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Via Electronic Mail

Mr. Ed Anzek, Director
Planning Department
City of Rochester Hills
1000 Rochester Hills Drive
Rochester Hills, MI 48309

Re: ***Crematorium***

Dear Mr. Anzek:

You have asked me, the City's Attorney, for my legal opinion concerning an appeal pending before the Rochester Hills Zoning Board of Appeals from your determination that crematories are, under the City's Zoning Ordinance, akin to incinerators which are not permitted in any zoning district. I concur with your conclusion for the reasons which follow.

The City Zoning Ordinance does not define or mention "crematorium." Our Zoning Ordinance is written in a permissive format. It lists the land uses that are permitted in the particular zoning district, but does not (with a few exceptions) expressly list or name prohibited uses. Case law supports the interpretation and construction that for permissive format zoning ordinances uses that are not listed or determined to be permitted are impliedly prohibited. Consistent therewith, Zoning Ordinance Section 138-1.202 provides that land uses not specifically listed in or permitted by the ordinance, or otherwise determined to be similar to listed and permitted uses, are prohibited. So, it becomes necessary to determine whether a crematorium is similar to any other listed or permitted uses.

The City conditionally permits cemeteries in residential zoning districts, and funeral homes associated with cemeteries are conditionally permitted in residential districts too. Stand-alone funeral homes are a permitted use in the O-1 Office Business Zoning District, and may also be permitted in FB-2 and FB-3 as a general commercial use.¹ Although cemeteries and funeral homes are related to crematories in the sense they all involve disposition of human

¹ I have not been asked whether a crematorium would be a lawful accessory use to a cemetery or funeral home. Further study and research will be necessary to answer that question, but my preliminary answer is probably not. And, to my knowledge, there are no crematories associated with any of the existing cemeteries or funeral homes in the Greater Rochester area.

remains, I determine that a crematorium is not similar to a cemetery or funeral home land use. As its root word implies, a crematorium involves cremation, which involves incineration of human remains resulting in “cremains.” On-line research reveals a number of concerns have been raised, across the country, where crematories have been proposed. The most common concerns appear to be air quality (unpleasant odors and emission of pollutants), loud noises and aesthetics.² Consequently, I concur with your determination that a crematorium would be similar to an incinerator land use, which is not a permitted use under the City Zoning Ordinance -- even in the industrial zoning district.

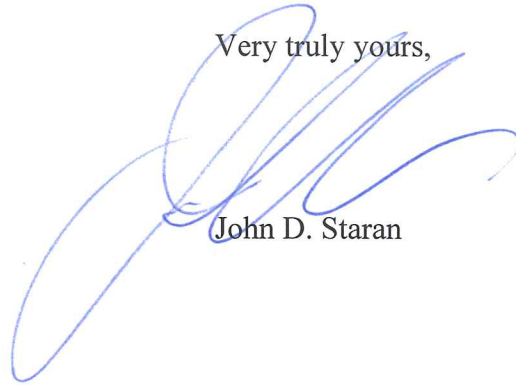
Incidentally, I did consider whether a crematorium or incinerator may be similar to other uses permitted as principal or conditional uses in the Industrial District, such as a (1) “Manufacture, compounding, processing, or packaging or treatment of finished or semi-finished products, articles, or merchandise where the external effects are restricted to the site and will not impact neighboring land uses;” or (2) Manufacture, compounding, processing, or packaging of raw materials into finished or semi-finished products, or manufacturing, compounding, packaging or recycling operations that will generate external physical effects that will be felt to some degree by neighboring land uses.” However, I conclude a crematorium is not similar to those permitted uses for several reasons, including: (i) Nothing is being made, assembled, created or packaged. Rather, human remains are being incinerated and destroyed; (ii) Cremains are not a product or material intended for re-use, sale, distribution, or recycling; (iii) I do not consider human remains to be a “finished or semi-finished product...” or “raw materials;” and (iv) Based on reported concerns about air quality, noise and aesthetics, I am unable to conclude that a crematorium will not generate external effects that may impact or be felt to some degree by neighboring land uses. So, in my opinion, a crematorium is not a permitted land use in Rochester Hills under the current Zoning Ordinance.

I anticipate the appellant may contend there is a need for a crematorium in Rochester Hills and they should not be excluded, or that appropriate measures or conditions may be implemented to minimize any nuisance effects associated with crematories. According to reports, there is an upward trend in popularity and acceptance of cremation, with cremation now accounting for nearly half of final dispositions. Also, it appears to be uncertain—or at least disputable -- whether concerns over nuisance, health and safety aspects, especially regarding exposure to chemicals released into the air from crematorium operations, are warranted in all circumstances. Consequently, it may be worthwhile for the Planning Department, Planning Commission and City Council to further study and consider whether the City should permit crematories and where and under what conditions. But, meanwhile, the ZBA should remain mindful that they serve a quasi-judicial function, and, as such, their responsibility is to interpret and construe the Zoning Ordinance as written – which is not necessarily as they or the appellant may prefer it to read. Establishing public policy and adopting or amending zoning ordinances remains the province of the City Council, with support and recommendation from City Staff and consultants and the Planning Commission.

²Curiously, although air quality issues, including the possibility of mercury and other harmful chemicals being released into the air, have been publicly expressed according to a number of articles and reports I came across, there is relatively little emissions regulation for crematories at the federal level, other than general EPA emissions rules. The EPA specifically regulates “other solid waste incineration units, but the EPA does not consider human remains to be “solid waste.” See 40 CFR, pt 60.

Please feel free to share this opinion letter with the ZBA. Meanwhile, I will welcome any further questions you may have.

Very truly yours,

A handwritten signature in blue ink, consisting of several large, overlapping loops and flourishes, positioned above the printed name.

John D. Staran

JDS/ijd