

Memo

To: Historic Preservation Committee, Village Board

Fr: Trevor Fuller, Planning and Zoning Administrator

Re: ACTION RE: RESTRICTIVE COVENANT FOR ALLOUEZ WATER WORKS BUILDING LOCATED AT 535 GREENE AVENUE

Date: 09 June 2017

At the April meeting, staff provided the update that the village is required by state statutes to place a restrictive covenant on the Allouez Water Works Building located at 535 Greene Avenue prior to selling the building. Staff learned from a meeting with the State Historic Preservation Office (SHPO) in May that the village is the holder and author of this restrictive covenant.

The Village Attorney is in the process of writing a covenant for this building, which will protect the village historic interests in the building in perpetuity. Attached is a sample covenant, which was provided by the SHPO. The Historic Preservation Committee is asked to discuss and recommend to the Village Board the specific portions of the property, which should be protected by the covenant (e.g. front façade). Changes or alterations to these specific portions of the property would need to receive a Certificate of Appropriateness (COA) by the Historic Preservation Committee. The COA process is appealable to the Village Board, but allows for the committee to review proposed changes and make suggested changes if necessary, which would help preserve the historic integrity of the property.

The Historic Preservation Committee is asked to recommend specific portions of the property to the Village Board that are historically relevant to the village and specific portions of the property that are not historically important to the village. These recommendations will be made part of the attorney draft of the restrictive covenant, which will be presented to the Village Board.

HISTORIC PRESERVATION EASEMENT
City of XXXXXXXXXX, Wisconsin

The City of XXXXXXXX (hereinafter, CITY), being the owner of real property and any improvements thereon located at **** **[Insert Address]** (hereinafter, PROPERTY), being described fully below, retains for itself a preservation easement on and against said Property, as described herein, which will be real, including covenants binding on the City and on any subsequent purchasers, and/or the heirs, successors, and assignees of the City or any subsequent purchasers (hereinafter referred to as OWNER), of the PROPERTY and will be considered as running with the land and the PROPERTY in perpetuity. The PROPERTY is located in the City of XXXXXXXX, County of XXXXXX, Wisconsin. The PROPERTY is listed in the National Register and the State Register of Historic Places as **[Insert N/SRHP Property Name]** and is more fully described as:

[Formal Legal Description]

And further described as:

Lot , of County Certified Survey Map # _____ as recorded in Volume _____, Page ____.

Unless otherwise indicated, all authorizations or written actions of the CITY stipulated herein must be executed in writing by the **[City Representative Title?]** of the CITY, and all notifications to the CITY must be to the **[City Representative Title?]** of the CITY.

The OWNER agrees to protect, preserve, and maintain all historic features of the PROPERTY, except those listed below, which are excepted as specific exclusions from this easement:

[List Specific Exclusions]

The CITY hereby retains the following easement expressed as stipulations unto itself:

- 1) The OWNER agrees to assume the cost of continued maintenance and repair of the PROPERTY in accordance with the recommended approaches in the Secretary of the Interior's standards for rehabilitation and associated guidelines, or substantially similar standards of the CITY, so as to preserve the architectural and historical integrity of the features, materials, appearance, workmanship, and environment in

order to protect and enhance those qualities that made the property eligible for listing in the National Register and (/or) the State Register.

- 2) The OWNER agrees that any alterations that may affect the architectural or historical integrity of the PROPERTY must have the prior written approval of the CITY. The OWNER shall neither construct, demolish, alter, nor remodel any portion of the PROPERTY, including any structures, buildings, or objects thereon that are not named herein as specific exclusions. The OWNER shall not construct any new building or structure on or move any existing building or structure to the PROPERTY, nor erect fences or signs on the PROPERTY, nor disturb the ground surface of the PROPERTY, without the express written approval of the CITY.
- 3) The OWNER agrees to notify the CITY in writing of any proposed actions to be undertaken by the OWNER, or any other party known to the OWNER, that may affect the architectural or historical integrity of the PROPERTY. The OWNER furthermore agrees that the CITY will be allowed 30 days to respond with a written approval or refusal of such proposed actions, except that the CITY may extend this period up to an additional 60 days upon written notice to the OWNER. In the event of refusal, the OWNER may request a written statement of the reasons for refusal.
- 4) The OWNER agrees to notify the CITY in writing of any substantial damage to the property by accidental, natural, or deliberate causes within 30 days of the date on which the damage was incurred. The OWNER further agrees that no repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to the PROPERTY and to protect public safety, shall be undertaken by the OWNER without prior written approval of the work by the CITY, in accordance with paragraph (3) above.
- 5) The OWNER agrees to give access to the interior and exterior of the premises to the CITY, its personal representatives, successors, or assigns of purposes of monitoring the OWNER's compliance with this easement upon reasonable verbal or written notice. Nothing in this instrument shall require the CITY to conduct regular or irregular on-site inspections of the PROPERTY.
- 6) The OWNER agrees that the failure of the CITY to exercise any right or remedy granted under this instrument, or to conduct on-site inspections of the PROPERTY, shall not have the effect of waiving or limiting the exercise of any right or remedy or the use of such right or remedy at any other time.

- 7) The OWNER agrees to insert the easement provisions contained herein, either verbatim or by express reference, in any deed or other legal instrument by which the OWNER divests himself (or herself or itself) of either the fee simple title or any lesser estate in the PROPERTY.
- 8) The OWNER agrees that, in the event of a violation of this historic preservation easement, and in addition to any remedy now or hereinafter provided by law, the CITY may, following reasonable notice to the OWNER, institute suit to enjoin said violation or to require specific performance and/or the restoration of those portions of the PROPERTY that were affected.
- 9) The OWNER agrees that he (or she or it) shall indemnify and hold the CITY and its successors and assigns harmless for any liability, costs, attorney's fees, judgments, or expenses to the CITY, or any officer, employee, agent, or independent contractor of the CITY, resulting from actions or claims of any nature by third parties arising from defaults under this historic preservation easement by the OWNER, or arising out of the conveyance of, possession of, or exercise rights under this historic preservation easement, excepting any such matters arising solely from the negligence of the CITY, and that it shall not be considered negligence on the part of the CITY should the CITY conduct neither regular nor irregular on-site inspections of the PROPERTY.
- 10) The OWNER agrees that the CITY may, at its discretion, without prior notice to the OWNER, convey and assign all or part of the CITY's rights and responsibilities contained herein to a third party.
- 11) The OWNER agrees that the CITY, at its discretion, shall have the right to install a plaque of suitable design at a point easily visible by the public, from a public way, which plaque shall give information regarding the property determined appropriate by the CITY and that the PROPERTY is subject to a preservation easement held by the CITY. The OWNER shall take reasonable measures for the duration of the term of this preservation easement to protect and maintain the visibility of any such plaque as may be installed.
- 12) The City shall generate Baseline Documentation for the PROPERTY to the standards established by the CITY for such work.

This preservation easement may be amended or released by the CITY and the [City Representative title?], in writing, and such amendment or release shall become effective upon its recordation by the CITY at the Register of Deeds in the County in which the PROPERTY is located.

The covenants and restrictions contained herein are enforceable by the CITY by an action in the Circuit Court of XXXXXX County, Wisconsin, or any other court of competent jurisdiction.

Signed:

[Name], OWNER Date: _____

STATE OF WISCONSIN
COUNTY OF _____

The above _____ personally came before me, attested to and signed this document on this _____ day of _____, 2016.

Notary Public, State of Wisconsin
My commission is permanent/expires _____.

Signed:

[City Representative Title?] Date: _____
City of XXXXXXXXXX, Wisconsin

STATE OF WISCONSIN
COUNTY OF _____

The above [NAME] personally came before me, attested to and signed this document on this _____ day of _____, 2016.

Notary Public, State of Wisconsin
My commission is permanent/expires _____.