

Village of Mukwonago
Notice of Meeting and Grutzmacher Collection Committee Agenda

LIBRARY BOARD OF TRUSTEES MEETING
Thursday, August 4, 2022

Time: **3:00 pm**

Place: **440 River Crest Ct, Mukwonago, WI 53149**

- 1. Call to Order**
- 2. Roll Call and Introduction of Guests**
- 3. Discussion/Action Items**
 - 3.a History and Introduction
[Grutzmacher Collection Information for Meeting of the Boards 20220804.pdf](#)
 - 3.b Explanation of NAGPRA
Jan Bernstein of Bernstein and Associates will explain the Native American Graves Protection and Repatriation Act (NAGPRA) and their role as a hired consultant.
 - 3.c Discussion About Potential Donation
Discussion between members of the Boards regarding questions and concerns each party has about the potential change in ownership of the Grutzmacher Collection.
- 4. Referral Items**
- 5. Confirm Next Meeting Date**
- 6. Adjourn**

It is possible that a quorum of, members of other governmental bodies of the municipality may be in attendance at the above stated meeting to gather information. No action will be taken by any governmental body at the above stated meeting other than the governmental body specifically referred to above in this notice. Please note, upon reasonable notice, efforts will be made to accommodate the needs of individuals with disabilities through appropriate aids and services. For additional information or to request this service, contact the Municipal Clerk's Office, (262) 363-6420.

Grutzmacher Collection Information Packet

Prepared for Mukwonago Community Library Board of Trustees and Mukwonago Historical and Museum Society

Committee Meeting of the Boards August 4, 2022

Purpose: This packet of information was prepared to help both parties understand the history, current state of, and potential future for the Grutzmacher Collection. It will both provide information and guide the committee members through their discussion.

A Brief History

In 1965 Arthur Grutzmacher, a decades-long artifact collector and dealer, willed his “Indian relics, arrowheads and show cases” as well as \$25,000 to the Library “to be administered as the Library Board sees fit and proper.” (See Appendix A for photos). The artifacts—a wide and varied collection that includes Native American artifacts, Grutzmacher’s own catalogs and drawings, Civil War era money and medals, and photographs—has colloquially often been referred to as the “Grutzmacher Collection” for the decades since the gift to the Library. (See Appendix B “Grutzmacher Will and Testament”)

In a related clause of his will, Grutzmacher also stated to “give, devise, and bequeath all of my real estate located in the Village of Mukwonago” to the Village Board to use “as they see fit.” No historical society had not yet been formed. Soon after Grutzmacher’s death, the Mukwonago Community Commission petitioned the Village Board and Library Board to consider purchasing the “Andrews-McNulty property” for purposes of displaying the “Indian artifacts donated to this village by the late Mr. Grutzmacher.” (See Appendix C “Petition to Purchase ‘Andrews-McNulty property’”) This property, now colloquially referred to as the “Sewall Andrews house” or “red brick house” became the Red Brick Museum. For five years after Grutzmacher’s death, his collection was stored in the basement of a Citizen’s Bank until the “Red Brick House” was purchased and readied to showcase his “relics.” In 1969 the Mukwonago Historical and Museum Society (MHMS) formed and in August 1970 the doors opened and the public was able to view the collection.

Eventually the bulk of Grutzmacher’s collection was displayed in the Red Brick Museum and still remains on display to this day. In 2015, part of the collection was returned to the Library for storage. In 2018, a lockable steel cage was purchased to store these items. Most of the Native American artifacts in the Library’s basement are not considered to be of a high enough quality to display and the rest of the collection that is non-Native American artifacts resides solely in the basement.

In 2021, the Library Director and Library Board began an investigation into the entire Grutzmacher Collection with the intention of understanding the complex history, the need to

fulfill NAGPRA requirements, and the potential to donate the collection to MHMS. In October 2021 the Library Board approved an initial donation agreement and then, discovering that NAGPRA requirements and basic inventory needed to be met before a donation could occur, continued their work to determine how best to handle the collection. After contact with MHMS, the Waukesha County Historical Society, the Wisconsin State Historical Society, Jan Bernstein of Bernstein and Associates, and their own legal counsel, the Library Board decided in May 2022 to engage the services of Bernstein and Associates for \$44,320 to conduct a complete NAGPRA summary and inventory, being advised that conducting the inventory work and publishing the summary to National NAGPRA would appropriately satisfy their obligations as owners and could potentially mean the collection could get donated.

After nine months of exploration and now knowing more about the legal necessities, the complicated history of the collection in the Village, the logistics of storage and maintenance of this collection, and the sensitive nature of sacred Native American objects, the Library Board created a committee to meet with MHMS to discuss the future fate of the collection. On August 4, 2022, the Grutzmacher Collection Committee of the Library Board and the Executive Committee of MHMS convened to start to discuss both parties' questions and concerns over the legal, fiscal, political, and logistical ramifications of a potential change in ownership of this collection.

Care, Custody, and Control

One of the most confusing issues about the Grutzmacher Collection is that the ownership of the collection is different from the entity that has taken care of the bulk of the collection. Additionally confusing is that "the Grutzmacher Collection" is physically in two separate locations. A useful term for understanding this is "care, custody, and control."

- The Library Board of Trustees owns the Grutzmacher collection, and therefore has the responsibility to provide insurance to all items in the collection, no matter what building they reside in. They also have the responsibility to ensure the safety, security, and basic museum maintenance of the collection at all times, whether this is themselves providing storage or display space or working with another organization to store or display the collection.
- Since the 1970's when the Red Brick Museum opened, the Library Board of Trustees has loaned part of the Grutzmacher Collection to the MHMS to display. That part of the collection is under the "care, custody, and control" of MHMS. They house it, display it, maintain it, and work with the Village to ensure it is stored securely.
- The Village owns the Red Brick Museum building and are therefore responsible for providing insurance for the building just like any other building they own. However, MHMS owns the collections (except the Grutzmacher Collection) and is a separate, non-profit entity who maintains their own insurance for their governing Board and their own collection items. When a collection is loaned to museum, the museum typically alerts its own insurance company that this loaned collection is now under their "care, custody, and control" which is why a formal loan agreement needed to be created, ensuring all insurance providers understand what is covered and how.

- The Library Board of Trustees owns the part of the Grutzmacher Collection that is housed in the Library's basement. Because that part of the collection is under the "care, custody, and control" of the Library, it is the responsibility of the Library Board to ensure it is properly insured and stored.

What is NAGPRA?

The Native American Graves Protection and Repatriation Act (NAGPRA) is a federal law enacted in 1990. From the nps.gov website:

Since 1990, Federal law has provided for the repatriation and disposition of certain Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony. By enacting NAGPRA, Congress recognized that human remains of any ancestry "must at all times be treated with dignity and respect." Congress also acknowledged that human remains and other cultural items removed from Federal or tribal lands belong, in the first instance, to lineal descendants, Indian Tribes, and Native Hawaiian organizations. With this law, Congress sought to encourage a continuing dialogue between museums and Indian Tribes and Native Hawaiian organizations and to promote a greater understanding between the groups while at the same time recognizing the important function museums serve in society by preserving the past.

Not all Native American items need to have NAGPRA compliance; only those objects that are funerary or sacred in nature. Especially because we don't have the original inventory, it is extremely hard to say where any of these objects came from, which is why it is vital to have a trained consultant identify these objects. As far as the Library is aware, there are no human remains in the Grutzmacher Collection, so Bernstein and Associates will be focused on identifying any funerary or religious objects.

There are two basic "parts" to NAGPRA. Here is a brief summary from nps.gov:

- 1) *Each museum and Federal agency must compile an Inventory of Native American human remains and associated funerary objects and a Summary of other cultural items. A museum or Federal agency must ensure that these requirements are met for any Native American cultural item under its legal control regardless of where the cultural item is physically located.*
- 2) *Museums and Federal agencies must:*
 - *Consult with lineal descendants, Indian Tribes, and Native Hawaiian organizations,*
 - *Evaluate repatriation or disposition requests for cultural items, and*
 - *Give public notice prior to repatriating or transferring.*

The Library has already committed to the Inventory and Summary portion by contracting the services of Bernstein and Associates and is willing to consider donating the collection after this is completed to MHMS if they are willing to undertake the responsibilities in the second "part." The Native American Tribes do not have a deadline for contacting a museum over repatriation, and therefore MHMS would always have to be available for contact.

Timeline of Significant Events Pertaining to Today's Meeting

- 1965 – Arthur Grutzmacher donates the collection to the Library Board. No known inventory of exactly what was in the donation has been found.
- 1969 – Historical Society (MHMS) formed.
- 1970 – Red Brick Museum, run by MHMS, opens to the public. Library Board minutes show that the Library loaned the Grutzmacher Collection for display.
- 2011-2012 – MHMS hired Bernstein & Associates to aid in the assessment of the *museum-owned* collections for compliance with NAGPRA. MHMS contacted the Library and advised of the issue, but the Library did not take action regarding NAGPRA.
- 2015 – A portion of the Grutzmacher Collection is transferred back to the Library for storage.
- 2016 – MHMS publishes its NAGPRA summary to National NAGPRA regarding its own Native American collections.
- 2018 – MHMS undergoes appraisals to be able to insure their collections, realizing that the Native American collections (including the loaned Grutzmacher Collection) had never been insured. At this time, the part of the Grutzmacher Collection on display at the Red Brick Museum is appraised at the cost of MHMS and without the Library's knowledge.
- 2020 – Under advisement of MHMS, the Library has an appraisal completed on the part of the Grutzmacher Collection housed in the Library's basement.
- July 2021 – Henry Hecker presented to Library Board about the Grutzmacher Collection and the outstanding issues (including insurance and NAGPRA) that he advises should be addressed.
- August-September 2021 – The Library Board investigates the potential to donate the Grutzmacher Collection to MHMS.
- October 2021 – The Library Board approves a formal donation agreement. They immediately thereafter learn that they may need to complete all or parts of NAGPRA in order to donate the collection. Additionally, legal counsel stipulated that a complete inventory needed to be appended to the donation agreement, and that document was not readily available. The donation agreement, though signed, is put on hold as the Library Board investigates. They appoint the Library Director and Library Board President as representatives to research and bring back more information.
- November 2021 – February 2022 – The Library Board representatives contact MHMS, the Waukesha County Historical Society, the Wisconsin State Historical Society, Jan Bernstein of Bernstein and Associates, and their own legal counsel for expert guidance on correctly handling the issue. The representatives learn that there is no complete inventory of the collection—a matter complicated by Henry's admission in July 2021 that "some merging of items over the last 50 years with other collections due to personnel turnover and display re-arranging" left an uncertainty to which items belonged to the Grutzmacher Collection—and discovered that it was inadvisable and unfavorable to all parties involved to donate the collection before conducting at least the first part of NAGPRA. During this time, the representatives also worked with MHMS and the Village to determine how to insure the collection.
- February 2022 – The Library Board paid MHMS a \$599.38 reimbursement for appraisal costs incurred in 2018 in order to obtain the complete appraisal document. The Library now

has all appraisal documents, but still no inventory.

March 2022 – The Library Board purchases insurance for the entire collection as a fine arts rider to the Village building insurance the Library building is already covered under.

April 2022 – Understanding that getting to the point of donation could take a lot longer than was originally anticipated back in October 2021, the Library Board approves a formal loan agreement to send to MHMS for consideration. Until this point, there had been no loan agreement or inventory for either party to work from.

May 2022 – Library Board approves a \$44,320 contract with Bernstein & Associates (B&A) to conduct a full NAGPRA inventory and summary. The Library Board representatives work with B&A to determine a timeline, and August 9 through August 21, 2022 is selected for this work. The Library Board representatives work with MHMS to ensure access to the collection for NAGPRA compliance during this timeframe. MHMS assigns subcommittee to discuss the potential Grutzmacher Collection donation with the Library.

June 2022 – After negotiations by the Library Board and MHMS representatives on the finer points of the loan agreement, the loan agreement is signed by both parties by the end of June. This marks the first time in the history of the Grutzmacher Collection that a formal agreement between the organizations was recorded and mutually approved. The Library Board creates the Grutzmacher Collection Committee to discuss the potential donation with MHMS.

August 4, 2022 – For the first time ever, the Library Board and MHMS Executive Board meet, with the goal of discussing the questions, logistics, and legal ramifications of potentially changing ownership of the Grutzmacher Collection.

Issues with the Collection

The complicated history of this collection has led to several issues that have had significant implications to this process. As there is no way to fix what happened in the past, the Library Board and MHMS have determined to take the current reality at face value and work from hereon forward to do what is best for the collection, the Mukwonago Community, and the Native American community.

- 1) **Lack of Inventory** – The original donation by Arthur Grutzmacher to the Library did not contain an original inventory and many simply referred to it collectively as a collection. MHMS and the Library have faithfully maintained the collection and to no one's knowledge have any items been sold, lost, or damaged. The appraisals, done well into the 21st century, capture the clearest "inventory" so far, but are not the same as a clear inventory as the appraisals state things like "several pestles" and "est. 45 arrows, broken." These vagaries mainly are found in the appraisal of the items in the basement as they are lower quality. However, as people turned over at the Library and MHMS and as items were moved, it's impossible to tell what was actually the original collection. On top of this, because there is no original inventory, it is very difficult to tell the "provenance" of the pieces and therefore an expert familiar with this process is needed to identify which Native American Tribes need to be contacted. The NAGPRA Inventory and Summary process will create a clear list to go forward with and will be a key legal document for whomever possesses the collection in the future.

- 2) **Native American Graves Protection and Repatriation Act (NAGPRA)** – This federal law pertains to the Library since it directly accepted federal funding in 2020 during the COVID-19 pandemic in the form of CARES grant money. NAGPRA is a formal process intended to help and protect both the owners of the collection and any Native American Tribes who wish to examine or repatriate items and cannot be substituted with informal contact or non-expert analysis. The Library Board feels strongly about appropriately and respectfully complying with NAGPRA and fully recognizes the financial burden that will incur.
- 3) **Physical Storage** – The best approximation of the size of this collection is about 15,000 items which range widely in content. Many of the Native American items are stone (i.e. “lithics”) which means the collection is heavy and hard to move. The objects are not organized appropriately (specifically in the aesthetically-designed but non-classified cases) and would need to be curated appropriately, bringing items from similar provenances together across the entire collection. It doesn’t just include Native American items, but also includes photographs, catalogs, Civil War era money, and more. None of these other items fall under any type of local, state, or federal protections and therefore do not need special legal treatment like the Native American items need under NAGPRA. All together, whomever owns this collection must have the space needed to appropriately display and store everything.

Points of Discussion

The following are major points of discussion that both Boards need to talk about and ultimately come to a consensus upon before any ownership change. This list was created by listening to questions and concerns by both parties; there will be more questions that occur during the discussion and this should not be considered an exhaustive or authoritative list but merely an organized entry to discussion.

- 1) It’s been a long process and this is all very confusing, so it’s understandable if either party has questions or concerns with the basic concept of ownership transfer.
 - a. Library Board, would you like to still donate the collection?
 - b. MHMS, would you still like to consider accepting this donation?
- 2) Does either party have a “dealbreaker” that would prevent them from proceeding?
 - a. Library Board “dealbreakers”?
 - b. MHMS “dealbreakers”?
- 3) If the Library donated the collection to MHSM, who would be responsible for the repatriation portion of NAGPRA? The Library’s position is that a donation transfer would transfer all responsibility to MHMS.
- 4) If the Library donated the collection to MHSM, where would the collection be housed? What are the current physical limitations of the Red Brick Museum that might impact

display and/or storage? The Library is concerned that items would remain in the Library's basement.

- 5) The Library Board's original timeline is to donate the collection after the NAGPRA summary is published to National NAGPRA, likely in late September (see Appendix D).
 - a. Is this acceptable to MHMS?
 - b. Is MHMS prepared to do the initial consultations and respond to any repatriation request?
 - c. Is MHMS prepared to bear the potential fiscal and time burden in taking on a collection with a published NAGPRA Summary and Inventory?
- 6) MHMS is concerned about the permanency of the donation. The Library Board has obtained clarification from their legal counsel regarding this statutory clause (see Appendix E). Does MHMS have further questions or concerns?
- 7) MHMS is concerned about what their obligations would be regarding NAGPRA. These include concerns over workload, financial costs, potential penalties, and loss of items through repatriation.

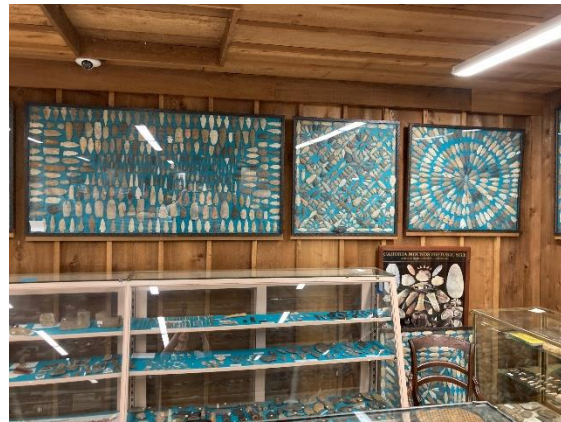
Appendix A

A Sample of Photos of the Grutzmacher Collection Today



(Above) Items stored in the cage in the Library's basement. Originally stored in plastic Tupperware and wooden ammo boxes. Plastic can leach into collections (even stone "lithics"), so MHMS Vice President Jeff Vanevenhoven and Library Director Abby Armour donated 11 hours of their time in early 2022 to begin transferring them into stainless steel containers and organizing them.

(Below) Cases and frames on display in the "Indian Room" at the Red Brick Museum. All Grutzmacher Collection items at the Red Brick Museum are on display and available for public viewing.



Appendix B

Grutzmacher Will and Testament

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LAST WILL AND TESTAMENT OF ARTHUR D. GRUTZMACHER

I, Arthur D. Grutzmacher, of the Village of Mukwonago, Waukesha County, Wisconsin, being of sound mind and memory and not acting under fraud, duress, or undue influence do hereby make, publish and declare this my last will and testament, hereby revoking all former wills and codicils by me made.

First. It is my will that the funeral expenses, expenses of administration and all my just debts be paid out of any property of which I may die seized.

Second. I give, and bequeath the sum of Ten Thousand and no/100 (\$10,000.00) Dollars unto my niece Van Vey Zweifel of La Crosse, Wisconsin, if she be living at the time of my death. If my niece Van Vey Zweifel shall predecease me, then I give, devise and bequeath this share unto her surviving child or children, in equal shares, share and share alike.

Third. I give and bequeath the sum of Five Thousand and no/100 (\$5,000.00) Dollars unto my niece Janice Erichsen, formerly of Mukwonago, Wisconsin and now residing in Texas. In the event that my niece Janice Erichsen shall predecease me, then I give, devise and bequeath this share unto her surviving child or children, in equal shares, share and share alike.

Fourth. I give and bequeath the sum of Twenty-Five Thousand and no/100 (\$25,000.00) Dollars, together with all my Indian relics, arrowheads and show cases unto the Mukwonago Public Library to be administered as the Library Board sees fit and proper and to be used for books, supplies, expansion, improvements or maintenance.

Fifth. I give, devise and bequeath all my real estate located in the Village of Mukwonago unto the Village Board of the Village of Mukwonago to be used for village purposes or to be sold by them and the funds used for such village projects as they may see fit.

Sixth. I give and bequeath all the rest, residue and remainder of my property unto my nephew John Grutzmacher of Mukwonago, Wisconsin, if he be living at the time of my death. If my nephew John Grutzmacher be not living at the time of my death, then I give and bequeath this portion of my estate unto his surviving child or children, in equal shares, share and share alike.

Sixth. I nominate and appoint L. W. Hause executor of this my last will and testament and I request and direct that he shall be required to furnish no official bond. I hereby authorize and empower him to handle my property and estate in such manner as he may see fit and not under the supervision of any court, except to make such reports as the law may require. I hereby authorize and empower him to handle, mortgage, lease or sell all or any part of the estate at such price and upon such terms and conditions as he may see fit, and, for these purposes he is authorized and empowered to execute such deeds, bills of sale or mortgages as may be necessary.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 16th day of January, 1965.

Arthur D. Grutzmacher (SEAL)
William F. Kingston
Shirley Kingston

FEB 25 1965

Appendix C

Petition to Purchase "Andrews-McNulty property"

to whom it may concern,

The purpose of this letter is to inform your organization of the intention of this committee to present to the Village Board and the Library Board, a request that they look into the possibilities of purchasing the Andrews-McNulty property, to be used not only as a museum but restore to a certain extent the nostalgic history of this home; a home which has witnessed the unfolding of almost the entire history of Mukwonago.

This house, the first brick building in Waukesha County, has historical value in its own right. It would be an ideal place to display the Indian Artifacts donated to this village by the late Mr. Grutzmacher--Indian artifacts which are now stored away in the basement of the citizens bank.

We ask that you as individuals, give some serious thought to this project to see where your personal thoughts stand in this regard.

Should your organization have a discussion on this subject, an opinion from you would be appreciated.

This request, with signed petitions, will be presented to the Board on October 4th. Any representation of interested personnel are invited to attend this meeting.

Signed, Mukwonago Community Commission

Marge Wright
Margo Wright, Secretary

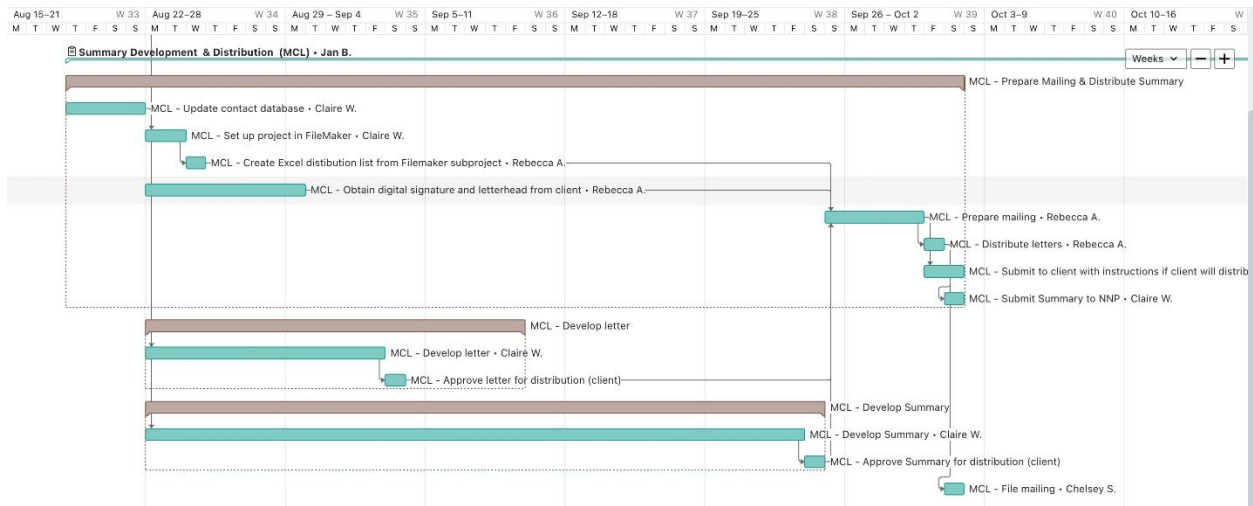
Committee:

Mr Leo Mitten
Mrs Henry Hauser
Mrs DeEstin Wright
Mr David Scheel

This letter was composed by the signer and sent to all organizations in Mukwonago in 1965. Here is where all this started.

Appendix D

NAGPRA Timeline from Bernstein and Associates



Appendix E

Memo from Attorney Gralinski Regarding Library Position on Grutzmacher Collection Donation

720 Clinton Street
P.O. Box 766
Waukesha, WI 53185

**Hippenmeyer, Reilly,
Blum, Schmitzer,
Fabian & English S.C.**

Memo

To: Abby Armour, Library Director

From: Attorney Matthew Gralinski

Date: July 27, 2022

Re: Mukwonago Community Library Positions on Grutzmacher Collection Donation Agreement

Dear Abby:

It is my understanding that committees assigned by the Mukwonago Community Library and the Mukwonago Historical Society and Museum will be meeting to discuss ongoing negotiations related to the donation by the Library to the Museum of the Grutzmacher Collection. In anticipation of that meeting, you have requested our office prepare a memorandum clarifying and articulating the Library's positions with respect to several outstanding matters related to this Agreement. Please allow this memorandum to serve as a response to your request.

I would note, however, that this office represents the Mukwonago Community Library Board in this matter. Thus, this memorandum is not meant to provide legal advice to any other party, including the Museum. Rather, this memorandum is meant to articulate the Library's position on several outstanding items related to this negotiation. The Museum should of course consult with their own independent counsel during the course of these negotiations, and after the review of this memorandum.

First, I would like to address the issue of Wisconsin Statute Section 43.58(7), relating to the requirements set forth therein for transfers of items which have been previously gifted or donated to the Library. Section 43.58(7) sets forth several requirements which must be satisfied before the Library recipient of a gift can transfer any part of that gift to a charitable organization. Namely, the statute requires that, after transfer of the collection from the Library to the Museum, the Library retains the right to request in writing from the Museum the disbursement of any portion of the collection back to the Library. The assets disbursed back to the Library are retained under the Library's control once returned to the Library. Because the Library has the authority to request the disbursement of any portion of a gift previously donated to it, it necessarily follows that the transferee, here the Museum, should not have the ability to transfer, convey, or otherwise encumber the items in their possession under the Donation Agreement such that the Museum would not be able to return or disburse those items upon request of the Library as allowed by statute.

There seems to be some confusion as to the requirements of Section 43.58. The statute does not require the donee cede day-to-day operation or maintenance of the collection to the donor. The statute does not provide for a “temporary” donation scheme. A donation can occur, however, the right to disbursement and limited control, as set forth and limited by Section 43.58(7), must be provided for in the Agreement.

Understanding that the language as previously proposed in a draft Donation Agreement as to compliance with Section 43.58(7) may have given the wrong impression, our office has revised the Donation Agreement as to that language and other areas. I provide a copy of that revised Agreement along with this memorandum for the committee’s consideration.

It is my understanding the Museum has requested the authority to curate the collection while in its possession. The Museum has also requested a reciprocal clause in section 4 of the draft Agreement providing for a right of first refusal on the collection. Again, the requirements of Section 43.58(7) do not require the donee, here the Museum, to cede the day-to-day control of the collection to the donor. Thus, the Agreement can provide for the curation authority as requested, provided that curation does not impact the Library’s ability to request a disbursement of the collection under Section 43.58 nor interfere with the NAGPRA compliance process.

As to the Museum’s request for a “right of first refusal on the collection” in the event of the dissolution of the Library Board, I must confess that I am confused as to the rationale for this request. Any concern that the Mukwonago Community Library, an extension of a Wisconsin municipal corporation, would suddenly dissolve seem to be unfounded. Additionally, as the Library is in possession of the Grutzmacher Collection due to a bequest by Will, the Library holds the collection essentially in trust under the conditions of that gift. That fact, combined with the requirements of Section 43.58(7), seem to preclude the type of right of first refusal to a third-party even if the Library was inclined to grant such a right to the Museum. In other words, this request seeks to remedy an issue that is unlikely to exist, but also seeks to contract around a statutory requirement. The latter is something which is impossible to do.

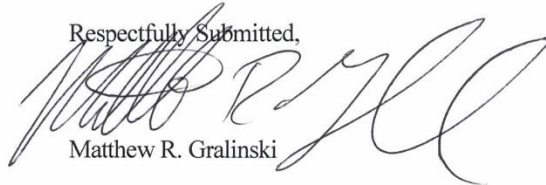
There also seems to be some confusion as to the timing of the donation, and how that interfaces with the ongoing NAGPRA compliance review process. To be clear, there is nothing preventing a donation occurring before the total completion of the NAGPRA process. The position taken by the Library at the outset of these negotiations was that further information needed to be gathered as to the NAGPRA compliance process, so that both parties could be fully informed before proceeding with the donation. Now that that process has been initiated, it is up to the parties to determine when they would like the donation to occur, given the backdrop of the NAGPRA process and the information available to both parties.

This leads directly into my final point, dealing with the obligations of each party with respect to NAGPRA compliance and follow through post-donation. This is an item that will have to be discussed amongst the parties, as it is my understanding that that has not yet occurred. Any Donation Agreement should clearly spell out the obligations of both parties with respect to ongoing NAGPRA compliance, and to follow through with the consulting/compliance process also initiated. At the outset, the Library would take the position that the Library’s NAGPRA compliance obligations should cease at the donation of these items and the assignment of the Consulting Agreement to the Museum. Again, despite the confusion over what Section 43.58(7) requires, the donation of these items is not a

temporary arrangement. Yes, the Library does retain some control and disbursement rights to the collection, but that does not require an ongoing obligation on the part of the Library. Thus, the initial draft enclosed with this memorandum of the Donation Agreement sets forth the responsibilities of each party with respect to the Consulting Agreement with Bernstein & Associates as well as ongoing NAGPRA compliance. This draft would require the Consulting Agreement be assigned, upon written approval of Bernstein & Associates of course, to the Museum and that the Museum would follow through and be responsible for any NAGPRA compliance, including repatriation and facilitation of the same, post-donation. It is my understanding that the committees will discuss this matter further, but it should be clear what the enclosed draft provides from the Library's perspective.

Again, this memorandum is meant to articulate and clarify the Library's position and understanding of these various topics as raised by the Museum previously. The above does not represent independent legal advice and should not be construed as providing the same. Thank you for your attention to these comments.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Matthew R. Gralinski', written in a cursive style.

Matthew R. Gralinski

MRG/ma
Enclosure