

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: 16 June 2017

Earlier this year, 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 and staff have written a draft covenant using model language provided by the SHPO and including previous discussions by the Village Board and Historic Preservation Committee (HPC). This covenant protects the village historic interests in the building in perpetuity. Attached is the draft covenant.

The Village Board is asked to discuss and include 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 HPC to review proposed changes and make suggested changes if necessary, which would help preserve the historic integrity of the property.

The Village Board is asked to approve, contingent on Historic Preservation Committee recommendation, specific portions of the property that are historically relevant to the village and specific portions of the property that are not historically important to the village, which will all be made part of the restrictive covenant.



HISTORIC PRESERVATION EASEMENT
Village of Allouez, Wisconsin

The Village of Allouez (hereinafter, VILLAGE), being the owner of real property and any improvements thereon located at **535 Greene Avenue, Allouez, WI 54301** (hereinafter, PROPERTY), being described fully below, retains for itself the following preservation easement on and against said PROPERTY, as described herein, which will be real and include covenants binding on any subsequent purchasers of the property, and/or their heirs, successors, and assignees (hereinafter referred to as OWNER) and will be considered as running with the land and the PROPERTY in perpetuity. The PROPERTY is located in the Village of Allouez, County of Brown, Wisconsin. The PROPERTY is listed in the National Register and the State Register of Historic Places as **Allouez Pump House** and is more fully described as:

GREENE & VROMAN'S SUBD #1 E 100 FT OF S 188 FT OF LOT 23 & WLY
15 FT OF S 188 FT OF LOT 22

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 VILLAGE stipulated herein must be executed in writing by the President of the VILLAGE, and all notifications to the VILLAGE must be to the President of the VILLAGE. 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;

1. Round Reservoir Addition; and
2. Earthen Berms; and
3. Non-Structural Interior Walls; and
4. Concrete Roof.

The VILLAGE 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 VILLAGE, 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 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 VILLAGE.
- 3) The OWNER agrees to notify the VILLAGE 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 VILLAGE will be allowed 30 days to respond with a written approval or refusal of such proposed actions, except that the VILLAGE 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 VILLAGE 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 that may affect the architectural or historical integrity of the PROPERTY, 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 VILLAGE, in accordance with paragraph (3) above.
- 5) The OWNER agrees to give access to the interior and exterior of the premises to the VILLAGE, its agents, consultants, 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 VILLAGE to conduct regular or irregular on-site inspections of the PROPERTY.
- 6) The OWNER agrees that the failure of the VILLAGE 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. The OWNER further agrees and authorizes the VILLAGE to record this easement with the Brown County, Wisconsin Register of Deeds.
- 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 VILLAGE 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 in violation of this easement. In the event that the VILLAGE prevails in such suit, the OWNER agrees to pay the reasonable costs incurred by the VILLAGE in such suit, including, without limitation, attorneys' and experts' fees.
- 9) The OWNER agrees that he (or she or it) shall indemnify and hold the VILLAGE and its successors and assigns harmless for any liability, costs, attorney's fees, judgments, or expenses to the VILLAGE, or any officer, employee, agent, or independent contractor of the VILLAGE, 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 of rights under this historic preservation easement, excepting any such matters arising solely from the negligence of the VILLAGE, and that it shall not be considered negligence on the part of the VILLAGE should the VILLAGE conduct neither regular nor irregular on-site inspections of the PROPERTY.
- 10) The OWNER agrees that the VILLAGE may, at its discretion, without prior notice to the OWNER, convey and assign all or part of the VILLAGE's rights and responsibilities contained herein to a third party.
- 11) The OWNER agrees that the VILLAGE, 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 VILLAGE and that the PROPERTY is subject to a preservation easement held by the VILLAGE. 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 VILLAGE shall generate Baseline Documentation for the PROPERTY to the standards established by the VILLAGE for such work.

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

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

Signed:

_____ Date: _____
[Name], OWNER

STATE OF WISCONSIN
COUNTY OF BROWN

The above _____ personally came before me, attested to and signed this document on this _____ day of _____, 2017.

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

Signed:

_____ Date: _____
Village President
Village of Allouez, Wisconsin

STATE OF WISCONSIN
COUNTY OF BROWN

The above _____ personally came before me, attested to and signed this document on this _____ day of _____, 2017.

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

