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OLSON, BZDOK & HOWARD

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July 13, 2016

Bill Cooper  
Village Manager  
P.O. Box 398/315 Bridge Street  
Elk Rapids, MI 49629

Via email: [vllg398@elkrapids.org](mailto:vllg398@elkrapids.org)

RE: Library  
Our File No.: 5555.02

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Dear Bill:

I previously provided an opinion letter to the Village on any potential restriction related to the expansion of the library dated October 13, 2015. I concluded that, based on the documents I had to review, there was no legal prohibition to expansion of the historic Island Home. My conclusion was summarized as follows:

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.

You have provided me with additional information related to a prior version of Ordinance 65. In particular, Article IX, General Provisions, Sec 1 used to read as follows:

The Council shall not change, alter, or amend this Ordinance except on petition of the electors of the Village representing no less than twenty (20) per cent of the property owners of the Village, setting forth the proposed changes, alterations or amendment desired and the reason therefor. The Council shall, upon receipt of such petition, properly signed and executed and provided the petition does not contravene the covenants of the deed of conveyance, proceed in the manner provided for by law in the matter of ordinance.

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This language was ultimately replaced with the language that is in the current version of Chapter 22 of the Village Code of Ordinances, which states that “This chapter may be amended in the manner provided by law in the matter of ordinances.”

It is my opinion that the current language of the Ordinance is consistent with state law, and the previous version of the Ordinance requiring amendment only to be initiated by petition would be ruled unlawful. It is a longstanding principle of municipal law that the act of one Village Council body cannot tie the hands of a future Village Council. The Michigan Supreme Court has explained this legal principle as follows:

The act of one legislative body does not tie the hands of future Legislatures. The power to amend and repeal legislation as well as to enact it is vested in the Legislature, and the Legislature cannot restrict or limit its right to exercise the power of legislation by prescribing modes of procedure for the repeal or amendment of statutes; nor may one Legislature restrict or limit the power of its successors. One Legislature cannot enact irrepealable legislation or limit or restrict its own power, or the power of its successors, as to the repeal of statutes; and an act of one Legislature is not binding on, and does not tie the hands of, future Legislatures.<sup>1</sup>

Limiting the ability to amend or repeal an ordinance by any future Village Council only through a petition by residents is directly contrary to this legal principle and would likely be struck down by a reviewing court. To be clear, an ordinance could allow for a petition process that requests an amendment by the Village Council, but also retains the right of Council to amend the ordinance independent of a petition submission. The problem with the historical language in Ordinance 65 is that it seems that a petition is the only way the Ordinance could be amended, which is what I believe makes it unlawful.

I understand the Village is currently reviewing records to see exactly when and how this language was amended to its current form and whether there was a petition involved in that amendment. So far that search has not turned up a definitive answer. However, it is my opinion that the petition requirement in the previous version of Ordinance 65 would be rendered unenforceable and unlawful if challenged in Court.

As I indicated in my previous letter, my opinion is that the addition to the library structure is a policy decision that is at the discretion of the Village Council. For the reasons explained above, the historic language of Ordinance 65 does not alter that opinion.

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<sup>1</sup> *Atlas v Wayne Cty.*, 281 Mich 596, 599; 275 N.W. 507, 508-09 (1937) (citations omitted)

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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](mailto:scott@envlaw.com)

SWH:knf