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Mr. Greg Hooper, President
City Council
City of Rochester Hills
1000 Rochester Hills Drive
Rochester Hills, MI 48309

Via E-Mail

Re: *City Place PUD – Request to Terminate PUD*

Dear President Hooper:

The developer of the City Place PUD project, G&V Investments, has, through its attorney, notified the City Council in writing that G&V is not able to develop the property or submit a site plan pursuant to the PUD Agreement, and that G&V is abandoning the PUD Agreement and waiving any right to notice on the issue of abandonment. The City has also received a letter from the Eddington Property Owners Association's attorney setting forth EPOA's position on the elimination of Eddington Boulevard and various legal and procedural matters. You have asked me to advise the City Council on the legal issues the developer and EPOA raise, and to provide general guidance in regard to proper procedure and the Council's options to deal with this request. I restrict my comments to legal issues and defer to the traffic engineering professionals to address issues raised as to traffic light and road alignment considerations.

1. Authority to Terminate PUD.

The PUD designation of the subject property and entry into the PUD Agreement, as amended, is both legislative and contractual in nature (See Zoning Ordinance Sec. 138-7.108 and Amended and Restated Planned Unit Development Agreement Sec. 19). Because contractual matters are within the City Council's exclusive purview, it is appropriate for the request to terminate the PUD and the PUD Agreement to be first presented to the City Council.

The zoning ordinance requires PUD agreements to include timeframes for commencement and completion of improvements, procedures for amending the PUD agreement and provisions for violation of the PUD contract or failure to complete improvements. The City Place PUD does that. It includes timeframes for completing improvements and submittal of development plans/site plans. Sec. 18C prescribes a procedure for determining and dealing with the developer's failure to substantially complete and/or abandonment of the project. G&V has notified City Council that G&V is abandoning the project and waives notice of abandonment,

thereby triggering section 18.C. and putting the City in a position to terminate the PUD and rezone the property. Moreover, because the PUD has a contractual component, the parties can mutually agree to enter into, amend or terminate the PUD contract. Based on G&V's attorney's letter, it is apparent that termination of the PUD would be by mutual agreement and not adversarial.

2. Termination of the PUD as an "end around."

The EPOA's frustration over the absence of a complete development site plan¹ and resulting reluctance to consider a proposed realignment of the Eddington Boulevard entrance is understandable. So is the EPOA's attorney's characterization of the request to terminate the PUD as an "end-around" the PUD process. That is because the request raises considerable uncertainty about whether and how the subject property may someday be developed. But, the City cannot force a developer of the subject property or any other property to start or complete a development project. The City's remedy and control is its zoning power and the provisions of the PUD agreement. The ultimate remedy the City has in the event a developer does not complete the project in accordance with the PUD agreement is to terminate the developer's rights under the PUD and initiate the rezoning process. That is exactly what is before the City Council to consider.

Termination of the PUD does not necessarily mean G&V or any successor or assignee will have more flexibility to do what they want with the property or have the ability to develop it more intensely, less stringently or not harmoniously with the surrounding area. What the future holds for the property will be a function of the property's master land use plan, zoning classification and ultimately site plan approval

3. What happens to the zoning and what is the procedure to follow?

The developer's decision to abandon the project or the City Council's possible decision to terminate the PUD agreement will not leave the property unzoned. The property would retain its current zoning classification (B-2 with FB-2 overlay) unless or until the City Planning Commission and City Council decide to zone it differently.

Sec. 18C of the amended PUD Agreement authorizes the City to initiate rezoning of the property in the event of abandonment. Because the PUD is both zoning and contractual in nature, and because contractual matters are within the City Council's purview, and because a determination by Council that the project has been abandoned is prerequisite to initiating the rezoning process, it is proper for consideration of G&V's request to terminate the PUD to start with the City Council. Then, if the City Council determines the project has been abandoned, the process of rezoning should be initiated by Council referring the matter to the City Planning Commission to consider the planning and zoning and make a report and recommendation to

¹ The amended PUD agreement expressly requires that the realignment must be acceptable to the developer, the City, MDOT, other applicable agencies *and* the EPOA. It was anticipated that any proposal to realign the Eddington Boulevard entrance would come about in the course of a site plan review process. But, there was no delegation of site plan approval authority to the EPOA. Indeed, the City cannot lawfully delegate away its governmental authority over site plan review and approval. The EPOA's limited role under the PUD Agreement is to accept, or not, any proposed realignment.

Council. In referring the matter to the Planning Commission, the Council may, if it wishes to do so, direct Planning Commission to also consider, report and recommend various options or considerations for the property, keeping in mind the City will have the full array of zoning tools and options available to it including conventional zoning categories as well as overlays, planned unit development and conditional zoning options.²

4. **Eddington Boulevard.**

There has been speculation about the status and future of Eddington Boulevard and the City's, developer's and EPOA's rights. These warrant clarification. Eddington Boulevard is a platted public road. As such, under the Michigan Constitution and statutes, Eddington Boulevard is owned by and under the exclusive jurisdiction and control of the City, meaning the City can open it, maintain it, close it, discontinue it or even vacate it, in the City's sole discretion. See Mich Const 1963 art 7, sec 29. The City can decide by City Council resolution whether to close or vacate a public road, and the decision to do so is left to the sound discretion of the City Council. See MCL 560.257 and *Tomaszewski v Palmer Bee Co*, 223 Mich 565 (1923).³ A provision in the Eddington Farms declaration of restrictions authorizing the EPOA to maintain a sign in the boulevard island does it alter or diminish the City's ultimate ownership and control of the road.

I expect to be present when this matter comes before City Council, and I look forward to further explaining the topics and issues on answering questions surrounding the request to terminate the City Place PUD.

Very truly yours,



John D. Staran

JDS/ljd

cc: City Council
Mayor Bryan Barnett
Mr. Ed Anzek, Planning Department
Mr. Paul Davis, City Engineer

² Sec. 18C provides that in the event of abandonment, the City may rezone the undeveloped portion of the subject land to "FB-1 or similar zoning classification that permits office and multi-family development." Arguably, if the PUD is abandoned and the PUD Agreement is terminated, the aforesaid provision in 18C will have no further effect. However, 18C provision does reflect the thinking, as of 2010, that mixed use, flex business zoning would be appropriate for the subject property in the event the PUD project does not proceed.

³ Although the City Council may by resolution close and vacate a platted road and extinguish the public's interest in the road, lot owners in the subdivision retain a "private" right of way over the platted roads which can only be extinguished and vacated by court action under the Land Division Act. That would involve filing a circuit court lawsuit joining as Defendants all the lot owners in the plat.