**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-** | ) | **No. 15 CH 3461** |
| **VILLAGE OF BARRINGTON HILLS, an Illinois Municipal Corporation,** | ) | |
| **Defendant.** | ) | |
| **BENJAMIN B. LECOMPTE III, CATHLEEN B. LECOMPTE, JOHN J. PAPPAS, SR., BARRINGTON HILLS POLO CLUB, INC., BARBARA MCMORRIS, VICTORIA KELLY, MARIANNA BERNARDI, PASQUALE BERNARDI, and JUDITH K. FREEMAN,** | ) | |
| **Defendants-Intervenors,** | ) | |

**PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

**NOW COME** the Plaintiffs, 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 their attorneys, The Law Office of Thomas R. Burney and Zanck, Coen, Wright & Saladin, P.C., and move this Honorable Court pursuant to §2-1005 of the Illinois Code of Civil Procedure (735 ILCS 5/2-1005) to enter summary judgment in its favor and against Defendant Village of Barrington Hills, and Defendants-Intervenors: Benjamin B. LeCompte III, Cathleen B. LeCompte, John J. Pappas, Sr., Barrington Hills Polo Club, Inc., Barbara McMorris Victoria Kelly, Marianna Bernardi, Pasquale Bernardi, and Judith K. Freeman, and in support hereof, Plaintiffs state as follows:

## I. PRINCIPLES GOVERNING CROSS MOTIONS FOR SUMMARY JUDGMENT.

*Gurba v. Cmty. High Sch. Dist. No. 155*, lays out the guiding principles when the parties proceed pursuant to cross motions for summary judgment,

> Pursuant to section 2-1005(c) of the Code of Civil Procedure, summary judgment may be granted only where the pleadings, depositions, admissions, and affidavits on file, when viewed in the light most favorable to the nonmoving party, show that there is no genuine issue as to any material fact and that the moving party is clearly entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2012). When parties file cross-motions for summary judgment, they mutually concede that there are no genuine issues of material fact and that only a question of law is involved. 2015 IL 118332 ¶10.

## II. COMMON FACTS.

**1. Introduction.** At issue is Ordinance 14-19 (the "Ordinance") which contains a retroactivity provision that is unprecedented in the annals of Illinois zoning law. Plaintiffs have brought this facial challenge to the Ordinance on the grounds that it does not promote the public welfare but was adopted for the benefit of Benjamin LeCompte ("LeCompte"). He has been operating a commercial horse boarding operation in the Village illegally for at least 6 years before the initiation of this lawsuit.

**2. Oakwood is a Commercial Operation.** The evidence and testimony elicited leaves no doubt that the operations at Oakwood Farms are commercial. The uncontradicted facts establish the size of the buildings "well over 30,000 square feet." **Group Ex. 2-G** and **Group Ex. 2-H**. The Zoning Board of Appeals held that, "the LeComptes are operating a commercial boarding facility in an R-1 District." **Group Ex. 2-E**. The Intervenors' own experts testified that the operation at Oakwood Farms is a commercial use. See: Dale Kleszynski, the Intervenors' appraisal expert (**Group Ex. 2-A**); Konstantine Savoy, their planning consultant; (**Group Ex. 2-B**) and Jim Plonczynski, their zoning consultant (**Group Ex. 2-C**). The records LeCompte produced confirm the commercial operations. See Boarding Agreement (**Group Ex. 2-I**) and a statement of collected

revenues between $145,000 and $367,000 for in the time period from 2011 through 2015. **Group Ex. 2-J**.

**3. Ordinances Involved.** Ordinance No. 14-19, (**Group Ex. 1-K**) contains the constitutionally offensive retroactivity provision, which declares the Ordinance effective to June 26, 2006 a date 8 ½ years prior to its passage. The Home Occupation Ordinance in effect since 2006 is attached as **Group Ex. 8-A** ("HOO")

**4. Prior Litigation.** This case is the third proceeding concerning the same commercial horse boarding operations. The first involved an administrative appeal from the Village's cease and desist order declaring LeCompte in violation of the HOO. **(Group Ex. 2-E**). It ended adversely to LeCompte. See *LeCompte v. ZBA*, 2011 IL App (1st) 100423 attached as (**Group Ex. 1-E)** ("*LeCompte I*"). The second case involves James Drury adjacent landowners suit against LeCompte. The circuit court's dismissal of that suit was reversed in *Drury v. LeCompte*, 2014 IL App (1st) 121894-U is attached as (**Group Ex. 1-F**) ("*LeCompte II*") and remains pending before the circuit court. The dismissal of the instant case was reversed in *Drury v. Village of Barrington Hills*, 2018 IL App (1st) 173042, (**Group Ex. 1-A**) ("*Drury*").

**5. Village's Answer and the Intervenors.** The Village has admitted that the Ordinance is unconstitutional and has admitted many of the legally significant allegations in the Complaint. **Group Ex. 1-C**. Initially, a total of 10 parties were granted leave by this Court to intervene. Subsequent to serving written discovery, five of the intervenors withdrew from this case. To date, a total of five intervenors (half of the Intervenors) have withdrawn from this matter. As to the remaining intervenors, the depositions of Victoria Kelly, (**Group Ex. 9-A)**; the corporate representative of the Barrington Hills Polo Club (**Group Ex. 9-B**); and the Answers to Request to Admit to John Pappas (untimely answered) (**Group Ex. 9-C)** establish that these intervenors do

not have the necessary interest in this matter to continue as Intervenors. None board horses on a scale that offends the HOO. None have been cited by the Village for violations of the HOO. None have claimed a vested right in the retroactivity provision. Thus, summary judgment should be entered against these three leaving LeComptes as the lone intervenors.

## III. A SUMMARY JUDGMENT FINDING THAT THE RETROACTIVITY PROVISION IN ORDINANCE NUMBER 14-19 IS INVALID ON ITS FACE

### A. The 8½ Year Retroactivity Provision Itself Establishes the Ordinance's Facial Invalidity.

1. Controlling Legal Principles on Retroactive Legislation. Since the Illinois Supreme Court's seminal decision on retroactivity in *Commonwealth Edison Co. v. Will County Collector*, 196 Ill. 2d 27 (2001), the principles governing retroactivity have been well settled. In that case, the Court adopted the approach to retroactivity endorsed by the United States Supreme Court in *Landgraf v. USI Film Products*, 511 U.S. 244 (1994).

The U.S. Supreme Court reiterated the fundamental principles governing retroactive application of legislation including the preeminent principle that **statutory retroactivity is not favored**. (e.s.) *Landgraf*, 511 U.S. at 264 [citations omitted]. Justice Stevens writing for the United States Supreme Court illustrated with several examples the ample precedent in our jurisprudence for this axiom. *See Landgraf*, 511 U.S. at 265-68. For example, he cited with authority James Madison's treatise in the Federalist Papers:

> "James Madison argued that retroactive legislation also offered *special opportunities for the powerful to obtain special and improper legislative benefits*. According to Madison, 'bills of attainder, ex post facto laws, and laws impairing the obligation of contracts' were 'contrary to the first principles of the social compact, and to every principle of sound legislation,' in part because *such measures invited the 'influential' to 'speculate on public measures,' to the detriment of the 'more industrious and less informed part of the community.*"

Following its analysis, the Court in *Landgraf* concluded that, "[t]he Legislature's unmatched powers allow it to sweep away settled expectations suddenly and without individualized consideration. Its responsivity to political pressures poses a risk that it may be tempted to use retroactive legislation as a means of retribution against unpopular groups or individuals." *Id*. at 267. For these and other reasons, the Court concluded that statutory retroactivity has long been disfavored but acknowledged that "deciding when a statute operates 'retroactively' is not always a simple or mechanical task." *Id*. at 268.

The Supreme Court's adoption of the *Landgraf* analysis is consistent with the legislature's clear-cut statement in Section 4 of the Statute on Statutes, 5 ILCS 70/4, which the Court has described as "the general saving clause of Illinois" on the, "'temporal reach' of *every* amended statute." *Caveney v. Bower,* 207 Ill. 2d 82, 92 (2003). Citing *Commonwealth Edison*, *supra*, the Court in *Caveney* identified the analysis when the legislature has clearly indicated the temporal reach of an amended statute. The court must next determine whether applying the statute would have a retroactive impact, *i.e.*, whether it would impair rights a party possessed when he acted. If there would be no retroactive impact, then the amended law may be applied retroactively. If there *would* be a retroactive impact, however, then the court must presume that the legislature did not intend that it be so applied. *Caveney*, at 91.

As demonstrated below, the undisputed facts adduced as well as the exhibits attached hereto establish that the changes worked by the Ordinance, and particularly the immodest retroactivity provision, are clearly substantive. The *Glisson* proscription against retroactivity on substantive statutes is not limited to criminal statutes as the court held in *Caveney*. Sufficient facts are set forth to establish for purposes of summary judgment that the retroactivity provision in the Ordinance violates Plaintiffs' constitutional rights.

The determination of whether a statute is retroactive is not formulaic. Simply because the legislative body expresses an intent to apply the new law retroactively does not end the inquiry as Constitutional protections like those raised in the Complaint must be examined and considered. *See Commonwealth Edison,* 196 Ill. 2d at 33.

The Illinois Supreme Court in *Commonwealth Edison* identified the factors to be considered in a constitutional challenge to a retroactive statute include: (i) the legislative purpose in enacting the amendment (noting that legislative purpose is a concern with retroactive legislation because the legislature, "may be tempted to use retroactive legislation as a means of retribution against unpopular groups or individuals"); (ii) the length of the period of retroactivity; (iii) whether there was reasonable and detrimental reliance on the prior law; and (iv) whether adequate notice of the change in the law occurred. *Commonwealth Edison*, at 43.

An examination of the Ordinance and its retroactivity provision in connection with three of these factors—legislative purpose, length of the retroactivity period and detrimental reliance—is particularly appropriate in this case.

**a. Legislative purpose**. The Supreme Court's direction to examine the legislative purpose necessarily requires an examination of the law's impact in these circumstances on the impact on individuals. It is easy to connect the dots from the Ordinance back to the Appellate Court's reversal in *LeCompte II*.

The First District's opinion in *LeCompte II* eradicated LeCompte's "Schuman Letter" defense (which the trial court erroneously relied upon in dismissing the Drury-McLaughlin lawsuit) when the Appellate Court ruled that, "… defendants cannot evade the effect of [*LeCompte I*] 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*, 2014 Ill. App. (1st) 121894-U, ¶ 54.

The facts establish how the Village came full circle from issuing a cease and desist order, to defending that order through the Village's appeal process at its ZBA and then before the Circuit Court and the Appellate Court. The Village prevailed at each stage of the proceedings. *Id*. *See also LeCompte I*. While the Village prevailed on its cease-and-desist order and the ensuing appeal, its elected officials at the time refused to enforce it, refused to levy fines and afforded LeCompte the Schuman letter as the excuse it used for not acting.

All of these actions by the Village occurred after LeCompte made $5,000.00 contributions to each of LeCompte's allies on the Village Board – Messer, Meroni and Selman. These three each illegally reported the campaign contributions as contributions not to the candidates themselves but to a campaign organization, Save Five Acres.

Attached as **Group Ex. 4** are a series of exhibits that document this sordid tale. These exhibits and Messer's sworn testimony demonstrate that "each of the recipients of the campaign donation largesse accepted the $5,000.00 checks and immediately did a special endorsement to Save 5 Acres and then handed them back to Steve Knoop who had the other two checks.
As to the connection between the campaign contributions and the Schuman letter, Messer testified, "I have no idea. There might have been. And there might not have been." **Group Ex. 4-E**.

That LeCompte engineered the Schuman letter is abundantly clear from an examination of the email exchange between LeCompte and Knoop on February 20, 2011. (**Group Ex. 6-B**). LeCompte had given Stieper a $5,000.00 campaign contribution on February 8, 2011. Less than 2 weeks later he was calling upon Stieper to assist him in convincing "Bobby" (the term of endearment - or maybe derision) for the then Village President, Robert Abboud. LeCompte admits

in writing that he had crafted what became the Schuman letter, "David, below is a note to Steve Knoop regarding a prototype letter that I have proposed from Bobby Abboud." Two hours earlier he had written to Steve Knoop (who solicited the illegal campaign contributions) freely admitting that the Appellate Court decision in *LeCompte I* had caused him to scramble to manipulate the legal system to find another means for continuing his illegal commercial operations.

> "Apparently, Bobby asked Paddy what he wanted him to do, and Paddy told him, in no uncertain terms, that the Village needed to get involved in my case, which thus far Wambach[1] has refused to do."

LeCompte again in that letter acknowledged that he had drafted the Schuman letter:

> "Below is a prototype letter that I drafted, with Paddy's encouragement, from Bobby to me that addresses the pertinent issues, which obviously Bobby is free to change as he deems appropriate, as long as the substance remains essentially the same."

Stieper addressed his concern about the corruption involved in these transactions in a series of letters he addressed to Village officials concerning these transactions. During the deposition he testified without reservation that, "It's my opinion they were manufacturing a falsity to get commercial boarding through our zoning code, I believe in particular under home occupation…It was a travesty." See **Group Ex. 5-H**.

Stieper had no axe to grind. As he explained, in his deposition:

> "He (LeCompte) liked my independence. He liked the fact I wasn't going to be swayed by anybody. I'm not friends with any of these people. I'm not friends with Barry LeCompte. I am not friends with Drury. I have no skin in this game. I don't own horses. I have a legal background." **Group Ex. 5-I.**

It is apparent from reading the entirety of his depositions that he has been motivated in coming forward in disclosing this issue to the public, a whistle blower so to speak, to advocate for

[1] The refusal of Wambach that LeCompte is referring to is the letter from the Village Attorney and the accompanying documents attached as **Group Ex. 6-C and 6-D**. LeCompte admits his prior inconsistent position. **Group Ex. 1-L at ¶27**.

good government, for transparent government, to defend the "rule of law". He believed that legislation like the one here needs to be deliberative and based on science.

It was these very same individuals running for Village Trustee at the time who supported LeCompte by voting: 1) not to enforce the cease-and-desist order that the Village had spent in excess of $150,000.00 to successfully defend in *LeCompte I*; 2) not to fine LeCompte for violating its zoning ordinance; 3) not to disown the Schuman letter; and 4) to approve the Ordinance with the 8- and 1/2-year retroactivity provision in it.

Stieper, the then Plan Commission Chairman and a member of the ZBA in 2014 called it like it is, "Pay for Play". (**Group Ex. 5-K**).

In its consideration of the provenance of the Schuman letter, the Appellate Court stated:

> "According to Drury, there was 'substantial evidence' that the Schuman letter 'was not authored by Mr. Schuman but instead by an officer of the Village, the then President of the Village Board, Robert Abboud.' That's a bold claim, but apparently there was some truth to it. When the Village answered Drury's complaint, it expressly 'denie[d] that the letter was either authored by or signed by Donald Schuman." *Drury* at ¶¶21-22.

After the Schuman letter was shown to be a fraud and called out by the Appellate Court in *LeCompte II*, LeCompte's allies went to bat for him again in record speed in swiftly adopting the Ordinance before the 2015 election was conducted.

The case law (discussed below in the argument on the invalidity of the Ordinance *in toto*) is legion that ordinances intended to benefit one individual do not promote the public welfare. The timing of the retroactivity provision following the two adverse decisions in 2011 and 2014 in *LeCompte I* and *II* make it obvious that the Ordinance was adopted to principally benefit LeCompte.

**b. Length of the Retroactivity.** The length of the retroactivity in the Ordinance—8½ years—is sufficient in and of itself to raise a red flag on its constitutionality. The 8½ years of

retroactivity reaches back in time to before LeCompte was cited for violating the Village's ordinances. It is no coincidence that[2] it was LeCompte (the solicitor of the Schuman letter) who initiated a text amendment shortly after the Appellate Court reinstated the complaint against LeCompte in *LeCompte II*. The LeCompte 's draft of the text amendment expressly provided for retroactivity back to June 26, 2006. (**Group Ex. 1-M**) That date is the identical date adopted in the Ordinance as were other essential elements of LeCompte's text amendment, like relaxing the limit on the size of accessory buildings.

The witnesses deposed in this record were unanimous in their assessment that the retroactivity provision was unprecedented. All of the expert witnesses identified by both the Plaintiffs and LeCompte in their depositions acknowledged that in all of their years of professional experience as either a land planner or an appraiser they could not identify another retroactivity provision in any other zoning ordinance and certainly not one which reached back 8½ years from the date of adoption.

Plaintiffs' expert land planner, Jacques Gourguechon, ("Gourguechon") who has more than 45 years of professional experience in the field of urban and regional planning, concludes in his affidavit that, "Retroactive application of zoning amendments makes a mockery of zoning is unheard-of and was adopted to benefit one individual in an attempt to legalize a use that was unlawfully established." **Group Ex. 1-H at ¶56**; see also **Group Ex. 1-H at ¶14**.

Gourguechon supports that conclusion with solid facts and references to the principles guiding the exercise of the police power:

> "Zoning is a police power of local governments in the state of Illinois. Zoning must be structured, deliberated and officially adopted to benefit all the residents of the

[2] The hearing examiner called out the "entirely too coincidental" principle in his oral report on the campaign disclosure violations: "Finally, it is entirely too coincidental that all three candidates got three 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." **Group Ex. No. 4-B**

> village and not adopted for the benefit of a single property owner. In the case at hand, the now eliminated text amendment was designed for the benefit of one property owner to fit his/her already illegally established commercial use." **(Group Ex. 1-H at ¶55)**.

He explained:

> "Property owners would not have a basis to make investment decisions that a proper zoning ordinance provides. To make substantial investments property owners need to rely and have confidence in official and permanent land use patterns over the long term." **(Group Ex. 1-H at ¶57)**

Michael MaRous, ("MaRous"), a professional real estate appraiser, who holds the designation MAI with 40 years of professional experience unequivocally stated in his affidavit that:

> "[i]n the course of my 35 years as an appraiser I have had occasion to review hundreds of zoning ordinances in Illinois. I cannot recall nor am I aware of one instance when a zoning ordinance or a text or map amendment provided for a retroactivity provision." (**Group Ex 1-I at ¶12)**.

Konstantine Savoy ("Savoy"), one of LeCompte's disclosed expert planning witnesses, with more than 32 years of professional experience in the field of land planning, stated in his deposition:

> ". . . [t]he work that I've done specifically and the ordinances either I've reviewed or that I've written I have not seen this provision…. I am just not -- I am not familiar with an ordinance that had a similar provision."

This sworn testimony was consistent with his testimony six years earlier at the ZBA on December 2, 2014. (**Group Ex. 3-A**). Six years later Savoy had still not found either a zoning ordinance or a text amendment with a retroactivity provision!

James Plonczynski, ("Plonczynski") a self-described expert in zoning matters, confirmed that he was not aware of any retroactivity provision being approved, not aware of any other municipality that has adopted such a provision, and he had not "come across" a single such

provision and stated emphatically, "It is not something that is typically done." He agreed that such a provision was "unusual". (**Group Ex. 3-B)**.

The Village Administrator, Robert Kosin ("Kosin") testified that he could not recall any other such retroactivity provision ever adopted by the Village in his 32 years as the Village Administrator. Don Schuman concurred. (**Group Ex. 3-C)**.

Amongst five real estate experts with collectively nearly 150 years of experience not one of them could identify a single retroactivity provision adopted in any municipality in the State of Illinois! Such an undisputable fact is like a "fire bell in the night" emphasizing its illegality.

The Village has on three occasions in acts it has taken in its corporate capacity acknowledged that the Ordinance and the retroactivity provision was for the benefit of LeCompte and that it did not advance any public interest--the settlement agreement; the verified answer; and a third time when it nullified the Ordinance and restored the HOO[3].

So too, it cannot go without notice that the author of the text amendment, Kurt Anderson, then a member of the ZBA, did a 180-degree change in position on retroactivity in less than 6 weeks. On September 11, 2014 he stated on the record while deliberating on the text amendment that he had crafted that:

> "I'm trying to find and make sure that people are reasonable and responsible to this. As I looked at some of the other text amendments, there were some that seemed to be designed strictly to favor a specific resident**. Even Mr. LeCompte had a few provisions that I felt may have been designed to favor him for other reasons, for example, retroactive provisions.** I asked, you know, I struck that from my amendments. I struck those provisions in my amendment. So the goal here was to try to address the concerns of those that I'd heard within the village and keep the safety of the village and the residents of the village in mind as I put this together and proposed these amendments." (Emphasis added)

[3] By virtue of the 2016 Ordinance, this cause of action would be moot but for LeCompte's insistence that he has acquired vested rights under the Ordinance's retroactivity provision and that the 2016 Ordinance does not apply to him. *Drury* at ¶58.

On that date the ZBA voted 5-2 to approve Anderson's draft of the text amendment without a retroactivity provision. **Group Ex, 1-D at ¶¶ 68-73; 86**.

In his deposition, Anderson acknowledged that: he agreed with that statement about "retroactivity" at the time he made it—that it seemed to favor LeCompte. (**Group Ex. 3-D**).

Forty (40) days later in a second text amendment, he claims to have drafted himself, he included the retroactivity provision that was *uncannily similar to the proposed LeCompte Text Amendment*. LeCompte's text amendment is described above. Anderson's text amendment also permitted this commercial activity as of right and relaxed the limits on accessory use, as was included in LeCompte' text amendment. **Group Ex. 1-D at ¶¶ 68-73; 86**.

What had changed in those forty days? Nothing of substance. On September 22, the Village Board considered the LeCompte Text Amendment and tabled consideration of it. The Village Board directed the ZBA to gather information on several issues of importance that were necessary to understand in order to make a reasoned decision**. Group Ex. 5-A** and **5-J**. Instead of gathering the information the Village Board had directed the ZBA to conduct, and instead of waiting for the Village Board to act on his first amendment, Kurt Anderson initiated a new text amendment. A majority of the ZBA who had voted 40 days earlier to advance a text amendment without retroactivity voted to support the passage of one with retroactivity in it.

Anderson's explanation of this sea change in his position is not credible. When he drafted it he knew that the Village Board had tabled his earlier amendment, but didn't know that the Village Board had asked the ZBA to gather additional information on horse boarding. He acknowledged that the ZBA ignored the Village Board's request. The ZBA and the Village Board ignoring the request for information did not escape the Appellate Court's attention when examining the process and the Village's departure from it here. See *Drury* at ¶¶100-03.

He couldn't explain what caused him to shift his focus. His explanations are self-contradictory He testified that Anderson II was the product of his **"frustration."**

None of LeCompte's witnesses could explain this profound change. Neither Savoy nor Plonczynski could identify any facts which had changed to justify such a profound change in position. See **Group Ex. 3-A and**[4] **Group Ex. 3-B.**

The Chairman, Judith Freeman is no more credible. In September of 2014 she agreed with Anderson in eliminating retroactivity because it favored LeCompte. She could not identify what changed in the short time frame. See **Group Ex. 3-E**. She denied that it was concerns of other large barn owners that drove her change in position. She attributed this to the fear relayed by Jennifer Russo. She was not aware of any activity of the Village in this 6-week period that frightened these barn owners. She neither confirmed nor denied the accuracy of the fears expressed by Jennifer Russo. See **Group Ex. 3-E**.

Freeman's testimony on a "change in environment" is however revealing as to the reason for the swift passage. She admitted she was referring to the upcoming election the next year. She admitted that there were some residents who advocated for swift action by the zoning board. See **Group Ex. 3-E**. She professed to not be swayed by those fears but as described below her actions spoke louder than her words. Stieper confirmed the role of the upcoming election explained the lightning speed with which the ZBA and the Village Board adopted the Ordinance. See **Group Ex. 5-F.**

The only rational explanation for this extraordinary set of events is that LeCompte's allies in the Village feared an electoral defeat in the March 2015 election and sought to pass an ordinance

[4] Savoy did not have the benefit of the email exchange between LeCompte-Knoop and Stieper. See **Group Ex. 6-B**

before the election that would protect LeCompte. The Ordinance was not adopted to promote the public welfare. It was adopted to shield LeCompte from the consequences of his illegal acts.

The record contains the testimony of two contemporaneous actors in this flawed process. Village President McLaughlin unequivocally stated in a letter he directed to the Village Board, "the fact that the text amendment is to serve only one resident is brutally apparent given the retroactive nature of the text amendment." See **Group Ex. 5-B and 5-C**. In his first deposition, David Stieper testified to his views on what drove the pace at which the Ordinance was adopted:

> "So for this Village, which there is really no commercial property, there is no commercial activity, it is a residential town, there is no reason for something to move this fast, to sacrifice being deliberative. To sacrifice, you know, science. To sacrifice an exactness in return for something to be passed expeditiously.
> **(Group Ex. 5-G)**

The facts of this case underscore the numerous procedural irregularities in the ZBA's process-- the voting meeting piggy-backed on the only public hearing the night before; denying objectors the right to a continuance to present their own evidence; the failure of the witnesses called by the Village to support the proposed text amendment. **Group Ex. 1-D ¶¶74-76; 86-96**; **Group Ex. 1-G.** These exhibits further disclose the chain of events after the ZBA's vote--the vote by the Village Board at a specially called meeting; the Village President's veto; and then the Village Board's override of that veto. These exhibits demonstrate the accelerated process that LeCompte's allies on the ZBA and on the Village Board pushed the adoption of the Ordinance following the reversal by the Appellate Court in *LeCompte II*.

With respect to the public hearing process, in less than 3 months the ZBA held five public hearings on LeCompte's text amendment (in addition to three others that had been submitted); three of these meetings were special meetings; a special voting meeting was held on September 11, 2014, two days after the conclusion of the testimony on the text amendments.

The public hearings scheduled on that petition were even more accelerated. Special public hearings were initially scheduled for November 10 and November 12, 2014 but had to be cancelled due to the ZBA's haste and its failure to provide the minimum 15 days' notice mandated under the applicable statute. The meetings were then scheduled for two consecutive days on December 2 and 3, 2014. The December 3, 2014 meeting was the voting meeting where the ZBA recommended the text amendment with the retroactivity in it. . **Group Ex. 1-D at ¶86.**

Not to be upstaged by the ZBA's speed, the Village Board called a special meeting less than two weeks later on December 15, 2014 (a date when the Village President was out of town and unavailable) and approved that second text amendment. The Village President's sternly objected to the process employed by LeCompte's allies on the Village Board. **Group Ex. 5-B**. The Village President then vetoed the text amendment on January 8, 2015. **Group Ex. 5-C**.

The only event that explains this unusual set of circumstances is that LeCompte faced the consequences of his illegal activities. It is abundantly clear that the Ordinance was adopted for the benefit of LeCompte. There is no other credible explanation for why it was adopted so quickly, without deliberation and failing to respond to the significant requests for information that the Village Board had requested. There is no other credible explanation for Anderson's change in position from not wanting to favor LeCompte to drafting, submitting and voting for a text amendment that he himself publicly acknowledged favored LeCompte.

By way of comparison, the period of retroactivity at issue in *Commonwealth Edison*, *supra* was six weeks. *Commonwealth Edison,* 196 Ill. 2d at 44. The 8-1/2 year retroactivity provision here is clearly excessive and invalid on its face under any standard of review.

c. Reasonable and Detrimental Reliance on the Prior Law. Plaintiffs relied on the prior law, *i.e.* the HOO and the understanding that the Village would not change its ordinances unless such changes promoted the public welfare

In his deposition, James O'Donnell testified as to the negative impacts of the Ordinance on his welfare:

> "The Anderson Amendment removed personal protections of the Home Occupation Ordinance, which required an invisible operation… The Anderson 2 Amendment essentially litigated or allowed for the development of 96 percent of the non-forest preserve property in the Village to – that five-acre properties could have up to ten horses on that property. Those properties could have been purchased and someone could come in and put in a barn that was five times bigger than their house and have as many as ten horses on that property, which I, using common sense, I said that was, especially on a property on a waterway on a hill that was heavily wooded, was -- would create a nuisance, would create a stink, would be inhumane to the horses." **Group Ex. 8-C**

As to the protections afforded property owners in the Village under the Home Occupation provisions he testified:

> "Home Occupation means that you can conduct a business in your residence. I've had a business in my residence as long as I've had that no one can tell that. I have a neighbor that boards a horse..… It's invisible. …You don't have to understand the legalese. You don't know that someone is running a business." **Group Ex 8-C.**

Jack Reich a co-plaintiff in this litigation also weighed in on why the home occupation provisions work in the Village:

> "…lots are different in Barrington Hills, all right? That's why, one of the reasons why Home Occupation was not defining it precisely, because one five-acre property in the middle of nowhere might be able to have eight or ten horses. Another five-acre property that had lots of forestry or a big house, et cetera, might not be able to for the sake of the health of the horses."

Reich's injuries are identified on the affidavit he submitted (**Group Ex. 1-B** at Exhibit P at ¶¶8-17) and in the excerpt from his deposition. (**Group Ex. 1-J**).

Reich's affidavit also includes photos and diagrams of what Ordinance No. 14-19 permits as a matter or right (Exhibit B attached to Exhibit P of **Group Ex. 1-B**).

James Drury III suffered irreversible injuries to the peaceful and quiet enjoyment of his homes as a result of LeCompte's commercial operations. An operation with 60 stalls and the maintenance on the LeCompte property of horse trailers, manure trucks, unimproved customer parking lots and vehicles and manure piles. **Group Ex. 1-B**. (Exhibit O at ¶¶21-32) The affidavit includes photos of LeCompte's operations. (Exhibits A-E attached to Exhibit O of **Group Ex. 1-B**)

There were no restrictions included in the Ordinance to prevent the owner of a commercial horse boarding operation from maintaining his property in such an unsightly condition.

The photos attached to Drury's affidavit and the photo attached to MaRous' Affidavit (**Group Ex. 1-I**) depict the large barn on LeCompte's property encroaching into the 100' setback. The Ordinance permits accessory buildings to exceed the size of the principal building. The Ordinance permits the accessory buildings to dwarf the principal residential use not only on the property but on adjacent residential lots.

Applying the Ordinance to the 126 acres LeCompte owns, as a matter of right he can: (i) board 252 horses, and (ii) construct in excess of 250,000 sq. ft of accessory buildings!

The Drury Affidavit identifies the sound of machinery starting up first thing in the morning, excessive light and glare at night, the smells from manure piles and the dust kicked up at the site all day long including on weekends from LeCompte's operations. **Group Ex. 1-B** (Exhibit O at ¶¶21, 22, 23, 28).

In his affidavit, Michael S. MaRous concluded that Drury's property values have been substantially negatively impacted by 5-10% which amounts to hundreds of thousands of dollars in

lost value. The bases for his opinion are the same as identified in Drury's affidavit. **Group Ex. 1-I**.

There were no restrictions included in the Ordinance to regulate noise, odor, the location of trucks and trailers on the lot, or the handling and transport of horse manure.

Jacques Gourguechon identified the protections under the Home Occupation Ordinance that were removed under the Ordinance. **Group Ex. 1-H, ¶¶** 15-23.

In reliance on the principle that an ordinance would not be changed unless it promoted the public welfare and in reliance on the home occupation ordinance and the Village's successful defense of the same. Drury filed his complaint against LeCompte pursuant to the Adjacent Landowners Act (65 ILCS 5/11-13-15) seeking to enjoin the LeComptes' ongoing violations of zoning laws. The Appellate Court observed, "the plaintiffs properly availed themselves of the relief provided by section 11-13-15 of the Illinois Municipal Code." *LeCompte II*, *supra*, ¶ 15.

In 2011, in *LeCompte I*, the Appellate Court upheld the Village's 2008 cease and desist order issued against LeCompte finding that the property "is currently being used as a commercial horse boarding facility in violation of the Village Zoning Code." *LeCompte I*, ¶¶ 7-12, 53. The circuit court order that was affirmed specifically found:

> "In conclusion, the Court finds that the commercial boarding of horses, not bred or raised on the land in question, is not 'agriculture,' within the meaning of 5-5-2(a) of the Zoning Code of the Village of Barrington Hills."

In *LeCompte II*, the dismissal of Drury's complaint was reversed. The Appellate Court reaffirmed its previous ruling in *LeCompte I* and again confirmed that LeCompte's operation was in violation of the Village Zoning Code:

> "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." *LeCompte II*, ¶ 41.

The record establishes that Drury relied on the Village's 2008 cease and desist order, the Village ZBA ruling, the circuit court's affirmance of that order, the Appellate Court's opinion in *LeCompte I* finding that LeComptes' commercial horse boarding operation was in violation of the Village Zoning Code. By virtue of these facts, the 8½ year retroactivity upsets and impairs vested rights Plaintiffs possessed before the adoption of the Ordinance

**B. LeCompte Has Failed to Advance Any Basis In The Public Welfare to Support the 8½ Year Retroactivity Provision**

LeCompte concocts two bases to explain the accelerated schedule for approving the Ordinance. The first is the alleged threat to the existing large commercial boarding operations that have been operating in the Village since 2006 without running afoul of the home occupation regulations. Those barns had been operating under those regulations since 2006. None of them had ever been cited for a violation. None of these other barn owners, other than LeCompte are intervenors in this case.

Anderson may have referenced them as the "Dirty Little Secret" but LeCompte and his allies Village showed no urgency for these operations dating back eight years to 2006—the period of time when these barns were ostensibly in legal peril. (**Group Ex. 1-D**).

The Village Board had an opportunity in 2011 after the decision in *LeCompte I* to address this issue if it was truly a concern. Judith Freeman, the then Chairman of the ZBA, presented the Village Board with its recommendation that the Village Board initiate proceedings to adopt a

special use for large scale commercial boarding. In a letter dated July 20, 2011, Ms. Freeman stated:

> "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." (Emphasis added.) (**Group Ex. 7-A**).

A month later on August 22, 2011, the ZBA and the Village Board met jointly on the special use approach. The Village Board took no action. **Group Ex 1-D at ¶51.** The recommendation failed because of the "90 Day Rule". **Group Ex. 7-B.**

What intervenors now posit as the excuse in 2014 for adopting the Ordinance is belied by the facts. These same barn owners were in the same alleged legal peril in 2011, yet the Village Board felt no urgency to act on their behalf.

The only facts that changed between 2011 and 2014 related to LeCompte. In 2011 he had secured the Schuman letter as a defense to Drury's adjacent landowner's suit. In 2014 the Appellate Court called that letter out as the sham that it was leaving LeCompte with no protection. Thus, LeCompte's minions went to work again on his behalf and did his bidding by adopting [the text amendment] with retroactivity in it.

This substantial lag of several years in addressing the uncertainties allegedly wrought by the home occupation ordinance and the alleged threat to the other large barn owners can only be explained as a pretense.

Nor does the sworn testimony in the depositions support this dubious claim. All of the witnesses who testified agreed that not one other barn had been cited for violating the Home Occupation Regulations. This fact was known to the ZBA on December 3, 2014 when Kosin testified to that fact. (**Group Ex. 3-C**).

So too, Intervenors' argle bargle claim concerning the confusion of the "Notwithstanding" clause in the Home Occupation Regulations is nothing more than a concoction made up to sow confusion in the ordinance where there is none.

The "Notwithstanding "clause is found in Section 3(g) of the Home Occupation Ordinance. **Group Ex. 8-A.** In order for Intervenors' argument to make any sense, one must take Section 3(g) out of context and purposefully ignore the clearly stated purposes set forth in the ordinance. Byron Johnson, the former ZBA member credited with crafting the HOO to permit limited horse boarding, explains in clear and succinct terms the meaning of the clause. (**Group Ex. 8-B**). Many witnesses in this proceeding testified to a clear understanding that it was additive not the exclusive requirements.

In fact, a witness called by LeCompte, Michael Harrington, knew exactly what the phrase stood for:

> "[S]o you know my view is that word means, you know, regardless of everything that you read before here, here's another provision, or here's, you know, some more information that needs to be considered. You know in my background it's mostly I see it in business contracts. I mean that's how interpret it." (**Group Ex. 8-D**).

Nor is it like the "Notwithstanding" clause appeared out of the blue in 2014 when Anderson and LeCompte's other cronies on the ZBA and the Village Board set out to do his bidding. That clause had been embedded in the HOO since its adoption in 2006. Neither Anderson, Freeman nor any of LeCompte's other allies on the Village Board felt any compunction to address the alleged confusion for 8 years until LeCompte's operations were put in legal peril due to the Appellate Court's reversal in *LeCompte II*.

LeCompte's "Notwithstanding" defense is even more startling given the Appellate Court's statement about the HOO in *LeCompte I*. "[T]he 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."

Village President McLaughlin debunked this canard in his deposition, "the clarity issue was I believe an attempt to get others to **assist in a marketing campaign** to threaten other properties which were not actually ever in jeopardy of being shut down." **Group Ex. 8 E-C**.

As John Adams was fond of saying, "facts are stubborn things." The "Notwithstanding" clause did not drive the urgency with which the Village acted in 2014 and 2015. The "Notwithstanding" clause did not justify the adoption of the Ordinance in 2015 nor the speed with which it was adopted. It was as Freeman put it, "a change in environment", a code word that LeCompte's allies on the Village Board were in jeopardy of being thrown out of office.

No one but LeCompte and those doing his bidding found the clause confusing. It is evident that the Intervenors "Notwithstanding" argument is a ruse.

Each and every time LeCompte faced legal peril, his allies at the Village came to his defense. All of these events are no coincidence. A quick review of the timeline demonstrates the temporal relationship between each of these events which threatened LeCompte's commercial boarding operation and the Village's timely response to each. (**Group Ex. 1-G**).

LeCompte's legal peril is not the basis for a municipality to adopt a text amendment. To prevent one from facing the consequences of one's illegal acts dating back more than 12 years (at the time this motion is being presented) does not form the basis for or a justification for a text amendment. An ordinance to benefit an individual is not a valid justification to support an Ordinance. The Village has denied that the Ordinance is "rational[ly] relat[ed] to a legitimate legislative purpose." *Napleton*, 229 Ill. 2d at 319. (**Group Ex. 1-C** at ¶¶102 & 103). In this record

there is simply no legislative purpose identified. LeCompte is well aware of that. That is why he has conjured this series of pretenses.

## IV. A SUMMARY JUDGMENT FINDING THAT ORDINANCE NUMBER 14-19 IS INVALID ON ITS FACE[5]

This Court need go no further in its inquiry on the invalidity of the Ordinance than to examine the Village's Answer to the Complaint. (**Group Ex. 1-C**) The Village has unmistakably admitted in its answer that the ordinance does not advance the public interest. (**Group Ex. 1-C** at ¶¶102 & 103).

But if the Court chooses to go deeper into the facts, Plaintiffs invite the Court to examine the troubling series of events described above that followed every time LeCompte was in danger of being shut down. Not only was the Ordinance adopted for an improper purpose but it in fact poses a substantial detriment to the Village as a whole. (**Group Ex.'s 1-H** and **1-I**).

In facial challenges to an ordinance on the grounds that it has not been adopted to promote the general public welfare but instead for the benefit of an individual, it is proper for the trial court to necessarily examine the impact on individuals from such enactments. The record discloses substantial damages to the three Plaintiffs from the enactment of the Ordinance, injuries that the Ordinance worked on other landowners in the Village.

In his affidavit, Michael S. MaRous testifies that Drury's peaceful and quiet enjoyment of his homes have been substantially and irreversibly injured as a result of the large number of people who access the LeCompte Property via Deepwood Road creating traffic and noise and light from the vehicles where none existed before the establishment of the commercial horse boarding operations. With the substantial increase in people using Deepwood Road the risks to his family's

[5] Plaintiffs adopt and incorporate their arguments in support of the invalidity of the Retroactivity provision as and for its arguments supporting the invalidity of the Ordinance.

security has increased. In MaRous' opinion, Drury and his family's privacy and security have been invaded. (**Group Ex. 1-I**).

There were no restrictions included in the Ordinance to prevent a private lane like Deepwood Road from becoming a public thoroughfare for LeCompte's customers.

These buildings and these unsightly operations are even more visible in the winter months. In 2010, Drury installed on his property along Deepwood Road a berm with heavy landscaping in an attempt to mitigate the damages of his homes from the operation. The berm cost approximately $250,000.00. He also initiated in 2011 a lawsuit currently pending in the Circuit Court of Cook County (Civil Case No. 11 CH 03852) to defend his property rights and the rule of law.

Plaintiffs have demonstrated in exacting detail that the retroactivity provision and the Ordinance as a whole was for the benefit of LeCompte.

In its remand of this case back to this Court the Appellate Court laid out a road map for determining whether the Ordinance is rationally related to the public welfare. The discussion below follows that road map.

All witnesses were unanimous in their conclusion that the 8½ year retroactivity provision was unparalleled in Village history and in the State for that matter. The record demonstrates that the only justification for the ordinance is that a chosen few individuals wanted it. As the Appellate Court recognized, our supreme court has typically invalidated such an ordinance.

The evidence is also undisputed that the timing of the ordinance was driven by LeCompte's urgencies, not the public welfare.

> The action of the zoning commission in recommending the amendment in the fall of 1928 after having denied a similar petition earlier in the same year might be attributed to the fact that certain property owners agreed to the widening and paving of the streets provided the reclassification was made. These agreements not only fail to show that the amendments to the ordinance were passed for the public good,

> but they tend to show that they were passed in deference to the wishes of certain individuals.

*Kennedy,* 348 Ill. at 433-34; *cf. Church of the Lukumi Babalu Aye, Inc.* ***v****. City of Hialeah*, 508 U.S. 520, 540, (1993); *Drury* at ¶96.

In the words of the Appellate Court:

> "[i]t was only after his **legal prospects in court were dimming** that, in August 2014, LeCompte sought a legislative solution via the LeCompte text amendment. The fact that the Village acted only at that particular time, considering the years-long court battles over its horse boarding ordinance, is at least a relevant consideration that the ordinance was adopted with LeCompte's particular interests, not the interests of the public at large, in mind. *Drury* at ¶97.

The Appellate Court restated the several procedural irregularities in the Village's adoption of the Ordinance and its deviations from its standard procedures – adopting the ordinance without obtaining sufficient facts from the ZBA. *Drury* at ¶¶100-102.

There was utterly no explanation for why the ZBA ignored the directive of the Village Board. There is no evidence in this record by any of the proponents of the Ordinance that any of them changed their mind and decided they no longer needed answers to the questions they had submitted to the ZBA, that they had enough information even without the ZBA providing any findings of fact. *Drury* at ¶109. As the Appellate Court observed:

> "**These appear to be reasonable and important issues that a responsible municipality would want to consider before making a significant change to its zoning laws would want to consider before making a significant change to its zoning laws.** Yet only three days later, on October 20, 2014, ZBA member Kurt Anderson introduced his own text amendment that was all but identical to the LeCompte text amendment—the same **village**-wide permit for commercial boarding, the same 8 1/2-year retroactivity provision." *Drury* at ¶103.

Nor is it disputed that any witness at the ZBA testified that the amendment promoted the public welfare. *Drury* at ¶104. Six years later the same witness who testified at the ZBA had not yet found an ordinance that contained a retroactivity provision or identified an ordinance that

permitted commercial horse boarding as a matter of right as the Ordinance did.

With respect to the Findings approved by the ZBA to support their recommendation, the Appellate Court condemnation stands:

> "The 'findings of fact' issued by the ZBA in regard to the Anderson text amendment are, to say the least, quite short on the required 'facts.' It would be more accurate to say that this document was nothing but a curt conclusion designed to satisfy the constitutional requirement that zoning ordinances bear a rational relationship to the public welfare. It was a conclusion without any facts. It did not comply with the Village code's requirement for 'findings of fact.'" *Drury* at ¶107.

It is also beyond question that the Board repealed the ordinance a year later. As the Appellate Court remarked:

> "It would make no sense, in determining whether Ordinance 14-19 was adopted for the public welfare, to completely ignore the fact that the Board, just less than a year after its adoption, determined that it was in the public interest to repeal that legislative act and restore the *status quo ante*." *Drury* at ¶110-11.

Finally, the Appellate Court gave significant weight to the Village's refusal to enunciate the stated justification for the ordinance—or rather the lack thereof:

> "A court cannot determine whether an ordinance is "rational[ly] relat[ed] to a legitimate legislative purpose" until it has identified that legislative purpose. *Napleton*, 229 Ill. 2d at 319. Usually, that purpose is identified by the governmental unit defending the challenged law. Here, of course, the Village has (now) taken the position that no legitimate public interest was served by Ordinance, that it was done only for LeCompte's benefit." (**Group Ex. 1-C at ¶¶102-103**). The Village itself disclaims any rational basis (much less the intervenors' asserted basis) for having adopted the ordinance." *Drury* at ¶¶112-13.

Both the Village President and Stieper pulled no punches in describing what occurred here. Stieper weighed in on LeCompte's allies' first exercise of the local government's authority for the expressed benefit of LeCompte: "But as I said, it was appalling. It would basically take – it would uproot and disrupt, do violence of what would be our 5 acre residential zoning."

Village President McLaughlin reached a similar conclusion to Stieper with respect to the violence done to the Village's ordinances as a result of the Ordinance. "[T]the objective here is to

be equal in treatment and not to pick a winner. It was very evident that what was taking place here was to pick a winner in a lawsuit that I had been consistent then and am now to stay out of and to let the Court adjudicate. And in so doing, when you take 8 your oath, you are supposed to equally apply the law, and it appeared in this case that was not taking place" (**Group Ex. 5-D**)

A zoning ordinance is not immune from constitutional attack where the facts alleged as they are here that the ordinance was not adopted for the public benefit but to benefit a certain individual(s). An amendatory zoning ordinance cannot be sustained if the evidence fails to show that it was passed for the public good, but instead tends to show that it was passed in deference to the wishes of certain individuals. *Bossman v. Village of Riverton*, 291 Ill. App. 3d 769, 775-776 (4th Dist. 1997). As with the facts in *Bossman*, the evidence here clearly demonstrates that Ordinance was not passed for the public good, but rather was passed in deference to the wishes of a certain individual – LeCompte.

## V. CONCLUSION

Plaintiffs have established that there are no questions of fact and have demonstrated ***as a matter of law*** that Ordinance No. 14-19 is facially invalid. Plaintiffs pray to this Court for the entry of Summary Judgment finding the ordinance is void from the outset and declare it invalid.

In the alternative, Plaintiffs pray to this Court to enter summary judgment in Plaintiffs favor that the retroactivity provision in Ordinance No. 14-19 was not rationally related to the public welfare and that it is ***void ab initio.***

Find that the Intervenors, Victoria Kelly, the Barrington Hills Polo Club and John Pappas have not established the requisite interest to proceed as intervenors in this matter.

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: /s/ Thomas R. Burney
One of their attorneys

Thomas R. Burney (ARDC No. 0348694)
Michael R. Burney (ARDC No. 6302982)
Law Office of Thomas R. Burney, LLC
Firm No. 58886
40 Brink Street
Crystal Lake, IL 60014
Telephone: (815) 459-8800
tburney@zcwlaw.com

# TABLE OF CONTENTS
# PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

D Messer – Deposition Excerpt
E Knoop – Deposition Excerpt
F Knoop Subpoena and his Response
G Messer – President's Day, Schuman Letter – Deposition Excerpts

**GROUP EXHIBIT 5 – FLAWED PROCESS**

A McLaughlin on Studies Requested – Deposition Excerpt
B McLaughlin – Mayor's Statement Konisek Read 12.15.14
C McLaughlin Veto 01.26.15
D McLaughlin on his Letter – Deposition Excerpt
E Stieper (I) on Process – Deposition Excerpt
F Stieper (I) on So Many Meetings – Deposition Excerpt
G Stieper (I) on No Commercial Property – Deposition Excerpt
H Stieper (I) on Manufactured Falsity – Deposition Excerpt
I Stieper (I) on Independence – Deposition Excerpt
J Kosin Letter to ZBA 10.17.14
K Stieper (I) on Pay to Play – Deposition Excerpt

**GROUP EXHIBIT 6 – SCHUMAN LETTER**

A Schuman Letter 03.15.11
B LeCompte-Knoop-Stieper emails on Schuman Letter
C Wambach Letter 02.15.11
D LeCompte at ZBA on HOO 08.13.08
E Messer – President's Day, Schuman Letter – Deposition Excerpts

**GROUP EXHIBIT 7 – SPECIAL USE APPROACH**

A Freeman Letter 07.20.11
B Stieper (I) on 90-Day Rule – Deposition Excerpt

**GROUP EXHIBIT 8 – HOME OCCUPATION ORDINANCE**

A Home Occupation Ordinance
B Sworn Affidavit of Byron Johnson
C O'Donnell on HOO – Deposition Excerpt
D Harrington on Notwithstanding – Deposition Excerpt
E McLaughlin on "No Threat to Other Barns", "Notwithstanding" – Deposition Excerpts

**GROUP EXHIBIT 9 – INTERVENORS' INTERESTS**

A Kelly, Victoria – Deposition Transcript
B Rosene, John (Corp Rep) – Deposition Transcript
C Pappas' Response to Plaintiffs' Request to Admit Facts