



City of Rochester Hills  
AGENDA SUMMARY  
NON-FINANCIAL ITEMS

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Legislative File No: 2013-0371

**TO:** Mayor and City Council Members

**FROM:** Ed Anzek, Director of Planning and Economic Development, ext. 2572

**DATE:** October 9, 2013

**SUBJECT:** Request for presentation of an Amended Consent Judgment between the City of Rochester Hills and Avon & John R Retail and its General Partners, proposed for two parcels at the northwest corner of Avon and John R, zoned R-3, One Family Residential and requesting a Public Hearing for October 28, 2013

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**REQUEST:**

Staff is requesting to present the history of an “open-ended” 30 year old Consent Judgment along with the site plan that would complete the remaining tasks, and request a Public Hearing and consider approving the Amended Consent Judgment at the City Council’s scheduled meeting of October 28, 2013. The current building is known as Avon Country Market.

**BACKGROUND:**

Due to Avon Township’s effort to enforce the Zoning Ordinance and deny an expansion to the Avon Country Market around 1983-84 litigation ensued. The market was deemed a non-conforming use as the corner was zoned for single-family use. The current owners are Paul and Samira Essa, husband and wife.

As a settlement to the litigation it was negotiated that the market could expand, while the second floor apartment was to cease and be converted for storage in support of the retail. The original Consent Judgment included time limits as to when these changes were to occur. The CJ was first entered into on December 5, 1984 (30 years).

Apparently, most of the terms were not met and continuations were agreed to. It is my understanding that around 1993, the Essa’s approached the City (previous Avon Township) and asked to modify the Consent Judgment that enabled them to rebuild a new facility and demolish the existing one. Their basis was that the costs to renovate and expand were greater than building new. It is my understanding that the city was supportive of this approach as the current building and freestanding pole sign are partially located in the right of way.

The revised Consent Judgment was held open pending the development of a site plan that could reasonably be built by most city standards. The development of the plans became an unusually long drawn out process. Since 2000 the City Engineer, City Attorney and I would meet with the Essa’s architect and attorney to review, refine, tweak, and revise plans for a new building that could be built while the existing market stayed open for business. This process would start and stop without conclusion about every 2 years. The new plans also had to incorporate city standards as they changed such as storm water retention.

As anyone that has driven by the market can see, the business is closed and the structure is rapidly deteriorating. The Essa's have been trying to sell the property as they informed us they did not have the resources to rebuild. The Consent Judgment has determined the use and its continuance. Therefore even though a non-conforming use has ceased to operate for more than 6 months it can continue or restart as the CJ takes priority over the Zoning Ordinance.

In recent months 2 people that have a significant investment in the immediate area have offered to buy it and rebuild the operation.

In discussion with the City Attorney the Consent Judgment is transferable. Staff has been working with the prospective buyers and their architect and Engineer to design a small facility that can work on the site with a few modifications. Those modifications are discussed in the following.

The plans have been reviewed by all pertinent departments and have been approved. The Consent Judgment, if approved by Council, also approves the site plan that will be attached as an Exhibit.

**The Plan**

The proposed site plan complies with all City Ordinances and requirements, and all departments have recommended approval or approval with conditions. The Fire Department approved the site and utility layout but did not approve the plans until verification of required hydrant flow rates could be provided. The City has completed fire flow testing and this requirement has been met.

The plan was designed according to the development requirements in the B-2 district and complies with all zoning standards except for setbacks. The proposed building has been pushed out to the corner in an effort to provide separation from the existing houses to the west and north and better maneuverability for trucks. The proposed setbacks have been reduced to 4 feet from Avon Road, and 10 feet from John R. These setback modifications are established in the CJ.

The plan otherwise conforms to minimum parking, landscaping, screening, lighting, etc. requirements. The building is attractive and is designed to have front facades on all four sides.

There are a few items that need to be addressed from the technical reviews, which can be completed on revised plans to be approved by City Staff. The remaining items are minor and will not impact the layout or use of the site.

**RECOMMENDATION:**

Staff is requesting City Council to advertise a Public Hearing for October 28, 2013 and to consider the approval of the Amended Consent Judgment as presented on October 14, 2013. The Public Hearing is in keeping with Council Policy of holding a Public Hearing when the resolution of a Consent Judgment is being considered.

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APPROVALS:	SIGNATURE	DATE
Department Review		
Department Director		
Mayor		
City Council Liaison		