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CONFIDENTIAL
ATTORNEY-CLIENT PRIVILEGED

Village President and Board of Trustees
Village of Barrington Hills
112 Algonquin Road
Barrington Hills, Illinois 60010-5199

**Re: Report Concerning John Knight's Allegation of Improper Interference with
the ZBA**

President and Trustees of the Village of Barrington Hills:

The Village received a complaint from John Knight, the Chairman of the Village Zoning Board of Appeals (hereinafter the "ZBA"). Exhibit 1. He alleges in his letter of March 28, 2011 that the Village President improperly interfered with the ZBA, specifically; 1) the Village President without authority removed the attorney attending the ZBA meetings, 2) that the Village President interfered with the "Cell Tower" hearings before the ZBA, 3) that the Village President interfered with ZBA hearings concerning the "Lighting issue" by circulating an email prior to the hearing, 4) that the Village President interfered with the 2010 Hardy Variance Petition 2010, 5) and interfered with the "Commercial Horse Boarding" issue, and 6) failed to timely appoint members of the ZBA upon the expiration of terms. I will address each of these issues with respect to there propriety under the law.

To provide context with respect to the issues presented I will briefly describe the legal framework under with the Village ZBA operates.

Background

The Village of Barrington Hill's is a home rule municipality, which pursuant to the Illinois Municipal Code, created a Zoning Board of Appeals. 65 ILCS 5/11-13 et seq. The role of Village of Barrington Hills ZBA can be separated into two distinct categories, an advisory board and a quasi-adjudicative body. These roles are clearly set forth in the Village Code in Title 2-4-2. The ZBA when hearing appeals and deciding on petitions for variances is acting in its role as a quasi-adjudicative body. When acting as a quasi-adjudicative body, the ZBA must afford the petitioner due process. Due process requires that the parties must have and opportunity to be heard, present evidence and there must be an opportunity for the parties to conduct cross examination. While conducting quasi-adjudicative hearings the ZBA should be acting impartially when hearing the evidence presented by the parties. The ZBA when acting in

its advisory capacity it holds public hearings on various issues and makes recommendations on these issues to the Board.

The Village Code establishes the powers and duties of the Village President at Title 1-5-4 and Title 1-5-5. These powers include the power to appoint the village attorney with the approval of the board. Village of Barrington Hills Code, Title 1-6-6.

Reassignment of Mr. Von Meier

After reviewing the facts pertaining to the reassignment Mr. Von Meier, I have concluded that neither the Village President nor the Village Attorney acted improperly.

First and foremost, the ZBA is not entitled to representation by an attorney, let alone an attorney of their choice. The Village President has the statutory authority to appoint a village attorney with the approval of the board.¹ Further the Village President has the right to select an attorney in whom he has trust and confidence to represent the Village. Mr. Abboud with the approval of the Board appointed the firm of Burke, Warren, MacKay & Serritella, P.C. to represent the Village. Attorney Douglas Wambach serves as the Village Corporate Counsel and any attorneys from his firm that work with the Village serve at his direction. At some point the Village determined that it was necessary for legal counsel to attend the ZBA meetings. Mr. Wambach assigned Mr. Von Meier to this task.

At the February 28, 2011 meeting of the ZBA the Chairman of the ZBA Mr. Knight requested that Mr. Von Meier provide an opinion with respect to the ZBA. Mr. Von Meier immediately gave his opinion on the record. The legal sufficiency of Mr. Von Meier's opinion is irrelevant. Village President Abboud was present at the ZBA meeting on February 28, 2011 and heard Mr. Von Meier's opinion. Based upon what Mr. Abboud heard, he lost his trust and confidence in Mr. Von Meier to represent the Village. On March 1, 2011, Mr. Abboud sent Mr. Von Meier a letter expressing his concerns. Exhibit 2. Mr. Abboud also spoke with the Mr. Wambach regarding his concerns. Mr. Abboud did not direct that Mr. Von Meier be reassigned or terminated. Mr. Wambach then reassigned Mr. Von Meier.

The decision to reassign Mr. Von Meier was made by the Village's Corporate Counsel, Mr. Wambach. He has the absolute right to determine which attorney in his firm will be assigned to attend ZBA meetings and provide legal advice to the Board. Further, I am of the opinion that if a client, in this case the President of the Village loses trust and confidence in his legal counsel, ethically the legal counsel should not continue his representation of that client.

Zoning Board Of Appeals

After speaking with former ZBA Chairman John Knight, Village President Robert Abboud, Village Administrator Robert Kosin, Trustee Joseph Messer, and reviewing the September 17, 2007 ZBA Report of Proceedings, February 28, 2011 ZBA Report of Proceedings, May 16, 2011 ZBA Report of Proceedings, the files concerning the Petition for Variance at 104 Brinker Road (Hardy), the Village Code, the ZBA Rules, and the relevant law, I have determined that Village President Robert G. Abboud did not violate any statute, Village

¹ Village of Barrington Hills Code, Title 1-6-6(A)

ordinance, policy, or act improperly when interacting with the ZBA. More specifically, Mr. Abboud's contacts with the ZBA did not violate the Open Meetings Act. I will address each of the allegations in Mr. Knight's complaint individually.

1. Cell Tower Hearings

The ZBA conducted hearings regarding cell towers in 2007. These hearings were conducted in the ZBA's advisory capacity. First and foremost it should be noted that there are no rules of the ZBA, or of the Village, which regulate public discussion prior to the beginning of a ZBA meeting. Mr. Abboud is subject to the same rules as any member of the public with regard to his activities prior to the ZBA meeting. Further, there is no statutory prohibition against the Village President, or any elected official from addressing citizens prior to the beginning of any open meeting. In addition, the Village President has the same rights as any other citizen to address the ZBA during an open meeting, including questioning of witnesses at a hearing, as any member of the public.² Statements by the Village President prior to the ZBA meeting and during an open meeting were not improper.

2. Lighting Issues

Mr. Knight alleges that Mr. Abboud improperly interfered with the ZBA's hearings concerning the text amendment to Village Code concerning lighting. The ZBA was holding hearings in its advisory capacity on this matter. His complaint specifically alleges that Mr. Abboud's email of October 18, 2009 was improper. Exhibit 3. There is no prohibition against any elected official from stating his position on any matter before the ZBA or any other public body. Mr. Abboud's First Amendment right to exercise free speech are not extinguished by taking public office. He has the same rights as any other citizen in expressing his opinion concerning the lighting issue. Mr. Abboud's action in sending his email of October 18, 2009 was not improper and did not violate any law or ordinance.

3. Hardy Variance

Mr. Knight alleges that the Village President improperly interfered in the Hardy Variance Petition in the fall of 2010. One of Mr. Knight's allegations is based upon an ex-parte conversation between Mr. Knight, Mr. Messer, and Mr. Abboud. The law concerning this matter is that a member of an adjudicative body should not engage in ex-parte conversations for the benefit of one party and outside of the record of proceeding.³

In this case, prior to Mr. Knight having an ex-parte communication with Mr. Messer and Mr. Abboud, he obtained a legal opinion for one of the village's attorneys and was advised as to how he could lawfully proceed. Both Mr. Abboud and Mr. Messer state that the purpose of this call was to discuss their concern about the slow rate at which the ZBA was processing files, including the Hardy variance. Both Mr. Abboud and Mr. Messer also reported that Mr. Knight,

² People ex rel. Klaeren v. Village of Lisle 316 Ill.App.3d 770, 737 N.E.2d 1099, 250 Ill.Dec. 122 (Ill.App. 2 Dist.,2000)

³ Waste Management of Illinois, Inc. v. Pollution Control Bd. 175 Ill.App.3d 1023, 1043, 530 N.E.2d 682, 697, 125 Ill.Dec. 524, 539 (Ill.App. 2 Dist.,1988)

in conversations with them, suggested that if he was reappointed as chairman of the ZBA files would be processed more quickly and that if he was not reappointed he did not know what would happen. Mr. Abboud felt that he was being extorted to reappoint Knight.

If any impropriety occurred, it would be that Mr. Knight, as a member of an adjudicative body (the ZBA), engaged in an ex-parte conversation with a third party. However, in this case even if the ex-parte conversation was improper, there was no prejudice to any party, as the Petitioner withdrew this petition.

Mr. Knight also asserts that Mr. Abboud during an open meeting of the ZBA concerning the Hardy Petition for Variation offered Village resources to resolve the dispute between private property owners. Village President making statements and offering village assistance to resolve an issue during an open meeting is not improper interference with the operation of the ZBA. The Village President's statements violated no statute, ordinance, or rule.

4. Commercial Horse Boarding – Amendment of Home Occupation Use

The ZBA was holding meetings to discuss an amendment to the zoning provisions of the Village Code concerning the boarding of horses on residentially zoned property. Mr. Knight makes the allegation that Mr. Abboud interfered with the ZBA hearing on this matter which resulted in no public notice being given for several hearings. There are four methods by which amendments of the Zoning Code are brought before the ZBA.⁴ Proposals for a text amendment can be made 1) by a trustee, 2) the ZBA, 3) the enforcement officer, or 4) a person having an interest in property. Regardless of the method followed to adopt a text amendment, the ZBA has the responsibility for causing public notice of its hearings to be published. Historically, the ZBA would direct the Village Staff to make its publications. In this case, the ZBA did not direct the Village Staff to publish notices of hearing, for meetings which Mr. Knight claims did not have proper public notice. The Staff reported Mr. Abboud did not interfere with the publication of any notice. Mr. Knight's claim appears to have arisen due to confusion over the process followed for initiating a text amendment, not the intentional actions of any person.

The allegation that Mr. Abboud improperly interfered with the text amendment process is unfounded and wholly without merit.

5. Appointment of ZBA Members

The appointment of ZBA members is made pursuant to the Villages Code.⁵ The Code provides for the appointment of 7 members to the ZBA and that terms of the members be staggered. The Code specifically provides that "*The members of the board shall serve, respectively, for the following terms, or until their respective successors are appointed.*" Village of Barrington Hills Code Title 2, Chapter 4, Section 1. It is undisputed that terms of some ZBA members expired and they were not replaced. This is clearly provided for in the Villages Code and is not improper. The decision of the Village President and the Village Board to not replace a ZBA member upon the expiration of his/her term is a public policy decision of a legislative body well within the scope of the Board's authority. It was the intent of the Village President make

⁴ The Village of Barrington Hills Code Title 5-10-6

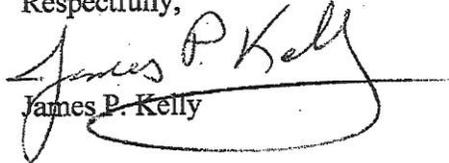
⁵ The Village of Barrington Hills Code Title 2-4-1

appointments coinciding with the fiscal year, and that terms would be staggered pursuant to the Village Code. There was no improper action by the Village President or the Village Board.

Conclusion

I find that Mr. Abboud did not act improperly as alleged. The reassignment of Mr. Van Meier was solely the decision of the Village's Corporate Counsel.

Respectfully,


James P. Kelly