

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

SALEM PROPERTIES, a Michigan
partnership,

Plaintiff,

Case No: 00-821-CK

v

Hon. Donald E. Shelton

SALEM TOWNSHIP, a Michigan municipal
corporation,

Defendant.

CONLIN, McKENNEY & PHILBRICK, P.C.

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CONSENT JUDGMENT

CONSENT JUDGMENT

At a session of said Court, held in the City of
Ann Arbor, County of Washtenaw, State of Michigan

on _____

Present: HONORABLE DONALD E. SHELTON
Circuit Court Judge

UPON STIPULATION AND CONSENT OF THE PARTIES, by and through their respective attorneys, this Court finds:

1. Plaintiff, Salem Properties, a Michigan partnership (hereinafter “Developer”), is the owner of certain property (“Property”) containing approximately 14.78 acres and located generally on the east side of Godfredson Road in the vicinity of the M-14/Godfredson Road interchange. The Property is more particularly described in Exhibit A, attached hereto.
2. Defendant, Salem Township (hereinafter “Township”), is a municipal corporation organized and existing under Act 359, Public Act 1947, as amended, MCL 42.1 et seq, located in Washtenaw County, Michigan.
3. Pursuant to the Zoning Act, the Township has duly adopted a Zoning Ordinance, which has been amended from time to time (“Zoning Ordinance”).
4. Under the Zoning Ordinance, the Property is currently zoned AR, Agricultural Residential, which permits single-family residential development on a minimum two (2) acre lot.
5. In November of 1998, the Developer petitioned the Township to rezone the Property from AR to HC, Highway Commercial.
6. On August 2, 1999, the Salem Township Planning Commission recommended denial of the rezoning request.

7. On October 14, 1999, the Washtenaw County Metropolitan Planning Commission recommended denial of the rezoning request.
8. On November 9, 1999, the Salem Township denied the request for rezoning.
9. The parties now desire to settle this lawsuit in accordance with the terms and conditions of this Consent Judgment, in order to avoid further costs and expenses, and the uncertainty of a trial, and to resolve this dispute without any admission of liability.
10. The parties agree that the operative provisions of this Consent Judgment are promises made by each of them to the extent that these provisions are applicable to their respective actions.

NOW, THEREFORE, this Consent Judgment being presented to the court pursuant to the stipulation of the parties, and the court having determined that this proposed Consent Judgment is reasonable and just and being otherwise fully advised in the premises;

IT IS HEREBY ORDERED that:

Section 1 - Approvals

1.1 Zoning

The parties to this Consent Judgment agree that the Property will maintain the current zoning classification of AR, Agricultural Residential. Nothing in this Section shall prohibit the Township from rezoning the Property in the future in the exercise of its legislative discretion. In spite of the underlying zoning of the property now or in the future, the property may be developed consistent with this Consent Judgment, and any uses developed consistent with this Consent Judgment shall not be considered non-conforming.

1.2 Plan Approval

Irrespective of the AR zoning of the Property, Developer shall be permitted to develop the Property in conformance with the conceptual plans and specifications (collectively “Conceptual Plans”), attached hereto as Exhibit B and made a part of this Consent Judgment. The Conceptual Plans consist of:

PLANS TO BE ATTACHED

1.3 Review Process of Conceptual Site Plan

Exhibit B is deemed to have conceptual site plan approval for the proposed commercial developments on the Property. Developer shall be required to submit a complete site plan to the Township Planning Commission through the formal process contained in the Zoning Ordinance for final approval of the site plan. The Planning Commission shall review the site plan to insure compliance with all applicable Township ordinances and regulations, and the terms of this Consent Judgment. Once final site plan approval is obtained, the final site plan shall be attached to this Consent Judgment as part of Exhibit B. Developer shall pay all the applicable fees with respect to the final site plan review and approval process.

1.4 Building and Other Permits

Township will issue building permits and all other permits necessary to enable Developer to construct the improvements after the Developer obtains final site plan approval. Developer shall pay all applicable fees for any permits required.

1.5 Limitation on Approval

The conceptual site plan approved by this Consent Judgment shall expire in the event that final site plan approval is not initiated by Developer within the time periods contained in this section. Developer shall apply for site plan approval for the gasoline station within eighteen (18) months of entry of this Consent Judgment. Developer shall apply for site plan approval for the restaurant within three (3) years of entry of this Consent Judgment. Developer shall apply for site plan approval for the retail center within five (5) years of entry of this Consent Judgment. As Final Site Plan Approval is obtained for each of the three (3) respective uses of the Property, Developer shall have a period of two (2) years to commence development of the Property for that use. Any request for an extension of the time period within which to initiate Final Site Plan Approval and/or to commence development shall be submitted to the Township Board, and the Township Board may choose, in the exercise of its sole discretion, to extend the time periods.

1.5 Other Governmental Approvals

The parties are aware that some modifications to the Plans may result from further regulatory requirements of other governmental agencies. Such changes shall be deemed approved by the Township if the changes are substantially in compliance with this Consent Judgment, the intent of the parties, and the Plans.

Section 2 - Conditions

2.1 Specifics of Development

The development of the project shall meet the standards set forth in the Zoning Ordinance for the GC, General Commercial District, except where specifically modified herein.

2.2 Gasoline Station Portion of Development

Developer shall be permitted to develop an gasoline station as shown on the Plans. The building on this portion of the development shall be no larger than 6,400 sq. ft. The gasoline station can include a fast food establishment in the building. No drive-through service shall be permitted for the fast food establishment. The gasoline station shall be constructed with no more than four (4) gas pump islands, containing no more than sixteen (16) gas pumps. Under no circumstances shall the gasoline station be utilized as truck stop, nor shall parking spaces for such a truck stop be permitted. For purposes of this Consent Judgment, a “truck stop” is any building, premises, or land upon which a business, service, or industry involving the maintenance, servicing, storage, or repair of commercial vehicles is conducted or rendered, and may include overnight accommodations and restaurant facilities primarily for the use of truck crews. No major or minor repair services for automobiles or trucks shall be conducted on the gasoline station site.

2.3 Sit Down Restaurant

Developer shall be permitted to construct a sit down restaurant as shown on the Plans. The restaurant shall be no greater than 6,000 sq. ft. in size. No drive-through shall be permitted.

2.4 Retail Shopping Center

Developer shall be permitted to construct a retail shopping center containing no more than 35,000 sq. ft. as shown on the Plans. Developer shall have flexibility to select the commercial tenants for the shopping center. However, the permitted uses shall be limited to the following:

1. Clothing and apparel services, including laundry pick-up, automatic laundry, dressmaking, millinery, tailor shop and shoe repair shop.

2. Food services including grocery, meat market, bakery, restaurant not serving alcoholic beverages, delicatessen, and fruit market, but not including any business of a drive-in type.
3. Personal services such as a barber shop and beauty salon;
4. Business and professional offices, such as medical and dental clinics, banks, accountant, engineering, insurance, attorney and real estate offices.
5. Retail services, including drug store, hardware, gift shop, and dry goods and notions store.
6. Printing, lithographic, blueprinting, and similar uses.

2.5 Building Facade

The buildings constructed according to the Plans shall be of a colonial/traditional design. The buildings shall be constructed of brick, stone or wood. The buildings shall contain gable roofs at a minimum 4/12 pitch, and the roof material shall be asphalt dimensional shingle, cedar shakes, or clay tile. Neutral color tones shall be utilized.

2.6 Signs

The Township's sign regulations shall apply to the Property, other than as modified below:

a. Gasoline station

Ground sign. One (1) ground sign is permitted. The height of the sign shall not exceed six (6) feet from grade, and shall not exceed a total of 48 square feet. The ground sign may be located on a landscaped berm not exceeding three (3) feet in height from original grade.

Ancillary sign. Two (2) permanent signs for the purpose of advertising gasoline prices and similar announcements, when mounted on a free-standing structure or on the structure of another permitted sign, may be installed along the Godfredson Road frontage, provided that clear views of

traffic by motorists or pedestrians are not obstructed in any way. Such sign(s) shall not exceed twelve (12) square feet in area.

Wall sign. One (1) sign may be affixed to the wall of the building. Total sign area shall not exceed two (2) square feet for each foot of length of the wall to which it is affixed. Wall signs shall not project more than one (1) foot from the wall face, as measured to the furthest face of the sign.

b. Retail Shopping Center and Restaurant

Ground sign. One (1) free-standing (ground) identification sign each, stating the name of the restaurant and shopping center, and major tenants therein. The height of the sign shall not exceed six (6) feet from grade, and shall not exceed a total of 48 square feet. The ground sign may be located on a landscaped berm not exceeding three (3) feet in height from original grade.

Wall sign. One (1) sign per building, may be affixed to the wall of the building. If the building contains more than one enterprise, as in the shopping center, each enterprise located therein may have one (1) sign. Total sign area for wall signs shall not exceed one (1) square foot for each foot of length of the wall to which it is affixed. In the case of individual storefronts, the length of each storefront should be used to calculate available wall signage. Wall signs shall not project more than one (1) foot from the wall face, as measured to the furthest face of the sign. Wall signs within the shopping center should have a uniform design and appearance.

2.7 Lighting

All lighting for the development shall comply with the terms of the Zoning Ordinance. The light poles shall not exceed eighteen (18) ft. in height, and shall be screened so as to direct light down towards the surface of the parking area. Any lighting in the canopies for the gasoline station shall be recessed so that light is screened down.

2.8 Landscaping

Attached as a portion of Exhibit B is the landscaping plan for the development. The landscaping plan shows what landscaping shall be required to be installed as each of the three uses is developed on the Property. To insure that there is compliance with the tree planting requirements when developing each use, Developer shall establish with _____ an escrow agreement in a form acceptable to the Township. Should Developer fail to comply with the landscaping requirements for each use, the Township shall send written notice of such failure, and if the Developer fails to correct the problem within 30 days, the Township shall have the right to use the escrowed funds to install the appropriate landscaping. Each year Developer shall renew the escrow agreement in a form acceptable to the Township, and the annual amount escrowed may be reduced to reflect the remaining obligations with respect to the tree plantings. Developer shall be required to maintain the landscaping, and to replace any diseased or dead landscaping within each growing season.

The following landscaping, greenbelt, buffer and screening specifications shall apply to the development of the Property:

- a. Buffering Between Land Uses to North, East and South. A landscape buffer shall be required to create a visual screen at least six (6) feet in height along adjoining boundaries to the north and south and at least nine (9) feet to in height along the east between the shopping center and restaurant and residential uses and behind the service station. The landscape buffer shall consist of earthen berms and plan materials, or plant materials only, so as to maintain a minimum opacity of at least eighty (80) percent. Opacity shall be measured by observation of any two (2) square yard area of landscape screen between one (1) foot above the established grade of the area to be concealed and the tope or the highest point of the required screen.

- b. Parking Lot Landscaping. Interior Areas. Each separate landscaped area within a parking lot shall be adequately planted and maintained and shall be located in such a manner as to promote the following: divide and break up the expanse of pavement; define parking areas; designate vehicular circulation; and separate parking lots from off-street parking. The following specific standards shall apply:
- i. Separate landscaped islands shall be required within the parking lots.
 - ii. There shall be one (1) canopy tree with a minimum caliper of 3 inches for every eight (8) parking spaces. Landscaped islands within a designated parking area shall be a minimum of six (6) feet in width.
 - iii. A minimum distance of three (3) feet shall be established between proposed tree or shrub plantings and the backside of the curb or edge of the pavement.
- c. Front Greenbelt Landscaping. A landscaped greenbelt equivalent of 75' in width with a landscaped berm varied in height from between two (2) to three (3) feet. The berm shall be planted with a minimum on average of one (1) deciduous or evergreen tree and six (6) deciduous or evergreen shrubs, for each thirty (30) lineal feet, or major portion thereof, of frontage. The remainder of the greenbelt shall be landscaped in grass or ground cover.
- Access ways from public rights-of-way through required landscape strips shall be permitted, but such access ways shall not be subtracted from the lineal dimension used to determine the minimum number of trees required unless such calculation would result in a spacing arrangement which is detrimental to plant development.
- d. Foundation Landscaping. Foundation plantings shall be provided along the front or sides of any buildings which face a public road and/or is adjacent to a parking lot or

other area which provides access to the building(s). Foundation planting areas shall be integrated into the sidewalk system (between the front or sides of the building and the parking area and/or associated driveways) adjacent to the building. Foundation planting areas shall contain at a minimum, on average, one (1) ornamental tree and six (6) shrubs per thirty (30) lineal feet of applicable building frontage. Individual planting areas shall be a minimum of six (6) feet in width.

- e. General Site Landscaping. In addition to any required screening, front greenbelt, foundation landscaping and/or parking lot landscaping required, ten (10) percent of the site area, including existing public road right-of-way, or private road easement shall be landscaped. Such site landscaping shall include preservation of existing plant material, grass, ground cover, trees, shrubs and/or other living plant materials, but shall not be solely grass. In meeting general site landscaping requirements, particular attention shall be paid to such site elements as transformers, mechanical equipment, ground sign bases, entry ways, and/or retention and detention areas. In particular, the integration of stormwater retention and detention ponds in the overall landscape concept shall be required. Ponds with a natural, rather than square or rectangular, design and appearance shall be strongly encouraged. Fenced retention/detention ponds within a front yard shall be strictly prohibited.
- f. Refuse Containers. Outside refuse disposal containers shall be screened on all sides with an opaque masonry wall, and gate at least as high as the container, but not less than six (6) feet in height, and shall be constructed of material which is compatible with the architectural materials used in the site development.

2.9 Access to Development

No more than three (3) curb cuts shall be permitted for development of the entire Property, and shall be located as shown on the Plans. At the request of the Township, Developer shall make the curb cut access at the southern corner of the Property available to the property owner to the south when the property to the south is developed. Developer shall be required to enter into the necessary easement agreement(s) for the use and maintenance of the south curb cut access with the property owner to the south.

2.10 Outside Storage Prohibited

No outside storage in any form related to any of the uses on the Property shall be permitted.

2.11 Bike Path

In the event the Township shall construct a bicycle path or sidewalk along Godfredson Road in the future, Developer shall grant to the Township an easement, at no cost, within the setbacks of the development for this purpose. Any bike path or sidewalk shall be designed by the Township so as to not interfere with any berms and landscaping which have been placed in the development.

2.12 Utilities

Developer acknowledges that there is no public sanitary sewer or public water available to the Property. It shall be Developer's obligation to provide on-site utilities for the development. This Consent Judgment specifically prohibits the development of a package sewage treatment plant for this development. Instead, individual systems septic fields must be developed for the each of the three (3) contemplated uses. Developer shall obtain all required governmental approvals for the provision of water and sewage disposal on the Property. In the event that public sanitary sewer or public water becomes available to the Property in the future, then the uses existing or contemplated for the Property shall connect to the public utilities.

2.13 Storm water management

Developer shall be required to comply with all the provisions in the Township's Stormwater Management Ordinance. As it appears that the Property drains into the Johnson Creek watershed, Developer shall meet the special standards contained in the Stormwater Management Ordinance to ensure that the Property shall be designed such that no measurable adverse change in discharge volume and rate occur from the proposed development of the Property.

2.13 Variances

Except as specifically provided in this Consent Judgment, Developer shall not be permitted to apply for, or obtain, any other variances for the proposed development contemplated under the Plans.

2.14 Parking

Developer shall fully comply with all the parking requirements contained in the Zoning Ordinance relative to the ultimate uses which occupy the buildings depicted on the Plans.

Section 3 - Release

3.1 Release for Liability

Salem Properties, for itself, and its respective successors and assigns, releases and forever discharges the Township, the Township Board, the Township Planning Commission, the Township's employees, officials, independent contractors, commissions, boards, consultants and attorneys, of and from any and all claims, demands, actions, causes of actions, suits, debts, judgments, executions, damages, and rights of whatever nature in law, equity or otherwise, which now exist or which may subsequently accrue by reason of any acts, events or facts existing on the date of this Consent Judgment, whether known or unknown on that date. This release shall not bar claims brought to enforce the provisions of this Consent Judgment.

3.2 Enforcement of Consent Judgment

In the event of a proceeding to enforce this Consent Judgment, either party may seek to recover costs and attorney fees in addition to any other applicable and available relief.

Section 4 - Additional Provisions

4.1 The parties shall execute any and all documents and/or enter into such a agreements as are necessary or convenient to carry out the intent of this Consent Judgment.

4.2 This Consent Judgment is declared to be in recordable form, and the covenants contained herein are declared to be covenants running with the land and all portions or divisions thereof, and shall be binding on the respective heirs, successors, and assigns of the parties, and the Washtenaw County Register of Deeds be, and hereby is, ordered to record a true copy of this Consent Judgment in the land records of Washtenaw County.

4.3 The terms of this Consent Judgment may be amended, changed or modified but only by written agreement executed by the parties hereto and approved and ordered by this Court.

4.4 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 effect the validity of the remainder of this Consent Judgment.

4.5 Except as provided by this Consent Judgment, all claims asserted in this lawsuit, including all claims for money damages, attorney fees and costs, are merged into this Consent Judgment and forever barred.

4.6 This Court retains jurisdiction to assure compliance with the terms of this Consent Judgment.

HONORABLE DONALD E. SHELTON
CIRCUIT COURT JUDGE

SALEM PROPERTIES, a Michigan Partnership

SALEM TOWNSHIP

By:

By:

Its: Supervisor

By:

Its: Clerk

JOSEPH W. PHILLIPS (P-34063)
Attorney for Plaintiff

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