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July 18, 2006

Planning Commission of the
City of Rochester Hills
1000 Rochester Hills Drive
Rochester Hills, MI 48309

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

Dear Planning Commission:

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

It has been brought to our attention that there is to be a hearing on July 18, 2006 for Site Plan Approval of Madison Park, City File No. 03-023, together with a request for a tree removal permit and wetland use recommendation.

We are informed by the MDEQ that there has been no Due Care Plan approved as of this date. The approved Due Care Plan is a condition precedent in accordance with the Consent Judgment for a detailed phasing and engineering plan regarding the proposed redevelopment of the landfill areas, all of which have to be approved by the MDEQ before there can be Site Plan Approval or any permits of any kind issued to REI under the Amended Consent Order and Judgment.

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 hereof 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 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,

JACKIER GOULD

Rochester Hills Planning Commission
July 18, 2006
Page 2

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

JACKIER GOULD

Rochester Hills Planning Commission

July 18, 2006

Page 3

It is further provided under Section 9, Approvals/Additional Requirements:

"The following additional regulations shall apply to the Property:

* * * * *

(d) Approvals; Procedure; Timing. *REI intends to commence the development as soon as REI's due care plan, baseline environmental assessment and covenant not to sue are accepted (and/or executed as the case may be) by the MDEQ."*

* * * * *

Under Section 5, Site Design Standards, Paragraph H, Clinton River Trail Relocation, provides in part as follows:

* * * * *

"H. Clinton River Trail Relocation

In connection with the development of the Property, the City has agreed to permit *REI relocate a portion of the Clinton River Trail* that bisects the Property (the "Rails to Trails Property") and to substitute replacement property therefor, which shall be designated during site plan approval.... *REI agrees to donate to the City a parcel of equal acreage, width and value in substitution for the Rails to Trails Property, the precise location of which shall be approved by City Council (which approval shall not be unreasonably withheld, conditioned or delayed) as part of site plan approval.* REI will also cause the relocated trail on the Property to be gravel or asphalt surfaced (or otherwise consistent with the adjacent portions of the Trail) and constructed 10 feet in width and designed to AASHTO standards, the cost of which will not be included in the \$500,000 of improvements to be provided pursuant to Paragraph 8.F. below. The relocated trail also will be landscaped in a manner designed to be harmonious with the development on the Property and suitable for users of the trail (which may include one or more drinking fountains), which landscaping plan shall be subject to review and approval by City Council as part of site plan review..."

Under Paragraph 6, Building Design, Sub-paragraph (g), it is provided that REI shall provide and submit site elevations, landscape and sign package with the first Site Plan submitted.

Under Paragraph 7, Maintenance, Sub-paragraph (b), it is provided that:

* * * * *

"... the stormwater detention basin(s)...including design, engineering and precise location, shall be subject to reasonable review and approval by the City in conjunction with the initial site plan submittal."

JACKIER GOULD

Rochester Hills Planning Commission
July 18, 2006
Page 4

Under the explicit terms of the Consent Judgment and as a condition precedent to any Site Plan Approval, REI is to provide and obtain and submit to the City an approved Due Care Plan from the MDEQ in conjunction with a submitted baseline assessment.

There must be an approved Due Care Plan for the requirements set forth in connection with REI's development for the excavation and off-site disposal of portions of the landfill, the backfilling of such areas, and the creation of engineered and methane cap collection systems contemplated under the Due Care Plan no matter what type of funding source is used.

Again, without such approvals, it is impossible for REI to provide the City with a detailed phasing and engineering plan. It is and was the intent of the Consent Judgment that REI obtain such approvals from the MDEQ as a condition precedent to Site Plan Approval.

The property owners of Rochester Hills, including Grand/Sakwa, ask only that the conditions precedent and requirements of the Consent Judgment be fulfilled as these were the representations of immediate harm made to the Court as a condition necessitating immediate action to correct an alleged "hazardous condition" as recited in the Preamble of the Amended Consent Judgment.

The citizens and taxpayers of Rochester Hills and the property owners are entitled to such assurances.

Very truly yours,



Robert A. Jacobs

RAJ/nv

cc: Mayor Bryan K. Barnett
John D. Staran, Esq.
Mark D. Jacobs, Esq.