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# BAD APPLE FEE NEWS

## Certain Client Conversations Are Challenging

### 1. *In Fee Not-So-Simple*

You represent All-In-Families, a not-for-profit working with developers, funders, businesses, and the city's school board to create a very large project with family-size low income apartments, on-site early childhood, 3-6 Pre-K, and after school programs. There would also be space for business & tech companies willing to provide training & certifications for teens and young adults and perhaps future part-time or full time jobs.

With great effort and leadership, All-In-Families have secured sufficient funding for building and setting up the programs, but just barely. They have City social services budget commitments for the next few years and are seeking to build an endowment to fund future operational costs. Assume one or both circumstances described below are now real.

- Client creativity runs free but isn't free of charge.

At the start of the project (when you quoted the flat fee), All-In-Families hadn't thought of the idea that teens might earn high school credits for some of their tech offerings, particularly through the summer. Recently, faced with the recognized decline in math and reading test scores, they've announced an intent to expand summer offerings for students to learn more intensively and receive high school or, possibly, college credit in cooperation with the local city university. Of course, you support these efforts, but they will require working with the City's School Board, the State's education department, and the university. This will take additional time for Applegate-TT lawyers. The flat fee must be re-negotiated.

- Digging deeper digs into pocket.

The city donated land with some run-down buildings in a formerly industrial area. It was understood that those buildings were to be torn down and excavation done on much of the acreage. Heeding warnings from an industrial site make-over a few miles away where buried oil tanks were found, the developer decided to do some exploratory digging on the All-In-Families site. Sure enough, several large oil tanks were located, and had apparently leaked into a small portion of the land under the project.

Exactly who is on the hook for the costs of remediation is fuzzy. The city has pledged to help with remediation efforts and will cooperate in tracking down any companies who operated on the site (and are still in business) to contribute to clean up costs as PRPs.

The project will inevitably be delayed, meaning more work with the participating parties to keep project components in place. This complicates Applegate's legal work, of course. There will have to be EPA, state and local environmental, and health department approvals. Your client also has an incentive to help chase PRP contributions to remediation costs.

Explain to your client that Applegate-TT's fee will have to be re-negotiated.



## 2. **Fee Fie Fo Fum....**

You are about to negotiate a flat project representation fee with Fine-Dev, a relatively large development company. You were pleased to be contacted for repeat business: Applegate-TT had represented this developer in a recent deal in South Carolina and you were part of that legal team. The Fine-Dev's client representative, Dana Ferscz, mentioned that they enjoyed working with you.

When Dana first emailed you, they referenced the flat fee on that South Carolina project, and said they hoped the fee on this new project could be in the same ballpark.

You know this will not be possible. That South Carolina town was much more development-friendly, and there was plenty of green space and acreage available.

The email mentioned that the new project will be in Philadelphia. You anticipate resistance in the neighborhood. Applegate-TT has worked in Philadelphia before and you know the city officials there are sticklers about zoning, green space, and parking and always want to appease politicians. You anticipate the flat fee will be 150% higher than in South Carolina.

The only other alternative would be to offer the minimum with built in escalators for if (really, when) there are project roadblocks that require intense legal work. But you must let the client know to build in the anticipated additional fees into project projections and make them transparent to investors.