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September 27, 2006

Mayor Bryan K. Barnett
City of Rochester Hills
1000 Rochester Hills Drive
Rochester Hills, Michigan 48309-3033

Re: ***Steep Slope Ordinance / Proposed Temporary Moratorium***

Dear Mayor Barnett:

At the last City Council meeting, you asked the City Council to consider a temporary moratorium on the processing of land development plans for properties that may be affected by the proposed steep slope ordinance the Planning Commission is currently considering. I have prepared and enclose a proposed zoning ordinance amendment which is intended to implement a temporary moratorium.

We have previously advised the City there is little case law in Michigan on the subject of moratoriums, but we believe the City may lawfully adopt a temporary moratorium that is for a specific, legitimate purpose and has a duration no longer than reasonably necessary. In this case, the legitimate, specific purpose is to allow the deliberations and anticipated adoption of the proposed steep slope ordinance to continue and be completed in a thoughtful and orderly manner and to avert a "horse race" between the ordinance adoption process and the processing of development plans for properties that may be affected by the proposed ordinance.

A moratorium is established by adopting a moratorium ordinance. The City has adopted at least two prior moratoriums that I am aware of -- a moratorium, back in 1991, on new development in the B-3 zoning district while the master plan was being studied for possible down-zoning of some B-3 properties, and then, again, in 2001, when the City adopted a moratorium on new cell towers while the City was reevaluating the standards for cell towers in residential areas. In both cases, the moratorium ordinance was treated and processed as a zoning ordinance amendment and was submitted to the Planning Commission for public hearing and recommendation before adoption by the City Council. I advise that the same process should be followed for the proposed steep slope moratorium, and that the moratorium ordinance should be submitted to the Planning Commission to hold a public hearing and make a recommendation to the City Council before the City Council considers the moratorium ordinance for adoption.

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Although I am suggesting the moratorium be handled as a zoning ordinance amendment, it differs from a rezoning of property. Therefore, I do not think the Zoning Enabling Act requires separate rezoning notices be sent to individual property owners. Nonetheless, it is an arguable point that "due process" would require notice of the proposed moratorium be sent to individual property owners who may be directly affected by it, since the moratorium ordinance will affect their opportunity to develop their property. Hence, I recommend that the City send notice of the public hearing on the proposed moratorium ordinance to property owners and users who may be affected by the moratorium. It is my understanding that the Planning Department has already mapped the properties that may be affected by the proposed steep slope ordinance (and, thus, the moratorium), which should assist in ascertaining who the owners and users of those properties are.

Very truly yours,



John D. Staran

JDS/ab
Enclosure

cc: Mr. Edward Anzek, Planning Dept. (w/enc)
Mr. James Rosen, City Council President (w/enc)