

CITY OF MUSKEGON

CITY COMMISSION MEETING

JUNE 24, 2008

CITY COMMISSION CHAMBERS @ 5:30 P.M.

AGENDA

- ❑ **CALL TO ORDER:**
- ❑ **PRAYER:**
- ❑ **PLEDGE OF ALLEGIANCE:**
- ❑ **ROLL CALL:**
- ❑ **HONORS AND AWARDS:**
- ❑ **INTRODUCTIONS/PRESENTATION:**
- ❑ **CONSENT AGENDA:**
 - A. Approval of Minutes. CITY CLERK
 - B. Fireworks Display Permit for Muskegon Summer Celebration and Muskegon Bike Time. CITY CLERK
 - C. Rezoning Request for Property Located at 552 W. Southern Avenue. PLANNING & ECONOMIC DEVELOPMENT
 - D. Vacation of a Portion of Emerald Street. PLANNING & ECONOMIC DEVELOPMENT
 - E. Smith Ryerson Community Center Contract. PLANNING & ECONOMIC DEVELOPMENT
- ❑ **PUBLIC HEARINGS:**
 - A. Amendments to Brownfield Plan – Parkland Muskegon, LLC. PLANNING & ECONOMIC DEVELOPMENT
 - B. Request for an Industrial Facilities Exemption Certificate – Sappi Fine Paper. PLANNING & ECONOMIC DEVELOPMENT
- ❑ **COMMUNICATIONS:**
- ❑ **CITY MANAGER'S REPORT:**
- ❑ **UNFINISHED BUSINESS:**
- ❑ **NEW BUSINESS:**

A. Concurrence with the Housing Board of Appeals Notice and Order to Demolish the following: PUBLIC SAFETY

2241 Sherin Street

1174 Jefferson Street – Area 10

553 Allen Avenue – Area 11

724 Oak Avenue (House and Garage)

922 S. Getty Street

**B. Findings of Fact and Recommendation Re: Spotlight Lounge. CITY
MANAGER**

❑ ANY OTHER BUSINESS:

❑ PUBLIC PARTICIPATION:

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

❑ CLOSED SESSION: To Discuss Pending Litigation.

❑ 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 ANN MARIE BECKER, CITY CLERK, 933 TERRACE STREET, MUSKEGON, MI 49440 OR BY CALLING (231) 724-6705 OR TDD: (231) 724-4172.

Date: June 24, 2008
To: Honorable Mayor and City Commissioners
From: Ann Marie Becker, City Clerk
RE: Approval of Minutes

SUMMARY OF REQUEST: To approve minutes for the June 9th Commission Worksession, and the June 10th Regular Commission Meeting.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

CITY OF MUSKEGON

CITY COMMISSION MEETING

JUNE 24, 2008

CITY COMMISSION CHAMBERS @ 5:30 P.M.

MINUTES

The Regular Commission Meeting of the City of Muskegon was held at City Hall, 933 Terrace Street, Muskegon, Michigan at 5:30 p.m., Tuesday, June 24, 2008.

Mayor Warmington opened the meeting with a prayer from Pastor Jim Thiele from the Central Assembly of God after which the Commission and public recited the Pledge of Allegiance to the Flag.

ROLL CALL FOR THE REGULAR COMMISSION MEETING:

Present: Mayor Stephen Warmington, Vice Mayor Stephen Gawron, Commissioners Clara Shepherd, Lawrence Spataro, Sue Wierengo, Steve Wisneski, and Chris Carter, City Manager Bryon Mazade, City Attorney John Schrier, and City Clerk Ann Marie Becker.

2008-57 CONSENT AGENDA:

A. Approval of Minutes. CITY CLERK

SUMMARY OF REQUEST: To approve minutes for the June 9th Commission Worksession, and the June 10th Regular Commission Meeting.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

B. Fireworks Display Permit for Muskegon Summer Celebration and Muskegon Bike Time. CITY CLERK

SUMMARY OF REQUEST: West Michigan Burners is requesting approval of a fireworks display permit for July 5th during the Muskegon Summer Celebration and July 18th during Muskegon Bike Time. The insurance coverage has been approved, and Fire Marshall Metcalf has reviewed the request and recommends approval contingent on inspection of the fireworks.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval contingent on inspection of the fireworks.

C. Rezoning Request for Property Located at 552 W. Southern Avenue.
PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Request to rezone the property located at 552 W. Southern Avenue, from B-2, Convenience and Comparison Business District to I-1, Light Industrial District.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Staff recommends approval of the request.

COMMITTEE RECOMMENDATION: The Planning Commission recommended approval of the request at their June 12th meeting. The vote was unanimous, with B. Mazade, T. Harryman and B. Smith absent.

E. Smith Ryerson Community Center Contract. PLANNING & ECONOMIC
DEVELOPMENT

SUMMARY OF REQUEST: The Muskegon Recreational Center (MRC), Inc. has been managing the Smith Ryerson Community Center since July 2006. The management has been successful, with many area youth (as well as others in the community) being served. As the contract between MRC and the City concludes July 1, 2008, it is recommended that a new two-year contract be approved. The new contract also includes use of the facility by the Muskegon Summer Adventure Program.

FINANCIAL IMPACT: The contract specifies that the Manager will receive its management fee through the revenue generated at the Center.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the contract and authorize the Director of Community & Economic Development and the City Clerk to sign.

Motion by Commissioner Carter, second by Commissioner Wisneski to approve the consent agenda as read minus item D.

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

Nays: None

MOTION PASSES

2008-58 ITEM REMOVED FROM THE CONSENT AGENDA:

D. Vacation of a Portion of Emerald Street. PLANNING & ECONOMIC
DEVELOPMENT

SUMMARY OF REQUEST: Request for the vacation of Emerald Street, between

Allen and Apple Avenues.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Staff recommends vacation of the portion of Emerald Street between Allen and Apple Avenues, with the condition that all utility easement rights be retained.

COMMITTEE RECOMMENDATION: The Planning Commission unanimously recommended the vacation, with B. Mazade, T. Harryman, and B. Smith absent.

Motion by Commissioner Carter, second by Commissioner Wisneski to approve the vacation of Emerald Street between Allen and Apple Avenues.

ROLL VOTE: Ayes: Warmington, Wierengo, Wisneski, Carter, Gawron, and Shepherd

Nays: None

Abstain: Spataro

MOTION PASSES

2008-59 PUBLIC HEARINGS:

A. Amendments to Brownfield Plan – Parkland Muskegon, LLC. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: To hold a public hearing and approve the resolution approving and adopting amendments for the Brownfield Plan. The amendments are for the inclusion of property owned by Parkland Muskegon, LLC in the Brownfield Plan.

FINANCIAL IMPACT: There is no direct financial impact in approving the Brownfield Plan amendments, although the redevelopment of the property into a residential/commercial project will add to the tax base of the City of Muskegon.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To hold the public hearing and approve the resolution and authorize the Mayor and Clerk to sign the resolution.

COMMITTEE RECOMMENDATION: The Muskegon City Commission set the public hearing for June 24, 2008 at their June 10, 2008 meeting. Since that time, a notice of the public hearing has been sent to taxing jurisdictions and it has been published twice in the Muskegon Chronicle. In addition, the Brownfield Redevelopment Authority approved the Plan amendment on June 5, 2008 and further recommends that the Muskegon City Commission approve the Plan amendment.

The public hearing opened to hear and consider any comments from the

public. Comments were heard from the developer John Rooks, Parkland Properties of Michigan, 940 Monroe, Suite 155, Grand Rapids.

Motion by Commissioner Carter, second by Vice Mayor Gawron to close the public hearing and approve the amendments to the Brownfield Plan for Parkland Muskegon, LLC.

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

Nays: None

MOTION PASSES

B. Request for an Industrial Facilities Exemption Certificate – Sappi Fine Paper. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Pursuant to Public Act 198 of 1974, as amended, Sappi Fine Paper, 2400 Lakeshore Dr., has requested the issuance of an Industrial Facilities Tax Exemption Certificate. The company will be making \$3,822,200 in personal property improvements. This qualifies them for a tax abatement of seven years for personal property.

FINANCIAL IMPACT: The City will capture certain additional property taxes generated by the expansion.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the resolution granting an Industrial Facilities Exemption Certificate for a term of seven years for personal property.

The public hearing opened to hear and consider any comments from the public. No comments were made.

Motion by Commissioner Carter, second by Commissioner Wisneski to close the public hearing and approve the Industrial Facilities Exemption Certificate for Sappi Fine Paper.

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

Nays: None

MOTION PASSES

2008-60 NEW BUSINESS:

A. Concurrence with the Housing Board of Appeals Notice and Order to Demolish the following: PUBLIC SAFETY

2241 Sherin Street

1174 Jefferson Street – Area 10

553 Allen Avenue – Area 11

724 Oak Avenue (House and Garage)

922 S. Getty Street

SUMMARY OF REQUEST: This is to request that the City Commission concur with the findings of the Housing Board of Appeals that the structures are unsafe, substandard, a public nuisance and that they be demolished within 30 days. It is further requested that administration be directed to obtain bids for the demolition of the structures and that the Mayor and City Clerk be authorized and directed to execute a contract for demolition with the lowest responsible bidder.

FINANCIAL IMPACT: CDBG Funds for 553 Allen, 724 Oak, 1174 Jefferson, and 922 S. Getty. General Funds for 2241 Sherin.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To concur with the Housing Board of Appeals decision to demolish.

Motion by Commissioner Spataro, second by Commissioner Shepherd to concur with the Housing Board of Appeals notice and order to demolish 553 Allen Avenue and 724 Oak Avenue – house and garage.

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

Nays: None

MOTION PASSES

Motion by Commissioner Spataro, second by Vice Mayor Gawron to concur with the Housing Board of Appeals notice and order to demolish 2241 Sherin Street.

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

Nays: None

MOTION PASSES

Motion by Commissioner Spataro, second by Vice Mayor Gawron to concur with the Housing Board of Appeals notice and order to demolish 1174 Jefferson.

Motion by Commissioner Carter, second by Commissioner Wisneski to table 1174 Jefferson Street to the 2nd meeting in July.

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

Nays: None

MOTION TO TABLE PASSES

Motion by Commissioner Spataro, second by Vice Mayor Gawron to concur with

the Housing Board of Appeals notice and order to demolish 922 S. Getty Street.

Motion by Commissioner Spataro, second by Commissioner Shepherd to refer the item back to staff.

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

Nays: None

MOTION TO REFER BACK TO STAFF PASSES

B. Findings of Fact and Recommendation Re: Spotlight Lounge. CITY MANAGER

SUMMARY OF REQUEST: To consider the Findings of Fact and Recommendation for the Spotlight, submitted by Hearing Officer Robert O. Chessman, for potential revocation of the liquor license for Spotlight.

Motion by Commissioner Spataro, second by Vice Mayor Gawron to recommend to the Michigan Liquor Control Commission that the liquor license be revoked.

ROLL VOTE: Ayes: Gawron, Spataro, Warmington, and Wisneski

Nays: Carter, Shepherd, and Wierengo

MOTION PASSES

2008-61 CLOSED SESSION: To Discuss Pending Litigation.

Motion by Commissioner Carter, second by Commissioner Wierengo to go into closed session to discuss pending litigation.

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

Nays: None

MOTION PASSES

Motion by Commissioner Carter, second by Commissioner Shepherd to come out of closed session.

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

Nays: None

MOTION PASSES

Motion by Commissioner Spataro, second by Vice Mayor Gawron to authorize the Attorney to execute the consent judgment as discussed.

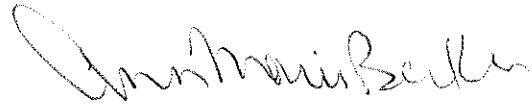
ROLL VOTE: Ayes: Gawron, Shepherd, Spataro, Warmington, Wierengo, and Carter

Nays: Wisneski

MOTION PASSES

ADJOURNMENT: The City Commission Meeting adjourned at 7:02 p.m.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Ann Marie Becker".

Ann Marie Becker, MMC
City Clerk

Date: June 24, 2008
To: Honorable Mayor and City Commissioners
From: Ann Marie Becker, City Clerk
RE: Fireworks Display Permit for Muskegon Summer Celebration and Muskegon Bike Time

SUMMARY OF REQUEST: West Michigan Burners is requesting approval of a fireworks display permit for July 5th during the Muskegon Summer Celebration and July 18th during Muskegon Bike Time. Fire Marshall Metcalf has reviewed the request and recommends approval contingent on inspection of the fireworks.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval contingent on inspection of the fireworks and approval of the insurance.

APPLICATION

FOR FIREWORKS DISPLAY PERMIT

Act 358, P.A. 1968

DATE OF APPLICATION

6-17-08

1. TYPE OF DISPLAY:



Public Display



Agricultural Pest Control

2. APPLICANT

NAME OF PERSON

Josh Colquitt

ADDRESS

17890 Cove St Apt 9

AGE: Must be 21 or over

25

IF A CORPORATION: Name of President

W. Mich Burners

ADDRESS

3. PYROTECHNIC OPERATOR

NAME

Bruce Boonstra

ADDRESS

2276 E. Riley-Thompson

AGE: Must be 21 or over

46

EXPERIENCE:

NUMBER OF YEARS

12

NUMBER OF DISPLAYS

25

WHERE

All over U.S. / PGV conventions

NAMES OF ASSISTANTS:

NAME

Tim Harwood

ADDRESS

4342 Janet

AGE

36

NAME

Jeff Deyoung

ADDRESS

4342 Janet

AGE

22

4. NON-RESIDENT APPLICANT

NAME

ADDRESS

Name of Michigan Attorney or Resident Agent

ADDRESS

TELEPHONE NUMBER

5. EXACT LOCATION OF PROPOSED DISPLAY

Heritage Landing
DATE July 5thLagoon
TIME After Sunset 10:20

6. NUMBER AND KINDS OF FIREWORKS TO BE DISPLAYED

- Fountains / Gerbs
- Crenoras
- Flash Pots

MANNER & PLACE OF STORAGE PRIOR TO DISPLAY

Day of Show

(Subject to Approval of Local Fire Authorities)

7. FINANCIAL RESPONSIBILITY

A. AMOUNT OF BOND OR INSURANCE

(to be set by municipality)

\$

B. BONDING CORPORATION OF INSURANCE COMPANY: NAME

ADDRESS

PERMIT

FOR FIREWORKS DISPLAY

Act 358, P.A. 1968

This permit is not transferable. Possession of this permit by the herein named person will authorize him to possess, transport and display fireworks in the amounts, for the purpose, and at the place listed below only.

TYPE OF DISPLAY: ☒ PUBLIC DISPLAY ☐ AGRICULTURAL PEST CONTROL

ISSUED TO: W. Michigan Burners

NAME Josh Colquit

ADDRESS 17890 Cove Street AGE

REPRESENTING Muskegon Summer Celebration

NAME OF ORGANIZATION, GROUP, FIRM OR CORPORATION

ADDRESS

NUMBER & TYPES OF FIREWORKS:

Fountains/Gerbs

Cremoras

Flash Pots

DISPLAY: Heritage Landing - Lagoon

EXACT LOCATION City of Muskegon July 5, 2008 10:20 p.m.
After Concert

CITY, VILLAGE, TOWNSHIP DATE TIME

BOND OR INSURANCE FILED: ☒ YES ☐ NO AMOUNT \$1,000,000.

ISSUED BY:

Issued by action of the MUSKEGON CITY COMMISSION

of the CITY of MUSKEGON
(city, village, township) (name of city, village, township)

on the 24th day of June, 2008

Stephen J. Warmington
Mayor

(signature & position of council, commission or board representative)

APPLICATION

FOR FIREWORKS DISPLAY PERMIT

Act 358, P.A. 1968

DATE OF APPLICATION

6-17-08

1. TYPE OF DISPLAY:



Public Display



Agricultural Pest Control

2. APPLICANT

NAME OF PERSON

Josh Colquh

ADDRESS

17890 Cove St Apt 8

AGE: Must be 21 or over

25

IF A CORPORATION: Name of President

W. Mich Burners

ADDRESS

3. PYROTECHNIC OPERATOR

NAME

Bruce Boonstra

ADDRESS

2276 E. Riley Thomsen

AGE: Must be 21 or over

46

EXPERIENCE:

NUMBER OF YEARS

12

NUMBER OF DISPLAYS

25

WHERE

All over U.S. / PGF countries

NAMES OF ASSISTANTS:

NAME

Jim Hancock

ADDRESS

4342 Janet

AGE

36

NAME

Jeff DeYoung

ADDRESS

4342 Janet

AGE

22

4. NON-RESIDENT APPLICANT

NAME

ADDRESS

Name of Michigan Attorney or Resident Agent

ADDRESS

TELEPHONE NUMBER

5. EXACT LOCATION OF PROPOSED DISPLAY

Western Ave between 1st + 2nd

DATE

July 18th, 2008

TIME

Dark - 10:30

6. NUMBER AND KINDS OF FIREWORKS TO BE DISPLAYED

- Fountains / Gerbs
- Cremoras
- Flash Pots

MANNER & PLACE OF STORAGE PRIOR TO DISPLAY

Day of Show

(Subject to Approval of Local Fire Authorities)

7. FINANCIAL RESPONSIBILITY

A. AMOUNT OF BOND OR INSURANCE

(to be set by municipality)

\$

B. BONDING CORPORATION OF INSURANCE COMPANY: NAME

ADDRESS

This permit is not transferable. Possession of this permit by the herein named person will authorize him to possess, transport and display fireworks in the amounts, for the purpose, and at the place listed below only.

(signature & position of council, commission or board representative)

ACORD CERTIFICATE OF LIABILITY INSURANCEOF ID TIT
WMBUR-1DATE (MM/DD/YYYY)
06/18/08

PRODUCER The White Agency - Twin Lake 5948 Holton Road Twin Lake MI 49457 Phone: 231-828-5566 Fax: 231-828-6339		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.	
INSURED WM BURNERZ JOHN COLOUITT 17980 COVE SPRING LAKE MI 49456		INSURERS AFFORDING COVERAGE	NAIC #
		INSURER A: Nautilus Insurance Company	
		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.

TRUCK ADD'L LTR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A X	GENERAL LIABILITY ☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO- JECT ☐ LOC	NC547472	05/12/08	05/12/09	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 1,000,000 PRODUCTS - COMP/OP AGG \$ INCLUDED
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ☐ NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	DAMAGE LIABILITY ☐ ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
	EXCESS/UMBRELLA LIABILITY ☐ OCCUR ☐ CLAIMS MADE DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER				WC STATU- TORY LIMITS \$ OTH- ER \$ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

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

ENTERTAINMENT PERFORMED ON OTHERS PREMISES - PRODUCTS
ADDITIONAL INSURED: CITY OF MUSKEGON, ALL ELECTED AND APPOINTED OFFICIALS,
ALL EMPLOYEES AND VOLUNTEERS, ALL BOARDS, COMMISSIONS, AND/OR AUTHORITIES
AND BOARD MEMBERS, INCLUDING EMPLOYEES AND VOLUNTEERS THEREOF

CERTIFICATE HOLDER

0000000
CITY OF MUSKEGON 933 TERRACE STREET MUSKEGON MI 49440

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 Lisa R Reichle
--

933 Terrace Street
Muskegon, MI 49440

OFFICE 231-724-6705
FAX 231-724-4178

CITY OF MUSKEGON CLERK'S OFFICE

FAX COVER SHEET

To: Tim McClorey or Keith Potter From: Linda

Fax: _____ Pages(including cover) 4

Phone: _____ Date: 6-19-08

Re: _____ CC: _____

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

Hi,

Please check out the insurance coverage for a fire show during Summer Celebration and Bike Time. One will be at a county park (on the barge in the lagoon) and the other will be on Western Avenue.

Thanks,

Linda

(231)724-6915

*per Tim McClorey
insurance is OK.
6-19-2008*

BRUCE L. BOONSTRA 2-25-62 (7/89)
WENDY S. BOONSTRA 4-23-65
B523-098-497-146 PH. 766-2341
2276 E. RILEY-THOMPSON RD.
MUSKEGON, MI 49444

4772

74-8331/2724

6-17-08

DATE

PAY TO THE
ORDER OF

City of Muskegon
Two hundred and

\$200.00

DOLLARS



Security
Features
Details on
Back

Community
Schools credit union

Muskegon, MI 49444
www.cscul.org

FOR

App. Pmt. WMBus. Bus. Bond

MT

⑆272483316⑆ 0000874600⑈ 4772

Commission Meeting Date: June 24, 2008

Date: June 13, 2008
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development *CB*
RE: Rezoning request for property located at 552 W. Southern Ave.

SUMMARY OF REQUEST:

Request to rezone the property located at 552 W. Southern Avenue, from B-2, Convenience and Comparison Business District to I-1, Light Industrial District.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Staff recommends approval of the request.

COMMITTEE RECOMMENDATION:

The Planning Commission recommended approval of the request at their 6/12 meeting. The vote was unanimous, with B. Mazade, T. Harryman and B. Smith absent.

CITY OF MUSKEGON

MUSKEGON COUNTY, MICHIGAN

ORDINANCE NO. 2244

An ordinance to amend the zoning map of the City to provide for a zone change for certain properties from B-2 "Convenience and Comparison Business" district to I-1 "Light Industrial" district.

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

The zoning map of the City of Muskegon is hereby amended to change the zoning of the following described property from B-2 "Convenience and Comparison Business" district to I-1 "Light Industrial" district:

CITY OF MUSKEGON REVISED PLAT OF 1903 LOTS 8, 9 & 13 BLK 416

This ordinance adopted:

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

Nayes: None

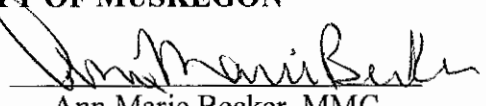
Adoption Date: June 24, 2008

Effective Date: July 14, 2008

First Reading: June 24, 2008

Second Reading: N/A

CITY OF MUSKEGON

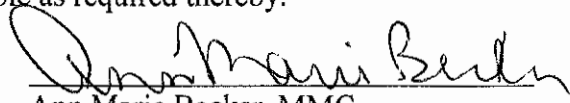
By: 

Ann Marie Becker, MMC
City Clerk

CERTIFICATE (Rezoning of 552 W. Southern B-2 to I-1)

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 24th day of June, 2008, 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: June 24, 2008.


Ann Marie Becker, MMC
Clerk, City of Muskegon

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

CITY OF MUSKEGON
NOTICE OF ADOPTION

Please take notice that on June 24, 2008, the City Commission of the City of Muskegon adopted an ordinance amending the zoning map to provide for the change of zoning of the following property from to B-2 "Convenience and Comparison Business" to I-1 Light Industrial":

CITY OF MUSKEGON REVISED PLAT OF 1903 LOTS 8, 9 & 13 BLK 416

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: July 2, 2008

CITY OF MUSKEGON

By _____
Ann Marie Becker, MMC
City Clerk

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

Account No. 101-80400-5354

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

June 12, 2008

Hearing; Case 2008-15: Request to rezone the property at 552 W. Southern Avenue from B-2, Convenience and Comparison Business District, to I-1, Light Industrial District, by Jim Perreault, Spec Abrasives.

Applicant: Jim Perreault, Spec Abrasives

Property Address/Location: 552 W. Southern Avenue

Request: Rezoning from B-2, Convenience and Comparison Business to I-1, Light Industrial

Present Land Use: Warehouse

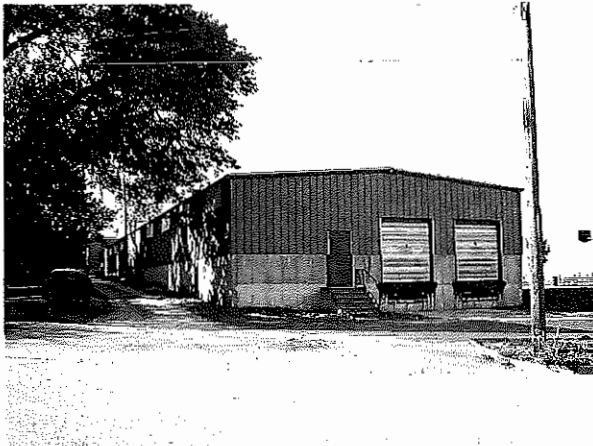
Zoning: B-2, Convenience and Comparison Business

STAFF OBSERVATIONS

1. The site is a large parcel that presently is owned by Brad Lange, who has used most of the building for storage since it was built. The front portion is being used by Schmidt Roofing Company.
2. The applicant is requesting a rezoning from a B-2, Convenience and Comparison Business zone, to I-1, General Industrial zone.
3. The applicant wishes to purchase the property and expand a portion of his business from across the street at 543 W. Southern. The company currently performs part refinishing, as well as building and repair of machinery. They would like to move their machinery business to the subject property. They currently employ 16 people, up from 4 employees when they bought the company.
4. The property currently is zoned I-1, and is long and narrow in configuration with no possible way to add additional floor space to their current building.
5. The property to the north and east is zoned R-1, One Family Residential. The property to the west is zoned OSR, Open Space Recreation, and is the site of Clara Shepherd Park. The property to the south is zoned I-1.
6. The Future Land Use Map shows this area as "Industrial". The industrial uses allowed in this zone "meet a higher standard of restrictions than those imposed in the I-2 zoning district", with heavier uses only allowed through special land use permit, or in an I-2, General Industrial zones. For example, casting of metal parts can only be done as an incidental use to the allowed machine shop or metal finishing process.
7. While staff has some concerns regarding an industrial use so close to residential properties, the applicant would also be purchasing the residential lots facing Eighth Street

and on the corner of Eighth and Southern Avenue on the east side. These lots would remain zoned "R", One Family Residential. The loading docks for the building are located on the Southern Avenue side of the building and facing W. Grand Avenue, across from Nelson School's parking lot, closest to Clara Shepherd Park, so truck traffic should not disturb the neighborhood.

8. Kathy Hulbert, 465 W. Southern Avenue called to say she was in favor of the request.



Rear of property as seen from Grand Avenue.



Front of the building as seen from Southern.



STAFF RECOMMENDATION

Staff recommends approval of the request to rezone the subject property from B-2, Convenience and Comparison Business district to I-1, Light Industrial district, because the request conforms to the goals and recommendation of the City's 1997 Master Plan and Future Land Use Plan and zoning district intent.

DELIBERATION

Criteria-based questions typically asked during a rezoning include:

1. **What**, if any, identifiable **conditions** related to the petition **have changed which justify** the petitioned **change in zoning**.
2. **What** are the **precedents and the possible effects** of precedent that might result from the approval **or denial** of the petition?
3. What is the **impact** of the amendment on the ability of the city to provide **adequate public services and facilities and/or programs** that might reasonably be required in the future if the petition is approved?

4. Does the petitioned zoning change adversely affect the environmental conditions or value of the surrounding property?
5. Does the petitioned zoning change generally **comply with the adopted Future Land Use Plan of the City**?
6. Are there any **significant negative environmental impacts** which would reasonably occur if the petitioned zoning change and resulting allowed structures were built such as:
 - a. **Surface water** drainage problems
 - b. **Waste water** disposal problems
 - c. Adverse effect on surface or subsurface **water quality**
 - d. The **loss of valuable natural resources** such as **forest, wetland, historic sites, or wildlife areas**.
7. Is the proposed zoning change a “**Spot Zone**”?
 - a. Is the parcel **small in size relative to its surroundings**?
 - b. Would the zoning change allow uses that are **inconsistent with those allowed in the vicinity**?
 - c. Would the zoning change confer a **benefit to the property owner** that is **not generally available to other properties** in the area?
 - d. A spot zone is **appropriate if it complies with the Master Plan**.

DETERMINATION

The following motion is offered for consideration:

I move that the request to rezone the property located at 552 W. Southern Avenue from B-2, Convenience and Comparison Business district to I-1, Light Industrial district, as described in the public notice, be recommended for (**approval/denial**) to the City Commission pursuant to the City of Muskegon Zoning Ordinance, and the determination of (**compliance/lack of compliance**) with the intent of the City Master Land Use and zoning district intent.

Commission Meeting Date: June 24, 2008

Date: June 16, 2008

To: Honorable Mayor & City Commission

From: Planning & Economic Development Department *CBC*

RE: Smith Ryerson Community Center Contract

SUMMARY OF REQUEST: The Muskegon Recreational Center (MRC), Inc. has been managing the Smith Ryerson Community Center since July 2006. The management has been successful, with many area youth (as well as others in the community) being served. As the Contract between MRC and the City concludes July 1, 2008, it is recommended that a new two-year contract be approved. The new Contract also includes use of the facility by the Muskegon Summer Adventure Program.

FINANCIAL IMPACT: The Contract specifies that the Manager will receive its management fee through the revenue generated at the Center.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the attached Contract and authorize the Director of Community & Economic Development and the City Clerk signatures.

COMMITTEE RECOMMENDATION: None.

**CITY OF MUSKEGON
OPERATIONS MANAGEMENT CONTRACT
SMITH RYERSON COMMUNITY CENTER**

This is a Contract, effective July 1, 2008, for the management of the entire operations, management and promotion of the Smith Ryerson Community Center ("Center"), made between the City of Muskegon, a Michigan municipal corporation, of 933 Terrace Street, Muskegon, Michigan 49440 ("City") and Muskegon Recreational Center, Inc., a Michigan non-profit corporation, of 4564 Manchester Lane, Twin Lake, Michigan, 49457 ("Manager").

Background

The City is the owner of the Center, located at 500 Wood Street, Muskegon, Michigan, 49442. The Manager has provided the City with a proposal for its services to manage the Center. In the event of any conflict, this Contract prevails over any terms in the proposal. The proposal is attached as **Exhibit A** and is incorporated except as limited by this Contract.

Therefore, the parties agree as follows:

1. **Management; Operation; Maintenance; Improvements.** The Manager agrees to perform all acts and assume all responsibilities for the management, operation, maintenance and improvements of the Center. The Manager's responsibilities include, but are not limited to, all operation of the building and its systems, complete maintenance thereof, repairs, cleaning, snow removal, and improvements to the building and the premises necessary for the efficient, timely and full operation thereof. The Manager's responsibility shall further include the retaining and hiring of all personnel or, if approved by the City, independent contractors, for the purpose of carrying out all the responsibilities and functions of the Manager.
2. **Expenses.** The Manager shall pay on a timely basis, without incurring any cost of default or penalties, all expenses, payroll, payroll taxes, benefits, taxes, if any, and costs of any kind necessary or related to the complete performance of its responsibilities as Manager. Excepted from these costs shall be only utility expenses (as defined herein), which the City agrees herein to pay directly.
3. **Manager; Agency Status.** The Manager shall carry on the responsibilities set forth above, and all incidental or related performances, functions or acts, and shall pay all the said expenses and costs, all on behalf of the City.
4. **Level of Performance; Standards; Prices.** The Manager's performance and assumption of the responsibilities undertaken by this Contract shall be carried out and performed to the satisfaction of the City, in its sole judgment and discretion. The Manager shall charge reasonable prices and fees for all paid events and from all paid users, concessionaires and others, which shall be reviewed and adjusted by the City at its option.
5. **Participants** It is the intent of the City that the Center be used for programs involving the youth of the City of Muskegon. The Manager shall keep a log of all participants, their age group and their residence and submit that report on a quarterly basis to the City's Leisure Services Supervisor.
6. **Muskegon Summer Adventure Program.** The participants in the City's Summer Adventure Program, located at Smith Ryerson Park, will be allowed to use the facility Monday- Friday, June 16- August 1 (Fridays will be until Noon, only). City staff will coordinate with the Manager to ensure the building is maintained and in order for weekend rentals.

7. Quarterly Reports. The Manager shall provide City with quarterly reports detailing all income and expenditures. Manager shall also provide the City with a copy of the participant log on a quarterly basis.

8. Management Fee. For its management and maintenance services, the Manager shall be entitled to keep any and all revenue generated at the Center as a management fee. The said management fee shall be the sole compensation to the Manager, and Manager shall pay all the expenses contemplated by this Contract without further payments from the City.

9. Records; Audit of Financial Information. The Manager shall afford the City at reasonable times every opportunity to examine its financial records, books, bank accounts, evidence of receipts and expenses, invoices, any computer records, and any other information deemed appropriate by the City in order to verify the receipts, uses and payment of funds by the Manager under this Contract. For said purpose the Manager shall provide the City with all necessary means to access any computer records, programs, systems, databases or other information. Copies of any information required by the City, whether on paper or by computer media, as requested by the City, shall be afforded the City immediately upon its request.

10. Possession; Termination. The parties agree that possession during the term of this management contract remains with the City. The Manager shall act as an agent of the City, and its presence and possession in the Center is carried on entirely on behalf of the City. This Contract shall not be construed as a lease or to give Manager any property right whatsoever in the Center for any purpose. In the event of lawful termination either before the term of this Contract or at the end thereof, Manager shall vacate the premises without any notice or necessity of judicial proceedings.

11. Property; Termination. All portable property purchased by the Manager or donated to the Manager shall be retained by the Manager when this Agreement terminates, with the exception that any property left on the premises fourteen (14) days after termination shall be deemed to be the property of the City. All property owned by the City and used by the Manager shall remain the property of the City.

12. Condition of the Premises and Property. On termination the Manager shall deliver all the property and the premises to the Manager in good and useable condition, except for the effects of ordinary wear and tear. Manager shall be immediately responsible for any repairs necessary to restore any property, whether real or personal, fixtures or otherwise, to the said condition.

13. Term. The term of this Contract shall be two (2) years from the effective date, provided that either party may terminate this Contract without cause, effective upon 60 days written notice to the other party.

14. Insurance. The Manager shall obtain insurances required by the City in at least the coverage amounts set forth below. In all the following coverages except workers' compensation insurance, the City shall be named as additional insured or loss payee, and each policy shall carry the commitment by the company that no cancellation shall be effective against the City without thirty (30) days written notice to the City:

14.1. Comprehensive general liability insurance. The Manager shall obtain a comprehensive liability insurance policy through a company licensed to do business in Michigan and acceptable to the City, carrying limits of at least \$3,000,000, single limit.

14.2. Workers' compensation insurance. The Manager shall carry workers' compensation insurance in the amounts required by state law.

14.3. Other insurances. Any insurances which are available and which are especially appropriate for the operation of the Center, such as coverages involving professional or amateur boxing and the like, covering liability and the cost of injuries to persons and property shall be obtained by the Manager, with liability coverages carrying at least a single limit of \$1,000,000.

15. **Insurance Notices.** Cancellation Notice: Workers' Compensation Insurance and Commercial General Liability Insurance, as described above, shall include an endorsement stating the following: "It is understood and agreed that, in order to be effective, thirty (30) days' Advance Written Notice of Cancellation, Non-Renewal, Reduction and/or Material Change shall be sent to:

City of Muskegon
Attn: City Manager
933 Terrace Street
P.O. Box 536
Muskegon, MI 49443-0536

16. **Assignment.** The Manager may not assign this Contract. Any attempted assignment or change in entity of the Manager shall constitute a violation of this Contract and cause immediate termination in the City's discretion.

17. **Hold Harmless and Indemnity.** To the fullest extent permitted by law, Manager agrees to defend, pay in behalf of, indemnify, and hold harmless the City, its elected and appointed officials, employees and volunteers and others working in behalf of it against any and all claims, demands, suits, or loss, including all costs connected therewith, and for any damages which may be asserted, claimed or recovered against or from the City, its elected and appointed officials, employees, volunteers or others working in behalf of it, by reason of personal injury, including bodily injury and death and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with this Contract.

18. **Duties of the City.**

18.1 Paint. The City shall provide Manager with any paint necessary to maintain the Center.

18.2 Lawn Mowing; Supplies. The City shall provide the Center with lawn mowing, custodial supplies, and trash service.

18.3 Utilities. Interruption of utility service shall not result in any damages or claim against the City. Manager covenants that it will not unnecessarily use the gas, utility, and water utilities at the Center. If City determines, in its sole discretion, that Manager is using the utilities in a wasteful manner, City shall have the right to charge the Manager for the excess utility costs.

19. **General Provisions.**

19.1 Independent Contractor. The Manager is an independent contractor and not an employee of the City. Manager is responsible for all it's own personnel and all

other expenses and costs as set forth in this Contract and shall not have recourse to the City for any claims involving the said expenses or costs.

19.2 Corporate Status. Manager warrants that it is a Michigan non-profit corporation in good standing and is authorized to perform this Contract.

19.3 Equal Employment Opportunity; Discrimination. The Manager shall not discriminate unlawfully against any person in violation of any law or rule of the City, the County, the State of Michigan or the federal government, in employment, services or any other respect. The Manager shall comply in each and every way with the City of Muskegon's affirmative action plans or policies, and shall never discriminate against any person based on race or any other protected status under the laws of the State or the United States.

20. **Defaults.** Violation of any of the provisions of this Contract by the Manager, and failure to remedy or cure such violation within thirty (30) days after written notice of such violation from the City, shall constitute default by the Manager and constitute cause for immediate termination of this Contract:

21. **Non-Waiver.** Failure to enforce any remedy for a breach or a violation of this Contract shall not constitute waiver of subsequent breaches or violations.

22. **Remedies of the Manager.** In the event the City breaches this Contract in any way, or the Manager determines that a breach or failure to observe any covenant or condition by the City has occurred, the Manager's sole remedy shall be termination of this Contract. The Manager shall not be entitled to any damages for breach of contract, or to any injunctive relief to enforce this Contract. In the event there are sums legally due to the Manager at the time of such termination they shall be paid forthwith, but no consequential damage or damages for breach shall be awarded or available to the Manager.

23. **Liens.** The Manager shall be responsible for protecting the Center from any and all liens, mortgages, security interests or claims for any interest in any property.

24. **Counterparts.** This Contract may be executed in counterparts, and each set of duly delivered identical counterparts that includes all signatories shall be deemed to be one original document.

25. **Governing Law.** This Contract shall be construed and enforced in accordance with the laws of the State of Michigan applicable to contracts made and to be performed within the State of Michigan.

26. **No Third Party Beneficiary.** This Contract shall benefit only the parties to this Contract, and not any third party.

27. **Notices.** All notices, approvals, consents and other communications required under this Contract shall be in writing and, except when receipt is required to start the running of a period of time, shall be deemed given: (i) when delivered in person; (ii) when sent by telephone facsimile or e-mail, (the sender shall also mail or send a "hard copy" following the facsimile or e-mail, however, the notice shall be effective upon the transmission of the facsimile or e-mail); (iii) one (1) day after depositing in the custody of a nationally-recognized receipted overnight delivery service with delivery fees prepaid; or, (iv) two (2) days after posting in the United States Mail, first-class. Notices shall be sent to the parties at their address stated above.

MUSKEGON RECREATIONAL CENTER, INC.

By: Matt Kolkema
Matt Kolkema, President
Dated: July 1, 2008

CITY OF MUSKEGON

By: Cathy Brubaker-Clarke
Cathy Brubaker-Clarke, Director of Community
& Economic Development

Dated: July 7, 2008

By: Ann Marie Becker
Ann Marie Becker, City Clerk

Dated: June 27, 2008

Commission Meeting Date: June 24, 2008

Date: June 13, 2008
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development *CBC*
RE: Vacation of a portion of Emerald Street

SUMMARY OF REQUEST:

Request for the vacation of Emerald Street, between Allen and Apple Avenues.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Staff recommends vacation of the portion of Emerald Street between Allen and Apple Avenues, with the condition that all utility easement rights be retained.

COMMITTEE RECOMMENDATION:

The Planning Commission unanimously recommended the vacation, with B. Mazade, T. Harryman, and B. Smith absent.

CITY OF MUSKEGON

RESOLUTION #2008-58(d)

RESOLUTION TO VACATE A PORTION OF A PUBLIC STREET

WHEREAS, a petition has been received to vacate Emerald Street, between Allen and Apple Avenues; and

WHEREAS, the Planning Commission held a public hearing on June 12, 2008 to consider the petition and subsequently recommended the vacation; and

WHEREAS, due notice had been given of said hearing as well as the June 24, 2008 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 Emerald Street, between Allen and Apple Avenues; and

BE IT FURTHER RESOLVED that the City Commission does hereby declare the said portion of street 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 24th day of June, 2008.

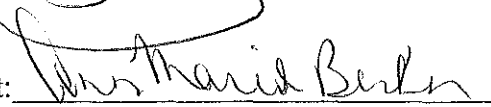
Ayes: Warmington, Wierengo, Wisneski, Carter, Gawron, and Shepherd

Nays: None

Absent: None

By: 

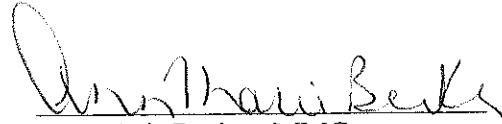
Steve Warmington, Mayor

Attest: 

Ann Marie Becker, MMC, City Clerk

CERTIFICATE (Vacation of Emerald Street between Allen and Apple Avenues)

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 June 24, 2008.

A handwritten signature in dark ink, appearing to read "Ann Marie Becker". The signature is fluid and cursive, with a large initial "A" and "M".

Ann Marie Becker, MMC
Clerk, City of Muskegon

City of Muskegon
Planning Commission
Case # 2008-14



- Selected property
- Affected properties



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

June 12, 2008

Hearing; Case 2008-14: Request to vacate the Emerald Street, between Apple and Allen Avenues, by Jack Niemiec, County of Muskegon.

BACKGROUND

Muskegon County owns and operates the John Halmond Center, which houses Community Mental Health located at 318 E. Apple Avenue. They have recently purchased a large parcel of land located to the east, across Emerald Street with the intention of expanding their facility. In order for the expansion to take place, the County requests that the portion of Emerald Street between Allen and Apple Avenues be vacated.

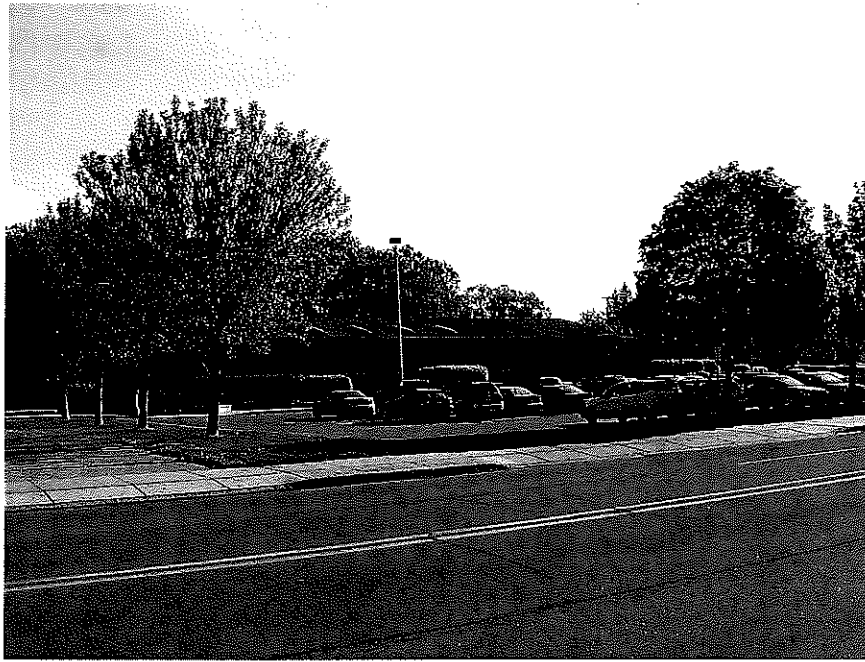
The Fire Department has no issues with this street vacation request. The Engineering Department and Department of Public Works, however, have some comments and requirements. The City has a six inch water main located in Emerald Street that would need to be abandoned or it could be used by the County as a service from either end of the property. There is also a section of sanitary sewer in Emerald that extends off Allen to the south. It should also be abandoned prior to development, or it could be used by the County. All costs associated with abandonment or re-use will be the responsibility of the County.



Emerald Street from across Apple Avenue.



Emerald Street from Allen Street.



John Halmond Center as seen from across Apple Avenue.

City of Muskegon
Planning Commission
Case # 2008-14



STAFF RECOMMENDATION

Staff recommends approval of the request.

DELIBERATION

I move that the vacation of Emerald Street from Allen Avenue to Apple Avenue, be recommended to City Commission for (approval/denial), based on (compliance/lack of compliance), with the City's 1997 Master Land Use Plan, with the following conditions:

1. All utility easements will be retained.
2. Those sections of the water main and sanitary sewer line located in Emerald Street be either abandoned or re-used, at the expense of Muskegon County.

Commission Meeting Date: June 24 2008

Date: June 17, 2008
To: Honorable Mayor & City Commission
From: Planning & Economic Development Department *CBC*
RE: Public Hearing for Amendments to Brownfield
Plan - Parkland Muskegon, LLC

SUMMARY OF REQUEST: To hold a public hearing and approve the attached resolution approving and adopting amendments for the Brownfield Plan. The amendments are for the inclusion of property owned by Parkland Muskegon, LLC in the Brownfield Plan.

FINANCIAL IMPACT: There is no direct financial impact in approving the Brownfield Plan amendments, although the redevelopment of the property into a residential/commercial project will add to the tax base of the City of Muskegon.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To hold the public hearing and approve the attached resolution and authorize the Mayor and Clerk to sign the resolution.

COMMITTEE RECOMMENDATION: The Muskegon City Commission set the public hearing for June 24, 2008 at their June 10, 2008 meeting. Since that time, a notice of the public hearing has been sent to taxing jurisdictions and it has been published twice in the Muskegon Chronicle. In addition, the Brownfield Redevelopment Authority approved the Plan amendment on June 5, 2008 and further recommends that the Muskegon City Commission approve the Plan amendment.

RESOLUTION APPROVING THE BROWNFIELD PLAN AMENDMENT

Parkland Muskegon, LLC

City of Muskegon

County of Muskegon, Michigan

Minutes of a Regular Meeting of the City Commission of the City of Muskegon, County of Muskegon, Michigan (the "City"), held in the City Commission Chambers, on the 24th day of June, 2008, at 5:30 p.m., prevailing Eastern Time.

PRESENT: Members

Gawron, Shepherd, Spataro, Warmington, Wierengo, Wisneski,
and Carter

ABSENT: Members

None

The following preamble and resolution were offered by Member Carter and supported by Member Gawron:

WHEREAS, in accordance with the provisions of Act 381, Public Acts of Michigan, 1996, as amended ("Act 381"), the City of Muskegon Brownfield Redevelopment Authority (the "Authority") has prepared and approved a Brownfield Plan Amendment to add **Parkland Muskegon, LLC**; and

WHEREAS, the Authority has forwarded the Brownfield Plan Amendment to the City Commission requesting its approval of the Brownfield Plan Amendment; and

WHEREAS, the City Commission has provided notice and a reasonable opportunity to the taxing jurisdictions levying taxes subject to capture to express their views and recommendations regarding the Brownfield Plan Amendment, as required by Act 381; and

WHEREAS, not less than 10 days has passed since the City Commission provided notice of the proposed Brownfield Plan to the taxing units; and

WHEREAS, a notice of the Public Hearing on the proposed Brownfield Plan Amendment was published twice in the Muskegon Chronicle, the first of which was not less than 10 days before the scheduled Public Hearing; and

WHEREAS, the City Commission held a public hearing on the proposed Brownfield Plan on June 24, 2008.

NOW, THEREFORE, BE IT RESOLVED, THAT:

1. Definitions. Where used in this Resolution the terms set forth below shall have the following meaning unless the context clearly requires otherwise:

"Eligible Property" means the property designated in the Brownfield Plan as the Eligible Property, as described in Act 381.

"Brownfield Plan" means the Brownfield Plan prepared by the Authority, as transmitted to the City Clerk by the Authority for approval, copies of which Brownfield Plan are on file in the office of the City Clerk.

"Taxing Jurisdiction" shall mean each unit of government levying an ad valorem property tax on the Eligible Property.

2. Public Purpose. The City Commission hereby determines that the Brownfield Plan Amendment constitutes a public purpose.

3. Best Interest of the Public. The City Commission hereby determines that it is in the best interests of the public to promote the revitalization of eligible properties in the City to proceed with the Brownfield Plan Amendment.

4. Review Considerations. As required by Act 381, the City Commission has, in reviewing the Brownfield Plan Amendment, taken into consideration whether the Brownfield Plan Amendment meets the requirements set forth in Section 13 of Act 381.

5. Approval and Adoption of Brownfield Plan Amendment. The Brownfield Plan Amendment as submitted by the Authority is hereby approved and adopted. A copy of the Brownfield Plan and all amendments thereto shall be maintained on file in the City Clerk's office.

6. No Capture of Tax Increment Revenues by Authority. The Authority shall not capture Tax Increment Revenues on the Eligible Property, as described in the Brownfield Plan Amendment.

7. Disclaimer. By adoption of this resolution and approval of the Brownfield Plan Amendment, the City assumes no obligation or liability to the owner, developer or lessor of the Eligible Property for any loss or damage that may result to such persons from the adoption of this resolution and Brownfield Plan Amendment. The City makes no guarantees or representations as to the determinations of the

appropriate state officials regarding the ability of the owner, developer or lessor to qualify for a Michigan Business Tax credit pursuant to P.A. 36 of 2007, as amended, or as to the ability of the Authority to capture tax increment revenues from the State school taxes for the Brownfield Plan.

8. Repealer. All resolutions and parts of resolutions insofar as they conflict with the provisions of this resolution be and the same hereby are rescinded.

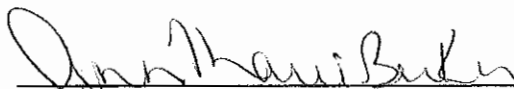
AYES: Members

Shepherd, Spataro, Warmington, Wierengo, Wisneski, Carter,
and Gawron

NAYS:

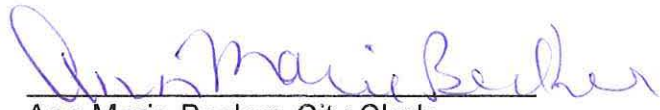
Members None

RESOLUTION DECLARED ADOPTED.


Ann Marie Becker, City Clerk


Stephen J. Warmington, Mayor

I hereby certify that the foregoing is a true and complete copy of a resolution adopted by the City Commission of the City of Muskegon, County of Muskegon, State of Michigan, at a regular meeting held on June 24, 2008, and that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, as amended, and that the minutes of said meeting were kept and will be or have been made available as required by said Act.


Ann Marie Becker, City Clerk

Commission Meeting Date: June 24, 2008

Date: June 16, 2008
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development *CBC*
RE: Public Hearing - Request for an Industrial Facilities Exemption Certificate – Sappi Fine Paper

SUMMARY OF REQUEST:

Pursuant to Public Act 198 of 1974, as amended, Sappi Fine Paper, 2400 Lakeshore Dr., has requested the issuance of an Industrial Facilities Tax Exemption Certificate. The company will be making \$3,822,200 in personal property improvements. This qualifies them for a tax abatement of seven (7) years for personal property.

FINANCIAL IMPACT:

The City will capture certain additional property taxes generated by the expansion (see attached Summary Sheet).

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Approval of the attached resolution granting an Industrial Facilities Exemption Certificate for a term of seven (7) years for personal property.

COMMITTEE RECOMMENDATION:

None

RECEIVED

MAY 30 2008

Michigan Department of Treasury
1012 (Rev. 5-07)**Application for Industrial Facilities Tax Exemption Certificate**

Issued under authority of Public Act 198 of 1974, as amended. Filing is mandatory.

CITY OF MUSKEGON
PLANNING DEPARTMENT

INSTRUCTIONS: File the original and two copies of this form and the required attachments (three complete sets) with the clerk of the local government unit. The State Tax Commission (STC) requires two complete sets (one original and one copy). One copy is retained by the clerk. If you have any questions regarding the completion of this form or would like to request an informational packet, call (517) 373-3272.

To be completed by Clerk of Local Government Unit	
Signature of Clerk <i>Wendy Beck</i>	Date received by Local Unit <i>May 30, 2008</i>
STC Use Only	
Application Number	Date Received by STC

APPLICANT INFORMATION

All boxes must be completed.

1a. Company Name (Applicant must be the occupant/operator of the facility) Sappi Fine Paper North America		1b. Standard Industrial Classification (SIC) Code - Sec. 2(10) (4 or 6 Digit Code) 2621	
1c. Facility Address (City, State, ZIP Code) (real and/or personal property location) 2400 Lakeshore Drive, Muskegon, MI 49443		1d. City/Township/Village (indicate which) City of Muskegon	1e. County Muskegon
2. Type of Approval Requested ☒ New (Sec. 2(4)) ☐ Transfer (1 copy only) ☐ Speculative Building (Sec. 3(8)) ☐ Rehabilitation (Sec. 3(1)) ☐ Research and Development (Sec. 2(9))		3a. School District where facility is located Muskegon	3b. School Code 61010
4. Amount of years requested for exemption (1-12 Years) 6 years after completion of project			

5. Per section 5, the application shall contain or be accompanied by a general description of the facility and a general description of the proposed use of the facility, the general nature and extent of the restoration, replacement, or construction to be undertaken, a descriptive list of the equipment that will be part of the facility. Attach additional page(s) if more room is needed.

The applicant is engaged in the manufacturing of high-quality coated commercial printing paper products. The new machinery and equipment will keep the mill competitive.

6a. Cost of land and building improvements (excluding cost of land) * Attach list of improvements and associated costs. * Also attach a copy of building permit if project has already begun.	Real Property Costs
6b. Cost of machinery, equipment, furniture and fixtures * Attach itemized listing with month, day and year of beginning of installation, plus total	\$3,822,200.00
6c. Total Project Costs	Personal Property Costs
* Round Costs to Nearest Dollar	\$3,822,200.00
	Total of Real & Personal Costs

7. Indicate the time schedule for start and finish of construction and equipment installation. Projects must be completed within a two year period of the effective date of the certificate unless otherwise approved by the STC.

Begin Date (M/D/Y)		End Date (M/D/Y)	
Real Property Improvements	1/30/08	8/30/08	☐ Owned ☐ Leased
Personal Property Improvements	1/30/08	8/30/08	☒ Owned ☐ Leased

8. Are State Education Taxes reduced or abated by the Michigan Economic Development Corporation (MEDC)? If yes, applicant must attach a signed MEDC Letter of Commitment to receive this exemption. ☐ Yes ☒ No

9. No. of existing jobs at this facility that will be retained as a result of this project. **195**

10. No. of new jobs at this facility expected to create within 2 years of completion. **0**

11. Rehabilitation applications only: Complete a, b and c of this section. You must attach the assessor's statement of SEV for the entire plant rehabilitation district and obsolescence statement for property. The Taxable Value (TV) data below must be as of December 31 of the year prior to the rehabilitation.

a. TV of Real Property (excluding land)

b. TV of Personal Property (excluding inventory)

c. Total TV

12a. Check the type of District the facility is located in:

☒ Industrial Development District ☐ Plant Rehabilitation District

12b. Date district was established by local government unit (contact local unit)

12/13/83

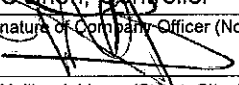
12c. Is this application for a speculative building (Sec. 3(8))?

☐ Yes ☒ No

APPLICANT CERTIFICATION - complete all boxes.

The undersigned, authorized officer of the company making this application certifies that, to the best of his/her knowledge, no information contained herein or in the attachments hereto is false in any way and that all are truly descriptive of the industrial property for which this application is being submitted.

It is further certified that the undersigned is familiar with the provisions of P.A. 198 of 1974, as amended, being Sections 207.551 to 207.572, inclusive, of the Michigan Compiled Laws; and to the best of his/her knowledge and belief, (s)he has complied or will be able to comply with all of the requirements thereof which are prerequisite to the approval of the application by the local unit of government and the issuance of an Industrial Facilities Exemption Certificate by the State Tax Commission.

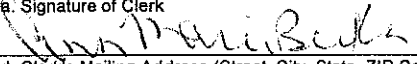
13a. Preparer Name Cindy Hendon	13b. Telephone Number (260) 490-2121	13c. Fax Number (260) 490-1707	13d. E-mail Address chendon@valutec.com
14a. Name of Contact Person Cindy Hendon	14b. Telephone Number (260) 490-2121	14c. Fax Number (260) 490-1707	14d. E-mail Address chendon@valutec.com
▶ 15a. Name of Company Officer (No Authorized Agents) John O'Brien, Controller			
15b. Signature of Company Officer (No Authorized Agents) 		15c. Fax Number (231) 759-8244	15d. Date
▶ 15e. Mailing Address (Street, City, State, ZIP Code) 2400 Lakeshore Drive, Muskegon, MI 49443		15f. Telephone Number (231) 759-5242	15g. E-mail Address john.o'brien@sappi.com

LOCAL GOVERNMENT ACTION & CERTIFICATION - complete all boxes.

This section must be completed by the clerk of the local governing unit before submitting application to the State Tax Commission. Check items on file at the Local Unit and those included with the submittal.

▶ 16. Action taken by local government unit ☒ Abatement Approved for <u>0</u> Yrs Real (1-12), <u>7</u> Yrs Pers (1-12) After Completion ☒ Yes ☐ No ☐ Denied (Include Resolution Denying)		16b. The State Tax Commission Requires the following documents be filed for an administratively complete application: Check or Indicate N/A if Not Applicable ☐ 1. Original Application plus attachments, and one complete copy ☐ 2. Resolution establishing district ☐ 3. Resolution approving/denying application. ☐ 4. Letter of Agreement (Signed by local unit and applicant) ☐ 5. Affidavit of Fees (Signed by local unit and applicant) ☐ 6. Building Permit for real improvements if project has already begun ☐ 7. Equipment List with dates of beginning of installation ☐ 8. Form 3222 (if applicable) ☐ 9. Speculative building resolution and affidavits (if applicable)	
16a. Documents Required to be on file with the Local Unit Check or Indicate N/A if Not Applicable ☐ 1. Notice to the public prior to hearing establishing a district. ☐ 2. Notice to taxing authorities of opportunity for a hearing. ☐ 3. List of taxing authorities notified for district and application action. ☐ 4. Lease Agreement showing applicants tax liability.		16c. LUCI Code	
17. Name of Local Government Body City of Muskegon		16d. School Code 61010	
		▶ 18. Date of Resolution Approving/Denying this Application 6-24-08	

Attached hereto is an original and one copy of the application and all documents listed in 16b. I also certify that all documents listed in 16a are on file at the local unit for inspection at any time.

19a. Signature of Clerk 	19b. Name of Clerk Ann Marie Becker	19c. E-mail Address ann.becker@postman.org
19d. Clerk's Mailing Address (Street, City, State, ZIP Code) 933 Terrace, Muskegon, MI 49440		
19e. Telephone Number (231) 724-6705	19f. Fax Number (231) 724-4178	

State Tax Commission Rule Number 57: Complete applications approved by the local unit and received by the State Tax Commission by October 31 each year will be acted upon by December 31. Applications received after October 31 may be acted upon in the following year.

Local Unit: Mail one original and one copy of the completed application and all required attachments to:

State Tax Commission
Michigan Department of Treasury
P.O. Box 30471
Lansing, MI 48909-7971

(For guaranteed receipt by the STC, it is recommended that applications are sent by certified mail.)

STC USE ONLY				
▶ LUCI Code	▶ Begin Date Real	▶ Begin Date Personal	▶ End Date Real	▶ End Date Personal

MUSKEGON CITY COMMISSION

RESOLUTION APPROVING APPLICATION FOR ISSUANCE
OF INDUSTRIAL FACILITIES EXEMPTION CERTIFICATE
Sappi Fine Paper North America

WHEREAS, pursuant to P.A. 198 of 1974 as amended, after duly noticed public hearing held on December 13, 1983, this Commission by resolution established an Industrial Development District as requested by Sappi Fine Paper North America, 2400 Lakeshore Drive, Muskegon, Michigan 49441; and

WHEREAS, Sappi Fine Paper North America has filed an application for the issuance of an Industrial Facilities Tax Exemption Certificate with respect to new machinery and equipment will be installed within said Industrial Development District ; and

WHEREAS, said application was filed no later than six months after project completion and the Muskegon City Commission held a public hearing on June 24, 2008, at the Muskegon City Hall in Muskegon, Michigan at 5:30 p.m. at which hearing the applicant, the assessor and representatives of the affected taxing units were given written notice and were afforded an opportunity to be heard on said application; and

WHEREAS, the installation of machinery and equipment is calculated to and will have the reasonable likelihood to retain, create, or prevent the loss of employment in Muskegon, Michigan; and

WHEREAS, the aggregate SEV of real property exempt from ad valorem taxes within the City of Muskegon, will not exceed 5% of an amount equal to the sum of the SEV of the unit, plus the SEV of personal and real property thus exempted.

NOW, THEREFORE, BE IT RESOLVED by the Muskegon City Commission of the City of Muskegon, Michigan that:

- 1) The Muskegon City Commission finds and determines that the Certificate considered together with the aggregate amount of certificates previously granted and currently in force under Act No. 198 of the Public Act of 1974 as amended and Act No. 255 of the Public Acts of 1978 as amended shall not have the effect of substantially impeding the operation of the City of Muskegon or impairing the financial soundness of a taxing unit which levies ad valorem property taxes in the City of Muskegon.
- 2) The application of Sappi Fine Paper North America, for the issuance of an Industrial Facilities Tax Exemption Certificate with respect to the installation of new machinery and equipment on the following described parcel of real property situated within the City of Muskegon to wit:

CITY OF MUSKEGON REVISED PLAT OF 1903 BLKS 598 599 600 601 602 603 & 604 EXC
WLY 260 FT ALSO RICHARDS ST VAC FROM N LN LAKESHORE DR TO SHORE OF
MUSKEGON LAKE EXC C&O ROW ALSO LOT 19 BLK 597 EXC COM @ SE COR SD LOT 19
TH NWLY ON ELY LN SD LOT 125 FT TH WLY 70 FT TH SELY 125 FT TO S LN SD LOT TH
ELY 70 FT TO BEG SUBJ TO UTILITY ESMT 2251/225 SUBJ TO UTILITY ESMT 2251/228

- 3) The Industrial Facilities Tax Exemption Certificate is issued and shall be and remain in force and effect for a period of seven (7) years on personal property.

Adopted this 24th Day of June 2008.

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

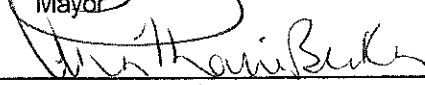
Nays: None

Absent: None

BY:

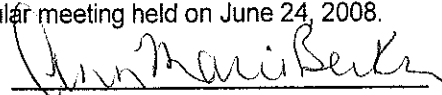

Stephen J. Warmington
Mayor

ATTEST:


Ann Marie Becker
Clerk

CERTIFICATION

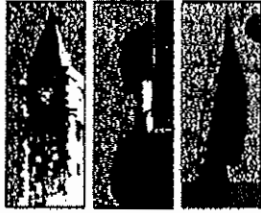
I hereby certify that the foregoing constitutes a true and complete copy of a resolution adopted by the Muskegon City Commission, County of Muskegon, Michigan, at a regular meeting held on June 24, 2008.


Ann Marie Becker
Clerk

Sappi Fine Paper - Muskegon**2008 Spending Plan**

Asset	Actual Approp.	Beginning Date	Completion Date
Converting - Provide Skid Discharge Capability at 2CC	2,984,200	1/30/2008	6/30/2008
Condensate Return	368,000	1/30/2008	5/30/2008
Replace 2nd Press Double Doctor	126,000	1/30/2008	6/30/2008
Replace hot oil rotary joint	124,000	1/30/2008	4/30/2008
#5PM-Upgrade MSP Voith Profilmatic Computer System	27,000	1/30/2008	9/30/2008
5PM Smooth Press Roll	53,000	1/30/2008	6/30/2008
Air Compressor overhaul	<u>140,000</u>	1/30/2008	8/30/2008
TOTALS	<u>3,822,200</u>		

MUSKEGON



West Michigan's Shoreline City

City of Muskegon Industrial Facilities Exemption Application Summary Sheet

Project Summary:

Sappi Fine Paper, a manufacturing company located at 2400 Lakeshore Drive, Muskegon, Michigan, will be installing new machinery to continue its operations. Since the company is investing \$3,822,200 in personal property, it is eligible for a seven (7) year exemption for personal property.

Employment Information: 212 Employees

Racial Characteristics:

White	173
Minority	39
Total	212

Gender Characteristics:

Male	191
Female	21
Total	212

Total No. of Anticipated New Jobs: 0

Investment Information:

Real Property:	\$0
Personal Property	\$3,822,200
Total:	\$3,822,200

Property Tax Information: (Annual)

	<u>All Jurisdictions</u>	<u>City Only</u>
Total New Taxes Generated	\$ 633,833	\$ 211,619
Value of Abatement	\$ 316,916	\$ 105,810
Total New Taxes Collected	\$ 158,458	\$ 105,810

Income Tax Information: (Annual)

Total Additional Income Tax Generated: \$ 0

Company Requirements:

Adopted Affirmative Action Policy	☒ Yes	☐ No
Meeting w/ City Affirmative Action Director	☒ Yes	☐ No
Signed Tax Abatement Contract	☐ Yes	☐ No
Taxes Paid In Full	☐ Yes	☐ No
Zoning Conflicts	☐ Yes	☐ No

Mike Franzak
Planner II

Dwana Thompson
Dwana Thompson
Affirmative Action Director



City of Muskegon Industrial Facilities Exemption Application Summary Sheet

Project Summary:

Sappi Fine Paper, a manufacturing company located at 2400 Lakeshore Drive, Muskegon, Michigan, will be installing new machinery to continue its operations. Since the company is investing \$3,822,200 in personal property, it is eligible for a seven (7) year exemption for personal property.

Employment Information: 223 employees

Racial Characteristics:

White	180
Minority	43
Total	223

Gender Characteristics:

Male	200
Female	23
Total	223

Total No. of Anticipated New Jobs: 0

Investment Information:

Real Property:	\$0
Personal Property	\$3,822,200
Total:	\$3,822,200

Property Tax Information: (Annual)	<u>All Jurisdictions</u>	<u>City Only</u>
Total New Taxes Generated	\$ 633,833	\$ 211,619
Value of Abatement	\$ 316,916	\$ 105,810
Total New Taxes Collected	\$ 158,458	\$ 105,810

Income Tax Information: (Annual)

Total Additional Income Tax Generated: \$ 0

Company Requirements:

Adopted Affirmative Action Policy	☐ Yes	☐ No
Meeting w/ City Affirmative Action Director	☐ Yes	☐ No
Signed Tax Abatement Contract	☒ Yes	☐ No
Taxes Paid In Full	☒ Yes	☐ No
Zoning Conflicts	☐ Yes	☒ No


Mike Franzak
Planner II


Dwana Thompson
Affirmative Action Director

CITY OF MUSKEGON

CONTRACT FOR TAX ABATEMENT

Act 198 Public Acts of 1974

AGREEMENT between CITY OF MUSKEGON, a municipal corporation of 933 Terrace Street, Muskegon, Michigan 49441, ("City") and Sappi Fine Paper North America ("Company") of 2400 Lakeshore Drive, Muskegon, Michigan 49443.

Recitals:

- A. The Company has applied to City for the establishment of an industrial development district or industrial rehabilitation district pursuant to the provisions of Act 198 of the Public Acts of 1974, as amended, which act requires a contract between the City and the Company to be agreed and submitted with the Company's subsequent anticipated application for an industrial facilities exemption certificate.
- B. That in addition to the statutory requirement, the City has determined that it is in the best interests of the taxpayers, property owners and residents of the City that this Agreement be approved and executed prior to the establishment of the requested district, and the City deems this Contract, together with the conditions set forth in the said Act to constitute a necessary element in the City's determination whether or not to create the district.
- C. The Company intends to install the project set forth in its application ("project") which it believes qualifies for the process of establishing the district and the application for industrial facilities exemption certificate.
- D. The City, provided this Agreement is executed, will determine whether to create the district based upon the potential for the production of permanent jobs, the continuation, **stabilization** or increase of economic activity, planning and zoning considerations and the City's general plan and intentions regarding economic development. In addition to the City policy considerations and predictions that the Company's proposed district and certificate benefit the community in those ways, the City has further determined that the contractual commitments made by the Company to thereby assist the community shall be binding on the Company and necessary to continue the tax exemption made possible by the certificate.
- E. This contract shall become effective upon the issuance of an Industrial Facilities Tax Exemption Certificate.**

NOW THEREFORE THE PARTIES AGREE:

1. **COMPANY AGREEMENT.** The Company irrevocably commits to the investment, job retention and job creation promises made in its application, a copy of which is attached hereto and incorporated herein. In particular the Company agrees:

- 1.1 That 100% of the jobs shall be filled and in existence with full-time employees by a date no later than two (2) years from the date of the granting of the certificate by the State Tax Commission, **subject to the provisions of section 3.4 of this agreement.**

- 1.2 That the amount of jobs listed on the application, whether new or retained, will be maintained through the life of the abatement, **subject to the provisions of section 3.4 of this agreement.**
- 1.3 The Company shall meet the affirmative action goal included in the application or in any documents supplied by the City and utilized by the Company, including any additional representations made to the City Commission on or before the date two (2) years after the granting of the certificate by the State Tax Commission. It shall maintain the said levels of employment diversity during the period of the certificate, **subject to the provisions of section 3.4 of this agreement.**
- 1.4 The Company, by the end of two (2) years from the date of the grant of the certificate by the State Tax Commission shall have completed the investment of \$1,025,000 in the equipment and improvements as shown in the application, **subject to the provisions of section 3.4 of this agreement.**
- 1.5 That the improvements and equipment to receive the tax abatement treatment shall be completed on or before the date two (2) years from the date of granting of the certificate by the State Tax Commission.
- 1.6 The Company shall pay its specific taxes required by the act in a timely manner, and shall not delay payments so as to incur any penalties or interest.
- 1.7 The Company shall fully cooperate with the City representatives in supplying all requested and required documentation regarding jobs, investment, the meeting of all goals and the timely installation and utilization of equipment and improvements. The City shall be entitled to inspect at reasonable hours the Company's premises where the said improvements and equipment have been installed and where the said jobs are performed.
- 1.8 The Company shall maintain, during the entire period for which the tax abatement is granted, the level of jobs, affirmative action goals, production and utilization of the improvements and equipment at the site where the district has been created and for which the tax exemption has been granted.
- 1.9 The Company shall not cause or fail to cure the release of any hazardous substance, or the violation of any environmental law on its premises in the City. It shall report any releases to the appropriate governmental authority in a timely and complete manner, and provide copies of said report documentation to the City. It shall comply with all orders and actions of any governmental agency having authority.
- 1.10 The Company shall maintain the equipment and improvements so as to minimize physical or functional obsolescence.
- 1.11 The Company shall continue to operate its business location in the City, containing the same number of and type of jobs, for the term of the certificate.

2. **AGREEMENT BY THE CITY.** Provided this contract has been executed and further provided all applications to create the district and achieve the industrial facility exemption certificate have been properly filed, the City shall, in a timely manner, determine in a public meeting to **whether to create the district and whether to receive, process, and approve thereafter the Company's application for an industrial facilities exemption certificate.** The City may consider this contract in a meeting separate from and prior to the meeting in which the City considers the creation of the district and/or approval of the application for certificate. Further, the City shall require the submission of this contract signed by the Company together with its applications, before creating the district.

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

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

3.2 The closing of the Company's facilities in the City. Closing shall mean for purpose of this Agreement, the removal, without transfer to another site within the City of substantially all of the production facilities, and the elimination of substantially all the jobs created or retained thereby, which are set forth in the Company's application.

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

3.4 The failure to create or retain jobs, meet affirmative action goals or expend the funds on equipment and improvements as represented in the application within the times required hereby, **unless the company can show that there has been a loss of revenue and employment due to circumstances beyond the control of the company. In order to make that showing the company shall have the burden of supplying, to the City's satisfaction, complete and convincing documentation supporting and justifying reductions in investment, failures to attain affirmative action goals or job losses, such as, without limitation, written evidence of lost contracts, accounting information showing reduced revenues due to the loss of business, (not due to diversion of production to affiliate companies or divisions of the company), production records showing reduced quantities over significant periods of time, and such other information required by the City to support the Company's claim that the failure to invest, failure to achieve affirmative action goals, or loss of jobs should not form the basis for a finding of default.**

3.5 The bankruptcy or insolvency of the Company.

3.6 The failure to pay any and all taxes and assessments levied on the Company's property or any other taxes, local, state or federal, including but not limited to City income taxes and the withholding of said City income taxes from employees as required by the City Income Tax Ordinance.

3.7 The performance or omission of any act which would lead to revocation under MCLA 207.565, being §15 of the Act.

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

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

4.1 In the event of closing as determined after investigation of the facts and a public hearing, the Company shall be immediately liable for penalties to be paid forthwith to the city as determined as follows:

4.1.1 The Company shall pay to the City for prorata distribution to the taxing units experiencing the abatement, an amount equal to the difference between the industrial facilities tax which it has paid, and the total property taxes to the relevant taxing units which it would have paid, given its installations of improvements and equipment, during the years for which the certificate was in effect.

4.1.2 Immediate Revocation. The Company hereby consents to revocation to the IFT certificate before the State Tax Commission, without hearing, and the City shall submit a copy of this Agreement to the State Tax Commission in connection with its revocation procedure, giving notice that the default has occurred and immediate revocation should occur.

4.2 In the event the improvements and equipment have not been installed before the two (2) year period, in addition to the revocation procedures before the State Tax Commission, the abatement should immediately be reduced by the City proportionately, and any installations which have not been finished at the end of said two (2) year period shall not be eligible for the abatement thereafter and shall be placed on the regular tax roll.

4.3 Failure to Expend the Funds Represented. In the event, (whether or not the installations have been completed), the Company has not expended the funds it has represented on its application that it would invest for the installation of equipment, the abatement shall be reduced prorata, and any remaining value of equipment shall be placed on the regular tax roll, **unless the company can show, through receipts, etc. that the cost of the equipment was actually less than the amount estimated by the company (i.e., the same equipment was purchased as listed in the IFT application, but the bids came in less than expected).**

4.4 Job Creation and Retention. In the event the promised number of jobs have not been created or retained at the end of the two (2) years after the grant of the certificate by the State Tax Commission, the abatement shall be proportionately reduced, **unless the company can show that the loss of jobs, or inability to hire as many people as expected, is due to circumstances beyond the control of the company (such as an economic downturn).**

4.5 Affirmative Action Goals. In the event, after one (1) year from the grant of the certificate by the State Tax Commission, the affirmative action goals of the City for additional jobs have not been met on a prorata basis, the abatement shall be revoked.

4.6 For other violations of this Agreement or for actions or omissions by the Company amounting to grounds for revocation by statute, the City shall recommend to the State Tax Commission immediate revocation of the certificate.

4.7 Special Assessment. For any amount due to be paid to the City, under this Section 4, the Company consents that the City shall have a personal action against the Company for the said amount, and in addition, cumulatively, and not by election, the City shall have a special assessment lien on all the property of the Company personal and real, located in the City, for the collection of the amounts due as and in the manner of property taxes and in such case the collection of the said special assessment shall be accomplished by addition by the City to the Company's property tax statement regularly rendered.

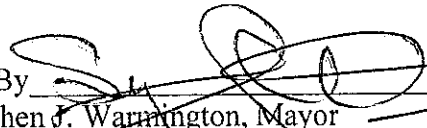
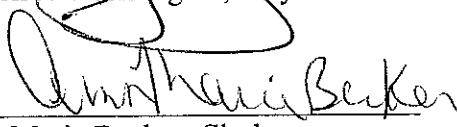
5. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Michigan applicable to contracts made and to be performed within the State of Michigan.

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

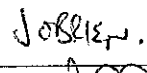
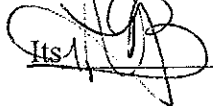
7. Benefit. This Agreement shall be binding upon and inure to the benefit of the respective parties, their successors and personal representatives.

8. Effective Date. This Agreement shall be effective on the date the State of Michigan Tax Commission grants the company an Industrial Facilities Exemption Certificate.

CITY OF MUSKEGON

By 
Stephen J. Warrington, Mayor
and 
Ann Marie Becker, Clerk

Sappi Fine Paper North America

By 
 CONTROLLER-
MUSKEGON MILL
and _____
Its _____

DATE: 06/16/2008
TO: Honorable Mayor and Commissioners
FROM: Mark Kincaid, Deputy Director of Public Safety
RE: Concurrence with the Housing Board of Appeals Notice and Order to Demolish. Dangerous Building Case #: EN070060

SUMMARY OF REQUEST: This is to request that the City Commission Concur with the findings of the Housing Board of Appeals that the structure located at **553 ALLEN AVE, Area 11** is unsafe, substandard, a public nuisance and that it be demolished within thirty (30) days. It is further requested that administration be directed to obtain bids for the demolition of the structure and that the Mayor and City Clerk be authorized and directed to execute a contract for demolition with the lowest responsible bidder.

Case# & Project Address: # EN070060 553 Allen, Muskegon, MI 49442

Location and ownership: This structure is located on Allen St. between Scott and Williams Streets and is owned by Jeffrey Myers/Brad Lehman, 1646 W. US 10, Baldwin, MI 49304.

Staff Correspondence: A dangerous building inspection was conducted on 03/28/07. The Notice and Order to Repair was issued on 03/29/07. On 05/03/07 the HBA tabled case until June 2007. The case came back before HBA 06/07/07 and was declared dangerous, substandard and a public nuisance.

Owner Contact: Jeffrey Myers was present for the 05/03/07 HBA meeting. He stated he bought house for investment purposes, then house was vandalized; plans was to rehab to sell. Case was tabled. The case came back before HBA June 7, 2007 with no one present, the property was declared dangerous. The owner contacted Inspections and a timeline was submitted with repairs to commence August of 2007 and completion date of January 2008 which was not acceptable to Inspections and a letter was sent 11/29/07 requesting a meeting so options could be discussed. The revised timeline was reviewed with certain conditions. A permit was issued 02/18/08 with an expiration date of 05/30/08. To date no inspections have been scheduled and no progress has been made. The home has had several boardups.

Financial Impact: CDBG Funds

Budget action required: None

State Equalized value: \$19,900

Estimated cost to repair: \$20,000

Staff Recommendation: To concur with the Housing Board of Appeals decision to demolish.

CITY OF MUSKEGON

933 Terrace St., P.O. Box 537, Muskegon, MI 49443 (231) 724-6715

DANGEROUS BUILDING INSPECTION REPORT

Wednesday, March 28, 2007

Enforcement # EN070060 **Property Address** 553 ALLEN AVE
Parcel #24-205-058-0006-00 **Owner** MYERS JEFFREY/LEHMAN BRAD

Inspector: Henry Faltinowski

Date completed: 03/28/2007

DEFICIENCIES:

Uncorrected

1. Replace front entry steps (Exterior) replace damaged siding.
2. Severe structural damage to attached garage roof collapsed - walls fallen out. Rebuild to MRC 2003 Code or remove.
3. Boardup - numerous broken out windows.
4. Replace damaged roof covering on home.
5. Scrape and paint entire exterior of home - siding, windows.
6. Repair foundation walls - open mortar gaps on block wall.
7. Interior inspection requested.

Request interior inspection by all trades, electrical, mechanical and plumbing. Please contact Inspection Services with any questions or to schedule an inspection at 933 Terrace St., Muskegon, MI 49440 (231) 724 6758.

Based upon my recent inspection of the above property I determined that the structure meets the definition of a Dangerous Building and/or Substandard Building as set forth in Section 10-61 of the Muskegon City Code.

Henry Faltinowski, Building Inspector

Date

CITY OF MUSKEGON
933 Terrace St., P.O. Box 536, Muskegon, MI 49443 (231)724-6715
DANGEROUS BUILDING INTERIOR INSPECTION REPORT

553 ALLEN AVE
05/18/2007

Inspection noted:

Uncorrected

1. Install new rafters bearing wall to ridge board.
2. Replace damaged ridge board.
3. All handrails, guardrails to code.
4. Scrape paint and patch all interior, walls, ceiling damage.
5. Replace any damaged roof sheathing
6. Repair damaged ramp - deck to code.
7. DB - Inspect & certify chimney.
8. Hose spigots to have vac breaker.
9. Support all piping in basement.
10. Inspect & certify furnace and need water heater.
11. Clean ductwork -support ductwork
12. Pressure test gas lines.
13. Replumb wash sink in basement.
14. Inspect all plumbing cap of cleanout/
15. Need kitchen sink & plumbing.
16. Replace toilet - need bathfan
17. House to be rewired to current code.
18. Smoke alarms to be installed to code.
19. Replace electric service to code.
20. Scald free faucet for tubshower.
21. Provide return air for bedrooms & upstairs.
22. Seal opening in chimney in kitchen.
23. All plumbing & mechanical to meet 2003 MIch Codes.

BASED UPON MY RECENT INSPECTION OF THE ABOVE PROPERTY, I HAVE DETERMINED THAT THE STRUCTURE MEETS THE DEFINITION OF A DANGEROUS AND/OR SUBSTANDARD BUILDING AS SET FORTH IN SECTION 10-61 OF THE MUSKEGON CITY CODE.

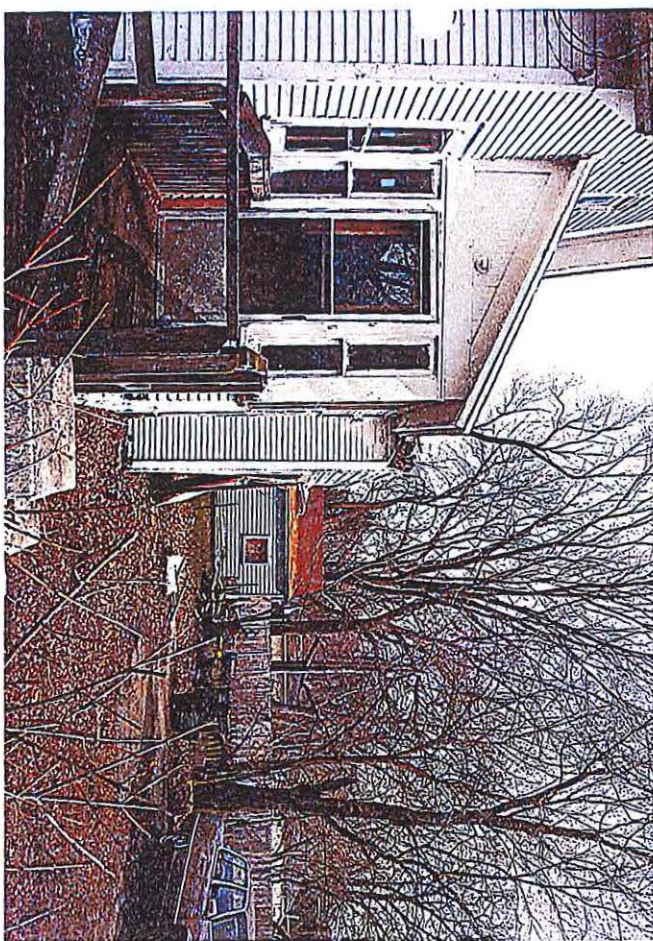
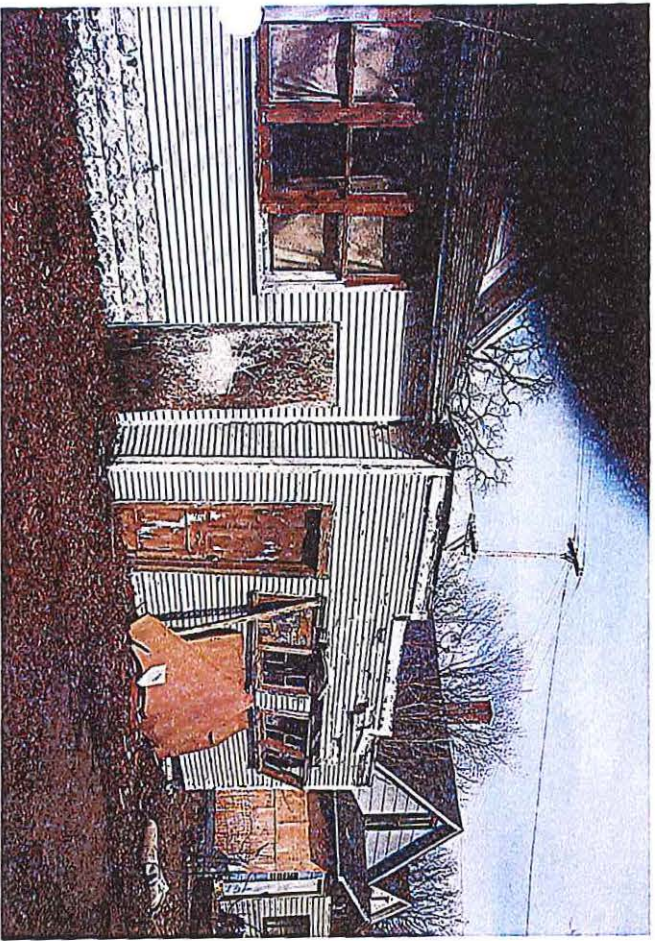
HENRY FALTINOWSKI, BUILDING INSPECTOR

DATE

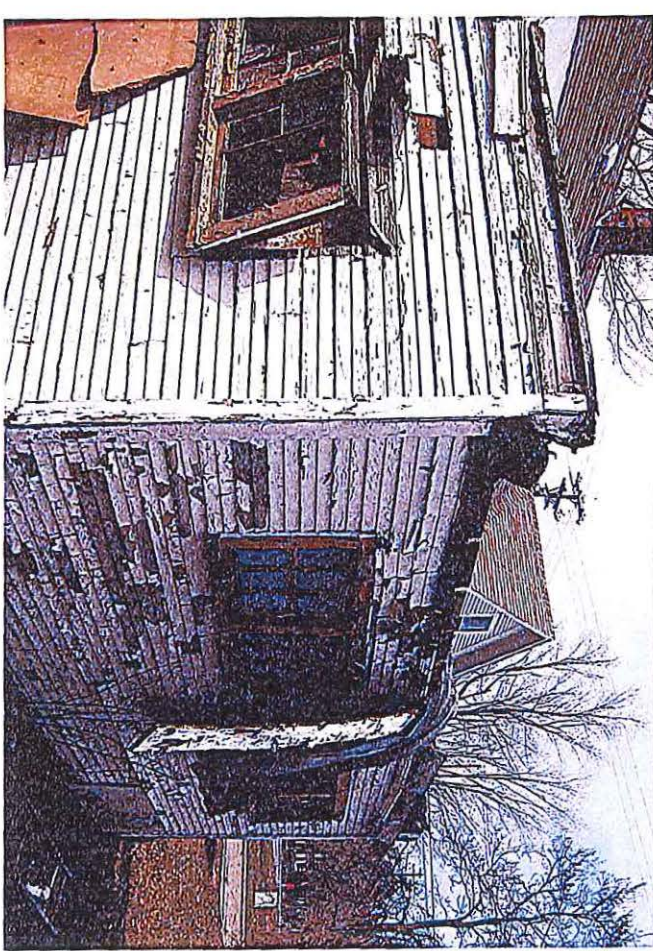
SUMMARY FOR: 553 ALLEN AVE

This building is a two story wood frame, single family dwelling. This building has numerous structural deficiencies as well as needing to be completely rewired. Except for the removal of the garage, there has been no evidence of any substantial repairs, in spite of the Inspections Department repeated attempts to work with the property owner. If this building is left in it's unrepared it will continue to deteriorate and be a blighting influence on the neighborhood.

553 ALLEN



JEFFREY MYERS
8853 MORNING MIST DR.
LAKESIDE MI 48348





DATE: 06/16/2008
TO: Honorable Mayor and Commissioners
FROM: Mark Kincaid, Deputy Director of Public Safety
RE: Concurrence with the Housing Board of Appeals Notice and Order to Demolish. Dangerous Building Case #: EN080029

SUMMARY OF REQUEST: This is to request that the City Commission Concur with the findings of the Housing Board of Appeals that the structure located at **724 OAK AVE (House & Garage)** is unsafe, substandard, a public nuisance and that it be demolished within thirty (30) days. It is further requested that administration be directed to obtain bids for the demolition of the structure and that the Mayor and City Clerk be authorized and directed to execute a contract for demolition with the lowest responsible bidder.

Case# & Project Address: # EN080029- 724 Oak, Muskegon, MI 49442

Location and ownership: This structure is located on Oak St. between Kenneth and Getty Streets and is owned on land contract between Christopher/.Zabulonia Burt and Kirk Duell/Fred Assink, 2719 Strand Rd, Muskegon, MI 49445.

Staff Correspondence: A dangerous building inspection was conducted on 02/06/08. The Notice and Order to Repair was issued on 02/11/08. A interior inspection was conducted 03/11/08. On 05/03/08 the HBA declared the structure substandard and dangerous.

Owner Contact: Mr. Fred Assink was present for the HBA meeting dated 05/03/08 stating the house was sold on land contract but buyer has abandoned the building with no forwarding address. Mr. Assink has decided to have the property demolished but is in process of getting legal issues regarding ownership resolved. No permits to demolish structure have been applied for.

Financial Impact: CDBG Funds

Budget action required: None

State Equalized value: \$19,500

Estimated cost to demolish:\$6,000 (Not feasible for repair)

Staff Recommendation: To concur with the Housing Board of Appeals decision to demolish.

CITY OF MUSKEGON

933 Terrace St., P.O. Box 537, Muskegon, MI 49443 (231) 724-6715

DANGEROUS BUILDING INSPECTION REPORT

Tuesday, February 12, 2008

Enforcement # EN080029 **Property Address** 724 OAK AVE
Parcel #24-205-039-0005-05 **Owner** BURT CHRISTOPHER/ZABULOINA

Inspector: Henry Faltinowski

Date completed: 02/06/2008

DEFICIENCIES:

Uncorrected

1. Roof system has collapsed on home.
2. Walls are severely stressed from collapse.
3. Garage wall system is severely racked out of alignment. Must rebuild to MRC 2003 Code requirements.
4. Interior inspection is needed by trade inspectors to further evaluate collapse damage.

Request interior inspection by all trades, electrical, mechanical and plumbing. Please contact Inspection Services with any questions or to schedule an inspection at 933 Terrace St., Muskegon, MI 49440 (231) 724 6758.

Based upon my recent inspection of the above property I determined that the structure meets the definition of a Dangerous Building and/or Substandard Building as set forth in Section 10-61 of the Muskegon City Code.

Henry Faltinowski, Building Inspector

Date

CITY OF MUSKEGON
933 Terrace St., P.O. Box 536, Muskegon, MI 49443 (231)724-6715
DANGEROUS BUILDING INTERIOR INSPECTION REPORT

724 OAK AVE
03/11/2008

Inspection noted:

Uncorrected

1. House to be wired to code.
2. Electric service to be replaced to code.
3. Smoke alarms to be installed to code.
4. Clean ductwork -re-establish chimney.
5. Need returns in bedrooms.
6. Need bath fan.
7. Need scald free faucet for tub/shower.
8. Insure all plumbing is in working order.
9. Pressure test gas line.
10. Inspect water & sewer service.
11. Inspect & certify furnace, water heater and chimney.
12. Replace T & P Drain
13. Maintain clearance on single wall water heater vent.
14. CPVC 6"
15. Hammer arrestors for laundry.
16. Support water lines.
17. Attach vent for water heater insure furnace heats habital spaces.
18. Need vacuum breakers for hose spigots.
19. Front Porch decking - replace, joists must meet code for span MRC 2003.
20. Engineered design on foundation wall re relay to code- porch rafters must meet 2003 MRC Code.
21. Walls splitting away from home -remove entire roof system. Strip walls - rebuild to MRC 2003.
22. New roof system must meet MRC 2003 code of rafters, ceiling joists ventilation.

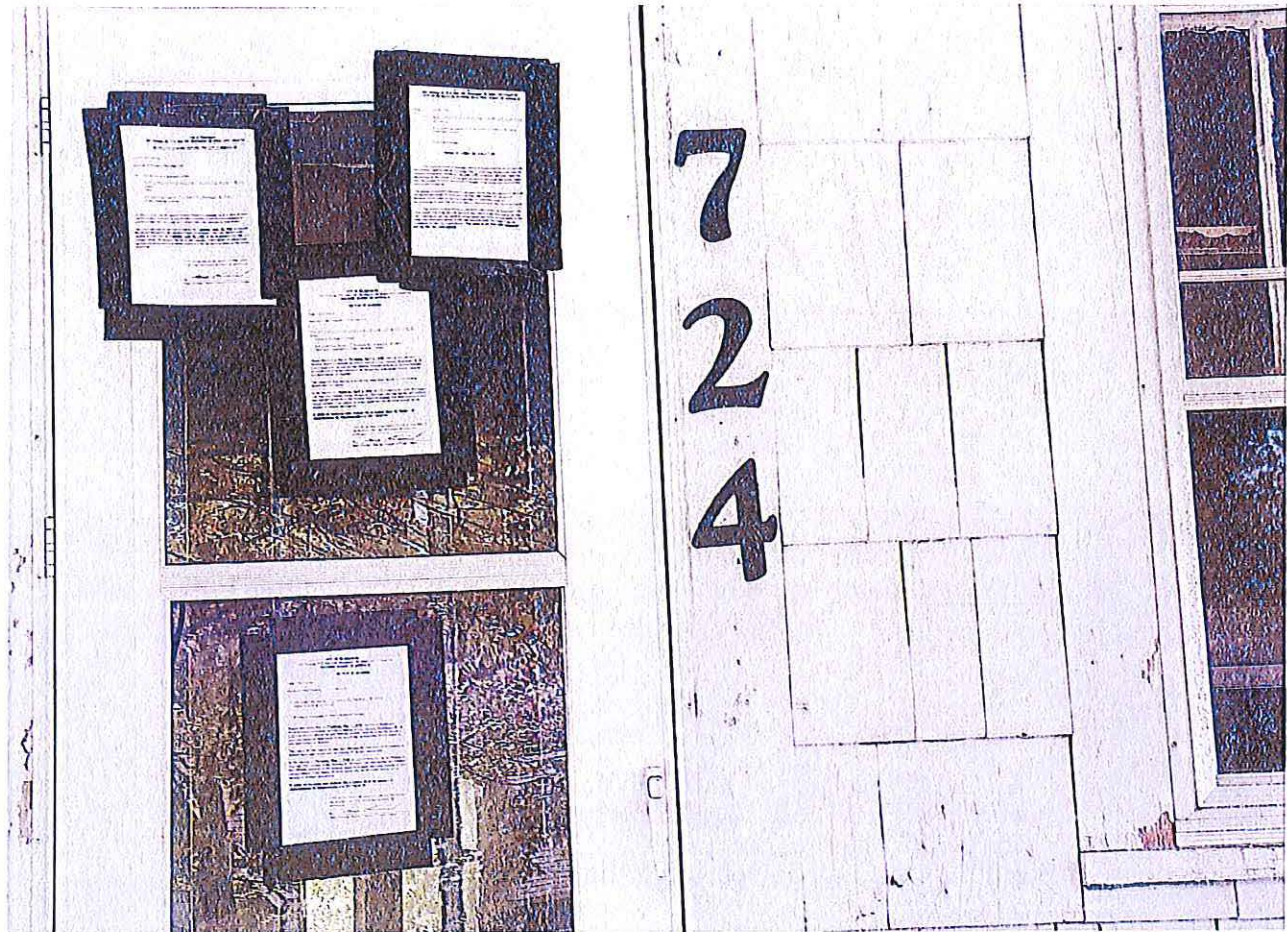
BASED UPON MY RECENT INSPECTION OF THE ABOVE PROPERTY, I HAVE DETERMINED THAT THE STRUCTURE MEETS THE DEFINITION OF A DANGEROUS AND/OR SUBSTANDARD BUILDING AS SET FORTH IN SECTION 10-61 OF THE MUSKEGON CITY CODE.

HENRY FALTINOWSKI, BUILDING INSPECTOR

DATE

SUMMARY FOR: 724 OAK AVE

This building is a single story wood frame single family dwelling. This building has suffered a catastrophic failure (roof collapse) based on a recent inspection of the building, it does not appear that it is economically feasible to rehabilitate this structure.



DATE: 06/16/2008
TO: Honorable Mayor and Commissioners
FROM: Mark Kincaid, Deputy Director of Public Safety
RE: Concurrence with the Housing Board of Appeals Notice and Order to Demolish. Dangerous Building Case #: EN070257

SUMMARY OF REQUEST: This is to request that the City Commission Concur with the findings of the Housing Board of Appeals that the structure located at **2241 SHERIN ST** is unsafe, substandard, a public nuisance and that it be demolished within thirty (30) days. It is further requested that administration be directed to obtain bids for the demolition of the structure and that the Mayor and City Clerk be authorized and directed to execute a contract for demolition with the lowest responsible bidder.

Case# & Project Address: # EN070257 – 2241 Sherin, Muskegon, MI 49441

Location and ownership: This structure is located on Sherin, between Miner and Lakeshore Drive and is owned by Larry C. Earle, 1456 Beardsley, Muskegon, MI 49441.

Staff Correspondence: A dangerous building inspection was conducted on 12/12/07. The Notice and Order to Repair was issued on 12/20/07. An interior inspection was conducted 01/14/08. On 03/06/08 the HBA declared the structure substandard and dangerous.

Owner Contact: No one was present for the HBA meeting dated 03/06/08. The new owner scheduled interior inspection but no permits have been applied for.

Financial Impact: General Funds

Budget action required: None

State Equalized value: \$26,800

Estimated cost to repair: \$40,000

Staff Recommendation: To concur with the Housing Board of Appeals decision to demolish.

CITY OF MUSKEGON

933 Terrace St., P.O. Box 537, Muskegon, MI 49443 (231) 724-6715

DANGEROUS BUILDING INSPECTION REPORT

Thursday, December 13, 2007

Enforcement # EN070257
Parcel #24-205-693-0001-28

Property Address 2241 SHERIN ST
Owner US BANK NATIONAL ASSOC

Inspector: Henry Faltinowski

Date completed: 12/13/2007

DEFICIENCIES:

Uncorrected

1. Siding falling off home. Incomplete siding - exposed wood to weather elements improper flashing around windows.
2. Started interior framing without permits - beams that were installed not to code.
3. Home power support is not to code.
4. Door and window openings have been reframed without permits and inspections.
5. Provide interior inspection by all trade inspectors.

Request interior inspection by all trades, electrical, mechanical and plumbing. Please contact Inspection Services with any questions or to schedule an inspection at 933 Terrace St., Muskegon, MI 49440 (231) 724 6758.

Based upon my recent inspection of the above property I determined that the structure meets the definition of a Dangerous Building and/or Substandard Building as set forth in Section 10-61 of the Muskegon City Code.

Henry Faltinowski, Building Inspector

Date

CITY OF MUSKEGON
933 Terrace St., P.O. Box 536, Muskegon, MI 49443 (231)724-6715
DANGEROUS BUILDING INTERIOR INSPECTION REPORT

2241 SHERIN ST
01/14/2008

Inspection noted:

Uncorrected

1. Electric service to be replaced to code.
2. House to be wired to code - no existing wire is usable.
3. Install smoke alarms to code.
4. Header over front door is inadequate.
5. Header over front window is inadequate.
6. Header over opening where bearing wall removed is inadequate.
7. Header not bearing wait back to foundation.
8. Header over side door is inadequate.
9. Header over opening where bearing wall removed on south side of house is inadequate.
10. Skylights in side foyer improperly framed in (ceiling joists cut out).
11. Skylights in side foyer are leaking.
12. Skylights in living room improperly framed in (ceiling joists cut out).
13. Misc. floors improperly framed in.
14. Egress windows required in all bedrooms.
15. Remove unused door on second floor above living room.
16. Provide separation between units.
17. Provide necessary draft stopping.
18. Collar ties are missing in roof assembly in living room.
19. Stairs to living room to meet MRC.
20. Stairs to 2nd floor must be reframed to meet MRC.
21. Smoke detectors required to meet MRC
22. Provide handrails to stairs.
23. Clean ductwork.
24. Need scald free faucet - tub/shower
25. Inspect all plumbing & venting insure in working order.
26. Replace S-trap lav & kitchen sink - need bath vent fan.
27. Pressure test gas line - provide duct for furnace.
28. Provide supply & return air to all habital spaces.
29. Support gas lines - inspect & certify chimney, water heater & furnace.
30. Must have 6" clearance for water heater vent to CPVC water pipe.
31. Need T & P drain for water heater.
32. Provide heat & return air.- upper

- 33. Need scald free faucet shower.
- 34. Insure all plumbing is in working order.
- 35. All plumbing & mechanical work to meet current codes.
- 36. Kitchen sink needs strainers.
- 37. Inspect water service & building sewer insure flows.

BASED UPON MY RECENT INSPECTION OF THE ABOVE PROPERTY, I HAVE DETERMINED THAT THE STRUCTURE MEETS THE DEFINITION OF A DANGEROUS AND/OR SUBSTANDARD BUILDING AS SET FORTH IN SECTION 10-61 OF THE MUSKEGON CITY CODE.

HENRY FALTINOWSKI, BUILDING INSPECTOR

DATE

SUMMARY FOR: 2241 SHERIN ST

This structure is a two story wood frame dwelling. While this building appears to be in good condition from the outside, it has been extensively modified on the inside. This structure is partially gutted out on the inside and many of the modifications on the inside are structural in nature. Most of the structural modifications made to this building do not conform to standard construction practices and seriously compromise the structural integrity to the building.



2007 12 3

DATE: 06/16/2008
TO: Honorable Mayor and Commissioners
FROM: Mark Kincaid, Deputy Director of Public Safety
RE: Concurrence with the Housing Board of Appeals Notice and Order to Demolish. Dangerous Building Case #: EN050084

SUMMARY OF REQUEST: This is to request that the City Commission Concur with the findings of the Housing Board of Appeals that the structure located at 1174 JEFFERSON ST- Area 10 is unsafe, substandard, a public nuisance and that it be demolished within thirty (30) days. It is further requested that administration be directed to obtain bids for the demolition of the structure and that the Mayor and City Clerk be authorized and directed to execute a contract for demolition with the lowest responsible bidder.

Case# & Project Address: # EN050084 – 1174 Jefferson St., Muskegon, MI 49441

Location and ownership: This structure is located on Jefferson Street between Merrill and Monroe Streets and is owned by Chaunel Phillips/Gibson.

Staff Correspondence: A dangerous building inspection was conducted on 02/15/07. The Notice and Order to Repair was issued on 02/22/05. A building permit was issued on 08/04/05, electrical issued 08/12/05 and plumbing issued 08/12/05. Rough-in inspections were conducted and approved but progress halted when contractors walked away from job and no final inspections were scheduled. A progress inspection was conducted 01/03/08. The case came before HBA 09/01/05 to monitor progress on case and was tabled until January 2006 to allow owner to complete repairs and schedule final inspections. The case came back before HBA 10/04/07 because all permits had expired and no progress inspections had been scheduled, the case was tabled with owner to secure all new permits by October 15, 2007. The case came back before HBA 12/06/07 because no permits were issued. The case was tabled with owner to schedule progress inspection. The case came back 01/03/08 and was declared dangerous, substandard, and a public nuisance with a delay until June 2008 before bringing case to the City Commission.

Owner Contact: Owner was present for all HBA meetings. Owner disagreed with cost of obtaining new permits. No new permits have been applied for, no final inspections scheduled and no owner contact since the January 2008 HBA meeting.

Financial Impact: CDBG Funds

Budget action required: None

State Equalized value: \$38,300

Estimated cost to repair: \$30,000

Staff Recommendation: To concur with the Housing Board of Appeals decision to demolish.

DATE: 06/16/2008
TO: Honorable Mayor and Commissioners
FROM: Mark Kincaid, Deputy Director of Public Safety
RE: Concurrence with the Housing Board of Appeals Notice and Order to Demolish. Dangerous Building Case #: EN080015

SUMMARY OF REQUEST: This is to request that the City Commission Concur with the findings of the Housing Board of Appeals that the structure located at **922 S GETTY ST** is unsafe, substandard, a public nuisance and that it be demolished within thirty (30) days. It is further requested that administration be directed to obtain bids for the demolition of the structure and that the Mayor and City Clerk be authorized and directed to execute a contract for demolition with the lowest responsible bidder.

Case# & Project Address: # EN080015 – 922 S. Getty

Location and ownership: This structure is located on Getty, between Amity and Allen Streets and is owned by Darryl Lane, 1067 Frances, Muskegon, MI 49442.

Staff Correspondence: A dangerous building inspection was conducted on 01/16/08. The Notice and Order to Repair was issued on 01/17/08. On 03/06/08 the HBA declared the structure substandard and dangerous.

Owner Contact: No one was present for the HBA meeting dated 03/06/08. The owner who is in the military called and sent a email stating the home was rented with option to buy and was abandoned and trashed he planned to be home on leave in May 2008 to address issues. There has been no contact from the owner since that time and no permits, nor interior inspection scheduled.

Financial Impact: CDBG Funds

Budget action required: None

State Equalized value: \$24,300

Estimated cost to repair: \$5,000(Exterior Only)

Staff Recommendation: To concur with the Housing Board of Appeals decision to demolish.

SUMMARY FOR: 922 S GETTY ST

This building is a two story wood frame single family dwelling. This building has numerous violations including the foundation; it appears that this home has been abandoned. This building, if left in it's current condition, will continue to deteriorate and remain an "attractive nuisance" to the neighborhood children.

CITY OF MUSKEGON

933 Terrace St., P.O. Box 537, Muskegon, MI 49443 (231) 724-6715

DANGEROUS BUILDING INSPECTION REPORT

Wednesday, January 16, 2008

Enforcement # EN080015 **Property Address** 922 S GETTY ST
Parcel #24-121-300-0109-00 **Owner** LANE DARRYL

Inspector: Henry Faltinowski

Date completed: 01/16/2008

DEFICENCIES:

Uncorrected

1. Replace all damaged siding on home.
2. Scrape and paint siding on home.
3. Replace - repair damaged windows, window screens, glass and exterior doors.
4. Foundation repair needed per MRC 2003 code. Provide interior inspection to evaluate scope of foundation damage.
5. Remove debris out of yard.
6. Provide interior inspection by trade inspectors.
7. All stairs, landings, guardrails and handrails must meet MRC 2003 code.

Request interior inspection by all trades, electrical, mechanical and plumbing. Please contact Inspection Services with any questions or to schedule an inspection at 933 Terrace St., Muskegon, MI 49440 (231) 724 6758.

Based upon my recent inspection of the above property I determined that the structure meets the definition of a Dangerous Building and/or Substandard Building as set forth in Section 10-61 of the Muskegon City Code.

Henry Faltinowski, Building Inspector

Date



6-1-2007

Date: June 24, 2008
To: Honorable Mayor and City Commissioners
From: Bryon Mazade, City Manager
RE: Findings of Fact and Recommendation
Re: Spotlight Lounge

SUMMARY OF REQUEST: To consider the Findings of Fact and Recommendation for the Spotlight, submitted by Hearing Officer Robert O. Chessman, for potential revocation of the liquor license for Spotlight.

FINANCIAL IMPACT:

BUDGET ACTION REQUIRED:

STAFF RECOMMENDATION:

COMMITTEE RECOMMENDATION:

In Re:

CITY OF MUSKEGON,

and

D & L OF MICHIGAN,
d/b/a Spotlight Lounge

FINDINGS OF FACT AND RECOMMENDATIONS

I. NATURE OF THE PROCEEDING

This matter came before me as the appointed hearing officer for the City Manager and the City Commission for the City of Muskegon. On May 22, the City Clerk suspended the business certificate of registration of D&L of Michigan, doing business at 435 and 441 West Western Avenue in the City of Muskegon. She suspended the business certificate pursuant to section 50-43 (7) of the Muskegon City Code, alleging that the Spotlight was "[c]onducting a business in an unlawful manner or in such manner as to constitute a breach of peace or to constitute a menace to the health, morals, safety or welfare of the public." Exhibit 1.4. On May 23, 2008, the Spotlight filed a timely appeal of the suspension. Exhibit 1.5. This appeal entitled the Spotlight to a hearing before a hearing officer appointed by the City Manager. Section 50-44 (b); Exhibit 1.4.

During this same time period, the City Commission decided to consider asking the Michigan Liquor Control Commission to revoke the Spotlight's on-premises liquor license. The Commission directed the City Staff to have a third-party hearing officer hold a hearing and make recommendations to the Commission on this issue. Exhibit 1.7.

I conducted a public hearing on June 9 and 10, 2008. The hearing addressed both the business certificate and liquor license issues. The City of Muskegon and the Spotlight both appeared at the hearing represented by counsel. The City produced two witnesses and offered into evidence two exhibits. The first exhibit contains 45 sections, which I will refer to

as Exhibits 1.1 through 1.45. The Spotlight presented no exhibits or testimony, although its attorney vigorously cross-examined the two City witnesses.

II. QUESTIONS PRESENTED

A. Should the City Manager affirm or reverse the decision to revoke the Spotlight's business certificate?

B. Should the City Commission recommend that the Michigan Liquor Control Commission revoke the Spotlight's liquor license?

III. FINDINGS OF FACT

The Spotlight opened for business on June 29, 2007. Exhibit 2. It sits in the middle of the block on the south side of Western Avenue between Third Street on the east and Fourth Street on the west. The Hilt Building and the Frauenthal Center for the Performing Arts occupy the space on that block to the east; the Muskegon Chronicle Circulation Department building occupies the space to the west. The L.C. Walker Arena lies diagonally across the intersection to the northwest. Racquets restaurant and bar lies directly north across Western Avenue. To the east of Racquets are an eye doctor's office, a parking lot, and the Holiday Inn. The back doors of the Spotlight open onto an alley which separates it from the Muskegon Chronicle offices. One-half block away from the front doors is the intersection of Third and Western, the center of the new downtown.

At 2:04 a.m. on July 1, two days after the opening of the lounge, City police discovered that there had been a fight inside the Spotlight. Bouncers were in the process of kicking people out of the lounge. About 100 people remained on the sidewalk and in Western Avenue outside the front doors. The police broke up several fights and dispersed the crowd. They then discovered an injured patron lying on the dance floor inside the Spotlight, with a cut to his head. Lacy Jones, the owner of the Spotlight, saw the fight, but could not get to it or identify who was involved. Exhibit 1.10.

At 2:07 a.m. on July 15, 2007, a patron who had been drinking at the Spotlight crossed the street to Racquets and tried to order some food. When he was told that the kitchen was closed, he created a disturbance. The police arrived to find him outside the restaurant waiting for a cab. They characterized him as "obviously intoxicated". Exhibit 1.11.

At 1:16 a.m. on July 29, 2007, police responded to the report of an assault. A dispute had started inside the Spotlight. Security staff had ejected the complaining witness from the Spotlight. Later on, the police heard "gunfire coming from the Spotlight". Exhibit 1.12. An officer reported "several rapid gunshots" "coming from near the Spotlight". From his vantage point at the corner of Western and Fourth, he saw 50 people running in all directions. Outside the front doors of the lounge, police found evidence of a fight. Inside the lounge at 2:45 a.m., they saw about 25 people. The bar owner said these people were all employees. To the police, they looked like patrons, not employees. The police did not find the shooter. No evidence directly connects the gunshots to the Spotlight. Exhibit 1.13. Later that same morning, a woman contacted the police to report that another woman had struck her three or four times in the head with a beer bottle outside the front doors of the Spotlight. She said that several other women then hit her while she was on the ground and robbed her. Exhibit 1.14.

At 2:47 a.m. on August 2, 2007, a woman reported to police that someone had assaulted her and had stolen her cell phone near the Spotlight. No evidence directly connects the assault and theft to the lounge. Exhibit 1.15.

At 0:57 a.m. on August 12, 2007, police responded to a report of about 20 people waiting in line outside the Spotlight, pounding on the doors trying to get in. Exhibit 1.16. Also on the morning of the 12th, at 1:27 a.m., a caller reported an assault in front of the Spotlight. The assault victim had gotten up and walked east toward the Frauenthal. Police found him lying on the sidewalk, accompanied him to the hospital for medical treatment, and booked him in jail for carrying a concealed weapon in the form of a kitchen steak knife. Exhibit 1.18.

Later that same morning, a caller reported "several subjects with guns". Police responded and found no guns. Crowd control staff from the Spotlight were moving people along. Several small groups of people were yelling at each other. They left, still yelling at each other and also at the officers who had arrived. The owner of the Spotlight asked the police to come to the lounge from 1:45 to 2:15 a.m. every Wednesday and Saturday to help his staff deal with these issues. He confirmed that the problems this morning had started when the lounge was full and could not legally admit any other patrons. Exhibit 1.17. Finally, at 2:54 a.m. this same morning, a woman reported that her husband, who worked security at the Spotlight, had been assaulted by a very intoxicated patron. The assault took place inside the lounge as her husband was trying to get the patron, who was also her brother and his brother-in-law, to leave around closing time. The security staff member lost a tooth and had another dangling from his mouth at the hospital. Exhibit 1.19.

At 0:54 a.m. on August 25, 2007, police found a woman lying in a flower bed near the intersection of Fourth and Western. She did not at first appear to be breathing. She had vomited and was drunk, her preliminary breath test registering .171 (legal limit to drive .08). She told police she had been at the Spotlight. Exhibit 1.20.

At 2:12 a.m. on September 20, 2007, police investigated a fight that had taken place. The fight involved two men who had left the Spotlight. There was no indication that the fight took place inside the lounge or that either of the men was intoxicated. The police filed no charges. Exhibit 1.21.

A patron told police that she had left the Spotlight at 2:00 a.m. on September 29, 2007. She became stuck in the middle of a large group of people. A fight broke out and someone stole her purse. There is no evidence that the crowd came from the Spotlight or that excessive drinking played any role in the incident. Exhibit 1.23.

At 12:17 p.m. on September 30, 2007, police investigated a reported fight that had taken place at the Spotlight twelve hours beforehand. The participants denied drinking at the lounge. The police filed no charges. Exhibit 1.22.

At some point in the late summer or early fall of 2007, City of Muskegon Director of Public Safety, Tony Kleibecker, met with Lacy Jones, the owner of the Spotlight. They talked about the incidents that had taken place during the first several months that the Spotlight had been open. Mr. Kleibecker made three suggestions to reduce problems at closing time: 1) Moving up the time to stop serving alcohol before closing; 2) Clearing the patrons in smaller groups rather than all at once; and 3) Hiring and training quality security staff members. Mr. Kleibecker testified that Mr. Jones responded in a positive way to these suggestions. From an "operational" standpoint, Mr. Kleibecker felt that the Spotlight had done all that it could to deal with the problems.

On October 4, 2007, at 2:04 a.m., a large crowd of 50 to 75 people assembled outside the Spotlight. The owner called the police to report that it looked as though a fight might start. The police arrived to find cars blocking Western Avenue. They were able to disperse the crowd without further incident. There was no fight and the police filed no charges. Exhibit 1.24.

Three nights later, at 2:16 a.m. police responded to reports of a fight at the Spotlight. The fight they discovered was at the intersection of Third and Western, one-half block east of the front doors of the lounge. A large group of people was trying to separate the two men who were fighting. Police escorted one injured and high-intoxicated participant to Hackley Hospital for treatment. There was no direct evidence that the men fighting had been inside the Spotlight. Exhibit 1.25.

On October 27, 2007, security staff ejected a female patron from the Spotlight. Police arrived at 2:17 a.m. and discovered that she was intoxicated. A Racquets employee

reported that this woman had failed to pay for two drinks there. The woman reported that she had been assaulted by unknown women. She had sustained a cut over her eye. Police transported her to Hackley Hospital for treatment. Exhibit 1.26.

On Sunday morning, November 18, 2007, police responded to a woman yelling obscenities near the front entrance to the Spotlight. They found an intoxicated white woman yelling racially-charged insults at a patron waiting to enter the lounge. A Spotlight employee stated that she had done this repeatedly and he was concerned for her safety. The officers arrested the woman and lodged her in the County jail for disturbing the peace. She had not been drinking at the Spotlight. Although this exhibit was listed by Mr. Kleibecker as an incident involving the Spotlight, he admitted that it probably should not have been included. Exhibit 1.27.

At 2:06 a.m. on December 6, 2007, an officer saw a crowd on the sidewalk near the Spotlight. People were shoving other people. By the time other officers arrived, the crowd dispersed. Exhibit 1.29.

At 2:16 a.m. on December 22, 2007, officers responded to a reported assault. They found cars blocking Western in front of the Spotlight and Fourth from Clay to Shoreline Drive. An estimated 150 to 200 people were milling around in front of the Spotlight. A fight broke out in the City parking lot at Fifth and Western. Police successfully directed traffic and dispersed the crowd. At 2:50 a.m., two officers entered the Spotlight. About 50 people remained inside the club. The officers advised the owner, Lacy Jones, that all those who were not in the band or club employees had to leave. Mr. Jones cooperated and about 20 people left the Spotlight. Exhibit 1.30.

At 23:15 p.m. on December 23, 2007, someone reported a fight inside the Spotlight. When officers arrived, lounge staff said that the fight was over and those fighting had left. The officers entered the lounge and found an injured patron in the bathroom. He claimed

that an unknown male had struck him in the head with a bottle. Exhibit 1.31.

On December 29, 2007, three different individuals assaulted a woman inside the Spotlight. The owner ejected all participants from the lounge. When the police arrived at 2:15 a.m., Mr. Jones told the victim of the assault that all problems in his club would be dealt with on a "zero tolerance" basis. Exhibit 1.32.

At 2:11 a.m. on January 10, 2008, police responded to a call from Spotlight security. A very large fight was in progress inside the lounge. Patrons jumped over the bar to grab bottles to use as weapons. By the time the police arrived, 100 people remained inside. Patrons locked the police out of the bar. The owner came out and described what had happened. When the officers got inside, 50 people still were causing a disturbance. The police ordered all non-employees to leave. They observed that the interior of the club was "destroyed". Exhibit 1.33.

No other reported incidents took place during the winter months of January and February. On March 5, 2008, Tony Kleibecker recommended that the City Commission not approve the renewal of the liquor license for the Spotlight. He outlined the number and character of the incidents that had taken place and the lack of significant improvement since the meeting with Lacy Jones in the late summer of 2007. Exhibit 1. 9.

On March 11, 2008, Lacy Jones filed an application for a business registration. In that application, he represented to the City that the Spotlight employed five people. Two days later, the Muskegon City Clerk issued the new certificate of registration. Exhibit 2. There is no direct evidence in the record regarding what action the City Commission took on Mr. Kleibecker's recommendation that it not approve the renewal of the liquor license. Apparently, though, either the Commission did not act on his recommendation or the Michigan Liquor Control Commission renewed the license despite the City Commission's request for non-renewal. The liquor license must have renewed in April of 2008. Otherwise, I

would not have conducted this hearing.

On March 17, 2008, at 2:21 a.m. an officer met with a patient at Mercy Hospital. The patient claimed to have been attacked earlier that morning by five to seven Spotlight security guards as he was trying to break up a fight involving a friend. His friend was at the hospital and confirmed this story. This incident is still under investigation according to Tony Kleibecker. There is no information in the record from the security guards or the owner of the Spotlight detailing their view of what happened. Exhibit 1.34.

At 1:28 a.m. on May 3, 2008, police responded to a report of a fight taking place in a car in front of the Spotlight. There was a large crowd on Western, but no apparent fight. Exhibit 1.35.

I now turn to the events of May 17, 2008, a series of incidents which precipitated the actions by the City of Muskegon to revoke the business registration and to consider recommending revocation of the liquor license. Beginning on the evening of the 16th of May, the Spotlight held a dance for teenagers. In so doing, the Spotlight did not comply with the applicable City ordinances. It did not obtain a license for the event as required by section 50-74 of the City Code. Nor did it obtain chief of police approval for the adult supervision that it had to provide under section 50-78 (2). Finally, the dance appears to have continued well beyond the 9:00 p.m. deadline for non-licensed dances as well as the 11:00 p.m. deadline for licensed dances. Sections 50-77 and 50-78.

Police responded at 00:58 a.m. on the 17th to investigate a reported shooting. An officer discovered a fifteen-year-old male lying in the entrance way to the Spotlight. Further investigation revealed that this young man had attended the event inside the Spotlight. As he was leaving the lounge, he encountered a large crowd of people fighting at the corner of Fourth and Western. He tried to go around the crowd, at which point someone shot him in the back. He turned around and ran back toward the Spotlight, where he was later

discovered by the officer. At the scene, he said he did not know who had shot him. Two days later, he told police that he had been directed out the back door of the Spotlight at closing with a large group of people. In that group was a male named "Blue". There were fights in the alley behind the Spotlight. He saw Blue go into a car parked near the Chronicle building and come out with a handgun, which he then fired into the air three or four times. People ran out of the alley onto Fourth Street and toward the intersection with Western. Blue fired the gun again. The fifteen-year-old had turned and was running away as Blue started shooting again. It was at this point that he was hit in the back with a bullet.

In a separate incident, another officer was trying to disperse the crowd of hundreds in the street and parking lots. As he walked along the north side of Western Avenue by the parking lot between the eye doctor's office and the Holiday Inn, he saw a male standing between two parked cars pulling a small handgun out of his waistband. The officer pulled his own gun and ordered the man to drop his. Just as the officer was about to shoot, the man dropped his gun and started to run to the north. The officer got him to stop and lie down. The man said that he was drunk.

In the same parking lot, police found evidence of a car with a bullet mark on it and two shell casings. The gun taken from the man there had no bullets in it. Three more shell casings were found in the parking lot later that same day by a Racquets employee.

Police conducted later interviews with high school students who had attended the event at the Spotlight. They said it was a teen dance. They stayed there until almost 1:00 a.m. The lounge served soft drinks only, no alcohol. Outside the Spotlight, numerous fights took place. The students identified a male named Armstrong. Several reported he had fired a gun into the air several times. One said he also fired once into a crowd.

To sum up, most, if not all of the Muskegon City Police Department responded to these incidents. I count ten officers from the department that participated in some way on the

17th. Later investigation brought in another six officers, not including their supervisors. Shots came from at least two separate guns: one which was found, the other which was not. One shooting took place in the alley behind the Spotlight and into Fourth Street near the intersection with Western Avenue. The other took place in the parking lot near the Holiday Inn on the north side of Western. One young man sustained serious injury from a bullet. The various participants had all attended an unlicensed and improperly supervised teen dance at the Spotlight. No alcohol had been served at the event. No fighting took place inside the Spotlight. Exhibit 1.36.

Following these events on the 17th of May, the City of Muskegon suspended the Spotlight's business registration that it had earlier granted on March 13, 2008. The City Commission asked the staff to look into whether or not it should ask the Michigan Liquor Control Commission to revoke the Spotlight's on-premises liquor license.

At the hearing, Ann Marie Becker, City Clerk for the City of Muskegon, testified that she suspended the Spotlight's business registration on May 22, 2008. She based the suspension on the memorandum she had received from Director of Public Safety Anthony L. Kleibecker that same day. Exhibit 1.4. She had not conducted any investigation herself, relying instead on Mr. Kleibecker's summary and analysis of what had happened at the Spotlight over the previous ten months. She had never suspended or revoked a business registration before during her tenure as City Clerk, beginning in February of 2007.

Mr. Kleibecker testified over a period of nearly four hours. He worked in positions of increasing responsibility for Michigan State University from 1975 to 2000. In 2000, he moved to Muskegon and became Chief of Police for the City. He later assumed the position of Director of Public Safety.

Mr. Kleibecker authenticated the police reports set forth as Exhibits 1.10 through 1.36. For purposes of the hearing, both attorneys agreed that I could consider the reports as

evidence. I admitted Exhibits 1 and 2 into evidence.

Mr. Kleibecker first set forth the basis for his request that the business registration be suspended. He focused on the language of section 50-43 (7), which allows the City Clerk to suspend the license of an owner who is "[c]onducting a business in an unlawful manner or in such a manner as to constitute a breach of peace or to constitute a menace to the health, morals, safety or welfare of the public".

In his opinion, the Spotlight had conducted its business in an unlawful manner when it held the teen dance on May 16-17, 2008. It did not obtain the required permit for the event. It did not seek or obtain approval for a "floor manager". It also did not stop the event by the two potentially applicable time deadlines: 9:00 p.m. for unlicensed events, and 11:00 p.m. for licensed teen dances.

He further testified that the Spotlight had conducted its business so as to cause a breach of peace by virtue of the fact that 1) the gun shot victim; 2) the person believed to have shot this victim, 3) another individual possessing a gun in the parking lot near the Holiday Inn; and 4) a fourth individual possessing a concealed weapon in the form of brass knuckles had all reportedly attended the event at the Spotlight that night.

Mr. Kleibecker believed that the Spotlight constituted a menace to public safety because of the various reports of shots being fired in the downtown business district. He also cited at least seven incidents of injury taking place inside the Spotlight from the opening in late June of 2007 to the night of May 17, 2008.

On the liquor license issue, Mr. Kleibecker had earlier requested in March that the City Commission recommend non-renewal of that license to the Michigan Liquor Control Commission. The events since March, most particularly the incidents of May 17, 2008, reinforced his view that the pattern of serious problems associated with the Spotlight justified revocation of the liquor license. Every officer on duty had responded to the events of May

17th, leaving the rest of the City without any police protection. Looking at comparable police calls for other bars in the City, the Spotlight's record stood out in terms of both quantity and seriousness of the calls.

The attorney for the Spotlight conducted a lengthy cross-examination of Mr. Kleibecker. The witness admitted that he had not previously recommended suspension of a business registration. He admitted that he had never shut down a business for lack of a teen dance license. He admitted that the Spotlight had not served alcohol to the teenagers at the May 16-17th event. He knew of no instance where the Spotlight had served alcohol to an underage person. The Spotlight had never been charged with any criminal violation, and in fact had not yet been cited for failing to obtain a permit for the teen dance. He agreed that the penalty for failure to obtain such a permit was a civil infraction, justifying at most a fine.

Much of the cross-examination focused on the question of what the Spotlight employees and owner had done or failed to do that caused the problems that took place in the streets of Muskegon after closing time. Mr. Kleibecker could not point to actions by the owner or staff that directly caused the problems in the streets. He agreed that the security staff had no authority to police the streets outside the lounge. He also agreed, as set forth above, that the owner, Lacy Jones, had tried to put in place the three "operational" suggestions from the police department after the meeting in late summer or early fall of 2007.

When asked the question: "What can the Spotlight do to mitigate the behavior of its patrons?", Mr. Kleibecker had no further "operational" suggestions. He pointed out that the lounge could change the type of entertainment it offered so as to attract a different or more diverse set of patrons, but admitted that this was a business decision. He agreed that the Spotlight was probably one of the larger bars in the City of Muskegon. He agreed that, in general, the owner had acted in a cooperative way throughout the ten months of operation.

He also agreed that some of the calls to the police had come from the Spotlight staff itself.

IV. DISCUSSION AND RECOMMENDATIONS

This is not a simple case. The public outcry following May 17, 2008, notwithstanding, it is difficult, if not impossible, to identify something that the Spotlight could have done differently that would have prevented the gunshot wound to the fifteen-year-old. The gun that caused the wound appears to have come from a car parked in the alley outside the back door of the Spotlight. The Spotlight is no more responsible for and had no more control over that gun than did the Muskegon Chronicle.

The Spotlight did two things that no other business did: 1) It provided a meeting place for hundreds of unsupervised teenagers; and 2) It allowed these teenagers to stay out past the 9:00 deadline for unlicensed dances and past the 11:00 deadline for licensed dances. As a result, hundreds of unsupervised young people left the Spotlight around 1:00 a.m. and got into trouble of their own making.

The problem for the City of Muskegon and its police department is that they are left to deal with the consequences. The entire on-duty department responded to the reported shooting. On earlier occasions, many officers responded to deal with crowds of people on the streets and in the parking lots surrounding the Spotlight. Again, the Spotlight did not directly cause these disturbances; it provided a venue for hundreds of people who then left the lounge, usually at 2:00 a.m. and got into trouble of their own making. I count seven incidents involving large crowds outside the Spotlight. This is in a period of time from June 29, 2007 through May 17, 2008, and includes the period of time this past winter when no one spent any time outside at night due to the cold weather.

So, what should the City do? I see this as a very close call on the issue of the business certificate. Mr. Kleibecker and Ms. Becker based their actions on the language of section 50-43 (7). That ordinance focuses on the "conduct" of a business. On balance, I do

not see any "conduct" of the business from an operational standpoint that constituted a breach of peace or constituted a menace to the safety of the public. It is clear that the May 16-17, 2008, teen dance was "unlawful" in the sense that it took place without the required license and without the required adult supervision. I view this as an insufficient basis upon which to justify the drastic step of revoking the business certificate. I would therefore recommend that the City Manager reverse the decision to suspend the certificate of registration.

The liquor license presents a different question. The applicable provisions of the City Code focus on the extent to which the licensee has "caused law enforcement problems to the degree or extent that effective law enforcement in the remainder of the city has been...impaired or denied". Section 50-147 (4). The Code also gives deference to the recommendation of the chief of police 50-147 (2) and allows the Commission to consider whether or not the licensed premises are "reasonably harmonious with adjacent land uses" 50-147 (8).

The evidence supports the decision of the Director of Public Safety to request the non-renewal of the liquor license back in March of 2008. The events since March provide further evidence that non-renewal of that license was the best course of action. The incidents of May 17th undoubtedly caused impaired law enforcement in the remainder of the City. On at least six other occasions, police responded to problems associated with crowds outside the Spotlight.

The good news from the testimony at this hearing is that the owner of the Spotlight responded positively to the suggestions of the police department. He made a good faith effort to do what was within his power to mitigate problems caused by his patrons upon leaving the lounge. The bad news is that despite his best efforts, his patrons caused significant law enforcement problems on numerous occasions. The actions of the Spotlight

patrons mandated repeated police intervention.

For these reasons, I recommend that the City Commission ask the Michigan Liquor Control Commission to revoke the liquor license for the Spotlight.

V. CONCLUSION

I make recommendations only. The City Manager may accept, or reject my recommendation on the business certificate issue. The City Commission has the final say on the liquor license issue. It, too, may accept or reject my recommendation.

Dated: June 13, 2008

A handwritten signature in black ink, appearing to read "R. Chessman", written over a horizontal line.

Robert O. Chessman
Hearing Officer