

October 9, 2013

VIA EMAIL TO ALL PARTIES

Mayor Bryan K. Barnett  
City of Rochester Hills  
1000 Rochester Hills Drive  
Rochester Hills, MI 48309

Re: *G&V Investments' Request to Eliminate the City Place Planned  
Unit Development Agreement; City File 02-027*

Dear Mayor Barnett and City Council:

As you know, our office is legal counsel to Eddington Property Owners Association ("EPOA"). I am writing this letter to you as an update and with the consent of EPOA with their current position on the elimination of Eddington Boulevard as it exists.

EPOA held a meeting on September 19, 2013, and the realignment was one of the items on the agenda. Prior to the meeting, the Board sent out a survey for persons to express whether they want Eddington Boulevard to remain as is or whether they were okay with Eddington Boulevard being closed as it currently exists. Residents had the option of returning the information by mail and/or to attend the meeting to express their opinion. The results were not finalized until after the meeting to allow for any remaining ballots to be returned by the residents. The result of the member vote was 98% against realigning Eddington Boulevard with Drexelgate.

Please keep in mind that the EPOA only had a conceptual drawing to consider from the developer. EPOA was quite disappointed that the landowner has again refused to submit a proposed site plan for the City and the EPOA to consider. If the landowner is seeking to realign Eddington Boulevard, the PUD requires them to submit a site plan for consideration, not a conceptual drawing. Paragraph 11. D. of the City Place Amended and Restated Planning Unit Development Agreement reads as follows:

D. Owner agrees that at the time of the submission of an applicable site plan in the future, Owner (or the applicant if the site plan is submitted by a party other than Owner) will consider the possible realignment of Eddington Boulevard for the purpose of facilitating the installation of a traffic signal. This provision does not bind the parties to such realignment, but is intended to ensure that the parties consider such possible realignment when an applicable site plan is submitted. Any such realignment must be acceptable to Owner, the City, MDOT or such other

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applicable agency with jurisdiction over Rochester Road, and the Eddington Property Owners Association.

Again, EPOA is unsure why/how the landowner is trying to convince the City to realign Eddington Boulevard and/or seek to eliminate the PUD when it has not taken the appropriate steps to have the City or EPOA even consider such a request. At such time as the landowner submits a revised site plan that it wishes the City to consider, EPOA will certainly review the plan to see if its position changes. Without this critical piece of information, EPOA is being asked to give input in a vacuum to something that may or may not ultimately be presented to the City for consideration. The landowner is seeking to get consent from EPOA without EPOA reviewing a site plan that would "lock in" the developer's activities on the property. If EPOA agrees, the landowner could attempt to get approval for an entirely different project, or could attempt to sell a "blank slate" to a potential purchaser who could have a completely different development plan that would not be acceptable to EPOA.

EPOA would also like to point out that in paragraph 10. B. of the current PUD agreement, the landowner acknowledges that the landscape island at the entrance of Eddington Boulevard and Rochester Road is maintained by EPOA and agrees that EPOA has the "right and obligation to maintain the sign and landscaping within the island according to the recorded Eddington Farms Subdivision Declaration of Restrictions, the Amended and Restated Bylaws of the Association, and any other applicable recorded documents." The entrance, island and signage are not merely "nice things" for the EPOA, but they are directly entitled to them and responsible for them. The cost for this area frequently exceeds \$13,000 per year. If EPOA vacates its rights, it would save EPOA a significant amount of money. This further solidifies the residents' desire to keep Eddington in its current location. It is our position that EPOA has a legal right to its entryway, signage and island that would continue regardless of the status of the PUD.

Discussions have been had with the director of MDOT regarding the realignment issue. The information from the local office given to the landowner and/or the City appears to be incorrect. According to the director, if Eddington Boulevard is realigned to connect to Drexelgate, traffic counts would be taken after development occurs. It is not a "60 days after realignment" situation that the local Pontiac office indicates. Thus, if the roads are realigned, there is no guarantee that a fully developed area would then cause traffic counts to meet warrants. This is different than the MDOT's "conditional decision," which is based on projected traffic counts. Actual light placement is considered based on actual traffic counts after a project is completed.

As you know, EPOA has suggested a possible option, that being a staggered light situation where multiple traffic lights could be installed and synchronized in this area without the realignment of Eddington Boulevard. Such a situation could serve the interest of all parties. The

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City would need to petition MDOT for a staggered light situation. If the issue is truly safety as presented by the landowner, then a staggered light situation should serve that same purpose. However, it is apparent that the reason for the developer seeking realignment is to create a more of a blank canvas in which to market his property, without a true concern or traffic safety. Please keep in mind that if the landowner was truly concerned about traffic and safety, the developer would not have placed Eddington Boulevard in its current location. The landowner would presumably have made the original alignment of Eddington Boulevard with Drexelgate. Now that the landowner is apparently struggling to market his property, he presents an unsupported argument for traffic safety and ignores the fact that the landowner developed the property to be in this "unsafe" position.

As indicated above, there is no revised site plan presented to EPOA for consideration. The conceptual drawing does not show any connection to the Fifth Third Bank. Further, there is a requirement in paragraph 11. C. of the PUD that the remaining land "shall be developed so that there is continuous cross access for vehicular traffic between Eddington Boulevard and the adjacent Bordine's property (if permitted by the owner of the Bordine's property). The conceptual drawing does not meet this requirement as well. Further, the conceptual placement of new signage for the subdivision is shown to be in two locations, one at Rochester Road and one between the commercial portion of the property and the entrance way into the subdivision. Of note, the proposed sign on Rochester Road appears to be located in MDOT right-of-way and the inner sign would be located in the City's right-of-way. Finally, the landowner initially proposed to pay the entire cost of the road realignment and light installation as an incentive for the City to approve this concept. The current approach includes a cost sharing with the City and has apparently rescinded the offer to bear the cost entirely. It is estimated that to move the water main (that exists where the realigned Eddington Boulevard would enter Rochester Road) would be approximately \$300,000 to make such relocation. When added to the approximately \$250,000 light placement cost, it is wondered how much of these required costs would have to be borne by the City instead of the landowner, whose sole interest is maximizing profits. While EPOA does not begrudge the landowner for attempting to make money in its business, it should not come at the expense of the rights of the residents directly affected.

In sum, EPOA is not in favor of the realignment of Eddington Boulevard at this time. EPOA has not been provided with the required site plan for consideration. If/when a proposed site plan is prepared by a developer, EPOA is happy to consider its request. It appears that the landowner has now submitted a request to rescind the existing PUD. As City Council well knows, much time has been spent by the City, landowner, and the EPOA in crafting the various versions of the PUD. A simple request to rescind the PUD should not be entertained. Such an effort would attempt to be an "end-around" the process that the landowner agreed to when it received approval for this project. Further, the City's Zoning Code requires proposed amendments or changes to an approved PUD to be submitted to the Planning Commission, not City Council. Sec. 138-7.108. The landowner is trying to circumvent the required procedure. It

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is EPOA's request that City Council not even consider taking any action on the PUD unless and until the landowner provides all parties with the exact site plan that it ultimately wishes the City to approve. At that time the referral should be made to the planning commission to vet and explore all the parties' positions and concerns. A request to undo years of development efforts by a single action is highly improper. If a rescission of the PUD does occur, EPOA maintains that the original R-4 residential zoning classification should be reinstated. The PUD Agreement was the instrument by which zoning was changed from R-4 to B-2 with PUD overlay. The landowner now is attempting to abandon the PUD and ask the City to leave the negotiated zoning "as-is," essentially saying they do not want to comply with the PUD confines, but want the rezoning "benefit" to continue. The PUD Agreement addresses the "what if" questions if the PUD Agreement is abandoned. Paragraph 18 C of the PUD Agreement indicates that upon receipt of the abandonment notice,

"The City may initiate the rezoning of any of the Land which has not been developed according to an approved site plan, plat or condominium ("Undeveloped Land"), the FB-1 or similar zoning classification that permits office and multi-family development."

Thus, if the PUD Agreement is abandoned, the City is the one that would initiate any City-desired rezoning. The City Zoning ordinance requires the rezoning process to start at the Planning Commission, not City Council. Sec. 138-1.200.

Finally, the location of Eddington Boulevard is part of a recorded plat. There has been no mention by the landowner to date as to how/when it would be going through the replat process in the circuit court.

We appreciate your time and consideration in this matter and again I renew my request to be personally advised when these matters are brought before City Council or any board or commission. I appreciate your cooperation in this regard.

Very truly yours,

BEIER HOWLETT, P.C.

  
Jeffrey S. Kragt

JSK/lh

cc: Eddington Property Owners Association  
Mr. Edward Anzek, Director of Planning & Economic Development  
Ms. Tina Barton, City Clerk  
Mr. John D. Staran, City Attorney