

To the PLAN COMMISSION OF BARRINGTON HILLS

The Plan Commission has been asked by the Trustees of the Village to make recommendations with respect to fees for developers and land owners asking for special projects, etc., to be charged in connection with special engineering reviews by the Village Engineer or for legal services rendered by the Village Attorney. Messrs. Douglas and Alberts have been appointed a committee to consider this question with respect to legal fees.

The Village now has, or will presumably promptly adopt, rules that fees of the Village Engineer for services in reviewing plans for subdivisions, special uses, etc., shall be charged back to the petitioner.

With respect to fees of the Village Attorney, the problem is not as easy to resolve. The first consideration is that, as a lawyer, the Village Attorney must have an undivided duty of loyalty to the Village. Clearly he may not represent petitioners and we would regard it as improper for the Village Attorney to accept fees directly from petitioners. If the Village decides to charge petitioners for services of the Village Attorney, the payment should be made to the Village which then pays the Village Attorney.

We have asked two lawyers representing land developers if villages generally charge fees for services of village attorneys.

They report that until recently the villages have not usually charged for the services of their village attorney but that in the last several years the practice of charging for this is spreading. We are informed that currently the Villages of Barrington, Lake Zurich, Roselle and Carol Stream are charging developers for the services of their village attorneys in matters such as annexation, subdivision, special ordinances such as planned unit development ordinances, and other substantial work. We believe this is not the practice for smaller matters such as the division of one ten-acre tract into two five-acre lots.

There are various considerations:

A. Duty of loyalty. If a village attorney knows that his fees are being paid indirectly by the developer, he has in a sense an interest in seeing that the proposal goes through and there can arise the possibility that his loyalty to the village might be diluted.

B. On major projects, such as annexation agreements, substantial subdivisions, etc., the Village has a substantial interest in seeing that its legal position and rights are protected. Traditionally, villages have been unhappy in paying substantial legal fees. In addition, the budget of the Village of Barrington Hills is tight and the cost for the Village Attorney to prepare or review ordinances, etc., can be quite expensive. Our experience is that

attorneys give better service if they are properly compensated.

C. The question of potential conflict of interest has not been proved substantial in other areas. For instance, mortgage lenders, insurance company lenders and bank lenders usually require the borrower to pay the lender's attorney's fee, at least where the attorney is compensated directly as opposed to on a salary basis.

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There is another class of problems on which the Village Attorney's advice is requested on land matters. These are the relatively minor questions of dividing a ten-acre tract into two five-acre lots, often involving the question of average width, frontage, etc. -- or the question of special uses such as lakes -- or the question of setback ordinances or the computations of setbacks, i.e., from the center of the road or the edge of the road right-of-way. Our experience on the Plan Commission and the Zoning Board of Appeals is that it is rarely the case that a petitioner will consult an attorney. This muddies the water, slows down the proceedings, and creates many false issues. Our strong recommendation is that all petitioners should be asked to consult with their own attorneys and the attorneys should be encouraged to read the Village Ordinances. Some attorneys for petitioners have appeared

before Village bodies without, as far as we know, ever having considered the problem at hand in connection with the proper ordinances.

On the "smaller petitions," which usually are filed by residents of the Village, the Village Board should consider whether or not as a matter of public service, it should allow the Village Attorney to consult with petitioners and advise them of the effect of the ordinances. In the ordinary villages this is done by a village administrator, who is a full-time employee and charged with the administration of the ordinances. We do not believe Barrington Hills has or can afford such a person. No charge is usually made for the advice of the village administrator. The advantages to the village of following this routine are that it saves time and confusion before the Plan Commission or the Board of Zoning Appeals; it is a taxpayer service for which the taxpayer has presumably paid through his taxes; it avoids taxpayer irritation; and obviously it guides the development of the village along the Plan adopted by the village and its land use bodies.

Our preliminary recommendations are as follows:

1. The Village Attorney may, under no circumstances, represent anyone other than the Village in, or give any advice in connection with, any matter involving the Village respecting land use except as provided below. In any event, in no case may he accept fees for such services from anyone other than the Village.
2. In connection with substantial matters, the Village should have the right to require that the petitioner reimburse

the Village for the fees of the Village Attorney in connection with such matters. This would include annexation, subdivisions, special ordinances, such as planned unit development ordinances, etc.

3. All petitioners should be urged to be represented by their own legal counsel or engineers or surveyors.

4. The initial contact for questions by petitioners should probably be the Village Engineer. Simple questions of side yards, setbacks, barns, breaking 10 acres into two 5-acre lots, should be settled at this level. The Village Engineer would be authorized to refer legal questions to the Village Attorney.

5. On minor matters (as opposed to the major matters listed in Paragraph 2 above), in cases referred by the Village Engineer, the Village Attorney would be authorized to consult with attorneys for petitioners and advise what, if any, problems exist under the Village Ordinances in connection with land use. This would be without charge to the petitioners.

6. Subject to the decision of the Trustess, our preliminary recommendation is that in cases referred by the Village Engineer on minor matters, the Village Attorney be allowed to consult with individual property owners concerning land use problems involving the Village particularly where the question is one of purely legal interpretation and does not involve "constructive planning." This would usually be without charge to the petitioner.

7. In each of Paragraphs 5 and 6 above where the Village Attorney has been consulted, he must promptly send a written memorandum stating his conclusion and advice to the appropriate Village officials who might be the Plan Commission, the Board of Zoning Appeals, the Building Commissioner, Village Engineer or Trustees. In addition, where he has identified a problem in a proposed petition, he must identify the problem in a memorandum to the appropriate Village officials or bodies. These problems will usually surface at the hearing and it will expedite matters greatly if, for instance, the Members of the Plan Commission or Board of Zoning Appeals have key problems identified for them with tentative or final legal conclusions.

8. The Plan Commission and the Board of Zoning Appeals should not accept oral alleged "quotations" of the Village Attorney by petitioners or their representatives.