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via electronic mail

Ms. Sara Roediger, Director
Planning Department
City of Rochester Hills
1000 Rochester Hills Drive
Rochester Hills, MI 48309

Re: ***Local Development Finance Authority***

Dear Director Roediger:

You have asked for my opinion about the scope of the City's Local Development Finance Authority's (LDFA) authority to provide funding, from captured tax increment revenues, toward infrastructure improvements within the LDFA District. In particular, your inquiry concerns whether the LDFA may fund the paving of, and water and sewer mains along, Industrial Drive, and also the paving of Leach Road. In my opinion, the answer is a qualified yes – meaning yes if the applicable criteria are met, as explained below:

A. In General.

The LDFA is established in accordance with the Recodified Tax Increment Financing Act, 2018 PA 57, which allows municipalities to use tax increment financing to fund public infrastructure improvements for eligible property. It is a financing tool intended and designed to promote economic growth and job creation.

The following general criteria apply to all projects proposed for LDFA funding. After an LDFA is properly established, for a project to be considered eligible for LDFA funding the project must be:

- For public infrastructure improvement that will directly benefit the district. This includes, but is not limited to, street and road improvements, and water and sewer lines. But, if the project to be funded is not deemed to directly benefit the district or to promote economic growth and job creation, then it would be

improper to use LDFA funds. So, that is a threshold inquiry for any project proposed for LDFA funding.

- Supported by a development plan prepared by the LDFA Board and approved by City Council, and within the budget adopted by the Board and approved by City Council.

B. Paving of Industrial Drive.

I understand Industrial Drive is currently a private road. So, before LDFA funds may be lawfully used to pave Industrial Drive, the owner will need to dedicate (i.e., deed), and the City will need to accept, the road as a public road. The LDFA cannot lawfully expend or contribute funds toward a private road.

Another consideration— which is really public policy rather than legal in nature — is whether the City should require the private road owner to improve the road to public road standard before the City will consider accepting the road. That is not a legal requirement, but it has been the City’s practice to require private roads to be brought up to public road standards before the City will consider accepting them into the City’s public road system.

A final consideration — which is also public policy in nature — is whether a different means of funding the road paving is more appropriate — such as by establishing a special assessment district (“SAD”). I mention SAD because that has been the City’s preferred means of funding paving of local gravel roads, as evinced by the City Council’s adoption, in 2017, of a SAD policy. Although the context in which that SAD policy arose concerned paving local residential streets, the adopted policy does not expressly confine itself to residential streets.

So, in sum, my opinion is that if the paving of Industrial Drive satisfies the aforesaid general criteria and is dedicated to and accepted by the City as a public road, then LDFA funds may lawfully be used. Whether the City should use LDFA funds, and whether the City should require the road to be brought up to public road standards first, and whether an alternate means of financing the paving, such as by special assessment, is preferable are public policy questions.

C. Water & Sewer Lines.

The water and sewer lines would be City-owned and operated, so those will fulfill the requirement of being public infrastructure. So, there is no problem there. However, the City may have similar policy questions about whether installation of the proposed water and sewer lines advances the intent and purpose of the LDFA and whether an alternative means of financing the water and sewer lines — such as an SAD — is preferable.

D. Leach Road paving.

Leach Road is a public road within the district, so paving Leach Road is an eligible project for LDFA funding. And, Leach Road is not considered to be a local residential

street, although there are some residences located along it. So, although LDFA funds may be lawfully used to pave Leach Road, again consideration should be given, as a policy matter, to whether an alternative means of financing the project – such as SAD – would be more appropriate.

Very truly yours,



John D. Staran

JDS/ijd

cc: Mayor Bryan Barnett
Mr. Allan Schneck, DPS
Ms. Deborah Hoyle, Finance Dept.
Ms. Pam Valentik, Planning & Economic Development Dept.