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Via Email Only

Rochester Hills Planning Commission
c/o Leanne Scott, City Clerk
1000 Rochester Hills Drive
Rochester Hills, MI 48309

Re: Preliminary Planned Unit Development (PUD) and Site Plan Approval regarding property at located on the Southeast side of Adams Road and north of Auburn Road, Parcels 15-30-302-034 and 15-30-302-036, File PPUD202500001

Dear Planning Commissioners:

The Planning and Economic Development Department provided me with a copy of the Planning Commission's May 19, 2026 meeting minutes, the Planned Unit Development ("PUD") application submitted by Developer, Penelope's Place LLC, regarding a request for preliminary PUD and Site Plan Approval for proposed Penelope's Place Apartments, along with the Order for Settlement regarding Oakland County Circuit Court case 05-070139-CC, concerning the subject parcels noted above. Council President Carlock and the City Clerk's office requested I provide the Planning Commission with a legal opinion as to the procedural process for consideration of PUD applications based on the language of the City's zoning ordinance, Chapter 138. A review of the text of the of the City's zoning ordinance, Chapter 138, sets for the responsibility for the Planning Commission to undertake a review and make a recommendation to Council regarding a proposed preliminary PUD application.

The text of Chapter 138, Section 138-7.106 set forth the Submittal, Review and Approval Process for the PUD option application and preliminary plan. The ordinance provisions identify a two-step process. Section 138-7.106 A.1. states:

Authorized applicant. A person owning or controlling the land may request consideration of the PUD option. The applicant shall submit a request for a determination as to whether the parcel qualifies for the PUD option under the criteria set forth below in subsection 3.c., Planning Commission Review.

Sub-section 138-7.106 A.2. goes on to provide, in relevant part:

Submittal of proposed PUD preliminary plan. **Application shall be made to the Planning and Economic Development Department for review and recommendation by the Planning Commission**, except in case of a development application that is being submitted with an EGLE Restoration and Remediation Grant Application in which case the review and recommendation shall be made by the EGLE Grant Committee. (Emphasis added)

Sub-section 138-7.106 A.3.a. states, in part:

Planning commission or EGLE Grant Committee review.

The Planning Commission shall hold a public hearing in accordance with Section 138-1.203, **report its findings and make a recommendation to the City Council concerning the PUD option application and preliminary plan.** (Emphasis added)

Sub-section 138-7.106 A.3.c. states, in relevant part:

c. The Planning Commission or EGLE Grant Committee shall review the proposed PUD preliminary plan for compliance with the following objectives and requirements:

- i. The proposed PUD meets the qualification criteria as defined in Section 138-7.103.
- ii. The proposed PUD promotes the land use goals and objectives of the City.
- iii. All applicable provisions of this Chapter shall be met. Where provisions of this Chapter conflict with any other sections of this ordinance, the provisions of this Chapter shall control and apply to the lands within a PUD area.
- iv. There is, or will be at the time of initial development, adequate means of disposing of sanitary sewage and supplying the development with water, and the road system and stormwater drainage system are adequate.

Sub-section 138-7.106 A.4. then outlines the process for City Council review:

City Council review. **Upon receipt of a recommendation from the Planning Commission**, or EGLE Grant Committee for a development application that is being submitted with an EGLE Restoration and Remediation Grant Application, **City Council shall review the PUD option application and preliminary plan and make the final determination** on the applicant's fulfillment of the above-stated objectives and requirements. (Emphasis added)

Additionally, the City's zoning ordinance addresses the purpose and applicable regulations in Section 138-7.101. Sub-part D states:

It is further intended that the PUD option may be used to permit nonresidential uses of residentially zoned areas; to permit residential uses of nonresidential zoned areas; to permit densities or lot sizes that are different from the applicable district(s) and to permit the mixing of land uses that would otherwise not be permitted; provided that other objectives are met and the resulting development will promote the public health, safety and welfare.

This language empathizes that the PUD option may be considered for uses which are different than the what the zoned area expressly allows subject to City Council determination the applicant's fulfillment of the above-stated objectives and requirements of Section 138-7.103. The above-noted sections of the City's zoning ordinance read together direct the Planning Commission to undertake a review of a PUD option application and report its findings and make a recommendation to the City Council.

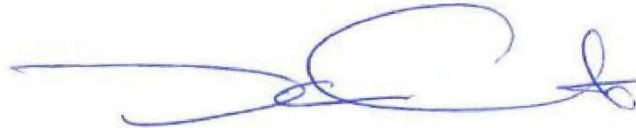
Additionally, I have reviewed the Order of Settlement entered February 24, 2006 concerning the subject property as to whether it modifies the application process for a PUD application set forth in the City's zoning ordinance. Paragraph 7 of the Order of Settlement reads:

The City **shall** permit the parcel 13 owners to process any future site plan or land use proposal under the City's Planned Unit Development regulations as contained in City Code Section 138-1001, et seq., as may be amended, in order to allow flexibility and innovation in site development and to afford a convenient, practical and efficient means to obtain reasonable relief from strict application of development standards and dimensional, setback and area regulations contained in the City's Zoning Ordinance. The need for such flexibility, innovation and reasonable relief arises from the irregular shape of the remainder parcel and other site development challenges caused, in part, by the City's partial taking and the proposed relocation of Adams Road. Notwithstanding the foregoing, the subject property may only be used and developed for those land uses permitted under the City's Zoning Ordinance in the O-1 Office Business District and the ORT Office, Research, Technology Districts. (Emphasis added)

The language of the Order of Settlement provides authority for the applicant to seek to utilize the City's Planned Unit Development regulations in its applications to the City seeking to develop the property. While I was not involved in the negotiation or drafting of the Order of Settlement, the last sentence "Notwithstanding the foregoing, the subject property may only be used and developed for those land uses permitted under the City's Zoning Ordinance in the O-1 Office Business District and the ORT Office, Research, Technology Districts" appears to highlight the entitlement of the defendants to utilize the City's Planned Unit Development Regulations for flexibility in site development but emphasize that such flexibility is not to be construed as an entitlement to any other land uses other than those in the O-1 Office Business District and the ORT Office, Research, Technology Districts. It sets forth a process which may be undertaken by the owner of the property, but it is my opinion that the Order of Settlement does not guarantee any

particular outcome regarding the City Council's determination as to whether an application meets the objectives and requirements of Section 138-7.103. It is my opinion that the City's zoning ordinance provides that an applicant's Preliminary Planned Unit Development (PUD) application and preliminary plan are to be initially considered by the Planning Commission and it is the responsibility for the Planning Commission to make its recommendation to City Council. Under the ordinance it is then the responsibility for City Council to make the final determination on whether an applicant meets the requirements and objectives which are provided in the ordinance.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'P. Daniel Christ', with a stylized, flowing script.

P. Daniel Christ

PDC/dh

cc: Mayor Bryan Barnett

Rochester Hills Council President and Council

Ms. Sara Roediger, PED Director