

**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,)

Plaintiffs,)

-v-)

VILLAGE OF BARRINGTON HILLS,)
an Illinois Municipal Corporation,)

Defendants.)

Case No. 15-CH-3461

Calendar 16

Judge David B. Atkins

**FIRST AMENDED 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 First Amended 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 Ordinance No. 14-19 entitled "An Ordinance Amending Title 5 Zoning Regulations Set Forth In Chapter 2, 3 and 5 Regarding Horse Boarding." ("Text Amendment"¹) attached as **Exhibit A-1**.

2. The First Amended Complaint alleges that the Text Amendment is an invalid exercise of the Village's police power authority where the Text Amendment does not promote

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 "Text Amendment".

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.

3. This First Amended Complaint is filed pursuant to this Court's Memorandum Opinion and Order granting the Motions to Dismiss and granting the Plaintiffs leave to file their First Amended Complaint.

4. 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

5. 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 Text Amendment.

6. 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 Text Amendment.

7. This initial Complaint for *de novo* judicial review was brought pursuant to 65 ILCS 5/11-13-25 within Ninety (90) days of the date that the Village Board adopted the Text Amendment.

PARTIES.

8. 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.

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

10. The Drury Property suffers from the deleterious impacts from large scale-commercial horse boarding operations. The Drury Property is experiencing the deleterious

impacts from horse trailers, manure trucks, customer parking lots, vehicles, additional traffic, and increased noise as further described below. and in the Affidavit of James Drury attached as Exhibit O.

11. 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.

12. 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. Reich's Property has experienced the deleterious impacts from horse trailers, manure trucks, customer parking lots, vehicles, additional traffic, ground water and surface water pollution, and increased noise as further described below. and in the Affidavit of James Drury attached as Exhibit O from an adjacent property owner who illegally established an equestrian training and boarding facility

13. James T. O'Donnell, resides at the property located at 1 Ridgcroft 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.

14. 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.

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

16. 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.*

**PREVIOUS LITIGATION INVOLVING BENJAMIN LECOMPTE AND THE
COMMERCIAL HORSE BOARDING OPERATIONS AT 350 BATEMAN**

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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 LeCompte’s since January 10, 2008.” (A copy of the Schulte letter is attached as **Exhibit B.**)

23. 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.

24. 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**.)

25. The validity of the home occupation regulations were sustained by both the trial court and the appellate court in this litigation.

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 and sought retroactive application of that text amendment. (“*LeCompte Text Amendment*”).

THE CIRCUMSTANCES SURROUNDING THE ADOPTION OF THE TEXT AMENDMENT

28. 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.

29. 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).

30. In 2008, the Village served a cease and desist order on LeCompte for operating an illegal commercial horse boarding operation on his property in violation of the Village Zoning Ordinance.

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

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

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

34. 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.

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

36. 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.

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

38. 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 LeCompte's since January 10, 2008." (See **Exhibit B.**)

39. 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.

40. 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.)

41. 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”).

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

43. 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**.)

44. 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.)

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

46. 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.

47. 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*.

48. 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.)

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

50. 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.)

51. Then 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").

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

53. 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").

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

55. 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.

56. 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.

57. 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.**)

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

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

60. On October 20, 2014, Kurt Anderson initiated an amendment to the text of the Village Zoning Ordinance, remarkably similar to the LeCompte 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 contained the permitted as of right approach in residential districts. It permitted multiple horses to be

commercially boarded on a residential lot dependent on the size of the lot. It imposed no limitation on the floor area ratio of barns and stables. Most significantly, it made the text amendment retroactive to before the date that LeCompte was cited for violating the Village's home occupation ordinance. 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.

61 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.

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

63 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.

64 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.

65 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.

66 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.

67 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.

68 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.

69 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. 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.

70 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 (“Text Amendment”).

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

72 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.**)

73 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.

THE VETO OVERRIDE

74 Three of the five votes to overturn the veto were cast by Trustees Joe Messer, Patty Meroni, and Karen Selman. The Village President vetoed the Commercial Horse Boarding Text Amendment on January 8, 2015.

75. 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.

76 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.

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

78 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 undermine the presumption of validity that the Courts normally attach to legislative action like this.

79 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.

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

81 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.)

82 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**.)

83 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**.)

84 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.

85 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*.

86 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.

87 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.

88 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.

89 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.)

90. 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).

91. 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.

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

93. 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.)

94. 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 eight years. 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**.)

**THE PROTECTIONS TO ADJOINING PROPERTY OWNERS
ELIMINATED BY THE TEXT AMENDMENT**

95. Prior to February 23, 2015 the Village had in place regulations governing the commercial boarding of horses belonging to others not residing on a residential lot. Such a use was regulated through the home occupation use provisions of the Village's Zoning Ordinance. A copy of that Ordinance is attached as Exhibit A-2

96. The Text Amendment worked the following modifications to the Village's regulatory scheme governing horse boarding:

97. It added the following provisions to the definition of Agriculture in Section 5-2-1:

- a) To permit as a matter of right the breeding, boarding and training of horses as a permitted use.
- b) To permit accessory uses needed for the breeding boarding and training of horses as a matter of right.
- c) Specifically authorized buildings, stables or structures associated with the breeding, boarding and training activities to exceed the size of the principal structure used for residential purposes.
- d) Exempted such building and structures from the requirement of securing any permits building or otherwise
- e) Provided for retroactive application of this amended definition and provided for its full force and effect to June 26, 2006 (more than 8 1/2 years earlier).

98. It amended 5-5-2(A) to permit as a matter of right the commercial uses of breeding, boarding and training of horses, and rider instruction on a residentially zoned property in the Village.

99. It added a new Section 5-3-4 which:

- a) Eliminated any regulations whatsoever other than minimal regulations contained in Section 5-3-4 (A) 2(a) (the activities must be located on same zoning lot or lots under the same ownership and/or control as the residence of the owner or operator of the related facility; an animal waste management protocol; lighting for barns.)
- b) Eliminated any requirements that such accessory buildings, structures or arenas used in connection with such commercial activities (barns, stables, or arenas) be secondary to the principal residential use on the lot. (See

Section 5-3-4 (A)(9)

- c) Eliminated any permit requirements (building or otherwise in connection with the erection, maintenance, repair, alteration, remodeling or extension of buildings or structures used or to be used for commercial horse boarding. (See Section 5-3-4 (A)(1))
- d) Permitted up to two boarded horse per zoning lot acre. (See Section 5-3-4 (2)(a)(6))
- e) Substantially increased the hours of operation (See Section 5-3-4 (A)(2)(a)(1))

100. The net effect of the Text Amendment was to legalize unlawful and unauthorized activities dating back 8 ½ years to June 26, 2006.

101. The protections afforded under the home occupation treatment of such a use were eliminated wholesale.

102. The Text Amendment eliminated the protections afforded adjoining property owners that such commercial horse boarding operations would be conducted in a manner to provide peace, quiet and domestic tranquillity 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.

103. The Text Amendment eliminated the protections afforded adjoining property owners that such commercial horse boarding operations would be conducted in a manner that the general public would be unaware of its existence and that it is 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.

104. The Text Amendment eliminated the protections afforded adjoining property owners that such commercial horse boarding operations would be secondary and incidental to the principal use of such dwelling unit for residential occupancy purposes .

105. The Text Amendment eliminated the protections afforded adjoining property owners on the number of employees of such a use (2); the prohibitions on separate entrances,

outside activities; the prohibition of routine attendance of clients, customers, subcontractors, or employees; the prohibition on 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; the limitations on the amount of refuse; the limitations on the amount of traffic (prohibition on generating significantly greater vehicular or pedestrian traffic than is typical of residences in the surrounding neighborhood);

106. The Text Amendment eliminated the protections afforded adjoining property owners on limitations on the floor area by quintupling the permissible floor area for barns, stables, or arenas from the permissible floor area limitation of 0.01 in 5-3-4(D) 3(c)(2) to 0.05. (See: 5-5-10-3) and doubled the number of boarded horses permitted on properties greater than 10 acres in size.

107. The Text Amendment eliminated general rules applicable throughout the Village intended to protect adjacent property owners governing bulk regulations like required yards, setbacks from watercourses and permitted obstructions in required yard. Those regulation provided the following protections to adjacent property owners, namely:

The bulk requirements applicable to accessory uses in a residential district which provided for:

- i) A minimum front yard setback of 150'.
- ii) A minimum interior side yard setback of 100'.
- iii) A minimum corner side yard setback of 100'.
- iv) A minimum rear yard setback of 100'.

108. The Text Amendment eliminated general rules applicable throughout the Village set forth in Section 5-3-9: intended to protect adjacent property owners pertaining to: continued conformity with bulk regulations; setbacks from watercourses; permitted obstructions in required yards; limitation on the location of parking areas and loading facilities.

109. All of these regulations are deemed by the Village as the minimum requirements for the promotion of the public health, safety, morals and welfare (See Section 5-3-1).

Plaintiffs' complaint fails to plead facts sufficient to establish that enactment of the text amendment bears no rational relationship to a legitimate government purpose.

THE INJURIES SUFFERED BY THE PLAINTIFFS

110. The Affidavits of James J. Drury III, Exhibit O (“Drury Affidavit”) and Jack Reich Exhibit P (“Reich Affidavit”) establish that the enactment of the text amendment bears no rational relationship to a legitimate government purpose and that the Text Amendment is unreasonable and arbitrary.

111. The Drury Affidavit demonstrate that the Drury Property has suffered deleterious impacts which negatively impact his quiet use and enjoyment of his property and devalue his property due to the impacts of noise, odors, light and dust emanating from the operations of a large scale commercial horse boarding operation from early in the morning until late at night. These impacts are the result of the unilateral actions of Benjamin LeCompte beginning in 2005 who has defied the Village’s ordinances and then used his influence to effect a change in the zoning ordinance retroactive to 2006 (to benefit only himself) which *inter alia* eliminates any permit requirements, extinguishes fundamental bulk requirements likes setbacks and permits accessory buildings to exceed the size of the principal structure—the residence. The affidavit identify the location of the Drury Property with reference to the LeCompte Property, describe the relevant distances from Drury’s home to the operations on the LeCompte Property, includes photographs which depict the unsightly conditions existing at the LeCompte Property.

112. The Reich Affidavit details an illegal equestrian training and boarding facility which was unlawfully established in his neighborhood and the deleterious impact that such an operation had on his peaceful enjoyment of his property and that devalued his property. The affidavit references photographs which depict the deleterious impacts from *inter alia* excessive horse manure from such an operation and diagrams which depict the amount of commercial development permitted by the Text Amendment on a 5 acre parcel and a 10 acre parcel which is inconsistent with the residential character of their respective areas.

113. Both affidavits identify the protections to their property rights which have been lost by virtue of the Text Amendment.

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

114. 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.

115. 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.

116. 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.)

117. 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**.)

118. 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**.)

119. 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.

120. 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.

121. 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.**)

122. 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 quiet 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.

123. 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.

124. 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.

125. 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 *Thorner 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.

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

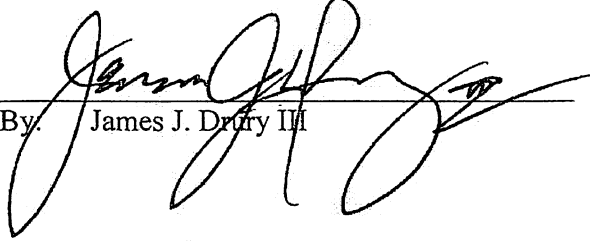
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VERIFICATION

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 FIRST AMENDED 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
02/0400,

By:  James J. Drury III

VERIFICATION

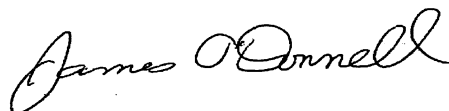
Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned hereby certifies that the statements set forth in the foregoing FIRST AMENDED VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT, INJUNCTION, AND OTHER RELIEF are true and correct except as to matters 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.

A handwritten signature in black ink, appearing to be 'Jack Reich', written over a horizontal line.

By: Jack Reich

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 FIRST AMENDED 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.

A handwritten signature in black ink that reads "James O'Donnell". The signature is written in a cursive style with a large initial "J" and "O".

By: James T. O'Donnell