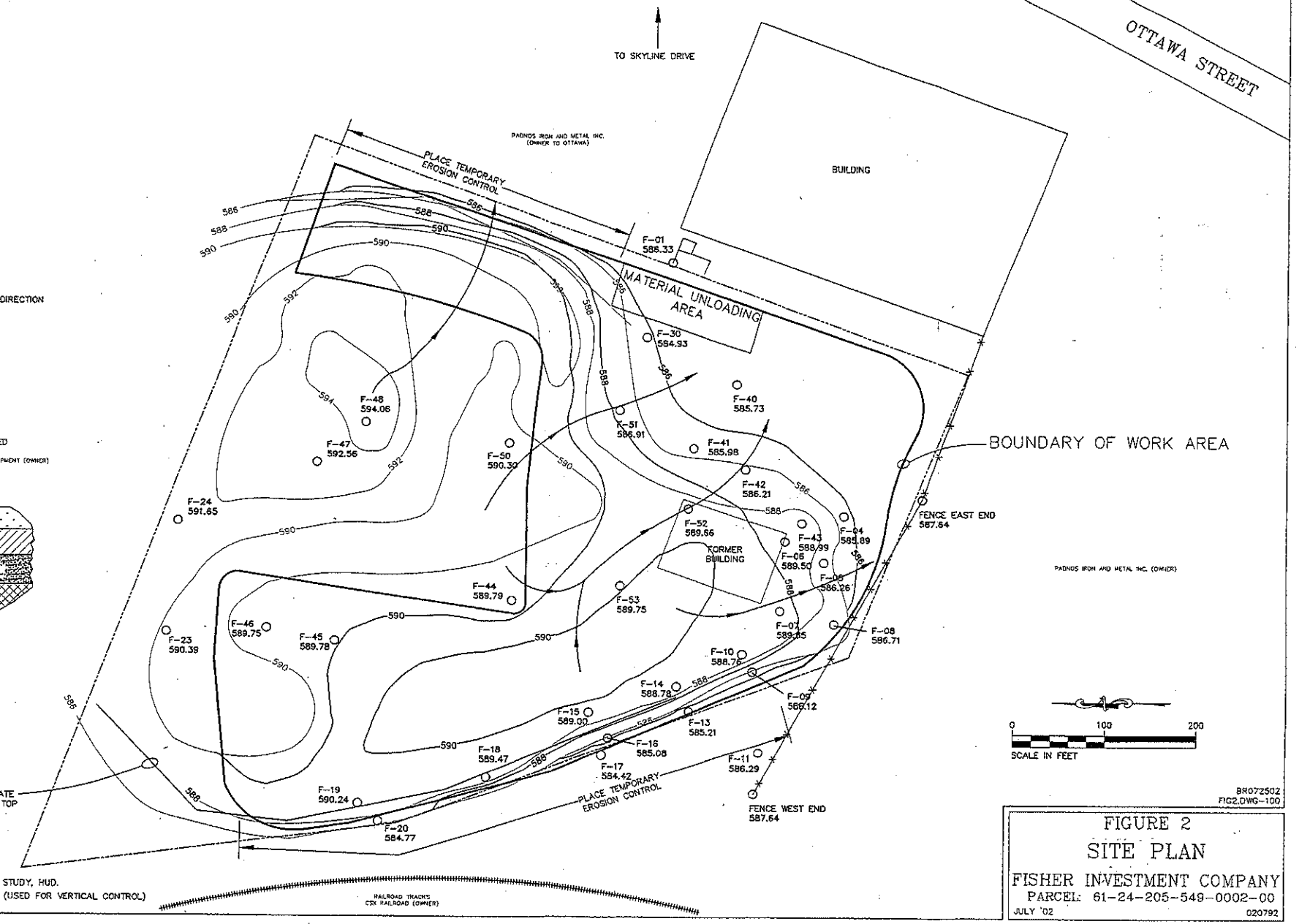
NOTE:
THERE ARE NO STRUCTURES PROPOSED FOR THIS SITE.

LEGEND:

OVERALL DRAINAGE DIRECTION



TYPICAL CROSS-SECTION
(NO SCALE)



NOTE:
1. BASE FLOOD ELEVATION: 584
   REFER: TABLE 1, FLOOD INSURANCE STUDY, HUD.
2. MUSKEGON BENCHMARK BM 46-100 (USED FOR VERTICAL CONTROL)

BR072502
FIG2.DWG-100

FIGURE 2
SITE PLAN
FISHER INVESTMENT COMPANY
PARCEL: 61-24-205-549-0002-00
JULY '02 020792

ATTACHMENT E
Legal Description

PART OF BLOCK 549, VACATED BANK STREET OF THE REVISED PLAT (OF 1903) OF THE CITY OF MUSKEGON, MUSKEGON COUNTY, MICHIGAN, AS RECORDED IN LIBER 3 OF PLATS, ON PAGE 71 , MUSKEGON COUNTY RECORDS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWESTERLY CORNER OF LOT 1, BLOCK 123 OF SAID PLAT; THENCE NORTH 67°47'00" WEST 12.26 FEET ALONG THE WESTERLY EXTENSION OF THE NORTHERLY LINE OF SAID BLOCK 123 TO THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED; THENCE SOUTH 22°19'14" WEST 378.36 FEET; THENCE NORTH 67°40'46" WEST 169.44 FEET; THENCE NORTH 20°15'00" WEST 262.35 FEET; THENCE NORTH 03°10'00" WEST 204.25 FEET; THENCE SOUTH 67°47'00" EAST 434.81 FEET ALONG THE WESTERLY EXTENSION OF THE NORTHERLY LINE OF SAID BLOCK 123 TO THE POINT OF BEGINNING.

LEGAL DESCRIPTION

Fishbeck, Thompson, Carr & Huber
Engineers • Scientists • Architects
Grand Rapids, Michigan
ftc&h

FORMER FISHER STEEL FILL AREA
MUSKEGON, MICHIGAN

DUE CARE PLAN

PROJECT NO.
98403

EXHIBIT
A

CONFIDENTIAL / ATTORNEY-CLIENT PRIVILEGED

Commission Meeting Date: August 27, 2002

Date: **August 19, 2002**

To: **Honorable Mayor & City Commission**

From: **Community and Neighborhood Services Department**

RE: **Public Hearing to Review 2001-2002 Consolidated Annual Performance Evaluation Report (CAPER)**

SUMMARY OF REQUEST: To conduct a public hearing on August 27, 2002 to receive comments from the public concerning the 2001 – 2002 CAPER developed by the Community and Neighborhood Services department.

After the public hearing has been conducted and all the comments have been documented, the CNS office request that the Commission direct the CNS staff to submit the required documents to HUD in compliance with 24 CFR 91.520, by no later than August 31, 2002.

FINANCIAL IMPACT: The City required to submit the CAPER report in order to continue receiving CDBG and HOME funding.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To direct staff to gather comments from the public and to submit the CAPER to HUD.

COMMITTEE RECOMMENDATION: None

See Packet for full booklet

City of Muskegon

Consolidated Annual Performance Evaluation Report

(C.A.P.E.R.)

2001-2002

Submitted to HUD August 31, 2002

Date: August 20, 2002

To: Honorable Mayor and City Commissioners

From: Ric Scott

RE: Big Red Football Request

SUMMARY OF REQUEST:

The Big Red Football program has requested that they be allowed to have a sale on city Streets.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Denial based on the current City Commission policy

COMMITTEE RECOMMENDATION:

The Leisure Services Board recommended approval for this year with the policy going to the Legislative Committee for review.

Affirmative Action
231/724-6703
FAX/722-1214

Assessor
231/724-6708
FAX/726-5181

Cemetery
231/724-6783
FAX/726-5617

Civil Service
231/724-6716
FAX/724-4405

Clerk
231/724-6705
FAX/724-4178

Comm. & Neigh. Services
231/724-6717
FAX/726-2501

Engineering
231/724-6707
FAX/727-6904

Finance
231/724-6713
FAX/724-6768

Fire Dept.
231/724-6792
FAX/724-6985

Income Tax
231/724-6770
FAX/724-6768

Info. Systems
231/724-6744
FAX/722-4301

Leisure Service
231/724-6704
FAX/724-1196

Manager's Office
231/724-6724
FAX/722-1214

Mayor's Office
231/724-6701
FAX/722-1214

Inspection Services
231/724-6715
FAX/726-2501

Planning/Zoning
231/724-6702
FAX/724-6790

Police Dept.
231/724-6750
FAX/722-5140

Public Works
231/724-4100
FAX/722-4188

Treasurer
231/724-6720
FAX/724-6768

Water Billing Dept.
231/724-6718
FAX/724-6768

Water Filtration
231/724-4106
FAX/755-5290

MUSKEGON

West Michigan's Shoreline City

Date: August 20, 2002

To: Honorable Mayor and City Commissioners

From: Ric Scott

Re: Big Red Football Request

The Big Red Football program is requesting that they sell Big Red decals on various city Street corners on August 31st. The current city policy for special events does not allow for any new selling of this nature on city streets. There are currently four groups grandfathered. (See attached Special Events Policy.)

At their meeting on Monday, August 19th, the Leisure Services Board recommended that the request be granted for one year, but that the policy be sent to the Legislative Committee for review.

Staff would recommend denial of the request based on the City Commissions policy. The policy was established to limit the amount of events where people sold on city streets because of liability and safety concerns.

Arlyn Zack, the Principal at Muskegon High School, did ask that this request go to you for your consideration. He did indicate that both parents and coaches would be with the football players selling the decals and that the Big Reds would not be back to ask for any other special exceptions.

Thank you for your consideration.

CITY OF MUSKEGON

SPECIAL EVENTS/SPECIAL ALCOHOL LICENSE POLICY

INTRODUCTION

Throughout the year, the City of Muskegon is asked by various organizations to supply various Services for special events, including the approval of special liquor licenses. While the Police Chief must sign all alcohol-related requests, several other departments get involved in the process, including the Department of Leisure Services. This policy centralizes the administration of special liquor licenses and special events with the Department of Leisure Services and provides rules and regulations to govern both the granting of the special request and the on-site administration of the event. The final authority for signing the special liquor licenses, however, remains with the Police Chief.

In the best interest of the city, this policy allows for only one (1) special alcohol license for outdoor events on any given night in the City of Muskegon, unless a specific event needs more than one license. Licenses will only be granted for events sponsored by non-profit charitable or service organizations involving broad community support, and not for private profit-making activities. The following events are expected, under normal circumstances to have licenses granted annually.

a. Memorial Day Spectacular
b. Ten Parties-in-the-Park
c. Summer Celebration
d. Shoreline Spectacular
e. Steak and Blues
f. Up to <u>two</u> (four) additional beer tent days per month from Memorial Day to Labor Day
g. Only three days per month for outdoor events after Labor Day and before Memorial Day and they must be on consecutive days.

PROCEDURE FOR REQUESTING A SPECIAL EVENT PERMIT

I. All requests for a special permit shall be filed with the Department of Leisure Services at least sixty days prior to the event.
   a. A twenty-five dollar ($25.00) administration fee must accompany the request.
   b. Failure to apply sixty days prior to the event is cause to deny the request

II. The request for a special permit shall be in writing and must be submitted on the appropriate application form. Application for outdoor special liquor licenses shall be for beer and wine only.

II. All special permittees agree to the following:

a. While a Police Officer's presence may not be required at all special events, it shall be at the discretion of the Chief of Police as to whether or not, and how many, City Police Officers will be required at any special event. Event sponsors will be responsible for payment of officer(s) service based on the time-and-one-half or triple time established rate plus benefits and all overhead cost.

b. For all alcohol-related events, the applicant will provide a system of Checking I.D.'s to prohibit underage drinking.

c. Where the event is being held on City-owned or controlled property the applicant shall provide an amount of insurance as set by the City for liquor liability and general liability insurance, naming the City as an additional insured. An acceptable certificate of insurance must be submitted prior to approval.

d. All outdoor events shall provide adequate restroom (port-o-jon) facilities including adequate handicapped accessible facilities.

e. Hours of operation shall be posted in the beverage serving area.

f. For alcohol events, the applicant shall agree to stop selling drink tickets at 10:30 P.M., stop pouring beverages at 11:00 P.M., and have the area cleared by 11:30 P.M.

g. The applicant shall provide evidence and certification that the organization shall at all times have person's pouring beer or selling beverages that have received alcohol awareness training at every serving station. (The applicant shall provide evidence and certification to the City that all persons pouring beer or selling beverages have received alcohol awareness training.)

h. Checking for underage drinking and over consumption of patrons is the responsibility of the sponsoring group, not the police.

i. Where the event is held on city owned or controlled property, the Applicant shall be responsible for all clean up of city facilities after an event, and for providing a dumpster. If the event is on other property, the cleanup shall be the responsibility of the owner. The city shall have the right to enforce cleanup measures, including but not limited to entry and cleaning by city personnel and charging and liening the cost to the owner, occupant, or applicant or all of them.

j. The applicant shall reimburse the city for all out-of-pocket expenses related to the set-up or clean up of the event, including overhead costs.

k. Failure to comply with all city rules and regulations may result in the denial of future requests.

l. Digging or staking on grounds will be cleared through Miss Dig. A minimum of a 3 working day notice is required. The sponsoring agency is responsible for contacting Miss Dig (1-800-482-7171), and paying for any damage of underground utilities created by digging or staking.

IV. HANDLING OF REQUESTS

a. The Leisure Services Board, which meets on the third Monday of each month, shall review all requests for special permits, except as otherwise provided by this policy.
   1. Any indoor facility may need an inspection before approval can be granted.
   2. The Board shall approve, deny, or table all requests at the Board Meeting following the receipt of the request.
   3. That reviews by other departments shall be provided in copy form to the Leisure Services Board.

b. Where the applicant proposes an indoor alcohol event occurring after Labor Day or before Memorial Day, it shall be reviewed by the staff and other departments of the City, and Leisure Services Board review shall not be necessary, unless City park or recreation facilities are proposed to be used for the event.

c. Where the Leisure Services Board reviews an application and denies same, it shall state in writing the reasons for the denial. An appeal of that decision may be made to the City Commission whose decision shall be final.

d. Where an existing Liquor Control Commission licensee applies for a special license, the review shall be made by the staff and other departments of the City as needed before the Police Chief's decision. Any moneys owed the City could be reason for denial.

e. All requests that include road closings shall go the traffic Committee for review prior to final approval, denial, or tabling by the Leisure Services Board. The sponsoring agency will be responsible for all associated costs. The Traffic Committee meets monthly on the second Friday.

f. Sales of all items for special events must be out of the public right-of-way. Street sales of newspapers, poppy's, etc. shall not be allowed except for those events that have existed before September 1, 1996, which will be allowed as long as they exist.

****

INSURANCE REQUIREMENTS

High degree of risk (H)	$1,000,000
Medium degree of risk (M)	500,000
Low degree of risk (L)	100,000

Event minimum requirements:

Parties-in-the-Park	(H)	Parades	(L)
Carnivals	(H)	Block Parties	(L)
Organized Walks/Runs	(M)	Summer Celebration	(H)
Shoreline Spectacular	(H)	Winterfest	(M)
Corporate Cup Events	(L)	Fireworks	(H)
Bike Races	(M)	Alcohol licenses	(H)
Any event using City streets and/or sidewalks			(M)

Date: **August 27, 2002**

To: **Honorable Mayor and City Commissioners**

From: **Gail A. Kundinger, City Clerk**

RE: **Liquor License Request**
Pine Street Tavern, Inc.
978 Pine Street

tabled

SUMMARY OF REQUEST: The Liquor Control Commission seeks local recommendation on a request from Pine Street Tavern, Inc., to transfer ownership of the 2002 Class C licensed business with dance-entertainment permit from Brutters, Inc.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: The City Income Tax Department and the Treasurer's Office are recommending disapproval due to monies owed the City.

Muskegon Police Department

Anthony L. Kleibecker
Chief of Police

980 Jefferson Street P.O. Box 536 Muskegon Michigan 49443-0536
(231) 724-6750 (231) 722-5140 *fax*
www.muskegonpolice.com

July 26, 2002

To: The City Commission through the City Manager

From: A. L. Kleibecker
Anthony L. Kleibecker, Chief of Police

Re: Liquor License Transfer at 978 Pine Street

The Muskegon Police Department has received a request from the Michigan Liquor Control Commission for an investigation concerning 978 Pine Street. Applicants, Beverly & Lucky Berry are requesting to transfer ownership of 2002 Class C-SDM licensed business with Dance-Entertainment from Brutters, Inc.

Beverly and Lucky Berry of 2610 Pillon Rd., Twin Lake, MI. 49457, are representing Pine Street Tavern, Inc., 978 Pine Street, Muskegon, MI. 49442. The Berry's have experience in owning an alcohol service establishment. In years past they have owned and operated 978 Pine Street as an alcohol serving business. Currently they are in the process of a foreclosure of 978 Pine Street and have plans of operating that business again as an alcohol serving business.

We have searched MPD records and conducted a Criminal History Check and find no reason to deny this request.

TK/cmw

MEMO

To: Chief Tony Kleibecker

From: Det. Kurt Dykman

Date: 7-25-02

Re: Liquor License Transfer

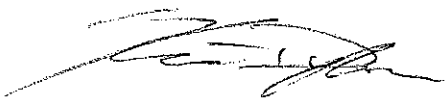
Chief Kleibecker,

The Muskegon Police Department has received a request from the Michigan Liquor Control Commission for an investigation from applicant Beverly & Lucky Berry of 2610 Pillon Rd., Twin Lake, MI. 49457, representing Pine Street Tavern, Inc., 978 Pine Street, Muskegon, MI. 49442.

Mr. & Mrs. Berry are requesting to transfer ownership of 2002 Class C-SDM licensed business with Dance-Entertainment from Brutters, Inc. The Berry's have experience in owning an alcohol service establishment. In years past they have owned and operated 978 Pine Street as an alcohol serving business. Currently they are in the process of a foreclosure of 978 Pine Street and have plans of operating that business again as an alcohol serving business.

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

Respectfully submitted,



Det. Kurt Dykman

data/common/PineSt

7-18-02 Mailed AA

Michigan Department of Consumer & Industry Services
LIQUOR CONTROL COMMISSION
7150 Harris Drive
P.O. Box 30005
Lansing, Michigan 48909-7505

POLICE INVESTIGATION REQUEST
[Authorized by MCL 436.1201(4)]

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

Date: July 11, 2002
REF#: 187128

Chief Law Enforcement Officer

Applicant:

PINE STREET TAVERN, INC. REQUESTS TO TRANSFER OWNERSHIP OF 2002 CLASS C-SDM LICENSED BUSINESS WITH DANCE-ENTERTAINMENT PERMIT AND ~~OFFICIAL PERMIT (FOOD)~~, LOCATED AT 978 PINE, MUSKEGON, MI 49442, MUSKEGON COUNTY, FROM BRUTTERS, INC.

Cancel 7-18-02 AA

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 and recommendations of the applicant to the Licensing Division.

If you have any questions, contact the Licensing Division at (517) 322-1400, after 10:00 a.m.

LC-1972 Rev. 9/17
4880-1658

sfs

POLICE INSPECTION REPORT ON LIQUOR LICENSE REQUEST
Req ID # 187128 (Authorized by M 436.1217)

MICHIGAN LIQUOR CONTROL COMMISSION
7150 Harris Drive
P.O. Box 30005
Lansing, Michigan 48909-7505

mailed 7-18-02 MA

Important: Please conduct your investigation as soon as possible and complete all four sections of this report. Return the completed report and fingerprint cards to the Commission.

BUSINESS NAME AND ADDRESS: (include zip code)
PINE STREET TAVERN, INC., 978 PINE, MUSKEGON, MI 49442, MUSKEGON COUNTY

REQUEST FOR:
REQUEST TO TRANSFER OWNERSHIP OF 2002 CLASS C-SDM LICENSED BUSINESS WITH DANCE-ENTERTAINMENT PERMIT AND ~~OFFICIAL PERMIT (FOOD)~~, FROM BRUTTERS, INC.
Cancel 7-18-02 MA

Section 1. APPLICANT INFORMATION

APPLICANT #1: **NO FINGERPRINTS REQUIRED**	APPLICANT #2: **NO FINGERPRINTS REQUIRED**
BEVERLY BERRY - STOCKHOLDER	LUCKY BERRY - STOCKHOLDER
HOME ADDRESS AND AREA CODE/PHONE NUMBER: 2610 PILLON ROAD TWIN LAKE, MI 49457 H(231)744-4860	HOME ADDRESS AND AREA CODE/PHONE NUMBER: SAME ADDRESS & PHONE # AS BEVERLY
DATE OF BIRTH: 7-19-32 If the applicant is not a U.S. Citizen: ° Does the applicant have permanent Resident Alien status? ☐ Yes ☐ No ° Does the applicant have a Visa? Enter status: Date fingerprinted:	DATE OF BIRTH: 4-19-40 If the applicant is not a U.S. Citizen: ° Does the applicant have permanent Resident Alien status? ☐ Yes ☐ No ° Does the applicant have a Visa? Enter status: Date fingerprinted:

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

Can living quarters be reached from the inside of the establishment without going outside? ☐ Yes ☒ No

Does applicant intend to have dancing or entertainment?
☐ No ☒ Yes, complete LC-693N, Police Investigation Report: Dance/Entertainment Permit

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)

R L. Klenklen 7-26-02
Signature ~~(Sheriff or~~ Chief of Police) Date

STATE OF MICHIGAN
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES
LIQUOR CONTROL COMMISSION
7150 Harris Drive
P.O. Box 30005
Lansing, MI 48909-7505

mailed 7-18-02 AD

REQ ID: 187128

LOCAL LAW ENFORCEMENT AGENCY REPORT

DANCE/ENTERTAINMENT/TOPLESS ACTIVITY PERMIT
(Authorized by MCL 436.1916)

PINE STREET TAVERN, INC. — 231. 744-4860
APPLICANT/LICENSEE — PHONE NUMBER

978 Pine ST | Muskegon | Muskegon | Muskegon | 49442
STREET ADDRESS | CITY | TOWNSHIP | COUNTY | ZIP

PERMIT(S) REQUESTED: DANCE √ ENTERTAINMENT √ TOPLESS ACTIVITY

1. The dance floor will not be less than 100 square feet, is clearly marked and well defined when there is dancing by customers. YES ☒ NO ☐ N/A ☐

2. Describe the type of entertainment applicant/licensee will provide: N/A ☐
Music/Karaoke

3. Will this entertainment include topless activity? YES ☐ NO ☒ N/A ☐

LAW ENFORCEMENT RECOMMENDATION

DANCE PERMIT	YES	☒	NO	☐	N/A	☐
ENTERTAINMENT PERMIT	YES	☒	NO	☐	N/A	☐
TOPLESS ACTIVITY PERMIT	YES	☐	NO	☐	N/A	☒

REMARKS:

7-25-02
DATE SUBMITTED

[signature]
OFFICER'S SIGNATURE

Muskegon Police — 231. 724-6750
DEPARTMENT NAME — PHONE NUMBER

980 Jefferson — Muskegon
ADDRESS — CITY

LC-693N REV 5/98
4880-0652

mailed 7-18-02
AM

Req ID # 187128

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

RESOLUTION

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

called to order by _____ on _____ at _____ P.M.

The following resolution was offered:

Moved by _____ and supported by _____

That the request from PINE STREET TAVERN, INC. TO TRANSFER OWNERSHIP OF 2002 CLASS C LICENSED BUSINESS WITH DANCE-ENTERTAINMENT PERMIT, LOCATED AT 978 PINE, MUSKEGON, MI 49442, MUSKEGON COUNTY, FROM BRUTTERS, INC.

be considered for _____
(Approval or Disapproval)

APPROVAL	**DISAPPROVAL**
Yeas: _____	Yeas: _____
Nays: _____	Nays: _____
Absent: _____	Absent: _____

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

_____ for issuance
(Recommended or not Recommended)

State of Michigan _____)
§
County of _____)

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

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

meeting held on _____ .
(Date)

SEAL

(Signed)_____
(Township, City of Village Clerk)

_____
(Mailing address of Township, City of Village)

David Bowen attorney Foreclosure

LIQUOR LICENSE REVIEW FORM

Business Name: Pine Street Tavern

AKA Business Name (if applicable): Brutters

Operator/Manager's Name: Beverly + Lucky Berry

Business Address: 978 Pine

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 _____

Deadline for receipt of all information: August 6, 2002

Police Department Approved ☐ Denied ☐ No Action Needed ☐

Income Tax Approved ☐ Owing ☒ Amount: ~~approximately~~ $1,500 plus Penalty & Interest

Treasurer Approved ☐ Owing ☐ Amount: _____

Zoning Approved ☐ Denied ☐ Pending ZBA ☐

Clerk's Approved ☐ Owing ☐ Amount: _____

Fire/Inspection Services Compliance ☐ Remaining Defects _____

Department Signature _____

Gail A. Kundinger, City Clerk
Liquor License Coordinator

LIQUOR LICENSE REVIEW FORM

Business Name: Pine Street Tavern

AKA Business Name (if applicable): Brutters

Operator/Manager's Name: Beverly + Lucky Berry

Business Address: 978 Pine

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 _____

Deadline for receipt of all information: August 6, 2002

Police Department Approved ☐ Denied ☐ No Action Needed ☐

Income Tax Approved ☐ Owing ☐ Amount: _____

Treasurer Approved ☐ Owing ☑ Amount: $322.51

Zoning Approved ☐ Denied ☐ Pending ZBA ☐

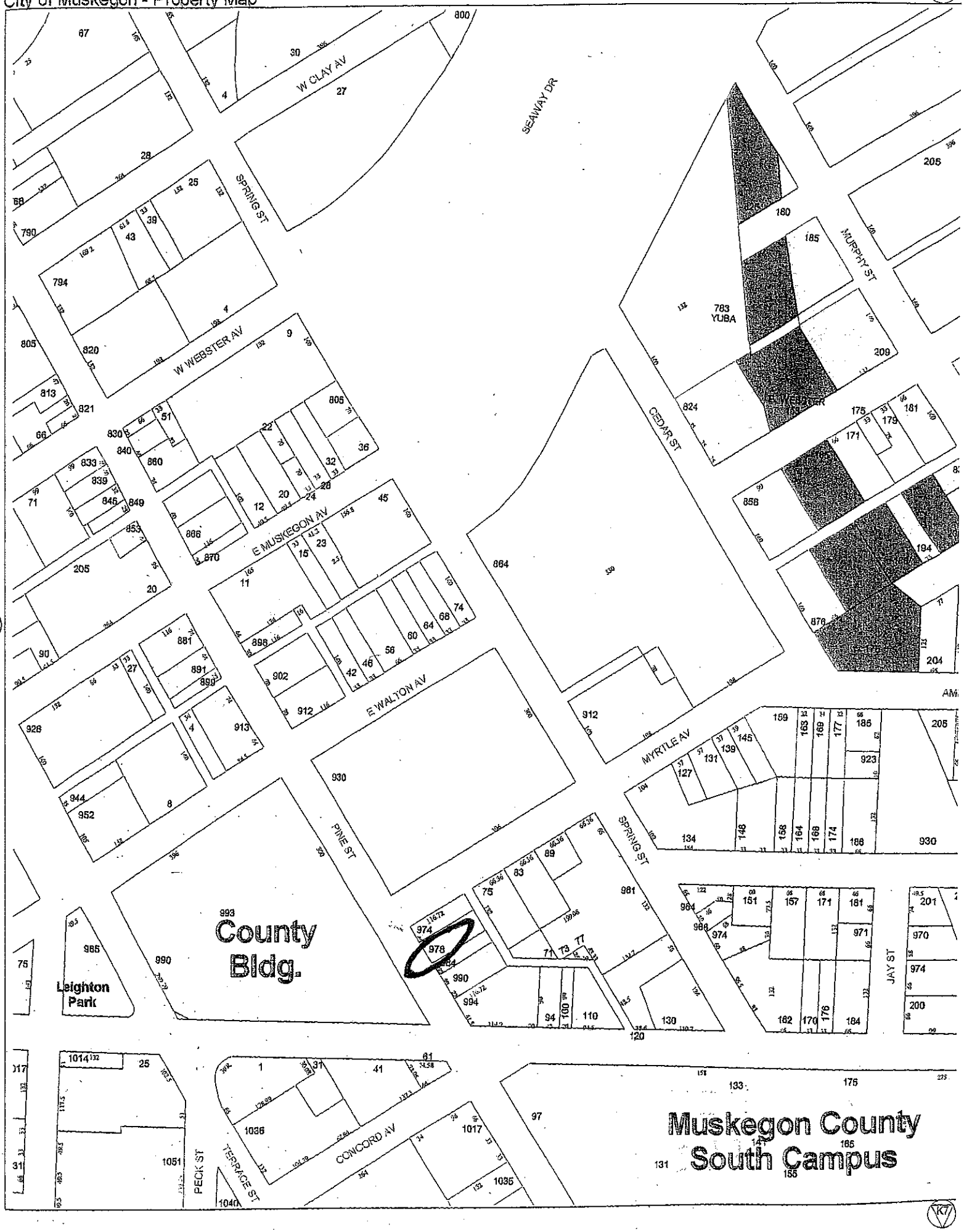
Clerk's Approved ☐ Owing ☐ Amount: _____

Fire/Inspection Services Compliance ☐ Remaining Defects _____

Department Signature _____

Gail A. Kundinger, City Clerk
Liquor License Coordinator

City of Muskegon - Property Map



Commission Meeting Date: August 27, 2002

Date: **August 16, 2002**

To: **Honorable Mayor and City Commissioners**

From: **Planning & Economic Development**

RE: **Zoning Ordinance Amendment to allow recording studios in the B-2, Convenience and Comparison Business District and to allow live music concert halls as special uses in the B-2, Convenience & Comparison Business, B-3, Central Business and B-4, General Business Districts.**

SUMMARY OF REQUEST:

Request to amend Section 1100 (Principal Uses Permitted) of Article XI (B-2, Convenience & Comparison Business) of the City's Zoning Ordinance to allow recording studios; and to amend Sections 1101, 1201, and 1301 (Special Land Uses Permitted) of Articles XI (B-2, Convenience and Comparison Business), XII (B-3, Central Business), and XIII (B-4, General Business) of the City's Zoning Ordinance to allow live music concert halls, under certain conditions.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Staff recommends amendment of the Zoning Ordinance to add the proposed language in the articles and sections described above.

COMMITTEE RECOMMENDATION:

The Planning Commission recommended approval of the request at their 8/15 meeting. The vote was unanimous.

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

August 15, 2002

Hearing; Case 2002-35: Request for an amendment to the Zoning Ordinance to allow recording studios in the B-2, Convenience & Comparison Business district, and to allow live music concert halls as special uses in the B-2, Convenience and Comparison Business, B-3, Central Business, and B-4, General Business districts.

BACKGROUND

In late June, staff met with a business owner with a proposed use he wishes to locate within the City of Muskegon. After discussion with the business owner, various staff members and the City Attorney, staff had been unable to determine which zoning district that the use best fit within, and therefore brought the issue before the ZBA to classify the use. A copy of the minutes of that ZBA meeting is attached. The determination of the ZBA was that recording studios should be principal uses permitted in the B-2 (Convenience and Comparison Business) zoning district and that 'live music concert halls' should be special uses only in the B-3 (Central Business) and B-4 (General Business) zoning districts.

Since the ZBA's determination, staff has met again with the business owner and explored his options, given the ZBA's classification of his use(s). His principal use is that of a 'live music concert hall', with a recording studio as an accessory use. The property in question that he wishes to use for these purposes is currently zoned B-2, which by the ZBA's determination would allow the recording studio but not the live music concert hall. Therefore, he is making two requests to the Planning and City Commissions. The first is to consider adding 'live music concert halls' as a special use in the B-2 district, as well as in the B-3 and B-4 districts. The other request (next on this agenda) is to rezone his property to B-4. These requests are being made as an 'either/or' situation.

When adding a new use to the Zoning Ordinance it is possible for the Planning and City Commissions to place certain conditions on that use that any business would need to meet. This has been done for other uses in the past, such as mini-storage and churches. Staff has discussed the 'live music concert hall' use both internally and with the neighborhood association involved with this case and the current applicant. Based on the discussion, staff is proposing a set of conditions to be placed on this use (whether placed in B-2, or just in B-3 and B-4 as classified by the ZBA) that will address nuisance concerns and hopefully keep the impact of such a business on the surrounding neighborhood to a minimum.

One of the biggest concerns which has been articulated in the current case is that of parking. The Zoning Ordinance lists parking requirements by use, and this use would be listed under 'dance hall' as the closest equivalent. The parking requirement for a 'dance hall' is: *One (1) space for each two (2) persons allowed within the maximum occupancy load as established by fire, building or health*

codes, plus one (1) space for every three (3) seats of spectator seating (one seat equals two feet of bench length). Staff feels that this requirement, along with the requirement that all parking associated with a business be located either on the same site or within 300 feet (excluding residential property), should adequately address the concern over parking.

Another concern that has been discussed is that of noise. The City does have a separate Noise Ordinance, which is administered by the Police Department. This ordinance is in force throughout the City, and applies to any business located in any zoning district. Section 26-34 of the Noise Ordinance prohibits "the operation of any radio receiving set, instrument, phonograph, machine or device between the hours of 11:00 p.m. and 7:00 a.m. in such a manner as to be plainly audible at a distance of 50 feet from the building, structure or vehicle in which it is located..." The ordinance also prohibits (at any time of day) any sound which disturbs the peace, quiet and comfort of neighbors or which is louder than necessary for the convenient hearing of any persons in the room, vehicle or chamber where the machine or device is operated.

A third concern has been that of safety and security on the site, as well as loitering and curfew for kids and teenagers. A 'live music concert hall', while able to cater to patrons of any age group, likely will attract many young people even to events that are not specifically designated for them. Staff feels strongly that there is no reason for any person to be outside any building being used for this purpose, other than for the purpose of being dropped off or picked up by a ride, or while waiting to enter the premises. Security staff should be provided by the business operator in order to ensure that loitering will not take place, as well as to make sure that persons who have a bona fied reason to be outside the building are not causing any concerns or being a nuisance to neighboring businesses or residences. Also, the curfew set in place by the City should be enforced by the business owner for any person 16 years of age or younger. The curfew does not allow any such person to be out on a public street between the hours of 11:00 p.m. and 6:00 a.m. unless accompanied by a parent, on an emergency errand, or returning directly home from an activity or employment.

Other concerns are addressed in the proposed set of conditions outlined below. Staff recognizes that such a business may in some cases wish to serve alcohol. Currently bars, taverns and other businesses which regularly serve alcohol are only permitted in the B-3 or B-4 zoning districts. Staff feels it is reasonable to extend this to 'live music concert halls' as well. If the Planning and City Commissions feel that it is reasonable to allow this use in the B-2 district as well (under Special Use Permit) as requested by the applicant, staff would propose that such a use be alcohol-free in that district.

If this request is approved, any business proposing to go in would need to meet the general conditions outlined for 'live music concert halls' in the ordinance. The Planning Commission also has the right to add other, more specific conditions for any particular business which comes before them asking for a Special Use Permit to operate a 'live music concert hall'.

CITY OF MUSKEGON

MUSKEGON COUNTY, MICHIGAN

ORDINANCE NO. 2087

An ordinance to amend Section 1100 (Principal Uses Permitted) of Article XI (B-2, Convenience & Comparison Business) of the City's Zoning Ordinance to allow recording studios; and to amend Sections 1101, 1201, and 1301 (Special Land Uses Permitted) of Articles XI (B-2, Convenience and Comparison Business), XII (B-3, Central Business), and XIII (B-4, General Business) of the City's Zoning Ordinance to allow live music concert halls, under certain conditions.

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

Section 1100 (Principal Uses Permitted) of Article XI (B-2, Convenience and Comparison Business) of the Zoning Ordinance of the City of Muskegon is hereby amended to add the following:

10. Recording Studios.

Section 1101 (Special Land Uses Permitted) of Article XI (B-2, Convenience and Comparison Business) of the Zoning Ordinance of the City of Muskegon is hereby amended to add the following:

9. Live Music Concert Halls, under the following conditions:

   a. The business will operate in such a manner as to comply with the Noise Ordinance enacted by the City of Muskegon. No music (either live or piped) will be permitted outside the building.

   b. The business will not be permitted to serve alcohol at any time to any person.

   c. The business will maintain security staff, both inside and outside the building, at all times when open to customers. Loitering will not be permitted on or around the site.

   d. The business will not operate between the hours of 3:00 a.m. and 8:00 a.m. No person of 16 years of age or younger will be permitted within the business after midnight and must directly exit the premises after that time.

   e. The site and general vicinity will be maintained and litter-free, and will be checked for litter every day before opening.

   f. Security lighting will be provided for the site.

Section 1201 (Special Land Uses Permitted) of Article XII (B-3, Central Business) of the Zoning Ordinance of the City of Muskegon is hereby amended to add the following:

6. Live Music Concert Halls, under the following conditions:

a. The business will operate in such a manner as to comply with the Noise Ordinance enacted by the City of Muskegon. No music (either live or piped) will be permitted outside the building.

b. The business will maintain security staff, both inside and outside the building, at all times when open to customers. Loitering will not be permitted on or around the site.

c. The business will not operate between the hours of 3:00 a.m. and 8:00 a.m. No person of 16 years of age or younger will be permitted within the business after midnight and must directly exit the premises after that time.

d. The site and general vicinity will be maintained and litter-free, and will be checked for litter every day before opening.

e. Security lighting will be provided for the site.

Section 1301 (Special Land Uses Permitted) of Article XIII (B-4, General Business) of the Zoning Ordinance of the City of Muskegon is hereby amended to add the following:

10. Live Music Concert Halls, under the following conditions:

a. The business will operate in such a manner as to comply with the Noise Ordinance enacted by the City of Muskegon. No music (either live or piped) will be permitted outside the building.

b. The business will maintain security staff, both inside and outside the building, at all times when open to customers. Loitering will not be permitted on or around the site.

c. The business will not operate between the hours of 3:00 a.m. and 8:00 a.m. No person of 16 years of age or younger will be permitted within the business after midnight and must directly exit the premises after that time.

d. The site and general vicinity will be maintained and litter-free, and will be checked for litter every day before opening.

e. Security lighting will be provided for the site.

This ordinance adopted:

Ayes: Warmington, Buie, Gawron, Larson, Schweifler, Shepherd, Spataro

Nayes: None

Adoption Date: August 27, 2002

Effective Date: September 15, 2002

First Reading: August 27, 2002

Second Reading: N/A

CITY OF MUSKEGON

By: Gail A. Kundinger

Gail A. Kundinger, 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 27th day of August, 2002, 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: August 27, 2002.

Gail Kundinger

Gail Kundinger, CMC/AAE
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 August 27, 2002, the City Commission of the City of Muskegon adopted an ordinance to amend Section 1100 (Principal Uses Permitted) of Article XI (B-2, Convenience and Comparison Business) of the City's Zoning Ordinance, to add the following:

10. Recording Studios.

Sections 1101, 1201 and 1301 (Special Land Uses Permitted) of Articles XI (B-2, Convenience and Comparison Business), XII (B-3, Central Business), and XIII (B-4, General Business) of the City's Zoning Ordinance were also amended to add 'Live Music Concert Halls' under certain conditions.

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 September 5, 2002

CITY OF MUSKEGON

By _____
Gail A. Kundinger
Its Clerk

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

Account No. 101-80400-5354

Commission Meeting Date: August 27, 2002

Date: **August 16, 2002**

To: **Honorable Mayor and City Commissioners**

From: **Planning & Economic Development**

RE: **Request for preliminary Planned Unit Development approval for 1350 Hackley Ave. (Hackley Glen).**

SUMMARY OF REQUEST:

Request for preliminary Planned Unit Development approval for the current Hackley Glen property, for a mixed-use residential development, containing senior, family apartment and possible future condominium units. The request is from Ruddiman Associates Limited Partnership.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

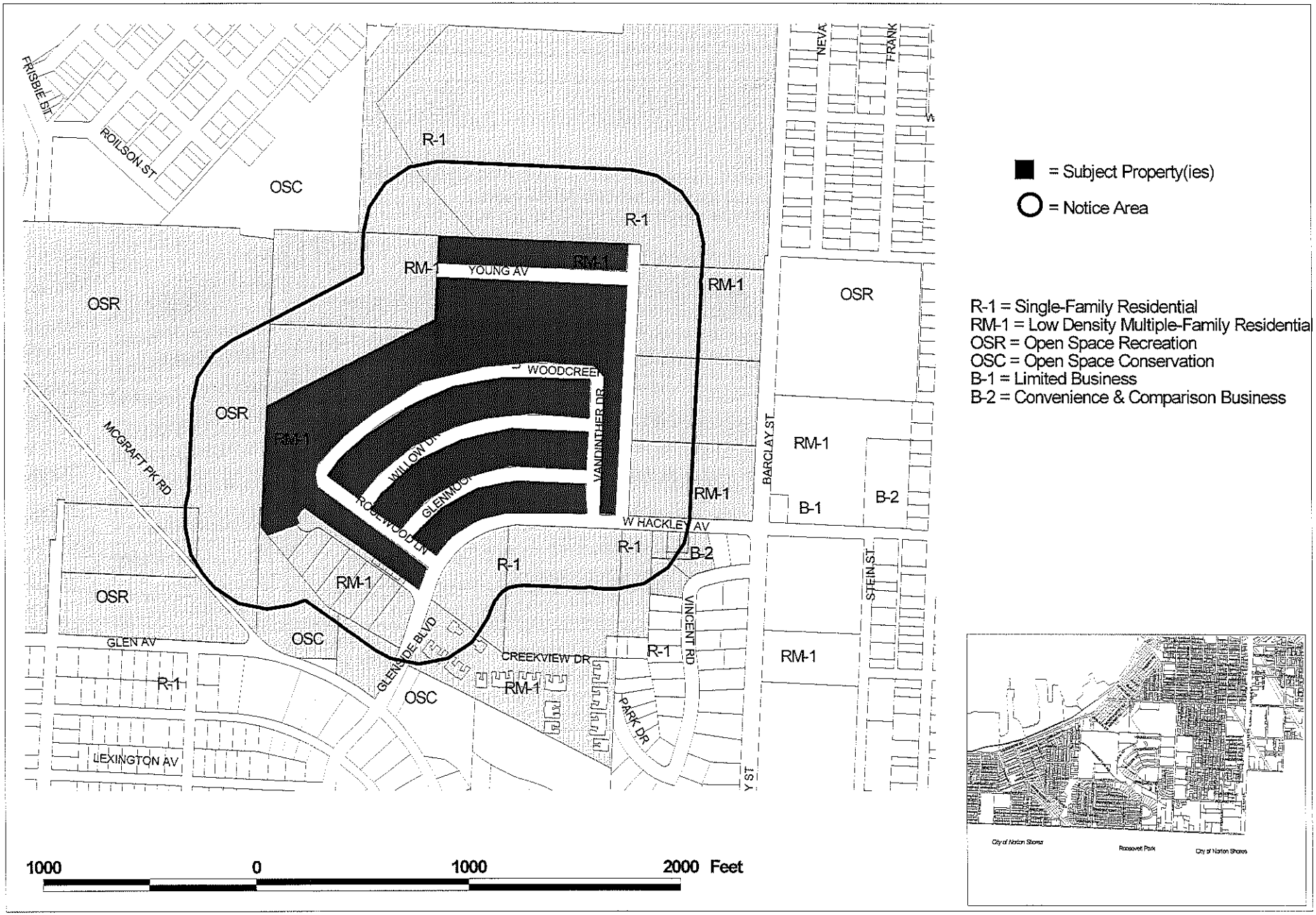
STAFF RECOMMENDATION:

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

COMMITTEE RECOMMENDATION:

The Planning Commission recommended preliminary approval of the PUD, with the conditions listed on the attached resolution at their 8/15 meeting. The vote was unanimous.

City of Muskegon
Planning Commission
Case # 2002-39



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

August 15, 2002

Hearing; Case 2002-39: Request for a preliminary Planned Unit Development for a mixed-use housing development at Hackley Glen, 1350 Hackley Ave., by Ruddiman Associates Limited Partnership.

BACKGROUND

Applicant: Ruddiman Associates Limited Partnership
Request: A preliminary PUD for a mixed-use housing development.
Present Land Use: Housing development
Zoning: RM-1, Low Density Multiple-Family Residential

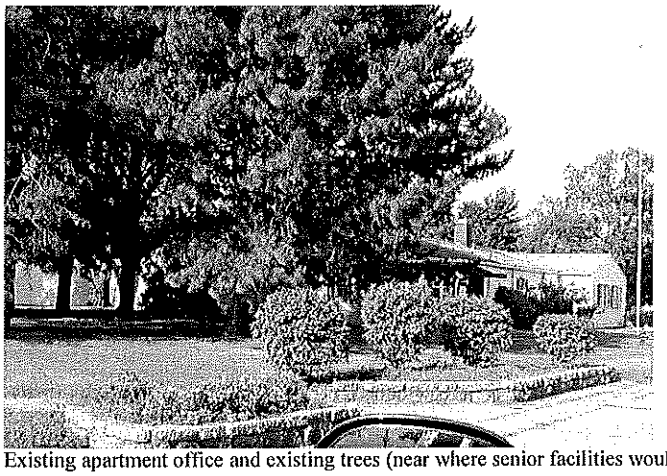
STAFF OBSERVATIONS

1. The Hackley Glen development is located on Hackley Ave., west of Barclay St., on the curve where Hackley Ave. becomes Glenside Blvd. The development was originally built as army barracks during WWII and was not originally intended as a long-term housing development. Although the buildings were rehabilitated when the existing owner took possession, many of the 300 apartment units are now run-down and vacant.
2. The existing development consists of several streets in a 'half circle' layout along the curve of Hackley Ave. The development serves primarily low and moderate income families. The developer has stated their intention to protect existing tenants of the development as much as possible by relocating them within the complex during the different phases of development, and then offering them units in the new buildings when available.
3. The applicant is proposing a mixed-use housing development in several phases. The first two phases, for which they are seeking a Planned Unit Development (PUD) approval at this time, include a senior housing complex as well as 2-story multi-family apartment units. Future development on the property is proposed to include additional multi-family apartment units and possible condominium units as well.
4. The proposed senior housing complex would include a large, 3-story congregate care facility as well as eight 'cottage' units for independent living. These facilities would be located closer up to Hackley Ave., with the proposed multi-family apartment units located further back in the development. A large area even further to the rear (north) of the development and along the western edge would be reserved for future condominium development.
5. The multi-family apartment units are intended to serve low and moderate income families. The developer has been working with the Michigan State Housing Development Authority (MSHDA) to obtain tax credits for this development, and also has been working with the City

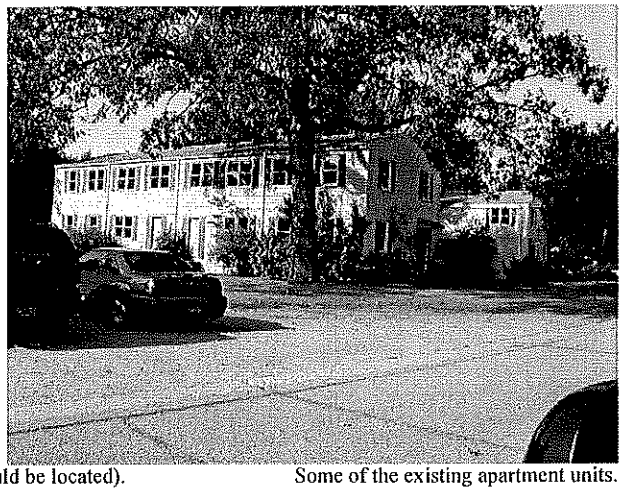
on a PILOT (Payment In Lieu Of Taxes) for the development as well. The PILOT has already been approved by the City.

6. Staff has been working with the developers for several years on this project as there are multiple challenges to redevelop an existing site such as this. Utility concerns have been discussed with the Department of Public Works as the current apartment units each contain separate water meters. The City and the developer have agreed that the proposed new development will be metered per building rather than per unit.
7. The proposed development includes the complete vacation of Glenmoor St. Existing utilities in this street would be capped on either end and removed from the center portion in order to allow the congregate living center to be constructed over the vacated street. Staff has no objections to this, as proposed.
8. The developer submitted a conceptual site plan along with this request for a preliminary PUD approval. Since that time, the developer has met with MSHDA officials who felt that the development should provide an additional amount of centralized greenspace than was shown on the plan. The developer revised the plan and met with City staff to discuss the possible vacation of Willow St. as well as Glenmoor St. The Department of Public Works has concerns with access to the remaining utilities underneath Willow St. and how those utilities could be maintained. Fire access to the rear of the senior living facility would also need to be provided.
9. Staff has briefly reviewed the revised conceptual site plan submitted by the applicant addressing the above concerns of MSHDA with the original plan, and will bring any additional comments heard on the new plan to the meeting. The revised conceptual plan is enclosed for the Planning Commission's review.
10. Staff also has concerns with the amount of greenspace provided for the development. The Zoning Ordinance requires that 15% of the development be common, usable open space. There are quite a few existing, mature trees that staff would like to see preserved on the site as well. Play areas for children should also be provided for the multi-family apartment units.
11. Once the first two phases of this development would be constructed, there would still be additional portions of the existing apartments remaining in the rear portion of the site (earmarked for Phase III). Since Phases I and II would be constructed first, the developer has stated that MSHDA is requiring that these areas of existing apartments be demolished until Phase III is developed. Staff concurs with MSHDA on this and would strongly recommend a condition to this effect be place on any PUD approval. Copies of assurances for any guarantees provided to MSHDA to ensure demolition should also be provided to the City.
12. If this preliminary PUD is approved, the developer would then need to submit a complete site plan and landscaping plan for a final PUD approval before the project would be allowed to move forward. The final PUD application and plans would need to come back before the Planning and City Commissions for their approval.
13. Staff has heard from a long-time resident of the current development who has concerns with the proposed relocation of current tenants during construction and whether there will be guaranteed units available in the new development for existing long-term tenants. She is concerned that the transition be as smooth as possible for everyone involved. She had some more specific questions about the transition as well, which would be better addressed to the management of the development.

PHOTOS

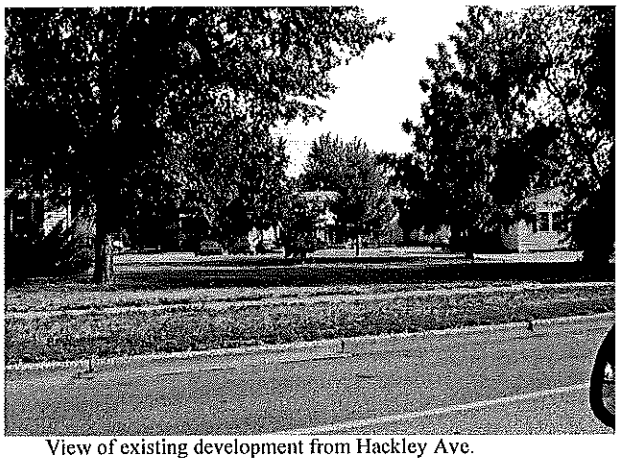


Existing apartment office and existing trees (near where senior facilities would be located).



Some of the existing apartment units.

Existing area with mature trees and benches off of Hackley Ave.



View of existing development from Hackley Ave.

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 2313 (4) of 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.

CITY OF MUSKEGON

RESOLUTION #2002- 99(f)

RESOLUTION FOR PRELIMINARY PLANNED UNIT DEVELOPMENT APPROVAL FOR
1350 Hackley Ave. (current Hackley Glen site)

WHEREAS, a petition for a planned unit development was received from Ruddiman Associates Limited Partnership and,

WHEREAS, a planned unit development will allow a mixed-use residential development, containing senior, family apartment and possible future condominium units; 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 preliminary Planned Unit Development and associated conceptual site plan with conditions as follows:

1. The applicant must apply for a final PUD approval including review of a complete site plan and landscaping plan for the entire site.
2. Any buildings from the existing development remaining after Phases I and II are complete will be demolished once residents have been relocated to the new buildings.
3. The developer and management will work with the current tenants of the development to ensure a smooth transition as building demolition and new construction occur.
4. Fire access roads shall be maintained and installed where needed according to International Fire Code Appendix D105 and D106.

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 with conditions.

Adopted this 27th day of August, 2002

Ayes: Buie, Gawron, Larson, Schweifler, Shepherd, Spataro, Warmington

Nays: None

Absent: None

By: _____
Steve Warmington, Mayor

Attest: Gail A. Kundinger
Gail A. Kundinger, Clerk

CERTIFICATE (Preliminary PUD for 1350 Hackley Ave.)

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 27th day of August, 2002, 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: August 27, 2002.

Gail Kundinger

Gail Kundinger, CMC/AAE
Clerk, City of Muskegon

Commission Meeting Date: August 27, 2002

Date: **August 21, 2002**

To: **Honorable Mayor & City Commission**

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

RE: **Amendment to National City Purchase Agreement**

SUMMARY OF REQUEST: To approve amendments to the "Real Estate Purchase Agreement" between The Westwood Group, LLC and the City of Muskegon. The purchase agreement, signed October 12, 2000, included two parcels of property. One of the parcels was formerly owned by Rick Perlman (known as the Terrace Lots) and was approximately 6 acres. The other was formerly part of the Teledyne property, and was purchase by the City as an "uneconomic remainder" when the property was purchased for Shoreline Drive (approximately 3 acres). Westwood is requesting that the portion of property where National City is being constructed (approximately 2 acres) be separated out from the 6 acre site. They are also requesting an extension on the closing dates for the remaining 4 acres of the former Terrace Lots (originally October 2001, later amended to February 28, 2002), as well as the closing date for the former Teledyne piece (scheduled to close on August 31, 2002).

FINANCIAL IMPACT: Time delay on the City receiving funds from the purchase of this property by Westwood.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the attached amendment to the Purchase Agreement, and authorize the Mayor and Clerk to sign.

COMMITTEE RECOMMENDATION: None.

Westwood

August 22, 2002

City of Muskegon
Attn: Cathy Brubaker-Clarke
933 Terrace Street
Muskegon, Michigan 49443

RE: Purchase Agreement for Terrace Lots

Dear Cathy:

Please accept this letter as a formal request to modify and amend the Purchase Agreement dated October 12, 2000 that exists between the parties. The amendment requested will change the legal descriptions of the parcels being purchased and modify the dates for closing of the agreement. I have attached the legal description for the new Parcel #1, and have been told by Westshore Engineering that the legal description for the new Parcel #2 will be available on Friday. I will forward the legal for Parcel #2 when received.

Thank you for your assistance in this matter. If you have any questions, please contact me at your convenience.

Sincerely,

The Westwood Group, L.L.C.

Mark A. VandenBosch
General Counsel/COO

Enclosure

SECOND AMENDMENT TO REAL ESTATE SALE CONTRACT

THIS Second Amendment to Real Estate Sale Contract ("Amendment") has been executed as of _____, 2002 and effective as of _____, 2002, by The City of Muskegon, a Michigan municipal corporation, of 933 Terrace Street, Muskegon, Michigan ("Seller"), and The Westwood Group, L.L.C., of 900 Third Street, Suite 204, Muskegon, Michigan ("Buyer"), based upon the following facts:

A. On October 12, 2000 Seller and Buyer executed a Real Estate Purchase Agreement ("Agreement") for the sale and purchase of certain real estate located in the City of Muskegon and specifically identified in the Exhibits attached to that Agreement. In January, 2002, Buyer and Seller executed the First Amendment to Real Estate Sale Contract.

B. Seller and Buyer desire to amend the Agreement and the First Amendment to Real Estate Contract as provided below.

THEREFORE, for good and valuable consideration, the receipt of which is acknowledged by both parties, Seller and Buyer agree:

1. **General Agreement and Description of Premises.** Paragraph 1 shall be modified only to the extent that Parcel #1 (approximately 1.63 acres) and Parcel #2 (approximately 6.83 acres) shall be as identified in Exhibit 1 and Exhibit 2 attached to this Second Amendment. These Parcels are both identified in the attached Exhibit #3.

2. **Purchase Price.** The purchase price for Parcel #1 shall be $89,650.00. The purchase price for Parcel #2 shall be based upon the formula provided in the original contract and upon the final survey.

3. **Closing.** The first sentence of Paragraph 10 is amended in its entirety to substitute the following language:

The closing date of this sale shall occur according to the following schedule:

Parcel #1 shall close not later than August 28, 2002. Parcel #2 shall close on a date that is not later than October 1, 2002.

As additional security for the extension of the Closing Date, Buyer shall make payment of $5,000.00 for the extension and not as a credit against the purchase price.

4. **Use of Parcel #2.** During the period between the closing of Parcel #1 and Parcel #2, Seller, as part of this Second Amendment, grants to Buyer a license to use Parcel #2 for placement of a construction trailer and as a staging area for the construction on Parcel #1, which construction shall be solely related to the National City Bank

Building. Buyer agrees, during the period between closing on Parcel #1 and Parcel #2, to indemnify the Seller or any claims, actions, damages, and liability related to Buyer's use of the property. Buyer shall not undertake any work on the site or site preparation work other than for the placement of fencing, placing a construction trailer and for staging of materials and equipment.

5. **Ratification.** Except as expressly amended by this Agreement, Seller and Buyer ratify and confirm the Agreement and the First Amendment to Real Estate Contract in all respects.

6. **Counterparts.** This Amendment may be signed in more than one counterpart, which shall together constitute one and the same agreement.

Buyer has signed this Amendment as of the date set forth above. Seller has signed by the City Manager as of the date set forth above, pending approval and execution by the Mayor and the Clerk of the City of Muskegon.

WITNESSES:

BUYER:

The Westwood Group, L.L.C.
A Michigan limited liability company,

By: _____
~~Michael J. Bowen~~ MARK A. VANDENBOSCH
Its: ~~Manager~~ AUTHORIZED AGENT/COUNSEL

SELLER:

City of Muskegon
a Michigan municipal corporation,

By: _____
~~Steve Warmington~~, Mayor

By: _____
Gail A. Kundinger, 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: **THE WESTWOOD GROUP, L.L.C.**, 900 Third Street, Suite 204, Muskegon, MI 49440,

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

[See Legal Description Attached]

for the sum of _____ Dollars ($_____).

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 27th day of August, 2002.

Signed in the presence of:

CITY OF MUSKEGON

By _____
Stephen J. Warmington, Mayor

and _____
Gail A. Kundinger, Clerk

STATE OF MICHIGAN
COUNTY OF MUSKEGON

The foregoing instrument was acknowledged before me this 27th day of August, 2002, by Stephen J. Warmington and Gail A. Kundinger, Mayor and Clerk, respectively, of the CITY OF MUSKEGON, a municipal corporation, on behalf of the City.

_____
Notary Public, Muskegon County, MI
My Commission Expires: _____

PREPARED BY:
John C. Schrier
PARMENTER O'TOOLE
Attorneys at Law
175 W. Apple Ave., P. O. Box 786
Muskegon, MI 49443-0786
Telephone: 231/722-1621

SEND SUBSEQUENT TAX BILLS TO: Grantee

WHEN RECORDED RETURN TO: Grantee

DESCRIPTION OF SURVEY
"A"

THAT PART OF LOTS 1, 2, AND 3 OF BLOCK 558, BEING PART OF VACATED WATER STREET, AND PART 0F BLOCK 557 OF THE REVISED PLAT OF 1903 OF THE CITY OF MUSKEGON AS RECORDED IN LIBER 3 OF PLATS, PAGE 71, MUSKEGON COUNTY, MICHIGAN DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH MOST CORNER OF BLOCK 556;

THENCE NORTH 61 DEGREES 13 MINUTES 00 SECONDS WEST (DEED=N62°44'00"W) ALONG THE NORTHEASTERLY LINE OF TERRACE STREET, AS EXTENDED, A DISTANCE OF 730.00 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 61 DEGREES 13 MINUTES 00 SECONDS WEST ALONG SAID NORTHEASTERLY LINE OF TERRACE STREET, A DISTANCE OF 518.69 FEET;

THENCE NORTHWESTERLY ALONG AN ARC OF A CURVE TO THE LEFT, A DISTANCE OF 2.49 FEET, (SAID CURVE DATA BEING: DELTA =00°28'15",R=302.48', L.C.B.=N61°27'09"W, A DISTANCE OF 2.49 FEET TO A POINT BEING LOCATED ON THE SOUTHERLY RIGHT-OF-WAY OF SHORE LINE DRIVE);

THENCE NORTHEASTERLY ALONG THE SOUTHERLY LINE OF SHORE LINE DRIVE, ALONG A CURVE TO THE RIGHT, AN ARC DISTANCE OF 300.51 FEET, (SAID CURVE DATA BEING: DELTA=24°19'04", R=708.05', L.C.B.=N82°07'41"E, L.C.=298.62') TO A POINT OF TANGENCY);

THENCE SOUTH 85 DEGREES 42 MINUTES 47 SECONDS EAST ALONG THE SOUTHERLY RIGHT-OF-WAY OF SHORELINE DRIVE, A DISTANCE OF 147.28 FEET;

THENCE SOUTH 42 DEGREES 00 MINUTES 00 SECONDS EAST, A DISTANCE OF 37.54 FEET;

THENCE SOUTH 04 DEGREES 17 MINUTES 13 SECONDS WEST ALONG THE NORTHERLY RIGHT-OF-WAY OF TERRACE STREET CONNECTOR, A DISTANCE OF 91.77 FEET;

THENCE SOUTHEASTERLY ALONG THE NORTHERLY RIGHT-OF-WAY OF TERRACE STREET CONNECTOR, ALONG A CURVE TO THE LEFT, AN ARC DISTANCE OF 132.23 FEET, (SAID CURVE DATA BEING: DELTA=16°28'11", R=460.02', L.C.B.=S03°56'55"E, L.C.=131.78');

THENCE SOUTH 23 DEGREES 17 MINUTES 55 SECONDS WEST, A DISTANCE OF 32. 56 FEET TO THE POINT OF BEGINNING;

SAID PARCEL CONTAINS 1. 63 ACRES MORE OR LESS.

3271-3/jrm

"B"
(VACATED PORTION OF TERRACE)

ALSO TOGETHER WITH THE FOLLOWING VACATED PORTION OF TERRACE STREET LYING ADJACENT TO PART OF BLOCKS 558 AND 557 OF THE REVISED PLAT OF 1903 OF THE CITY OF MUSKEGON, AS DESCRIBED IN LIBER 3 OF PLATS OF PAGE 71, MUSKEGON COUNTY, MICHIGAN, AND PART OF VACATED WATER STREET DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTH MOST CORNER OF BLOCK 556 FOR THE POINT OF BEGINNING;

THENCE NORTH 61 DEGREES 13 MINUTES 00 SECONDS WEST (DEED=N62°44'00"W), ALONG THE NORTHEASTERLY LINE OF TERRACE STREET, AS EXTENDED, A DISTANCE OF 730.00 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH 69 DEGREES 51 MINUTES 52 SECONDS WEST ALONG THE NORTHERLY LINE OF MORRIS STREET CONNECTOR, A DISTANCE OF 19.43 FEET;

THENCE SOUTHWESTERLY ALONG A CURVE TO THE LEFT, BEING THE NORTHERLY RIGHT-OF-WAY OF MORRIS STREET CONNECTOR, AN ARC DISTANCE OF 60.98 FEET (SAID CURVE DATA BEING: DELTA=12°57'22", R=269.66', L.C.B.=S63°23'11"W, L.C.=60.85');

THENCE NORTH 61 DEGREES 12 MINTUES 04 SECONDS WEST, A DISTANCE OF 384.34 FEET;

THENCE NORTH 28 DEGREES 47 DEGREES 56 SECONDS EAST, A DISTANCE OF 64.63 FEET;

THENCE SOUTH 61 DEGREES 13 MINUTES 00 SECONDS EAST ALONG THE NORTHEASTERLY LINE OF TERRACE STREET AS EXTENDED, A DISTANCE OF 431.64 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 0.60 ACRES MORE OR LESS.

"C"

(VACATED PORTION OF TERRACE STREET)

ALSO TOGETHER WITH THE FOLLOWING VACATED PORTION OF TERRACE STREET LYING ADJACENT TO PART OF BLOCKS 558 AND 557 OF THE REVISED PLAT OF 1903 OF THE CITY OF MUSKEGON, AS DESCRIBED IN LIBER 3 OF PLATS, PAGE 71, MUSKEGON COUNTY, MICHIGAN, AND PART OF VACATED WATER STREET DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTH MOST CORNER OF BLOCK 556 FOR THE POINT OF BEGINNING;

THENCE NORTH 61 DEGREES 13 MINUTES 00 SECONDS WEST (DEED=N62°44'00"W), ALONG THE NORTHEASTERLY LINE OF TERRACE STREET, AS EXTENDED, A DISTANCE OF 1161.64 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH 28 DEGREES 47 MINUTES 56 SECONDS WEST, A DISTANCE OF 64.63 FEET;

THENCE NORTH 00 DEGREES 08 MINUTES 13 SECONDS EAST, A DISTANCE OF 73.64 FEET;

THENCE SOUTH 61 DEGREES 13 MINUTES 00 SECONDS WEST, A DISTANCE OF 35.32 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 0.03 ACRES MORE OR LESS.

TRANSNATION TITLE INSURANCE CO
570 SEMINOLE ROAD, SUITE 102
MUSKEGON MI 49444

Date: August 28, 2002
Escrow Number: 420520

Property Address: Terrace Lots
Muskegon, Michigan 49440

PURCHASER'S STATEMENT	DEBIT	CREDIT
Purchaser Price	$ 89,650.00	$
Rent Adjustment		
CLOSING FEES	75.00	
OWNERS PREMIUM		
Recording Fees	11.00	
Real Estate Commission		
Sub Total	$ 89,736.00	$
Total Deposits to date		77,366.00
Due from Purchaser		$ 12,370.00
TOTALS	$ 89,736.00	$ 89,736.00

SELLER'S STATEMENT	DEBIT	CREDIT
Purchase Price	$	$ 89,650.00
Rent Adjustment		
Deposit of earnest money	77,366.00	
CLOSING FEES	75.00	
OWNERS PREMIUM	466.00	
Recording Fees		
Real Estate Commission		
Sub Total	$ 77,907.00	$ 89,650.00
Amount due Seller	$ 11,743.00	
TOTALS	$ 89,650.00	$ 89,650.00

****

The undersigned Purchasers acknowledge Receipt of a copy of this statement and agree to the correctness thereof, and authorizes and ratifies the disbursement of the funds as stated therein.

Purchaser(s) Signature(s):

The Westwood Group, L.L.C.,
a Michigan limited liability company

BY _____

The undersigned Sellers acknowledge Receipt of a copy of this statement and agree to the correctness thereof, and ratifies the disbursement of the funds as stated therein.

Seller(s) Signature(s):

City of Muskegon,
a Michigan Municipal Corporation

BY _____

1020

TERRACE DEVELOPMENT, L.L.C.
900 3RD STREET SUITE 204
MUSKEGON, MI 49440

NATIONAL CITY BANK OF MICHIGAN/ILLINOIS
KALAMAZOO, MICHIGAN
9-91-720

7/24/2002

PAY TO THE ORDER OF City of Muskegon

$ 76,366.00

DOLLARS

SEVENTY-SIX THOUSAND THREE HUNDREDSIXTY-SIX AND 00/100********

Details on back.

Security Features Included.

081064/3-90

MEMO

⑈0000 1020⑈ ⑆072000915⑆ 884 9956 15⑈

MP

THE BACK OF THIS DOCUMENT CONTAINS AN ARTIFICIAL WATERMARK - HOLD AT AN ANGLE TO VIEW

Transnation

TRANSNATION TITLE INSURANCE COMPANY

570 SEMINOLE ROAD
SUITE 102
MUSKEGON, MI 49444

No 200959 200959

420520 SS 08/28/02 9-9/720

FILE NO. ESCROW ACCOUNT DATE

PAY ELEVEN THOUSAND SEVEN HUNDRED FORTY THREE AND 00/100 DOLLARS 11743.00

TO THE ORDER OF City of Muskegon,

VOID AFTER 90 DAYS
COMERICA BANK
MUSKEGON, MI 49441
720-11758

BY [signature] AUTHORIZED SIGNATURE

BY AUTHORIZED SIGNATURE

20443/20453

⑈200959⑈ ⑆072000096⑆ 184035314⑆

DATE	DESCRIPTION	AMOUNT
Bank 5344	Check 200959	
Order No 420520 Closed by SS	Property	
420520		
Buyer The Westwood Group, L.L.C.	Seller City of Muskegon	
08/28/02 Net proceeds to seller(s)		11743.00
		$11743.00

CK-9 (10/00)

TRANSNATION TITLE INSURANCE COMPANY

Commission Meeting Date: August 27, 2002

Date: **August 19, 2002**

To: **Honorable Mayor & City Commission**

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

RE: **Renaissance Zone Notices of Intent**

SUMMARY OF REQUEST: To authorize staff to notify the State of Michigan that the City of Muskegon intends to designate three new sub-zones and amend the boundaries of the two existing sub-zones, as consistent with the attachment describing the current state of negotiations. Also requested is the authorization to have the City Manager or Director of Community and Economic Development to sign the Notice of intent documents. This does not obligate the City to grant all of the applicants' Renaissance Zone status, but does leave that possibility open.

FINANCIAL IMPACT: At this time there will be no financial impact. When Zones are created or expanded there will be an impact, which will consist of the amount of abated taxes.

BUDGET ACTION REQUIRED: None at this time.

STAFF RECOMMENDATION: To notify the State of Michigan that the City of Muskegon intends to designate three new sub-zones and amend the boundaries of the two existing sub-zones.

Attached is a summary of the current status of negotiations.

COMMITTEE RECOMMENDATION:

The Archimedes Group LLC

"Give me a lever and a place to stand and I will move the earth." Archimedes

Cathy Brubaker-Clarke
Director of Community & Economic Development
City of Muskegon
933 Terrace St
Muskegon MI 49440

August 15, 2002

RECEIVED
AUG 19 2002
CITY OF MUSKEGON
PLANNING DEPARTMENT

Dear Cathy,

Sometime ago, the Archimedes Group sent you a letter with regards to the Renaissance Zone proposals. The intent of our group as owners of 315 W. Clay (Medical Arts Building) was and is to be included in the boundaries eventually determined by the City of Muskegon for the Muskegon Mall Renaissance Zone.

It is our understanding these proposals have now been submitted and the City of Muskegon is in the review process. In follow-up to our original request I am submitting our "Proposal for Inclusion" in whatever Renaissance Zone designation may be generated for the Muskegon Mall property.

Our building is not large enough by itself to request such a designation, but is strategically located in the heart of the Downtown Central Business District, adjacent to the Muskegon Mall properties. 315 W. Clay is the only property on the block that is not a non-profit.

Please review the "Proposal for Inclusion." I believe our "proposed project" is in line with the other submitted proposals for specific Renaissance Zones and meets the City's criteria for such a project.

If you have any questions or need any information, please contact me. I look forward to working with the City, other downtown property owners and developers as this exciting phase of Muskegon's development takes shape.

Sincerely,

Norman Cunningham, Sr., Member
Archimedes Medical Arts LLC

cc: Dick Anderson
Bryon Mazade, City Manager
Steve Warmington, Mayor, City of Muskegon
City Commissioners

David L. Wendtland; Managing Member Richard B. Anderson; Resident Agent

525 W. Norton Ave. • Muskegon, MI 49444 • Phone (231) 739-1626 • Fax (231) 739-9331 • E-Mail: davidwendtland@chrystalanderson.com

Summary of Renaissance Zone applicants

Shaw Walker

The owners of the Shaw Walker building plan on converting the building to a mixed use including market rate housing, retail, and office uses. The first phase redevelopment will consist of at least $3 million and creation of 67 market-rate housing units. Future phases may include condominium development, as well as retail and office. The owners have been receptive to a consent assessment in order to ensure the development takes place. The owners are willing to start construction within 3 months of Renaissance Zone designation.

Mart Dock

Proposed projects include cross-lake ferry, farmers market, county convention center, marina, and market rate housing.

Representatives of the Mart Dock have been receptive to a consent assessment to ensure that development takes place. The consent assessment would allow the city to recover the lost revenue should development not take place. They have also offered to ensure that there is private investment of $1 million. Maintenance and demolition costs would not be eligible costs to count toward the $1 million. Development will occur within two years if the ferry project does not move ahead, but sooner if the project does proceed.

The public access portion of the project would not occur unless either the ferry or the farmers market or both projects proceed.

Cordova Chemical Site

This project will include a P.A. 425 temporary land transfer agreement between the City of Muskegon and Dalton Township. The former Cordova Chemical site consists of over 200 acres in Dalton Township,

which would be made available for large lot industrial park. Currently, the City has limited availability for large industrial lots. It is envisioned that spin off businesses from the Smart Zone could locate in this new industrial park.

The County would be responsible for development of the infrastructure and Dalton Township would be responsible for providing services. If Dalton Township cannot provide service the City would have the first right of refusal to provide those services at cost + 15%.

Income tax would be split 60% to the City and 40% to Dalton Township.

Staff has been in negotiations with representatives from the County and Dalton Township, and has agreed in principle on the major issues.

Muskegon Mall – Cindy Lawson

Staff is recommending that a consent assessment be implemented to ensure redevelopment of the Mall property. When the parcel or parcels are sold to developers, there would be a certain time frame within which they would need to substantially complete the project.

At this time the concept for redevelopment is to create an urban village, consisting of housing, retail, and office uses.

On a related matter, staff has received a letter from The Archimedes Group requesting inclusion of the Medical Arts building, 315 Clay, be included in the boundaries of the Muskegon Mall Renaissance Zone, if designated. Staff recommends that this parcel not be included because RFP procedures were not followed. The project may be eligible for other redevelopment incentives and staff will work with the developers to identify and apply for those incentives.

Grooters/Seaway Industrial Park

Staff has had ongoing negotiations with Grooters Development Corporation regarding an extension to an existing Renaissance Zone to encompass Seaway Industrial Park. Current positions are that Grooters agrees to a job creation number of 80 jobs at least 40 of which are new to the City, and at least 75% of the space to be used for manufacturing.

Amount of investment will be over $3 million. Grooters will post a performance bond to guarantee development.

Staff is recommending that all of the City-owned parcels in Seaway Industrial Park, along with the private parcels necessary for the Grooters project, be included in the Renaissance Zone expansion. Designation of the entire park will allow staff to more easily market the remaining property. Also, designation will allow for a more even playing field between the Seaway Industrial Park and the Cordova Chemical site.

Commission Meeting Date: August 27, 2002

Date: **August 16, 2002**

To: **Honorable Mayor and City Commissioners**

From: **Planning & Economic Development**

RE: **Request for amendment to Planned Unit Development for Balcom's Cove**

SUMMARY OF REQUEST:

Request to amend the Planned Unit Development for Balcom's Cove, 2964 Lakeshore Dr., to allow changes in the site plan.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

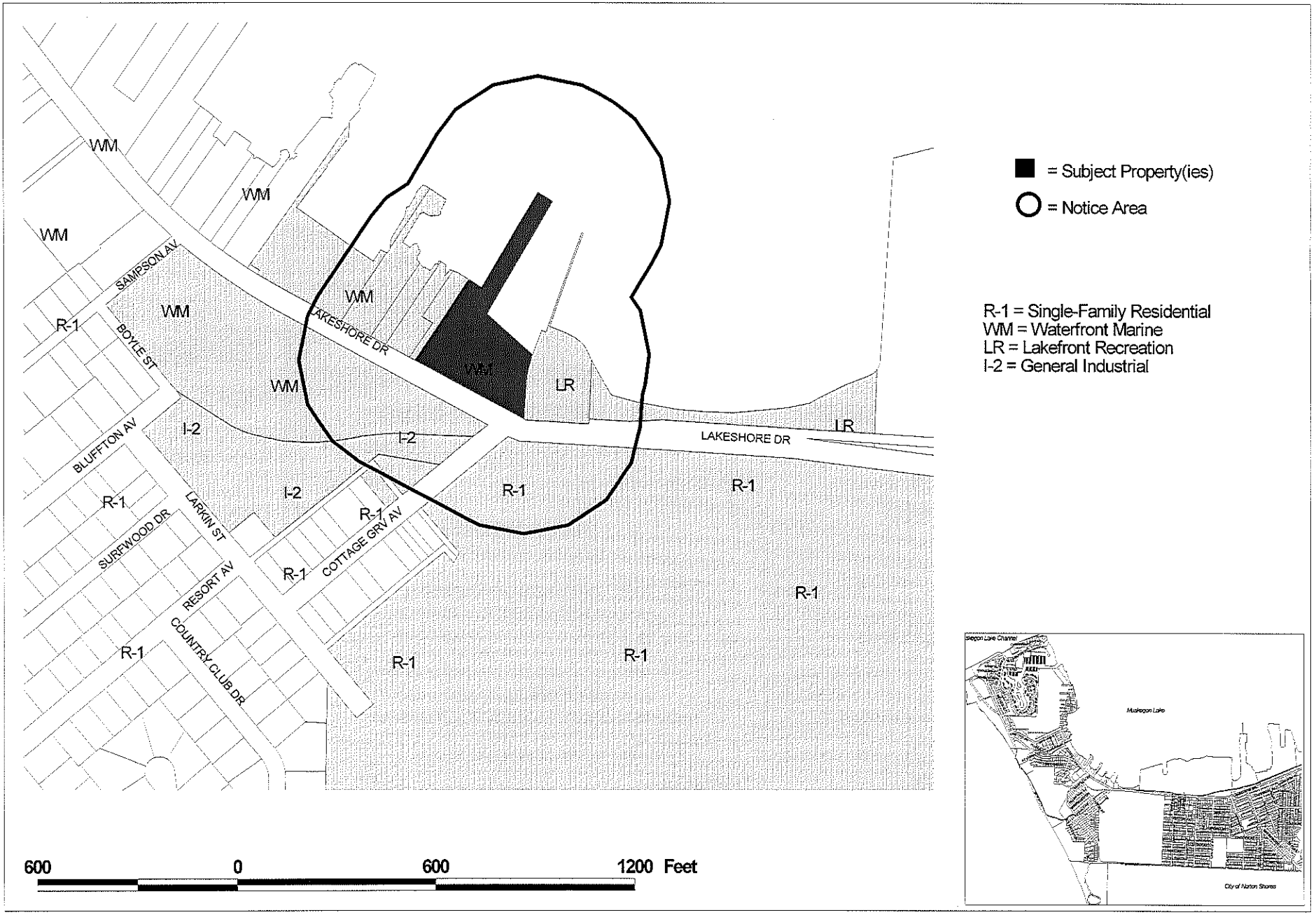
STAFF RECOMMENDATION:

Staff recommends that something be done to mitigate this situation, no matter the reasoning behind the changes. Various options were presented to the Planning Commission, and their recommendation is stated below.

COMMITTEE RECOMMENDATION:

The Planning Commission recommended approval of a portion of the PUD amendment, with the conditions listed on the attached resolution. The motion to approve passed on a 5-4 vote with B. Smith, B. Mazade, S. Warmington, P. Veltkamp, and L. Spataro voting yes and P. Sartorius, J. Aslakson, J. Stewart, and M. Kleaveland voting nay.

City of Muskegon
Planning Commission
Case # 2002-38



Staff Report
CITY OF MUSKEGON
PLANNING COMMISSION
REGULAR MEETING

August 15, 2002

Hearing; Case 2002-38: Request to amend the Planned Unit Development for Balcom's Cove, 2964 Lakeshore Dr., to allow changes in the site plan, by the Archimedes Group, LLC.

BACKGROUND

Applicant: Archimedes Group, LLC
Request: To amend the site plan to include a wall to the east of the property and to reduce the front setback along Lakeshore Dr.
Present Land Use: Residential condominiums under construction.
Zoning: WM, Waterfront Marine

STAFF OBSERVATIONS

1. Balcom's Cove is located on Lakeshore Drive, next to the City's launch ramp. The project received approval for a Planned Unit Development (PUD) for high-rise condominiums in January of 2000.
2. The PUD received approval from the City Commission on January 25, 2000. A copy of the resolution passed to approve the project is enclosed. A list of 17 conditions were placed on the approval for the project.
3. The project has proceeded and is currently under construction. The design called for two buildings with associated garages and carports between the buildings and Lakeshore Dr. When the first set of carports began to be constructed, staff received several phone calls about the proximity of the carport 'wall' to Lakeshore Dr. When staff went out on site to take a look, it was apparent that the 'wall' was definitely closer to the street than on the approved plan.
4. Staff spoke with several members of the Archimedes Group in order to determine what had happened and why staff wasn't apprised when changes were made to the site plan after it had been approved. Staff also informed the Archimedes Group that the 'changes' were significant enough that they would require an amendment to the approved PUD. Staff received a letter from the Archimedes Group (see attached letter dated 7/8/02) informing staff of their intention to apply for the amendment for the August Planning Commission meeting. Staff received the application and a second letter with some explanation for the changes, and the site plan was received a few days later (see enclosed site plan and letter dated 7/25/02).
5. The construction on the project has continued pending the PUD amendment request, including those portions of the project which are departures from the originally approved plan. A site plan is a document with legal standing, which is essentially a contract between the developer and the community. Any developer is obligated to follow the approved site plan.

6. Staff understands that there may be necessary changes to plans, especially for a large project such as this. However, such changes need to come back for approval before construction either begins or continues. In this case, the applicant did not bring the changes to staff's attention – instead they were discovered after the fact.

7. There are two significant deviations from what was originally on the approved site plan and what is currently under construction on the site which are:

   a. The approved site plan showed two rows of carports parallel to Lakeshore Dr., in front of the condominium buildings and garages. These carports are shown on the plan to be a minimum of 12 feet back from the front property line. There also is approximately 8 to 10 feet of terrace shown between the property line and curb, although dimensions for the terrace area are not given. Preservation of existing trees and heavy landscaping was required (and is shown) in this front setback area in order to mitigate the appearance of the long 'walls'.

      When the Zoning Inspector went out on site to look at what had actually been constructed, the easternmost row of carport 'wall' was already constructed. The Zoning Inspector measured the distance from the curb to the 'wall' at two points. The first measurement was 9 feet and the second (next to the drive entrance) was 7.5 feet. This was considerably under the minimum of 12 feet of setback plus terrace area shown on the site plan, and greatly reduces the amount of space left for the proposed landscaping. The wall was broken up and 'staggered', according to the applicant as a way to mitigate the appearance of the long, unbroken expanse of wall.

      Staff originally had a further concern as it appeared as if the 'wall' may have actually been constructed within the City's right-of-way. After both the Zoning Inspector and City Engineer looked at it however, they feel confident that the wall is on private property, and not located within the terrace.

   b. The second major change is that a six-foot wall has been constructed along the eastern property line, adjacent to the City launch ramp. This wall was not shown on the approved site plan. The approved resolution did address future screening needs on this side of the property, but stated that any future screening would need to be 'step-up' and 'step-down' with lower heights near the water and roadside (4 feet) and higher levels permitted in the middle (6 feet). The 6-foot concrete wall is both stark and gives a "fortress" appearance that should be avoided, particularly along the waterfront. This unauthorized wall could be either removed altogether, partially removed (e.g., from the building lakeward) or stepped down to four feet.

      During the time after this PUD was approved, the ordinance was amended to require a 75-foot waterfront setback from the ordinary high water mark or wetland on any lakefront property. No fence or wall of any height may now be constructed within this 75-foot setback area. Since this wall was not on the previously approved plan, it is not considered to be grandfathered under the current requirement. The applicant has stated that the wall was constructed in order to keep the property from being vandalized by people using the launch ramp.

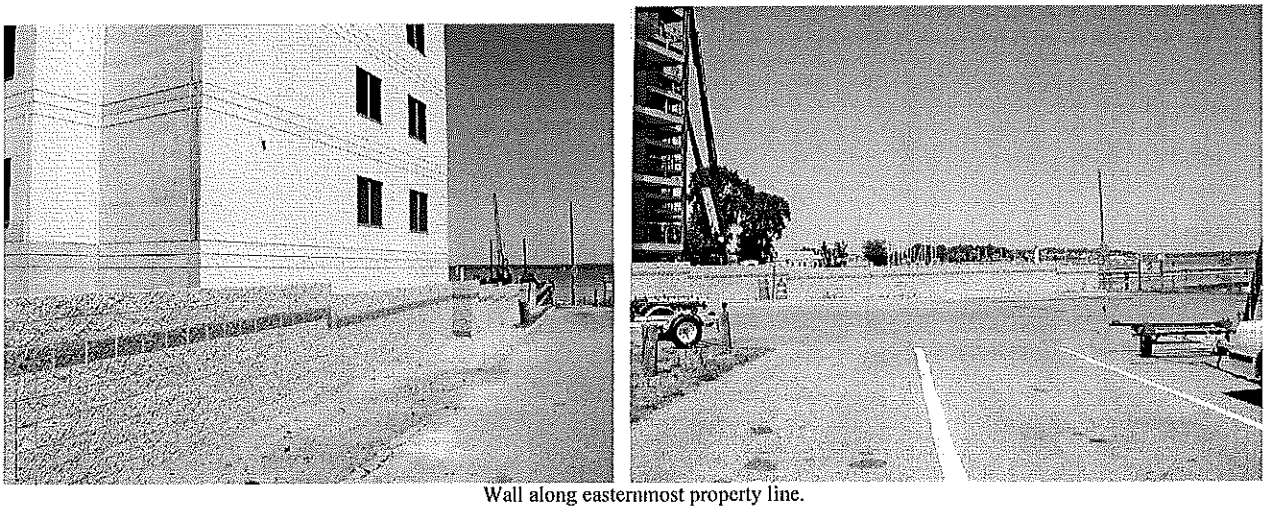
8. The applicant is asking to amend the plans to include the changes as constructed. They have

submitted a site plan showing the actual setbacks and the constructed wall. The stated reasons for the change include the relocation of the easternmost building in order to meet fire access requirements (the Fire Marshal had not yet reviewed the plans when approved by the City Commission, and one of the conditions of approval was that fire and emergency access approvals would be required). Again, when that fire access requirement was put in place and the building was shifted by the developer, that change should have come to staff's attention so that it could be approved at that time.

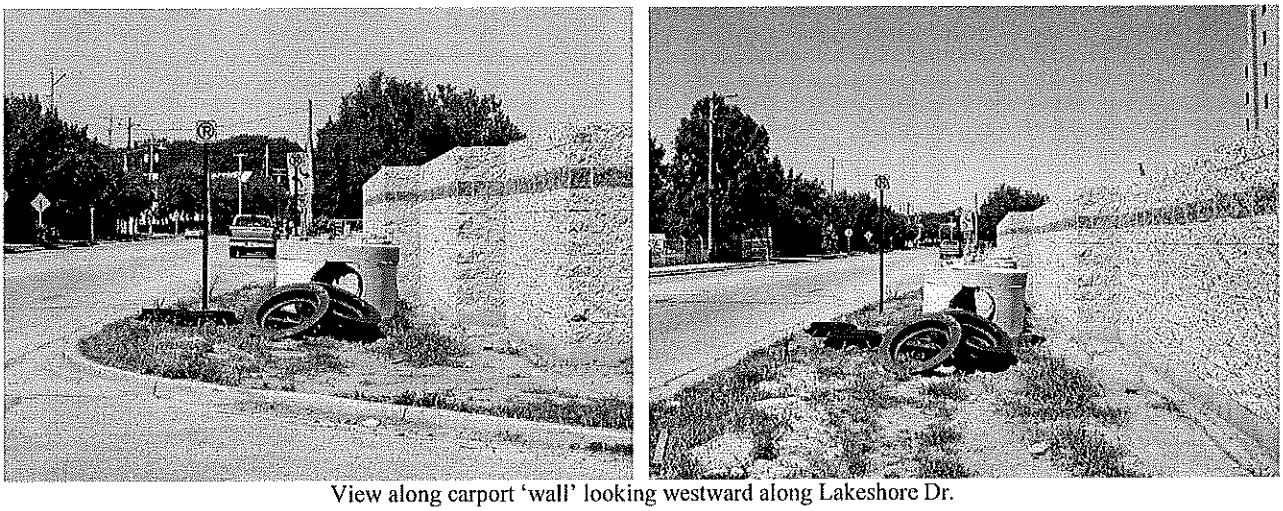
9. According to the developers, the shifting of that building caused everything else to be shifted as well, and brought the garages and carports closer to the road. The applicant has also stated that they did not have accurate survey drawings of Lakeshore Dr. at the time that the original site plan was approved, and that the terrace area shown on that plan was inaccurate, actually much less terrace area existed.
10. Staff was apprised of the removal of the large existing trees in the front setback. Cranes were unable to maneuver over the trees and the developer was advised that pursuant to the ordinance, the trees would have to be replaced with *"(2) trees for every one tree lost with trees of a minimum of three (3) inches in diameter four and one-half (4 ½) feet above the ground"*. Given the reduced setback, it will be difficult to provide shade trees along the setback or anywhere else on site. Perhaps the developer could make suggestions as to how to mitigate this situation given the limited flexibility of the site proper.
11. Staff has routed the submitted plan and has the following comments from other departments:
    a. The Department of Public Works is still not entirely convinced that the 'wall' has not been constructed in the City right-of-way, but it appears on the plan that it is entirely on private property. The DPW also stressed to staff that determining locations of buildings, rights-of-way, etc. is the responsibility of the developer and that they should rely on surveys, not maps or charts.
    b. The Director of Inspections Services (former Fire Marshal at the time this project was originally approved) has stated, "They were told that fire department access is required and they were given the information as to the dimensions required. We did not tell them to shift the garages. They did this on their own to solve the problem. Fire and Life Safety issues are paramount and access to this site can not be compromised. The requirements from the fire code for access were given early in the review process".
    c. Staff has not yet received comments from the current Fire Marshal or City Engineer but will bring any comments from them to the meeting.
12. At this point, staff sees several options to mitigate unapproved site design changes. First, the developer could be required to remove the outer 'walls' from the carports or to remove the carports all together. In any case, as much landscaping as can fit in the space left should be provided to screen either the 'wall' or visible cars (if the wall is removed or partially removed) from public view along Lakeshore Dr.
13. The Planning Commission may wish to look at other ways to mitigate these 'changes' to an already approved site plan as well. Staff has outlined several options for mitigation in the motion for consideration below, or the Planning Commission may have additional suggestions for ways this situation can be mitigated.
14. Staff strongly recommends the use of a performance guarantee to ensure that the approved

changes, including landscaping, are put in as required with no deviations or substitutions. The performance guarantee would need to be in place before a Certificate of Occupancy is issued for the development.

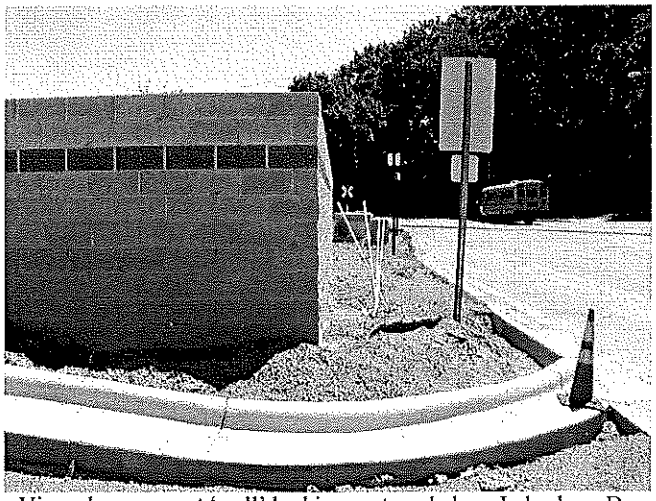
PHOTOS



Wall along easternmost property line.



View along carport 'wall' looking westward along Lakeshore Dr.



View along carport 'wall' looking eastward along Lakeshore Dr.

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 2313 (4) of 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.

OPTIONS GIVEN TO PLANNING COMMISSION REGARDING MITIGATION:

1. A revised site plan addressing all mitigating factors decided upon by the Planning and City Commissions will need to be submitted and approved.
2. A performance guarantee for all landscaping, screening and any other requirements will need to be provided.
3. With respect to the wall along the eastern edge of the property:

a. The wall could be left as is with heavy landscaping and ivy provided to break up the long expanse; **or**

b. The wall could be completely taken down to comply with the originally approved site plan; **or**

c. The wall could be changed in order to make it 'step-up' and 'step-down' as provided for in the original PUD approval. The portions of the wall near the street and the water would need to be restricted to a maximum of four feet in height, with the center portion allowed to be six feet in height. Ivy and heavy landscaping would need to be provided to break up the long expanse.

4. With respect to the carports:

   a. The carports could be required to be completely taken down with regular, open parking spaces provided instead; **or**

   b. The carport 'walls' facing Lakeshore Dr. could be lowered with the roofs sloped forward in order to break up the visual effect of the 'walls'; **or**

   c. The carports could be left as constructed.

   d. With any of the above options, staff recommends that as much heavy landscaping (with ivy on any existing portions of 'wall') as possible be put in place to block the visual effect of either the 'walls' or open parking spaces. There appears to be additional space along the eastern property line where landscaping could be provided as well as in the (reduced) front setback area along Lakeshore Dr.

5. With respect to landscaping issues:

   a. Recognizing that the reduced setback areas do not provide the room for such landscaping as originally proposed (and approved) in the front setback area, staff is offering a suggestion to the developer that they may wish offer additional offsite improvements to help mitigate the fact that these 'changes' were made without City approval.

   b. As much landscaping as can practically be supported and maintained in the reduced setback area along Lakeshore Dr. needs to be provided. Taller canopy trees could be provided which would not create hazards to clear vision at any driveways. Any remaining walls should be landscaped with ivy as well.

   c. Heavy landscaping can and should be provided along the eastern property line where there is more space than along Lakeshore Dr.

   d. The developers had agreed to replace the trees, which were removed along Lakeshore Dr. with a comparable amount of trees pursuant to the ordinance.

6. There is currently an 'unofficial' drive from the easterly row of carports into the launch ramp's drive entrance onto Lakeshore Dr. This 'unofficial' drive appears to be utilized by construction vehicles and the developers have stated that it will be closed once construction is complete. This drive needs to be closed and blocked with landscaping provided in the remaining areas.

7. Screening along the western property line between the development and the existing home was required at the time of the original PUD approval and was shown on the approved site plan. This screening has not yet been put in place and still needs to be provided.

CITY OF MUSKEGON

RESOLUTION 2000-21(d)

RESOLUTION FOR A PLANNED UNIT DEVELOPMENT FOR 2964 LAKESHORE DR.

WHEREAS, a petition for a planned unit development was received from the Archimedes Group LLC; and,

WHEREAS, a planned unit development will allow a condominium development in the WM, Waterfront Marine zone; 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 Planned Unit Development with conditions as follows:

1. Resubmit the revised site plan to document the location of existing trees with a note they will be preserved. Only 2 of the existing trees are shown to remain on the site plan and front elevation.
2. Adhere to the open space, landscape augmentation, wall, and berming plan submitted 1/4/00. Clarify size and species of trees to be used on the pier.
3. Clarify method of screening for the parking on the pier.
4. At a minimum, adhere to the front elevation (Lakeshore Drive view) design submitted 1/4/00. Additional windows or larger windows would be permissible in the design.
5. Provide assurances that site has had a baseline environmental assessment (BEA) and any other appropriate environmental investigation necessary.
6. The development is limited to 56 units and 95 feet in height from the road grade.
7. The existing chain-link fence with barbed wire adaptations must be removed from site. Any future screening provided on the east property line must be "step-up" and "step-down" with lower heights near the water and roadside (4 feet) and higher levels permitted in the middle (6 feet).
8. The portable sign on the site must be removed immediately.
9. Car parking on the pier must be screened from the water.
10. The marina improvements and dockage footprint may not expand. The project may not include any activities that would fill the lake.

11. The drive access must be approved by and meet the standards of the City's Engineering department

12. Site drainage (rooftop and parking lot) needs to be managed on site. The plan needs to be approved by the City's Engineering department.

13. Pole lighting on the site shall be no higher than 17 feet and shall be a "cut-off" fixture to prevent light from bleeding onto adjacent properties and into the night sky.

14. Fire and emergency site access approvals must be obtained for the final site plan.

15. A more detailed soil erosion control plan must be provided prior to the issuance of a building permit pursuant to the State Soil Erosion and Sedimentation Control Act.

16. A performance guarantee for landscaping and screening must be submitted prior to the issuance of a building permit.

17. The applicant/owner must formally disclose that the land in proximity to the subject property is zoned I-2, general industrial, and may be used for any industrial use permitted by the zoning ordinance.

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 with conditions.

Adopted this 25th day of January, 2000

Ayes: Schweifler, Shepherd, Sieradzki, Spataro

Nays: Aslakson, Benedict, Nielsen

Absent: None

By: Fred J. Nielsen
Fred J. Nielsen, Mayor

Attest: Gail A. Kundinger
Gail A. Kundinger, 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 a resolution adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the 25th day of January, 2000, 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: January 25, 2000.

Gail Kundinger

Gail Kundinger, CMC/AAE
Clerk, City of Muskegon

The Archimedes Group LLC

"Give me a lever and a place to stand and I will move the earth." Archimedes

July 8, 2002

Mrs. Cathy Brubaker-Clark, Director of Community and Economic Development
City of Muskegon
933 Terrace Street
Muskegon, MI 49443

Re: Balcom's Cove

Dear Mrs. Brubaker-Clark:

I want to thank you and your staff, on behalf of The Archimedes Group-Balcom's Cove, LLC, for bringing to our attention the need to file a request to amend the Balcom's Cove Planned Unit Development. We are in process of preparing the amendment and will meet with staff and submit the request in time to be considered for the August Planning Commission meeting.

As with any development of this size and complexity there are changes that must be made during construction to meet codes and improve the end product with an eye toward marketability and success of the development. Balcom's is no different. We have made significant changes most of which were as a result of working with city staff to comply with construction code issues. Other changes were intended to further upgrade the development. Most of these changes had no affect on the original approved PUD.

We are in the final stages of construction and will submit any changes which are different than the approved PUD through the amendment process, of which we believe, are only a couple. We will submit these as a proposal of "as-built" so as not to piece-meal our amendments. We look forward to working with the City of Muskegon to make Balcom's Cove the success we said it would be and one of which we can all be proud.

Please feel free to call on Dave Wendtland at 206-3296 if you have any questions.

Sincerely,

Richard Anderson, Chairman
The Archimedes Group-Balcom's Cove, LLC

Cc: Mayor Warmington and City Commissioners
Bryon Mazade, City Manager
Brenda Moore, Deputy Director of Community and Economic Development
Debbie Steenhagen, Zoning Officer

David L. Wendtland; Managing Member Richard B. Anderson; Resident Agent

525 W. Norton Ave. • Muskegon, MI 49444 • Phone (231) 739-1626 • Fax (231) 739-9331 • E-Mail: davidwendtland@chrystalanderson.com

The Archimedes Group LLC

"Give me a lever and a place to stand and I will move the earth." Archimedes

July 25, 2002

Mrs. Cathy Brubaker-Clark, Director of Community and Economic Development
City of Muskegon
933 Terrace Street
Muskegon, MI 49443

Re: Balcom's Cove

Dear Mrs. Brubaker-Clark:

Enclosed is the Planning & Zoning Application for a PUD Amendment for Balcom's Cove. This Application identifies "As Built" dimensions for building and screening wall set-backs versus the original PUD for Balcom's Cove approved by the City Commission and Planning Commission (The Survey and Amended PUD drawing is in process and will be submitted early next week per Deb Steenhagen's request).

1) The PUD Amendment will show that the Towers were set back from the marina an additional 6 feet +/- due to the Fire Marshal's direction to provide for fire truck access to the front of the buildings, especially the East Tower.
2) Additionally, Lakeshore Drive as constructed is wider than shown on the original PUD as a result of the parking lane and street width. This results in a reduction of the terrace and planting area by an estimated 4-5 feet.
3) The turning radiuses to the parking garages and carports are minimum necessary for maneuverability.
4) The combination of the above has reduced the depth of the planting area street-side of the screening wall and the curb. In an effort to mitigate any negative affect, the carport-screening wall has been offset at various locations to improve the visual appearance and provide the greatest depth to the landscape area.
5) The Landscape Plan is being prepared and will be submitted as soon as complete. We believe that the offsetting of the screening wall combined with a quality landscaping plan will result in visual affect that exceeds the original PUD.
6) A screening wall was added to the East Side of the property to reduce any conflict with the use of the City's Cottage Grove Boat Launch Ramp.

Although we would prefer to have submitted completed "As Built" drawings as the PUD Amendment, which are also required under Condominium Law, we were instructed to submit this portion at this time. We will update this submittal with "As Built" drawings when complete. Rest assured that Archimedes-Balcom's Cove, LLC remains as committed to a first class development for itself, The City, The Neighborhood and Purchasers as it was at the initiation of Balcom's Cove.

Sincerely,

David L. Wendtland, Member
The Archimedes Group-Balcom's Cove, LLC

Cc: Deb Steenhagen

David L. Wendtland; Managing Member Richard B. Anderson; Resident Agent

525 W. Norton Ave. • Muskegon, MI 49444 • Phone (231) 739-1626 • Fax (231) 739-9331 • E-Mail: davidwendtland@chrystalanderson.com

The Archimedes Group LLC

"Give me a lever and a place to stand and I will move the earth." Archimedes

August 14, 2002

Mr. Peter Sartorius, Planning Commission Chair and
Planning Commission Members
City of Muskegon
933 Terrace Street
Muskegon, MI 49443

Re: Balcom's Cove PUD Amendment

Dear Mr. Sartorius and Planning Commission Members:

The following is submitted with the requested Amendment to the Balcom's Cove PUD for your review and consideration.

Background:

The original PUD request was approved by the City Commission on January 25th 2000 after recommendation by Planning Commission and Staff.

The final detailed engineering drawings were submitted in June 2000 after a prolonged bidding process, financing procedure and redesign as a result of several meetings with fire, engineering and code enforcement personnel.

Specific Requested Amendments:

1. Lakeshore Drive Screening Wall & Development Footprint - Amended Site Plan.

A. The Original PUD site plan was submitted based upon a survey which, although accurately identified the site, inaccurately depicted the street and curb as it existed prior to the last reconstruction. The "terrace area" was reduced with this reconstruction by approximately 8 feet.

B. Through meetings with city staff, additional modifications were made including the buildings being setback further (approximately 8.3 feet) from the waters edge to accommodate fire fighting equipment in front (lakeside) of the structures. These changes were included in the June 2000 submittal.

C. The combination of the above resulted in the Plans submitted in June 2000

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showing the location of the buildings and Screening Wall as depicted on the PUD Amendment request.

D. The Screening Wall and Development Footprint as Amended are in compliance with the intent of the City's Zoning Ordinance with regard to PUD, Screening/Landscaping and Parking requirements.

Actions already taken to improve/mitigate amendment request:
Screening Wall is "offset" at several locations to provide the greatest depth to the landscape area between the Screening Wall and the curb including terrace area. Improved the visual appearance.

Proposed Additional Actions;
Utilize landscape area on Lakeshore with same amount of trees and scrubs of different species to reflect amended size. Add plantings along Screening Wall - Climbing Ivy or similar species and scrubs. The trees which were removed due to safety issues will be replaced on site.

2. East-Side Screening Wall - Amended Site Plan

This Screening Wall was an addition to the original PUD in an attempt to avoid future conflicts between residents of Balcom's Cove and users of the City's Cottage Grove Launch Ramp. The Screening Wall also separates Balcom's Cove from what is essentially a parking lot.

Archimedes-Balcom's Cove further takes issue with the statement that "The 6-foot concrete wall is both stark and gives a 'fortress' appearance...."(Staff Observations 7b). This statement is the authors opinion, and further suggests that the zoning ordinance controls aesthetics, The developer would not nor has it purposefully constructed the wall to detract from marketability and visual appearance.

Actions already taken to improve/mitigate amendment request:
The Screening Wall was varied in height and offset to improve the visual appearance. It also screens the parking area of the Cottage Grove Launch Ramp from the Residential Use of Balcom's Cove.

Proposed Additional Actions:
Add plantings including scrubs and vines on the East side of the Wall with some on City property.

3. West Side Screening Wall - Amended Site Plan

We are suggesting that the original masonry Screening Wall be replaced with evergreen scrubs where there are not existing scrubs.

Summary:

A. The requested amendments to the original PUD for Balcom's Cove are consistent with the City of Muskegon's PUD Ordinance, the Developments Design Standards and are necessary to meet minimum code and design requirements.

B. The Landscape Plan will be amended to reflect these changes.

C. We are committed to continue working with City Staff, Planning Commission and City Commission to complete this development of which we will all be proud.

Sincerely,

David L. Wendtland, Member
The Archimedes Group-Balcom's Cove LLC

Richard Borgeson, Architect and Member

Cc: Mayor Warmington and City Commissioners
Bryon Mazade, City Manager
Cathy Brubaker-Clark, Director of Community and Economic Development

The Archimedes Group LLC

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August 22, 2002

Mayor Warmington, Vice Mayor Karen Buie and Commissioners
Gawron, Larson, Schweifler, Shepherd and Spataro
City of Muskegon
933 Terrace Street
Muskegon, MI 49443

Re: Archimedes-Balcom's Cove Requested PUD Amendment,

Dear Mayor Warmington, Vice Mayor Karen Buie and Commissioners
Gawron, Larson, Schweifler, Shepard and Spataro:

The following is presented in follow-up to the Amendment Request in an effort to provide factual information and provide a win-win-win solution to this Request:

I. Footprint of Building and Location of Lakeshore Drive Screening Wall.

Facts:

A. The PUD as approved by Resolution #2000-21(d) on January 25, 2000 included a site plan which showed the Condominium Structures approximately eight (8) feet closer to the marina wall than constructed.

B. The Resolution contained condition #14 "Fire and emergency site access approvals must be obtained for the final site plan."

C. Meetings between the Fire Marshal and Archimedes Architect resulted in the Fire Marshal **requiring** this additional 8' setback and a gravel base in front of the East Tower for fire and safety reasons, i.e. to park a fire truck on the North side of this tower.

D. The five sets of Plans submitted in May, 2000 incorporated this requirement. Unfortunately, we are informed the plans were not shared with Planning staff nor did Archimedes resubmit this amended site plan back to Planning.

We apologize for any miscommunication at that time; however, we acted in good-faith in that we were required to submit plans which would be approved by the Fire Marshal.

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E. Resolution #2000-21(d) also contained condition #11, "The drive access must be approved by and meet the standards of the City's Engineering department". The plans submitted were reviewed and met design standards.

F. The Landscape Area along Lakeshore Drive was reduced by this additional setback from the waters edge.

G. The Landscape Area along Lakeshore Drive was reduced further due to the terrace being less than depicted on the original preliminary site plan as a result of the construction of a parking lane on the North side of Lakeshore Drive.

H. Although, these reductions to the Landscape Area along Lakeshore Drive resulted from these facts, the as-built setbacks and Greenbelt Buffer do meet or exceed the City's Zoning Ordinance under which the PUD was approved (Sections 2328-6; 2330-1(a) and 4; and 2331.

I. The Landscape Area also exceeds the City's Current Zoning Ordinance Section 2331-5(a) by over 100%.

J. The change of the location of the footprint of the structures as a result of the Fire Marshal's directive also complies with the current Ordinance:

Section 2330-16: "MINOR MODIFICATIONS TO A SITE PLAN PREVIOUSLY APPROVED BY THE PLANNING COMMISSION MAY BE APPROVED BY THE ZONING ADMINISTRATOR INCLUDING, WITHOUT LIMITATION:

(g) - "Movement of buildings or other structures by no more than ten feet", and

(k) - "Changes required or requested by the City or other regulatory agency in order to conform to their laws or regulations".

* These two elements as well as 9 others are considered "Minor Modifications"

Improvements/Mitigating Measures Proposed:

We submit that although we acted in good-faith and believe the City has and is acting in good-faith; and further, the facts are what they are, we need to arrive at a

mutually acceptable solution to amend the PUD.

1. Archimedes representatives met with city planning staff and traffic superintendent and will:

A. Submit a revised landscaping plan for the Lakeshore Drive Area and further welcomes suggestions to the plan and has every intention of working with the City to achieve mutual agreement for any final decisions

B. Will "bump-out" the curb as suggested and approved by engineering and planning to include part of the current non-used parking lane for landscape area both East and West of the Driveways from Balcom's to Lakeshore Drive.

II. East Property Line Screening Wall.

A. Resolution #2000-21d(7) provides, "The existing chain-link fence with barbed wire adaptions must be removed from site. Any future screening provided on the east property line must be 'step-up' and 'step-down' with lower heights near the water and roadside (4 feet) and higher levels permitted in the middle (6 feet).

B. This condition permit's the East Screening Wall.

C. The Requested Amendment to 6' is consistent with both the previous zoning ordinance - Section 2328-6 and Section 2331.

D. The East Screening Wall also meets the City's current Zoning Ordinance Section 2331-7 which requires "at least four (4) feet and up to six (6) feet in height may be required along all adjoining boundaries with residentially zoned or used property. A landscape buffer with berming, or landscaping with a fence or a solid wall may be used to meet screening requirements."

E. The meeting with Planning Director and Leisure Services Director explained to us that if we do not build the East Wall (or are required to tear it down as recommended by the Planning Commission) that Leisure Services will be required to place a fence on the boat launch and maintain it. The City's Zoning Ordinance requires buffers/fencing/screening.

Improvements/Mitigating Measures Proposed.

1. Archimedes after meeting with City Staff will:

A. Submit a revised Landscaping Plan for the East Property Line and welcomes suggestions and has every intention to arrive at a mutual agreement for any final decision.

B. Remove the top two rows of the decorative concrete block screening wall from the North end to the South (56'-8") replace it with a "wrought-iron" type of fence on top of this section of wall and extend a wrought-iron fence at this height along the East side of the Docks (12').

III. West Property line landscape fence/planting area

A. The requested amendment is to replace the decorative concrete Screening Wall with plantings of Scrubs and Trees to be shown on the revised Landscape Plan.

SUMMARY

Although, Archimedes is of the opinion that the as built development complies with and exceeds the City's Standards and requirements as contained in the Original PUD, previous Zoning Ordinance and the current Zoning Ordinance (except for fence setbacks from waterfront), we believe that the above mitigating/improvement measures will further improve the final "as-built" development to provide a "win-win-win" outcome for the City-Residents-Developers.

Thank you for your concern and consideration.

Sincerely,

David L. Wendland. Member

Dick Borgeson, Architect and Member

On Behalf of The Archimedes Group-Balcom's Cove, LLC

CITY OF MUSKEGON

RESOLUTION #2002-99(i)

RESOLUTION FOR AN AMENDMENT TO THE PLANNED UNIT DEVELOPMENT FOR BALCOM'S COVE

WHEREAS, the Balcom's Cove project has proceeded under construction with several variations from the previously approved site plan for the project; and

WHEREAS, a petition for a planned unit development amendment was received from the Archimedes Group, LLC; 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 has recommended approval of a portion of the of the Planned Unit Development amendment with conditions as follows:

1. A revised site plan addressing all mitigating factors decided upon by the Planning and City Commissions will need to be submitted and approved.
2. A performance guarantee for all landscaping, screening and any other requirements will need to be provided.
3. The wall along the eastern edge of the property must be completely taken down to comply with the originally approved site plan.
4. The carports are to be left as constructed. As much heavy landscaping (with ivy on any existing portions of 'wall') as possible be put in place to block the visual effect of the 'walls'. Heavy landscaping needs to be provided in the additional space along the eastern property line as well as in the (reduced) front setback area along Lakeshore Dr.
5. The developer may wish to offer additional offsite improvements to help mitigate the fact that these 'changes' were made without City approval.
6. As much landscaping as can practically be supported and maintained in the reduced setback area along Lakeshore Dr. must be provided. Taller canopy trees could be provided which would not create hazards to clear vision at any driveways. Any remaining walls must be landscaped with ivy as well.
7. Heavy landscaping must be provided along the eastern property line where there is more space than along Lakeshore Dr.
8. As previously agreed, the developers must replace the trees, which were removed along Lakeshore Dr., with a comparable amount of trees pursuant to the ordinance.
9. The 'unofficial' drive from the easterly row of carports into the launch ramp's drive entrance onto Lakeshore Dr. must be closed and blocked with landscaping provided in the remaining areas.

10. Screening along the western property line between the development and the existing home was required at the time of the original PUD approval and was shown on the approved site plan. This screening still must be provided.

11. This resolution is subject to verification that the present location of the carport walls constitutes no violation of the Michigan Department of Transportation standards for clear vision safety. If it is determined that a violation exists, this issue will be brought back before the Planning and City Commissions for further review.

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

Adopted this 27th day of August, 2002

Ayes: Spataro, Warmington, Buie, Gawron, Larson, Schweifler, Shepherd

Nays: None

Absent: None

By: _____
Steve Warmington, Mayor

Attest: _____
Gail A. Kundinger, Clerk

CERTIFICATE (Balcom's Cove PUD Amendment)

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 27th day of August, 2002, 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: August 27, 2002.

Gail Kundinger

Gail Kundinger, CMC/AAE
Clerk, City of Muskegon