



October 13, 2015

Michael Spence, MPA
Assistant Village Manager
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Via email: vllg398@elkrapids.org

RE: Library
Our File No.: 5555.02

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Dear Mike:

I understand that the Library and the Village are seeking a legal opinion on whether there is any restriction that would “*prevent expansion of the library structure at its current location.*” Based on the documents I have been provided to date, I do not see any such restriction. However, I do note that the cover letter from the District Library Board of Trustees asks to evaluate whether “*the Board of Island Commissioners Ordinance 65 and any other related documents do not prevent expansion of the library structure at its current location.*” I have reviewed Article 22 of the Village Code of Ordinances, which regulates use of the Island, and I assume was enacted through Ordinance 65 referenced in the letter from the Library. I have not been provided, nor am I aware of, “*any other related documents*” limiting the expansion of the Library. This opinion is limited to only the documents that I am aware of and have reviewed. If there are other related documents in existence that I am not aware of, those documents could change my opinion. I also note that I have not reviewed the title history or any other title work for the property other than the conveyance deed and related documents that were provided to me. The Village may want to review the title history of the property to make sure there are not any other restrictions or encumbrances of record restricting the use of the Island.

With the above disclaimer in mind, the following is my analysis of the relevant documents:

The Conveyance Deed

The Village received the Island property subject to certain deed restrictions. These restrictions govern what the Village may and may not use the Island property for, and therefore are the fundamental starting point for analysis of the requested opinion. The deed conveying the island grants the property to the Village:

Michael Spence, MPA
Assistant Village Manager
October 13, 2015
Page 2

“in trust, nevertheless, for the benefit of the residence of said village and for the use by side Village and it's residence as a library, Park, place of assembly, village hall, or community center; in the grantee, for itself, it's successors and assigns, does hereby covenant and agree that said premises shall be continuously kept, maintained and used for one or more of the aforesaid public charitable uses our purposes and that in no event shall said promises be used for any other or inconsistent use our purpose and particularly that said premises shall not be used as a hospital, nursing home, convalescent home, home for the aged, or for any similar institution our purpose.”

As this language indicates, the use of the Island for a Library is a specifically contemplated public purpose under the deed restrictions. Notably, the restrictions do not discuss existing or future structures on the property, but many of the contemplated uses require some sort of building. Therefore, the deed restrictions themselves do not expressly prohibit expansion of existing structure on the Island, and imply by the list of permitted uses of the property that structure(s) may be built or modified to execute the permitted uses of the land.

Chapter 22 of the Code of Ordinances

Chapter 22 of the Village Code of Ordinances governs the use of the Island. The Ordinance provisions do not prohibit, and seem to contemplate, the potential development of facilities on the Island. For example, Sec. 22-51 requires an annual report for the Island. In that report council is to provide in part: (1) detail of improvements, repairs and betterments to the Island; and (5) the recommendations of the council for repairs, improvements and betterments of the Island Property with its reasons therefor and the estimated cost.

Within that chapter, the Library is also specifically contemplated in Sec. 22-77. That provision states:

“The council may by resolution set aside or reserve in the Island Home, rooms of sufficient size to establish, maintain and develop the Elk Rapids Library. Nothing in this chapter shall be construed as being intended to regulate, control or establish hours and rules or use of the Elk Rapids Library, it being intended that such library, when established, shall be under the control, management and direction of the Elk Rapids District Library Board, and that the library, as such, shall be used for no other purpose.”

I note that this language allows for the Village Council to determine what parts of the Island Home and/or rooms it will set aside for use by the Library.

Michael Spence, MPA
Assistant Village Manager
October 13, 2015
Page 3

The Lease Agreement

There is also a Lease Agreement between the District Library and the Village. The Lease Agreement specifies that the Village Council has approval authority over, and must consent to, any alterations to the interior or exterior of the structures on the property. Paragraph 4 of the Lease states:

In the event that Lessee desires to make structural alterations to the interior or the exterior of the premises, Lessee shall first obtain the "approval" or "consent" of the village council prior to undertaking any such structural alterations. Provided further, however, that any such alterations or expansion, shall be in conformity with all Village ordinance (including the zoning ordinance) and shall not cause any lien, of whatsoever kind or nature, to arise that would be enforceable against the real property including, but not limited to, a mechanics lien, contractors lien, mortgage or other encumbrance. Lessee agrees to indemnify and hold lessor absolutely and fully harmless as to any liens or encumbrances.

While this language does not prohibit an addition to the existing structure on the property, it does require the Library to obtain consent from the Village council before any alterations happen.

Historic Status of Island Home

Finally, I note that the Island House is a site of historic significant interest (see 1979 State Historical Commission letter). It does not appear that there are any restrictions on expansion of the structure due to this designation and the statute cited in the 1979 letter. However, I would recommend that the Library contact the State Historic Preservation Office to confirm that there are not any restrictions on expansion related to this designation. It is also important to review the State's records to see if there are any other grants or other agreements that may have restricted the possible use of the property due to its historical status. Likewise, I would recommend reviewing the Villages records for any such grants or agreements. It is often the case that this type of funding has limitations on how a historical structure may be altered or added on to.

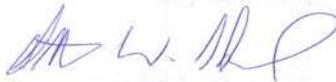
Michael Spence, MPA
Assistant Village Manager
October 13, 2015
Page 4

Conclusion

Based on the documentation and regulations that I have reviewed, there is not any prohibition on adding to the historic Island Home. Prior to any action by the Library, however, the Village Council must approve and consent to the addition. I also note that this opinion is limited to the documents that I have been provided and/or that I have found in my research. As noted above, there may be additional restrictions or applicable documents that I am not aware of and that I have not reviewed. I would recommend that the Library contact the State Historic Preservation Office and also consider reviewing the title history for the Island property.

Please feel free to contact me if you have any questions about this opinion letter.

Sincerely,

A handwritten signature in blue ink, appearing to read "S. W. Howard".

Scott W. Howard
scott@envlaw.com

SWH:knf