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December 15, 2017

Ms. Kristen Kapelanski
Manager of Planning
Planning and Economic Development Department
City of Rochester Hills
1000 Rochester Hills Drive
Rochester Hills, MI 48309

Re: *State Licensed Residential Facility*

Dear Ms. Kapelanski:

You have asked me to comment on the reference to “state licensed residential facility” that is proposed to be added to Zoning Ordinance Section 138-4.415 Home Occupations as part of the multi-section Zoning Ordinance amendment under consideration by the Planning Commission. My opinion is that a State Licensed Residential Facility is not, and should not be considered to be, a “home occupation.”

The City Zoning Ordinance defines a “Home Occupation” as “An occupation or profession customarily carried on by the occupant of a dwelling unit as a secondary use which is clearly subservient to the use of the dwelling for residential purposes.” A State Licensed Residential Facility is not a secondary or subservient to the use of the dwelling for residential purposes. Rather, the Michigan Zoning Enabling Act, at MCL 125.3206(1) requires that “[A] state licensed residential facility shall be considered a residential use of property for the purposes of zoning and a permitted use in all residential zones and is not subject to a special use or conditional use permit or procedure different from those required for other dwellings.”

Indeed, the City Zoning Ordinance, in the Table of Permitted Uses by District, expressly lists State Licensed Residential Facilities (6 or fewer residents) as a principal permitted use in the R zoning districts, and State Licensed Residential Facilities (7-12 residents) as a conditional use. Furthermore, Zoning Ordinance Section 138-4.440 deals specifically with State Licensed Residential Facilities and requires them, in Paragraph A thereof, to be state-licensed and to comply with applicable standards for such facilities. To the extent the state law prescribes the number of caregivers required, that requirement would apply.

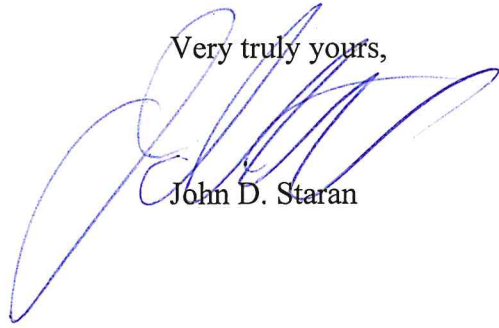
So, I conclude that a State Licensed Residential Facility is not a “Home Occupation,” and, therefore, the reference to “State Licensed Residential Facility” in Section 138-4.415 of the

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proposed Zoning Ordinance text amendment may be omitted. Requirements for caregivers for State Licensed Residential Facilities are prescribed by state law.

Very truly yours,



John D. Staran

JDS/ijd

cc: Ms. Sara Roediger, Director