COPY

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

JAMES J. DRURY III, as agent of the Peggy D. Drury Declaration of Trust U/A/D 02/04/00, Jack E. Reich and James T. O'Donnell,	)	2015CH03461 CALENDAR/ROOM 16 TIME 00:00 Declaratory Jdgmt
Plaintiffs,	)	
-v-	)	**Case No. 15-CH-**
VILLAGE OF BARRINGTON HILLS, an Illinois Municipal Corporation,	)	
Defendants.	)	

VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT, INJUNCTION, AND OTHER RELIEF

Plaintiffs, James J, Drury III, as agent of the Peggy D. Drury Declaration of Trust U/A/D 02/04/00 ("Drury"), Jack E. Reich ("Reich") and James O'Donnell ("O'Donnell") (collectively "Plaintiffs"), by their attorneys, Law Offices of Thomas R. Burney and Zanck, Coen, Wright & Saladin, P.C., for their Verified Complaint against the Village of Barrington Hills, an Illinois municipal corporation ("Village"), state as follows:

INTRODUCTION

1. This action involves a challenge to an amendment to the text of the Barrington Hills Zoning Ordinance authorizing commercial horse boarding on all residential zoned property in the Village. On February 23, 2015, the Village Board overrode the Village President's veto and voted to approve the text amendment.

2. Count I of the Complaint alleges that the necessary legal notice requirements were not satisfied in order for the Village to consider and adopt the text amendment.

3. Count II of the Complaint alleges that three of the Village Board members who voted for the text amendment were disqualified from participating in the vote because of a conflict of interest, and therefore, the necessary qualified votes to override the veto were not secured.

4. Count III of the Complaint alleges that the text amendment is an invalid exercise of the Village's police power authority where the text amendment does not promote the public

welfare but instead was adopted to benefit one property owner who illegally established and maintains the buildings to serve such a commercial horse boarding operation in violation of the Village's Zoning Ordinance.

5. Plaintiffs are owners of residential zoned land in the Village. Plaintiffs reside in the Village. The real property they own is used for their principal residence, and their land is adjacent to and in close proximity to residential zoned land owned by others that is eligible to be used for commercial horse boarding operations as a result of this text amendment.

NATURE OF ACTION

6. This action is brought pursuant to the Declaratory Judgment Act, 735 ILCS 5/2-701, wherein Plaintiffs seek a declaration of rights regarding an actual controversy, *to wit* the legal validity of the Commercial Horse Boarding Ordinance.

7. Plaintiffs seek additional relief pursuant to the Injunction statute 735 ILCS 5/11-101, requesting this Honorable Court to permanently enjoin the enforcement of the Commercial Horse Boarding Ordinance.

8. This action for *de novo* judicial review is brought pursuant to 65 ILCS 5/11-13-25 within Ninety (90) days of the date that the Village Board adopted Ordinance No. 14-19 entitled "An Ordinance Amending Title 5 Zoning Regulations Set Forth In Chapter 2, 3 and 5 Regarding Horse Boarding." ("Commercial Horse Boarding Text Amendment"[1]) attached as **Exhibit A.**[2]

PARTIES

9. James J. Drury III resides at the property located at 7 Deepwood Road in the Village of Barrington Hills, Illinois. ("Drury Property") The Drury Property is improved with his residence. Title to the Drury Property is held in the Peggy D. Drury Declaration of Trust UA/D 02/04/00, and Mr. James J. Drury is authorized to act as an agent on behalf of the trust in this matter.

10. The Drury Property is adjacent to the property at 350 Bateman Road that houses the unlawful large scale commercial horse boarding operation ("LeCompte Property").

11. The Drury Property suffers from the deleterious impacts from large scale-

[1] Commercial Horse Boarding Text Amendment is referred to in its June 17 to September 22, 2014 form as the "LeCompte Text Amendment". It is referred to in its October 20 to December 15, 2014 form as the "Anderson Text Amendment". After its initial adoption by the Village Board, it is referred to as the "Commercial Horse Boarding Text Amendment".

[2] The Ordinance attached as Exhibit A is missing pages two and four of Exhibit A attached to the Ordinance. It was obtained in this incomplete form from the Village's website.

commercial horse boarding operations. The Drury Property is experiencing the deleterious impacts from horse trailers, manure trucks, customer parking lots, vehicles, additional traffic, ground water and surface water pollution, and increased noise.

12. Jack Reich resides at the property located at 110 Brinker Road in the Village of Barrington Hills, Illinois ("Reich Property"). The Reich Property is improved with a residence. Title to the Reich Property is held in the name of Jack Reich's wife, Mary Beth Reich. Mr. Jack Reich is authorized to act on behalf of his wife in this matter.

13. The Reich Property is adjacent to and in close proximity to several large estates. Pursuant to the Commercial Horse Boarding Text Amendment, large scale-commercial horse boarding operations are permitted as a matter of right. As a result, the Reich Property will experience the deleterious impacts from horse trailers, manure trucks, customer parking lots, vehicles, additional traffic, ground water and surface water pollution, and increased noise.

14. James T. O'Donnell, resides at the property located at 1 Ridgecroft Lane, in the Village of Barrington Hills, Illinois ("O'Donnell Property"). The O'Donnell Property is improved with a residence. Title to the O'Donnell Property is held in joint tenancy with his wife, Sylvia J. O'Donnell. Mr. James O'Donnell is authorized to act on behalf of his wife in this matter.

15. The O'Donnell Property is adjacent to and in close proximity to several large estates. Two 20+/- acre parcels are located within a short distance from the O'Donnell Property on Meadow Hill. Pursuant to the Commercial Horse Boarding Text Amendment, large scale-commercial horse boarding operations are permitted as a matter of right. As a result, the O'Donnell Property will experience the deleterious impacts from horse trailers, manure trucks, customer parking lots, vehicles, additional traffic, ground water and surface water pollution, and increased noise.

16. The Drury Property, the Reich Property, and the O'Donnell Property are collectively referred to as the "Plaintiffs' Properties".

17. The Village of Barrington Hills is an Illinois municipal corporation organized and existing pursuant to the Illinois Municipal Code, 65 ILCS 5/1-1 *et seq.*

FACTS

18. The issue of commercial horse boarding in Barrington Hills has been litigated in the Circuit Court of Cook County in two separate cases and subject to two Appellate Court opinions.

19. Both of those proceedings involved the large scale commercial horse boarding operation conducted by Benjamin LeCompte at Oakwood Farm which is located on the LeCompte Property.

20. The first lawsuit was initiated by Benjamin LeCompte against the Village in *Benjamin B. LeCompte, et al. v. Zoning Board of Appeals For The Village of Barrington Hills, et al.* (Civil Case No. 09 CH 00934) ("First Lawsuit"). In the First Lawsuit, LeCompte appealed the Village Board's issuance in January 2008 of a cease and desist order which directed LeCompte to stop operating a large scale commercial horse boarding operation.

21. The Circuit Court, in a decision dated January 15, 2010, held that LeCompte's large scale commercial horse boarding operation conducted at Oakwood Farm was not in compliance with the Village Zoning Code. LeCompte appealed that decision.

22. Although the Village prevailed in that case and the subsequent appeal by LeCompte, the Village did absolutely nothing to enforce that judgment in its favor or to enforce its Zoning Ordinance. The Village did not even levy a fine against LeCompte.

23. On December 17, 2010, Attorney Steven Schulte, counsel for Drury, directed a letter to the Village attorney requesting that "the Village take all necessary actions to immediately enforce the cease and desist Order by no later than December 31, 2010 (almost three years after its issuance) and take all steps necessary to recover all fines assessed against the LeComptes since January 10, 2008." (A copy of the Schulte letter is attached as **Exhibit B.)**

24. On January 31, 2011, Drury initiated a lawsuit in the Circuit Court of Cook County *(James Drury III v. Benjamin B. LeCompte, et al* (Civil Case No.11 CH 3852)) against Benjamin LeCompte pursuant to the Adjacent Landowner Statute, 65 ILCS 5/11-13-15, ("Second Lawsuit" or "Drury-McLaughlin Lawsuit") seeking an order enjoining LeCompte from operating a commercial horse boarding operation at Oakwood Farms in violation of Village zoning laws.

25. Approximately five (5) months later, on June 30, 2011, the Appellate Court affirmed the decision of the Circuit Court in the First Lawsuit. In that decision, *Benjamin B. LeCompte, et al. v. Zoning Board of Appeals For The Village of Barrington Hills, et al.,* Case No. 1-10-0423 (later published September 21, 2011 as 2011 IL App (1st) 100423) ("LeCompte I"), the Appellate Court held that the commercial horse boarding operation of LeCompte at Oakwood Farm violated the Zoning Ordinances of the Village; held that the use of the land at Oakwood Farm for the commercial boarding of horses is not agriculture as defined in section 5-2-1 of the Village Zoning Code; and that since the commercial boarding of horses is not agriculture under section 5-5-2(A) of the Zoning Code, it is not a permitted use in a R-1 zoned district in the Village. (A copy

of the opinion in *LeCompte v. Zoning Board of Barrington Hills*, 2011 IL App (1st) 100423 ("*LeCompte I*") is attached as **Exhibit C**.)

26. In *James J. Drury III et al. v. Benjamin LeCompte et al.*, 2014 IL App (1st) 121894-U ("LeCompte II"), a copy which is attached as **Exhibit D**, the Appellate Court for the second time addressed large scale commercial horse boarding at Oakwood Farm. In that case, the Appellate Court reversed the trial court's dismissal of the Drury-McLaughlin Lawsuit. The Court discarded the home occupancy defense advanced by LeCompte and remanded the case to the trial court for further proceedings.

27. Shortly after the remand in *LeCompte II*, LeCompte initiated a petition for a text amendment with the Village to permit large scale commercial horse boarding as a permitted use in the residential zoning districts in the Village ("LeCompte Text Amendment").

28. The Commercial Horse Boarding Text Amendment is very similar to the LeCompte Text Amendment.

29. The Village Board enacted into law, over the Village President's veto, on February 23, 2015, the Commercial Horse Boarding Text Amendment that is the subject of this action.

COUNT I
LEGAL NOTICE DEFECTIVE

1.-29. Plaintiffs adopt and reallege Paragraphs 1 to 29 as and for this Count I of their Complaint.

30. On October 20, 2014, an Amendment to the text of the Village Zoning Ordinance, remarkably similar to the LeCompte Text Amendment, was initiated by Village Zoning Board of Appeals member Kurt Anderson ("Anderson Text Amendment").

31. The Anderson Text Amendment proposed to amend the permitted use restrictions on more than ninety-eight percent (98%) of the land located within the Village to permit large scale commercial horse boarding on all residential zoned land as a matter of right.

32. Other than posting a notice at the Village Hall and on the Village website, the only other public notice provided for the proposed Anderson Text Amendment was one legal notice placed in the Daily Herald on November 15, 2014.

33. The legal notice was obscure in size. (A copy of the legal notice is attached as **Exhibit E**.)

34. The legal notice did not contain an itemization or identification of the properties within the Village affected by the Anderson Text Amendment.

35. No other legal notice of the public hearing to be conducted by the Zoning Board of Appeals on the Anderson Text Amendment was published in the newspaper, and no legal notice via United States mail or by any other delivery method, was provided by the Village to property owners whose land would be affected by the Anderson Text Amendment.

36. The Village is located in four counties: Cook, Lake, Kane and McHenry. All four of those counties' tax records identify the legal owner of property and contain a mailing address of each property owner within the incorporated limits of the Village.

37. Prior to the Anderson Text Amendment, the issue of large scale commercial horse boarding had been the subject of numerous public meetings and hearings including those on July 21, 2014, September 9, 2014, September 11, 2014, and October 20, 2014, before the Zoning Board of Appeals and before the Village Board on September 22, 2014. At each of these meetings, numerous persons identified their names and addresses either preceding their testimony or on sign-up sheets provided at the entrance to the meeting.

38. All of these lists of individuals are maintained by the Village.

39. The Village made no effort whatsoever to notify any of the individuals who either spoke or signed their names and addresses on the sign-up sheets at any or all of these meetings.

40. Only one public hearing, on December 2, 2014, was conducted by the Zoning Board of Appeals on the Anderson Text Amendment.

41. On December 3, 2014, the very next evening after the public hearing, the Zoning Board of Appeals voted to recommend approval of the Anderson Text Amendment.

42. The notice provision of Section 11-13-2 of the Illinois Municipal Code (*65 ILCS 5/11-13-2* (West 2014)) has been held to be unconstitutional as applied to the facts similar to those found in this case where the Village published only in a newspaper. *See Passalino v. City of Zion,* 237 Ill. 2d 118, 928 N.E.2d 814 (2009).

43. Plaintiffs were entitled to receive actual notice from the Village of the Anderson Text Amendment that would work a substantial change in the uses permitted as a matter of right on their property and on the properties neighboring their property.

44. The Village's notification of the public hearings by use of newspaper publication pursuant to Section 11-13-2 of the Illinois Municipal Code was not sufficient notice to satisfy the due process requirements of the Fifth and Fourteenth Amendments to the United States Constitution.

45. Plaintiffs, as a result of their property interests which are affected by the Anderson Text Amendment, are persons interested in the hearings such that they were entitled to notice under

the Illinois Municipal Code.

46. Plaintiffs' due process rights guaranteed under the United States Constitution were abridged as a result of the lack of meaningful notice of the public hearing.

47. Consequently, the Anderson Text Amendment, which was enacted into law as Commercial Horse Boarding Text Amendment, is invalid inasmuch as notice was legally insufficient.

WHEREFORE, Plaintiffs pray that:

a. Judgment be entered finding in the Plaintiffs' favor and against the Defendant, Village of Barrington Hills, and declaring that the means employed by the Village were not reasonably calculated to inform Plaintiffs such that they received an opportunity to object to the Anderson Text Amendment; and

b. Judgment be entered finding and declaring that Plaintiffs' procedural due process rights deriving from the Fifth and Fourteenth amendments to the United States Constitution were violated; and

c. Declare the Commercial Horse Boarding Text Amendment invalid and void; and

d. Permanently enjoin the Village, its officers, agents, servants and employees from enforcing the terms of the Commercial Horse Boarding Text Amendment; and

e. Declare such other and further rights of the parties and grant such other and further relief as this Court shall consider necessary; and

f. Plaintiffs be awarded their costs of suit.

COUNT II

THE VOTE TO OVERRIDE THE VILLAGE PRESIDENT'S VETO IS A NULLITY

1.-47. Plaintiffs adopt and reallege Paragraphs 1 to 47 as and for this Count II of their Complaint.

48. On February 23, 2015, the Village Board, by a vote of 5 to 1, overruled the Village President's veto of the Commercial Horse Boarding Text Amendment. (See **Exhibit A.**)

49. Three of the five votes to overturn the veto were cast by Trustees Joe Messer, Patty Meroni, and Karen Selman.

50. The action and inaction of these three trustees over the last four years, as described herein below, demonstrates that Trustees Joe Messer, Patty Meroni, and Karen Selman, could not

render a fair and impartial decision on the Commercial Horse Boarding Text Amendment which benefitted one business owner in the Village, Benjamin LeCompte.

51. On February 10, 2011, LeCompte gave three campaign contributions of $5,000.00 each to Messer, Meroni, and Selman in the form of three separate checks. These three checks were endorsed by these three candidates for Village Trustee in the April 2011 election into the bank account of "Save 5 Acres", without identifying the source of this money [LeCompte], in violation of Illinois election law disclosure requirements.

52. A complaint was filed against Trustees Messer, Meroni and Selman, among others, with the Illinois State Board of Elections concerning these campaign contributions.

53. As the hearing examiner who presided over the proceedings before the Election Board observed in his analysis of the evidence presented: "Finally, it is entirely too coincidental that all three candidates got 3 checks for the same amount and not one of them deposited them into their personal accounts, but instead immediately specifically endorsed the checks to Save 5 Acres." (A copy of the Oral Report of Preliminary Closed Hearing dated 3/18/11 is attached as **Exhibit F.** See pg. 3.)

54. Trustees Messer, Meroni and Selman were found guilty of violating the state Election Code in connection with their reporting of these campaign contributions by LeCompte. (A copy of the Board of Elections' Final Order dated June 14, 2011, is attached as **Exhibit G.**)

55. One month after the LeCompte campaign contributions, on March 15, 2011, a letter was purportedly signed by Donald Schuman, the Village's Building Commissioner, (the "Schuman Letter") which stated that Oakwood Farm "appears to be in compliance with subsection (g) of the Village's Home Occupation Ordinance" due to a change in the operating hours. (A copy of the Schuman Letter is attached as **Exhibit H.**)

56. The Appellate Court in *LeCompte II* later described that change in operating hours as "inconsequential." *Drury v. LeCompte*, 2014 IL App (1st) 121894-U, ¶40. (See **Exhibit D,** *LeCompte II.*) The Court characterized the "Schuman" letter as "disputed" and noted that "[i]t was only after plaintiffs filed this lawsuit for injunctive relief in that defendants [including LeCompte] solicited the Schuman letter from Village officials." *LeCompte II*, at ¶¶ 45, 52. It was this letter, the Court observed, which was solicited "to derail plaintiffs' [Drury-McLaughlin] properly filed lawsuit by raising before the Village anew the home occupation issue they had formally waived in 2008." *LeCompte II*, at ¶ 54.

57. On September 22, 2014, at a regularly scheduled meeting of the Village Board, counsel for Mr. Drury filed a written Motion with the Village Board to recuse Trustees Messer,

Meroni and Selman as to matters relating to the proposed Commercial Horse Boarding Text Amendment. On October 9, 2014, copies of the Motion to Recuse Trustees Messer, Meroni and Selman were served by certified mail to the Village Clerk.

58. None of these Trustees have acknowledged the Motion to Recuse, and none have offered any explanation as to why they believe they could render a fair and impartial decision on the Commercial Horse Boarding Text Amendment.

59. Trustees Messer and Meroni were members of the Village Board which refused to act to enforce the Village's Zoning Ordinance against Oakwood Farm and the cease and desist order against commercial horse boarding at Oakwood Farm; and refused to levy any fines to recover some of the estimated $200,000.00 in legal fees and costs that the Village expended in defending its Zoning Ordinance against LeCompte's attacks before the Circuit Court of Cook County and before the Appellate Court in *LeCompte I.*

60. Trustees Messer, Meroni and Selman were members of the Village Board which refused to disown the Schuman letter when presented with substantial evidence that it was not authored by Mr. Schuman but instead by an officer of the Village, the then President of the Village Board, Robert Abboud.

61. Each of these trustees refused to act to reject the Schuman letter despite a legal opinion from the Village Attorney that Mr. Abboud is not authorized under either the Illinois Municipal Code or the Village Ordinance to interpret Village Ordinances.

62. The trustees' actions in refusing to enforce the cease and desist order, the Circuit Court's judgment affirming the Zoning Board of Appeals decision, and the Appellate Court opinion in *LeCompte I,* and in refusing to disown the "Schuman" letter treating the commercial horse boarding operations at Oakwood Farm as a home occupation, are contrary to the opinions of two village attorneys, the sworn testimony of the operator of Oakwood Farm, Mr. LeCompte, and contrary to the sworn testimony of Trustee Messer himself.

63. The Appellate Court observed in *LeCompte II* as follows:

> "This court's discussion of the home occupancy provision was not mere *obiter dictum* because even though Oakwood Farm was not a permitted agricultural use, it could have been a legal use if it complied with some other section of the Village's zoning code, like the home occupation section. This court, however, held that Oakwood Farm was not a permitted use because it did not comport with the Village's zoning code's overall intent and purpose. Central to this court's opinion was the determination that, in order to comply with the zoning code, Oakwood Farm's stables had to be a subordinate, not a primary, use of the property. Because defendants were using the stable for the commercial boarding of horses, which

was a primary use and not a subordinate use, it was a use that did not comport with the Village's zoning code. Defendants' alleged compliance with one subsection of the home occupancy provisions concerning the permissible operating hours for home occupation horse boarding cannot be reconciled with this court's ruling.

* * *

. . . We agree with plaintiffs that the Schuman letter did not render their injunctive relief claim moot or nonjusticiable where this court ruled in 2011 that defendants' Oakwood Farm was in violation of the zoning code, defendants were still operating their commercial horse boarding facility impermissibly in an R-1 residential district, and the relief provided in section 11-13-15 of the Illinois Municipal Code was an available remedy to plaintiffs. This is not a situation where an injunctive relief action was rendered moot because a zoning board had re-zoned the property; all that changed here was defendants' hours of operation at their commercial horse boarding facility.

* * *

Under the circumstances of this case, we hold that exhaustion [of administrative remedies] was unnecessary. Whether the Schuman letter's determination was correct is not the controlling question in the present posture of the case. Nor are we overly concerned with defendants' assertion that they have not yet argued before the Zoning Board that they need only comply with the operating hour requirements specified in subsection 5-3-4(D)(3)(g) for horse boarding home occupations, which predicament is self-induced by their decision to formally waive the home occupation issue during the 2008 administrative proceedings. The problem before us is the procedural snarl brought about by defendants' course of conduct after the plaintiffs properly availed themselves of the relief provided by section 11-13-15 of the Illinois Municipal Code. Defendants minimize their waiver of the home occupancy issue at the 2008 Zoning Board hearings and magnify the plaintiffs' refusal to proceed, on jurisdiction grounds, with their appeal of the Schuman letter before the Zoning Board.

Administrative proceedings had already been held on the Village's cease and desist order against defendants, and plaintiffs had already begun proceedings under section 11-13-15 before defendants revived the home occupancy issue they had previously and explicitly waived at the administrative hearings...

* * *

While plaintiffs could have abandoned their lawsuit for injunctive relief and pursued their appeal of the Schuman letter before the Zoning Board, they're not doing so, under the circumstances of this case, is not interdictive of the remedy they chose. Plaintiffs chose a remedy most beneficial to them, just as defendants, in proceeding under their revised home occupation argument, chose the course they thought most beneficial to them. The remedy chosen by plaintiffs was appropriate to the predicament confronting them. They were attempting to prohibit a zoning violation which was declared by the Village, upheld by the Zoning Board,

> and confirmed by the circuit and appellate courts. Plaintiffs were an aggrieved party and their predicament was exacerbated by defendants acting to derail plaintiffs' properly filed lawsuit by raising before the Village anew the home occupation issue they had formally waived in 2008. Under the circumstances of this case, plaintiffs' choice of remedy was not incorrect and their complaint should not have been dismissed. This court's 2011 opinion remains in force and defendants cannot evade the effect of that ruling by using their subsequent solicitation of the Schuman letter as a fait accompli-shield to justify their noncompliance with the zoning code or to deprive plaintiffs of relief."

(*LeCompte II*, **Exhibit D**, ¶¶ 41, 48, 51-52, 54.)

64. As the Appellate Court in *LeCompte II* recognized, it was only after Drury filed a lawsuit for injunctive relief that LeCompte solicited the Schuman letter from Village officials. (*LeCompte II*, **Exhibit D**, ¶ 52).

65. Since the Appellate Court's opinion in *LeCompte II* rendered on March 28, 2014, and in the face of the findings therein, Trustees Messer, Meroni and Selman have taken no action to either enforce the Village's cease and desist order, the judgment of the Appellate Court in *LeCompte I*, or disown the "Schuman" letter. Instead, they have acted in concert with LeCompte on two separate occasions, to approve an ordinance very similar to the text amendment LeCompte proposed, to approve a large scale commercial horse boarding text amendment which is to apply retroactively.

66. Such actions were taken after the Appellate Court in *LeCompte II* reversed the trial court and reinstated the Drury-McLaughlin Lawsuit.

67. The Appellate Court in *LeCompte II* held that:

> "The facts established that defendants' 30,000 square-foot horse barn contained 45 or more horses whose owners paid monthly rent to defendants. Moreover, the attendant horse trailers, manure trucks, and customer parking lot and vehicles dominated the property and dwarfed defendants' home. Defendants' inconsequential change in the operating hours of their business had no effect on this court's holding that the horse barn was not an accessory building and its primary use was commercial horse boarding in violation of the zoning code.
>
> * * *
>
> . . . It was only after plaintiffs filed this lawsuit for injunctive relief that defendants solicited the Schuman letter from Village officials. As discussed above, the home occupation issue was part of the Village's argument before the Zoning Board and this court, and no useful purpose would be served by requiring plaintiffs to institute another round of administrative hearings based on subsection 5-3-4(D)(3)(g) of the zoning code. Defendants' latest nuance of the home occupation issue, which is based on the operating hours discussed in subsection 5-3-4(D)(3)(g), is subsumed or rendered irrelevant by this court's 2011 opinion, which confirmed the cease and

desist order and concluded that defendants' commercial horse boarding operation did not qualify as a permitted use under all the relevant provisions of the zoning code, including the permissible use of horse boarding as a home occupation.

> It would be a strained application of the exhaustion doctrine to force plaintiffs to litigate before the Zoning Board essentially the same home occupation use issue that was formally waived by defendants during the 2008 administrative hearings but refuted anyway by the Village both at the administrative hearing sessions and again on administrative review before this appellate court. It is not reasonable to assume that the Zoning Board would reverse itself and now conclude that defendants' commercial horse boarding operation was a permissible home occupation use in a residential zone, which would be contrary to the Village's positions before the Zoning Board in the 2008 hearing sessions and in the Village's brief on appeal to this court. To insist on the additional useless step of litigating before the Zoning Board the waived and irrelevant issue of home occupancy, which irrelevancy was confirmed in this court's 2011 opinion, would merely give lip service to a technicality and thereby increase costs and delay the administration of justice, which is the very thing the exhaustion of remedies rule tries to avoid. *[citation omitted]*."

(*LeCompte II*, **Exhibit D**, ¶ ¶ 40, 52-53.)

68. The Village President vetoed the Commercial Horse Boarding Text Amendment on January 8, 2015. The Village President has retained former Appellate Court Justice, David Sterba, as special counsel, "to commence an inquiry into whether there was any improper influence, or conduct by any appointed or elected Barrington Hills Officials relating to all phases of the commercial horse boarding legislation, from initiation to approval by the ZBA and passage by the Board of Trustees." (A copy of the Village President's Letter to Residents, Elected and Appointed Officials and Employees of the Village of Barrington Hills is attached as **Exhibit I.**)

69. In a veto override, the provisions of 65 ILCS 5/3.1-40-50 apply. A vote of two-thirds of all the trustees then holding office on the Village Board were required to pass the Commercial Horse Boarding Text Amendment notwithstanding the Village President's refusal to approve it.

70. At the February 23, 2015, Village Board meeting, each of these trustees voted, over the Village President's veto, to approve the Commercial Horse Boarding Text Amendment at a special meeting called at the behest of Trustee Selman and Trustee Gohl. The text amendment was adopted by a vote of 5 to 1.

71. At the February 23, 2015, Village Board meeting, Messer introduced two (2) motions: (i) to repeal the Village President's appointment of special counsel; and (ii) to restrict the special counsel's payments to $0.00 per hour. Both of these motions were adopted with

Messer, Meroni and Selman voting in favor.

72. Trustees Messer, Meroni and Selman by their actions have demonstrated that they cannot render a fair and impartial decision on the Commercial Horse Boarding Text Amendment which benefitted one business owner in the Village, Benjamin LeCompte.

73. Because Trustees Messer, Meroni and Selman could not render a fair and impartial decision on the Commercial Horse Boarding Text Amendment, their votes to override the Village President's veto are a nullity.

74. As a result, there were not sufficient votes to override the Village President's veto, and the Commercial Horse Boarding Text Amendment is null and void.

WHEREFORE, Plaintiffs pray that:

a. Judgment be entered in Plaintiffs' favor and against the Defendant, Village of Barrington Hills, finding and declaring that Trustees Messer, Meroni and Selman could not render a fair and impartial decision on the Commercial Horse Boarding Text Amendment; and

b. Judgment be entered finding and declaring that the votes of Trustees Messer, Meroni to override the Village President's veto are a nullity; and

c. Declare the Commercial Horse Boarding Text Amendment invalid and void; and

d. Permanently enjoin the Village, its officers, agents, servants and employees from enforcing the terms of the Commercial Horse Boarding Text Amendment; and

e. The Court declare such other and further rights of the parties and grant such other and further relief as this court shall consider necessary; and

f. Plaintiffs be awarded their costs of suit.

COUNT III

THE COMMERCIAL HORSE BOARDING TEXT AMENDMENT IS AN INVALID EXERCISE OF THE POLICE POWER

1.-74. Plaintiffs adopt and reallege Paragraphs 1 to 74 as and for this Count III of their Complaint.

75. In the space of seven (7) years, the Village has come full circle. On January 10, 2008, the Village Board authorized the issuance of a cease and desist order directing Benjamin LeCompte, the owner and operator of Oakwood Farm, to stop operating a large scale commercial horse boarding operation at Oakwood Farm. The Village successfully defended its ordinance

against a claim by LeCompte that his large scale commercial horse boarding operations were an agriculture use permitted as a matter of right before the Circuit Court and the Appellate Court.

76. In 2015, the Village has now adopted a text amendment which treats large scale commercial horse boarding operations as an agricultural use and, therefore, permitted as a matter of right on all residential zoned land in the Village (estimated to be 98.5% of all land lying within the incorporated limits of the Village).

77. LeCompte appealed the 2008 cease and desist order to the Zoning Board of Appeals, claiming that large commercial horse boarding operations are permitted as a matter of right as a farming use.

78. The Zoning Board of Appeals conducted hearings on LeCompte's appeal of the cease and desist order between March 2008 and November 2008.

79. The Zoning Board of Appeals voted to uphold the cease and desist order on November 4, 2008.

80. On January 9, 2009, nearly one year after the cease and desist order was issued, LeCompte sought administrative review of the Zoning Board of Appeals decision in the Circuit Court.

81. The First Lawsuit was initiated by Benjamin LeCompte against the Village.

82. The Circuit Court upheld the decision of the Zoning Board of Appeals on January 15, 2010, nearly two years after the Village issued the cease and desist order.

83. LeCompte appealed the Circuit Court's opinion on February 9, 2010, to the Appellate Court.

84. In December, 2010, Drury, through his attorneys, made demand, by letter and in person, that the Village enforce its cease and desist order. Attorney Steven Schulte, counsel for Drury, sent a letter to the Village attorney requesting that "the Village take all necessary actions to immediately enforce the cease and desist Order by no later than December 31, 2010 (almost three years after its issuance) and take all steps necessary to recover all fines assessed against the LeComptes since January 10, 2008." (See **Exhibit B**.)

85. On January 7, 2011, the Village Attorney advised that the Village determined that no further action will be taken even though the Village had spent substantial sums of money defending its Zoning Ordinance.

86. At the time LeCompte was operating Oakwood Farm, in the words of the Appellate Court in *Lecompte II*:

> "The facts established that defendants' 30,000 square-foot horse barn contained 45 or more horses whose owners paid monthly rent to defendants. Moreover, the attendant horse trailers, manure trucks, and customer parking lot and vehicles dominated the property and dwarfed defendants' home. Defendants' inconsequential change in the operating hours of their business had no effect on this court's holding that the horse barn was not an accessory building and its primary use was commercial horse boarding in violation of the zoning code."

(*LeCompte II*, **Exhibit D**, ¶40.)

87. On January 31, 2011, more than three years after the cease and desist order was issued by the Village, Drury and McLaughlin filed their adjacent landowners complaint in the Circuit Court of Cook County seeking an order enjoining LeCompte from operating a commercial horse boarding operation at Oakwood Farm in violation of Village zoning laws because the Village failed to enforce its ordinance. ("Drury-McLaughlin Lawsuit".)

88. LeCompte's scheming and concerted action with certain Village officials really began to heat up following the filing of the Drury-McLaughlin Lawsuit.

89. LeCompte made campaign contributions to three candidates for Village trustee (Messer, Meroni, and Selman). These individuals' failure to report these contributions was the subject of complaint, investigation, and Findings of Election Code violations. Shortly after the campaign contributions, the Schuman letter surfaced. (*See* Paragraphs 51-55 of Count II.)

90. Shortly after the Drury-McLaughlin Lawsuit was filed, the Village initiated meetings on a text amendment to permit commercial horse boarding.

91. The Chairman of the Zoning Board of Appeals, Judith Freeman, reported to the Village Board that the Zoning Board of Appeals recommended a special use approach. (A copy of the letter from Judith Freeman dated July 20, 2011, is attached as **Exhibit J**.)

92. In the meantime on June 30, 2011, the Appellate Court affirmed the Circuit Court, nearly 3 1/2 years after the January 2008 cease and desist order was issued. The decision was published on September 21, 2011. In that case, *Benjamin B. LeCompte, et al. v. Zoning Board of Appeals For The Village of Barrington Hills, et al.*, 2011 IL App (1st) 100423, ("*LeCompte I*"), the Court held the commercial horse boarding operation of Defendants at Oakwood Farm violated the Zoning Ordinances of the Village; that the use of the land at Oakwood Farm for the commercial boarding of horses is not agriculture as defined in section 5-2-1 of the Zoning Code and that since the commercial boarding of horses is not agriculture under section 5-5-2(A) of the Zoning Code, it is not a permitted use in an R-1 zoned district in the Village. (*See* **Exhibit C**, *LeCompte I* opinion.)

93. A final order dismissing the Drury-McLaughlin Lawsuit (initially filed on January 31, 2011) was entered by the Circuit Court on May 31, 2012.

94. The Zoning Board of Appeals' recommendation to the Village Board to initiate a special use for large scale commercial horse boarding operations languished. No further actions or initiative on a text amendment concerning large scale commercial horse boarding operation was undertaken by the Village until nearly three years after the last text amendment effort abruptly halted--when the Drury-McLaughlin Lawsuit was reinstated by the Appellate Court.

95. LeCompte continued to operate a large scale commercial horse boarding operation at Oakwood Farm under the authority of the "Schuman" Letter for the next 2 1/2 years. The Village took no action to enforce either its cease and desist order or the judgment it had secured in *LeCompte I.*

96. Everything changed after March 28, 2014, when the Appellate Court handed down its decision in the Drury-McLaughlin Lawsuit reversing the Circuit Court's dismissal of the Drury-McLaughlin Lawsuit (the "*LeCompte II*" opinion). (*See* **Exhibit D**, *LeCompte II* opinion.)

97. The trial court had relied principally on the "Schuman" Letter as the grounds for dismissal in the Drury-McLaughlin Lawsuit.

98. The Appellate Court's opinion in *LeCompte II* effectively eradicated LeCompte's "Schuman" Letter defense asserted by him in the Drury-McLaughlin Lawsuit. (*See* Paragraphs 56 and 63-64, 67 of Count II.)

99. Next, on June 17, 2014, LeCompte petitioned for a text amendment to permit large scale commercial horse boarding as a matter of right on all residential zoned land in the Village and expressly provided that the text amendment would be applied retroactively to June 26, 2006 (the "LeCompte Text Amendment").

100. The Zoning Board of Appeals conducted a public hearing on the LeCompte Text Amendment on July 21, 2014.

101. Two other property owners, James Drury and James Hammond, each filed petitions for text amendments providing for a special use approach on commercial horse boarding operations in the Village (the "Drury and Hammond Text Amendments").

102. On September 9, 2014, the Zoning Board of Appeals conducted public hearings on the Drury and Hammond Text Amendments.

103. On September 11, 2014, over written objections made by James Drury that none of the petitioners for text amendments (LeCompte, Drury and Hammond) had the legal authority to initiate a text amendment, the Zoning Board of Appeals voted 5-2 to recommend approval of the

LeCompte Text Amendment. The Zoning Board of Appeals did not act on the Drury and Hammond Text Amendments at that meeting.

104. On September 22, 2014, the Village Board considered the LeCompte Text Amendment. Objections were raised to the Village Board acting on the LeCompte Text Amendment on the following grounds:

a. the Zoning Board of Appeals recommendation was not accompanied by any findings of fact or evidence to support its recommendation;

b. the standing of LeCompte to initiate such a text amendment under the express terms of the Village's Zoning Ordinance;

c. a substantial amendment to the LeCompte Text Amendment which was introduced the night of September 11, 2014 (the night of the voting meeting recommending the LeCompte Text Amendment) by Zoning Board of Appeals member Kurt Anderson ("Anderson"), was not the subject of preview, review and public comment by either members of the Zoning Board of Appeals who had voted against the LeCompte Text Amendment or by persons interested in this matter; and

d. the Zoning Board of Appeals failure to gather essential base line information in order to make a reasoned decision.

105. The Village Board, by a vote of 7 to 0, tabled the consideration of the LeCompte Text Amendment. It directed the Village Administrator and the Zoning Board of Appeals to gather a substantial list of facts before considering any further amendments to the text of the Village Zoning Ordinance with respect to commercial horse boarding. (A copy of the Memo dated October 17, 2014 to the Zoning Board of Appeals from Robert Kosin containing information that the Zoning Board of Appeals was directed to gather is attached as **Exhibit K**.)

106. On September 24, 2014, the Illinois Supreme Court denied a petition for leave to appeal filed by LeCompte in *LeCompte II*.

107. On October 20, 2014, the Zoning Board of Appeals voted 5-2 to recommend denial of the Drury and Hammond Text Amendments.

108. On October 20, 2014, Kurt Anderson initiated a text amendment ("Anderson Text Amendment"). While nominally introduced by Anderson, it is the rebirth of the LeCompte Text Amendment initiated on June 17, 2014. The Anderson Text Amendment contains the permitted as of right approach in residential districts. It permits multiple horses to be commercially boarded on a residential lot dependent on the size of the lot. It imposes no limitation on the floor area ratio of

barns and stables. Most significantly, it makes the text amendment retroactive to before the date that LeCompte was cited for violating the Village's home occupation ordinance.

109. The Zoning Board of Appeals Chairman, Judith Freeman ("Freeman"), scheduled two special meetings on November 10, 2014 and November 12, 2014. The first special meeting date was for the purposes of conducting a public hearing on the Anderson Text Amendment, and the second special meeting date was for the purposes of voting to make a recommendation to the Village Board on the Anderson Text Amendment.

110. Both of those special meetings had to be cancelled because the legal notices related to the meetings were not in compliance with State Statute.

111. The Village's pace of scheduling public meetings increased substantially after the special meetings scheduled for November 10, 2014 and November 12, 2014 were cancelled due to defective notice. A second set of special meetings were scheduled and noticed on the Anderson Text Amendment. The first special meeting date, December 2, 2014, was for the purposes of conducting a public hearing on the Anderson Text Amendment, and the second special meeting date, December 3rd, the very next night, was set for the purposes of voting to make a recommendation to the Village Board on the Anderson Text Amendment.

112. A request for additional time to respond to the witnesses was made to the Zoning Board of Appeals due to the fact that the witnesses presented by the Village had not provided any written reports in advance of their testimony and that the public was hearing their testimony for the first time. After hearing the testimony of the Zoning Board of Appeals witnesses, the public was also denied the opportunity to present their own experts at a later date. The Chairman of the Zoning Board of Appeals denied the request for a continuance and closed the public hearing that very night.

113. At the public hearing conducted on December 2, 2014, the Village presented four witnesses to testify on the Anderson Text Amendment. None of the witnesses expressed an opinion that the Anderson Text Amendment promoted the public welfare or satisfied the standards contained in the Village Ordinance.

114. The expert land planning witness, Konstantine Savoy, testified that he had no opinion on whether the Anderson Text Amendment satisfied the standards in the Village Code; that he was not prepared to render such an opinion; and that he was not tasked to specifically give comment or criticism relative to the specific text amendment. He testified that it would take much further study involving his firm and an interdisciplinary team to render such an opinion. He agreed such an analysis and study would include an analysis of when horse boarding becomes commercial

as a threshold issue, and the impact on surface and subsurface water supplies, traffic and other resulting environmental impacts. In his 30+ years as a professional land planner involved in assisting in the drafting of zoning regulations, he could not recall a single instance of an ordinance ever having been adopted that contained a retroactivity provision like the Anderson Text Amendment. He could not identify any community that permits large scale commercial horse boarding as a matter of right. Evidence was introduced that, based on a survey of five (5) communities (Mettawa, Wayne, Bull Valley, Homer Glen and Wadsworth), all five (5) communities which provided for commercial horse boarding adopted the special use approach.

115. Mr. Schuman, the Village's building and zoning official, testified. He offered to prepare and present to the Zoning Board of Appeals a list of items he deemed created enforcement issues. During his testimony, he identified several of these issues. The Zoning Board of Appeals never had the benefit of his written comments because they acted the next night to approve the Anderson Text Amendment. His testimony supported a permit requirement approach rather than the permitted as a matter of right approach. In all of his years with the Village, Schuman has never seen the Village adopt an ordinance with a retroactivity provision. Although he has been the building and zoning officer of the Village for the last 8 ½ years, he was not consulted or asked for his opinion on the issues he addressed in his testimony.

116. Mr. Kosin, the Village's Administrator, could not identify any other property but Oakwood Farm which was in violation of the Village's Home Occupation restrictions. In his tenure at the Village which dates back to 1982, nearly 32 years, he cannot ever recall an ordinance adopted by the Village with a retroactivity provision included in it.

117. The very next night, on December 3, 2014, by a vote of 4 to 3, the Zoning Board of Appeals voted to recommend the Anderson Text Amendment.

118. That vote to recommend approval of the Anderson Text Amendment occurred without the benefit of the stenographic record that had been taken of the public comment the night before or the minutes of the meeting from the night before.

119. That vote to recommend approval of the Anderson Text Amendment occurred without the benefit of the information that the Village Board directed the staff and the Zoning Board of Appeals to gather and to consider and was contrary to the recommendations of the witnesses who appeared before the Board. The Zoning Board of Appeals ignored Mr. Savoy's recommendations that further studies be undertaken and his offer to coordinate such a study. Mr. Savoy was one of the witnesses who the Zoning Board hired to advise the Zoning Board. The Zoning Board of Appeals gave no consideration to the issues identified in Exhibit K which the

Village Board expressly directed it to consider and study including: consulting with qualified academic individuals in the area of equestrian husbandry; consulting with the village engineer on the impact on village roads from horse trailers, hay deliveries, waste vehicles disposal and the traffic coming to and from the commercial horse boarding operation; and the impact of such an operation on ground water quality. The Zoning Board of Appeals failed to pursue and consider a memorandum that its Building and Zoning Officer offered to provide and ignored the officer's concerns about the enforceability of the Anderson Text Amendment.

120. That vote to recommend approval of the Anderson Text Amendment occurred without the benefit of expert testimony in support of the Anderson Text Amendment. In fact, the only expert testimony that was received advised the Zoning Board of Appeals that further detailed, specific study was required. (See Paragraph 114.)

121. That vote to recommend approval of the Anderson Text Amendment was completely inconsistent and at odds with the recommendation forwarded on by Chairman Freeman, speaking for the Zoning Board of Appeals in July of 2011, recommending the Village Board adopt a special use approach. In that letter, Freeman referenced the months of discussion and the several years of meetings that had occurred on the issue of commercial horse boarding. Freeman indicated that she and the other members of the Zoning Board of Appeals had reached a consensus as follows:

> "While we considered simply allowing all boarding operations to operate as home occupations, we felt that was not the best approach. Larger boarding operations can have impacts on the surrounding properties. In these circumstances, we are recommending that larger boarding operations should be required to obtain a Special Use Permit. The special use permit requirement would allow the community to have some involvement in whether such operations are appropriate at that particular location and, if so, under what conditions they should operate. As a result, we are suggesting that those facilities that board ten (10) horses or more be regulated as Special Uses. We discussed, at length, requiring stables or barns of a certain size to also obtain a Special Use Permit, but in the end determined that was burdensome and potentially overreaching."

(See **Exhibit J.**)

122. That vote to recommend approval of the Anderson Text Amendment was completely inconsistent with and at odds with the Village's hard earned victory in the *LeCompte I* litigation in which the Village defended its ordinance against a claim that the ordinance permitted large commercial horse boarding operations as a permitted agricultural use. The Appellate Court's denial of LeCompte's claim was recognized in Chairman Freeman's letter. **(Exhibit J.)**

123. The Zoning Board of Appeals recommendation was not accompanied by Findings

of Fact which meaningfully addressed the standards and criteria that the Zoning Board of Appeals is obliged to consider in passing on such a recommendation.

124. Twelve days later, on December 15, 2014, as a result of the call of two of the Village Board members (Selman and Gohl), the Village Board held a special Village Board meeting (on a date that the Village President announced that he could not attend) and approved the Anderson Text Amendment by a vote of 5 to 1 (the "Commercial Horse Boarding Text Amendment").

125. The Village Board did not have the transcripts of the public hearing, or the voting meeting, or the Zoning Board of Appeals minutes of either the December 2 or December 3, 2014, meetings, available at the December 15th special meeting.

126. On January 8, 2015, the Village President vetoed the Anderson Text Amendment.

127. At the Village's regularly scheduled meeting on January 26, 2015, the Village President read his veto message into the public record. (A copy of the veto message is attached as **Exhibit L.**)

128. On February 23, 2015, the Village Board voted to override the veto and approved the Commercial Horse Boarding Text Amendment, by a vote of 5-2 with Messer, Meroni and Selman voting in favor of the override.

129. The Village has now fully retreated from the legal position it took and defended in the Circuit Court of Cook County and before the Illinois Appellate Court in *LeCompte I.* The Village has adopted a text amendment which not only legalizes LeCompte's large scale commercial horse boarding but does so on all residential zoned land in the Village. Additionally, it has approved a retroactivity provision in the Commercial Horse Boarding Text Amendment which legalizes the unlawful activities that LeCompte has conducted at the Oakwood Farm dating back to at least January, 2008.

130. By the Commercial Horse Boarding Text Amendment, the Village seeks to eviscerate two opinions of the Appellate Court which have declared this large scale commercial horse boarding operation illegal under the Village's Zoning Ordinance.

131. Section 5-10-6 of the Village Zoning Ordinance sets forth the standards and criteria that the Zoning Board of Appeals is required to consider and follow in the first instance and directs the Village Board, as the ultimate decision-maker, to consider and follow in approving or denying any text amendment. That section provides in relevant part as follows:

AMENDMENTS

"(A) Authority: For the purposes of promoting the public health, safety, morals, comfort and general welfare, conserving the values of property throughout the village, and

lessening or avoiding congestion in the public roads and highways, the president and the board of trustees of the village may, from time to time, in the manner hereinafter set forth, amend the regulations imposed and the districts created by this title; provided, that in all amendatory ordinances adopted under the authority of this section, due allowance shall be made for existing conditions, the conservation of property values, the directions of building development to the best advantage of the entire Village, and the uses to which property is devoted at the time of the effective date hereof.

***

(F) Findings of Fact and Recommendations of the Zoning Board of Appeals: Within a reasonable time after the close of the hearing on a proposed amendment, the Zoning Board of Appeals shall make written findings of fact and shall submit same together with its recommendation to the Board of Trustees of the Village. Where the purpose and effect of the proposed amendment is to change the zoning classification of particular property, the Zoning Board of Appeals shall make findings based upon the evidence presented to it in each specific case with respect to the following matters:

1. Existing uses of property within the general area of the property in question.

2. The zoning classification of property within the general area of the property in question.

3. The suitability of the property in question for the uses permitted under the existing zoning classification.

4. The trend of development, if any, in the general area of the property in question, including changes, if any, which may have taken place since the day the property in question was placed in its present zoning classification.

The Zoning Board of Appeals shall not recommend the adoption of a proposed amendment unless it finds that the adoption of such an amendment is in the public interest and is not solely for the interest of the applicant..."

(A copy of the Section 5-10-6 of the Village Zoning Ordinance is attached as **Exhibit M.**)

132. The Commercial Horse Boarding Text Amendment is inconsistent with the standards and criteria identified in Section 5-10-6 of the Village's Zoning Ordinance *to wit*:

a. Large scale commercial horse boarding is inconsistent with the predominately residential uses in the Village; and

b. Large scale commercial horse boarding is inconsistent with the peaceful and quite enjoyment of the estate residential homes permitted as a matter of right in the Village's residential districts; and

c. Large scale commercial horse boarding is unsuitable and inconsistent with the uses as a matter of right in the Village's residential zoning districts. By exempting the

majority of the bulk and height restrictions in the Village's residential districts, the Commercial Horse Boarding Text Amendment is in contravention of those residential zoning districts; and

d. There is no trend of development within the residential zoning districts for large scale commercial horse boarding operations. There is only one such use in the entirety of the Village.

133. The Commercial Horse Boarding Text Amendment inverts the floor area ratio in such a manner that the barn and stables can be the principal structure, dwarfing the home on the property. It cripples the protections embodied in the Home Occupation provisions which gave adjacent property owners a cause of action and a remedy in the event that the commercial horse boarding operation disturbed their peaceful tranquility. It eliminates the bulk restrictions including those regulating height, rear yard, and side yard setbacks. The Village's Building and Zoning official identified several enforcement difficulties regarding the Commercial Horse Boarding Text Amendment which the Zoning Board of Appeals failed to address.

134. The foregoing demonstrates that in derogation of Section 5-10-6 of the Village Zoning Ordinance, the Commercial Horse Boarding Text Amendment was not adopted to promote the general public interest, but that instead, it was adopted to benefit one individual property owner who has been unlawfully operating a large commercial horse boarding on his property in the Village for over seven (7) years.

135. The Commercial Horse Boarding Text Amendment is not in the public interest for the following additional facts:

a. It is not supported by competent evidence and facts;

b. It is contrary to other communities' approach to authorizing commercial horse boarding operations through the special use technique;

c. It is evident from the several special meetings that were called by the Chairman of the Zoning Board of Appeals on this matter;

d. It is evident from the defective notices that were published that caused the cancellation of the first set of specially called meetings;

e. It is evident from the specially called voting meeting the very next evening after the public hearing;

f. It is evident from the failure to take the necessary time to gather the necessary information to make a reasoned and informed decision;

g. It is evident from the failure to link the Anderson Text Amendment to well considered goals and objectives of the Village for future land use resulting in an *ad hoc* decision;

h. It is evident from the absence of careful and deliberate study on the Anderson Text Amendment which impacts 98% of the land in the Village;

i. It is evident from the undo haste which resulted in failing to retain experts in the fields of land planning, traffic engineering, equine management, fire safety, ground water and other associated fields to study and advise the Zoning Board of Appeals before it voted; (Compare *Thornber v. Village of North Barrington*, 321 Ill. App. 3d 318, 322, 747 N.E. 2d 513, 518 (2nd Dist. 2001): "After consideration of public comment on the proposed text amendment, the plan commission recommended consultation with experts and consultants before revision of the proposed ordinances. The proposed amendments were rejected by the plan commission.");

j. It is evident from the rush to vote on the Anderson Text Amendment without taking the necessary time to order the stenographic record of the public hearing be prepared and sufficient time taken to study that transcript and the minutes of the meeting before voting on the Anderson Text Amendment;

k. It is evident from the absence of any evidence or professional opinion that the Anderson Text Amendment benefited the community as a whole;

l. It is evident from the absence of evidence examining the impacts on the public safety. Many of these impacts were expressly identified by the Appellate Court in *LeCompte II*;

m. It is evident from the absence of any examination of the applicability of the State Livestock Facilities Management Act, 510 ILCS 77/1 *et seq.*;

n. It is evident from the retroactivity provision which benefits only one property owner, Benjamin LeCompte; and

o. It is evident from the absence of any evidence that there exists any other large commercial horse boarding operation in the Village and the testimony of the Village Administrator conceding that he could not identify any other such operation.

136. The Village Board was well aware of all of these deficiencies and defects in the Zoning Board of Appeals decision making process. The Village Board did not insist that the

Zoning Board of Appeals procure, study and deliberate on a substantial amount of the information that the Village Board directed them to gather and to consider. (See **Exhibit K.**) Despite these fatal flaws, the Village Board voted on two separate occasions to enact into law the Anderson Text Amendment.

137. The Village Board's actions are yet another example of a pattern of activity by a majority of the Village Board since January 2011 to aid and abet LeCompte's continued unlawful use of Oakwood Farm for a large scale commercial horse boarding operation, *to wit*:

a. It began in 2011 when the Village refused to enforce its cease and desist order while the appeal in *LeCompte I* was pending; and

b. It continued in 2011 with the "Schuman" letter; and

c. It has continued to this day with the Village's refusal to enforce its cease and desist order even after the Appellate Court in *LeCompte II* dismissed the "Schuman" letter defense; and

d. It continued on April 22, 2013, when the former village president (Abboud) and his allies (including Messer, Meroni and Selman) at Abboud's last meeting in office appointed to the Village's advisory boards and commissions 33 of his allies. This included appointing two supporters of commercial horse boarding to the Zoning Board of Appeals. On June 10, 2014, the Attorney General's Office, in 2103 PAC 24843, found that these appointments by the outgoing Village President, Robert Abboud, violated the Open Meetings Act, 5 ILCS 120/3.5(e). The Attorney General's Office directed the Village as follows: "To remedy that violation, the Board is directed to reconsider and re-vote on the April 22, 2013 committee appointments at a properly noticed meeting for which the agenda specifically references the nature of the appointments." The Village Board has ignored this clear directive from the Attorney General's Office. (A copy of the letter from the Attorney General is attached as **Exhibit N.**); and

e. It has continued with other alleged violations of the Open Meetings Act which are the subject of pending investigations by the Attorney General's Office including allegations that Trustees Gohl, Messer and Selman met to discuss the Anderson Text Amendment in violation of the Open Meetings Act and that the Chairman of the Zoning Board of Appeals and member Kurt Anderson collaborated with Benjamin LeCompte; and

f. The pattern of activity has continued with Zoning Board of Appeals member, Anderson, who made substantial edits to the LeCompte Text Amendment and only publicly introduced them on September 11, 2014, the night that the Zoning Board of Appeals voted to recommend approval of the LeCompte Text Amendment. These changes were not disseminated in advance of the voting meeting to either the public or to members of the Zoning Board of Appeals who had not shown their support toward the LeCompte Text Amendment.

138. Instead of enforcing its laws, the Village Board majority has undertaken to amend its laws by adopting a text amendment which legalizes LeCompte's illegal large scale commercial horse boarding operations and makes the effects of the law retroactive so as to legalize the unlawful acts that LeCompte has engaged in for, at a minimum, the last seven years.

139. The acts as alleged herein destroy the presumption of validity that Illinois courts may accord to an amendment to the Village's Zoning Ordinance and demonstrates that the amendment is in contravention of the standards contained in the ordinance proscribing the adoption of amendments solely for the benefit of the applicant. (See **Exhibit M.**)

140. The Commercial Horse Boarding Text Amendment bears no relation to the public health, safety, comfort, morals or general welfare.

141. As a result of the Village's adoption of the Commercial Horse Boarding Text Amendment, which permits, as a matter of right, large scale commercial horse boarding on the properties immediately adjacent to each of Plaintiffs' Properties, Plaintiffs have been denied the right to the peaceful and quiet enjoyment of their properties.

142. As a result of the Village Board's adoption of the Commercial Horse Boarding Text Amendment, Plaintiffs will suffer from the impacts of additional traffic, ground water and surface water pollution, increased noise and other deleterious impacts.

143. The Commercial Horse Boarding Text Amendment destroys Plaintiffs' right to use their properties for estate residential purposes, depreciates and destroys the use and value of Plaintiffs' Properties, and the improvements developed thereon.

144. A Zoning Ordinance shall not be changed or amended unless such a change is for the public good and such change promotes the public welfare. The Commercial Horse Boarding Text Amendment advances neither of these legal standards.

145. The Commercial Horse Boarding Text Amendment confiscates Plaintiffs' Properties without due process of law, without benefitting the public, and is in violation of

Plaintiffs' rights to equal protection of the laws. The Village's actions in passing the Commercial Horse Boarding Text Amendment were arbitrary, capricious and unreasonable.

146. The Commercial Horse Boarding Text Amendment denies Plaintiffs their constitutional rights in violation of Article I, Sections 2 and 15 of the Illinois Constitution of 1970 and the Fourteenth Amendment to the Constitution of the United States.

147. Plaintiffs are irreparably harmed by the Village's adoption of the Commercial Horse Boarding Text Amendment and are without an adequate remedy at law.

148. Plaintiffs, as owners of residential estate zoned property in the Village, have invested substantial sums in each of their properties and the improvements thereon. Should the Commercial Horse Boarding Text Amendment be declared invalid and the Village enjoined from enforcing said text amendment, Plaintiffs shall be allowed to use and enjoy their properties as they are currently developed and improved, and Plaintiffs will derive full benefit from their properties without in any manner adversely affecting the public health, safety, comfort or welfare, nor depreciating the use and value of surrounding properties or improvements.

149. By reason of the Village's adoption of the Commercial Horse Boarding Text Amendment, an actual dispute has arisen between Plaintiffs and the Village affecting Plaintiffs' right to the use and enjoyment of their properties. A case or controversy exists between the parties and, pursuant to the provisions of Section 2-701 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-701, it is desirable and feasible that the Court declare the rights of the parties.

150. Plaintiffs' Properties, their rights, and the welfare of the community, will best be served if the Commercial Horse Boarding Text Amendment is declared null and void.

151. Plaintiffs have exhausted all, if any, administrative, local and legislative remedies available to them to challenge the Commercial Horse Boarding Text Amendment.

WHEREFORE, Plaintiffs pray that:

a. Judgment be entered finding and declaring that the Commercial Horse Boarding Text Amendment bears no relation to the public health, safety, comfort, morals or general welfare; that it is an unreasonable exercise of the police power where it infringes on the constitutional rights secured to Plaintiffs pursuant to Article I, Sections 2 and 15 of the Illinois Constitution of 1970 and the Fourteenth Amendment to the Constitution of the United States;

b. The Commercial Horse Boarding Text Amendment be declared to be unreasonable, null and void;

c. The Village, its officers, agents, servants and employees be further restricted and permanently enjoined from enforcing the terms of the Commercial Horse Boarding Text Amendment;

d. The Court reserve and retain jurisdiction to prevent the Village, its officers, agents and employees from interfering with the rights of Plaintiffs or anyone claiming by, through or under Plaintiffs;

e. The Court declare such other and further rights of the parties and grant such other and further relief as this court shall consider necessary; and

f. Plaintiffs be awarded their costs of suit.

Respectfully submitted,

JAMES J. DRURY III, as agent of the Peggy D. Drury Declaration of Trust U/A/D 02/04/00,
Jack E. Reich, and
James T. O'Donnell

By: _____
One of their attorneys

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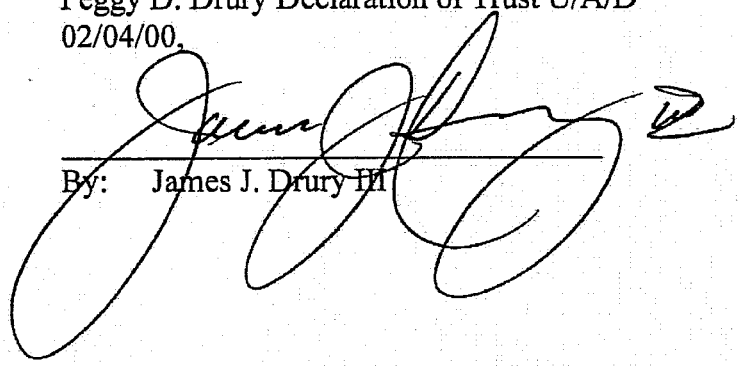
VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned hereby certifies that the statements set forth in the foregoing VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT, INJUNCTION, AND OTHER RELIEF are true and correct except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true to the best of his knowledge, information and belief.

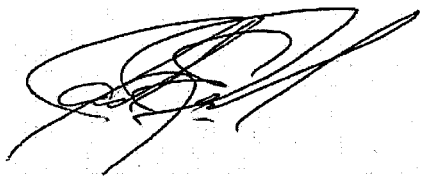
JAMES J. DRURY III, as agent of the Peggy D. Drury Declaration of Trust U/A/D 02/04/00.



By: James J. Drury III

VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned hereby certifies that the statements set forth in the foregoing VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT, INJUNCTION, AND OTHER RELIEF are true and correct except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true to the best of his knowledge, information and belief.



By: Jack E. Reich

VERIFICATION

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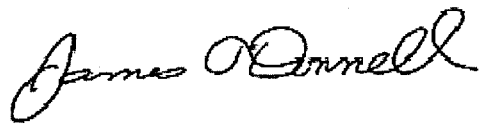

By: James T. O'Donnell

EXHIBIT LIST

A	Commercial Horse Boarding Text Amendment—Ordinance (*See* Footnote 2 to Complaint)
B	Letter dated December 17, 2010 from Stephen C. Schulte
C	*LeCompte v. Zoning Board of Appeals for the Village of Barrington Hills*, 2011 IL App (1st) 100423 ("LeCompte I")
D	*James J. Drury III et al. v. Benjamin LeCompte et al.*, 2014 IL App (1st) 121894-U ("LeCompte II")
E	Legal Notice- Daily Herald
F	Oral Report of Preliminary Closed Hearing on March 18, 2011
G	Board of Elections Final Order Dated June 14, 2011
H	Schuman Letter dated March 15, 2011
I	Village President's Letter to Residents, Elected & Appointed Officials and Employees of the Village of Barrington Hills dated February 12, 2015
J	Letter from Judith Freeman dated July 20, 2011
K	Memo dated October 17, 2014, to the Zoning Board of Appeals from Robert Kosin,
L	Veto Message from the Village President dated January 26, 2015
M	Section 5-10-6 of Village of Barrington Hills Zoning Ordinance
N	Letter from the Attorney General dated June 10, 2014

Exhibit A

ORDINANCE 14-

AN ORDINANCE AMENDING TITLE 5, ZONING REGULATIONS SET FORTH IN CHAPTERS 2, 3 AND 5 REGARDING HORSE BOARDING

WHEREAS, the Village of Barrington Hills (hereinafter the "Village") is a duly organized and existing Illinois home rule municipality pursuant to the Illinois Municipal Code, 65 ILCS 5/1-1-1 *et seq.*; and

WHEREAS, the Village of Barrington Hills is authorized and empowered, under the Municipal Code and the Code of Ordinances of the Village of Barrington Hills, to regulate properties located within the municipal boundaries of the Village; and

WHEREAS, in furtherance of this authorization, the Village of Barrington Hills has adopted a zoning code, set forth in Title 5 Zoning Regulations of the Village's Municipal Code to, among other purposes, effectuate the Village's planning program and to regulate individual property use by establishing use districts, building site requirements, setback, density, parking and height regulations, and by specifying external impact standards for noise, smoke, odor, glare and vibration; and

WHEREAS, the Village has established zoning classifications within the Village, which provide for allowable uses and special permit uses; and

WHEREAS, Section 5-10-6 of the zoning code of the Village of Barrington Hills authorizes the Village Zoning Board of Appeals to recommend in writing, upon the making of appropriate findings of fact, and the Board of Trustees to approve, amendments to the text of the zoning code; and

WHEREAS, horse boarding is regulated in the Village, as set forth in the zoning code, as a home occupation; and

WHEREAS, upon review of the Title 5 Zoning Regulations, and particularly, its authorization regarding horse boarding as a home occupation, the Village's Zoning Board of Appeals has received four Applications for amendment to the existing text concerning horse boarding and has filed its own Application for amendment following hearing of the Applications filed by other interested parties; and

WHEREAS, the Zoning Board of Appeals' Application for test amendment was filed for consideration in accordance with Section 5-10-6 of the zoning code; and

WHEREAS, Notice of the Public Hearing with respect to the proposed text amendment was published in the Daily Herald Newspaper in the Village of Barrington Hills, and additional notice of the hearing was provided, all as required by the statutes of the State of Illinois and the ordinances of the Village; and

WHEREAS, pursuant to said Notices, the Zoning Board of Appeals of the Village of Barrington Hills conducted a Public Hearing on December 2 and 3, 2014 as required by the statutes of the State of Illinois and the ordinances of the Village, and after hearing the Application, voted 4-2 to recommend approval of the text amendment offered by the Zoning Board of Appeals, in the version adopted by the Zoning Board of Appeals on December 3, 2014 in the form set forth in Exhibit "A," attached hereto and incorporated herein by reference; and

WHEREAS, the Zoning Board of Appeals has forwarded its finding and recommendation to approve the text amendment to the Village Board, in the Findings and Recommendation, attached hereto and incorporated herein by reference as Exhibit "B;" and

WHEREAS, the President and Village Board of Trustees has considered the matter and determined that the recommended text amendment to Title 5 Zoning Regulations, Chapters 2, 3 and 5 be granted as recommended, as such action is believed to be in the best interests of the Village and its residents

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Barrington Hills, a home rule community located in Cook, Lake, Kane and McHenry Counties, Illinois, duly assembled at a regular meeting, as follows:

SECTION ONE: That the forgoing recitals are hereby incorporated by reference as if fully set forth herein.

SECTION TWO: That Title 5 Zoning Regulations, Chapters 2, 3 and 5 be amended as set forth in Exhibit "A," attached hereto and incorporated herein by reference, and a clean copy of which amendment is attached hereto and incorporated herein by reference as Exhibit "C."

SECTION THREE: That all other ordinances and resolutions, or parts thereof, in conflict with the provisions of this Ordinance, are, to the extent of such conflict, expressly repealed.

SECTION FOUR: That this Ordinance shall be in full force and effect from and after its passage, approval, and publication in pamphlet form as provided by law.

PASSED AND APPROVED by the President and Board of Trustees of the Village of Barrington Hills, this 15th day of December, 2014.

AYES:_____

NAYES:_____

ABSENT:_____

ABSTAIN:_____

_____
Village President

ATTEST:

_____
Village Clerk

EXHIBIT A

TEXT AMENDMENT

Exhibit A

Chapter 2

ZONING DEFINITIONS

5-2-1: DEFINITIONS:

AGRICULTURE: The use of land for agricultural purposes, including farming, dairying, pasturage, apiculture, horticulture, floriculture, viticulture, ~~and~~ animal and poultry husbandry~~, (including~~ and the breeding, boarding, and training of horses and riders as a hobby or ~~an~~ occupation~~)~~, and the ~~necessary~~ accessory uses needed for the following: the handling or storing of ~~the~~ produce, conducting animal husbandry, and for the breeding, boarding, and training of horses and rider instruction. It is recognized specifically that buildings, stables or structures associated with the breeding, boarding, and training activities (Boarding and Training Facilities) may exceed the size of building associated with residential or other uses of the land, without affecting a determination that the use of such land is deemed Agricultural.~~; provided, however, that the operation of any such accessory uses shall be secondary to that of the normal agricultural activities.~~ This definition of Agriculture shall not be construed as encompassing or extending to daily or hourly ~~unsupervised~~ rental of horses. Such amended definition is retroactive and in full force and effect as of June 26, 2006.

Chapter 3

GENERAL ZONING PROVISIONS

5-3-4: REGULATIONS FOR SPECIFIC USES:

(A) Agriculture:

1) Other than those regulations specifically provided for in Section 5-3-4(A)2(a) below, the provisions of this title shall not ~~be exercised so as to~~ impose regulations or require permits with respect to land used or to be used for agricultural purposes.~~, or with respect to the erection, maintenance, repair, alteration, remodeling or extension of buildings or structures~~ used or to be used ~~for agricultural purposes upon such land, except that such buildings or structures for agricultural purposes may be required to conform to building or setback lines. In the event that the land ceases to be used solely for agricultural purposes, then, and only then, shall the provisions of the~~ this ~~zoning title~~ shall ~~apply.~~

2) Boarding and Training of Horses and Rider Instruction:

a) Regulations: The following provisions listed in this subsection 5-3-4(A)2(a) shall apply to the boarding and training of horses and rider instruction:

i.) The hours of operation of Boarding and Training Facilities shall be (a) employees (not residing on the property): from six o'clock (6:00) AM to nine o'clock (9:00) PM or 30 minutes past dusk, whichever is later; (b) boarders and riders receiving instruction: from seven o'clock (7:00) A.M. to eight thirty o'clock (8:30) P.M. or dusk, whichever is later; (c) use of machinery, seven o'clock (7:00) AM to nine o'clock (9:00) PM. These hourly restrictions shall not apply in the event of emergencies.

outward appearance nor manifest characteristics of a business which would infringe upon the right of neighboring residents to enjoy the peaceful occupancy of their dwelling units or infringe upon or change the intent or character of the residential district.

1. Authorization: Subject to the limitations of this subsection, any home occupation that is customarily incidental to the principal use of a building as a dwelling shall be permitted in any residential zoning district.

2. Definition: A "home occupation" is any lawful business, profession, occupation or trade conducted from a principal building or an accessory building in a residential district that:

a. Is conducted for gain or support by a full time occupant of a dwelling unit; and

b. Is incidental and secondary to the principal use of such dwelling unit for residential occupancy purposes, except that it is recognized that ~~the accessory building or buildings, such as~~ any barn, stable, or arena, may exceed the size of the dwelling unit; and

c. Does not change the essential residential character of such dwelling unit or the surrounding neighborhood.

3. Use Limitations:

a. Employee Limitations:

(1) The owner of every home occupation shall be a person that is a full time occupant of the dwelling unit where such occupation is conducted.

(2) No more than two (2) employees or subcontractors, other than the full time occupants of a dwelling unit shall be engaged or employed in connection with, or otherwise participate in the operation of, a home occupation at any one time. This limitation on the number of employees or subcontractors shall not apply to employees or subcontractors who are not present and do not work at the dwelling unit devoted to such home occupation.

b. Structural Limitations:

(1) No alteration of any kind shall be made to the dwelling unit where a home occupation is conducted that would change its residential character as a dwelling unit, including the enlargement of public utility services beyond that customarily required for residential use.

(2) No separate entrance from the outside of the building where the home occupation is located shall be added to such building for the sole use of the home occupation.

c. Operational Limitations:

(1) Every home occupation shall be conducted wholly within either: a) a principal building or b) an accessory building, but not both.

(2) The floor area ratio (FAR) of the area of the building used for any such home occupation shall not exceed .01 (exclusive of garage floor area devoted to permissible parking of vehicles used in connection with the home occupation) with the exception of any ~~accessory building or buildings such as a~~ barn, stable or arena.

~~horses and their riders shall be a permitted home occupation; provided that no persons engaged to facilitate such boarding, other than the immediate family residing on the premises, shall be permitted to carry out their functions except between the hours of eight o'clock (8:00) A.M. and eight o'clock (8:00) P.M. or sunset, whichever is later, and further provided that no vehicles or machinery, other than that belonging to the immediate family residing on the premises shall be permitted to be operated on the premises except during the hours of eight o'clock (8:00) A.M. and eight o'clock (8:00) P.M. or sunset, whichever is later. (Ord. 06-12, 6-36-2006).~~

. . .

Chapter 5

RESIDENTIAL DISTRICTS

5-5-2(A) to be amended to add the following accessory use:

Breeding, boarding, and training of horses, and rider instruction, as regulated under Section 5-3-4(A)(2) or Section 5-3-4(D) as applicable.

EXHIBIT B

ZBA FINDINGS OF FACT/RECOMMENDATION

December 8, 2014

To: President and Board of Trustees
Village of Barrington Hills

RE: ZBA Application for Text Amendment - Horse Boarding

This is to advise you that the Zoning Board of Appeals (ZBA) held a public hearing commencing on December 2 and continuing to December 3, 2014 regarding a proposed amendment to the zoning code relative to horse boarding. The proposed amendment was submitted for consideration by the ZBA, which served as the "Applicant" pursuant to the provisions of Title 5 – Zoning Regulations, Chapter 5 Administration, Section 5-10-6 of the Village Code. The hearings were held at Countryside Elementary School, where a quorum was present on each night. Notice of the hearings was published in compliance with the Open Meetings Act, and published in a timely manner in the Daily Herald.

At the hearing, the ZBA heard testimony from the Applicants and/or their representatives, and from the public at large.

FACTS

The Village Zoning Code, Title 5 – Zoning Regulations, Chapter 5 Administration, Section 5-10-6 allows for amendments to the Zoning Code. Section 5-10-6 (A) provides:

> Authority: For the purposes of promoting the public health, safety, morals, comfort and general welfare, conserving the values of property throughout the village, and lessening or avoiding congestion in the public roads and highways, the president and the board of trustees of the village may, from time to time, in the manner hereinafter set forth, amend the regulations imposed and the districts created by this title; provided, that in all amendatory ordinances adopted under the authority of this section, due allowance shall be made for existing conditions, the conservation of property values, the directions of building development to the best advantage of the entire Village, and the uses to which property is devoted at the time of the effective date hereof. (Ord. 63-1, 4-1-63)

For purposes of an amendment to the text of the Zoning Code, the ZBA must make findings of fact and its recommendation to the Board of Trustees in writing, pursuant to section 5-10-6(F), which provides:

> F) Findings of Fact and Recommendations of the Zoning Board of Appeals: Within a reasonable time after the close of the hearing on a proposed amendment, the Zoning Board of Appeals shall make written findings of fact

and shall submit same together with its recommendation to the Board of Trustees of the Village. . . .

The Zoning Board of Appeals shall not recommend the adoption of a proposed amendment unless it finds that the adoption of such an amendment is in the public interest and is not solely for the interest of the applicant. . . .

On December 4, 2014, immediately following the close of the public hearing, the ZBA met to discuss the facts presented on the Application for Text Amendment. ZBA Member Kurt Anderson opened discussion of the Application by presenting minor revisions to the Text proposed, based on the testimony of Village of Barrington Hills Zoning Enforcement Officer Don Schumann, who recommended various modifications related to enforcement. The ZBA Text Amendment, as amended by Member Anderson, is attached hereto. Member Anderson moved to recommend the Text Amendment; a motion which was seconded by ZBA Member Karen Rosene. Considerable discussion ensued over the Text Amendment.

FINDING

The ZBA, after having examined the Application for Text Amendment, with revisions proposed by Member Anderson, and taking into consideration the testimony heard in the public hearing for horse boarding, adopted the following finding as to the Text Amendment:

1. That the text amendment, as proposed, addresses the concerns of the health, safety, and welfare of the community arising out of the breeding, boarding, and training of horses and riders within the village. It's designed to eliminate or address the issues of nuisance as well as traffic and safety for residences of the village.

This finding was adopted on a 4-2 vote with Members Anderson, Freeman, Rosene, and Benkendorf voting "aye," and Members Stieper and Wolfgram voting "no." The motion to adopt this finding carried.

RECOMMENDATION

The Application for Text amendment, as amended by Member Anderson, was adopted on a 4-2 vote to recommend, with Members Anderson, Freeman, Rosene and Benkendorf voting "aye" and Members Stieper and Wolfgram voting "no." The motion to recommend carried.

Respectfully submitted,

Judith K Tree, Chair, Zoning Board of Appeals

Zoning Board of Appeals
Village of Barrington Hills

Exhibit C

Chapter 2

ZONING DEFINITIONS

5-2-1: DEFINITIONS:

AGRICULTURE: The use of land for agricultural purposes, including farming, dairying, pasturage, apiculture, horticulture, floriculture, viticulture, animal and poultry husbandry and the breeding, boarding, and training of horses and riders as a hobby or occupation, and the accessory uses needed for the following: the handling or storing of produce, conducting animal husbandry, and for the breeding, boarding, and training of horses and rider instruction. It is recognized specifically that buildings, stables or structures associated with the breeding, boarding, and training activities (Boarding and Training Facilities) may exceed the size of building associated with residential or other uses of the land, without affecting a determination that the use of such land is deemed Agricultural. This definition of Agriculture shall not be construed as encompassing or extending to daily or hourly rental of horses. Such amended definition is retroactive and in full force and effect as of June 26, 2006.

Chapter 3

GENERAL ZONING PROVISIONS

5-3-4: REGULATIONS FOR SPECIFIC USES:

(A) Agriculture:

1) Other than those regulations specifically provided for in Section 5-3-4(A)2(a) below, the provisions of this title shall not impose regulations or require permits with respect to land used or to be used for agricultural purposes.

2) Boarding and Training of Horses and Rider Instruction:

a) Regulations: The following provisions listed in this subsection 5-3-4(A)2(a) shall apply to the boarding and training of horses and rider instruction:

i.) The hours of operation of Boarding and Training Facilities shall be (a) employees (not residing on the property): from six o'clock (6:00) AM to nine o'clock (9:00) PM or 30 minutes past dusk, whichever is later; (b) boarders and riders receiving instruction: from seven o'clock (7:00) A.M. to eight thirty o'clock (8:30) P.M. or dusk, whichever is later; (c) use of machinery, seven o'clock (7:00) AM to nine o'clock (9:00) PM. These hourly restrictions shall not apply in the event of emergencies.

ii.) No property shall be allowed to conduct the activities subject to the regulations under this Section 5-3-4(A)2 that is not located on the same zoning lot or lots under the same ownership and/or control as the residence of the owner or operator of the related facility.

iii.) All barns shall have an animal waste management protocol consistent with published acceptable standards and in full compliance with 7-2-5 of the Village's Municipal Code.

iv.) Lighting for barns, stables and arenas shall only be directed onto the property for which such uses occur such that there is no direct illumination of any adjacent property from such lighting. In all respects, lighting for any activities or structures used in agriculture shall comply with all other provisions of the Village Code.

v.) Nuisance causing activities: It is unlawful for any person operating a Boarding and Training Facility to allow or permit any animal to cause serious or habitual disturbance or annoyance by frequent or habitual noisy conduct, which shall annoy, injure or endanger safety, health, comfort or repose to others. Noisy conduct is defined as noise which can be heard continuously within an enclosed structure off the property of the Boarding and Training Facility for more than fifteen (15) minutes and which annoys, injures or endangers the safety, health, comfort, or repose of others. In addition to the foregoing specific limitations, no Boarding or Training Facility shall cause or create any act, which endangers public health or results in annoyance or discomfort to the public, said act being defined as a nuisance under Title 7, Chapter 1 of this Code.

vi.) There shall be a limit on the number of horse that a Boarding and Training Facility is allowed to board such that there shall not be in excess of two boarded horses per zoning lot acre.

vii.) Properties subject to the provisions of this Section 5-3-4(A)(2) shall ensure that traffic associated with the agricultural operations is reasonably minimized, particularly at properties where access is from private roads, and including at times any events such as charity outings or clinics.

viii.) Properties subject to the provisions of this Section 5-3-4(A)(2) shall provide indoor toilets for use by employees, boarders and riders and shall not rely on outdoor portable toilets for ordinary operations.

(ix) Properties subject to the provisions of this Section 5-3-4(A)(2) shall comply with the maximum floor area ratio requirements applicable to single family detached dwellings as specified in Section 5-5-10-1 herein.

. . .

(D) Home Occupation: The intent of this subsection is to provide peace, quiet and domestic tranquility within all residential neighborhoods within the village and in order to guarantee to all residents freedom from nuisances, fire hazards, excessive noise, light and traffic, and other possible effects of business or commercial uses being conducted in residential districts. It is further the intent of this subsection to regulate the operation of a home occupation so that the general public will be unaware of its existence. A home occupation shall be conducted in a manner which does not give an outward appearance nor manifest characteristics of a business which would infringe upon the right of neighboring residents to enjoy the peaceful occupancy of their dwelling units or infringe upon or change the intent or character of the residential district.

Exhibit C

1. Authorization: Subject to the limitations of this subsection, any home occupation that is customarily incidental to the principal use of a building as a dwelling shall be permitted in any residential zoning district.

2. Definition: A "home occupation" is any lawful business, profession, occupation or trade conducted from a principal building or an accessory building in a residential district that:

a. Is conducted for gain or support by a full time occupant of a dwelling unit; and

b. Is incidental and secondary to the principal use of such dwelling unit for residential occupancy purposes, except that it is recognized that any barn, stable, or arena, may exceed the size of the dwelling unit; and

c. Does not change the essential residential character of such dwelling unit or the surrounding neighborhood.

3. Use Limitations:

a. Employee Limitations:

(1) The owner of every home occupation shall be a person that is a full time occupant of the dwelling unit where such occupation is conducted.

(2) No more than two (2) employees or subcontractors, other than the full time occupants of a dwelling unit shall be engaged or employed in connection with, or otherwise participate in the operation of, a home occupation at any one time. This limitation on the number of employees or subcontractors shall not apply to employees or subcontractors who are not present and do not work at the dwelling unit devoted to such home occupation.

b. Structural Limitations:

(1) No alteration of any kind shall be made to the dwelling unit where a home occupation is conducted that would change its residential character as a dwelling unit, including the enlargement of public utility services beyond that customarily required for residential use.

(2) No separate entrance from the outside of the building where the home occupation is located shall be added to such building for the sole use of the home occupation.

c. Operational Limitations:

(1) Every home occupation shall be conducted wholly within either: a) a principal building or b) an accessory building, but not both.

(2) The floor area ratio (FAR) of the area of the building used for any such home occupation shall not exceed .01 (exclusive of garage floor area devoted to permissible parking of vehicles used in connection with the home occupation) with the exception of any barn, stable or arena.

(3) There shall be no direct retail sales of merchandise, other than by personal invitation or appointment, nor any permanent display shelves or racks for the display of merchandise to be sold in connection with the home occupation, with the exception of any barn, stable or arena.

(4) No routine attendance of patients, clients, customers, subcontractors, or employees (except employees and subcontractors as provided in subsection (D)3a(2) of this section) associated with any home occupation shall be permitted at the premises of the home occupation, provided, however, that the attendance of up to four (4) persons at any one time may be allowed for the purpose of receiving private instruction in any subject of skill. "Routine attendance" means that the conduct of the home occupation requires persons, other than the owner or permitted employees and subcontractors, to visit the premises of the home occupation as part of the regular conduct of the occupation, without regard to the number, frequency, or duration of such visits.

(5) No vehicle or mechanical, electrical, or other equipment, that produces noise, electrical or magnetic interference, vibration, heat, glare, emissions, odor, or radiation outside the principal building or accessory building containing the home occupation that is greater or more frequent than that typical of vehicles or equipment used in connection with residential occupancy shall be used in connection with any home occupation.

(6) All storage of goods, materials, products or merchandise used or sold in conjunction with a home occupation shall be wholly within the principal building or accessory building containing the home occupation.

(7) No refuse in excess of the amount permitted under section 5-3-9 of this chapter shall be generated by any home occupation.

(8) There shall be a limit on the number of horses that are subject to the home occupation activity such that there shall not be in excess of one boarded horse per zoning lot acre.

d. Signage And Visibility:

(1) No exterior business signs on a principal building, accessory building or vehicle used in connection with the home occupation, shall be permitted in connection with any home occupation unless otherwise permitted under section 5-5-11 of this title.

(2) There shall be no exterior indications of the home occupation or exterior variations from the residential character of the principal building or accessory building containing the home occupation.

e. Traffic Limitations: No home occupation shall generate significantly greater vehicular or pedestrian traffic than is typical of residences in the surrounding neighborhood of the home occupation.

f. Nuisance Causing Activities: In addition to the foregoing specific limitations, no home occupation shall cause or create any act, which endangers public health or results in annoyance or discomfort to the public, said act being defined as a nuisance under title 7, chapter 1 of this code.

g. Boarding And Training Of Horses and Riders: The boarding and training of horses and rider instruction shall be a permitted home occupation. For properties of less than ten acres these activities are regulated under Section 5-3-4(D) herein, and in addition must comply with the restrictions under Section 5-3-4(A)2i., iii., and viii. For properties of ten acres or larger, these activities are regulated solely under Section 5-3-4(A)2 herein.

. . .

Exhibit C

Chapter 5

RESIDENTIAL DISTRICTS

5-5-2(A) to be amended to add the following accessory use:

Breeding, boarding, and training of horses, and rider instruction, as regulated under Section 5-3-4(A)(2) or Section 5-3-4(D) as applicable.

Exhibit B

WINSTON & STRAWN LLP

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December 17, 2010

Via Email, Telecopy and U.S. Mail

Douglas E. Wambach, Esq.
Burke, Warren, MacKay & Serritella, P.C.
330 North Wabash Avenue
22nd Floor
Chicago, Illinois 60611-3607

Re: Enforcement of Cease and Desist Order at 350 Bateman Road

Dear Doug:

Winston & Strawn LLP has been retained to represent James Drury in connection with his opposition to the commercial horse boarding facility being operated at 350 Bateman Road in violation of the Barrington Hills Village Zoning Code.

On January 10, 2008, on behalf of the Village of Barrington Hills, you sent a letter to Dr. and Mrs. Barry LeCompte informing them that their commercial horse boarding facility violated Section 5-5-2 of the Village Zoning Code and requested that they immediately cease and desist operation.

Rather than comply with the cease and desist letter, the LeComptes filed an appeal before the Zoning Board of Appeals, which subsequently voted on August 28, 2008, to affirm the cease and desist letter. Thereafter, the LeComptes filed a complaint in the Circuit Court of Cook County. On January 15, 2010, Judge Nancy J. Arnold issued an Order upholding the Village's cease and desist letter. The LeComptes have sought review by the Appellate Court of Illinois, First Judicial District. Your firm filed an opposition brief on behalf of the Village in that matter which argued that the LeCompte's "Commercial Horse Boarding Operation Does Not Comport With The Village Zoning Code." Brief of Defendants-Appellees at 21-23, LeCompte v. Zoning Board of Appeals for the Village of Barrington Hills, No. 10-0423 (Ill. App. Ct. Sep. 17, 2010). This brief succinctly summarizes the point very well as follows:

> **"Such a use is not permitted in the Village's R-1 zoning districts.... Unlike a home occupation, Plaintiffs' [LeComptes] horse boarding operation generates intense use, traffic and noise ill-suited to an R-1 Zoning District, regardless of fee arrangements."** (emphasis added)

It is important to remember the above process started when Mr. Drury filed a formal complaint with the Village to protect his rights under Village law so he and his neighbors would not be subjected to the noise, traffic and other irritants attendant with the illegal LeCompte boarding business. That lawful protection has long been denied to Mr. Drury and the neighbors, and as a result he and his neighbors have suffered irreparable harm for several years now.

Therefore, our client respectfully requests that the Village take all necessary actions to immediately enforce the cease and desist Order by no later than December 31, 2010 (almost three years after its issuance) and take all steps necessary to recover all fines assessed against the LeComptes since January 10, 2008. Based on a fine of up to $500.00 per day as indicated in the cease and desist letter, this amounts to a fine of $536,500.00 as of the date of this letter, and will be $543,500.00 as of December 31, 2010. The Village is entitled to this revenue and obviously could use this money for various Village needs – especially given these economic times. The Village has an obligation to act in the best interests of all of its residents and not to allow a single resident to violate the law to the detriment of other residents.

I look forward to discussing this matter with you personally at your earliest convenience.

Very truly yours,

Stephen C. Schulte

SCS/ps

Exhibit C

BENJAMIN B. LECOMPTE, CATHLEEN B. LECOMPTE, and NORTH STAR TRUST COMPANY, as Successor Trustee of Harris Bank Barrington N.A., as Trustee Under Trust Number 11-5176, Plaintiffs-Appellants, v. ZONING BOARD OF APPEALS FOR THE VILLAGE OF BARRINGTON HILLS; JONATHAN J. KNIGHT, Chairman; JUDITH FREEMAN, BYRON JOHNSON, NANCY MASTERSON, GEORGE MULLEN, KAREN ROSENE and MARK ROSSI as Members of the Zoning Board of Appeals, Defendants-Appellees.

No. 1-10-0423

APPELLATE COURT OF ILLINOIS, FIRST DISTRICT, THIRD DIVISION

2011 IL App (1st) 100423*; *958 N.E.2d 1065*; *2011 Ill. App. LEXIS 1014*; *354 Ill. Dec. 869

September 21, 2011, Decided

SUBSEQUENT HISTORY: Related proceeding at *Drury v. LeCompte, 2014 IL App (1st) 121894-U, 2014 Ill. App. Unpub. LEXIS 612 (2014)*

PRIOR HISTORY: [***1]

Appeal from the Circuit Court of Cook County. 09 CH 00934. Honorable Nancy J. Arnold, Judge Presiding. *LeCompte v. Zoning Bd. of Appeals for Barrington Hills, 2011 Ill. App. Unpub. LEXIS 1559 (2011)*

DISPOSITION: Affirmed.

SYLLABUS

The zoning board of the village where plaintiffs resided properly ordered plaintiffs to cease and desist using their property for the commercial boarding of horses, since the commercial boarding of horses was not a permitted agricultural use in the R-1 district in which plaintiffs resided.

COUNSEL: For PLAINTIFFS-APPELLANTS: Paul M. Bauch, Kenneth A. Michaels Jr., Carolina Y. Sales, Luke J. Hinkle, Of Counsel, Bauch & Michaels, LLC, Chicago, Illinois.

For DEFENDANTS-APPELLEES: Doughlas E. Wambach, George J. Lynch, Susan M. Horner, Of Counsel, Burke, Warren, MacKay & Serritella, P.C., Chicago, Illinois.

JUDGES: JUSTICE NEVILLE delivered the judgment of the court, with opinion. Justice Quinn and Justice Murphy concurred in the judgment and opinion.

OPINION BY: NEVILLE

OPINION

[*P1] **[**1066]** Plaintiffs, Dr. Benjamin LeCompte, Cathleen LeCompte (LeComptes), and the North Star Trust Company as successor trustee of Harris Bank Barrington N.A. and as trustee under trust number 11-5176, filed a complaint for administrative review of a final decision by the Zoning Board of Appeals (Zoning Board) for the Village of Barrington Hills (Village). The Zoning Board upheld a Village order directing the LeComptes to stop using their property for the commercial boarding of horses because it was not a

permitted agricultural use in an R-1 zoned district. The circuit court affirmed the Zoning Board's decision. We find that the commercial [***2] boarding of horses is not a permitted use of property in a R-1 zoned district because it is not agriculture as that term is defined in section 5-2-1 of The Village of Barrington Hills' Zoning Ordinance (Zoning Code). Therefore, we affirm the order of the circuit court.

[*P2] BACKGROUND

[*P3] The LeComptes are the beneficial owners of approximately 130 acres of property located at 350 Bateman Road, in the Village of Barrington Hills, Illinois. The property was organized in December of 2003, as Oakwood Farm of Barrington Hills, L.L.C. (Oakwood Farm) for the purpose of operating a horse farm. There are approximately 45 horses boarded at Oakwood Farm and 35 are owned by third [**1067] parties who signed an "Equine Training and Breeding Agreement." The other 10 horses are owned by the LeComptes and 2 of those horses are involved in breeding. The property consists of a single-family residence where the LeComptes reside with a stable and a riding arena, which is approximately 30,000 square feet, and there are 60 stalls for the horses and other buildings. In addition to boarding horses, the LeComptes also grow, cut and bale their own hay; raise, train and sell horses; provide pasturage; and provide veterinary [***3] services for the horses.

[*P4] The Village has been predominantly a residential community, with approximately 72.3% of its land dedicated to residential and agricultural property more than five acres in size, 24.6% of its land is forest preserves, 2.1% is residential property less than five acres in size, 0.7% is institutional, and 0.4% is business and industrial. Many of the residential properties are involved in equestrian activities and these activities remain an important part of the Village's character.

[*P5] Oakwood Farm is located in a residential district of the Village zoned R-1. The preamble to section 5-5-2 of the Village's Zoning Code provides (1) that agriculture is a permitted use for land located in an R-1 zoned district; (2) that other than accessory uses - uses incidental to and on the same or an adjacent zoning lot or lots under one ownership - only one of the enumerated permitted uses may be established on a zoning property; and (3) that no building or zoning lot shall be devoted to any use other than a use permitted in the zoning district. Village of Barrington Hills Zoning Ordinance § 5-5-2 (Feb. 27, 2006).

[*P6] Section 5-2-1 of the Zoning Code defines "agriculture" as "[t]he [***4] use of land for agricultural purposes, including farming, dairying, pasturage, apiculture, horticulture, floriculture, viticulture and animal and poultry husbandry (including the breeding and raising of horses as an occupation)." Village of Barrington Hills Zoning Ordinance § 5-2-1 (added Dec. 18, 1972). Section 5-2-1 also defines "animal husbandry" as "[t]he breeding and raising of livestock, such as horses, cows and sheep." Village of Barrington Hills Zoning Ordinance § 5-2-1 (added June 27, 2005).

[*P7] On January 10, 2008, the Village's attorney delivered a cease and desist letter to the LeComptes which stated that the LeComptes' property, Oakwood Farm, was being used as a commercial horse boarding facility in violation of the Zoning Code and ordered the LeComptes to immediately cease and desist using the property for the nonpermitted use.

[*P8] The LeComptes filed an appeal with the Zoning Board. The Zoning Board conducted a hearing on August 13 and 28, 2008, which was attended by the parties to this appeal, the attorneys for the LeComptes and the Village, and members of the community. The issue before the Zoning Board was whether the commercial boarding of horses is agriculture, a permitted [***5] use of property in a R-1 zoned district under section 5-5-2(A) of the Zoning Code.

[*P9] During the hearing, the LeComptes admitted that they were using their property for the commercial boarding of horses. Dr. LeCompte argued that the commercial boarding of horses is agriculture as defined by section 5-2-1 of the Zoning Code. He also argued that since the commercial boarding of horses is a permitted agricultural use, according to section 5-3-4(A) of the Zoning Code, the Zoning Board was without authority to regulate the use of his property.

[*P10] [**1068] The attorney for the Village, Doug Wambach, argued that the commercial boarding of horses is not a permitted use in an R-1 zoned district. He also argued that, according to the definition of agriculture in section 5-2-1 of the Zoning Code, only the breeding and raising of horses is a permitted use in an R-1 zoned district and horse boarding is not. He further argued that the drafters of the Zoning Code intended that the

permitted uses in an R-1 zoned district would be compatible with each other and that Oakwood Farm's commercial boarding facility was not compatible with the other single-family residences in the R-1 zoned district.

[*P11] At the conclusion of **[***6]** the hearing, the Zoning Board made the following findings: (1) that the LeComptes are operating a commercial boarding facility in an R-1 zoned district; (2) that the commercial boarding of horses is not a permitted agricultural use in an R-1 zoned district; and (3) that because the commercial boarding of horses is not a permitted agricultural use, section 5-3-4(A) does not apply. Finally, the Zoning Board denied the LeComptes' petition to overturn the Village's order to cease and desist using Oakwood Farm for the commercial boarding of horses.

[*P12] The LeComptes filed a complaint for administrative review in the circuit court and requested that the Zoning Board's decision be reversed. The circuit court affirmed the Zoning Board's decision and the LeComptes appealed to the appellate court.

[*P13] After the LeComptes filed their reply brief in the appellate court, the Zoning Board filed a motion to strike the reply brief and argued that it contained arguments that were not presented in the administrative proceedings in the circuit court or in its initial appellate brief. The Zoning Board's motion to strike was taken with the case.

[*P14] ANALYSIS

[*P15] I. Standard of Review

[*P16] The LeComptes appeal from the circuit **[***7]** court's order affirming the Zoning Board's decision. Appellate courts review the decision of the administrative agency, herein the Zoning Board, not the circuit court. *Kimball Dawson, LLC v. City of Chicago Department of Zoning, 369 Ill. App. 3d 780, 786, 861 N.E.2d 216, 308 Ill. Dec. 151 (2006)*. The Zoning Board was asked to interpret the Village's Zoning Code to determine whether the commercial boarding of horses is agriculture, a permitted use under the Zoning Code. The LeComptes have admitted that they were engaged in the commercial boarding of horses on their property. However, the parties disagree about whether or not the commercial boarding of horses is agriculture. We note that a mixed question of law and fact is one in which the facts are admitted or established, the rule of law is undisputed, and the issue is whether the facts satisfy the statutory standard or whether the rule of law as applied to the historical facts is or is not violated. *AFM Messenger Service, Inc. v. Department of Employment Security, 198 Ill. 2d 380, 391, 763 N.E.2d 272, 261 Ill. Dec. 302 (2001)*. The agency's application of a rule of law to a mixed question of law and fact will not be reversed unless it is clearly erroneous. *Cook County Republican Party v. Illinois State Board of Elections, 232 Ill. 2d 231,243-44, 902 N.E.2d 652, 327 Ill. Dec. 531 (2009)*. **[***8]** A decision is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been committed. *Cook County Republican Party, 232 Ill. 2d at 244*.

[1069]** **[*P17]** II. The Village's Zoning Code

[*P18] A. The Village is a Home Rule Unit of Government

[*P19] The threshold question we must decide is whether the Village had the power to promulgate the Zoning Code. We note that the Illinois Constitution makes the Village a home rule unit of government; therefore, it "may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare." *Ill. Const. 1970, art VII, § 6(a)*. As a home rule unit, the Village has the power to enact the Zoning Code (*County of Cook v. John Sexton Contractors Co., 75 Ill. 2d 494, 511-12, 389 N.E.2d 553, 27 Ill. Dec. 489 (1979)*), as long as the legislative enactment comports with constitutional requirements. *Thompson v. Cook County Zoning Board of Appeals, 96 Ill. App. 3d 561, 569, 421 N.E.2d 285, 51 Ill. Dec. 777 (1981)*. The Village also has the power to define the terms in its Zoning Code and the terms may be given a broader or narrower meaning than they otherwise would have. *County of Lake v. Zenko, 174 Ill. App. 3d 54, 59-60, 528 N.E.2d 414, 123 Ill. Dec. 869 (1988)* **[***9]** (citing *People v. Burmeister, 147 Ill. App. 3d 218, 222, 497 N.E.2d 1212, 100 Ill. Dec. 850 (1986), appeal denied, 113 Ill. 2d 577, 505 N.E.2d 355, 106 Ill. Dec. 49 (1987)*). Accordingly, we hold that the Illinois Constitution empowered the Village, a home rule unit, to enact its Zoning Code. *Ill. Const. 1970, art. VII § 6(a)*.

[*P20] B. The Rules of Statutory or Ordinance Construction

[*P21] Next, we must determine whether the

Zoning Board's decision - that the commercial boarding of horses is not agriculture, a permissible use, according to the Villages' Zoning Code - was clearly erroneous. See Village of Barrington Hills Zoning Ordinance § 5-2-1 (added Dec. 18,1972); § 5-5-2(A) (Feb. 26, 2006).

[*P22] The rules of statutory construction apply to municipal ordinances, like the Village's Zoning Code. *Pooh-Bah Enterprises, Inc. v. County of Cook, 232 Ill. 2d 463, 492, 905 N.E.2d 781, 328 Ill. Dec. 892 (2009).* When a court construes a zoning ordinance, "[e]ffect should be given to the intention of the drafters by concentrating on the terminology, its goals and purposes, 'the natural import of the words used in common and accepted usage, the setting in which they are employed, and the general structure of the ordinance.' [Citation.]" *Cosmopolitan National Bank v. County of Cook, 103 Ill. 2d 302, 313, 469 N.E.2d 183, 82 Ill. Dec. 649 (1984).* The **[***10]** best indication of legislative intent is the statutory language, given its plain and ordinary meaning. *Lauer v. American Family Life Insurance Co., 199 Ill. 2d 384, 388, 769 N.E.2d 924, 264 Ill. Dec. 87 (2002).*

[*P23] C. Agriculture is a Permitted Use Under the Zoning Code

[*P24] With the rules of statutory construction in mind, we now review the Zoning Board's decision. The LeComptes argued before the Zoning Board that commercial horse boarding is a permitted agricultural use under section 5-5-2(A) of the Zoning Code. Village of Barrington Hills Zoning Ordinance § 5-5-2(A) (Feb. 26, 2006). They also argued that the terms breeding and raising, in the definition for agriculture in section 5-2-1 of the Zoning Code (Village of Barrington Hills Zoning Ordinance § 5-2-1), encompass the boarding of horses. The Village disagrees and argues that the boarding of horses is not a permitted use under section 5-5-2(A) of the Zoning Code and that the boarding of horses is not agriculture **[**1070]** based upon the definition of agriculture in section 5-2-1 of the Zoning Code.

[*P25] Section 5-5-2(A) of the Zoning Code provides that agriculture is a permitted use in an R-1 zoned district. Village of Barrington Hills Zoning Ordinance § 5-5-2(A) (Feb. 26,2006). Section 5-5-2(A) **[***11]** sets forth the permissible uses in an R-1 zoning district as (1) agriculture, (2) single-family detached dwellings, (3) signs, and (4) accessory uses, incidental to and on the same or an adjacent zoning lot or lots under one ownership, as the principal use. Village of Barrington Hills Zoning Ordinance § 5-5-2(A) (Feb. 26, 2006). Therefore, we must determine whether the Zoning Board erred when it found that the commercial boarding of horses is not agriculture, a permitted use, as defined by section 5-2-1 of the Zoning Code.

[*P26] D. The Commercial Boarding of Horses is Not Agriculture

[*P27] As previously indicated, section 5-2-1 defines agriculture as "[t]he use of land for agricultural purposes, including animal husbandry (including the breeding and raising of horses as an occupation)." Village of Barrington Hills Zoning Ordinance § 5-2-1 (added Dec. 18, 1972). The preamble to the definitions in section 5-2-1 provides that "[i]n the construction of this zoning title, the words and definitions contained in this chapter shall be observed and applied, except when the context clearly indicates otherwise." Village of Barrington Hills Zoning Ordinance § 5-2-1. Finally, the rules of statutory construction **[***12]** provide that when specific definitions of any terms are provided, those definitions, when reasonable, will be sustained to the exclusion of hypothetical indulgences. *R VS Industries, Inc. v. Village of Shiloh, 353 Ill. App. 3d 672, 674, 820 N.E.2d 503, 289 Ill. Dec. 727 (2004).*

[*P28] In support of their argument that commercial horse boarding is agriculture, the LeComptes focus on the term "including" that is used in the definition of agriculture and they argue that the use of the term "including" means that the list following the term is illustrative not exhaustive, and that the terms that follow are a partial list. We find the LeComptes' argument is consistent with cases construing the terms "includes" and "including." See *People v. Perry, 224 Ill. 2d 312, 328, 864 N.E.2d 196, 309 Ill. Dec. 330 (2007)*; *Paxson v. Board of Education of School District No. 87, 276 Ill. App. 3d 912, 920, 658 N.E.2d 1309, 213 Ill. Dec. 288 (1995).* However, while the Zoning Code defined "agriculture" as land used for "agricultural purposes," and used the term "including" to provide examples of other uses of land for agricultural purposes, unless the boarding of horses is similar to other uses in the definition, the rules of statutory construction prevent us from saying that the Village intended for the commercial boarding **[***13]** of horses to be a use included in that list. *Perry, 224 Ill. 2d at 328* (the preceding general term is to be construed as a general description of the listed items and other similar items).

[*P29] Specifically, the LeComptes argue that the terms "breeding" and "raising" in the definition of "agriculture" encompass the boarding of horses. The definition of "agriculture" in section 5-2-1 lists animal husbandry as a use for agricultural purposes. Village of Barrington Hills Zoning Ordinance § 5-2-1 (added Dec. 18,1972). The definition also includes the "breeding and raising of horses as an occupation" as an example of animal husbandry. Village of Barrington Hills Zoning Ordinance §5-2-1 (added June 27, 2005). Because the Zoning Code does not define the terms "breeding" and "raising," we will look at a dictionary to give the terms their ordinary and popularly understood meaning. *O'Donnell v. City of Chicago, 363 Ill. App. 3d 98, 107-08, 842 N.E.2d 208,* **[**1071]** *299 Ill. Dec. 469 (2005)* (citing *People v. Maggette, 195 Ill. 2d 336, 349, 747 N.E.2d 339, 254 Ill. Dec. 299 (2001))*; *In re Detention of Bailey, 317 Ill. App. 3d 1072, 1086, 740 N.E.2d 1146, 251 Ill. Dec. 575 (2000)* (A "court may look to dictionary definitions to derive the plain and ordinary meaning without rendering the term ambiguous.") (citing *In re A.P., 179 Ill. 2d 184, 198-99, 688 N.E.2d 642, 227 Ill. Dec. 949 (1997))*.

[*P30] **[***14]** Webster's Third New International Dictionary defines the term "breeding" as "the action or process of bearing or generating", as gestation or hatching, or as the propagation of plants and animals. Webster's Third New International Dictionary 274(1986). Webster's also defines the term "raising" as "the breeding and care of animals", and it defines the term "raise" as breeding or caring for animals to maturity. Webster's Third New International Dictionary 1877 (1986). We note that Webster's defines "boarding" as the act of supplying meals and lodgings for pay. (Emphasis added.) Webster's Revised Unabridged Dictionary 160 (1913). We find that Webster's definitions make it clear that a person who boards horses engages in different acts from a person who breeds and raises horses.

[*P31] We note that the Zoning Code also defines "animal husbandry" as "[t]he breeding and raising of livestock, such as horses." Village of Barrington Hills Zoning Ordinance § 5-2-1 (added June 27, 2005). The definition does not include the commercial boarding of horses as part of the definition of animal husbandry. Based upon the Zoning Code's definition of agriculture and Webster's definitions of the terms breeding, **[***15]** raising, and boarding, we find that the drafters of the Zoning Code did not intend for the commercial boarding of horses to be included in the definition of agriculture as a use for agricultural purposes. *Cosmopolitan National Bank, 103 Ill. 2d at 313*.

[*P32] We are unwilling to interpret the definition for agriculture in the Zoning Code to include the commercial boarding of horses as a use for agricultural purposes because the words in context do not support such an interpretation. *Cosmopolitan National Bank, 103 Ill. 2d at 313*; Village of Barrington Hills Zoning Ordinance § 5-2-1 (added Dec. 18,1972). Therefore, following *Perry*, we find that, while the terms in the definition of "agriculture" that describe the uses for agricultural purposes are not exhaustive, if there are any other terms to be included in the description of uses of the land for agricultural purposes they should be *similar* to, not different from, as in this case, the listed terms. *Perry, 224 Ill. 2d at 328*; also see *Paxson, 276 Ill. App. 3d at 920*; *Kostecki v. Pavlis, 140 Ill. App. 3d 176, 181, 488 N.E.2d 644, 94 Ill. Dec. 645(1986)*.

[*P33] E. Using Stables for the Commercial Boarding of Horses Does Not Comport With the Village's Zoning Code

[*P34] Next, the LeComptes **[***16]** argue that using their stables for the commercial boarding of horses comports with the Village's Zoning Code. We disagree. The Zoning Code defines a "stable" as "[a] detached accessory building the primary use of which is the keeping of horses." Village of Barrington Hills Zoning Ordinance § 5-2-1 (added Feb. 27, 2006). We note, however, that the Zoning Code also defines an "accessory building" as "subordinate to and serves a principal building or principal use." Village of Barrington Hills Zoning Ordinance § 5-2-1 (added Apr. 1, 1963). Although the stable may be an **[**1072]** accessory building, the LeComptes are not using the stable as an accessory building that is subordinate to a principal building or use. Therefore, because the LeComptes are using the stable for the commercial boarding of horses, which is a primary use and not a subordinate use, it is a use that does not comport with the Village's Zoning Code.

[*P35] F. Viewed in its Entirety, the Zoning Code Supports the Zoning Board's Decision

[*P36] The LeComptes also argued that the Village intended for residents to commercially board horses. In order to determine the intent of the Village when it

enacted the Zoning Code, we must consider the Zoning **[***17]** Code in its entirety. *Orlak v. Loyola University Health System, 228 Ill. 2d 1, 8, 885 N.E.2d 999, 319 Ill. Dec. 319 (2007)* (citing *Perry, 224 Ill. 2d at 323*).

[*P37] Several sections of the Zoning Code support the conclusion that its drafters did not intend for the commercial boarding of horses to be a permitted primary use in an R-1 zoned district. For example, section 5-1-2 explains the "intent and purpose" of the Zoning Code and provides that it is "[t]o promote and protect the public health, safety, *** convenience and the general welfare of the people. *** [P]revent congestion *** overcrowding of*** residential, *** areas *** from harmful encroachment by incompatible *** inappropriate uses." Village of Barrington Hills Zoning Ordinance § 5-1-2. (Apr. 1, 1963).

[*P38] In addition, subsection 5-3-4(D) entitled "Home Occupation" explains that the residential tranquility of the neighborhood must remain paramount when a business is conducted from the principal building. Village of Barrington Hills Zoning Ordinance § 5-3-4(D) (added June 26, 2006). Subsection 5-3-4(D)(2) defines "home occupation" in pertinent part as "any lawful business, *** occupation *** conducted from a principal building or an accessory building in a residential **[***18]** district that *** [i]s incidental and secondary to the principal use of such dwelling unit for residential occupancy purposes." Village of Barrington Hills Zoning Ordinance § 5-3-4(D)(2) (added June 26, 2006). A home occupation must be conducted in a manner that (1) "provide[s] peace, quiet and domestic tranquility within all residential neighborhoods," (2) "guarantee[s] * * * freedom from [the] possible effects of business or commercial uses," and (3) cannot "generate significantly greater vehicular or pedestrian traffic than is typical of residences in the surrounding neighborhood of the home occupation." Village of Barrington Hills Zoning Ordinance § 5-3-4(D)(3)(e).

[*P39] The record reveals that commercial boarding at Oakwood Farm caused a significant increase in the traffic and noise in the neighborhood and resulted in complaints by the surrounding property owners. The record also reveals that Oakwood Farm's primary purpose is the commercial boarding of horses, which is a use that is not incidental and secondary to residential occupancy. While the Zoning Code does permit the boarding and training of horses as a home occupation, it must be done in a manner that maintains the peace, quiet **[***19]** and domestic tranquility within all residential neighborhoods in an R-1 zoned district. See Village of Barrington Hills Zoning Ordinance § 5-3-4(D)(3)(g) (added June 26, 2006). We find that the commercial boarding of horses does not comport with the overall intent of the Zoning Code. Therefore, the Zoning Board's decision was not clearly erroneous.

[*P40] G. Section 5-3-4(A) Does Not Apply in This Case

[*P41] Finally, the LeComptes also argue that section 5-3-4(A), which restricts the **[**1073]** Village from "impos[ing] regulations or requir[ing] permits with respect to land used or to be used for agricultural purposes," applies in this case. Village of Barrington Hills Zoning Ordinance § 5-3-4 (Apr. 1,1963). We disagree. Section 5-3-4(A) is clear that "[i]n the event the land ceases to be used solely for agricultural purposes, then, and only then, shall the provisions of the zoning title apply." Village of Barrington Hills Zoning Ordinance § 5-3-4 (Apr. 1, 1963). Here, because the LeComptes' property as used primarily for the commercial boarding of horses, which is not a use for agricultural purposes, section 5-3-4(A) of the Zoning Code did not apply. Accordingly, the Zoning Board's decision that section 5-3-4(A) **[***20]** did not apply was not clearly erroneous.

[*P42] H. The LeComptes' Cases Do Not Support Their Position

[*P43] The LeComptes rely on a number of cases to support their position. In *Tuftee v. County of Kane, 76 Ill. App. 3d 128, 394 N.E.2d 896, 31 Ill. Dec. 694 (1979)*, the court held that the care and training of horses for show was an agricultural purpose. We find that the zoning ordinance in *Tuftee* is different from the Zoning Code in this case. Unlike the zoning ordinance in this case, in *Tuftee*, there was no definition for agriculture provided in the zoning ordinance. Therefore, because the *Tuftee* court had to resort to extrinsic sources, other cases and the dictionary to obtain a definition for terms in its zoning ordinance, it is distinguishable from this case. *Tuftee, 76 Ill. App. 3d at 131-32.* See *County of Knox ex rel. Masterson v. The Highlands, LLC, 188 Ill. 2d 546, 556, 723 N.E.2d 256, 243 Ill. Dec. 224 (1999).*

[*P44] In *Borrelli v. Zoning Board of Appeals, 106 Conn. App. 266, 941 A.2d 966 (Conn. App. Ct. 2008)* the

facts are also distinguishable from the facts in our case. Although the zoning regulations in *Borrelli* contained a definition for "agriculture" similar to the definition of "agriculture" in our case, the descriptive phrase following "animal husbandry" "(including the breeding **[***21]** and raising of horses as an occupation)" in the Village's Zoning Code is not included in the zoning ordinance in *Borrelli. Borrelli, 941 A.2d at 972-73.* In addition, unlike the ordinance in our case, there is no definition for "animal husbandry" contained in the ordinance in *Borrelli. Borrelli, 941 A.2d at 972-73.* Therefore, *Borrelli* is also distinguishable from this case.

[*P45] The LeComptes also cite other Illinois cases, *People ex rel Pletcher v. City of Joliet, 321 Ill. 385, 388, 152 N.E. 159 (1926)*, and *County of Knox ex rel Masterson v. Highlands, L.L.C., 302 Ill. App. 3d 342, 346, 705 N.E.2d 128, 235 Ill. Dec. 515 (1998)*, in support of their position. However, as the Zoning Board correctly states in its brief, these cases are also distinguishable. In both *City of Joliet* and *County of Knox*, the term "agriculture" was undefined and the courts resorted to extrinsic sources for a broad definition of those terms. *City of Joliet, 321 Ill. at 388* (" ns [a]griculture' is another indefinite word which renders the statute more or less uncertain"; as such the court resorted to the broad dictionary definition of "agriculture"); *County of Knox, 302 Ill. App. 3d at 346* (the court applied the dictionary definition of "agriculture" used by the **[***22]** supreme court in the *City of Joliet*).

[*P46] Finally, the LeComptes' reliance on *Steege v. Board of Appeals, 26 Mass. App. Ct. 970, 527 N.E.2d 1176, 1178 (Mass. App. Ct. 1988)*, is misplaced because the term "agriculture" was not defined and decisions from other jurisdictions are not binding on this court. *Travel 100 Group, Inc. v. Mediterranean Shipping Co. (USA), 383 Ill. App. 3d 149, 157, 889 N.E.2d 781,* **[**1074]** *321 Ill. Dec. 516 (2008).* Accordingly, because the facts in the aforementioned cases are distinguishable from the facts in the instant case, we see no reason to follow these cases.

[*P47] We find that the commercial boarding of horses is not agriculture as defined by the Zoning Code. Accordingly, we hold that the Zoning Board's decision, that the commercial boarding of horses is not agriculture and is not a permitted use in an R-1 zoned district, was not clearly erroneous. Village of Barrington Hills Zoning Ordinance § 5-2-1, (added Dec. 18, 1972); § 5-5-2(A) (June 27, 2006), *Cosmopolitan National Bank, 103 Ill. 2d at 313.*

[*P48] III. Zoning Board's Factual Findings

[*P49] Next, the LeComptes argue that the Zoning Board's decision contains erroneous factual findings because it did not accurately summarize comments from certain audience members who were not called to **[***23]** testify. The Zoning Board's factual findings are deemed *prima facie* true and correct, and its decision will not be disturbed on review unless it is contrary to the manifest weight of the evidence. *Scadron v. Zoning Board of Appeals, 264 Ill. App. 3d 946, 949, 637 N.E.2d 710, 202 Ill. Dec. 171 (1994).* A decision is contrary to the manifest weight of the evidence only where the reviewing court determines, viewing the evidence in the light most favorable to the agency, that no rational trier of fact could have agreed with the agency. *Scadron, 264 Ill. App. 3d at 949.* If there is any competent evidence supporting the agency's determination, it should be affirmed. *Scadron, 264 Ill. App. 3d at 949* (citing *Abrahamson v. Illinois Department of Professional Regulation, 153 Ill. 2d 76,88, 606 N.E.2d 1111, 180 Ill. Dec. 34 (1992)).* We found nothing in the record to suggest that the Zoning Board's findings were unsupported by the evidence in the record. Therefore, because there was competent evidence supporting the Zoning Board's decision, we find that its factual findings were not against the manifest weight of the evidence.

[*P50] IV. Zoning Board's Motion to Strike Plaintiffs' Reply Brief

[*P51] The Zoning Board argues that the LeComptes' argument regarding the Illinois Open **[***24]** Meetings Act (*5 ILCS 120/1 et seq.* (West 2008)) in their reply brief should be stricken because it was not made in the administrative proceedings, in the circuit court or in its initial appellate brief. The LeComptes argue in their reply brief that the Zoning Board violated the Act when it. (1) failed to vote in open meeting to have a closed session and identify the exception that allowed the closed session (*5 ILCS 120/2(c)(4)* (West 2008)), and (2) failed to indicate the results of the vote in the minutes (*5 ILCS 120/2a* (West 2008)). We find that this argument was not raised before the Zoning Board or in the complaint for administrative review; therefore, it is forfeited. *Western & Southern Life Insurance Co. v. Edmonson, 397 Ill. App. 3d 146, 154, 922 N.E.2d 1133, 337 Ill. Dec. 556 (2009)*; *People ex rel. Hopf v. Barger,*

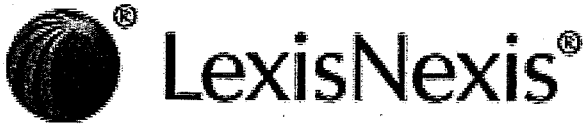
30 Ill. App. 3d 525, 539-40, 332 N.E.2d 649 (1975) (citing *Shaw v. Lorenz, 42 Ill. 2d 246, 248, 246 N.E.2d 285 (1969)).* Therefore, we see no need to address that issue.

[*P52] CONCLUSION

[*P53] We find (1) that the use of the land at Oakwood Farm for the commercial boarding of horses is not agriculture as defined in section 5-2-1 of the Zoning Code (Village of Barrington Hills Zoning Ordinance § 5-2-1 (added Dec. 18, 1972)), and (2) that since the **[***25]** commercial boarding **[**1075]** of horses is not agriculture under section 5-5-2(A) of the Zoning Code, it is not a permitted use in an R-1 zoned district in the Village of Barrington Hills. Village of Barrington Hills Zoning Ordinance § 5-5-2(A) (June 27, 2006). After reviewing the record, we do not have a definite and firm conviction that the Zoning Board made a mistake. Accordingly, we hold that the Zoning Board's decision was not clearly erroneous, and the judgment of the circuit court is affirmed.

[*P54] Affirmed.

Exhibit D



JAMES J. DRURY, III, as Agent of the Peggy D. Drury Declaration of Trust U/A/D 02/04/00; and MICHAEL J. MCLAUGHLIN, Plaintiffs-Appellants, v. BENJAMIN B. LECOMPTE, CATHLEEN B. LECOMPTE, and NORTH STAR TRUST CO., as Successor Trustee of Harris Bank Barrington N.A., as Trustee Under Trust Number 11-5176, Defendants-Appellees.

No. 1-12-1894

APPELLATE COURT OF ILLINOIS, FIRST DISTRICT, SIXTH DIVISION

2014 IL App (1st) 121894-U; 2014 Ill. App. Unpub. LEXIS 612

March 28, 2014, Decided

NOTICE: THIS ORDER WAS FILED UNDER *SUPREME COURT RULE 23* AND MAY NOT BE CITED AS PRECEDENT BY ANY PARTY EXCEPT IN THE LIMITED CIRCUMSTANCES ALLOWED UNDER *RULE 23(e)(1)*.

SUBSEQUENT HISTORY: Appeal denied by *Drury v. LeCompte, 2014 Ill. LEXIS 1036 (Ill., Sept. 24, 2014)*

PRIOR HISTORY: [**1]

Appeal from the Circuit Court of Cook County. No. 11 CH 03852. The Honorable Franklin U. Valderrama, Judge Presiding.

LeCompte v. Zoning Bd. of Appeals for Barrington Hills, 2011 IL App (1st) 100423, 958 N.E.2d 1065, 2011 Ill. App. LEXIS 1014, 354 Ill. Dec. 869 (2011)

DISPOSITION: Reversed and remanded.

JUDGES: JUSTICE LAMPKIN delivered the judgment of the court. Presiding Justice Gordon and Justice Reyes concurred in the judgment.

OPINION BY: LAMPKIN

OPINION

ORDER

[*P1] *Held*: The circuit court erred in dismissing plaintiff property owners' amended complaint for injunctive relief against defendants, who were owners of a horse boarding facility, on the basis of failure to exhaust administrative remedies, mootness, and lack of justiciability. Where plaintiffs' amended complaint was pending in the circuit court after a cease and desist order against defendants had been upheld by the municipal zoning board of appeals and confirmed on administrative review by the circuit and appellate courts, but defendants subsequently claimed they were in compliance with the zoning code on a basis defendants had formally waived during the administrative proceedings, plaintiffs were not required to litigate the waived issue before the zoning board of appeals before proceeding in court with their request for injunctive relief.

[*P2] Plaintiff property owners, James Drury, III, as an agent of the Peggy D. Drury [**2] Declaration of Trust U/A/D 02/04/00, and Michael McLaughlin, sought injunctive relief against defendant adjacent property owners Dr. Benjamin LeCompte, Cathleen LeCompte (LeComptes), and North Star Trust Co., as successor trustee of Harris Bank Barrington N.A., as trustee under trust number 11-5176. In their amended complaint, plaintiffs alleged that defendants were operating a

commercial horse boarding operation on their property in violation of the zoning laws of the Village of Barrington Hills (Village) and, despite plaintiffs' repeated requests, the Village refused to shut down the operation by enforcing the cease and desist letter that was issued to defendants, upheld by the Village's Zoning Board of Appeals (Zoning Board), and affirmed on administrative review by both the circuit court and this appellate court.

[*P3] Defendants moved to dismiss the amended complaint for mootness, lack of subject matter jurisdiction, and lack of justiciability. Defendants argued that plaintiffs' injunctive relief action was rendered moot upon the issuance of a letter by a Village code enforcement officer, which stated that defendants' boarding and training of horses appeared to be a home occupation based **[**3]** on their hours of operation. Defendants also argued that plaintiffs forfeited any judicial remedies by failing to exhaust their administrative remedies and follow through with their appeal before the Zoning Board of the Village code enforcement officer's decision.

[*P4] The circuit court granted defendants' motion to dismiss. On appeal, plaintiffs contend the circuit court erred because their complaint was neither moot nor nonjusticiable. Plaintiffs argue that: (1) any change in defendants' operating hours had no effect on this appellate court's decision that defendants' commercial horse boarding operation did not comply with the Village's zoning code; (2) plaintiffs were not required to exhaust any administrative remedies before the Zoning Board prior to seeking injunctive relief in the circuit court; and (3) the circuit court denied plaintiffs due process by terminating discovery and failing to adjudicate the issue concerning the authenticity and validity of the Village code enforcement officer's letter.

[*P5] For the reasons that follow, we reverse the circuit court's dismissal of plaintiffs' amended complaint and remand this cause for further proceedings.

[*P6] I. BACKGROUND

[*P7] Although the issue before **[**4]** this court is the dismissal of plaintiffs' 2011 amended complaint seeking injunctive relief, the origins of this litigation go back to 2007, when plaintiffs complained to the Village that the LeComptes were boarding horses on their property for a commercial purpose in violation of the Village's zoning laws. The LeComptes were the beneficial owners of 130 acres of property in the Village. The property was organized as Oakwood Farm of Barrington Hills, L.L.C. (Oakwood Farm) for the purpose of operating a horse farm. The property consisted of a single-family home where defendants resided, a stable, a riding arena, 60 stalls for horses, and other buildings.

[*P8] In January 2008, the Village's attorney sent a cease and desist letter to the LeComptes. The Village informed them that, pursuant to the Village zoning code, their operation of a commercial horse boarding facility was not one of the permitted uses of their property, which was located in a residential district of the Village zoned R-1. The only permitted uses within an R-1 zoning district were (1) single-family detached dwellings; (2) agricultural; (3) signs as regulated by the zoning code; and (4) accessory uses, which included home **[**5]** occupations. The LeComptes appealed this determination to the Zoning Board.

[*P9] At the August 2008 hearing sessions before the Zoning Board, the LeComptes admitted that they were using their property for the commercial boarding of horses. They argued, however, that this use was a permitted agricultural use of the property pursuant to the Village zoning code and, thus, the Zoning Board had no authority to regulate this use of the LeComptes' property. Dr. LeCompte acknowledged that the zoning code allowed horse boarding as a home occupation, but he emphasized that the LeComptes were not claiming that their use was a permitted accessory use incidental to the principal use by virtue of the home occupancy provisions, and he "would never even come to the [the Zoning] Board and say I'm a home occupation."

[*P10] The Village argued that the commercial boarding of horses was not a permitted use in an R-1 zoned district. The Village contended that, according to the definition of "agriculture" in the zoning code, the breeding and raising of horses was a permitted use in an R-1 zoned district but the distinct use of horse boarding was not a permitted use. The Village also argued that the drafters of the zoning **[**6]** code intended for the permitted uses in an R-1 zoned district to be compatible with each other and Oakwood Farm's commercial boarding facility was not compatible with the other single family residences in the R-1 zoned district. When the chairman of the Zoning Board asked if home occupation use applied to this matter, the Village responded that the home occupation definition allowed people to board

horses in a residential area. The provision allowing horse boarding as a permitted home occupation use was intended to enable people who had a four or five stall barn to board a couple of horses for neighbors or friends. However, given the zoning code's proscriptions against excessive traffic, noise, and disruptions to the tranquility of the residential area, the operation of a 60 to 70 stall horse boarding facility could not even be contemplated as a permitted home occupation use.

[*P11] Zoning Board member Byron Johnson commented on the record that, although the boarding of horses in the Village had been illegal, the Village knew that horse boarding was occurring on some scale. When the Village amended section 5-3-4(D) of the zoning code concerning home occupations to allow horse boarding and **[**7]** training pursuant to subsection 5-3-4(D)(3)(g), the Village did not want to allow large-scale horse boarding operations. Accordingly, the Village added an intent and purpose preamble to section 5-3-4(D) to clarify that the conduct of any home occupation, including horse boarding and training, must not infringe upon the rights of neighboring residents to enjoy the peaceful occupancy of their homes or change the character of the residential area. Consequently, when subsection 5-3-4(D)(3)(g) was added to the home occupation section, it permitted horse boarding and training subject to compliance with the various conditions set forth in section 5-3-4(D) of the zoning code.

[*P12] In November 2008, the Zoning Board concluded that the LeComptes were operating a commercial boarding facility impermissibly in an R-1 residential district and that the commercial boarding of horses was not a permitted agricultural use of the property. The Zoning Board denied the LeComptes' petition to overturn the Village's cease and desist order.

[*P13] The LeComptes then filed a complaint for administrative review in the circuit court. The circuit court confirmed the Zoning Board's decision in January 2010, and the LeComptes **[**8]** appealed to this court.

[*P14] While that appeal was pending, plaintiffs Drury and McLaughlin sent a letter to the Village in December 2010, asking the Village to take the necessary action against the LeComptes to enforce the January 2008 cease and desist letter. The Village responded that no further action would be instituted while the LeComptes' appeal to this appellate court was pending.

[*P15] In January 2011, plaintiffs filed in the circuit court a complaint against defendants seeking injunctive relief pursuant to *section 11-13-15* of the Illinois Municipal Code (*65 ILCS 5/11-13-15* (West 2010)). In response, defendants filed multiple motions to dismiss the complaint.

[*P16] Meanwhile, in a February 2011 letter to the Village attorney, defendants asked the Village to confirm in writing defendants' compliance with the zoning code. Defendants argued that subsection 5-3-4(D)(3)(g) of the code allowed unlimited horse boarding in their R-1 residential district as a home occupation as long as they complied with the operating hours of 8 a.m. through 8 p.m. Defendants asserted that, in addition to their exemption from Village regulations as an agricultural use, their new operating hours complied with subsection **[**9]** 5-3-4(D)(3)(g) and, thus, meant that they were in compliance with the code. In a response letter, the Village attorney stated that "[i]t is and has been the Village's position that Oakwood Farms does not comply with the requirements of the home occupation provisions of the Village's zoning code." The Village attorney noted that defendants consistently took the position that their horse boarding activities did not constitute a home occupation in sworn testimony before the Zoning Board, in statements to the circuit court on administrative review, and in their brief to this appellate court. Defendants did not file any appeal to the Village attorney's letter.

[*P17] On June 9, 2011, the circuit court dismissed plaintiffs' complaint, without prejudice, as moot. The circuit court ruled that a March 2011 letter from a Village officer to defendants stating that their land use was a home occupation resolved any issues brought in plaintiffs' complaint for injunctive relief.

[*P18] Meanwhile, on June 30, 2011, this court, upon administrative review of the LeComptes' appeal of the Zoning Board cease and desist order, confirmed the Zoning Board's decision in an unpublished order. The unpublished order was subsequently **[**10]** published as an opinion in September 2011. This court construed the Village's zoning code and ruled, in pertinent part, that the commercial boarding of horses was not an agricultural use as defined in the Village's zoning code. *LeCompte v. Zoning Board of Appeals for the Village of Barrington Hills, 2011 IL App (1st) 100423, ¶¶ 24-32, 958 N.E.2d 1065, 354 Ill. Dec. 869.*

[*P19] This court also rejected the LeComptes' argument that their use of their stables for the commercial boarding of horses comported with the Village's zoning code. *Id. at ¶ 34.* Specifically, this court construed the zoning code definitions of "stable" and "accessory building," and noted that the LeComptes' use of their stable was a primary use and not a subordinate use. *Id.*

[*P20] In addition, this court rejected the LeComptes' argument that the Village intended for residents to commercially board horses. *Id. at ¶¶ 36-37.* In reaching this determination, this court considered the entire zoning code and found that several sections established that the code did not intend for the commercial boarding of horses to be a permitted primary use in an R-1 zoned district. *Id. at ¶ 37.* Specifically, section 5-1-2 of the zoning code explained that the code intended to, *inter* **[**11]** *alia*, promote and protect the convenience and general welfare of the people and prevent congestion and overcrowding of residential areas from the harmful encroachment of incompatible and inappropriate uses. *Id.* (citing Village of Barrington Hills Zoning Ordinance § 5-1-2 (April 1, 1963)).

[*P21] Furthermore, "subsection 5-3-4(D) entitled 'Home Occupation,' explain[ed] that the residential tranquility of the neighborhood must remain paramount when a business is conducted from the principal building." *Id. at ¶ 38* (quoting Village of Barrington Hills Zoning Ordinance § 5-3-4(D) (June 26, 2006)). The zoning code defined "home occupation" in pertinent part as " 'any lawful business, *** occupation *** conducted from a principal building or an accessory building in a residential district that *** [i]s incidental and secondary to the principal use of such dwelling unit for residential occupancy purposes.' " *Id.* (quoting Village of Barrington Hills Zoning Ordinance § 5-3-4(D)(2)). Moreover, a home occupation had to be conducted in a manner that was peaceful, quiet and domestically tranquil; guaranteed freedom from the possible effects of business or commercial uses; and did not generate significantly **[**12]** greater vehicular or pedestrian traffic than would be typical of residences in the neighborhood. *Id.* (citing Village of Barrington Hills Zoning Ordinance § 5-3-4(D)(3)(e)).

[*P22] This court found that, although the zoning code allowed the boarding and training of horses as a home occupation, it had to be done in a manner that maintained the peace, quite and domestic tranquility of all residential neighborhoods in an R-1 zoned district. *Id. at ¶ 39* (citing Village of Barrington Hills Zoning Ordinance § 5-3-4(D)(3)(g)). This court concluded that the LeComptes' commercial boarding of horses did not comport with the overall intent of the zoning code where the record established that Oakwood Farm's primary purpose was the commercial boarding of horses, which was a use that was not incidental and secondary to residential occupancy, and Oakwood Farm's commercial boarding caused a significant increase in traffic and noise in the neighborhood and resulted in complaints by the surrounding property owners. *Id.* In a petition for rehearing, the LeComptes asked this court, *inter alia*, **[**13]** to strike the discussion of the boarding and training of horses as a home occupation, but this court denied that petition.

[*P23] Although plaintiffs' initial complaint for injunctive relief had been dismissed, without prejudice, as moot in June 2011, plaintiffs, with leave of court, filed in July 2011 the amended complaint at issue here. Plaintiffs sought injunctive relief pursuant to *section 11-13-15* of the Illinois Municipal Code. Plaintiffs alleged that defendants were operating a commercial horse boarding operation on their property in violation of the zoning laws of the Village and, despite plaintiffs' repeated requests, the Village refused to shut down the operation by enforcing the cease and desist letter that was issued to defendants, upheld by the Zoning Board, and confirmed on administrative review by both the circuit court and this appellate court.

[*P24] In November 2011, defendants moved to dismiss the amended complaint for mootness, lack of subject matter jurisdiction, and lack of justiciability pursuant to *section 2-619(a)(1)* of the Code of Civil Procedure (Code) (*735 ILCS 5/2-619(a)(1)* (West 2010)). Defendants argued that plaintiffs' injunctive relief action was rendered moot upon **[**14]** the issuance of a letter, dated March 15, 2011, to defendants from Don Schuman, the Village building and code enforcement officer (the Schuman letter). In this letter, Schuman noted defendants' request that the Village consider their use of Oakwood Farm for the boarding and training of horses as a home occupation. Schuman referenced defendants' submission of (1) an affidavit, which averred that they had limited their hours of operation to 8 a.m through 8 p.m. and asserted that this change meant that they were now conducting their boarding and training of horses as a home occupation use in compliance with subsection

5-3-4(D)(3)(g) of the Village's zoning code; and (2) an employee register, which listed the extent of their employees' work hours. Schuman stated that "it appears that the use of Oakwood Farm is a Home Occupation." Moreover, in a letter dated March 29, 2011, the Village attorney advised plaintiffs and defendants that the Schuman letter represented a final and official decision of that officer.

[*P25] Defendants also argued that plaintiffs forfeited any judicial remedies by failing to exhaust their administrative remedies and follow through with their appeal of the Schuman letter **[**15]** before the Zoning Board. Specifically, defendants recounted that: (1) plaintiffs had appealed the Schuman letter to the Zoning Board in April 2011 but then, in June 2011, informed the circuit court that they would withdraw their Zoning Board appeal; (2) the circuit court, nevertheless, dismissed without prejudice plaintiffs' complaint for injunctive relief, finding that, as a result of the Schuman letter, there was no justiciable controversy and the matter was moot; (3) counsel for plaintiffs argued to the Zoning Board in a letter that the doctrines of collateral estoppel and judicial estoppel precluded the Zoning Board from considering plaintiffs' appeal of the Schuman letter because the Zoning Board was legally bound by this appellate court's decision in *LeCompte, 2011 IL App (1st) 100423, 958 N.E.2d 1065, 354 Ill. Dec. 869*, which had resolved the same matter at issue in plaintiffs' appeal of the Schuman letter; and (4) the Zoning Board ultimately dismissed plaintiffs' appeal of the Schuman letter for want of prosecution in August 2011. Defendants argued that plaintiffs' April 2011 appeal to the Zoning Board effectively divested the circuit court of subject matter jurisdiction. According to defendants, the sole issue **[**16]** adjudicated in the LeComptes' prior hearing before the Zoning Board was the question of whether their boarding of horses was an agricultural use of the land; the issue of the separate and distinct use of their land as a home occupation was never presented in the administrative proceeding and, thus, should not have been addressed on administrative review by this appellate court. Defendants argued that the Schuman letter rendered plaintiffs' amended complaint moot and plaintiffs forfeited any judicial remedies by failing to pursue their Zoning Board appeal of the Schuman letter, which was dismissed for want of prosecution.

[*P26] Plaintiffs responded to the motion to dismiss, arguing (1) defendants' position that Oakwood Farm was a home occupation was irreconcilable with and refuted by this appellate court's September 2011 opinion; (2) the Schuman letter was irrelevant by virtue of this court's September 2011 opinion and did not render this case moot because the circuit court had statutory jurisdiction to grant plaintiffs injunctive relief where the Village failed to enforce its own zoning laws; and (3), in the alternative, the motion to dismiss must be denied because the amended complaint presented **[**17]** genuine issues of disputed fact as to whether Oakwood Farm complied with the zoning code.

[*P27] In their reply, defendants argued that (1) this appellate court never considered the issue of whether the LeComptes' current use of their property complied with the home occupation provisions of the zoning code; (2) the Schuman letter divested the circuit court of jurisdiction over plaintiffs' claim for injunctive relief, administrative review law applied to this case, and *section 11-13-15* of the Illinois Municipal Code did not create concurrent jurisdiction; and (3) the proper venue for the resolution of any factual disputes was the Zoning Board.

[*P28] On December 19, 2011, the circuit court granted defendants' motion and dismissed plaintiffs' amended complaint with prejudice for want of justiciability.

[*P29] Plaintiffs filed a motion to reconsider, arguing that jurisdiction existed in the court because *section 11-13-15* of the Illinois Municipal Code provided a cause of action for adjacent landowners to bring a suit for an alleged zoning ordinance violation. Plaintiffs also argued the circuit court failed to consider the authenticity of the Schuman letter and new evidence suggested defendants schemed with Village **[**18]** representatives to obtain dismissal of the injunctive relief action. Further, plaintiffs argued the circuit court erroneously concluded that the home occupation provisions of the zoning code were not an issue before the Zoning Board and circuit and appellate courts.

[*P30] On May 31, 2012, the circuit court denied plaintiffs' motion to reconsider. The circuit court found that (1) *section 11-13-15* of the Illinois Municipal Code did not provide a basis for the court to exercise jurisdiction over this matter involving zoning code violations; (2) plaintiffs were required, but failed, to exhaust their administrative remedies prior to filing their lawsuit in this case; (3) the Schuman letter was

admissible under the rules of evidence without need of further authentication; (4) although the appellate court discussed the home occupation provisions of the zoning code, it only ruled on the issue of whether the LeComptes' use was agricultural; and (5) plaintiffs' newly discovered evidence was not relevant to the jurisdiction issue before the court.

[*P31] Plaintiffs timely appealed the circuit court's December 2011 and May 2012 orders.

[*P32] II. ANALYSIS

[*P33] A motion to dismiss pursuant to *section 2-619* of the Code admits **[**19]** the legal sufficiency of the pleading and raises defects, defenses, or other affirmative matters that act to defeat the claim. *Keating v. 68th and Paxton, L.L.C., 401 Ill. App. 3d 456, 463, 936 N.E.2d 1050, 344 Ill. Dec. 293 (2010)*. When ruling on a 2-619 motion to dismiss, the issue is whether, after reviewing the pleadings, depositions and affidavits, there is a genuine issue of material fact that precludes dismissal, or whether dismissal is proper as a matter of law. *Id.*

[*P34] A. Scope of 2011 Appellate Opinion

[*P35] In supporting its decision to dismiss plaintiff's amended complaint, the circuit court stated that, although this court discussed the home occupation provisions of the zoning code, this court's September 2011 opinion ruled only on the issue of whether the LeComptes' use was agricultural. Defendants adopt this position and contend our 2011 opinion in the prior case did not affect or control the instant case because the prior case was between the LeComptes and the Village on an unrelated zoning issue with a different factual scenario. Defendants argue that the home occupation discussion in our 2011 opinion was *obiter dictum* and does not control the instant appeal or prevent the Village from recognizing that defendants **[**20]** could change their operating hours and conditions to bring the farm into compliance with the Village home occupation provisions of the zoning code. Defendants contend this court's home occupancy discussion was neither germane nor necessary to our 2011 opinion, which was limited to the issue of whether boarding horses was an agricultural use under the code. Defendants assert that the issue of their compliance with the home occupation provisions of the code was never presented by the parties or briefed as an issue in the proceedings reviewed by this appellate court.

[*P36] We disagree. When administrative hearings were held on the LeComptes' appeal of the Village's 2008 cease and desist letter, the LeComptes formally waived the home occupation provisions of the zoning code as a basis for finding that their commercial boarding of horses was a permitted use of their property in their residential area. Nevertheless, the Village, in addition to countering the LeComptes' argument that horse boarding was a permitted agricultural use of their property, also explained to the Zoning Board that Oakwood Farm's large scale commercial horse boarding operation did not comply with the code provisions that **[**21]** permitted horse boarding in residential zones as a home occupation. Furthermore, witnesses testified at the administrative hearings about the disruption to the residential neighborhood's peace and tranquility as a result of the LeComptes' horse boarding operation.

[*P37] After the LeComptes lost before the Zoning Board and sought administrative review before the courts, the Village, in addition to countering the LeComptes' argument concerning permitted agricultural uses, also argued to this court that the LeComptes' commercial boarding of horses did not qualify as a home occupation where the relevant code provisions permitted boarding and training of horses as a home occupation incidental to a permitted primary use of a property and the LeComptes had admitted that the primary use of the Oakwood Farm facility was horse boarding. See *Kravis v. Smith Marine, Inc., 60 Ill. 2d 141, 147, 324 N.E.2d 417 (1975)* (an appellee may defend a judgment by raising a previously unruled-upon issue if the necessary factual basis for determining the issue is in the record); accord *Kuney v. Zoning Board of Appeals of City of De Kalb, 162 Ill. App. 3d 854, 856, 516 N.E.2d 850, 114 Ill. Dec. 695 (1987)*.

[*P38] Moreover, the LeComptes argued to this court that their use **[**22]** of their stables for commercial horse boarding comported with the Village's code and the Village intended for residents to commercially board horses. In refuting those claims, this court viewed the zoning code in its entirety, even discussed subsection 5-3-4(D)(3)(g) of the zoning code-the same section defendants now claim compliance with in this appeal-and concluded that the LeComptes' use did not comply with several provisions concerning home occupations in subsection 5-3-4(D). Specifically, this court concluded that Oakwood Farm's primary purpose was the commercial boarding of horses, which was a use that was not incidental and secondary to residential occupancy,

and their commercial horse boarding operation could not be done in a manner that maintained the peace, quiet and domestic tranquility within their R-1 zoned residential district. *LeCompte, 2011 IL App (1st) 100423, ¶¶ 34-39.* In addition, when the LeComptes filed a petition for rehearing asking this court to strike our discussion of their failure to comply with the home occupancy provisions of the code, this court denied the petition, rejecting their argument that the issue was not raised in the appeal.

[*P39] Accordingly, the circuit **[**23]** court erroneously concluded that this court's 2011 opinion only ruled on the issue of whether the LeComptes' use was agricultural. A careful reading of the opinion establishes that this court not only rejected the Lecomptes' argument that their horse boarding operation was a permitted agricultural use, but also accepted the Village's argument that the LeComptes' use was not in compliance with the necessary code requirements concerning home occupations as a permitted accessory use. The issue of the LeComptes' noncompliance with the home occupancy provisions of the code was integral to this court's ruling and a mere change in operating hours had no effect on that ruling because it did nothing to address this court's conclusions that (1) the stable was not an accessory building that was subordinate to a principal building, and (2) commercial horse boarding was inconsistent with the overall intent of the zoning code.

[*P40] The facts established that defendants' 30,000 square-foot horse barn contained 45 or more horses whose owners paid monthly rent to defendants. Moreover, the attendant horse trailers, manure trucks, and customer parking lot and vehicles dominated the property and dwarfed defendants' **[**24]** home. Defendants' inconsequential change in the operating hours of their business had no effect on this court's holding that the horse barn was not an accessory building and its primary use was commercial horse boarding in violation of the zoning code.

[*P41] This court's discussion of the home occupancy provision was not mere *obiter dictum* because even though Oakwood Farm was not a permitted agricultural use, it could have been a legal use if it complied with some other section of the Village's zoning code, like the home occupation section. This court, however, held that Oakwood Farm was not a permitted use because it did not comport with the Village's zoning code's overall intent and purpose. Central to this court's opinion was the determination that, in order to comply with the zoning code, Oakwood Farm's stables had to be a subordinate, not a primary, use of the property. Because defendants were using the stable for the commercial boarding of horses, which was a primary use and not a subordinate use, it was a use that did not comport with the Village's zoning code. Defendants' alleged compliance with one subsection of the home occupancy provisions concerning the permissible operating hours **[**25]** for home occupation horse boarding cannot be reconciled with this court's ruling.

[*P42] B. Exhaustion of Administrative Remedies

[*P43] Defendants argue the circuit court correctly dismissed plaintiffs' amended complaint for injunctive relief based on mootness and lack of justiciability because plaintiffs failed to exhaust their administrative remedies. Defendants conceded at oral argument before this court that the circuit court had jurisdiction over plaintiffs' injunctive relief complaint when it was filed. Nevertheless, defendants contend that the issuance of the Schuman letter divested the circuit court of that jurisdiction and required plaintiffs to seek administrative relief by appealing the Schuman letter to the Zoning Board. According to defendants, where the plaintiffs had initiated an appeal of the Schuman letter before the Zoning Board but then abandoned it, they failed to exhaust their administrative remedies and dismissal of their injunctive relief lawsuit was proper.

[*P44] Plaintiffs respond that they were not seeking to appeal an administrative decision; instead they filed a lawsuit under *section 11-13-15* of the Illinois Municipal Code to enjoin defendants' ongoing violation of the Village **[**26]** zoning code, as determined by the Zoning Board, circuit court, and this court. Plaintiffs argue the circuit court had independent jurisdiction to hear plaintiffs' injunctive relief case under *section 11-13-15* of the Illinois Municipal Code, which empowers adjacent landowners to bring a legal proceeding to enforce laws when the municipality fails or is reluctant to act or acts in a manner contrary to the adjacent landowners' interests. See *Dunlap v. Village of Schaumburg, 394 Ill. App. 3d 629, 638, 915 N.E.2d 890, 333 Ill. Dec. 819 (2009)*; *LaSalle National Bank v. Harris Trust & Savings Bank, 220 Ill. App. 3d 926, 932, 581 N.E.2d 363, 163 Ill. Dec. 412 (1991).*

[*P45] Plaintiffs assert that defendants' ongoing

zoning code violation was not a moot issue, and the disputed Schuman letter did not moot the case, divest the circuit court of jurisdiction, or require exhaustion of administrative remedies. Plaintiffs note that it was only after they sought injunctive relief in the courts that defendants solicited the disputed Schuman letter and asserted that plaintiffs must re-litigate the already ruled upon home occupancy issue, which defendants had previously waived at the 2008 Zoning Board hearings. Plaintiffs argue they properly sought court relief pursuant to *section 11-13-15*, **[**27]** which expressly states that "the court with jurisdiction *** has the power" to resolve complaints under *section 11-13-15*, and nothing in *section 11-13-15* places the resolution of lawsuits to enjoin zoning code violations within the exclusive jurisdiction of administrative agencies. Plaintiffs contend that *section 11-13-15* is its own remedy, makes no mention of exhausting administrative remedies, and cases applying *section 11-13-15* show that it provides a remedy to adjacent landowners outside of the administrative review process. Moreover, plaintiffs assert that the Schuman letter plainly shows the Village has failed to act where there was a clear violation of its own zoning code, as determined by this appellate court in 2011.

[*P46] Plaintiffs also explain that their appeal of the Schuman letter to the Zoning Board was a defensive action, filed out of an abundance of caution. Plaintiffs state that they continued to prosecute the instant lawsuit and challenged the jurisdiction of the Zoning Board, arguing that the doctrines of collateral estoppel and judicial estoppel precluded the Zoning Board from considering the Schuman letter appeal because the Zoning Board was legally barred by this court's **[**28]** 2011 opinion, which had resolved the same home occupancy matter at issue in the Schuman letter.

[*P47] Because these arguments present only issues of law, our review is *de novo*. See *In re A.H., 207 Ill. 2d 590, 593, 802 N.E.2d 215, 280 Ill. Dec. 290 (2003)*. For the reasons discussed below, we conclude that plaintiffs' choice of remedy was not incorrect and their complaint should not have been dismissed because, under the circumstances of this case, the exhaustion of administrative remedies was not necessary.

[*P48] A justiciable matter is a controversy appropriate for review by the court, in that it is definite and concrete, as opposed to hypothetical or moot. *Owens v. Snyder, 349 Ill. App. 3d 35, 40, 811 N.E.2d 738, 285 Ill. Dec. 251 (2004)*. "A moot question is one that existed but because of the happening of certain events has ceased to exist and no longer presents an actual controversy over the interests or rights of the party." *In re Nancy A., 344 Ill. App. 3d 540, 548, 801 N.E.2d 565, 279 Ill. Dec. 891 (2003)*. We agree with plaintiffs that the Schuman letter did not render their injunctive relief claim moot or nonjusticiable where this court ruled in 2011 that defendants' Oakwood Farm was in violation of the zoning code, defendants were still operating their commercial horse boarding facility impermissibly **[**29]** in an R-1 residential district, and the relief provided in *section 11-13-15* of the Illinois Municipal Code was an available remedy to plaintiffs. This is not a situation where an injunctive relief action was rendered moot because a zoning board had re-zoned the property; all that changed here was defendants' hours of operation at their commercial horse boarding facility.

[*P49] The statutory relief extended to citizens under *section 11-13-15* of the Illinois Municipal Code provides enforcement authority where municipal officials are slow or reluctant to act, or are otherwise not protective of the private citizen's interests. *Dunlap, 394 Ill. App. 3d 638*. However, if there is an ordinance violation, the usual remedy would be to object before the zoning board of appeal. "[A] party aggrieved by administrative action ordinarily cannot seek review in the courts without first pursuing all administrative remedies available to him." *Illinois Bell Telephone Co. v. Allphin, 60 Ill. 2d 350, 358, 326 N.E.2d 737 (1975)*. This rule allows full development of the facts before the agency, allows the agency an opportunity to utilize its expertise, and may render judicial review unnecessary if the aggrieved party succeeds before **[**30]** the agency. *Id.* The exhaustion rule, however, can produce very harsh and inequitable results if strictly applied. *Id.* Consequently, although our courts have required comparatively strict compliance with the exhaustion rule, exceptions have been recognized pursuant to the time-honored rule that equitable relief will be available if the remedy at law is inadequate. *Id.*

[*P50] Illinois courts have recognized several exceptions to the doctrine of exhaustion of administrative remedies. *Castaneda v. Illinois Human Rights Comm'n, 132 Ill. 2d 304, 308, 547 N.E.2d 437, 138 Ill. Dec. 270 (1989)*. An aggrieved party may seek judicial review of an administrative decision without complying with the exhaustion of remedies doctrine where the administrative

body's assertion of jurisdiction is attacked on its face and in its entirety on the ground that it is not authorized by statute. *One Way Liquors, Inc. v. Byrne, 105 Ill. App. 3d 856, 861, 435 N.E.2d 144, 61 Ill. Dec. 655 (1982)*. A party may also seek judicial review where issues of fact are not presented and agency expertise is not involved. *Canel v. Topinka, 212 Ill. 2d 311, 321, 818 N.E.2d 311, 288 Ill. Dec. 623 (2004)*. In addition, where multiple remedies exist before the same administrative agency and at least one has been exhausted, the exhaustion of **[**31]** remedies rule is not required. *Allphin, 60 Ill. 2d at 358*; *Kuney, 162 Ill. App. 3d at 857*; *Pecora v. County of Cook, 323 Ill. App. 3d 917, 927-28, 752 N.E.2d 532, 256 Ill. Dec. 652 (2001)*. Furthermore, exhaustion is not required if the administrative remedy is inadequate or futile or in instances where the litigant will be subjected to irreparable injury due to lengthy administrative procedures that fail to provide interim relief. *Castaneda, 132 Ill. 2d at 309*.

[*P51] Under the circumstances of this case, we hold that exhaustion was unnecessary. Whether the Schuman letter's determination was correct is not the controlling question in the present posture of the case. Nor are we overly concerned with defendants' assertion that they have not yet argued before the Zoning Board that they need only comply with the operating hour requirements specified in subsection 5-3-4(D)(3)(g) for horse boarding home occupations, which predicament is self-induced by their decision to formally waive the home occupation issue during the 2008 administrative proceedings. The problem before us is the procedural snarl brought about by defendants' course of conduct after the plaintiffs properly availed themselves of the relief provided by *section 11-13-15* **[**32]** of the Illinois Municipal Code. Defendants minimize their waiver of the home occupancy issue at the 2008 Zoning Board hearings and magnify the plaintiffs' refusal to proceed, on jurisdiction grounds, with their appeal of the Schuman letter before the Zoning Board.

[*P52] Administrative proceedings had already been held on the Village's cease and desist order against defendants, and plaintiffs had already begun proceedings under *section 11-13-15* before defendants revived the home occupancy issue they had previously and explicitly waived at the administrative hearings. It was only after plaintiffs filed this lawsuit for injunctive relief that defendants solicited the Schuman letter from Village officials. As discussed above, the home occupation issue was part of the Village's argument before the Zoning Board and this court, and no useful purpose would be served by requiring plaintiffs to institute another round of administrative hearings based on subsection 5-3-4(D)(3)(g) of the zoning code. Defendants' latest nuance of the home occupation issue, which is based on the operating hours discussed in subsection 5-3-4(D)(3)(g), is subsumed or rendered irrelevant by this court's 2011 opinion, which **[**33]** confirmed the cease and desist order and concluded that defendants' commercial horse boarding operation did not qualify as a permitted use under all the relevant provisions of the zoning code, including the permissible use of horse boarding as a home occupation.

[*P53] It would be a strained application of the exhaustion doctrine to force plaintiffs to litigate before the Zoning Board essentially the same home occupation use issue that was formally waived by defendants during the 2008 administrative hearings but refuted anyway by the Village both at the administrative hearing sessions and again on administrative review before this appellate court. It is not reasonable to assume that the Zoning Board would reverse itself and now conclude that defendants' commercial horse boarding operation was a permissible home occupation use in a residential zone, which would be contrary to the Village's positions before the Zoning Board in the 2008 hearing sessions and in the Village's brief on appeal to this court. To insist on the additional useless step of litigating before the Zoning Board the waived and irrelevant issue of home occupancy, which irrelevancy was confirmed in this court's 2011 opinion, **[**34]** would merely give lip service to a technicality and thereby increase costs and delay the administration of justice, which is the very thing the exhaustion of remedies rule tries to avoid. *Herman v. Village of Hillside, 15 Ill. 2d 396, 408, 155 N.E.2d 47 (1958)*.

[*P54] While plaintiffs could have abandoned their lawsuit for injunctive relief and pursued their appeal of the Schuman letter before the Zoning Board, their not doing so, under the circumstances of this case, is not interdictive of the remedy they chose. Plaintiffs chose a remedy most beneficial to them, just as defendants, in proceeding under their revised home occupation argument, chose the course they thought most beneficial to them. The remedy chosen by plaintiffs was appropriate to the predicament confronting them. They were attempting to prohibit a zoning violation which was

declared by the Village, upheld by the Zoning Board, and confirmed by the circuit and appellate courts. Plaintiffs were an aggrieved party and their predicament was exacerbated by defendants acting to derail plaintiffs' properly filed lawsuit by raising before the Village anew the home occupation issue they had formally waived in 2008. Under the circumstances of this case, **[**35]** plaintiffs' choice of remedy was not incorrect and their complaint should not have been dismissed. This court's 2011 opinion remains in force and defendants cannot evade the effect of that ruling by using their subsequent solicitation of the Schuman letter as a fait accompli-shield to justify their noncompliance with the zoning code or to deprive plaintiffs of relief.

[*P55] Therefore, we find that plaintiffs' injunctive relief complaint was properly before the circuit court, exhaustion of further administrative remedies was not necessary under the circumstances of this case, and plaintiffs' complaint was erroneously dismissed as moot and nonjusticiable by the circuit court.

[*P56] III. CONCLUSION

[*P57] Under the foregoing circumstances, plaintiffs were not required to exhaust any administrative remedies before proceeding with their injunctive relief action in the circuit court. The judgment of the circuit court dismissing plaintiffs' amended complaint for injunctive relief is reversed and the cause is remanded for further proceedings before the circuit court.

[*P58] Reversed and remanded.

Exhibit E

PUBLIC HEARING
Before the Zoning
Board of Appeals
Village of Barrington Hills
Re: Text Amendment/Horse
Boarding and Training

Notice is hereby given that a Public Hearing will be held on Tuesday, December 2, 2014 at 7:30 p.m. by the Zoning Board of Appeals of the Village of Barrington Hills at Countryside School, 205 W. County Line Road, Barrington Hills, concerning a proposed text amendment from the Zoning Board of Appeals to the Village's Zoning Ordinance, Title 5 of the Village Code; specifically an amendment to Section 5-2-1 "Definitions" Section 5-3-4 "Home Occupation" and Section 5-5-2 "Permitted Uses".

A copy of the Zoning Ordinance and the proposed amendment is available for examination at the office of the Village Clerk at the Village Hall 112 Algonquin Road, weekdays between 9:00 a.m. and 5:00 p.m. Also a copy of this notice and amendment is available at the Village website www.barringtonhills-il.gov

All interested parties are invited to attend the Public Hearing and will be given an opportunity to be heard. Written comments on the application for text amendment to be made part of the record of this proceeding will be accepted in person, by fax or email in the office of the Village Clerk through 5 p.m. Monday December 1, 2014.

By: Village Clerk
Village of Barrington Hills
clerk@barringtonhills-il.gov
Fax 847.551.3050

Published in Daily Herald
November 15, 2014 (4391207)

CERTIFICATE OF PUBLICATION

Paddock Publications, Inc.

Daily Herald

Corporation organized and existing under and by virtue of the laws of the State of Illinois, DOES HEREBY CERTIFY that it is the publisher of the **DAILY HERALD**. That said **DAILY HERALD** is a secular newspaper and has been circulated daily in the Village(s) of Algonquin, Antioch, Arlington Heights, Aurora, Barrington, Barrington Hills, Lake Barrington, North Barrington, South Barrington, Bartlett, Batavia, Buffalo Grove, Burlington, Campton Hills, Carpentersville, Cary, Deer Park, Des Plaines, South Elgin, East Dundee, Elburn, Elgin, Elk Grove Village, Fox Lake, Fox River Grove, Geneva, Gilberts, Grayslake, Green Oaks, Gurnee, Hainesville, Hampshire, Hanover Park, Hawthorn Woods, Hoffman Estates, Huntley, Inverness, Island Lake, Kildeer, Lake Villa, Lake in the Hills, Lake Zurich, Libertyville, Lincolnshire, Lindenhurst, Long Grove, Mt.Prospect, Mundelein, Palatine, Prospect Heights, Rolling Meadows, Round Lake, Round Lake Beach, Round Lake Heights, Round Lake park, Schaumburg, Sleepy Hollow, St. Charles, Streamwood, Tower Lakes, Vernon Hills, Volo, Wauconda, Wheeling, West Dundee, Wildwood, Sugar Grove, North Aurora

County(ies) of Cook, Kane, Lake, McHenry and State of Illinois, continuously for more than one year prior to the date of the first publication of the notice hereinafter referred to and is of general circulation throughout said Village(s), County(ies) and State.

I further certify that the DAILY HERALD is a newspaper as defined in "an Act to revise the law in relation to notices" as amended in 1992 Illinois Compiled Statutes, Chapter 7150, Act 5, Section 1 and 5. That a notice of which the annexed printed slip is a true copy, was published 11/15/14 in said DAILY HERALD.

IN WITNESS WHEREOF, the undersigned, the said PADDOCK PUBLICATIONS, Inc., has caused this certificate to be signed by, this authorized agent, at Arlington Heights, Illinois.

PADDOCK PUBLICATIONS, INC.
DAILY HERALD NEWSPAPERS

BY Paula Baltzer
Authorized Agent

Control # 4391207

Exhibit F

ORAL REPORT OF
PRELIMINARY CLOSED HEARING OF 3/18/11
BEFORE THE STATE BOARD OF ELECTIONS

RE:
George L. Schueppert
Complainant

VS.

Save 5 Acres of Barrington Hills, Jason Elder, Dan Lundmark, E. Margaret Eich, Karen Rosene, John Rosene, Patty Meroni, Karen N. Selman, Joseph Messer, Benjamin B. Le Compte III
Respondents

Violations
Complainant alleges the above mentioned Respondents individually or in concert, violated the following sections of the Campaign Disclosure Act: **9-25,** in that contributions were made in the name of another, **9-26** filing of false campaign disclosure reports, and **9-8.5** received contributions in excess of the amount permitted by law.

Primary Activity Complaned of
As set forth in Appendix B, Complainants allege that Dr. Benjamin LeCompte II of Barrington Hills contributed $15, 000 in contributions to Save 5 Acres, by making 3 $5000 contributions each to Selman, Messer, and Meronni knowing the money would be laundered through their personal accounts and then transferred to the Save5Acres "Candidate Political Account". In this way it would appear as if they were coming from the candidates own individual accounts.

Complainant learned of this due to a phone conversation between Mr. Rosene and Mr. Jonathon Knight (attached Affidavit in Complaint)

****It is alleged that other Respondents acted in concert with the above**

****Service was obtained on all in attendance or they submitted to service by virtue of their appearing and not objecting to service. In General service achieved by emails and US mail.**

****Complainant's Case**

1Save 5 Acres formed in November 2010 to support three candidates.
2Recognizing new campaign limits, Dr LeCompte issued 3 checks.
33 checks were given to Mr. Steve Knoop (aka bagman) and candidate Selman at home of LeCompte on 2/10/11
4Shortly thereafter, all above 3 candidates made Special Endorsement to "Save 5 Acres"
5 Checks were deposited by a consultant/agent of Save 5 Acres.
6All 3 candidates filed late D-1s and A-1s on 3/17/11 the day before the Closed Hearing.
7Respondents Selman, Meroni, and Messer only did so because Complaint was filed.
8As a result of the above, some or all of the activity resulted in the above 3 violations by any **one of the Respondents or some/all of them acting in concert.**
9Actions as set forth indicates complaint filed on justifiable grounds

****Respondent's Case**

1Selman and Knoop did go to LeCompte to obtain contributions on the day in question
2All three candidates had no experience or knowledge of campaign disclosure filing requirements.
3Only learned of requirement to file D-1s and A-1s upon receiving the complaint
4Upon learning of the requirements, all three filed appropriate forms on 3/17/11
5No deception intended by any candidate.
6Respondent also stated that LeCompte intended on giving contributions to candidates as individuals.
7Therefore because the candidates and those affiliated with the committee were unaware of requirements and upon learning of their errors they took corrective action to remedy the non filings with filings, the allegations in complaint were not filed on justifiable grounds.

Appearances:

Richard Means on behalf of Complainant. John Fogarty on behalf of Respondent.

Complanant Witnesses: (adverse)
LeCompte
1That on 2/10/11, only individual contributions were intended.
2Would not give to Save 5 Acres because did not like Mr. Aboud, the perceived leader of said PAC.
3Lundmark, previously associated with Save 5 Acres gave info on contribution limits
4P. 47 of transcript Quote of LeCompte: Admitted knowing they could put money in PAC
5No intention to launder
6Stated if he was seeking to avoid limit, he and wife could contribute $7500 each.
Selman
1Accepted check and immediately did special endorsement to Save 5 Acres.
2Gave check to Mr. Knoop that moment, who had other two checks.
3No Knowledge of Complainant Ex #1 (A1 filed showing contribution from her on 2/14/11)
4P 66 of transcript Quote of Selman: Admitted gave to Save 5 Acres because it was the intent of campaign
5Admitted Save 5 Acres set up to support all three candidates.
Messer
1Also did special endorsement to Save 5 Acres after his check presented to him by Knoop
2P78 of transcript Quote of Messer: "Did special endorsement because it was the most expedient thing to do"
3Means presents Complainant's Ex #3, D1 of Save 5 Acres dated 11/19/2011 created to support Joe Messer.
Meroni
1Knoop gave her check and she did special endorsement to Save5Acres
2Gave her check and other two checks to Casey Justice who handled deposits (Respondent Ex 4)
3Claimed Casey Justice was consultant
John Rosesne
1Essentially denies most of what Jonathan Knight alleges in his affidavit
2Said he never told Knight of 3 $5000 contributions from LeCompte
3Claims Knight told him of the contributions and even mentioned Selman could never afford that much of a contribution on her own.

Jonathan Knight
Essentially reiterated what he alleged in affidavit in that Rosene told Knight of LeCompte's 3 $5000 contributions to the three candidates totaling $15,000, and that he responded to Rosene telling him that he thought there was a problem because Save 5 Acres had an A-1 on file indicating the receipt of contributions by Save 5 Acres on 2/14/11

Analysis

There is substantial evidence that indicates that Save 5 Acres was formed in November of 2010 for the exclusive purpose of supporting Selman, Messer, and Meroni for the offices they were seeking. This is indicated in part because of the fact that at least one of the D-1s filed lists the support of the candidacy of Messer as a stated purpose. Additionally the D-1 was amended at least 4 times since the initial filing wherein it switched from a Candidate committee to a party committee to a PAC committee in a short period of time. Selman herself testified that Save 5 Acre was created for the campaign of all three candidates. In any event, one thing is clear. LeCompte could not have given $15,000 to Save 5 Acres because as a PAC committee, $10,000 was the most he could have contributed. 3 $5000 contributions (gifts) to the three candidates for them to contribute individually to Save 5 Acres could have been a way to circumvent the contribution limit provision.

LeCompte states that he did not want to contribute to Save 5 Acres allegedly because of personal and some philosophical differences between the perceived leader of the committee and Village President Mr. Robert Aboud. Yet, he also states that he knew that the three candidates he gave the $5000 contributions to were the principal candidates of Save 5 Acres. If he did not want to give to Save 5 Acres directly, then why would he give to the candidates individually knowing that they were the candidates of Save 5 Acres?

Finally, it is entirely too coincidental that all three candidates got 3 checks for the same amount and not one of them deposited them into their personal accounts, but instead immediately specifically endorsed the checks to Save 5 Acres.

In the alternative and in defense of the Respondents, it is conceivable that they were novices and maybe they really did not know of the campaign disclosure filing requirements. Also, maybe they knew of the creation of the Save 5 Acres committee, and they did not think that when they endorsed their checks to Save 5 Acres, they did not believe they had violated any of the relevant laws under Article 9 of the election code. They did file D-1s and A-1s in an attempt to remedy their error, albeit they did not do so until a week after the filing of this complaint or the night before the Closed Hearing.

Recommendation

Enough evidence was adduced at hearing to allow this Hearing Examiner to conclude that pursuant to the relevant statutes of Article 9 and the relevant Rules and Regulations of the State Board of Elections, this complainant was filed on justifiable grounds and that it has some basis in law and fact. It is my recommendation that the Board issue an Order for a Public Hearing to determine if all three of the code sections mentioned above have been violated by any one or all of the Respondents either individually or in concert with one another.

Mark Greben-Hearing Examiner, March 20, 2011

Exhibit G

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

STATE BOARD OF ELECTIONS
STATE OF ILLINOIS

In the Matter Of:	)	
	)	
George L Schueppert,	)	
	)	
Complainant(s),	)	
vs.	)	11 CD 006
	)	
Save 5 Acres, J. Elder, D. Lundmark, E.M. Eich, K. Rosene, J. Rosene, P. Meroni, K. Selman, J. Messer, & B. LeCompte	)	
Respondent(s).	)	

FINAL ORDER

TO:

George L Schueppert 97 Otis Rd Barrington Hills, IL 60010	Save 5 Acres PO Box 339 Barrington, IL 60010	Jason Elder 273 Leeds Dr. Barrington Hills, IL 60010	Dan Lundmark 23 Bow Lane Barrington Hills, IL 60010
E Margaret Eich 7 Bellwood Dr Barrington Hills, IL 60010	Karen & John Rosene 208 A Braeburn Rd Barrington Hills, IL 60010	Patty Meroni 5 Bellwood Dr Barrington Hills, IL 60010	
Karen Selman 116 Brinker Rd Barrington Hills, IL 60010	Joseph Messer 21 Oakdene Dr Barrington Hills, IL 60010	Benjamin LeCompte III 350 Bateman Rd Barrington Hills, IL 60010	

This matter coming to be heard this 14th day of June, 2011, following a Public Hearing of a Complaint filed pursuant to "An Act to Regulate Campaign Financing" (Illinois Compiled Statutes, 10 ILCS 5/9-1 *et seq.*, herein referred to as the "Act"), alleging that the respondent(s) violated 10 ILCS 5/9-25, 5/9-26 and 5/9-8.5 in that the Respondent committee made contributions in the name of another, filed false campaign disclosure reports and received contributions in excess of the amount permitted by law; and the State Board of Elections having read the report of the Hearing Officer and hearing the recommendation of the General Counsel and now being fully advised in the premises,

THE BOARD FINDS:

1. The respondents violated Section 5/9-8.5 and 5/9-25 of the Election Code; and

IT IS HEREBY ORDERED:

1. The recommendation of the Hearing Officer and the General Counsel is adopted; and
2. The respondents comply with all reporting requirements in the future, and
3. Failure to do so will subject the Committee to a civil penalty not to exceed $5000.00 for failure to comply with a Board Order, and
4. Board staff shall review reports filed for any possible violations of contribution limits and make any necessary penalty assessments, and
5. The effective date of this Order is June 15, 2011, and
6. This is a Final Order subject to review under the Administrative Review Law and Section 9-22 of the Election Code.

DATED: 6/15/2011

Bryan A. Schneider, Chairman

Exhibit H

President
ROBERT G. ABBOUD

Trustees
FRITZ GOHL, Pro-Tem
WALTER E. SMITHE
STEVEN E. KNOOP
BETH MALLEN
ELAINE M. RAMESH
JOSEPH S. MESSER

KAREN S. SELMAN, Clerk
DOLORES G. TRANDEL, Deputy Clerk

112 ALGONQUIN ROAD
BARRINGTON HILLS, ILLINOIS 60010-5199
www.barringtonhills-il.gov

TELEPHONE
(847) 551-3000

FACSIMILE
(847) 551-3050

Via Fax and U.S. Mail

March 15, 2011

Dr. & Mrs. LeCompte

350 Bateman Road

Barrington Hills, IL 60010

Dear Dr. & Mrs. LeCompte,

The Building Department has received and examined your affidavit dated March 4, 2011. You have asked to consider the use of Oakwood Farm as a Home Occupation. The affidavit states the terms by which the use is a Home Occupation. Similarly, you submitted an employee register in support of the extent of your employee's hours.

Your Home Occupation pertains to boarding and training of horses, which is a use specifically referenced in subsection (g) of Section 5-3-4(D)3 of the Zoning Ordinance. Based on the information in your affidavit, it appears that the use of Oakwood Farm is a Home Occupation.

Sincerely,

Don Schuman

Don Schuman

Building and Code Enforcement Officer

847-551-3003

Exhibit I

From the desk of
Martin J. McLaughlin
Barrington Hills Village President

To Residents, Elected and Appointed Officials and Employees of the Village of Barrington Hills:

As a follow up to the Board of Trustees Meeting held on January 26, 2015, under the legal authority granted to the President of the Village of Barrington Hills pursuant to 1-6-6(d)(1) of the Barrington Hills Village Code, I will appoint Special Counsel, David Sterba former Appellate Court Judge, to commence an inquiry into whether there was any improper influence, or conduct by any appointed or elected Barrington Hills Officials relating to all phases of the commercial horse boarding legislation, from initiation to approval by the ZBA and passage by the Board of Trustees.

I am on the record stating that I do not support the language of the horse boarding Ordinance 14-19 approved by the Board, as evidenced by my veto. My decision to employ Special Counsel to conduct a review of the events surrounding commercial boarding is in no way motivated by the text of the Ordinance itself, but rather, there is a concern about the circumstances gave rise to the resulting Ordinance, including the path it took through the ZBA and Board of Trustees. Numerous allegations have been made at both public meetings and in filings with the Village, challenging the process of the Ordinance and the conduct of certain Village Officials. The Village residents have the right to know that the process by which the approval of Village legislation is free from any outside influence or impropriety.

As Village President, I expect current and formally elected and/or appointed officials called upon by Special Counsel, as well as all others employed by the Village, whether on contract or otherwise, to fully cooperate by providing complete and truthful answers to questions, as well as to timely furnish Special Counsel with all relevant information and documentation in his or her possession or control. This includes providing information to Special Counsel on "who" or "where" other unavailable, but known, information may be found.

I trust in the spirit of cooperation, members of the public will choose to do the same. While the focus of this inquiry is intended to be geared toward process or circumstances upon which commercial boarding legislation originated and proceeded through the ZBA and Board of

Trustees, I will not prevent Special Counsel from exploring further avenues relating to commercial horse boarding should information obtained during the course of his investigation lead to such inquiry.

At this time, my role as Village President will be to provide Special Counsel with any requested information on the subject matter of horse boarding in Barrington Hills. I will allow Special Counsel to perform this work free from interference or influence. Therefore, until the Report of Special Counsel is made available, I will have no further public comment on this matter.

On the expectation that individuals called upon by Special Counsel will fully cooperate in timely fashion, I anticipate the job of Special Counsel will be completed and a written Report furnished no later than sixty (60) days from the date Special Counsel is formally retained. To the extent the Village is legally able; the results of this investigation will be made available to the public.

Sincerely,

Martin McLaughlin, Village President
February 12, 2015

Exhibit J

July 20, 2011

President and Board of Trustees
Village of Barrington Hills
112 Algonquin Road
Barrington Hills, IL 60010

RE: Commercial Horse Boarding

Dear President and Trustees:

After many months of discussion of the commercial horse boarding issue in Barrington Hills, we have reached a consensus on a proposed manner of regulating boarding in the Village. We are respectfully requesting that you review and discuss our proposal and if it is acceptable to you, that you refer it back to the Zoning Board of Appeals to conduct a public hearing so that we may make the appropriate recommendation to the Board of Trustees for its adoption. The specific language that we have discussed and are proposing is attached hereto as Exhibit A.

As you are aware, this issue has been under consideration for several years and numerous meetings and discussions have taken place with regard to it. We have had various "white papers" submitted to us by the Equestrian Commission and a number of proposals that have been made by the Legal Committee, the Equestrian Commission and others. We are aware of the situation with Oakwood Farms and the recent holding by the Illinois Appellate Court denying the claim by Oakwood Farms that horse boarding is agriculture and therefore a permitted use.

In 2005, the ZBA recommended and the Board of Trustees approved changes to the Home Occupation Ordinance, which allowed horse boarding as a home occupation. While we considered simply allowing all boarding operations to operate as home occupations, we felt that was not the best approach. Larger boarding operations can have impacts on the surrounding properties. In these circumstances, we are recommending that larger boarding operations should be required to obtain a Special Use Permit. The special use permit requirement would allow the community to have some involvement in whether such operations are appropriate at that particular location and, if so, under what conditions they should operate. As a result, we are suggesting that those facilities that board ten (10) horses or more be regulated as Special Uses. We discussed, at length, requiring stables or barns of a certain size to also obtain a Special Use Permit, but in the end determined that was burdensome and potentially overreaching.

We feel that the attached proposal represents a good balance between preserving and protecting the equestrian nature of the Village while taking into account the concerns of residents who might be impacted by larger boarding facilities.

Very truly yours,

Judith Freeman – Chairman
Zoning Board of Appeals

cc: Copy to each of the ZBA members

02976\00002\899447.1

Exhibit K

Village of Barrington Hills

Memo

To: Zoning Board of Appeals
From: Robert Kosin, Director of Administration
CC: Village President, Board of Trustees
Date: October 17, 2014
Re: Boarding Text Amendment

During the consideration of the LeCompte Text Amendment as amended by the ZBA, the Board of Trustees posed questions regarding underlying topics involving horse boarding. It is intended that a response from the ZBA is provided to the BOT for which a schedule was proposed of ninety days. The topics are as follows including the likely reference source for a response.

1. HUSBANDRY: What is the allowed number of horses per area? Comment. Information on density of horses has been examined by other jurisdictions but the underlying value has not reference the source. To that end, qualifying academic individuals in the area of equestrian husbandry may be consulted for their opinion on the subject.

2. PROPERTY TAX ASSESSMENT: If horse boarding is an allowed agricultural use, what is the potential property tax impact? Comment. The assessment value of property is that which is set by township assessor (except for Cook County) according to adopted guidelines by the Illinois Department of Revenue. A local assessor may be consulted for an opinion.

3. PLANNING:

[3.1] If horse boarding is an allowed commercial activity, does this create the potential for additional commercial activities in the Village?

[3.2] What is the effect of a permitted use of this type versus making it a special use?

Comment. Both questions go to the basic elements of planning meaning the identification of the trend of development and techniques of zoning regulations. The land use consultant who assisted the Village in the uses and revision of the Comprehensive Plan may be consulted for an opinion.

4. ENGINEERING: What is the potential cause/effect on the Village roads by allowance of commercial boarding (trailers/disposal/hay)? Comment. Traffic loads and volumes are subjects presently address through the duties of the Village Engineer, and may be consulted for an opinion.

5. ENVIORNMENT: What is the effect on the aquifer of large scale commercial boarding? Comment. Ground water is a subject reviewed and opined by BACOG including availability of its consultant to specific geographically and land use concerns. An opinion on this subject may be requested.

6. ENFORCEMENT: What would be the role of the Building Department if the text amendment is adopted? Comment. The Building Department is the general enforcement entity of either the Zoning or Building Code.

7. CLARIFICATION: What are the allowed hours of operation? Comment. Hours of activity are set by the Village dependent on the use.

Exhibit L

Robert Kosin <rkosin@barringtonhills-il.gov>

(no subject)

Marty <mclkln6@aol.com> Mon, Jan 26, 2015 at 5:34 PM
To: mmclaughlin@barringtonhills-il.gov, clerk@barringtonhills-il.gov, Robert Kosin <rkosin@barringtonhills-il.gov>

VETO MESSAGE FROM THE VILLAGE PRESIDENT
OF THE VILLAGE OF BARRINGTON HILLS

January 6,
2014

To the Honorable Trustees of the Village of Barrington Hills:

In accordance with Sections 1-5-4 and 1-5-12 of the Village Code and Sections 3.1-45-5 and 3.1-40-45 of the Illinois Municipal Code, I hereby veto Ordinance No. 14-19 entitled "AN ORDINANCE AMENDING TITLE 5, ZONING REGULATIONS SET FORTH IN CHAPTERS 2, 3 AND 5 REGARDING HORSE BOARDING", which was passed by the Village Board of Trustees on December 15, 2014.

My opposition to this Text Amendment is well known, and I believe supported by a majority of the residents of the Village of Barrington Hills as evidenced by testimony and written submission to the Clerk. I join my fellow residents in being suspect about the reasons for the speed at which the majority of the Zoning Board of Appeals and the Board of Trustees determined to adopt the Text Amendment at issue – particularly when this issue had been the subject of lengthy debate in 2011, but never formally addressed. I believe the only change in circumstance which forced the series of special meetings to adopt the Text Amendment was a change in legal circumstances for one property owner in the Village. This is not a good reason to change the Village Code and its effect on all residents of the Village. The fact that the Text Amendment is to serve only one resident is brutally apparent given the retroactive nature of theText Amendment.

Our Village working with South Barrinton just settled18 years of legal wrangling with Sears litigation which cost our taxpayers over $1.5 million dollars. Now, the majority of the Zoning Board of Appeals and the Board of Trustees seem interested in only putting the Village right back, squarely in litigation yet again, because I am sure, like me, that you have heard the repeated threats of litigation should the Village Board adopt the Text Amendment. The temporary Village attorney and special counsel has provided a clear opinion as to the jeopardy a change in the law can cause. Yet, the majority of the Board seems not to care.

Lest there be any question, I want to make clear that I am a supporter of the Village's equestrian heritage. I support horse boarding. But, I do not support this text amendment.. I believe we should mirror the countless other municipalities in the State of Illinois and allow large scale horse boarding through the grant of a Special Use Permit. Such a process will allow the Village to remain in authority over the operation of these commercial operations to protect the Village and the neighbors of such operations. The Zoning Board of Appeals recognized the value of the Special Use Approval for horse boarding in 2011, but does not now. One should ask, what has changed that we now are forced to allow commercial horse boarding as of right, by amending the definition of agriculture?

I am firmly opposed to this measure. Accordingly, I must return this Ordinance to the Village Board of Trustees with my veto. Pursuant to Sections 1-5-4 and 1-5-12 of the Village Code and Sections 3.1-45-5 and 3.1-40-45 of the Illinois Municipal Code, I hereby return Ordinance No. 14-19 entitled "AN ORDINANCE AMENDING TITLE 5, ZONING REGULATIONS SET FORTH IN CHAPTERS 2, 3 AND 5 REGARDING HORSE BOARDING", to the next regularmeeting of the Village Board of Trustees, occurring not less than 5 day after the date of passage, with the foregoing objections, vetoed in its entirety.

Sincerely,

_____
Martin J. McLaughlin,
Village President, Village of Barrington Hills

Dated: _____

Exhibit M

5-10-6: AMENDMENTS:

(A) Authority: For the purposes of promoting the public health, safety, morals, comfort and general welfare, conserving the values of property throughout the village, and lessening or avoiding congestion in the public roads and highways, the president and the board of trustees of the village may, from time to time, in the manner hereinafter set forth, amend the regulations imposed and the districts created by this title; provided, that in all amendatory ordinances adopted under the authority of this section, due allowance shall be made for existing conditions, the conservation of property values, the directions of building development to the best advantage of the entire Village, and the uses to which property is devoted at the time of the effective date hereof. (Ord. 63-1, 4-1-63)

(B) Initiation of Amendment: Amendments may be proposed by a Trustee, the Zoning Board of Appeals, the Enforcing Officer or by any person owning or having an interest in the subject property. (Ord. 77-1 7, 9-26-77)

(C) Application for Amendment: An application for an amendment shall be filed with the Enforcing Officer, in such form and accompanied by such information as required by the Zoning Board of Appeals.

(D) Hearing on Application: The Zoning Board of Appeals shall hold a public hearing on each application for an amendment at such time and place within the Village as shall be established by the Zoning Board of Appeals. The hearing shall be conducted and a record of such proceedings shall be preserved in such manner as the Zoning Board of Appeals shall, by rule, prescribe from time to time. (Ord. 63-1, 4-1-63)

(E) Notice of Public Hearing:

1. Notice of the time and place of such hearing shall be published in a newspaper of general circulation in the Village not more than thirty (30) nor less than fifteen (15) days before such hearing. Supplemental or additional notices may be published or distributed as the Zoning Board of appeals may, by rule, prescribe from time to time. (Ord. 63-1, 4-1-63; amd. 1977 Code)

2. Where the amendment is initiated by a Trustee, the Zoning Board of Appeals, or the Enforcing Officer, and proposes a change of district classification of a particular property, a true copy of the application or of the Board's order shall be served upon the owner or owners of record in person or by certified United States mail within ten (10) days after the filing of the application or the entry of the Board order initiating the proceeding. Where the application is filed by a person having an interest in the subject property, a notice and copy of the application shall be served in like manner upon each of the other co-owners or those having an interest. The foregoing notice and service requirements shall be in addition to the publishing requirements of this subsection. (Ord. 63-1, 4-1-63; amd. Ord. 77-17, 9-26-77)

(F) Findings of Fact and Recommendations of the Zoning Board of Appeals: Within a reasonable time after the close of the hearing on a proposed amendment, the Zoning Board of Appeals shall make written findings of fact and shall submit same together with its recommendation to the Board of Trustees of the Village. Where the purpose and effect of the proposed amendment is to change the zoning classification of particular property, the Zoning Board of Appeals shall make findings based upon the evidence presented to it in each specific case with respect to the following matters:

1. Existing uses of property within the general area of the property in question.

2. The zoning classification of property within the general area of the property in question.

3. The suitability of the property in question for the uses permitted under the existing zoning classification.

4. The trend of development, if any, in the general area of the property in question, including changes, if any, which may have taken place since the day the property in question was placed in its present zoning classification.

The Zoning Board of Appeals shall not recommend the adoption of a proposed amendment unless it finds that the adoption of such an amendment is in the public interest and is not solely for the interest of the applicant. The Zoning Board of Appeals may recommend the adoption of an amendment changing the zoning classification of the property in question to any higher classification than that requested by the applicant. For the purpose of this paragraph the R1 District shall be considered the highest classification and the Light Industrial District shall be considered the lowest classification.

(G) Action by the Board of Trustees:

1. The Board of Trustees of the Village shall not act upon a proposed amendment to this Title until it shall have received a written report and recommendation from the Zoning Board of Appeals on the proposed amendment.

2. In cases where the Zoning Board of Appeals recommends that a proposed amendment not be adopted or in case of written protest against any proposed amendment signed and acknowledged by the owners of twenty percent (20%) of the property proposed to be altered or by the owners of twenty percent (20%) of the property adjacent to the property proposed to be altered, and filed with the Clerk of the Village, such amendment shall not be passed except by the favorable vote of two-thirds ($^2/_3$) of all members of the Board of Trustees.

3. If an application for a proposed amendment is not acted upon finally by the Board of Trustees of the Village within sixty (60) days of the time of receipt of the Zoning Board of Appeals' recommendations, it shall be deemed to have been denied.

(H) Minimum Size of Parcel: A lot, lots or parcel of land shall not qualify for a zoning amendment unless it possesses a minimum of one hundred fifty feet (150') of frontage and contains a minimum of forty thousand (40,000) square feet of area, or adjoins a lot, lots or parcel of land which bears the same zoning district classification as the proposed zoning amendment.

Exhibit N

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

June 10, 2014

Mr. Jack E. Reich
110 Brinker Drive
Barrington Hills, Illinois 60010

Ms. Susan M. Horner, Village Attorney
OBO Village of Barrington Hills
Burke, Warren, MacKay & Serritella, P.C.
330 North Wabash Avenue, Suite 2100
Chicago, Illinois 60611

RE: OMA Request for Review – 2013 PAC 24843

Dear Mr. Reich and Ms. Horner:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2012)). For the reasons that follow, the Public Access Bureau concludes that the Village Board of Barrington Hills (Board) violated OMA at its April 22, 2013, meeting by voting to approve 33 appointments to various committees without sufficiently identifying the subject matter of the proposed final action on the meeting agenda.

On June 6, 2013, Mr. Jack E. Reich submitted a Request for Review to the Public Access Bureau alleging that the Board violated OMA by limiting the public comment period during its April 22, 2013, regular Board meeting to three minutes, by failing to timely post the meeting notice, by failing to sufficiently describe on the agenda the 33 appointments to committees voted on during the meeting, and by holding secret meetings that were not open to the public prior to the meeting at which the appointments were approved. On June 19, 2013, this office forwarded a copy of the Request for Review to the Board and asked it to respond to the allegations, and to provide a copy of the Board's rules for public comment, as well as copies of the minutes, agenda, and notice of the April 22, 2013, meeting.

In its response, the Board asserted that the public comment period was limited to three minutes per speaker pursuant to the Board's rules adopted on August 27, 2012, which are

posted on the Village's website and at the location of its meetings. The Board also asserted that it provided timely notice and that its agenda sufficiently described the final action concerning the appointments:

> [T]he notice and agenda for the April 22, 2013 meeting were posted (1) in the Village Hall lobby near the MacArthur room (the room in which the meeting took place) on a board marked "NOTICES," (2) on an illuminated ADA accessible sign at the exterior of the Village Hall, (3) on the Village Trustee page of the Village's website, (4) in the Village's calendar-at-a-glance on the Village's website, and (5) in the MacArthur conference room, all before 6:00pm on Friday, April 19, 2013, in compliance with section 2.02 of the Act.
>
> * * *
>
> In the instant matter, item 10.1 of the April 22, 2013 Agenda is '[Approval] Appointments.' The bracketed word 'approval' indicates that appointments will be submitted for vote by the Board (see, e.g., other similarly described agenda items for April 22, 2013, such as items 1.1-1.5, 2.1, 2.3-2.4, 3.3 & 5.3).[1]

Further, the attorney for the Board inquired of Board members and confirmed that "[t]here were no prior private meetings of a majority of a quorum of the Village's Board of Trustees regarding the appointees."[2]

DETERMINATION

Public Comment

Section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2012)) provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." A public body may prescribe reasonable rules to govern meeting decorum and procedure, including time limits for public comment. *See Wright v. Anthony*, 733 F.2d 574, 577 (8th Cir. 1984). Thus, a public body may impose reasonable limits

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[1] Letter from Susan M. Horner to Shari L. West, Assistant Attorney General, Public Access Bureau (July 3, 2013).

[2] Letter from Susan M. Horner to Shari L. West, Assistant Attorney General, Public Access Bureau (November 8, 2013).

on the right of the public to make public comments. Such rules serve a significant governmental interest in conserving time and ensuring that other speakers have an opportunity to speak. *See I.A. Rana Enterprises, Inc. v. City of Aurora*, 630 F.Supp.2d 912, 923 (N.D. Ill. 2009). Here, persons were permitted an opportunity to provide public comment at the meeting pursuant to the Board's rules, which limited public comment to three minutes per person. Consequently, the Board did not violate section 2.06(g) of OMA.

Posting of Notice/Agenda

Section 2.02(a) of OMA (5 ILCS 140/2.02(a), (West 2012)) provides that:

> [a]n agenda for each regular meeting shall be posted at the principal office of the public body and at the location where the meeting is to be held at least 48 hours in advance of the holding of the meeting. A public body that has a website that the full-time staff of the public body maintains shall also post on its website the agenda of any regular meetings of the governing body of that public body.

Also, section 2.02(b) of OMA (5 ILCS 140/2.02(b), (West 2012)) requires public notice to be given "by posting a copy of the notice at the principal office of the body holding the meeting or, if no such office exists, at the building in which the meeting is to be held" and requires that "a public body that has a website that the full-time staff of the public body maintains shall post notice on its website of all meetings of the governing body of the public body."

The Board asserted that the notice and agenda for the April 22, 2013, meeting were posted in the lobby at the Village Hall, at the room where the meeting was held, and on the Village's website, among other sites, more than 48 hours prior to the meeting. Although Mr. Reich asserted that the "notice of this agenda item could not have been made to the public more than 4 or 5 days before the Board meeting[,]"[3] by posting the notice and agenda at the principal office, at the location of the meeting, and on the Village's website at least 48 hours before the meeting commenced, the Board complied with the requirements of sections 2.02(a) and 2.02(b) of OMA.

[3]Letter from Jack E. Reich to Shari L. West, Assistant Attorney General, Public Access Bureau (July 15, 2013).

Subject Matter on Agenda

Section 2.02(c) of OMA (5 ILCS 140/2.02(c) (West 2012)) provides that "[a]ny agenda required under this Section shall set forth the general subject matter of any resolution or ordinance that will be the subject of final action at the meeting." The Senate debate on House Bill No. 4687, which as Public Act 97-827, effective January 1, 2013, added section 2.02(c) of OMA, indicates that the General Assembly intended this provision to ensure that agendas provide sufficiently descriptive advance notice of the matters upon which a public body anticipates taking final action:

> [T]here was just no real requirement as to how specific they needed to be to the public of what they were going to discuss that would be final action. And this just says that you have to have a * * * general notice if you're going to have and take final action, as to generally what's going to be discussed so that – that people who follow their units of local government know what they're going to be acting upon. Remarks of Sen. Dillard, May 16, 2012, Senate Debate on House Bill No. 4687, at 47.

Specifically, "the sufficiently descriptive language that has to be put in the agenda will * * * be more clear about what the town or the village intends to do at that particular meeting." Remarks of Rep. Zalewski, May 22, 2012, House Concurrence on Senate Committee Amendment No. 3 on House Bill No. 4687, at 17-18.

The facts are undisputed that the Board took final action at the Board meeting by voting to approve 33 appointments to various Board committees. The issue is whether the Board's agenda provided sufficient notice of the nature of the final action. The Board asserts that the agenda item "[Approval] Appointments"[4] provided adequate notice. This office, however, has previously determined that generic agenda items of this sort do not sufficiently describe the general subject matter of final action. Ill. Att'y Gen. PAC Req. Rev. Ltr. 23602, issued May 22, 2013 (agenda item for "personnel" for the appointment of a police chief did not comply with section 2.02(c) of OMA). In these circumstances, there was no reference to committees or any other information that would have given the public even rudimentary notice of the Board's intentions. We conclude that the agenda failed to satisfy the requirements of section 2.02(c) of OMA. To remedy that violation, the Board is directed to reconsider and re-vote on the April 22, 2013, committee appointments at a properly noticed meeting for which the agenda specifically references the nature of the appointments.

[4] Village of Barrington Hills Board, Regular Meeting, Agenda Item 10.1 (April 22, 2013).

Private Meeting Allegation

Section 2(a) of OMA (5 ILCS 120/2(a) (West 2012)) requires that all meetings of a public body must be open to the public unless properly closed pursuant to an exception in section 2(c) of the Act (5 ILCS 120/2(c) (West 2012)). Section 1.02 of OMA (5 ILCS 120/1.02 (West 2012)) defines a meeting as:

> [A]ny gathering, whether in person or by video or audio conference, telephone call, electronic means (such as, without limitation, electronic mail, electronic chat, and instant messaging), or other means of contemporaneous interactive communication, of a majority of a quorum of the members of a public body held for the purpose of discussing public business or, for a 5-member public body, a quorum of the members of a public body held for the purpose of discussing public business.

The Board is comprised of seven members; a majority of the Board, or four members, of the Board constitutes a quorum, and three members a majority of the quorum. Therefore, if at least three members of the Board engaged in contemporaneous, interactive communications concerning public business during the period in question, then those discussions would have constituted a meeting or meetings of the Board which would have been subject to all of the procedural safeguards and requirements of OMA.

Mr. Reich alleges that there must have been prior private meetings regarding the appointments because "it is impossible to believe that these nominations could be orchestrated or that they would vote so uniformly in favor without prior discussion."[5] However, it appears that the voting was not so consistent as to imply that it had been preordained. Based on the minutes of the April 22, 2013, meeting, the Board made 10 motions regarding the appointment of committee members, and of those 9 passed. Five motions passed five to four, three motions passed six to one, and one motion passed four to three. Further, the attorney for the Board confirmed that there were no prior private meetings regarding the appointees, and Mr. Reich has not provided any evidence that any private meetings occurred. Thus, we conclude that there is insufficient evidence to support the allegation that a majority of a quorum of the Board held a secret meeting or meetings concerning the appointments prior to the April 22, 2013 meeting.

Lastly, Mr. Reich appears to argue that the appointments were made for political

[5]Letter from Jack E. Reich to Sarah Pratt, Acting Public Access Counselor, Office of the Attorney General (June 6, 2013).

purposes. That issue is not within the limited jurisdiction of the Public Access Counselor to review alleged violations of the Open Meetings and Freedom of Information Acts. *See* 5 ILCS 120/3.5(a) (West 2012).

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, you may contact me at (217) 524-7958 or at the Springfield address on the bottom of the first page. This letter shall serve to close this matter.

Very truly yours,

SHARI L. WEST
Assistant Attorney General
Public Access Bureau

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