



**City of Rochester Hills
AGENDA SUMMARY
NON-FINANCIAL ITEMS**

**1000 Rochester Hills Dr.
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Legislative File No: 2010-0445

TO: Mayor and City Council Members
FROM: Ed Anzek, Planning & Economic Development Department, Ext. 2577
DATE: November 1, 2010
SUBJECT: Ovonyx Technologies, Inc. Transfer of Employment

REQUEST:

Ovonyx Technologies, Inc. is requesting a transfer of its personnel and assets to another community without incurring tax repayment under a Industrial Facilities Exemption Certificate in accordance with Section 9 of the Development Agreement.

BACKGROUND:

In 2007, Ovonyx Technologies, Inc. received approval for an Industrial Facilities Exemption Certificate for \$4 million in personal property that it planned to acquire and locate at 2956 Waterview Dr. The facility is leased by Energy Conversion Devices and a portion of the building is subleased to Ovonyx.

The lease on the building expires at the end of this year and Energy Conversion Devices has chosen to not renew it, and plans to vacate. At the time that Council approved the Ovonyx tax abatement, it was aware that this possibility existed. Therefore, the Development Agreement provided a provision in Section 9 that allowed Ovonyx to relocate outside of Rochester Hills with no penalty or requirement to repay the past abated taxes as long as the company made a "reasonable" effort to remain in Rochester Hills.

Ovonyx submitted a letter to the City on September 29, 2010 which describes the attempts that it made to remain in the community, and has decided to relocate part of its operation to Wayne State University and the remainder to the City of Troy. It is requesting approval from Council to transfer its employment.

Here is the pertinent section of the Development Agreement that relates to this issue:

9. The applicant, Ovonyx Technologies, Inc., agrees to remain in the City of Rochester Hills for the period of the Industrial Facilities Exemption Certificate to retain the benefits of the abated taxes, unless permission is granted by the City Council. Failure to obtain permission prior to the end of the term of the Industrial Facilities Exemption Certificate shall result in the right of the City to recapture from applicant all taxes abated plus interest at the rate of 8% per year compounded annually. The taxes and interest shall be a lien placed upon the tax rolls of the City and/or County and collected in the same manner as set forth in Paragraph 3. Further, it is understood that Ovonyx Technologies, Inc. subleases space at 2956 Waterview Dr. from Energy Conversion Devices, Inc., whose lease initially expires in 2010 with an option to renew for five additional years. Should Energy Conversion Devices, Inc. not renew or extend the lease beyond 2010, Ovonyx Technologies, Inc. will not be penalized by the City for failure to remain in the facility

for the duration of the abatement period. Ovonyx Technologies, Inc., however, will make a reasonable good faith effort to remain in Rochester Hills for the duration of the abatement. Should it become necessary for Ovonyx Technologies, Inc. to relocate its equipment and operations to another facility in Rochester Hills during the abatement period, the City will reasonably consider transfer of the Industrial Facilities Exemption Certificate to the new facility, provided the conditions and commitments in this agreement are met.

The “penalty” referred to in Section 9 means that no repayment of the past abated taxes would be required.

The Assessing Department has determined that \$49,127.95 has been abated thus far from all jurisdictions. The City’s portion of taxes is \$16,918.29.

Reasons to not penalize Ovonyx by requesting repayment of the abated taxes are:

1. Ovonyx cannot afford to purchase and install its own wafer lab (see Ovonyx letter) and there is no such lab available anywhere else in Rochester Hills
2. The ECD facility, where the current wafer lab is located, is far too large for Ovonyx to lease based on its current requirements, and ECD owns the equipment and plans to vacate by December 31, 2010
3. In Section 9 of the Development Agreement, the word “reasonable” is not clearly defined and, therefore, subject to City Council’s interpretation

The company will be sending a representative to the November 8 Council meeting to describe the efforts that were made to remain in Rochester Hills.

RECOMMENDATION:

Grant Ovonyx’ request to transfer employment and equipment outside of Rochester Hills with no penalty or repayment of past abated taxes.

RESOLUTION

NEXT AGENDA ITEM

RETURN TO AGENDA

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