

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

FINSILVER/FRIEDMAN VENTURE I, L.L.C.
a Michigan limited liability company,

Appellant,

v.

Hon. John J. McDonald
Case No. 04-058042-AA

CITY OF ROCHESTER HILLS ZONING
BOARD OF APPEALS,

Appellee.

CARSON FISCHER, P.L.C.
Karen H. Safran (P-51317)
Gregory T. Obloy (P-58104)
Attorneys for Appellant
300 E. Maple Road, 3rd Floor
Birmingham, MI 48009
(248) 644-4840

BEIER HOWLETT, P.C.
John D. Staran (P-35649)
Attorneys for Appellee
200 E. Long Lake Road, Suite 110
Bloomfield Hills, MI 48304-2328
(248) 645-9400

CONSENT JUDGMENT

At a session of said Court, held in the
City of Pontiac, County of Oakland,
State of Michigan on _____

PRESENT: _____
CIRCUIT COURT JUDGE

The parties stipulate, and based thereon, this Court finds the material facts underlying this controversy and Consent Judgment are:

A. Plaintiff is the owner of certain real property (“Property”) located within the City of Rochester Hills (“City”), County of Oakland, State of Michigan, more particularly described in the legal description attached hereto as **Exhibit A**.

B. Defendant is a Michigan Municipal body located in Oakland County, Michigan.

C. Pursuant to Ordinance of the City, a certain portion of the Property is zoned R-3; One Family Residential (“Residential Property”) and more particularly described in the legal description attached hereto as **Exhibit B**; the remainder of the Property is zoned O-1 Office Business (“Office Property”) and more particularly described in the legal description attached hereto as **Exhibit C** and adjacent to the Residential Property.

D. The Office Property complies with the parking requirements set forth in the City’s Zoning Ordinance; however, the Plaintiff desires to use the Residential Property to provide additional parking for the users of the Office Property.

E. The Residential Property does not (independent of a driveway/parking lot in the Office Property) have access to any public street, right-of-way or thoroughfare and cannot be reasonably used as permitted by the Ordinance.

F. Plaintiff desires to use a portion of the Residential Property to park up to eighteen (18) vehicles for the users of the adjacent Office Property.

G. In 2003, Plaintiff submitted an application to rezone the Residential Property to O-1 Office Business.

H. On October 21, 2003, City’s Planning Commission recommended a denial of the rezoning request.

I. On November 19, 2003, City Council denied the rezoning request.

J. On January 16, 2004, Plaintiff filed an application for a use variance with City's Zoning Board of Appeals ("ZBA") to use a portion of the Residential Property for "parking for the adjacent office use."

K. On February 23, 2004, the City's Zoning Board Appeals ("ZBA") in a split vote (4-3) denied Plaintiff's use variance application.

L. On May 3, 2004, Plaintiff appealed the decision of the ZBA to this Court.

M. The parties are in dispute as to the use of the Residential Property and the parties acknowledge and agree that resolution other than by agreement would involve considerable expense, delay, and uncertainty.

N. The parties desire to settle disputes which have arisen regarding the use of this Residential Property as provided in this Consent Judgment and to provide for adequate screening and landscaping for the adjacent Residential Property owners as provided herein.

O. The parties have stipulated and agreed to enter into and abide by the terms of this Consent Judgment.

Based upon the foregoing and the stipulation by the parties hereto, and the Court otherwise being duly advised:

IT IS ORDERED AND ADJUDGED:

1. Plaintiff may use the Residential Property to construct and provide additional paved parking for up to eighteen (18) vehicles for the users/invitees of the Office Property as shown on **Exhibit D**, subject to the following conditions:

(a) Plaintiff shall not permit litter or debris to accumulate on the improved areas of the Residential Property and shall remove and dispose of such litter and debris on a regular basis.

(b) Plaintiff shall not keep or place a dumpster or trash receptacle on the Residential Property.

(c) Plaintiff shall not use of the Residential Property for any other non-residential use (except the additional parking) including overnight parking of vehicles; storage, equipment or materials; or deliveries.

(d) Plaintiff shall maintain the landscaping shown on **Exhibit D** on a regular basis and shall remove and replace any dead, damaged, diseased or infected trees, shrubs or other landscaping in a timely manner. Plaintiff shall provide City with a surety bond in the amount of \$22,900.00 to guaranty completion of the construction and installation of the landscaping shown on **Exhibit D**. Upon completion of the construction and installation of the landscaping shown on **Exhibit D**, the surety bond shall be reduced to \$5,725.00 and shall remain in place for an additional two years to ensure the removal and replacement of unhealthy or dead plant material.

2. The improvements shall be constructed and developed by Plaintiff in accordance with the drawings attached hereto and marked **Exhibit D**, unless specifically amended in writing and approved by both parties to this Consent Judgment or their successors in interest or assigns. All of the City's landscape/buffering, engineering standards and construction standards, except as otherwise depicted on **Exhibit D** or set forth herein or as attached hereto, shall be generally applicable. To the extent of any conflict between this Consent Judgment and the City's standards and ordinances, this Consent Judgment (including all exhibits) shall control. The Residential Property shall remain zoned R-3 pursuant to the City's

Zoning Ordinance subject to any subsequent modification permitted by Ordinance, Statute or otherwise.

3. This Consent Judgment, including **Exhibit D**, has been reviewed and approved by the City's Planning and Engineering Departments and complies with all applicable laws, ordinances and statutes. Plaintiff shall have the right to apply for permits in pursuit of the improvements shown in **Exhibit D** immediately upon the entry of the Consent Judgment. The City's review and approval of such permits shall not be unreasonably conditioned, withheld or delayed.
4. Plaintiff shall maintain the storm water detention system shown in **Exhibit D** and the Plaintiff and City shall execute an agreement for maintenance of the stormwater detention system in the form and substance of the Agreement For Maintenance Of Storm Water Detention System attached hereto as **Exhibit E**.

IT IS FURTHER ORDERED AND ADJUDGED that the uses granted herein by the City shall terminate upon the following:

- (a) Plaintiff fails to complete the construction of the improvements shown on **Exhibit D** within two years of the date this Consent Judgment is entered by the Court; provided that, the Construction Period shall be extended by a period of time equal to the number of days during which the performance of such construction is unavoidably prevented or delayed, retarded or hindered by acts of God, fire, earthquake, floods, explosion, actions of the elements, war, declared or undeclared (including "police action"), invasion, insurrection, riot, mob violence, sabotage, inability to procure labor, equipment, facilities, or materials, strikes, walkouts, actions of labor unions, condemnation, eminent domain, requisition laws, orders of government or civil or

military authorities or any other cause, whether similar or dissimilar to the foregoing, not within the control of Plaintiff; or

(b) There is a subsequent and material change in the use of the Office Property from the current use (as of the date of entry of this Consent Judgment) of the Office Property.

IT IS FURTHER ORDERED AND ADJUDGED that this Consent Judgment shall operate to bind the parties and control the improvements to Residential Property as set forth in **Exhibit D** and any modification or amendments to **Exhibit D**, shall not be permitted except by written consent of both parties to this Judgment or further Order of this Court.

IT IS FURTHER ORDERED AND ADJUDGED that the parties' entry of this Consent Judgment shall not be construed as an admission of fault, mistake, or wrongdoing by any party.

IT IS FURTHER ORDERED AND ADJUDGED that this Consent Judgment, or a memorandum making reference to this Consent Judgment, may be recorded with the Register of Deeds of Oakland County, Michigan, and shall be binding upon and shall inure to the benefit of the parties, their successors, or assigns and shall run with the land.

IT IS FURTHER ORDERED AND ADJUDGED that this Court shall have and maintain continuing jurisdiction over the parties and the subject matter of this Consent Judgment in order to construe and enforce the terms and provisions of the Consent Judgment.

IT IS FURTHER ORDERED AND ADJUDGED, and the City represents, that City has the power and authority to enter into this Consent Judgment and that City believes that the drawings and plans that comprise **Exhibit D** are not detrimental to the health, safety and welfare of the community.

IT IS FURTHER ORDER AND ADJUDGED that this Consent Judgment, having been entered with the Court, shall be, and the same is hereby deemed, a final disposition of the entire case.

CIRCUIT COURT JUDGE

Approved as to Form and Content,
Notice of Entry Waived

Gregory T. Obloy
Attorney for Appellant

John D. Staran
Attorney for Appellee

EXHIBIT A

Property Legal Description

A part of the Southeast $\frac{1}{4}$ of Section 22, T3N, R11E, City of Rochester Hills, Oakland County, Michigan, being a part of Lot 6 and a part of Outlot "C" of "Hamlin Place Farms" as recorded in Liber 15, Page 34 of Plats, Oakland County Records, more particularly described as commencing at the Southeast corner of Section 22; thence N01°48'43"W, 871.99 feet along the East line of Section 22; thence S87°53'45"W, 70.00 feet to a point on the Westerly right-of-way line of Rochester Road as described in Liber 6595, Page 460 of deeds, Oakland County Records, also being the point of beginning; thence continuing S87°53'45"W, 441.16 feet; thence S01°37'58"E, 229.00 feet; thence N88°00'54"E, 546.62 feet to a point on the Westerly line of Rochester Road, thence S01°48'43"E, 170.08 feet to the point of beginning and containing 2.699 acres.

EXHIBIT B

Residential Property Legal Description

A part of the Southeast $\frac{1}{4}$ of Section 22, Town 3 North, Range 11 East, City of Rochester Hills, Oakland County, Michigan, being a part of Outlot "C" of "Hamlin Place Farms", as recorded in Liber 15 of Plats, Page 34, Oakland County Records, more particularly described as commencing at the Southeast corner of said Section 22; thence North 01 degrees 48 minutes 43 seconds West 871.99 feet along the East line of said Section 22; thence South 87 degrees 53 minutes 45 seconds West 70.00 feet to the point on the Westerly Right of Way line of Rochester Road as described in Liber 6595, Page 460 of Deeds, Oakland County Records, also being the point of beginning; thence continuing South 87 degrees 53 minutes 45 seconds West 441.16 feet to a point on the West line of said Outlot "C"; thence North 01 degrees 37 minutes 58 seconds West 171.00 feet along the West line of said Outlot "C"; thence North 88 degrees 00 minutes 54 seconds East 440.62 feet to a point on the Westerly Right of Way line of said Rochester Road; thence South 01 degree 48 minutes 43 seconds East 170.08 feet along the Westerly Right of Way line of said Rochester Road to the point of beginning.

EXHIBIT C

Office Property Legal Description

A part of the Southeast $\frac{1}{4}$ of Section 22, Town 3 North, Range 11 East, City of Rochester Hills, Oakland County, Michigan, being a part of Lot 6 of "Hamlin Place Farms", as recorded in Liber 15 of Plats, Page 34, Oakland County Records, more particularly described as commencing at the Southeast corner of said Section 22; thence North 01 degrees 48 minutes 43 seconds West 871.99 feet along the East line of said Section 22; thence South 87 degrees 53 minutes 45 seconds West 511.16 feet to a point of the East line of said Lot 6, also being the point of beginning; thence South 01 degrees 37 minutes 58 seconds East 229.00 feet along the East line of said Lot 6; thence South 88 degrees 00 minutes 54 seconds West 106.00 feet; thence North 01 degrees 37 minutes 58 seconds West 400.00 feet to a point on the North line of said Lot 6; thence North 88 degrees 00 minutes 54 seconds East 106.00 feet along the North line of said Lot 6 to the Northeast corner of said Lot 6; thence South 01 degrees 37 minutes 58 seconds East 171.00 feet along the East line of said Lot 6 to the point of beginning.

EXHIBIT D

EXHIBIT E

AGREEMENT FOR MAINTENANCE OF STORM WATER DETENTION SYSTEM

This agreement is made on August __, 2004, by Finsilver/Friedman Venture I, L.L.C., a Michigan limited liability company ("Finsilver"), whose address is 34975 West Twelve Mile Road, Farmington, Hills, Michigan 48331; and the CITY OF ROCHESTER HILLS (the City), whose address is 1000 Rochester Hills Drive, Rochester Hills, MI 48309.

RECITALS:

WHEREAS, Finsilver owns the property described in attached Exhibit A; and

WHEREAS, Finsilver has submitted plans and applied for, and the City has approved, a storm water drainage and detention system (the system), which includes a detention basin, for the property as described and depicted in Exhibit A; and

WHEREAS, the parties will benefit from the proper use and maintenance of the System and desire to enter into this agreement to provide for the same.

THEREFORE, the parties agree:

1. **Use of the System:** Components of the System, including the detention basin, shall be used solely for the purpose of detaining storm and surface water on the property until such time as: (i) The City may determine and advise Finsilver, or its successors, grantees or assigns, in writing that it is no longer necessary to use the detention basin to detain storm or surface water; and (ii) An adequate alternative for draining storm and surface water has been provided which is acceptable to the City and which includes the granting of such easements to the City or third parties for the alternative drainage system as may be necessary.

2. **Maintenance:**

A. Finsilver shall be responsible for the proper maintenance, repair and replacement of the System and any part thereof, including the detention basin.

B. Proper maintenance of the System shall include, but not limited to: (i) Keeping the bottom of the detention basin free from silt and debris; (ii) Removing harmful algae; (iii) Maintaining steel grating across the basin's inlets; (iv) Controlling the effects of erosion; and (v) Any other maintenance that is reasonable and necessary in order to facilitate or accomplish the intended function and purpose of the System.

3. **Action by City:** In the event Finsilver or its successors, grantees, or assigns, neglects or fails at any time to properly maintain the System or any part thereof, the City may notify Finsilver or its successors, grantees or assigns, in writing, and the notice shall include a listing and description of maintenance deficiencies and a demand that they must be corrected within thirty (30) days. The notice shall further specify the date and place for a hearing to be held at least fourteen (14) days after the date of the notice before the City Council, or such other board or official to whom the City Council may delegate responsibility. At the hearing, the City Council (or other board or official) may endorse or modify the listing and description of

deficiencies to be corrected and, for good cause, may extend the time within which the deficiencies must be corrected.

Thereafter, if the maintenance deficiencies are not corrected within the time allowed, the City may undertake and make the necessary corrections, and may maintain the System for a period not to exceed one (1) year. Such maintenance of the System by the City shall not be deemed a taking of the property, nor shall the City's actions be deemed to vest in the public any right to use the property. If the City determines maintenance of the system by the City should continue beyond one year, the City shall hold, and provide advance written notice of, a further hearing at which Finsilver or its successors, grantees or assigns, will not or cannot properly maintain the System, the City may continue to maintain the System for another year, and subject to a similar hearing and determination, in subsequent years.

In the event the City determines an emergency condition caused by or relating to the System threatens the public health, safety or general welfare, the City shall have the right to immediately and without notice enter the property and undertake appropriate corrective action.

4. **Charges:** The City shall charge to the current owner of the property the cost of maintenance or other corrective action undertaken by the City in accordance with this agreement, plus a five percent (5%) administrative fee. If not timely paid, the City may assess the charges on the City's tax roll, which charges shall be a lien on the real property and shall be collectable and enforceable in the same manner general property taxes are collected and enforced.

5. **Notice:** Any notices required under this agreement shall be sent by certified mail to the address for each party set forth below, or to such other addresses as such party may notify the other parties in writing:

To Finsilver:

Finsilver/Friedman Venture I
Attn: Stanley Finsilver
34975 West Twelve Mile Road
Farmington Hills, MI 48331

To the City:

Clerk
City of Rochester Hills
1000 Rochester Hills Drive
Rochester Hills, MI 48309

6. **Successors and Assigns:** This agreement shall bind and inure to the benefit of the parties and their respective successors, grantees and assigns. The rights, obligations and responsibilities hereunder shall run with the land and shall bind all current and future owners of the property.

7. **Recording of Agreement:** This agreement shall be recorded at the Oakland County Register of Deeds.

IN WITNESS WHEREOF, the parties have executed this agreement on the date set forth above.

WITNESSES:

Finsilver:

FINSILVER/FRIEDMAN VENTURE I, a Michigan limited liability company

By: _____
Stanley Finsilver, [Mmbr/Mngr]

City:

CITY OF ROCHESTER HILLS

By: _____
Pat Somerville, Mayor

By: _____
Beverly A. Jasinski, Clerk

STATE OF MICHIGAN)
COUNTY OF OAKLAND)

This agreement was acknowledged before me on August ____, 2004, by Stanley Finsilver, [member/manager] of Finsilver/Friedman Venture I, L.L.C., a Michigan limited liability company, on behalf of the limited liability company.

_____, notary public
_____, County, Michigan
My commission expires: _____

STATE OF MICHIGAN)
COUNTY OF OAKLAND)

This agreement was acknowledged before me on _____, _____, by Pat Somerville, Mayor, and Beverly A. Jasinski, Clerk, of the City of Rochester Hills, on behalf of the City.

_____, notary public

My commission expires: County, Michigan

Drafted by and when recorded return to:
Clerk
City of Rochester Hills
1000 Rochester Hills Drive
Rochester Hills, MI 48309

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