

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

CHARTER TOWNSHIP OF AVON, a
municipal corporation, now known
as the CITY OF ROCHESTER HILLS, the
successor to the Township,

Plaintiff,

vs

Case No. 82-241146-CZ
Hon. Richard D. Kuhn

AVON COUNTRY MARKET, a Michigan
co-partnership now known as Avon Country
Market, Inc., a Michigan corporation, Robert
H. Yono and Paul G. Essa, General Partners
of Avon Country Market and Verna E. Wells

Defendants.

HAFELI STARAN & CHRIST, P.C.

By: John D. Staran (P35649)

2055 Orchard Lake Road

Sylvan Lake, MI 48320

(248) 731-3080

Attorneys for Plaintiff

**WILLIAMS, WILLIAMS, RATTNER &
PLUNKETT, P.C.**

By: John D. Gaber (P45294)

380 N. Old Woodward Avenue, Suite 300

Birmingham, MI 48009

(248) 642-0333

Attorneys for Defendants

AMENDED CONSENT JUDGMENT

At a Session of said Court held in the Oakland County Circuit
Court located in the City of Pontiac, Michigan on

_____.

PRESENT: _____

Circuit Court Judge

Upon stipulation and consent of the parties, by and through their respective attorneys, this Court finds:

A. A Consent Judgment was entered by this Court on December 5, 1984 (“Consent Judgment”) resolving a number of issues pertaining to the use of the property which is the subject of this action (“Property”), and the compliance of the Property with the Zoning Ordinance of the Charter Township of Avon.

B. The Charter Township of Avon has since been incorporated as the City of Rochester Hills (“City”), which City is the local government with jurisdiction over the Property which is the subject of this litigation.

C. The Property is zoned R-3, single family residential pursuant to the Zoning Ordinance of the City of Rochester Hills, Chapter 138 of the City Code of Ordinances (“Zoning Ordinance”).

D. The Property has been used as a retail store since before the entry of the Consent Judgment, which use is a legal nonconforming use of the Property.

E. The Consent Judgment provided for the renovation of the retail store on the Property and various site improvements.

F. The renovation of the retail store on the Property and the construction of various site improvements pursuant to the Consent Judgment have not occurred, and are no longer in the best interest of the parties.

G. The parties have agreed upon a plan for the redevelopment of the Property, on the terms and conditions set forth in this Amended Consent Judgment.

H. The owner of the Property, which was originally Avon Country Market, a Michigan co-partnership, has, since the entry of the Consent Judgment in 1984, incorporated as

Avon Country Market, Inc., a Michigan corporation, and transferred ownership of the Property to Peter P. Essa, a married man. Peter P. Essa and Samira Essa, his wife, are now the sole owners of the Property and should be substituted as the proper Defendants in this action.

I. This Amended Consent Judgment is consented to by the parties and entered by this Court in order to resolve the issues which currently confront the parties so that the Property may be redeveloped, which will allow for construction of a new buildings and site improvements, the improvement of vehicular and pedestrian safety, and the improvement of the aesthetics and compatibility of the Property with surrounding properties.

IT IS HEREBY ORDERED that this Amended Consent Judgment shall be and hereby is entered as follows:

1. Property. This Amended Consent Judgment pertains to real property located in the City of Rochester Hills, County of Oakland, State of Michigan, being more particularly described as:

Land in the SE 114 of Section 14, T3N, R11E, in the City of Rochester Hills, County of Oakland, State of Michigan, described as: Lots 1 and 2 of Eyster's Bloomer Park Subdivision, according to the plat thereof as recorded in Liber 39, Page 5 of Plats, Oakland County Records, Sidwell Nos. 15-14-478-021 and 15-14-478-020.

2. Defendants. Peter P. Essa and Samira Essa, his wife, are the owners of the Property. Therefore, Peter P. Essa and Samira Essa, his wife, shall now be the sole Defendants designated on the pleadings in this action. The previously named Defendants, Avon Country Market now known as Avon Country Market, Inc, a Michigan corporation, Robert H. Yono, Paul G. Essa and Verna E. Wells, shall be and hereby are removed as Defendants in this action, and are hereby released from any liability relating to any claims arising out of the Property or this lawsuit which existed as of the date of this Amended Consent Judgment and which were actually

raised or which could have been raised in this lawsuit, including without limitation any noncompliance with the original Consent Judgment.

3. Zoning. The Property shall remain zoned R-3, Single Family Residential. Nothing in this Amended Consent Judgment shall prohibit or preclude the City from subsequently amending the zoning classification applicable to the Property, exercising its legislative discretion. Despite the existing zoning or any amended zoning classification applicable to the Property being residential, the Property may be developed, constructed and used for all uses provided for in this Amended Consent Judgment and in the B-2 General Business District zoning classification of the Zoning Ordinance (except that any conditional land uses shall be subject to public hearing and recommendation by the Planning Commission and approval by the City Council in accordance with the procedures and conditions defined in the Zoning Ordinance). No other uses of the Property shall be permitted without the approval of the Rochester Hills City Council and further amendment of this Amended Consent Judgment. All construction and improvements on the Property shall be in conformity with the regulations and standards pertaining to the B-2 General Business District zoning classification, except as otherwise provided herein. In the event any of the existing or new buildings or structures on the Property are destroyed or damaged by fire or other casualty, Defendants may rebuild same in accordance with the terms of this Amended Consent Judgment. The foregoing shall allow the continued use of the Property as it is currently used as a retail facility, subject to the terms of this Amended Consent Judgment. The foregoing shall also continue to apply in the event the existing retail store on the Property ceases operations either temporarily or permanently. There shall be no limitation on the hours of operation.

4. Site Plan Approval. Defendant shall be permitted to redevelop, construct and use the Property in conformance with the drawings and specifications attached hereto as Exhibit A (collectively, the “Site Plan”) and incorporated herein by reference, which contain the following:

- A-1 Floor Plan dated September 9, 2013
- A-2 Elevations dated September 9, 2013
- SP-1 Site Plan dated October 3, 2013
- PCE-1 Notes dated October 2, 2013
- PCE-2 Site Grading & Drainage dated October 2, 2013
- PCE-3 Site Utilities dated September 9, 2013
- PCE-4 Stormwater Management dated October 2, 2013
- L-1 Landscape Plan dated October 2, 2013

And which comply with the City’s development requirements and zoning, engineering and fire standards. References to the Amended Consent Judgment shall be deemed to include the Site Plan. The chain link fence around the detention basin shown on Sheet PCE-2 shall, instead, be an aluminum decorative fence.

5. Building and Other Permits. The City will issue building permits and all other permits necessary to enable Defendant to construct the improvements shown on the Site Plan, after proper application by Defendant and the payment of all applicable application and permit fees, and compliance with all applicable building codes and engineering requirements. The City agrees to process all applications for permits in a timely fashion. Defendants shall comply with all valid ordinances, regulations and standards of the City, unless otherwise specifically provided herein.

6. Modifications to Zoning Ordinance Requirements. Any deviations in the Site Plan from the requirements of the B-2 zoning classification regulations and standards are hereby approved by the City without further review, including the 10' setback from the John R Road Right-of-way and the 4' setback from the Avon Road right-of-way.

7. Other Governmental Approvals. Modifications to the Site Plan may be required based on factors such as tenant or occupant needs, or modifications to applicable fire, building or other codes, which may include, for example, modifications to building size, shape and elevations. The City may allow minor modifications to the Site Plan if the changes are substantially in compliance with this Amended Consent Judgment, the intent of the parties and the architectural character of the project. Such minor modifications shall be reviewed and approved by City Staff. Examples of minor modifications may include, without limitation: (a) a minor increase or reduction in the size of the buildings; (b) the replacement of approved landscaping materials with similar compatible types of landscaping materials; (c) minor changes to the elevations or the floor plan; (d) minor changes in site layout which do not violate any requirements of the Zoning Ordinance; and (e) changes of building materials to those of like or better quality.

8. Construction of Off-Site Improvements. Prior to obtaining a permanent certificate of occupancy, Defendant shall install pedestrian non-motorized pathways adjacent to the Property within the Avon Road and John R Road rights of way as shown on the Site Plan, and shall also construct those acceleration and deceleration lane tapers along Avon Road and John R Road as shown on the Site Plan. The construction of such off-site improvements shall not delay the issuance of a temporary certificate of occupancy for the Property.

9. Grant of Road Right of Way Easement. At the time of issuance of a permanent certificate of occupancy for the new improvements to be constructed on the Property, Defendant shall grant to the City or the Road Commission for Oakland County, as appropriate, a right-of-way easement for that portion of the Property within the proposed rights-of-way for Avon Road and John R Road as shown on the Site Plan, for road, pathway and/or utility purposes, without compensation by the City or Road Commission.

10. Signs. For the purpose of compliance with sign ordinance requirements, the site shall be considered to be zoned B-2 and all signs shall comply with the requirements of City Ordinances applicable to a site in the B-2 district. In addition to the type and amount of signage allowed by applicable City Ordinances, and in place of the existing non-conforming monument sign, a monument sign may be placed on the Property (along the Avon Road right-of-way) as indicated on the SP-1 Site Plan.

11. Consents/Approvals. Whenever the consent, approval, permit or certificate issuance of the City is required, such consent, approval, permit or certificate issuance shall not be unreasonably delayed, conditioned or withheld.

12. Recordation. This Amended Consent Judgment shall be recorded with the Oakland County Register of Deeds, and the covenants contained herein are declared to be covenants running with the land and all portions or divisions thereof, and the obligations, duties and rights herein shall be binding on the respective heirs, successors, grantees, and assigns of the parties, and the Oakland County Register of Deeds is ordered to record a true copy of this Amended Consent Judgment in the land records of Oakland County.

13. Sale of the Property. Defendant shall have the right to sell, transfer, assign and/or mortgage the Property. In the event the Property changes ownership or control, the terms and

conditions of this Amended Consent Judgment shall continue to be binding on any successor owner of the Property and the City. This Amended Consent Judgment may be relied upon for the future land use and development of the Property by Defendant and its successors and assigns and transferees.

14. Conflicting Provisions. To the extent that this Amended Consent Judgment conflicts with the Zoning Ordinance, or any other existing or future City Ordinance or regulation, the terms of this Amended Consent Judgment shall control. To the extent that the Amended Consent Judgment is silent on issues regulated by the Zoning Ordinance or other City Ordinances or regulations, then the Zoning Ordinance, and any applicable City Ordinances and regulations shall control.

15. Amendment. The terms of this Amended Consent Judgment may be amended, changed or modified but only by written agreement executed by the parties hereto and later approved and ordered by this Court. Minor modifications to the Site Plan, as previously described in Section 7 above, may be done administratively, without having to amend this Amended Consent Judgment.

16. Severability. Each restriction and clause is intended to be severable and in the event that any restriction is for any reason held void, it shall not affect the validity of the remainder of this Amended Consent Judgment.

17. Original Consent Judgment Superseded. This Amended Consent Judgment resolves the entire dispute between the parties set forth in the underlying action, and shall hereby supersede the Consent Judgment which was entered by this Court on December 5, 1984, which Consent Judgment shall immediately become null and void and of no further force or effect.

18. Reinstatement of Original Consent Judgment. In the event Defendant does not pull a building permit for the redevelopment of the Property as provided herein within three (3) years after the date of the entry of this Amended Consent Judgment, then the Rochester Hills City Council shall have the right to petition the Court to revoke this Amended Consent Judgment, in which event the original Consent Judgment shall be reinstated in full.

19. Continuing Jurisdiction. This Court retains continuing jurisdiction to assure enforcement and compliance with the terms of this Amended Consent Judgment.

Honorable _____
Circuit Court Judge

Approved:

Avon Country Market, Inc.,
a Michigan corporation

City of Rochester Hills,
a Michigan municipal corporation

By: _____
Paul G. Essa, President

By: _____
Bryan K. Barnett, Mayor

John D. Gaber (P45294)
Attorney for Defendant

John D. Staran (P35649)
Attorney for Plaintiff