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August 19, 2009

Mr. Derek Delacourt, Deputy Director  
Planning Department  
City of Rochester Hills  
1000 Rochester Hills Drive  
Rochester Hills, MI 48309

Re: ***Historic District Commission / Tienken Road Bridge Reconstruction***

Dear Mr. Delacourt:

At the last Historic District Commission ("HDC") meeting I attended, I was asked whether the HDC may impose truck weight limits on the proposed reconstructed Tienken Road Bridge over Stony Creek, and I explained that is doubtful. You have asked me to expand on that explanation, which I attempt to do herein. It is my legal opinion that for various reasons I will explain below, I remain doubtful that the HDC has the authority to weight-restrict the bridge.

Let me start out by explaining that I characterize my opinion as "doubtful" because I have not come across a case or statute that expressly says the HDC can or cannot weight-restrict the bridge. However, the combination of case law and statutes that apply to historic regulation and regulation of roads, traffic and motor carriers leads me to draw that conclusion.

**No express authorization.** Nothing in the Local Historic Districts Act ("LDHA"), local ordinance or U.S. Secretary of the Interior Standards provide any express authorization to local historic district commissions to set truck weight restrictions on roads or bridges. The LDHA is the enabling legislation that authorizes and governs local historic districts ordinances and commissions. It authorizes local legislative bodies to adopt local ordinances establishing and vesting local historic districts commissions with broad powers to review work that may affect the exterior treatment of historic and non-historic resources located within an historic district. However, those broad review powers do not include governance authority over the historic district, nor do they include planning, zoning or traffic control authority. Indeed, such authority remains with the local legislative body, planning/zoning authorities and road agency.

**Lack of evidence.** Load restrictions on bridges are determined by the public agency with jurisdiction over the bridge, subject to federal and state maximums. In this case that agency is the Road Commission for Oakland County ("RCOC"). The load restrictions established for a particular bridge result from expert analyses that focus on structural integrity, longevity, maintenance and traffic safety considerations. It appears from my review of HDC meeting

minutes that RCOC proposes to reconstruct the bridge to current standards that would support an 80,000 pound<sup>1</sup> vehicle, which is an increase over the current posted weight limit of 52,000 pounds.<sup>2</sup> I understand the HDC may consider weight-restricting the reconstructed bridge based not on concerns over the structural integrity of the bridge, but rather because of possible damage that heavier trucks and associated vibrations may cause to other buildings and structures in the historic district. You have told me that no evidence has been presented to suggest that such truck vibration damage will occur, but it is a concern raised by HDC members.

HDC decisions must be based on competent and material evidence on the record and be guided by objective standards set forth (or incorporated by reference) in the ordinance in order to pass legal muster. Decisions or conditions based on speculation that are not supported by or are contrary to evidence presented on the record before the HDC may be challenged as arbitrary and capricious and may not withstand judicial scrutiny. A conclusion based on lay opinion that heavier trucks will cause vibrations that may damage other buildings and structures in the historic district would be difficult to defend without more evidence. Such a conclusion would typically be supported by expert and testimony and study, not a lay opinion. Absent expert testimony or evidence, such a conclusion could be dismissed as speculative.

**Setting of Weight Limits in Michigan.** The LDHA does not contain any mechanism or procedure for the setting of weight limits, but the Michigan Vehicle Code does. Michigan's truck weight law is designed to control axle loads rather than gross vehicle weight. This purportedly is based on research by the American Association of State Highway and Transportation Officials, MDOT and other organizations that show pavement damage is directly related to axle loading, not gross vehicle weight. Michigan limits the allowable weight on individual axles, depending on their spacing. The calculated maximum allowable gross vehicle weight allowable in Michigan would be 164,000 pounds and would require eleven properly spaced and loaded axles. The axle load limits under the Michigan Vehicle Code are subject to seasonal weight reductions (i.e., the "Spring Law"). Furthermore, RCOC may impose restricted loading at any other time that the conditions of the highway require. It is also important to recognize that since this is a county road, only RCOC has authority to impose restricted loading under the Vehicle Code. The City is not authorized under the Vehicle Code to set weight restrictions on county, state or federal highways.

In regard to bridges, a lesser maximum weight can be set if warranted by structural engineering and safety considerations, as stated earlier. From what I read in the minutes, it appears RCOC intends for there to be an 80,000 pound weight limitation on the reconstructed bridge, which is equal to the federal truck weight limit.

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<sup>1</sup> 80,000 pounds is the federal truck weight limitation that applies to the interstate system and other designated highways. Michigan actually permits up to 164,000 pounds when spread over a sufficient number of axles. This is due to a "grandfather" exception in the federal law.

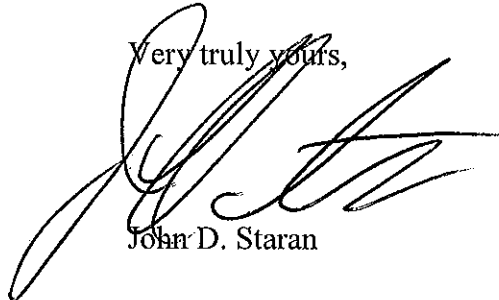
<sup>2</sup> I presume the current 52,000 pound weight limit was established based on the design, structural integrity and age of the current bridge and not on historic or aesthetic considerations.

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**Federal preemption.** There are also questions – which I have not fully researched – relating to federal law preemption. As is mentioned earlier, federal law sets an 80,000 maximum truck weight. There may be a question whether a local agency can require a lesser maximum weight unless warranted by road conditions or the bridge’s structural integrity. Another “weighty” issue is a potential constitutional conflict relating to interference with interstate commerce pitting federal truck weight limits against the City’s HDC. Lastly, the City is preempted by federal law from enacting or enforcing rules or regulations related to the “price, route, or service of any motor carrier...with respect to the transportation of property.” The trucking industry has challenged municipal authority to impose and enforce traffic and safety regulations for trucks, including weight limits, but the U.S. Supreme Court has recognized an exception to federal preemption for “safety” regulations. See *City of Columbus v Ours Garage*, 536 US 424 (2002). It is questionable whether a truck weight restriction imposed by the HDC would be considered to come within this narrow exception.

As you will glean, there are a number of significant legal issues associated with the HDC’s consideration of weight-restricting the reconstructed Tienken Road Bridge over Stony Creek. Absent expert testimony and studies to demonstrate that trucks up to 80,000 pounds are likely to damage other buildings and structures in the historic district, and in view of the legal authorities I have identified, I would advise the HDC against setting a truck weight limit on the bridge.

Very truly yours,

A handwritten signature in black ink, appearing to read "John D. Staran", written over the typed name below.

John D. Staran

JDS/ijd

cc: Mayor Bryan K. Barnett