


ROBERT CHARLES DAVIS

ATTORNEY CLIENT COMMUNICATION

TO: Lake Orion Downtown Development Authority
Executive Director, Matthew Gibb

FROM: Robert Charles Davis 

RE: Question Regarding Whether The Village of Lake Orion Council Can
Transfer Power From Its Currently Existing DDA Board To
The Village Of Lake Orion Planning Commission

DATE: April 13, 2026

I. PURPOSE

The purpose of this memorandum/legal opinion is to analyze whether the Village of Lake Orion Council is authorized, at this time, under the Downtown Development Authority Act, MCL 125.4201 Et. Seq. ("DDA Act") to transfer power from the currently existing DDA Board to the Village of Lake Orion Planning Commission.

II. SHORT ANSWER

Short Answer: "NO"

There is no statutory authority allowing the Village of Lake Orion Council to transfer authority from the currently existing DDA Board to the Village of Lake Orion Planning Commission.

III. LEGAL ANALYSIS

The DDA Act, at MCL 125.4204, states that an authority shall be under the supervision and control of a board consisting of the chief executive officer of the municipality or his or her designee from the governing body of the municipality and not less than 8 or more than 12 members as determined by the governing body of the municipality.

“(1) Except as provided in subsections (7), (8), and (9), an authority shall be under the supervision and control of a board consisting of the chief executive officer of the municipality or his or her designee from the governing body of the municipality and not less than 8 or more than 12 members as determined by the governing body of the municipality. . . .” (MCL 125.4204) (Emphasis Added)

The DDA Act, at MCL 125.4201, defines a “Governing body of a municipality” to mean an elected body of a municipality having legislative powers. Here, that is the Village Council.

“(q) “Governing body of a municipality” means the elected body of a municipality having legislative powers.” (MCL 125.4201) (Emphasis Added)

The DDA Act, at MCL 125.4204, states that by ordinance the governing body of a municipality that has a population of less than 5,000 may have the municipality’s planning commission created pursuant to former 1931 PA 285 or the Michigan planning enabling act, 2008 PA 33, MCL 125.3801 to 125.3885, serve as the board provided for in the DDA Act at MCL 125.4204(1).

“(8) By ordinance, the governing body of a municipality that has a population of less than 5,000 may have the municipality’s planning commission created pursuant to former 1931 PA 285 or the Michigan planning enabling act, 2008 PA 33, MCL 125.3801 to 125.3885, serve as the board provided for in subsection (1).” (MCL 125.4204) (Emphasis Added)

Thus, it is my opinion the statute allows a Village Council to initially choose to establish the Planning Commission as its DDA Board. However, if a Village Council does not initially choose to establish the Planning Commission as its DDA Board, it is my opinion there is no authority in the DDA statute stating that a Village Council can later take action to transfer power from a currently existing DDA Board to a Planning Commission. A careful examination of the DDA Act shows two (2) principal reasons why this cannot be done.

A. **First: The DDA Act Does Not State That The Village of Lake Orion Council Can Transfer Power From A Currently Sitting DDA Board To Its Planning Commission.**

A review of MCL 125.4204 shows no mention of any power being granted to the Village of Lake Orion Council to transfer power from the current DDA Board to the Village of Lake Orion Planning Commission. The Legislature, when enacting MCL 125.4204, did affirmatively provide for a limited set of defined circumstances when a new DDA Board can be created. By way of example, MCL 125.4204 (7) states that by resolution of its governing body, a municipality having more than one authority may establish a single board to govern all authorities in the municipality. The governing body may designate the board of an existing authority as the board for all authorities or may establish by resolution a “new board” in the same manner as provided in subsection (1).

“(7) By resolution of its governing body, a municipality having more than 1 authority may establish a single board to govern all authorities in the municipality. The governing body may designate the board of an existing authority as the board for all authorities or may establish by resolution a new board in the same manner as provided in subsection (1). A member of a board governing more than 1 authority may be a resident of or have an interest in property in any of the downtown districts controlled by the board in order to meet the requirements of this section.” (MCL 125.4204) (Emphasis Added)

MCL 125.4204 (9) then states that, if a municipality enters into an agreement with a qualified township under section 203(7), the membership of the board may be modified by the interlocal agreement.

“(9) If a municipality enters into an agreement with a qualified township under section 203(7), the membership of the board may be modified by the interlocal agreement described in section 203(7).” (MCL 125.4204) (Emphasis Added)

While MCL 125.4204 expressly provides for certain defined situations when a new DDA Board can be created, the Michigan Legislature did not insert any provision within MCL 125.4204 stating that the Village of Lake Orion Council can transfer power from a preexisting DDA Board to its

Planning Commission. Absent such a provision, it is my opinion this power was not granted by the DDA Act.

B. Second: The DDA Act States That Sitting DDA Board Members Shall Remain As DDA Board Members Until Their Term Expires.

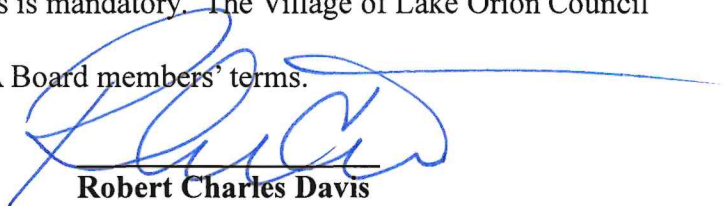
The DDA Act, at MCL 125.4204, states that of the members of a DDA Board which are first appointed, an equal number of the members, as near as is practicable, shall be appointed for 1 year, 2 years, 3 years, and 4 years and shall hold office until the member's successor is appointed and thereafter each member of a DDA Board "shall" serve for a term of 4 years.

"Of the members first appointed, an equal number of the members, as near as is practicable, shall be appointed for 1 year, 2 years, 3 years, and 4 years. A member shall hold office until the member's successor is appointed. Thereafter, each member shall serve for a term of 4 years. . . ." (MCL 125.4204) (Emphasis Added)

The use of the term "shall" is instructive. According to the Michigan Court of Appeals, when interpreting the language of a statute the use of the term "shall" in a statute denotes a mandatory requirement.

"The general rule when interpreting the language of a [*8] statute is to construe it according to its plain meaning. Uniformly, this Court has held that the word "shall" is mandatory. See *State Highway Comm v Vanderkloot*, 392 Mich 159; 220 NW2d 416 (1974)." (County of Delta v. Michigan Dep't of Natural Resources, 118 Mich. App. 458, 462; 325 N.W.2d 455, 457, 1982.) (Emphasis Added)**

Here, the Village of Lake Orion DDA Board was long ago created. The language set forth in MCL 125.4204 is clear that each of the current members of the Village of Lake Orion DDA Board shall serve until their term expires. This is mandatory. The Village of Lake Orion Council cannot prematurely terminate the current DDA Board members' terms.



Robert Charles Davis