

March 1, 2019

Copy 3-13-19

Representative Jim Lower, Chairperson
Local Government & Municipal Finance
S-1089 House Office Bldg.
P.O. Box 30014
Lansing, Michigan 48909-

Via Facsimile

RE: House Bill 4095 (2019)

Dear Representative Lower;

I am writing to express my concerns relative to HB 4095. The concerns expressed herein are not meant to be all inclusive but do represent the more pressing ones at this time. Thank you in advance for taking the time to consider my comments.

Constitutionality

The language being proposed at Sub Section (t) (ii) is unconstitutional in light of the ruling in *Larkin v Michigan Dept. of Social Services* (883 F. Supp 172 1994) wherein the court struck down density-based regulations relative to locating licensed residential facilities. In *Larkin* the court held that there is no rational basis for a spacing requirement and that enforcement of such regulations violated the Equal Protection Clause and had a discriminatory effect.

Lot size is a density-based scheme for regulating land use and community development. The language in Sec. (t) (ii) is clearly density-based regulation in that the number of individuals housed in a facility is dependent solely upon the lot size. As in *Larkin*, the question here is the same; "what would be the rational basis" for this type of regulation?

Impact on Services

There is little, if any, evidence that demonstrates residential services are enhanced merely by locating care facilities on large parcels. There is, however, considerable professional opinion about of dilatoriness effect on services for foster children placed in large capacity facilities (over six) with some believing even six is too many. These concerns seem to be supported by DHHS policy of having preference for placement in small (0-6 individuals) home settings.

Public Policy Considerations

The current statute, and by extension state regulations, has been in effect for many years. Its provisions are both time and court-tested and are being equally and uniformly applied across the state. In addition, there are currently other licensing

provisions permitting licensed residential facilities serving ten (10) individuals. What public purpose is served by advancing this legislation?

Given the procedural history of this matter, I am concerned that public policy may be taking a back seat to what many see as “special interest” legislation. During the last legislature’s “lame duck” session, Rep. Reilly introduced this same piece of legislation (House Bill 6499) on 11/27/18. As with most lame duck legislation, the bill was spirited through the legislative process and adopted in three weeks. Clearly this expedited process was intended to limit review, evaluation and public input. Since Rep. Reilly’s introduction of HB 4095 on January 24, 2019, it appears that it too is being “fast tracked” through the legislative process.

In his veto message of 12/28/18, Governor Snyder expressed his concern that this legislation (HB 6499) had not been thoroughly evaluated before final passage.

Unintended Consequences

As is often the case, “quick and simple” legislative fixes frequently have unintended consequences.

Rural communities, with their abundance of large and low-cost parcels but a lack of attributes (employment opportunities, social services, public transportation, proximity to familial support systems etc.) important contributors to the facilities success would act as a magnet, pulling services and resources away from the urban centers. Lacking large reasonably priced parcels, urban centers would be disadvantaged by making it harder for them to compete in drawing these needed services and facilities to their communities. A case in point involves House of Providence’s (a long-time Detroit based non-profit organization providing child care services), recent decision to closed their operations in that city and relocate to an 118 acre parcel in Oxford Twp. with intentions of establishing multiple 10-persons residential homes.

Foster family homes are intended for single-family homes in residential zones where site plan reviews are not required. The proposed legislation would extend unreviewable residential facility status to 10-person facilities. The 20-acre lot provision creates the opportunity for a service provider to “fly under the regulatory radar” by the planned construction, over time, of a series of 10-person facilities on the parent parcel (see above) with the end result being the evolution of a single family facility into a campus or institutional type setting. The question is, at what point do foster family homes become an institution from a licensing standpoint? Generally the larger the facility, the more licensing and community oversight is indicated. A facility of the size planned by HOP has the potential to alter the nature and character of its surroundings and without plan review powers, a community has no ability to ensure ordinance compliance and use compatibility, have input into development plans nor be assured that services and other activities at the facility are compliant with residential zoning regulations (such as offering on-site services to non-residents).

Adoption of this bill will create conflicts with various licensing regulations for residential facilities. Licensing regulations vary depending facility capacity, service types (e.g. adult, child, therapeutic, etc.), and who provides the services (private vs. non-profits organization etc.). Why impose elements that simply complicate the licensing process but do nothing to address the need for additional residential foster children facilities? This clearly a situation where bigger is not always better.

Sincerely,

Chester Koop