



**Request for City Council Committee Action
From the City Attorney's Office**

Date: October 25, 2004
To: Ways & Means / Budget Committee
Referral to: Public Safety & Regulatory Services Committee

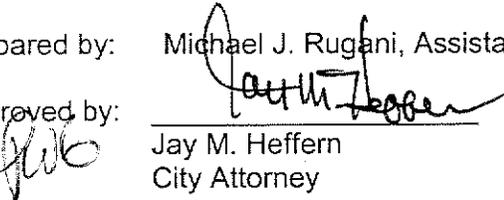
Subject: Auto Mart v. City of Minneapolis
Hennepin County District Court File No.: 04-1474;
In the Matter of the Motor Vehicle Licenses of Auto Mart, Inc.
Court of Appeals Case No.: A04-956

Recommendation: That the City Council approve the settlement of these cases and authorize the City Attorney's Office to execute any documents necessary to effectuate settlement.

Previous Directives:

Prepared by: Michael J. Rugani, Assistant City Attorney

Phone: 673-2897

Approved by: 

Jay M. Heffern
City Attorney

Presenter in Committee: Jay M. Heffern, City Attorney

Financial Impact (Check those that apply)

- No financial impact - or - Action is within current department budget.
(If checked, go directly to Background/Supporting Information)
 Action requires an appropriation increase to the Capital Budget
 Action requires an appropriation increase to the Operating Budget
 Action provides increased revenue for appropriation increase
 Action requires use of contingency or reserves
 Other financial impact (Explain):
 Request provided to the Budget Office when provided to the Committee Coordinator

Community Impact:

City Goals: Build Community

Background/Supporting Information

Douglas Berends and his wife, Kathleen, operate Auto Mart, Inc. which does business at both 501 West Lake Street and 4201 East Lake Street. Over a number of years the licensing status of the business and its compliance with zoning ordinances have been at issue. The City and Auto Mart have tried to reach agreements in the past which have ultimately been unsuccessful.

Auto Mart v. City of Minneapolis

Hennepin County District Court File No.: 04-1474;

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Court of Appeals Case No.: A04-956

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On February 2, 2004, the Berends' and Auto Mart sued the City of Minneapolis and License Inspector Julie Casey claiming that the City had failed to comply with a settlement agreement allegedly reached in previous litigation. The Berends' and Auto Mart seek to enforce the terms of the settlement agreement as they understood them, get site plan approval for their business, and recover damages for asserted due process and equal protection claims. The City answered the complaint and filed a counterclaim on May 11, 2004. For its part, the City denied that any such settlement agreement as recalled by the Plaintiffs had ever been reached, and sought a court order that Auto Mart be enjoined from operating as a motor vehicle dealership because they were in violation of Minneapolis City Ordinances.

The second lawsuit arises from an Administrative Citation Hearing held on February 2, 2004, before Hearing Officer Fabian Hoffner regarding alleged violations of Minneapolis City Ordinances and the imposition of administrative citations on both 501 Lake and 4201 Lake. On April 1, 2004, the Berends' were notified of the Hearing Officer's decision in which Auto Mart and the Berends' were ordered to cease operating at both locations, and ordered to pay \$20,000.00 in fines. Auto Mart timely appealed this decision to the Minnesota Court of Appeals on May 26, 2004, where the matter is pending.

After lengthy negotiations, the parties have reached a proposed settlement agreement. This agreement was reached with the considerable input of several members of City staff in various departments. The agreement provides for resolution of both of the above lawsuits as well as clarifying the steps needed to be taken by Auto Mart to bring themselves into compliance with the City's building codes, zoning ordinances, and licensing requirements. The settlement also includes the payment of \$4,000.00 to the City as satisfaction for various administrative fines that had been levied against Auto Mart.

The proposed settlement results in the creation of a site plan for 4201 East Lake Street that Steve Poor, Lead Inspector for Community Planning and Economic Development, is recommending for approval. Jim Moncur and Julie Casey of the Licensing Department also played a significant role in the terms of the settlement that affect the licensing of Auto Mart, Inc. as a motor vehicle dealership. Julie Casey and Denise Sandberg of the Inspections Department also had significant input into the terms of the agreement regarding the issues surrounding the addition to the existing structure at 4201 East Lake Street. All of the individuals named are in agreement with the terms of the proposed settlement. Additionally, the Longfellow Community Council added its support for the site plan which is part of the Settlement Agreement at a meeting on September 9, 2004.

Liability exposure on these matters is not substantial, but settlement is warranted. The settlement would resolve the pending litigation, bring Auto Mart into compliance with City ordinances, and advance the Comprehensive Plan.