

City of Marquette, MI



Meeting Agenda City Commission

Monday, September 12, 2022
6:00 PM
Commission Chambers

300 West Baraga Ave
Marquette, Michigan 49855

Call to Order, Pledge of Allegiance and Roll Call

Approval of the Agenda

Announcements

Boards and Committees

1. Appointment(s)

Peter Felsman, Arts and Culture Advisory Committee, for an unexpired term ending 06-01-25

Public Comments - Comments may not exceed three minutes per person. Please state your name and physical address when making public comments.

2. Consent Agenda - Roll Call Vote

2.a. Approve the total bills payable in the amount of \$ 2,916,887.47

2.b. Application for License to Use City Property Adjacent to 110 W. Hewitt Avenue

2.c. Historic United States Coast Guard Station Building Rehabilitation Resolution- Roll Call Vote

2.d. Schedule a Public Hearing- Rezoning Parcel of NMU Owned Property

2.e. Schedule a Public Hearing- FY 2023 Budget

2.f. Schedule a Public Hearing- Rezoning Request for 221 and 225 W. Park Street

New Business

3. MEDC Grant - Community Master Plan Update

Public Comments - Comments may not exceed three minutes per person. Please state your name and physical address when making public comments.

Comments from the Commission

Comments from the City Manager

Adjournment

Kyle Whitney, City Clerk

If you require assistance to participate in any meeting, program or activity offered by the City of Marquette, please provide advanced notice to City of Marquette ADA Coordinator Eric Stemen at 906-225-8978 or via email at estemen@marquettemi.gov.

City of Marquette, MI

300 West Baraga Avenue
Marquette, MI 49855

Agenda Date: 9/12/2022

Consent Agenda - Roll Call Vote

Application for License to Use City Property Adjacent to 110 W. Hewitt Avenue

BACKGROUND:

Peter Claybaker has submitted an application to use a small portion of the W. Hewitt Avenue right-of-way adjacent to his home for the placement of a fence to contain garden beds and keep out rabbits. All City staff reviewers approved of the request, the City Attorney has drafted the license and Mr. Claybaker has signed the license.

FISCAL EFFECT:

The application fee for a License to Use City Property is currently \$255 and has been paid.

RECOMMENDATION:

Approve the License, and authorize the Mayor and City Clerk to sign the License Agreement.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

- ▣ 06-PRU-09-22 Application and Exhibit
- ▣ 06-PRU-09-22 License Agreement_Signed by Applicant

CITY OF MARQUETTE
APPLICATION FOR LICENSE/EASEMENT
OF CITY OWNED PROPERTY



CITY STAFF USE

Date Submitted: 7-18-22 Parcel ID#: 0330260 File #: 06-PRU-09-2022
Property Address/Location: 110 W. Hewitt
Adequate Legal Description Submitted: ☒ Y / ☐ N Anticipated Hearing Date: 09-12-2022

FEE \$255 (We can only accept Cash or Check (written to the City of Marquette))

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED, ALL OF THE INFORMATION REQUIRED IS PRESENT AT THE TIME OF THE APPLICATION - NO EXCEPTIONS!

APPLICANT CONTACT INFORMATION

APPLICANT

Name: Peter Claybaker
Address: 110 W Hewitt Ave
City, State, Zip: Marquette, MI 49855
Phone #: 906 458 3777
Fax #: —
Email: pjclaybaker@gmail.com

****APPLICANTS OR REPRESENTATIVES ARE STRONGLY ENCOURAGED TO BE PRESENT AT THE MEETING****

APPLICANT'S REPRESENTATIVE

Name: Same
Address: _____
City, State, Zip: _____
Phone #: _____
Fax #: _____
Email: _____

****APPLICANTS OR REPRESENTATIVES ARE STRONGLY ENCOURAGED TO BE PRESENT AT THE MEETING****

What is the street address, or nearest street address, to the location of the requested license/easement?

110 W Hewitt Ave, Marquette, MI 49855

Please describe the reason or necessity for the requested license/easement for use of the City property:

We put garden beds in our front yard, and want to install a rabbit resistant fence around them. To have room to work the beds, inside the fence, the fence needs to be installed in the right of way. We are proposing that the fence is 1 foot from the sidewalk, which will match the front fence locations at the other properties on our block. One is at 114, and the other is at 130

You may attach sketches, maps, photos, or other items that may help to illustrate/visualize your request. Community Development staff will attach a photo-map of the area.

Attachments: _____

LEGAL DESCRIPTION

Legal description of the license/easement area:

Adams Addition

See Exhibit A for a depiction of the license area

The S. 118' of the W. $\frac{1}{2}$ of lot - 24 and the S. 118' of the E. 49' of Lot 25

SIGNATURE

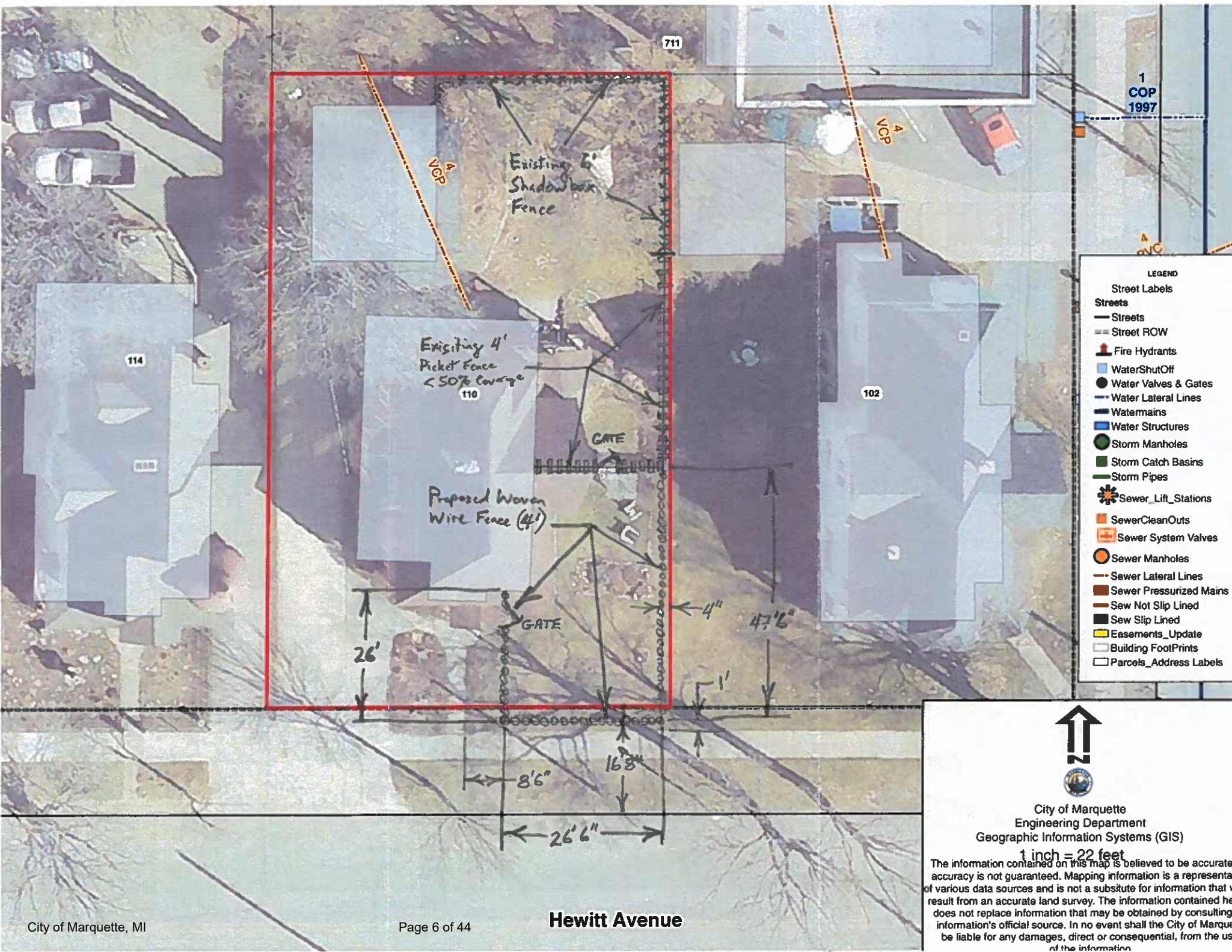
I understand that this application itself is not considered an approval and only the Marquette City Commission has the authority to grant an approval for a license/easement for use of property owned by the City of Marquette.

Signature:

Pete J. Apple

Date:

7/18/2022



- LEGEND**
- Street Labels**
- Streets
 - Street ROW
- Fire Hydrants**
- Water Shut Off
 - Water Valves & Gates
 - Water Lateral Lines
 - Water Mains
 - Water Structures
 - Storm Manholes
 - Storm Catch Basins
 - Storm Pipes
 - Sewer Lift Stations
 - Sewer Clean Outs
 - Sewer System Valves
 - Sewer Manholes
 - Sewer Lateral Lines
 - Sewer Pressurized Mains
 - Sew Not Slip Lined
 - Sew Slip Lined
 - Easements_Update
 - Building FootPrints
 - Parcels_Address Labels



City of Marquette
Engineering Department
Geographic Information Systems (GIS)

1 inch = 22 feet

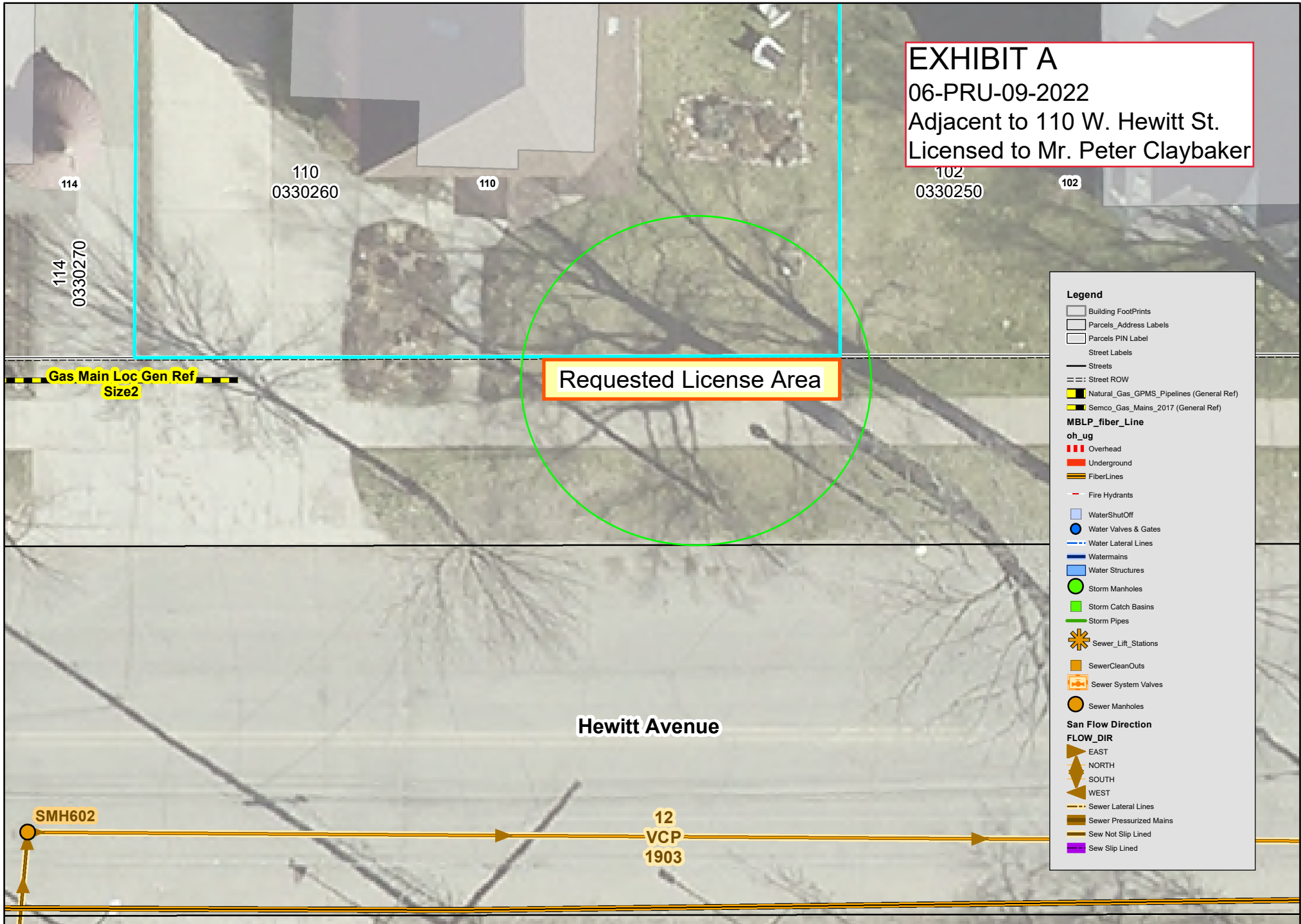
The information contained on this map is believed to be accurate accuracy is not guaranteed. Mapping information is a represental of various data sources and is not a substitute for information that v result from an accurate land survey. The information contained he does not replace information that may be obtained by consulting information's official source. In no event shall the City of Marquette be liable for any damages, direct or consequential, from the us of the information

EXHIBIT A

06-PRU-09-2022

Adjacent to 110 W. Hewitt St.

Licensed to Mr. Peter Claybaker



Legend

- Building FootPrints
- Parcels_Address Labels
- Parcels PIN Label
- Street Labels
- Streets
- Street ROW
- Natural_Gas_GPMS_Pipelines (General Ref)
- Semco_Gas_Mains_2017 (General Ref)
- MBLP_fiber_Line
- oh_ug
- Overhead
- Underground
- FiberLines
- Fire Hydrants
- WaterShutOff
- Water Valves & Gates
- Water Lateral Lines
- Watermains
- Water Structures
- Storm Manholes
- Storm Catch Basins
- Storm Pipes
- Sewer_Lift_Stations
- SewerCleanOuts
- Sewer System Valves
- Sewer Manholes
- San Flow Direction
- FLOW_DIR
- EAST
- NORTH
- SOUTH
- WEST
- Sewer Lateral Lines
- Sewer Pressurized Mains
- Sew Not Slip Lined
- Sew Slip Lined

In regard to the map, the information contained on this map is believed to be accurate but accuracy is not guaranteed. Mapping information is a representation of various data sources and is not a substitute for information that would result from an accurate land survey. The information contained herein does not replace information that may be obtained by consulting the information's official source. In no event shall the City of Marquette be liable for any damages, direct or consequential, from the use of the information.



1 inch = 13 feet

File #: _____

Parcel ID#: _____

STAFF REVIEW

- For a sign/object/structure/project encroaching into a public right-of-way or on City property -

Please fill out the form within 48 hours of receiving it.

<u>Reviewing Department</u>	<u>Recommend Approval</u>	<u>Comments</u>
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Planning & Zoning-Community Development

Date Received: _____

Engineering Division of CD

Date Received: _____

Fire

Date Received: _____

DPW

Date Received: _____

Treasurer

Date Received: _____

Police

Date Received: _____

Community Services (Parks & Rec.)

Date Received: _____

GRANT OF LICENSE

THE CITY OF MARQUETTE, a municipal corporation of 300 W. Baraga Ave., Marquette, MI 49855, ("City"), and PETER CLAYBAKER of 110 W. Hewitt Avenue, Marquette, Michigan 49855, "Claybaker," enter into this agreement on _____, 2022, subject to the following conditions:

1. Background. The City owns the Hewitt Avenue right of way, in the City of Marquette, and State of Michigan.
Claybaker desires to construct a fence ("Fence"), on the real estate and to the specifications set forth in Exhibit A.
2. Grant of the license. In consideration of \$255.00, the City grants to Claybaker the right to construct and maintain the Fence on the real estate and to the specifications set forth in Exhibit A.
3. Construction and Maintenance. Claybaker shall construct, and at all times while this License is in effect, maintain the Fence in good repair. Claybaker shall be responsible for all fees and expenses related to the construction and maintenance of the Fence and real estate described in Exhibit A.
4. Use. The right to use the real estate described in Exhibit A is not exclusive, however as long as this License is in effect, the City shall not permit any use contrary to the Fence except as may be necessary to install, repair, remove or replace utilities. In the event the City repairs, removes or replaces utilities or performs street work, Claybaker shall be responsible for any removal of, repair to or replacement of the Fence in connection with utility work. Claybaker shall not use the real estate for any purpose except as specifically allowed within this agreement, and shall not alter, injure or damage the City's real estate.
5. Reimbursement for damages. Claybaker shall reimburse the City for any physical damages to the City's real estate caused by Claybaker's use on the real estate. Claybaker shall indemnify, defend and hold harmless the City from and against any demand, claim, action or cause of action, assessment, loss, damage, liability cost and/or expense, including but not limited to, interest, penalties, consultants fees and expenses, and attorneys' fees and expenses, asserted against, imposed upon or incurred by the City due solely to Claybaker's use. Claybaker's obligations under this provision shall not extend to claims, losses, expenses or damages arising out of or in any way attributable to the negligence of the City or its agents, consultants, or employees. Claybaker reserves the right to control the defense and settlement of any claim for which Claybaker has an obligation to indemnify hereunder.
6. Revocation. This License may be revoked by either party at any time by providing at least 180 days' written notice of termination to the other party. On the termination date, all rights and obligations of the parties shall cease and on or before the termination date, Claybaker shall remove the Fence from the real estate, at his own expense. Claybaker shall not be entitled to a reimbursement for any portion of the fee previously paid to the City.
7. Entire Agreement. This Grant of License constitutes the entire agreement between the parties.

The said parties have caused this document to be executed the day and year first written above.

CITY OF MARQUETTE

By: Jennifer A. Smith
Its: Mayor

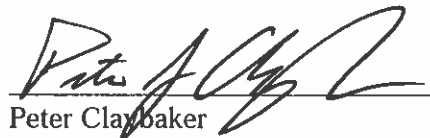
By: Kyle Whitney
Its: Clerk

STATE OF MICHIGAN)
)
COUNTY OF MARQUETTE)

Acknowledged before me in Marquette County, Michigan, on _____, 2022, by Jennifer A. Smith, Mayor and Kyle Whitney, Clerk, of the City of Marquette, a Michigan municipal corporation.

Public

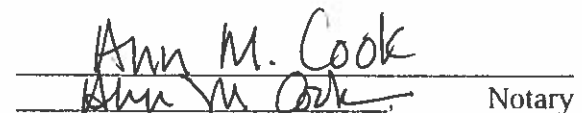
_____, Notary
State of Michigan, County of Marquette
My Commission Expires: _____
Acting in the County of Marquette


Peter Claybaker

STATE OF MICHIGAN)
)
COUNTY OF MARQUETTE)

Acknowledged before me in Marquette County, Michigan, on August 25, 2022, by Peter Claybaker.

Public


_____, Notary
State of Michigan, County of Marquette
My Commission Expires: 11-22-24
Acting in the County of Marquette

ANN M. COOK
Notary public, Marquette County, Michigan
My commission expires November 22, 2024.

City of Marquette, MI

300 West Baraga Avenue
Marquette, MI 49855

Agenda Date: 9/12/2022

Consent Agenda - Roll Call Vote

Historic United States Coast Guard Station Building Rehabilitation Resolution- Roll Call Vote

BACKGROUND:

The City of Marquette has applied for funding through the Resilient Lakeshore Heritage Grant program administered by the Michigan State Historic Preservation Office (SHPO) to perform work on the exterior of the former United States Coast Guard (USCG) Station Building located at Lighthouse Park. This program is intended to support long-term investment in the irreplaceable heritage assets of Michigan's rural lakeshore communities. Program funding is specifically for building rehabilitation (i.e., "bricks and mortar") projects. The program places a particular focus on economic impact and projects that positively contribute to the economic, social, and/or cultural life of a community and promote reinvestment in historic properties.

The USCG Station Building is an historic building constructed in 1891 as living and working quarters for the US Life-Saving Station established in Marquette. This building was continuously occupied until the construction of the new USCG Station Marquette facility in 2015 and was most recently used as the working office building for the station.

The City of Marquette Lighthouse Property Land Use Plan recommended the City rehabilitate the USCG Station Building for multi-purpose use and make the building available for rent by the public and various groups. The City has applied for \$89,000 in funding towards this purpose. The City's match component is \$10,000 and will be funded by dedicated bond proceeds.

A resolution of commitment for the grant from the City Commission is required as a component of the application.

FISCAL EFFECT:

If awarded, the grant provides for \$89,000 in reimbursements. The City will be required to provide a \$10,000 match. Sufficient funding is available from the dedicated 2018 bond issuance related to this park.

RECOMMENDATION:

Approve the resolution for the Michigan State Historic Preservation Office Resilient Lakeshore Heritage grant and authorize the Mayor and City Clerk to sign.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

▣ Resolution

▣ Photos



Resolution for Michigan State Historic Preservation Office Resilient Lakeshore Heritage Grant Program

Whereas, the City of Marquette will file an application to the Michigan State Historic Preservation Office (SHPO) for the Resilient Lakeshore Heritage Grant program in the amount of \$89,000 for the Historic United States Coast Guard Station Building Rehabilitation for the resource located at 400 Coast Guard Road and;

Whereas, the City of Marquette acknowledges that the Resilient Lakeshore Heritage Grant Program is an expense reimbursement program. The City of Marquette authorizes expenditures in the amount of \$99,000 for the project work, with funds from dedicated building authority bonds and;

Whereas, the City of Marquette acknowledges that reimbursements may be made, upon request, at fifty percent (50%) completion following SHPO receipt of a reimbursement request and SHPO audit and acceptance of related financial documentation and that the remainder will be reimbursed upon completion of final project work, SHPO acceptance of the final completion report, SHPO audit and acceptance of financial documentation for eligible costs and SHPO acceptance of a historic preservation easement recorded at the Register of Deeds, and;

Whereas, upon approval of the application by the SHPO the City Manager shall be authorized to sign the grant agreement, any necessary grant agreement amendments, and other agreement-related documents, and;

Whereas, Sean Hobbins, Assistant City Manager, is appointed as the Grant Project Manager who will oversee the day-to-day grant management and grant administration duties, including vendor selection and coordinating the payment of vendor invoices;

Whereas, upon completion of the project, the City of Marquette shall be required to and is authorized to sign the required historic preservation easement and record it at the County Register of Deeds before the grant reimbursement will be processed by the SHPO;

RESOLVED, that City of Marquette directs the City Manager to file an application for a grant from the SHPO Resilient Lakeshore Heritage Grant Program for \$89,000; and

RESOLVED, that the City Manager be authorized to sign the grant application and any additional grant documentation, and to take any additional administrative actions necessary to implement this resolution

Dated this 12th day of September, 2022.

Jennifer A. Smith
Mayor

I, Kyle Whitney, the duly qualified and acting City Clerk of the City of Marquette, do hereby certify that the following resolution was adopted at a meeting of Marquette City Commission held on September 12, 2022 is on file; has not been amended, altered or revoked; and is in full force and effect

Kyle Whitney
City Clerk

Coast Guard Station Exterior Repairs Summary



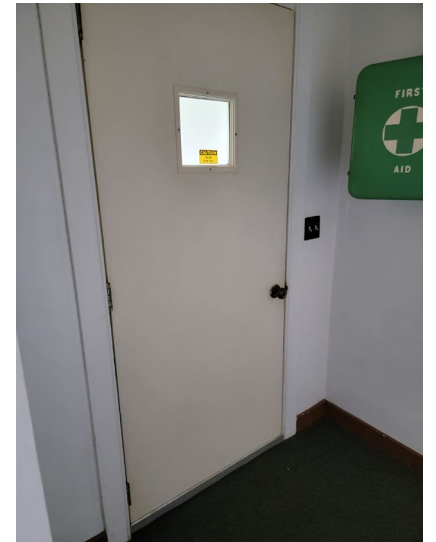
Exterior Windows



21 Exterior windows
10 Porch storm windows
10 Basement windows



Exterior Doors



8 Exterior Doors

Porch Repairs



Replace and paint
lattice on front and
side porches

Porch in need of structural repairs and handrails

Miscellaneous Exterior Repairs



Repair missing siding and power wash exterior

City of Marquette, MI

300 West Baraga Avenue
Marquette, MI 49855

Agenda Date: 9/12/2022

Consent Agenda - Roll Call Vote

Schedule a Public Hearing- Rezoning Parcel of NMU Owned Property

BACKGROUND:

The Planning Commission held a public hearing on September 6, 2022 to consider rezoning a 1.1 acre parcel of land with frontage on Center Street and which is owned by Northern Michigan University (NMU) and zoned as a Civic zoning district - which is appropriate for NMU property. This parcel includes the former "Presidents House" and it was recently split from the parcel with an address of 1321 Wright Street. A new address will be assigned to this parcel soon. NMU wishes to sell the property as a residence, and to accomplish this, NMU is requesting the zoning district be changed to Medium Density Residential (MDR).

The Planning Commission, after conducting a public hearing made the following motion:

It was moved by M. Larson, and seconded by S. Mittlefehldt, and carried 7-0 that after conducting a public hearing and review of the application and Staff Report for 05-REZ-09-22, the Planning Commission finds that the proposed rezoning is consistent with the Community Master Plan and meets the requirements of the Land Development Code Section 54.1405, and hereby recommends that the City Commission approve 05-REZ-09-22 as presented.

Under the procedures of section 54.1405 of the Land Development Code, the City Commission, upon recommendation from the Planning Commission, shall either schedule a public hearing to consider rezoning a parcel or deny the petition. If a public hearing is scheduled, the City Commission may approve or deny the petition following the public hearing on the request.

FISCAL EFFECT:

Upon approval of the rezoning, the property would be added to the tax roll.

RECOMMENDATION:

Schedule a Public Hearing for the October 11, 2022 City Commission meeting to consider rezoning the 1.1 acre property recommended for rezoning by the Planning Commission, according to the procedures stated in section 54.1406 the Land Development Code.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

No Attachments Available

City of Marquette, MI

300 West Baraga Avenue
Marquette, MI 49855

Agenda Date: 9/12/2022

Consent Agenda - Roll Call Vote
Schedule a Public Hearing- FY 2023 Budget

RECOMMENDATION:

Schedule a Public Hearing for September 26, 2022 at 6:00 p.m. to review and adopt the FY 2023 Budget.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

No Attachments Available

City of Marquette, MI

300 West Baraga Avenue
Marquette, MI 49855

Agenda Date: 9/12/2022

Consent Agenda - Roll Call Vote

Schedule a Public Hearing- Rezoning Request for 221 and 225 W. Park Street

BACKGROUND:

On August 16, 2022, the Planning Commission conducted a public hearing for the proposed rezoning of two parcels of land, owned by one party, addressed as 221 and 225 W. Park Street - from Medium Density Residential zoning districts to Third Street Corridor District zoning. After the presentation of the Staff File Review and Analysis, applicant testimony, and a public hearing, the Planning Commission made the following motion:

It was moved by N. Frischkorn, seconded by A. Andres, and carried 4-1 that after conducting a public hearing and review of the application and Staff Report with attachments for 04-REZ-08-22, the Planning Commission finds that the proposed rezoning is not consistent with the Community Master Plan and does not meet the requirements of the Land Development Code Section 54.1405 and hereby recommends that the City Commission deny 04-REZ-08-22 because it is inconsistent with the Community Master Plan.

Yes: A. Andres, N. Williams, N. Frischkorn, M. Larson

No: W. Premeau

Under the procedures of section 54.1405 of the Land Development Code, the City Commission, upon recommendation from the Planning Commission, shall either schedule a public hearing to consider rezoning a parcel or deny the petition. If a public hearing is scheduled, the City Commission may approve or deny the petition following the public hearing on the request.

FISCAL EFFECT:

None.

RECOMMENDATION:

Schedule a Public Hearing for the October 11, 2022 meeting to consider the proposed rezoning of the 221 and 225 W. Park Street parcels.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

- ▢ Planning Commission case file 04-REZ-08-22
- ▢ Draft Minutes of 8-16-22 PC Meeting Minutes



CITY OF MARQUETTE
PLANNING AND ZONING
1100 WRIGHT ST
MARQUETTE, MI 49855
(906) 228-0425
www.marquettemi.gov

MEMORANDUM

TO: Planning Commission
FROM: Andrea Landers, Zoning Official
DATE: August 10, 2022
SUBJECT: **04-REZ-08-22 – 221 W. Park St. & 225 W. Park St. (PIN: 0320010 & 0320020)**

The Planning Commission is being asked to make a recommendation to the City Commission regarding a request to rezone the properties located at **221 W. Park St. & 225 W. Park St.** which are zoned **Medium Density Residential (MDR)** to be zoned **Third Street Corridor – Transect 4 General Urban (TSC-T4)**.

Please see the attached Staff Report for more specific information regarding the application.

RECOMMENDED ACTION:

The Planning Commission should review the application and support information provided in this packet, conduct a public hearing, and determine whether or not the proposed rezoning of the above property would be in harmony with considerations required by the Community Master Plan and that the request is in accordance with Section 54.1405 of the Land Development Code - Zoning Ordinance Amendment Procedures, and make a recommendation to the City Commission.

It is also highly recommended that any motion regarding the request include the following or similar language:

After conducting a public hearing and review of the application and Staff Report with attachments for 04-REZ-08-22, the Planning Commission finds that the proposed rezoning is (consistent / not consistent) with the Community Master Plan and (meets / does not meet) the requirements of the Land Development Code Section 54.1405 and hereby recommends that the City Commission (approve / deny) 04-REZ-08-22 (as presented / for the following reasons / with the following conditions).

**OFFICIAL PROCEEDINGS OF THE
MARQUETTE CITY PLANNING COMMISSION
August 16, 2022**

A regular meeting of the Marquette City Planning Commission was duly called and held at 6:00 p.m. on Tuesday, August 16, 2022, in the Commission Chambers at City Hall.

ROLL CALL

Present: W. Premeau, A. Andres, Vice-Chair M. Larson, N. Williams, N. Frischkorn

Absent: S. Mittlefehldt, Chair J. Cardillo (both excused)

AGENDA

It was moved by N. Frischkorn, seconded by A. Andres and carried 5-0 to approve the agenda with the addition of an excerpt of the 3rd St. Corridor Sustainable Development Plan, the decision tree from p.3-32 of the Community Master Plan, and two items of correspondence received after the agenda was published.

CONFLICT OF INTEREST and EX-PARTE CONTACT

No conflicts were stated.

CITIZENS WISHING TO ADDRESS THE COMMISSION ON AGENDA ITEMS

Jeff Kallery, 229 W. Park St., stated:

My property is to the west, the lot that is to the west of 225 W. Park Street, which is in the proposed zoning. He stated that lot runs right down his side yard to the end, and so he is talking that his whole side is here under the proposal. In the end it is all about four or five parking spots, so I don't see how someone should wreck the neighborhood for four or five parking spots. I am very well aware of the potential proposed uses. If something is made 3rd Street Corridor that opens up a can of worms, especially when dealing with the Vango's people, who like to do things their way. It is really just asking for problems because there are so many different potential uses that could be done, and that although not all of them would be done there, there are lots of potentials. It would open that up to be totally paved and commercial buildings put on it and I would not put it past her to level all buildings on those two properties, 221 and 225; and either A) put up a parking lot; or B) put a commercial business now that she's given free reign, and with the 3rd Street Corridor, that is basically commercial. I'm concerned about that extending into our neighborhood and about the use of it, no matter what. These people have shown no concern for anyone else's property. My fence and personal property have been damaged as a result of their use of that illegal parking lot. I know that that is not anything you are dealing with, but I'm saying that it been a total disregard for other peoples' property and that giving Ms. Butler free reign I don't expect that to change. With all that being said, the city does not benefit from these permits, and that the neighborhood does not benefit, and I certainly don't benefit from this and in fact I see it as a detriment. Michele Butler is the only one who would benefit from this. Thank you.

PUBLIC HEARINGS

A. 04-REZ-08-22 – 221 W. Park St. (PIN 0320010) and 225 W. Park St. (PIN 0320020)

City Planner and Zoning Administrator D. Stensaas read the memo for the case and presented visuals from the agenda packet including the application and staff comments, consultant replies to staff comments, the area and block map with the parcel outlined in blue, photos of the vacant site, excerpts from the Third St. Sustainable Corridor Development Plan that were added to the agenda during the agenda approval item of the agenda, and the Rezoning "decision tree" from the Community Master Plan that was added to the

agenda during the agenda approval item of the agenda. He also read two items of correspondence that were received earlier the same day and showed two of the photos that were included in one of the items of correspondence.

M. Larson invited the applicant to come up and speak about the project.

Ms. Michele Butler, 3132 Island Beach Rd., the applicant, stated:

I am representing Park-Third Inc., which is not just Michele Butler, but also Robert Caron and John Christianson, they are my partners in this. Well, first of all, just to clarify, we've always done everything we possibly can to create parking on 3rd Street, going way back into the 90s, when we moved a house, when the parking restrictions were really, really strict. Before that was all switched over, we did everything we could to have the ample amount of parking that was needed for the restaurant and/or our apartments at that place. This area has been used for parking in excess of probably 18 years, and we literally were not aware, short of correspondence that was shown to me back in 2005, that it was only supposed to be for tenant parking. But there was nothing written, nothing sent to us, we didn't have anything. So it's always just been just overflowing in the summer when it's very, very busy. When 3rd Street did their restructuring of the parking, we did not want to have the spaces in front of Vango's occupied because of the site distance coming out, so they didn't put one space there, but we also have a space in the back. We worked for years to creating and help 3rd Street. We joined the DDA because part of that process back when this was going on, was to help with parking situations on 3rd Street.

We own both parcels adjacent to Vango's, 221, 225 W. Park. We have no intent of taking those houses down. We have no intent of creating any additional commercial use there. But when I met with Mr. Stensaas and Ms. Landers, the only way that we could approve or have that use of that parcel for parking was to request that it be zoned so that it could be used as parking. We have limited our seating capacity within the restaurant to also help with parking issues. We have our employees work to park over in the Village Shopping Center, because we also own that parcel, which I do have one question and then I'll follow up with that just shortly. We hired a surveyor to lay out all of our parcels and stake them off so that we know exactly where our corner points are and what property is ours. We have spoken with Mr. Kallery, who brought it to our attention this spring, in regard to his issues and we said we would work on it, and we've spent about \$1,500 already getting the area cleared out around his fence to verify what damage is there and what we could do to take care of that for him. In regard to blocking his back yard, I don't buy that as a viable argument, because he's got a huge barn back there and that takes up his whole back yard. So it's not really affecting his yard in that regard.

We're the oldest restaurant in town, we support the community, we really believe in everything that we can do, not only for 3rd Street, but wherever parking's an issue. And, you know, there was talk that they were going to put in a parking structure where the old Jack's IGA is, and that never happened, and instead, all that parking has been eliminated. So we don't have any other recourse but to hope that we can get this passed so that we can have the additional parking necessary, not only for ourselves, but all of our neighbors, too. And part of the issue will be very difficult for White's and other areas, because right now because Ms. Strand has no place for her snow to go, so we let her snow to be plowed onto the back part of the lot behind White's, which is our property. We have a good neighbor policy with all of the businesses in that area and we all work together. I don't know if you have any questions or anything else that I can help with.

M. Larson asked if any Commissioner had question for Ms. Butler now. He also stated that they could bring Ms. Butler back up later if there are questions.

Ms. Butler stated that she did have one question. She stated:

On the map that you showed - can you bring that up to where it shows the corridor? because it doesn't show the Village Shopping Center going all the way to 4th Street.

D. Stensaas showed the portion of the map and stated that the property does go all the way to 4th Street.

Ms. Butler stated that so does the egress and the rest of it. She also stated that that whole area, which abuts the neighbors, is zoned in regard to...this was just similar situation with regards with how parking is and how ingress and egress is, et cetera. She stated that there are several other parcels, if people were to really take the time to go up and down through the street, where it can be seen that there is an extended area of parking in that area. She referred to an overlay map that they had.

D. Stensaas displayed the parcel using the online interactive Land Development Code map and stated that he can't explain right now why the portion of the parcel [abutting Fourth St.] is shown as Mixed Use, but some parcels have split zoning.

Ms. Butler stated that her point is that there are other areas where this situation is taking place and that they are not an exception to the rule in what they are requesting on today. She stated that she hoped that the Planning Commission would give them that consideration to help alleviate parking issues on 3rd Street. She thanked the commission members.

It was moved by A. Andres, seconded by W. Premeau and carried 5-0 to suspend the rules for discussion.

A. Andres stated that he was wondering that for the first step, how deep does the other parcels go back. He asked if they ever found that out.

D. Stensaas used the interactive mapping program again and showed the entirety of the Third St. Corridor District and the parcels on each block.

W. Premeau stated that the only thing he thinks is as the Village Shopping Center goes back, you also have a church right there, and he inquired where the church attendees parked.

Ms. Butler stated that she lets them park there, but it is actually their parking.

W. Premeau stated that the problem that he sees is that Ms. Butler may not always own these parcels and that similar problems that have been going on down the street could arise in that situation. He stated that those houses could be turned into any business that the owners wanted to, but that he would not foresee any problems with parking if there was a way to do that.

M. Larson stated that they needed to go through the interim step of whether this was spot zoning or not. He stated that this was necessary to ensure that they feel comfortable discussing it further and then afterwards they could talk to W. Premeau's point regarding if we rezone that it opens up those lots for a variety of other uses that go beyond just the current owner, and that if it gets sold at some point in time it could turn into another use in which maybe the community wouldn't see as the best, or the Master Plan does not lay out as an opportunity.

M. Larson stated that the characteristics of a spot zone are that number one – is it small in size? He asked D. Stensaas if they would consider each of these lots separately. D. Stensaas stated no, this is a request for the two lots and they are owned by the same party and contiguous, so you can consider this as one request. M. Larson stated thank you.

M. Larson stated that next, "does it grant a right that is not enjoyed by similar adjacent parcels?" He said I don't think it does, the adjacent parcel is currently a parking lot and has the applicability of those uses.

M. Larson stated that “is it dissimilar from the zoning that is around it?” He stated only on one side, it all depends on which side you are on.

M. Larson stated “is it inconsistent with the Future Land Use Plan and policies of the Community Master Plan?” He stated he thinks this is the one where discussion of this request lies, because currently in the Future Land Use Map it is shown as residential, and in policy of the Master Plan for the Third St. Corridor it is recommended to remain as a residential lot.

N. Frischkorn stated that he concurs that it is inconsistent with the Master Plan, but for this to be spot zoning it would have to meet all of those characteristics and it does not meet all of the characteristics.

M. Larson stated that is correct and so this would not qualify as a spot zone, however there are still some questions that we need to discuss, mostly around the concerns of the Future Land Use Map and the current Master Plan and Third St. Corridor planning.

N. Williams stated that one comment about whether it is consistent with the Master Plan, in Appendix G in the Master Plan, on page C 50, it reads “Another longtime favorite, Vango’s, is on the northwest corner. The color of the building is appropriately vibrant and the crowds that come would enjoy the dining deck in front. All of the sidewalk frontage improvements, along with a shared parking strategy would make fuller use of parking further away on Third Street, while taking pressure off creating more parking into the neighborhood.” He stated that it specifically mentions creating more parking around Vango’s.

M. Larson stated right, and “while taking pressure off creating more parking into the neighborhood.’

M. Larson asked Ms. Butler if she could speak to the shared parking strategy in the Plan.

Ms. Butler stated that she thinks that a lot of that discussion came out of when they had the gentleman come up and they were talking about the whole plan and then getting involved with the DDA, and they were all in it together. She stated that basically they were together now, like she had stated, with White’s, with Stucko’s – they have no parking at all, they use part of our parking. She stated that when Jeremy has a funeral, they use our parking, and vice-versa - if Jeremy does not have anything going on, he’s amendable to someone pulling into his parking lot. She stated that she thinks that that is generally how they all operate together. She stated that they have never called anybody out for pulling into their parking lot and running into White’s Party Store to get their product or vice-versa.

M. Larson asked Ms. Butler if she could you speak about the possibility of connecting the existing parking lots at 927, 923, and 909 to the 907 N. Third St. property.

Ms. Butler stated that 907 N. Third St. is not really wide enough to warrant the additional parking that could be created, and also they are in the process of turning that property over to their grandson.

A. Andres stated that his only concern if this is granted, they do not have any control over what comes after it, and is that going to be harmonious with the Master Plan or not. He stated that that is something they do not know and that this would be taking a chance. He stated that although Ms. Butler may be the greatest owner there is, but somebody else could come in and build whatever they wanted to. A. Andres stated do they want to take the chance that we could make one party happy now but possibly making the whole community worse down the road. He stated for him, he did not really want to take that chance.

N. Frischkorn stated that they are not just being asked to rezone a parking lot, but rather those entire parcels, which included the houses and it is not just the area in the back. He stated that if you go to Page

11 of the agenda, there is a table that shows of the uses that will be permitted uses. N. Frischkorn then stated that if they do rezone this it would be more or less permanent and that his concern is that all of those uses become permitted uses, not just for this owner but for all future owners of the property. He stated that there are a lot of uses that are not currently permitted in the zone, and that would be his concern - that commercial development would encroach further into the neighborhoods, which we have seen issues with that recently, and that is my concern at this time.

M. Larson asked for any further thoughts from any of the other Commissioners.

N. Williams stated that he didn't have any.

W. Premeau stated that he didn't have any.

M. Larson stated that he certainly has some things he would like to address concerning this. He stated that the lot has been used for a very long time as far as parking goes. He stated that he thinks that there are other things that, if they were to recommend it to be rezoned, it could become any of the items on the list. He stated that despite good intentions, it could become those uses on that list some time down the line and that that is what the issue is here. M. Larson stated that he did not know what alternatives there are in allowing parking and retaining residential.

Ms. Butler stated that when she discussed the issue with staff my questions were "what can we do" – can we split that lot out so only that section is zoned for parking.

D. Stensaas stated that if this was rezoned, the lots could be split, because there is no minimum lot size. He stated that it could be split into three lots, but you still have the 3rd Street Corridor district zoning on all three of those lots. He stated that again, there is no minimum lot size for the 3rd St. Corridor, so this would be the only solution.

D. Stensaas also stated:

There are Mixed-Use parcels across the street, but the minimum lot size for a Mixed-Use parcel is 4,800 square feet, and these two parcels are each very small...each parcel is roughly 5,000 square feet, one is a bit over and one is a bit under, and if you take even a few hundred square feet out of them they would not be large enough to be viable Mixed-Use parcels. Third St. Corridor is the only viable zoning for a lot that small, which is what is being discussed here – subdividing the two parcels into three and dedicating one to commercial parking. But there is also no way to establish that commercial parking is a use in itself that will only be applicable to that lot because if you look in the use table for the district there is no use classification for commercial parking. It is a retail or restaurant use, or one of the other uses here [in the table of Permitted Uses that was shown on the screen] and what would make sense is that this would be restaurant use. So that leaves open all restaurant uses, not just parking.

M. Larson stated asked whether it would be possible to state that the use remain parking, or to place that condition.

D. Stensaas stated:

If it was your recommendation to the City Commission that you would approve with the condition that parking was the only thing to be allowed, you can do that, but I don't think it would be a reasonable condition that the owner applies for a land division. You could, but I don't know if it would legally supportable to say that you will only support it if the owner goes through a land division and has the lot subdivided for parking. He stated that that would be a discussion for the City Commission to have with the City Attorney.

N. Frischkorn stated that even if they did that, the houses would still be part of 3rd Street corridor.

M. Larson stated:

You would probably have to enter into some sort of conditional rezoning and I'm not aware if you would even be able to do something like that; if you were to do a land split and enter into some sort of conditional zone where you just uncheck all of the other boxes and just leave them as residential units, but it starts to get really complicated really fast. If it's true that it has been used for parking for 18 years, I believe that's what had been stated, that those back lots had been used that long, that is a long use, even if it was in violation of current zoning for those parcels. And I certainly have concerns for the homeowner if there has been fence damage and things along those lines. On the surface I don't think it meets the conditions for rezoning. I think there could be a convoluted answer to it, I just did not know how to solve for "X" on that and because we're making a recommendation to the City Commission, I don't not know how to put that convoluted answer to them on how it might work. It doesn't make a lot of sense, but asked Mr. Stensaas if he understood what he was getting at.

D. Stensaas stated:

Whether you vote to deny this outright or vote to approve it with a limited set of conditions, the City Commission is going to have to discuss those scenarios probably before it holds a hearing. Even if they were to deny it, the City Commission can still hold a hearing to consider it and to consider the same thing that the Planning Commission is considering - is there a limited set of conditions that we can approve, because they can do the same thing. They can say we approve this but only with these conditions that will allow this to be used this way. He stated that he thought that the City Manager and City Attorney and a delegation from the Commission would probably need to have a discussion about any legally viable options. I've tried to have a discussion with the Attorney lately, but she has not been available. But, again that gets really complicated and I don't know if anybody can require a property owner to subdivide their property, that is an at-will kind of thing and then you are getting into contract law which is going to get very complex.

M. Larson stated that that is why he does not know if they can make a motion and pass that information along within that motion if they are going to make it, to say that the Planning Commission after discussion of scenarios...

D. Stensaas stated that he would say the first thing is to decide if there is any scenario that they think is a good idea, because I don't see that that has been done.

M. Larson stated that he thought that came back to Commissioner Premeau's point that is - is there any scenario that is a reasonable idea of where this remains, that the whole piece gets zoned.

W. Premeau stated that I think we've got to go with what we've got and gamble on it, but you might have every business on Third Street buying a house behind them and wanting to add parking, whatever, which is probably not a bad thing, but Third Street [zoning] would go all the way from High St. to Fourth St. eventually. Is it a good thing or bad thing, I don't know. He stated at this point he would make a motion, and you can't find a better citizen.

N. Frischkorn asked D. Stensaas – hypothetically, if all the residents of 225 and 221 Park St., and 923, 909, and 907 Third St. all parked in that area would that comport with zoning, even though they are tenants from different parcels.

D. Stensaas stated that if there was an agreement from the property owner that would allow people to park there.

Ms. Butler stated:

I know what he means, and I asked them that too, can all the tenants park back there instead, how do you know whose cars they are and how are you monitoring? I own the property and was told that I can't park there, and I said why can't I? We were remodeling and trying to get everything fixed up. We're willing to do whatever, we'll put an addendum on the title. All we want is to secure the parking for my partners and for the community. We're not going to tear the houses down.

D. Stensaas stated that the Code allows people to seek parking within 2,000 ft. of their property if you provide an agreement with another property owner for that parking. He stated that this area is part of a yard and you can park in your yard, but that parking is only supposed to be for residents.

N. Williams asked about residential areas in the Third St. Corridor district. D. Stensaas stated it is the same.

N. Frischkorn stated that the parking for the residential parking for these houses on Third St. is part of the same parking lot for the restaurant, its all one big parking lot. M. Larson stated minus the 907 parking, which isn't connected. N. Frischkorn stated right, but 909 and 923 basically shuffling all their residential parking to this lot so they aren't rezoned and then all the parking in the rest of the lot would be commercial. He stated I don't know if that would work or not, but if it would work it seems that would be a better solution than rezoning these parcels.

M. Larson stated that is certainly an idea that applicant can look into, but as it stands I don't think it meets how the Code is written and I think we need to decide on that and if it is a motion to deny then encourage the City Commission or City staff to consider other solutions. Maybe there are some clever solutions.

N. Frischkorn stated that is why he wanted to discuss some clever solutions, because I don't think its consistent with the Master Plan and as we've discussed there are a number of problems with this kind of rezoning.

N. Williams asked if anyone know how the Third St. Village Shopping Center lot got zoned Third St. Corridor all the way through to Fourth St.

M. Larson stated that its one large parcel.

D. Stensaas stated :

It was the Community Business District before the Third. St. Corridor and that was a similar type of mixed-use district without all of the form-based code language and requirements. The zoning district hasn't changed much in its extent, it's just changed in the type of code we have. There is nothing conflicting in the codes. He stated that to go back a bit, it's the Master Plan that doesn't comport with the request. The Future Land Use Map and the proposed Zoning map for these parcels doesn't jive.

M. Larson asked if anyone wanted to make a motion.

It was moved by W. Premeau, seconded by N. Williams, and not carried 2-3 that after conducting a public hearing and review of the application and Staff Report with attachments for 04-REZ-08-22, the Planning Commission finds that the proposed rezoning is consistent with the Community

Master Plan and meets the requirements of the Land Development Code Section 54.1405 and hereby recommends that the City Commission approve 04-REZ-08-22 as presented.

Vice-Chair M. Larson stated the above motion failed and inquired if there was anyone else who would like to make a motion.

N. Frischkorn stated that he would make a motion.

It was moved by N. Frischkorn, seconded by A. Andres, and carried 4-1 that after conducting a public hearing and review of the application and Staff Report with attachments for 04-REZ-08-22, the Planning Commission finds that the proposed rezoning is not consistent with the Community Master Plan and does not meet the requirements of the Land Development Code Section 54.1405 and hereby recommends that the City Commission deny 04-REZ-08-22 because it is inconsistent with the Community Master Plan.

N. Williams, during discussion on the motion, stated that there is a lot of talk within the Master Plan about the need for parking and there are projects going on all over the city to increase parking, so here is private property that is proposed to be used for parking.

W. Premeau stated that Master Plan is a guide, it's not a bible, and if we followed the Master Plan the city would look entirely different.

N. Frischkorn stated that in response to Commissioner Williams' comments, if this were just parking, if that was it, I think that I'd be inclined differently, but these parcels aren't just parking, there are two houses and they could become different things down the line.

A. Andres stated that he concurs with the last statement.

D. Stensaas stated that he just wanted to point out the Future Land Use Map, and this is where the inconsistency lies. He showed the map on the screen, zoomed in on the property and said that these two parcels are designated as single-family residential. He stated that the Michigan Planning and Enabling Act, state law, says that if your Future Land Use Map is inconsistent with the rezoning request, it is an inconsistent request. He stated, so if you voted to approve something that is inconsistent with the Community Master Plan, you are really in violation of the state law. He stated that the City Commission, our elected officials, can do that, but appointed officials are supposed to follow the state law, although you can make recommendations, following the decision tree in the Plan, that there is an error in the Master Plan or a change in community attitudes or conditions that would make the proposed rezoning appropriate despite non-compliance with the Plan, and that is the exercise you should go through when you see there is an inconsistency with the Plan. He stated the decision tree walks you through this in a dichotomous – yes/no way. He also stated that this is all based on process at the Planning Commission level, but the City Commission can doesn't have to follow the process in the same way, and they aren't liable to be sued for approving an inconsistent request like this. He said that it is okay for them to say the request is inconsistent, but we still are going to approve it, but its not okay for the Planning Commission to do that. He said that all of this is to say that the process is backed by state law, so its not just a guide.

TRAINING

A. Article: *How Did We Get Here* (Michigan Planner May/June 2022)

Staff and the Planning Commission discussed the article.

COMMISSION AND STAFF COMMENTS

W. Premeau stated:

I'm not trying to raise hell, I'm just trying to get things moving, we need something to say no and something to say yes instead of just sitting here for hours throwing things back and forth. He also stated that we are unique up here. He also stated that I heard the VA is pulling out of here.

A. Andres stated:

September 10th is the SAIL cornhole tournament and if you're interested you could put a team together and I'd like to encourage everyone to come out to support the disabled community.

D. Stensaas stated:

There is a rezoning request on the docket for the next meeting, a request to add parcels to the Third St. Corridor District.

ADJOURNMENT

The meeting was adjourned by Vice-Chair M. Larson at 7:20 p.m.

Prepared by:

David Stensaas, City Planner and Zoning Administrator
Planning Commission Staff Liaison
Transcribed by iMedat/Edited by D. Stensaas

City of Marquette, MI

300 West Baraga Avenue
Marquette, MI 49855

Agenda Date: 9/12/2022

New Business

MEDC Grant - Community Master Plan Update

BACKGROUND:

City staff successfully applied for a Technical Assistance Grant from the Michigan Economic Development Corporation - Redevelopment Ready Communities program.

The grant will allow for a robust planning effort as it covers one-third of the total cost of the Community Master Plan update.

FISCAL EFFECT:

The City will receive \$30,000 in funding. This funding was projected in the FY2022-23 Budget.

RECOMMENDATION:

Accept the grant, and direct the City Manager to execute the contract.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

- ▣ MEDC Grant Contract

**MICHIGAN ECONOMIC DEVELOPMENT CORPORATION
GRANT WITH
CITY OF MARQUETTE**

The Michigan Economic Development Corporation (the “MEDC”) enters into a binding agreement (the “Agreement”) with City of Marquette (the “Grantee” or the “Municipality”). As used in this Agreement, the MEDC and Grantee are sometimes individually referred to as a “Party” and collectively as “Parties.”

Grantee: City of Marquette
300 W. Baraga Avenue
Marquette, Michigan 49855

I. NATURE OF SERVICES. The purpose of this Agreement is to provide funding to the Grantee to hire services to update the Master Plan for the Municipality (the “Grant Activities”).

II. PERFORMANCE SCHEDULE.

Starting Date: July 28, 2022

Ending Date: April 30, 2024

The term of this Agreement (the “Term”) shall commence on the Starting Date and shall continue until the occurrence of an event described in Section VIII of this Agreement.

III. PAYMENT SCHEDULE INFORMATION.

A. The MEDC agrees to pay the Grantee a sum not to exceed \$30,000 (the “Grant”), according to the following schedule:

(i) 25% of the Grant paid upon completion and approval of Milestone One.

(ii) 50% of the Grant paid upon completion and approval of Milestone Two.

(iii) 25% of the Grant paid upon completion and approval of Milestone Three.

B. Payment under this Agreement shall be made by the MEDC to Grantee upon receipt and approval by the Grant Administrator, as identified in Section IV, of documentation evidencing the completion and achievement of each of the Milestones (the “Supporting Documentation”) to the satisfaction of the Grant Administrator. The Grant Administrator shall provide the Grantee with appropriate submission instructions of the Supporting Documentation.

- C. MEDC requires that payments under this Agreement be processed by electronic funds transfer (EFT). Grantee is required to register to receive payments by EFT at the State Integrated Governmental Management Applications (SIGMA) Vendor Self Service (VSS) website (www.michigan.gov/VSSLogin).
- D. The Grantee agrees that all funds are to be spent as specified in this Agreement. This Agreement does not commit the MEDC to approve requests for additional funds during or beyond this Grant period.

IV. **MEDC GRANT ADMINISTRATOR.** The Grantee must communicate with the MEDC representative named below or his or her designee regarding this Agreement. The Grant Administrator may be changed, at any time, at the discretion of the MEDC.

Michelle Parkkonen (the "Grant Administrator")
Michigan Economic Development Corporation
300 North Washington Square
Lansing, Michigan 48913
parkkonenm@michigan.org

V. **GRANTEE DUTIES.** The Grantee agrees to undertake, perform, and complete the following during the Term, to the satisfaction of the Grant Administrator:

A. **Milestone One:**

- i. Provide a fully executed copy of a contract between the Municipality and a consultant selected by the Grantee (the "Consultant") to have the following services performed for the Municipality:
 - 1. Update the Master Plan in a manner consistent with the MEDC's Redevelopment Ready Communities ("RRC") Best Practices; and
 - 2. Facilitate formal adoption of the updated the Master Plan.
- ii. Schedule a formal kick-off meeting with the MEDC, the Consultant, and key officials at the Municipality.

B. **Milestone Two:** Provide full draft of the update the Master Plan to the Grant Administrator.

C. **Milestone Three:**

- i. Prior to obtaining formal adoption indicated in Section V(C)(ii), obtain agreement from the MEDC that the proposed Master Plan aligns with the RRC Certified expectations.

- ii. Obtain formal adoption by the Municipality's governing body of the updated the Master Plan, as approved by the MEDC.
 - iii. Make the updated the Master Plan available on Municipality's website within thirty (30) days following formal adoption.
- D. Apply all Grant funds towards paying the Consultant for its services described in Section V(A).
- E. Ensure the MEDC is invited to all key meetings throughout the project.
- F. Within 15 days of the Ending Date, provide the MEDC with written feedback summarizing feedback to the MEDC on the Grant funding process and the experience working with the Consultant.

VI. RELATIONSHIP OF THE PARTIES.

- A. Due to the nature of the services described herein and the need for specialized skill and knowledge of Grantee, the MEDC is entering into this Agreement with Grantee. As a result, neither Grantee nor any of its employees or agents is or shall become an employee of the MEDC due to this Agreement.
- B. Grantee will provide the services and achieve the results specified in this Agreement free from the direction or control of the MEDC as to means and methods of performance.
- C. The MEDC is not responsible for any insurance or other fringe benefits, including, but not limited to, Social Security, Worker's Compensation, income tax withholdings, retirement or leave benefits, for Grantee or its employees. Grantee assumes full responsibility for the provision of all such insurance coverage and fringe benefits for its employees.
- D. All tools, supplies, materials, equipment and office space necessary to carry out the services described in this Agreement are the sole responsibility of Grantee unless otherwise specified herein.
- E. Grantee shall retain all control of its employees and staffing decisions independent of the direction and control of the MEDC.

VII. ACCESS TO RECORDS. During the Term, and for Seven years after the Ending Date, the Grantee shall maintain reasonable records, including evidence that the services actually were performed and the identity of all individuals paid for such services, and shall allow access to those records by the MEDC or their authorized representative at any time during this period.

VIII. TERMINATION. This Agreement shall terminate upon the earlier of the following:

- A.** The Ending Date.
- B.** Termination by the MEDC, by giving thirty calendar days prior written notice to the Grantee. In the event that the Legislature of the State of Michigan (the "State"), the State Government, or any State official, commission, authority, body, or employee or the federal government (a) takes any legislative or administrative action which fails to provide, terminates or reduces the funding necessary for this Agreement, or (b) takes any legislative or administrative action, which is unrelated to the source of funding for the Grant, but which affects the MEDC's ability to fund and administer this Agreement and other MEDC programs, provided, however, that in the event such action results in an immediate absence or termination of funding, cancellation may be made effective immediately upon delivery of notice to the Grantee.
- C.** Termination by the MEDC pursuant to Section XIX of this Agreement.

IX. MEDC EMPLOYEES. The Grantee will not hire any employee of the MEDC to perform any services covered by this agreement without prior written approval from the Chief Executive Officer of the MEDC.

X. CONFIDENTIAL INFORMATION. Except as required by law, the Grantee shall not disclose any information, including targeted business lists, economic development analyses, computer programs, databases and all materials furnished to the Grantee by the MEDC without the prior written consent of the MEDC. All information described in this Section shall be considered "Confidential Information" under this Agreement. Confidential Information does not include: (a) information that is already in the possession of, or is independently developed by, Grantee; (b) becomes publicly available other than through breach of this Agreement; (c) is received by Grantee from a third party with authorization to make such disclosures; or (d) is released with MEDC's written consent.

XI. PUBLICATIONS. Except for Confidential Information, the MEDC hereby agrees that researchers funded with the Grant shall be permitted to present at symposia, national, or regional professional meetings, and to publish in journals, theses or dissertations, or otherwise of their own choosing, the methods and results of their research. Grantee shall at its sole discretion and at its sole cost and expense, prior to publication, seek intellectual property protection for any Inventions (as described in Section XIII) if commercially warranted. Grantee shall submit to the MEDC a listing of articles that Grantee has submitted for publication resulting from work performed hereunder in its quarterly report to the MEDC. Grantee shall acknowledge the financial support received from the MEDC, as appropriate, in any such publication.

XII. INTELLECTUAL PROPERTY RIGHTS. Grantee shall retain ownership to the entire right, title, and interest in any new inventions, improvements, or discoveries developed or produced under this Grant, including, but not limited to, concepts know-how, software, materials, methods, and devices (“Inventions”) and shall have the right to enter into license agreements with industry covering Inventions.

XIII. CONFLICT OF INTEREST. Except as has been disclosed to the MEDC, Grantee affirms that neither the Grantee, nor its Affiliates or their employees has, shall have, or shall acquire any contractual, financial business or other interest, direct or indirect, that would conflict in any manner with Grantee’s performance of its obligations under this Agreement or otherwise create the appearance of impropriety with respect to this Agreement.

Grantee further affirms that neither Grantee nor any affiliates or their employees has accepted or shall accept anything of value based on an understanding that the actions of the Grantee or its affiliates or either’s employees on behalf of the MEDC would be influenced. Grantee shall not attempt to influence any MEDC employee by the direct or indirect offer of anything of value. Grantee also affirms that neither Grantee, nor its Affiliates or their employees has paid or agreed to pay any person, other than bona fide employees and consultants working solely for Grantee or its Affiliate, any fee, commission, percentage, brokerage fee, gift or any other consideration contingent upon or resulting from the execution of this Agreement.

In the event of change in either the interests or services under this Agreement, Grantee will inform the MEDC regarding possible conflicts of interest which may arise as a result of such change. Grantee agrees that conflicts of interest shall be resolved to the MEDC’s satisfaction or the MEDC may terminate this Agreement. As used in this Paragraph, “conflict of interest” shall include, but not be limited to, conflicts of interest that are defined under the laws of the State of Michigan.

XIV. INDEMNIFICATION AND GRANTEE LIABILITY INSURANCE. To the extent permitted by law, the Grantee shall indemnify, defend and hold harmless the MEDC, its corporate board of directors, executive committee members including its participants, its officers, agents, and employees (the “Indemnified Persons”) from any damages that it may sustain through the negligence of the Grantee pertaining to the performance of this Agreement.

The Grantee shall maintain such insurance to protect the Indemnified Persons from claims that might arise out of or as a result of the Grantee’s operations; however, Grantee’s indemnification obligation shall not be limited to the limits of liability imposed under the Grantee’s insurance policies. The Grantee will provide and maintain its own general liability, property damage, and workers compensation insurance. The insurance shall be written for not less than any limits of liability required by law for the Grantee’s obligation for indemnification under this Agreement.

- XV. TOTAL AGREEMENT.** This Agreement is the entire agreement between the Parties superseding any prior or concurrent agreements as to the services being provided, and no oral or written terms or conditions which are not contained in this Agreement shall be binding.
- XVI. ASSIGNMENT/TRANSFER/SUBCONTRACTING.** Except as contemplated by this Agreement, the Grantee shall not assign, transfer, convey, subcontract, or otherwise dispose of any duties or rights under this Agreement without the prior specific written consent of the MEDC. Any future successors of the Grantee will be bound by the provisions of this Agreement unless the MEDC otherwise agrees in a specific written consent. The MEDC reserves the right to approve subcontractors for this Agreement and to require the Grantee to replace subcontractors who are found to be unacceptable.
- XVII. COMPLIANCE WITH LAWS.** The Grantee is not and will not during the Term be in violation of any laws, ordinances, regulations, rules, orders, judgments, decrees or other requirements imposed by any governmental authority to which it is subject, and will not fail to obtain any licenses, permits or other governmental authorizations necessary to carry out its duties under this Agreement.
- XVIII. DEFAULT.** The occurrence of any one or more of the following events or conditions shall constitute an "Event of Default" under this Agreement, unless a written waiver of the Event of Default is signed by the MEDC: (a) any representation, covenant, certification or warranty made by the Grantee shall prove incorrect at the time that such representation, covenant, certification or warranty was made in any material respect; (b) the Grantee's failure generally to pay debts as they mature, or the appointment of a receiver or custodian over a material portion of the Grantee's assets, which receiver or custodian is not discharged within Sixty calendar days of such appointment; (c) any voluntary bankruptcy or insolvency proceedings are commenced by the Grantee; (d) any involuntary bankruptcy or insolvency proceedings are commenced against the Grantee, which proceedings are not set aside within Sixty calendar days from the date of institution thereof; (e) any writ of attachment, garnishment, execution, tax lien, or similar writ is issued against any property of the Grantee, which is not removed within Sixty calendar days. (f) the Grantee's failure to comply with the reporting requirements hereof; (g) the Grantee's failure to comply with any obligations or duties contained herein; (h) Grantee's use of the Grant funds for any purpose not contemplated under this Agreement.
- XIX. AVAILABLE REMEDIES.** Upon the occurrence of any one or more of the Events of Default, the MEDC may terminate this Agreement immediately upon notice to the Grantee. The termination of this Agreement is not intended to be the sole and exclusive remedy in case any Event of Default shall occur and each remedy shall be cumulative and in addition to every other provision or remedy given herein or now or hereafter existing at law or equity.

- XX. REIMBURSEMENT.** If this Grant is terminated as a result of Section XVIII(h) hereof, the MEDC shall have no further obligation to make a Grant disbursement to the Grantee. The Grantee shall reimburse the MEDC for disbursements of the Grant determined to have been expended for purposes other than as set forth herein as well as any Grant funds, which were previously disbursed but not yet expended by the Grantee.
- XXI. NOTICES.** Any notice, approval, request, authorization, direction or other communication under this Agreement shall be given in writing and shall be deemed to have been delivered and given for all purposes: (a) on the delivery date if delivered by electronic mail or by confirmed facsimile; (b) on the delivery date if delivered personally to the Party to whom the same is directed; (c) One business day after deposit with a commercial overnight carrier, with written verification of receipt; or (d) Three business days after the mailing date, whether or not actually received, if sent by U.S. mail, return receipt requested, postage and charges prepaid, or any other means of rapid mail delivery for which a receipt is available. The notice address for the Parties shall be the address as set forth in this Agreement, with the other relevant notice information, including the recipient for notice and, as applicable, such recipient's fax number or e-mail address, to be as reasonably identified by notifying Party. The MEDC and Grantee may, by notice given hereunder, designate any further or different addresses to which subsequent notices shall be sent.
- XXII. AMENDMENT.** This Agreement may not be modified or amended except pursuant to a written instrument signed by the Parties.
- XXIII. GOVERNING LAW.** This Agreement is made and entered into in the State of Michigan and shall in all respects be interpreted, enforced and governed under the laws of the State of Michigan without regard to the doctrines of conflict of laws. The terms of this provision shall survive the termination or cancellation of the Agreement
- XXIV. COUNTERPARTS AND COPIES.** The Parties hereby agree that the faxed signatures of the Parties to this Agreement shall be as binding and enforceable as original signatures; and that this Agreement may be executed in multiple counterparts with the counterparts together being deemed to constitute the complete agreement of the Parties. Copies (whether photostatic, facsimile or otherwise) of this Agreement may be made and relied upon to the same extent as though such copy was an original.
- XXV. JURISDICTION.** In connection with any dispute between the Parties under this Agreement, the Parties hereby irrevocably submit to jurisdiction and venue of the Michigan circuit courts of the State of Michigan located in Ingham County. Each Party hereby waives and agrees not to assert, by way of motion as a defense or otherwise in any such action any claim (a) that it is not subject to the jurisdiction of such court, (b) that the action is brought in an inconvenient forum, (c) that the

venue of the suit, action or other proceeding is improper or (d) that this Agreement or the subject matter of this Agreement may not be enforced in or by such court.

XXVI. SEVERABILITY. All of the clauses of this Agreement are distinct and severable and, if any clause shall be deemed illegal, void or unenforceable, it shall not affect the validity, legality or enforceability of any other clause or provision of this Agreement. To the extent possible, the illegal, void or unenforceable provision shall be revised to the extent required to render the Agreement enforceable and valid, and to the fullest extent possible, the rights and responsibilities of the Parties shall be interpreted and enforced to preserve the Agreement and the intent of the Parties. Provided, if application of this section should materially and adversely alter or affect a Party's rights or obligations under this Agreement, the Parties agree to negotiate in good faith to develop a structure that is as nearly the same structure as the original Agreement (as may be amended from time to time) without regard to such invalidity, illegality or unenforceability.

XXVII. PUBLICITY. At the request and expense of the MEDC, the Grantee will cooperate with the MEDC to promote the Grant Activities through one or more of the placement of a sign, plaque, media coverage or other public presentation at the project or other location acceptable to the Parties.

XXVIII. SURVIVAL. The terms and conditions of sections VII, VIII, XI, XV, XVII, XXIV, XXVI and XXVII shall survive termination of this Agreement.

The signatories below warrant that they are empowered to enter into this Agreement.

GRANTEE ACCEPTANCE:

City of Marquette

Dated: _____

By: Karen Kovacs
Its: City Manager

MEDC ACCEPTANCE:

Michigan Economic Development Corporation

Dated: _____

By: Christin Armstrong
Its: Secretary