

# Beier Howlett

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February 28, 2014

## VIA EMAIL TO ALL PARTIES

Rochester Hills City Council  
1000 Rochester Hills Drive  
Rochester Hills, MI 48309

**Re: *G&V Investments' Property, City File 02-027 / Agenda Item 2010-0094 and  
Agenda Item 2014-0010***

Dear City Council Members and Mayor Barnett:

Please consider this letter regarding the above Agenda Items for the City Council meeting of March 3, 2014. As you know, Eddington Property Owners Association ("Eddington") has been actively monitoring and participating in the discussions regarding the development and rezoning of the parcels of property that are up for rezoning consideration once again before City Council. I have enclosed my November 19, 2013 letter to the Planning Commission to avoid reiterating the reasons set forth in that letter as to why Eddington believes that the final outcome of the rezoning efforts for these parcels should be R-4 with no FB overlay. The purpose of this letter is to supplement that letter and packet presented to the Planning Commission, which I know is in the City Council packet.

Other than Eddington raising the issue, there has not been any meaningful City discussion as to why the property should not be rezoned to R-4 without a specific FB overlay attached to it. City Administration and the Planning Commission were very reasoned in their decision that the underlying zoning should be R-4 and not RM-1 and O-2 as requested by G&V. However, while Eddington appreciates the interest in applying a FB overlay district to give the City the ability to control development at those locations, Eddington wishes the City to consider simply rezoning to the R-4 underlying district with no overlay.

The City's Zoning Code suggests that a FB overlay on a residential district was not anticipated. Section 138-4.200 states that one-family residential districts are designed

. . . to provide for one-family, low density dwelling sites and residentially related uses in keeping with the master plan of residential development in the city. The uses permitted by right and on special condition as conditional uses are intended to promote a compatible arrangement of land uses for homes, with the intent to keep neighborhoods relatively quiet and free of unrelated traffic noises.

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Further, Section 138-4.215 states as follows:

The FB districts are designed to permit a wider range of uses in areas already used for commercial purposes. The FB districts are an optional method of development that permits a mixture of uses that may include residential, public, institutional, office, business, and retail commercial uses, depending on the FB district. The FB overlay districts establish specific and detail design standards for the physical development of the districts, while permitting the wider range of uses. (Emphasis added.)

Thus, the zoning ordinance suggests that the FB overlay districts may not be appropriate under the circumstances. This property was originally R-4 zoned and should remain that way until such time as a specific development project is submitted to the City. Even without the FB overlay, a developer would not be prevented from presenting the City with a plan under a PUD or conditional rezone proposal. Doing this would put the developer in the same position he was at the start of the project.

While Eddington believes there should not be an overlay district attached to the R-4 area, it appears that the Planning Commission, Administration and perhaps the City Council have already concluded that a FB overlay is appropriate and will be approved. Assuming that is true, Eddington believes that the appropriate FB overlay would be the FB-1 overlay and not the FB-2 as proposed by the developer, City Administration and the Planning Commission. I have enclosed a copy of Section 138-8.200, which lists the uses permitted in the FB overlays. When reviewing the differences between FB-1 and FB-2 permitted uses, conditional uses and uses not permitted, we believe that the FB-1 is the more appropriate overlay district considering the significant residential development adjacent to the project to the east, that being Eddington. For example, the FB-2 would allow a bar or tavern to be allowed as a permitted use in the FB-2, but it would be a conditional use under the FB-1. Considering the close proximity to Eddington, such a use should not be permitted as of right. The same would apply for general commercial uses, which definitionally include barber shops, beauty salons, dry cleaners, funeral homes, animal clinics, etc. We do not believe that the permitted uses in the FB-2 provide any appropriate "transition." An FB-1 overlay would still permit multiple-family residential uses and office uses as of right, which are the very uses that the developer was seeking to have as the underlying zoning. Thus, the developer would be able to develop the property as the developer was suggesting, but with the City's enhanced regulation provided under the overlay district standards.

Again, Eddington appreciates the amount of time and effort expended in the rezoning of the parcels at issue. City Administration and the Planning Commission were correct and made reasoned decisions regarding the underlying zoning for this property to be R-4. While Eddington does not believe that an additional FB overlay is necessary or appropriate for this property, if

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there is a FB overlay that is going to be attached to this property, it should be FB-1 and not FB-2.  
Thank you for your time and consideration.

Very truly yours,

**BEIER HOWLETT, P.C.**



Jeffrey S. Kragt

JSK/lh  
Enclosure

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

November 19, 2013

VIA EMAIL TO ALL PARTIES

Rochester Hills Planning Commission  
1000 Rochester Hills Drive  
Rochester Hills, MI 48309

Re: *G&V Investments' Property, City File 02-027*

Dear Planning Commission Members:

Our office is legal counsel for Eddington Property Owner's Association. As some of you may know, at its October 28, 2013 meeting, the Rochester Hills City Council agreed to the abandonment of the City Place Amended and Restated Planned Unit Development Agreement dated November 16, 2010 (the "PUD"). The owner of the remaining property under the PUD, G&V Investments, LLC, requested that the City Council allow the PUD to expire and deem it to be abandoned, with the effective date being November 16, 2013. The City Council did agree to the abandonment pending resolution of the zoning classification for the undeveloped portion of the property.

City Council referred this matter to this Planning Commission for consideration of the issue of what the resulting zoning should be for this property. It was our initial information that this request would be discussed as an agenda item on tonight's Planning Commission meeting, but it does not appear on the agenda. It is our current understanding that a public hearing may be scheduled for the Planning Commission's December 17, 2013 meeting to consider the zoning. While we will be present at that meeting, but to the extent that there is any discussion that "pops up" at tonight's meeting, we wanted to provide you with the Association's position on this issue.

As you will see from an upcoming packet, by way of correspondence dated October 2, 2013 where it requested abandonment, G&V requests that the City:

Retain the existing underlying FB-2 zoning of the property, which will give [G&V] the opportunity to develop the property as consistent with the City's Master Plan, which designates this property as 'Business/Flexible Use 2.' As indicated in its Master Plan, the City intended that this property be developed as an FB-2 mixed use development to create a transition buffer from Rochester Road and the adjacent FB-3 Bordine's property to the Eddington Farms residential subdivision.

It is the Association's position that this is absolutely not true, and does not reflect the appropriate treatment of the zoning now that the PUD is abandoned.

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Going back to the original PUD entitled "City Plan Planned Unit Development Agreement" ("Original PUD") dated May 5, 2004, it is noted that the property was zoned R-4, One Family Residential. It was only by the Original PUD that the commercial uses were permitted on the property. Specifically, it was only as a result of the Original PUD that the zoning for the property was changed to B-2 with a PUD overlay. The PUD reflects this sequence and purpose in Recital F. In part, this paragraph reads as follows:

The City also rezoned the Land to be the B-2 zoning classification, for the sole reason that the PUD Ordinance in effect at that time required that the Land be rezoned to a rezoning classification that would permit all the uses approved in the PUD.

The PUD also noted in paragraph I that after the original PUD, the City modified its zoning ordinance in part to create the Flexible Business Overlay District. FB-2 was the only zoning classification in the new zoning ordinance that permitted the mixed use development set forth in the Original PUD. However, in an attempt to "sell" a new PUD agreement to the City, G&V negotiated with the City and agreed to be bound by the FB-1 zoning classification instead of the FB-2 overlay. Thus, it was a negotiated term to get the benefits found in the PUD.

Now that the PUD has been abandoned and terminated, G&V is now trying to ask the City to continue the B-2 with an FB-2 overlay zoning designation for the property. This is not the proper response and zoning for the property as a result of the PUDs and the subsequent abandonment. As the PUD is no longer in effect, the appropriate zoning treatment for the remainder of the undeveloped property is R-4. This R-4 classification, as stated above, was the original zoning classification for this remaining parcel. It was only due to the City and G&V's negotiation that business/commercial uses were permitted on this property by way of the Original PUD that the City rezoned the property. To allow the property to remain zoned B-2 with an FB-2 overlay now that the PUD is terminated, would be improper and an unfair result. G&V points to the Master Plan as its reasoning for its request to retain the current zoning. However, this argument is circular as the only reason the Master Plan was revised to change the property from R-4 to its current zoning classification was to reflect what the negotiated PUD agreements dictated. What G&V is now attempting to accomplish is to remove the restrictions negotiated for this project by allowing the PUD to terminate yet be permitted to develop the property under the more intensive B-2, FB-2 overlay. The Planning Commission and the City Council worked very hard and bent over backwards to accommodate G&V's ever-changing needs over the years. What G&V is requesting at this point is to remove all of the restrictions that the City required and enjoy the fruits of that negotiation.

It is not just the Association that believes that the appropriate treatment for the zoning is to convert the zoning back to R-4. The City's own administration concurs. In addition to

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including the Original PUD and the 2010 PUD, I have attached the Agenda Summary from Mr. Anzek dated March 1, 2010, which is the time when the 2010 PUD was being negotiated. In the second "Background" paragraph, Mr. Anzek's report reads as follows:

Land use and dimensional requirements for future development of the site are controlled by the existing PUD agreement. The subject site is zoned B-2 General Business, however, that zoning designation was put in place only to support the applicants requested PUD. At the time, the City's PUD Ordinance required the rezoning to B-2 to accommodate the applicants requested uses. At the time of the agreement it was understood that if the PUD were to become void that the property would revert back to its original zoning classification, Single Family. The reversion would take place automatically or by action of Council. The City's Master Plan identified the site as FB-2, Flexible Business Overlay; this was put in place to support the existing PUD. It is Staff's opinion that if the PUD agreement no longer governed development of the site that the City would need to revisit both the Master Land Use Plan and existing zoning classification. (Emphasis added.)

As you can see, the Association's position that this matter should revert back to R-4 should not be a surprise to City Council, G&V and now the Planning Commission. A rezone back to the R-4 zoning classification was the expected outcome if the PUD was no longer in place.

If a new project comes along from G&V or new owner, that project can still be considered under the PUD Ordinance or by way of conditional rezoning. Starting back at the R-4 zoning classification puts the owner in no worse or different position than when it first approached the City.

In sum, the undeveloped portion of the G&V property should be rezoned R-4, Residential. The Association respectfully requests this Planning Commission consider this information provided and to not reward G&V by giving it a blank slate with the zoning that was granted to G&V to accommodate the PUD. Everyone understood what would happen if the PUD terminated, a reversion back to R-4. To allow the developer to convince you and City Council that the current zoning should remain in place because it is contained in the Master Land Use Plan and/or Master Plan would allow the circular argument. It was only done to accommodate the negotiated result, and not a general vision of this area as G&V is attempting to portray through revisionist history. We will be present at the December 17, 2013 meeting to further

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discuss this matter with you. We appreciate the time and consideration that you are once again being asked to give this matter.

Very truly yours,

BEIER HOWLETT, P.C.



Jeffrey S. Kragt

JSK/lh

Enclosure

cc: Eddington Property Owners Association  
Ed Anzek, Director of Planning & Economic Development  
Maureen Gentry, Economic Development Assistant  
John D. Staran, City Attorney



## Chapter 2 Permitted Uses

### Section 138-8.200 Permitted Uses

The following Table 7 lists the uses that are permitted as principal, conditional, and accessory uses in the FB overlay districts. If a use is not listed in the following table, it is not permitted in the FB overlay districts. Refer to [Section 138-8.700](#) on page 142 for a description of the uses in Table 7.

**Table 7. Permitted Uses in Flex Business Districts**

Key:	P: Permitted Use	C: Conditional Use	[--]: use not permitted		
			FB-1	FB-2	FB-3
<b>Use</b>					
<b>Residential Uses</b>					
	Dwelling unit in a mixed-use building		P	P	P
	Live/work unit		P	P	P
	Multiple-family dwelling unit		P	P	P
	One-family detached dwellings		P	C	--
	State licensed residential facilities (all types)		P	P	P
<b>Lodging Uses</b>					
	Bed & Breakfast		P	P	P
	Inn		C	C	P
	Hotel		--	C	P
<b>Commercial Uses</b>					
	Bar, Tavern, or other Alcohol Service Establishment		C	P	P
	Drive-Through Facility accessory to a principal use		C	C	C
	Entertainment and recreation		--	P	P
	General Commercial		--	P	P
	Open Air Retail		--	C	C
	Place of Assembly		--	P	P
	Restaurant		C	P	P
<b>Office Uses</b>					
	Office		P	P	P
<b>Civic Uses</b>					
	Childcare Center		P	P	P
	Community Facility		P	P	P
	Place of Worship		C	P	P
	Recreational Facility		P	P	P
	Essential Services		P	P	P
	Public Parking		P	P	P
	Transit Facilities		P	P	P
<b>Education Uses</b>					
	Learning Center		P	P	P
	Research Facility		P	P	P
	School		P	P	--
	Special Training/Vocational		P	P	P

1 Administration & Enforcement  
 2 Admin. Org. & Procedures  
 3 Nonconformities  
 4 Zoning Dist. & Permitted Uses  
 5 Schedule of Regulations  
 6 Supplemental Dist. Standards  
 7 Planned Unit Development  
 8 Flex Business Overlay Districts  
 9 Natural Features  
 10 General Provisions  
 11 Parking & Loading  
 12 Landscaping & Screening  
 13 Definitions