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Dear Mayor and City Council members,

The purpose of this letter is to provide the council with clarity on options for the makeup of the Zoning Board of Appeals. The Zoning Enabling Act specifies the formation and allowable makeup of the ZBA. Under Section 125.3601(2) of the ZEA, "the legislative body of a city or village may act as a zoning board of appeals and may establish rules to govern its procedure as a zoning board of appeals. This is the current makeup of the City of Mackinac Island ZBA which is specified under the City's Zoning Ordinance. Section 22.01 specifies that the Zoning Board of Appeals shall consist of the city council. Under Section 125.3601(3) of the ZEA it is permissible for a planning commission member to be on the ZBA, unless the legislative body acts as the zoning board of appeals under subsection (2). Because of this, Council member Myers, who sits on the planning commission does not sit on our ZBA.

The ZEA specifies that in a local government with a population of fewer than 5,000 people shall be composed of not fewer than 3 members. The current voting members of the ZBA is 5. The city is certainly in compliance with state statute as the ZBA currently stands, but this letter is meant to clarify the options of the city for the ZBA makeup:

1. If the city council wishes to continue as the ZBA, and wishes to continue to have a council member sit on the planning commission, the ZBA makeup can continue with the 5 members of city council who are not members of the planning commission acting as the ZBA.
2. If the city council wishes to continue as the ZBA, but wishes that all 6 council members are sitting members of the ZBA, the council may choose to not have a member of the council sit on the planning commission.
3. If the city council wishes to appoint a separate ZBA that is not the legislative body, it may do so. Those members shall be appointed by majority vote of the city council members. Such a body may include one member of the planning commission and one member of the city council.

One reason this question arose was the difficulty in reaching a 2/3 vote on certain matters, like a variance request, when members of the ZBA are absent or need to abstain for conflict-of-interest reasons. Under Section 125.3601(7) the city council has the option to appoint to the ZBA not more than 2 alternate members for the same term as regular members. An alternate member may be called as specified in the zoning ordinance to serve as a member of the zoning board of appeals in the absence of a regular member if the regular member will be unable to attend 1 or more meetings, or to reach a decision on a case in which the member has abstained for reasons of conflict of interest. In such a case, the alternate member