



MEMORANDUM

To: Elk Rapids Village Council and Bill Cooper, Village Manager
From: Scott W. Howard
Date: January 3, 2018
Re: Island Property Deed Language

You have requested my opinion on whether the Village of Elk Rapids holds the Island House and Property in trust for the residents of Elk Rapids and, if so, what does “held in trust” mean?

The deed conveying the Island Property to the Village states that the Property is conveyed

unto the Grantee, its successors and assigns, forever, in trust, nevertheless, for the benefit of the residents of said Village and for use by said Village and its residents as a library, park, place of assembly, village hall, or community center; and the Grantee, for itself, its successors and assigns, does hereby covenant and agree that the said premises shall be continuously kept, maintained and used for one or more of the aforesaid public charitable uses or purposes and that in no event shall said premises be used for any other or inconsistent use or purpose and particularly that said premises shall not be used as a hospital, nursing home, convalescence home, home for the aged, or for any similar institution or purpose.

As the deed indicates, the Village obtained the property in trust for the benefit of the residents of the Village, with specific proscribed uses that the Village or any successor could make of the Property. There are also specific uses which are expressly prohibited.

The term “in trust” means that the Village holds the property for the benefit of its residents. Black’s Law Dictionary defines “In trust” as “To confer a trust upon; to deliver to another something in trust or to commit something to another with a certain confidence regarding his care, use or disposal of it.” In this case, the deed requires that the property must be used for a

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public purpose. For example, the Village could not rent or sell the property to a private entity in order to convert the structure to an office building. Fortunately, the deed is clear about the types of public uses the Grantor contemplated when granting the property to the Village in trust for the benefit of the residents of the Village: “as a library, park, place of assembly, village hall, or community center.” In this instance, the Property is being used as a library, which is a specifically authorized use of the Property in the deed.

Finally, I note that the district library is operating the library facilities through a lease with the Village. The library is open to the general public without charge. The library is acting as a “successor or assign” of the Village through the lease agreement, and the lease specifically references the restrictions contained in the deed. This use is consistent with the language in the deed that authorizes use of the Property “by said Village and its residents as a library.” I have previously opined that the Village may authorize structural alterations to the Island House in order to provide additional area for uses allowed in the deed. The district library must comply with Paragraph 4 of the lease, which addresses structural alterations to the premises. I continue to hold the opinion that the Village may approve structural alterations to the Property consistent with the “in trust” language of the deed so long as the modifications are pursuant to a use authorized by the deed and are available for use by the residents of the Village.