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,
Defendant.

JOHN J. PAPPAS, SR., BENJAMIN B. LECOMPTE III, CATHLEEN B. LECOMPTE, BARRINGTON HILLS POLO CLUB, INC., and VICTORIA KELLY

Intervenors.

No. 2015-CH-3461

Calendar 16

Judge David B. Atkins

JUDGE DAVID B. ATKINS
APR 24 2023
Circuit Court-1879

TRIAL ORDER

THIS CASE COMING TO BE HEARD for trial in this matter, the court having heard the testimony of the witnesses, and considered the exhibits submitted, and the parties' proposed findings of fact and conclusions of law, and the arguments of counsel, and being fully advised in the premises,

THE COURT HEREBY ORDERS:

Background

This is a dispute over the constitutionality of a certain ordinance ("14-19," or the "Ordinance") adopted in 2014 by the Defendant Village of Barrington Hills (the "Village") regarding the boarding of horses. Plaintiffs argue the Ordinance, and in particular a retroactivity provision therein, is facially void because it was adopted solely[1] for the benefit of one individual, Intervenor Benjamin B. LeCompte III. Intervenors[2] argue the provision is within the Vil-

[1] This court previously found in ruling on motions for summary judgment that 14-19 is not void for the other reasons raised, and the sole issue at trial was whether there is a rational basis for its adoption, in particular whether there was *not* because it was instead adopted for only one person's benefit.

[2] As noted in prior orders in this case and as the basis for granting the various Intervernors' leave to intervene, the Village itself no longer contests this matter due to a change in the members of its Board who have taken a different position on the issues. While Plaintiffs make much of the Village's admissions on the legal claims in this case the court is not per-

lage's authority to enact and that in fact it was enacted for its general welfare and not for the benefit of any one individual.

Certain general facts at least were undisputed[3] at trial. The Village is a municipality incorporated in 1957, and throughout its history various residents, but not all, have engaged in equestrian activities including the boarding and riding of horses.[4] Prior to the adoption of 14-19, such boarding activity was governed by a 2006 ordinance ("06-12")(and prior to that it was not specifically regulated). 06-12, often referred to by the parties as the "home occupation" ordinance, provided for general rules governing permitted home occupations (businesses conducted from one's own home), and in relevant part in Subsection 3(g) that "Notwithstanding anything to the contrary contained in this Section 5-3-4(D), the boarding of horses in a stable and the training of horses and their riders shall be a permitted home occupation."

At all relevant times Intervenor LeCompte has owned property in the Village consisting of approximately 130 acres and known as Oakwood Farms. Horse boarding occurred at Oakwood Farms even before LeCompte purchased it in 1995, but was expanded after he applied for (and was granted) permits to improve his barns and to build an indoor riding arena in 2005. Later however, Plaintiff Drury (who also owns property in the Village nearby Oakwood Farms) formally complained of the scale of LeCompte's operation. The Village then denied LeCompte's permit to build what he considered the "final phase" of the new barns, and in January 2008 the Village issued a cease and desist order requiring him to cease horse boarding altogether. LeCompte appealed that decision and was denied at the Village Zoning Board of Appeals ("ZBA"), and later he also sought and was denied administrative review of that decision in 2011. This court, and later the same year the Illinois Appellate Court, found horse boarding was not a permitted agricultural use under the Village Code.[5]

The same year, the ZBA held at least one meeting discussing how to handle horse boarding in the Village, LeCompte made campaign contributions to Village Board of Trustees candidates David Stieper, Patty Meroni, Karen Selman, and Joseph Messer (who later voted to approve 14-19), and Plaintiff

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suaded the Village's current opinion has any bearing on whether it in fact had a rational basis in 2014 to enact the Ordinance provision under Illinois law.

[3] This background focuses on the undisputed facts as laid out in the parties' Joint Stipulations of Fact; those in dispute are discussed in greater particularity in the court's Discussion and Findings below.

[4] The parties do dispute the extent thereof and particularly whether there were historically large and/or commercial boarding facilities.

[5] *LeCompte v. Zoning Board of Appeals for Village of Barrington Hills.* 2011 IL App (1st) 100423

Drury filed a lawsuit directly against LeCompte, *Drury v. LeCompte*, 2014 IL App (1st) 121894-U. That case eventually resulted in March 2014 in the Appellate Court's finding that Oakwood Farms was not merely not a valid agricultural use, but in general "did not comport with the Village's zoning code's overall intent and purpose." Later that year, several proposed amendments to the code were raised, including by the Barrington Hills Riding Club (the "Riding Club"), LeCompte, Plaintiff Drury, and Kurt Anderson, which resulted in the passage of 14-19. Plaintiffs then filed this case challenging the constitutionality thereof. This court heard testimony and assessed the credibility of many witnesses over a 21-day trial, heard the arguments of counsel, and now rules.

Legal Standards

Plaintiffs challenge 14-19 as facially unconstitutional, arguing it lacks any rational basis. Zoning laws are presumed lawful, and courts generally give great deference to municipalities in upholding the same. *People v. Johnson*, 225 Ill. 2d 573, 585 (2007). A zoning restriction "will be upheld if it bears a rational relationship to a legitimate legislative purpose and is neither arbitrary nor unreasonable." *Napleton v. Village of Hinsdale*, 229 Ill. 2d 296, 311 (2008). However, even where a rational basis may appear for a zoning ordinance, Illinois courts have found it may nevertheless be void if it "was not seeking to promote or preserve the general welfare but was seeking to bestow upon the individual residents of the rezoned properties special benefits." *Cosmopolitan National Bank of Chicago v. City of Chicago*, 27 Ill. 2d 578, 580 (1963). The Appellate Court in this case found that the facts of this case as alleged at least potentially implicated such a situation, and that 14-19 may thus be void, if as Plaintiffs assert it was in fact passed solely at the behest, and solely for the benefit of, Intervenor Benjamin B. LeCompte III.[6] The court thus analyses the facts under this framework.

Discussion and Findings

As to the first portion of the above analysis, there was no substantial dispute at trial that, at least as a general matter, there were rational bases[7] for the adoption of 14-19. 14-19 on its face contains numerous public welfare rules surrounding horse boarding, including procedures for manure disposal, noise/nuisance limitations, hours of operation etc., and is in all respects more detailed than 06-12 on the subject of the particular rules applicable to horse

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[6] *Drury v. Vill. of Barrington Hills*, 428 Ill. Dec. 567, 585 (2018)

[7] This was the basis of this court's prior order granting a motion to dismiss this matter, but as the Appellate Court has noted that order did not consider the unique factors involved in cases involving laws allegedly tailored to individuals/properties.

boarding operations. Intervenors offered numerous witnesses including Intervenor John J. Pappas Sr. and Kurt Anderson who testified credibly that they believed this additional detail was helpful in resolving perceived ambiguities in 06-12, and other witnesses such as Jennifer Rousseau credibly testified that 14-19 served generally to promote what they saw as the fundamentally equestrian nature of the Village, which in turn they believed promotes its general welfare.

The focus of the court's inquiry at trial, therefore, is whether the true basis for the adoption of 14-19 was those above reasons, or if it was in fact to benefit Intervenor LeCompte only, and his property Oakwood Farms. All parties agreed at closing that it is Plaintiffs' burden to prove the latter by clear and convincing evidence. To that end Plaintiffs offered a theory of the facts which, if assumed true, could at least conceivably support the finding: that LeCompte orchestrated efforts to absolve himself and Oakwood Farms of responsibility under the 2008 cease and desist letter (which had not been issued against any other property), through illegal campaign contributions to trustees that later voted for 14-19; that he sought and obtained a letter in 2011 from the Village finding he already *was* in compliance; that he rushed the eventual proposal through the Village Board in meetings with improper notice, and that he eventually accomplished his goal via 14-19, which contains a provision retroactively absolving any prior violations of 06-12 going back to its adoption.

At trial, the court finds this theory collapsed entirely.

First, as to the campaign contributions, although they were found improper in a June 2011 State Board of Elections hearing, the hearing officer therein found that "the reporting violations were the result of inexperience and confusion," and not "in any way willful or intentional."[8] Further, they had little to do with LeCompte at all, let alone his support 3 years later for an ordinance he did not even directly propose.[9] Instead, the violation was because candidates Meroni, Selman, and Messer endorsed their donations to a third-party, political action committee Save Five Acres, which they testified credibly was a "slate" of candidates dedicated to, as its name suggests, preserving the 5-acre minimum zoning of the Village, and had no apparent relation to horse boarding. All three also credibly testified that the campaign contributions had no relation to their votes in 2014 on 14-19. Additionally, the candi-

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[8] Intervenors' Exhibit 35

[9] As discussed in greater detail below, several proposals were offered and it was Kurt Anderson's second proposal, not LeCompte's, that eventually became 14-19. That proposal was meant to synthesize all priors, and although some of its language tracks LeCompte's proposal the bulk of it does not.

dates who received these contributions[10] were not even the only ones who later voted to approve 14-19: Trustee Harrington, who had no apparent connection to LeCompte, testified credibly that, like the others, he voted to approve it because he genuinely believed it to be in the Village's best interests. He also testified that opponents of 14-19 frequently made claims that LeCompte had somehow bribed the Board to pass it, and that he considered these claims a "conspiracy theory" with no merit. The court need not characterize it as such, but Plaintiffs' theory that LeCompte in any way improperly influenced the passage of 14-19 was certainly not supported by the evidence[11] at trial.

As to the Schuman Letter, prepared by Village Code Enforcement Officer Don Schuman reflecting an understanding that Oakwood Farms was in compliance with 06-12 as a home occupation, it does appear LeCompte sought the same as an alternative route to compliance, the Appellate Court having found his operation did not qualify under agriculture. However, there is no apparent impropriety surrounding that letter, nor does it even have any apparent legal effect. It was a solely advisory document sought and obtained evidently in an attempt to obtain clarity after the Appellate Court's 2011 decision. And it is worth noting here (though discussed further below) that LeCompte was not the only one left confused in the wake of that decision, as both it and the later 2014 decision appear to have triggered ZBA meetings on the topic of horse boarding and general concern throughout the Village.

Next, the court cannot find that Plaintiffs were in any way denied due process through the proposals and adoption of what eventually became 14-19. The ZBA itself (not LeCompte) initiated that process by soliciting petitions from residents to address horse boarding in the Village Code in light of the Appellate Court's 2014 decision in *Drury v. LeCompte*. Four such petitions were submitted, respectively (in order of submission) from LeCompte, the Riding Club,[12] one Mr. Hammond, and from the Plaintiff himself, James Dru-

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[10] It is also worth nothing here that, conversely, Plainiffs' witness David Stieper also received the same $5,000 donation, but it evidently did not persuade his vote even as he claimed it affected the votes of the others.

[11] The court is particularly unpersuaded by then-Village President Martin McLaughlin's statement opposing 14-19 (Plaintiffs' Exhibit 47), in which he expressed his extensive objections to the ordinance including that in his view the trustees were "conflicted" due to the prior donations. McLaughlin offered no further evidence to connect those donations to 14-19 and his statement was more akin to argument based on the same, which as noted above is unpersuasive.

[12] As to that petition, then-President of the Riding Club Jason Elder testified that he submitted the petition in direct response to the Appellate Court's decision because boarding at large barns was important to "a lot of members" and they saw it as potentially in jeopardy.

ry.[13] All four were heard before the ZBA at multiple public hearings in July-September 2014, after which it voted to recommend the bulk of LeCompte's proposed amendment to the Village Board. Trustee Harrington testified credibly that he suggested the ZBA should take "the best elements" from all 4 proposals along with considering several specific policy questions such as tax impacts. Then-ZBA member Kurt Anderson testified credibly that he did just that, preparing and presenting at an October 21, 2014 ZBA meeting his own proposal that was, in his opinion, a synthesis of the best elements of all the proposals.

After that, the Village scheduled the next hearings on November 10 and 12, but failed to give proper notice and thus cancelled those meetings. This is the only procedural irregularity in the passage of 14-19 Plaintiffs showed, and there appears to have been no prejudice to anyone involved, as the Village then scheduled a properly noticed public hearing for December 2. On that date extensive testimony was heard from three experts and from the public on the proposed ordinance, to the extent that the meeting had to be adjourned as the venue closed and continued the next day.[14] Based on the transcript of this meeting[15] and the testimony regarding the same it was anything *but* a secretive, rushed attempt to sneak in an amendment, and was instead a lengthy and thoroughly public hearing featuring passionate argument on both sides of the issue by various members of the community.

Finally, arguably Plaintiffs' strongest argument comes from 14-19's retroactivity clause, which this court previously described as in essence a legislative pardon for any violations of the previous 06-12 ordinance going back to its enactment. Plaintiffs emphasize this portion of 14-19 both because LeCompte was the one to propose it and because he was the only Village resident involved in ongoing legal troubles surrounding violations he would stand to be absolved of under 14-19. Plaintiffs' expert also testified that such provisions are highly unusual in zoning regulations and unheard of in the history of the Village in particular. But even as to this provision, the testimony at trial showed the Village had genuine and rational bases for adopting it.

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[13] Plaintiff's argument now that the zoning code was perfectly clear and in need of no amendment regarding horse boarding is somewhat undercut in light of his own submission of a proposed amendment thereto.

[14] Plaintiffs attempt to characterize this as somehow irregular as "back-to-back" hearings with no notice, but it was apparently in effect one hearing, continued into a second day due to time constraints with the amount of testimony. The parties are no doubt familiar with such proceedings after this 21-day trial, in which several witnesses' testimony ran into a second or even third day.

[15] Plaintiffs' Exhibits 44 and 45 (totaling 307 pages).

Among these, multiple witnesses including trustees Messer and Meroni testified that including retroactivity offered both clarity and reassurance to many other barn owners who had been boarding horses, arguably in violation of 06-12, for many years. Multiple witnesses testified unrebutted that there are many (at least 10-12) other large barns which can and do board numerous horses for a fee such that they would be in violation of 06-12 in much the same ways Oakwood Farms was found to be. Anyone running such a barn (including Intervenor Pappas, as he testified) could reasonably be concerned that, absent the retroactivity clause, they could be charged with similar violations even after being in compliance under the new rules. At least one similar situation *did* happen: while Plaintiffs initially asserted only LeCompte had been targeted by any enforcement actions, they later conceded that another boarding operation (Deerwood Farms) had been issued a stop work order that later resulted in a consent decree to resolve the alleged violations. And even Village residents not directly at risk of such action could reasonably consider such lingering uncertainties to be undesirable.

Plaintiffs point in particular to Anderson, who at first opposed the retroactivity language precisely because he thought it could be seen as too favorable to LeCompte. But his testimony credibly explained that, as discussed above, he came to believe there were other valid reasons other residents could have for supporting it even if they personally had not (yet) been cited. Plaintiffs sought to imply (with no evidence) some nefarious influence that caused Anderson to change his mind on retroactivity, but quite the opposite his initial opposition and thoughtful reconsideration of the same show both (a) that he was not unduly influenced by LeCompte or anyone else, and (b) that he genuinely sought to craft an ordinance in the best interests of the Village as a whole. Indeed, Anderson's first proposed amendment also struck other language from LeCompte's proposal that was arguably beneficial to Oakwood Farms, including a vague nuisance enforcement provision (replaced by a clearer defined prohibition on noise) and an exemption from the new 2 horse/acre limit for existing barns.[16] His second proposal (that became 14-19) maintained these changes even as it changed course on retroactivity. This further supports Anderson's testimony that he was not working at the behest of LeCompte, but was earnestly working to produce the best possible rules for the Village.

In sum, Plaintiffs failed to meet their burden, by any standard including clear and convincing evidence, that 14-19 was adopted solely for the benefit of Intervenor LeCompte. Instead, the testimony at trial revealed that the issue of horse boarding in the Village was a hotly debated and bitterly divided

[16] Plaintiffs' Ex. 36, pp. 3-4

issue among many residents. Many disagreed on what *was* allowed under 06-12,[17] and disagreed passionately on what *should* be allowed, going as far as to characterize the rules as existential for the future of the Village itself, either for or against larger equestrian activity. That sharp divide revealed the true nature of the dispute: rather than being LeCompte vs. the rest of the Village, it would be more accurately described as being the equestrian vs. the less-equestrian residents thereof. LeCompte was the focus of the dispute (and the perceived leader of team horse, so to speak) because his operation was the largest and most prominent, but it was far from the only one or even the only large one that was obviously[18] engaged in horse boarding as a business. Other options for regulating the matter (such as special use)[19] were considered at multiple times. And even during 2014 in the deliberations leading the ordinance at issue here, multiple proposals were offered, argument and study was conducted, multiple revisions to the final language occurred (each adding increasing detail to address more specific situations), and heated debate was had in public hearings open to all residents of the Village. LeCompte favored 14-19 (at least in some part because it stood to benefit him), but so did many other residents of the Village for their own independent and genuine reasons, including the trustees and ZBA members who voted for it. Under such circumstances, the court cannot find the Village lacked a rational basis to enact the Ordinance.

WHEREFORE, for all of the reasons discussed herein Judgment is hereby entered on behalf of the Intervenors and against the Plaintiffs in that the court finds the Village of Barrington Hills had a rational basis for adopting Ordinance 14-19, and it is thus not unconstitutional as a matter of law. This is a final and appealable order.

ENTERED: JUDGE DAVID B. ATKINS

DBA APR 24 2023

Circuit Court-1879

Judge David B. Atkins

[17] Specifically, as noted briefly above various parties disagreed over the effect of the word "notwithstanding" in 06-12. Some testified they believed it excluded all prior language from applying to horse boarding, others that it *includes* that language, and others that the language is simply ambiguous. The court need not (and does not) make any finding on whether 06-12 is ambiguous as a matter of law; but as a matter of *fact*, various residents did genuinely have differing beliefs on what it did or did not allow, and resolving even perceived ambiguity in local law is also a rational basis for a new law such as 14-19.

[18] Intervenor's Expert Dale Kleszynski, for example, testified that 10 different properties he personally viewed were visibly boarding operations from the edge of the properties, and that several even advertised their services on websites, as Oakwood Farms also does.

[19] The special use option was apparently raised (and rejected) both in 2011 and in 2014, and then-President McLaughlin evidently still considered it the "big question" as compared to a text amendment. (Plaintiffs' Exhibit 47, p.3)