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May 28, 1976

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ROBERT M. PRINCE
OF COUNSEL

Lee W. Alberts, Esq.
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Dear Win:

I have your thoughtful letter of May 20th and your draft memorandum concerning charges to land developers for legal services. I am generally in agreement with this memorandum, although I am quite reluctant to see legal fees paid by citizens or property owners, as discussed below.

Responding to the preliminary recommendations, I would comment as follows:

No. 1. I agree and further note that the prohibition is a general one and not limited to land use matters.

No. 2. As to this proposal, I have examined the Illinois Code of Professional Responsibility and do not find any direct conflict. At the same time I observe a statement that "if a lawyer is compensated from a source other than his client, he may feel a sense of responsibility to someone other than his client." In this general connection I am attaching a copy of Ethical Considerations EC 5-21 and EC 5-22 under the heading of "Desires of Third Persons". Under

Lee W. Alberts, Esq.
May 28, 1976
Page 2

all the circumstances I am willing to agree to the proposal in order to alleviate the rather serious financial problems of the Village provided that no contingent fees are involved, and provided that arrangements with the land owner are made by a Village official to whom I can report and be responsible.

No. 3. I agree fully with this and emphasize that Village expenses can be reduced by compliance with this suggestion.

Nos. 4 and 5. I agree with these two suggestions. We perhaps should consider whether the question should be referred to the Village Attorney by a Village official before the attorney answers any questions directly to the public. Such a rule would screen out inappropriate requests, although it might be a difficult rule to enforce.

No. 6. I am most agreeable to sending a copy of any written opinion to the appropriate Village officials, and this has always been my custom. I believe that No. 6 goes beyond this, however, and suggests a written memorandum on any oral opinions or information. I am not sure that the latter is a workable proposal. A citizen, or a real estate dealer, for example, may call and ask what the side yard requirement is in the 5 acre zone. A question like this I might well answer without knowing any facts beyond the requirement and possibly without a complete name and address identification of the person I am talking with. On other occasions, the questions are more complex but whenever they are, I avoid giving any definitive oral answers. In most cases the facts will not be presented to me (especially by telephone) in any complete or understandable way and often I tell people that if they want any advice, they will have to send me a survey or other diagram, etc. I may refer to the general problems which appear to be involved. If anyone quotes me as having given oral approval to anything other than a very straightforward

Lee W. Alberts, Esq.
May 28, 1976
Page 3

question, the chances are that I am being misquoted or misinterpreted. Most frequently when questions arise at all, they will involve variations by the Zoning Board or the Plan Commission in order to give any solution. With respect to variations I am exceedingly careful to state that the decision is strictly up to the Board involved, and that I have no way of predicting what the outcome will be. The only exception to this would be instances where very large variations are indicated and as to which I might express an opinion that a property owner should anticipate extreme difficulty in obtaining the variation required. The draft memorandum also refers to identification of problems, and I certainly agree that they should be reported in writing whenever any extended or serious consideration is given to them. If this policy were applied to casual telephone inquiries, however, I suspect we would find that the written memos would become a nuisance to the Village Attorney and to the official receiving the information. One final request by the Village Attorney would be for an identification of the official or officials to whom written memoranda should be sent. Do we mean the Secretary of a Board or Commission, the Chairman, or all of the Members?

Very truly yours,



SGC:ja.
Encl.

cc: H. James Douglass
45 Lakeview Road
Barrington Hills, Illinois