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July 25, 2006

**Via Facsimile and Email**

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

Re: **Site Plan Approval Request / Madison Park / REI Brownstown, LLC**

Dear Mayor Barnett and Members of the City Council:

The undersigned represents Grand/Sakwa of Rochester, LLC, a property owner in the City of Rochester Hills.

On July 18, 2006, the Planning Commission considered and approved the Site Plan of Madison Park, City File No. 03-023, with some 37 conditions.

As you may be aware, there has been no due care plan approved as of this date by the MDEQ and the timeframe within which the MDEQ is requiring to approve a due care plan has expired. The approved due care plan would be a necessary component under the Consent Judgment for the required "detailed phasing and engineering plan" regarding the proposed redevelopment of the landfill areas, which was to be submitted with the Initial Site Plan for review and consideration by the Planning Commission and public comment. In addition, as a result of REI's failure to obtain and approve a due care plan, REI cannot comply with its obligation under the Consent Judgment to ensure that the excavation, redevelopment and backfilling of the landfill areas will be completed in accordance with an approved due care plan.

The Amended Consent Order and Judgment of February 13, 2004, entered by Richard D. Kuhn in the Oakland County Circuit almost two and one-half years ago, in the entitled case REI Brownstown LLC, v City of Rochester Hills, provides specifically for the procedure to be followed for Site Plan Approval and recites in the "Recitals and Preambles" the reason for such requirements:

\* \* \* \* \*

"REI Brownstown LLC, a Michigan limited liability company, hereinafter referred to as "REI", for purposes hercof controls certain property located in the City. The "Property" which currently is the subject of this lawsuit consists of approximately 97 acres of land described in **Exhibit A** attached, and includes the

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property that was subject to the original Consent Order described above.... *REI desires to redevelop the Property, and in connection therewith, will cause the remediation of certain portions of the Property previously used as a landfill (as more fully described herein), which activities will confer a substantial public benefit upon the City by way of eliminating potentially hazardous conditions, remediating the Property so that it may be redeveloped and enhancing the value of the Property and the City's tax base.*"

Under Section 8, Provisions Relating to Development and Landfill Remediation, Sub-paragraph E, it is provided in part as follows:

*"REI and the City shall cooperate and keep each other informed in connection with REI's development of plans for the excavation and off-site disposal of certain portions of the previous landfill(s) on the Property, backfilling such areas, the creation of an engineered cap and methane collection system and other related matters contemplated under the due care plan to be reviewed and approved by the Michigan Department of Environmental Quality ("MDEQ"). The City and REI shall also cooperate in order to facilitate the expeditious approval (including the execution of any necessary permits or other documents) by MDEQ and any other agencies having jurisdiction, of (i) the due care plan for the Property; (ii) a baseline environmental assessment for the Property; and (iii) a so-called "covenant not to sue", as permitted under MCL § 324.20133. REI shall provide the City with a detailed phasing and engineering plan regarding the proposed redevelopment of the landfill area(s) as part of its initial site plan submittal (or sooner, if practical), and REI agrees that the excavation, redevelopment and backfilling of the landfill areas will be completed in accordance with (i) the due care plan approved by the MDEQ and (ii) all other applicable laws and regulations prior to the City's issuance of building permits for vertical construction within the development; provided, however, REI shall be permitted to phase its development and construct and occupy buildings on the Property prior to completion of the excavation, redevelopment and backfilling of landfill areas so long as such phasing plan is approved by MDEQ and the City, and the excavation and backfilling of landfill is completed within ten (10) years from the commencement of such work. The City shall be kept informed as to work schedules and meetings with MDEQ so that the City may monitor site work in respect of the landfill areas and facilitate any necessary approvals and/or permits relating thereto. In connection therewith, the City agrees to issue all permits necessary for REI to utilize the so-called Rails to Trails Property bisecting the Property and adjacent Clinton River Trail property owned by the City, as well as Hamlin Road and/or Crooks Road as a haul route for the excavation and disposal of landfill materials and importing backfill onto the Property, and the City will further cooperate in order to secure any necessary approvals for MDNR relative to*

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using the Rails to Trails Property and/or the Clinton River Trail for such purposes.”

There can be no question that the Planning Commission was to have received a “detailed phasing and engineering plan” regarding the proposed redevelopment of the landfill area(s) as part of its review and consideration of the initial site plan submitted which has not been provided.

It can only be presumed that such provision was inserted so that the Planning Commission can be informed and review the effect of such detailed plan on the Site Plan submitted for consideration and how it conforms to such proposed Site Plan. Further, it is presumed that the residents, taxpayers, and property owners would have the opportunity to review such plans and present their concerns to the Planning Commission as it relates to the cleanup and redevelopment of this property.

Most importantly, the residents, property owners, and taxpayers would have been informed of how the cleanup process and redevelopment of the landfill area is going to affect the use and enjoyment of their property with a detailed phasing and engineering plan which should be prepared in compliance with an approved due care plan by the MDEQ.

We are now informed that the cleanup and disposal of the hazardous material may not even take place and that instead, there may only be a new cap placed upon the landfill, upon which will be constructed retail developments. This is a far departure from the planned “excavation and off-site disposal” as contemplated by the terms of the Consent Judgment. Further, it would appear that economics and financing may be driving the method and scope of remediation and cleanup.

By REI not submitting a “detailed phasing and engineering plan” as part of its “initial site plan submitted” to the City’s Planning Commission as required by the Consent Judgment, it has deprived its citizens, residents, property owners, and taxpayers the opportunity to review and comment on such detailed plans. Since the Planning Commission is the designated body within the Consent Judgment that has the most expertise and experience in analyzing site plans and site conditions within the City, it is presumed that the participants to the Consent Judgment desired their input and public comment as to these matters and the Planning Commission’s recommendations.

This is not a case where the Consent Judgment provided the submission of a “detailed phasing and engineering plan” was optional or that it could be waived.

There is absolutely no reason why a “detailed phasing and engineering plan” was not provided to the Planning Commission for its consideration as required by the Consent Judgment. The Planning Commission shall not have, under the Consent Judgment, any other opportunity to review and comment or make recommendations on this plan, nor shall the citizens, property

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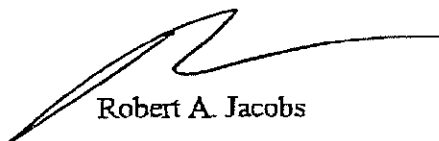
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owners, and taxpayers determine how such plan affects the Site Plan submitted or the use of their property.

We request the City Council to return this matter to the Planning Commission for its review after the required "detailed phasing and engineering plans" regarding the proposed redevelopment of the landfill areas have been presented as required under the Consent Judgment and an opportunity for the citizens to review such plan and comment upon it is given. Without such opportunity and conformance to the terms of the Consent Judgment, the rights and duties of the Planning Commission to review and make recommendations shall have been abrogated and compromised and the citizens and property owners shall have lost their rights to due process and the opportunity to review and be heard on matters of such concern.

It is not the position of Grand/Sakwa to be litigious or to foist upon the City requirements that were not contained within its own Consent Judgment. There is no reason or right to deviate from the Site Plan requirements of the Consent Judgment which was approved by the City and entered by the Court for the health, welfare, and safety of its constituents and property owners.

Very truly yours,



Robert A. Jacobs

RAJ/nv

cc: John D. Staran, Esq.  
Mark D. Jacobs, Esq.  
Mr. William Eisenberg