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January 23, 1961

Mr. August Lux
6 Elmwood Street
Albany 3, New York

Dear Gus:

At the time of the hearing with reference to the proposed change in zoning of the property at the corner of Fuller Road and Western Avenue, I advised you that even if the Town Board granted the application for a change of zoning that action would not necessarily be determinative of the rights of the property owners in that area so far as enforcement of the restrictive covenants contained in their deeds was concerned. As you know, the Board granted the application on January 3, 1961.

I immediately prepared a Summons and Complaint in an action for a declaratory judgment against Mr. Domenico asking that the Court declare that the restrictive covenants are still in full force and effect as far as all the property in Country Club Highlands is concerned including the property owned by Mr. Domenico, and restraining Mr. Domenico from erecting any building on his lot except a one-family dwelling house. You signed the Complaint on January 10th but were uncertain whether you wished to have it served immediately or not.

I discovered on January 11th that Mr. Domenico had filed a declaration of restrictions in conformity with the requirements of the resolution amending the zoning ordinance in the office of the Albany County Clerk on January 10th. I tried to reach you at that time but you were out of town. Since time is extremely important in these matters I served the Summons and Complaint to Mr. Domenico on January 12th and filed the original Complaint together with a Notice of Pendency of Action in the County Clerk's Office on January 13th. I did this so as to forestall any claim by

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Mr. Domenico that you had been guilty of laches. Also, I was afraid that Mr. Domenico might convey the property to a corporation organized by himself and claim that you and other property owners had lulled him into a feeling of security in executing a contract for the erection of the diner so that the Court should deny you equitable relief.

I have not asked for a temporary injunction in this matter since that would require your giving security for any damages Mr. Domenico might sustain for being delayed in construction in the event he is eventually successful in defending the action. I feel that the filing of the Notice of Pendency of Action is an effective deterrent since I am confident that no lending institution will advance him money for the construction of the diner while the record shows that this action is pending.

As I advised you, if no steps were taken to prevent Mr. Domenico from violating the building restrictions no property owner in the area could feel secure since once building restrictions are violated in an area they are destroyed completely and any other property owner could use his property for commercial purposes.

The time of the defendant to answer your Complaint will expire on February 1st. At that time or as soon as an answer is served I will advise you as to the next steps to be taken. I do not see how Mr. Domenico can deny any of the allegations of fact in the Complaint so that it would seem to me no trial will be necessary but that the matter can be determined by affidavit on a motion for summary judgment.

Very truly yours,

JWM:dp

