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IRIS Y. MARTINEZ
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**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

**JAMES J. DRURY, 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,

**BENJAMIN B. LeCOMPTE III, CATHELEEN
B. LeCOMPTE, BARRINGTON HILLS POLO
CLUB, INC., VICTORIA KELLY**

Intervenor/Defendant.

Case No. 15 CH 3461

12581698

INTERVENORS' MOTION FOR SUMMARY JUDGMENT

NOW COMES, JOHN J. PAPPAS, Sr., BENJAMIN B. LeCOMPTE III, CATHELEEN
B. LeCOMPTE, BARRINGTON HILLS POLO CLUB, INC., BARBRA McMORRIS,
VICTORIA KELLY, (collectively the "Intervenors"), by and through their attorneys,
MATUSZEWICH & KELLY, LLP, and move for summary judgment pursuant to 735 ILCS 5/2-
1005:

STANDARD

Summary judgment is proper only where the pleadings, depositions, and admission on
file, together with the affidavits, if any, show that there is no genuine issue as to any material fact
and that the moving party is entitled to a judgment as a matter of law. *Adames v. Sheahan*, 233
Ill. 2d 276, 909 N.E.2d 742 (2009). "Summary judgment is a drastic measure and should only be

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granted if the movant's right to judgment is clear and free from doubt.” *Outboard Marine Corp.*, 154 Ill.2d at 102, 180 Ill.Dec. 691, 607 N.E.2d 1204. However, “[m]ere speculation, conjecture, or guess is insufficient to withstand summary judgment.” *Sorce v. Naperville Jeep Eagle, Inc.*, 309 Ill.App. 3d 313, 328, 242 Ill.Dec. 738, 722 N.E.2d 227 (1999). The party moving for summary judgment bears the initial burden of proof. *Nedzvekas v. Fung*, 374 Ill.App.3d 618, 624, 313 Ill.Dec. 448, 872 N.E.2d 431 (2007). *Barrett v. FA Group, LLC*, 2017 IL App (1st) 170168, ¶ 26, 90 N.E.3d 537, 545. If the plaintiff fails to establish any element of the cause of action, summary judgment for the defendant is appropriate. *Lewis v. Lead Indus*, 2020 IL 124107. Further, facts unrelated to the essential elements of a plaintiff's cause of action are “immaterial,” and no matter how sharply controverted, their presence in the record will not warrant denial of a motion for summary judgment. *Equity Gen. Ins. Co. v. Patis*, 119 Ill. App. 3d 232 (1st Dist. 1983).

BACKGROUND

The Village is an equestrian community, SF 1,2, 3, 5, 6, 7 & 8, and prior to 2006 considered horse boarding an agricultural use of property. SF 18. Horses have been boarded in what is now the Village since 1937. SF 2, 3, 4, 7. The Village created an Equestrian Commission to provide expertise in equestrian activities. SF 9. Agriculture uses of property were allowed on R-1 pursuant to the Village Zoning Code. SF 223. The Village attorney stated in 2005 that horse boarding on R-1 “would be a permitted agricultural use under the definitions we have in our ordinance and anyone could board horses.” SF 3. 8/15/05 pg. 17. In 2006 two ordinances were adopted by the Village which created a Home Occupation Ordinance (“HOO”) that provided for horse boarding on R-1 property.¹ The first Ordinance concerning HOO, 06-3,

¹ The Intervenor's contest the validity of Ordinance 06-3 and 06-12 as they were not lawfully adopted by the Village, and filed a Motion for Declaratory Judgment in this cause on 12/24/2020.

provided for boarding of horses on R-1, with restriction concerning hours of operation, and excepting horse boarding from the other provisions of the ordinance by stating “Notwithstanding the foregoing”. SF 32. Ordinance 06-12 was purportedly adopted by the Village 4 months later replacing 06-3. SF 35. 06-12 contained section 5-3-4 (D)(g) a provision permitting horse boarding as a home occupation, and excepted horse boarding from the other provisions of the HOO by stating that “notwithstanding anything to the contrary contained in this Section 5-3-4 (D), the boarding of horses...shall be a permitted use. . .”. SF 35. Ordinance 06-12 incorporated the same additional requirements as 06-3, established hours of operation, hours for employees to work, and hours which equipment could be operated. SF 35. Ordinance 06-12 remained in effect until Ordinance 14-19 was adopted.

The “Notwithstanding” provision in 06-12 caused considerable confusion as to horse boarding on R-1 property from its inception. The Village took the position that “Notwithstanding” was “additive” and that all of the provisions in Section (D) applied. SF 89. Deerwood Farm was issued a stop work order by the Village in 2008. SF 40, 41. The Village contended that Deerwood was violating 5-3-4 (D). Deerwood Farm’s attorney challenged this interpretation that all of requirements of 06-12 applied and that the Village incorrectly construed the “Notwithstanding” provision. The owners attorney, wrote that “Subsection (g) does to state ‘Subject to the terms and conditions otherwise stated in this Section D above’ as you suggest, It clearly and unequivocally states “Notwithstanding anything to the contrary”. SF 41. “This in plain and concise english excludes anything that would otherwise exclude the same.” SF 41. The Village rather than litigate with the Deerwood Farm owners, allowed the boarding operation to continue in return for restrictions requiring the operation follow the home occupation

requirements. SF 42. This same offer to resolve the zoning violation was not offered to LeCompte although the Schuman Letter had the same effect.

Benjamin B. LeCompte III and his wife (hereinafter LeCompte) purchased Oakwood Farm in 1995 and began boarding horses on the property. SF 108. In 2008 the Village issued a cease and desist order to Oakwood Farm from operating a commercial horse boarding facility. **SF 108.** LeCompte appealed the Village's cease and desist order to the ZBA. The ZBA rejected his appeal, and LeCompte brought an administrative review action before the trial court.

Benjamin B. LeCompte, et al. v. Zoning Board of Appeals For The Village of Barrington Hills, et al. (09 CH 00934), 2011 IL App (1st) 100423. The Appellate Court held that LeCompte horse boarding operation did not comport with the Village Code. *LeCompte v. Zoning Bd. of Appeals for Vill. of Barrington Hills*, 2011 IL App (1st) 100423, ¶ 34.

The Village ZBA held 36 meetings and public hearings between 2005 and December 2, 2014 concerning horse boarding. SF 30.

ARGUMENT

The Plaintiff's make a facial challenge that Village Ordinance 14-19 is unconstitutional. The "rational basis test" must be applied when pleading a facial challenge to an ordinance based upon a substantive due process claim. *Napleton v. Village of Hinsdale* 229 Ill.2d 296 (2008). The Plaintiff when making a facial challenge to the constitutionality of an ordinance must assert that the ordinance does not bear a rational relationship to any legitimate legislative purpose and is arbitrary and unreasonable. *Napleton v. Village of Hinsdale* 229 Ill.2d 296, 307 (2008). In additions "a plaintiff must set forth more than mere conclusions to support allegations that the challenged enactment is arbitrary, capricious and unreasonable, and that it is invalid in its

entirety and in all applications. Therefore, plaintiff's conclusory statements are not to be considered." Id, 229 Ill. 2d 296, 320–21 (2008). Plaintiffs' fail to make this claim.

This case is not about Benjamin B. LeCompte the owner of Oakwood Farm, but the constitutionality of Village of Barrington Hills Ordinance 14-19. Plaintiff's string together a series of unrelated incidents which mislead the court to believe that this ordinance was adopted for a corrupt purpose. Intervenors incorporate their Response to Plaintiffs' Motion for Summary Judgement herein.

The Village Had a Clear Legitimate Purpose for Amending It's Zoning Code
As
Large Scale Horse Boarding Has Been a Long Standing Controversy in the Village

Horse boarding as well as large scale horse boarding has been an issue since before 2005 and the Village has devoted extensive resources in developing Ordinance 14-19. Between 2005 and December 3, 2014 the Zoning Board of Appeals held 36 meetings or public hearings concerning horse boarding. SF 30. Large scale horse boarding has been called the "dirty little secret" of the Village. SF 203. ZBA Chairman Knight recognized that there were a number of large boarding facilities in the Village operating for more than 50 years. SF 51, 60. The ZBA knew large boarding facilities were an issue which the ZBA needed to resolve. SF 52, 53. In 2011 the ZBA Chairman recognized that Village had been "screwing around" with the horse boarding issue four 4 years. SF 63. Ordinance 14-19 was drafted to resolved this problem.

Confusion Concerning Horse Boarding in the Village Since Before 2005.

Prior to 2006 there were no provisions in the Village Code addressing the boarding of horses in the Village of Barrington Hills. The Village in 2005 following a trial court decision in *Village of Barrington Hills v. Lawrence B. Irwin*, 04 MC3 004983, (concerning kenneling of dogs) recognized that horse boarding was a permitted use on R-1 zoned property. The Village

Attorney stated that “Boarding of horses in my opinion is, would be a **was a permitted agricultural use under the definitions we have in our code and anybody could board horses.**” SF 18. LeCompte, and other’s had been boarding horses since 1996 believing it was an agricultural use of land. SF 108. The Village attorney further admitted that residents can have multiple uses on their property and a lot of people are boarding horses. SF 25, 24. The Chairman of the Village Equestrian Commission acknowledged that horse boarding had been occurring since prior to the incorporation of the Village in 1957. SF 28. The Chairman of the Village Equestrian Commission in 2005 testified that the Village had turned a blind eye to horse boarding, and that there were commercial facilities such as Horizon Farms operating in the Village. SF 12. Further, in 2005 Village Trustee Schueppert acknowledged that large scale boarding was occurring in Village and that horse boarding was permitted and welcome. SF15, 16. The Village Attorney told the ZBA at the August 2005 meeting that a lot of people were boarding horses in the Village. SF24. He admitted that there was confusion between whether boarding was agricultural or home occupation, and further advised the ZBA that Village Board was aware of the *Irwin* decision and the confusion as to horse boarding. SF. 23, 25.

The Village directed the ZBA in 2005 to review commercial uses of property in the Village (SF 27) and discussed amending the Zoning Code (hereinafter Code) to provide for horse boarding. SF 27. Ordinance 06-3 concerning home occupations was adopted and subsequently replaced by Ordinance 06-12. SF 29-38. Ordinance 06-12 remained in effect until Ordinance 14-19 was adopted on February 23, 2015. SF 224. Ordinance 06-12 addressed use of R-1 property for home occupation occupations, and in Section 5-3-4 (D)3(g) provided for horse boarding as a home occupation. SF 35.

Prior to the 2006 ordinances, there was confusion as where horses could be boarded. A permitted use of R-1 property was agriculture. (Zoning Code Section 5-5-2) SF 223. The *Irwin* decision caused confusion as it allowed the boarding of horses on R-1 property which allowed agricultural uses. At that time the Village had no provisions for the boarding of horses in its Zoning Code. The Village at one point believed that R-1 property could be used for keeping and boarding horses as an agricultural use, however there was no clear provision in the Zoning Code for boarding horses.

Invalid 2006 Ordinances Created Additional Confusion

The Village following the *Irwin* decision, subsequently attempted to adopt two Home Occupation Ordinances, Ordinance 06-03 and 06-12, which never lawfully adopted and are void. SF 29, 31, 35, 36, & 37. Ordinance 06-12 replaced 06-3. Ordinance 06-12, in Section 5-3-4 (D)3(g) provided for horse boarding however, excepted horse boarding from the other provisions of the Ordinance. SF 29. 06-12 provided that horse boarding would be allowed “notwithstanding” anything to the contrary, the ordinance in relevant part stated:

Boarding And Training Of Horses: **Notwithstanding anything to the contrary** contained in this subsection (D), the boarding of horses in a stable and the training of horses and their riders shall be a permitted home occupation; provided, that no persons engaged to facilitate such boarding, other than the immediate family residing on the premises, shall be permitted to carry out their functions except between the hours of eight o'clock (8:00) A.M. and eight o'clock (8:00) P.M. or sunset, whichever is later, and further provided that no vehicles or machinery, other than that belonging to the immediate family residing on the premises shall be permitted to be operated on the premises except during the hours of eight o'clock (8:00) A.M. and eight o'clock (8:00) P.M. or sunset, whichever is later . . . (Bold Added) SF 39.

The “Notwithstanding” provision almost immediately caused confusion. SF 40-41. The Village read the “Notwithstanding” to mean additive while others believed that the language was excluded other provisions of the Ordinance. SF 39. The attorney for Deerwood Farms in 2008

was disputing the Village's interpretation of notwithstanding provision that it meant all of the provisions of 06-12 apply. Deerwoods' attorney told the Village that "This in plain and concise English excludes anything that would otherwise exclude the same". SF 41. Village Trustee Harrington believed that "The word notwithstanding seemed to be something that confused people." SF 102. One of the basis that Trustee Harrington voted to adopt 14-19 was due to 06-12 being vague and confusing. SF 103. There were competing interpretations of the 5-3-4 (D) 3 (g). SF 71. Former ZBA Member Byron Johnson, one of the drafters of 06-12 testified that Members of the public found the notwithstanding provision confusing. SF 88, 89. Johnson in fact believed that the "notwithstanding" provision meant that the other provisions of the ordinance were added to section (g). SF 89. Notwithstanding however means in spite of, not in addition to. This clearly demonstrates the confusion caused by the 06-12. SF 80,93,103,104,106, 107, 214. The Plaintiff, James Drury, could not define the meaning of the "notwithstanding" provision, he stated he understood the ordinance except for one word, "Notwithstanding". SF 103. There are numerous examples of confusion surrounding the notwithstanding provision. Trustee Harrington on December 15, 2014 indicated that it was vague and confusing. SF 156, 102. Village President McLaughlin could not independently describe the "notwithstanding clause. SF 106. Further, the ordinance did not distinguished as to what size and type of boarding facilities were legal. SF 80.

The confusion concerning whether horse boarding was allowed an agricultural use or as a home occupation, was compounded by the "Notwithstanding" provision. There was a clear need in the Village to clarify this ordinance.

The Village ignored the "dirty little secret" that large scale horse boarding which had not been addressed in by the Zoning Code prior to 2006 and after the adoption of 06-12. SF 164.

Mr. Stieper a member of the Village Plan Commission and subsequently a ZBA, admitted that there was a “gaping” hole in the law regarding large scale horse boarding. SF 200 Pg. 79. He further admitted that while developing the Comprehensive Plan in 2008, the Village board directed the Plan Commission not to deal with the issue of large scale horse boarding. O6-12 . SF 200 Pg. 80-88.

**Confusion Surrounding Horse Boarding Compounded
by the Court’s Decision in *LeCompte I***

The confusion concerning horse boarding in the community was exacerbated by the decision in *LeCompte v. Zoning Bd. of Appeals for Vill. of Barrington Hills*, 2011 IL App (1st) 100423, (Hereinafter *LeCompte I*), which held that horse boarding “does not comport with the Village’s Zoning Code.” Id at ¶ 34. Oakwood Farm is located on 126 acres in the Village of Barrington Hills, with several barns, paddocks, a polo field and a residence. LeCompte purchase this property in 1995 and has been boarding horses on that property since that time. SF _____. Plaintiff, James Drury, whose property is across Deepwood Road from Oakwood Farm, where he keeps 7 horses.

Drury complained to the Village about LeCompte’ s horse boarding operation and the Village issued him a cease and desist order alleging Oakwood Farm was boarding horses in violation of the Village Code. SF 108. LeCompte after making improvements to the barn which were all permitted by the Village, was ordered to cease and desist his horse boarding. SF 108 LeCompte appealed the cease and desist order asserting that he was boarding horses as an agricultural use. SF 108. Following the denial of his appeal he filed a lawsuit seeking to reverse the Village’s cease and desist order in which the trial court ruled against him. LeCompte then appealed. On appeal LeCompte asserted that horse boarding was permitted as an agricultural use on R-1 property. *LeCompte v. ZBA for Vill. of Barrington Hills*, 2011 IL App (1st) 100423, ¶1.

On September 21, 2011 the Appellate court ruled that “horse boarding did not comport with the Village Code” Id. ¶33. This decision created considerable confusion in the Village as to where and under what conditions could horses be boarded. SF204. What was more disturbing is that the Village knew that there were other boarding operations similar to Oakwood Farms operating in the Village which had not been ordered to cease and desist operating. SF 96. The Village attorney opined that “there are a number of boarding facilities here . . . and operating and essentially they all, based on this opinion, now become in violation of our zoning code.” SF 95.

This decision of the Appellate court caused concern in Riding Club of Barrington Hills as to where their 500 members could board horses. SF 201, 202. The Riding Club retained a municipal attorney, Michael Smoron who opined that, that the decision in *LeCompte I*, absolutely has an adverse impact on the Riding Club and places at risk any boarding facility in Village. SF 167. The Riding Club filed a petition for a text amendment to amend the Village’s Zoning Code on June 30, 2014. SF 169.

In addition to the confusion caused by the *Irwin* decision, which appeared to permit the boarding of horses on R-1 property as an agricultural use, the confusion as to the meaning of the “Notwithstanding” provision in 06-12, and the confusion the Appellate Court determined that horse boarding did not comport with the Village Code. The confusion of whether horses boarding was allowed at larger facilities, such as Oakwood Farms, Tudor Oaks, Deerwood Farm, and Shamrock Farm, was compounded by the decision in *LeCompte I*. Further, it was unknown whether all provisions of the HOO applied to larger facilities, or pursuant to the “Notwithstanding” provision, was horse boarding exempt from those provisions of the HOO, except for the requirements found in subsection (g).

An ordinance is unconstitutionally vague when men of common intelligence must necessarily guess at its meaning. (*Broadrick v. Oklahoma* (1973), 413 U.S. 601; *Redemske v. Village of Romeoville* (3rd Dist., 1980), 35 Ill.App.3d 286). *Union Nat. Bank & Tr. Co. of Joliet v. Vill. of New Lenox*, 152 Ill. App. 3d 919, 922 (3d Dist. 1987). “In other words, the ordinary person must be capable of appreciating, from the language of the ordinance or statute, how he will be affected by its operation.” *Id.* at 922. The record is clear, the Village’s ordinance concerning horse boarding as a home occupation clearly led to residents, ZBA members, Village Board members, the Plaintiff (Drury) SF 103, and the Village President, to disagree on the application to horse boarding. SF 214, 99, 103.

There Is Extensive Evidence of Rational Relationship To A Legitimate Legislative Purpose To Adopt Ordinance 14-19

The evidence is overwhelming that the adoption of Ordinance 14-19 had a rational relationship to legitimate legislative purpose which was neither arbitrary nor unreasonable. *Napleton v. Village of Hinsdale* 229 Ill.2d 296, 307 (2008). First and foremost, the Village of Barrington Hills had a strong public policy interest in adopting the Ordinance 14-19. Commercial horse boarding had been conducted in the Village since its incorporation since 1957. SF 1 -8, 14, 15, 16, 18, 24, 28, 61, 62, and 78. The Village had been aware of commercial horse boarding in the Village since the adoption of 06-12 in 2006 and the ZBA Chairman (Knight) recognized that commercial horse boarding was within the character of the community, SF 13, and that it was an oversight not to have addressed commercial boarding in 2006. SF 52.

Secondly, the Village and the ZBA knew that commercial boarding has been conducted for years and years. SF 53. The Village had been working on developing zoning for commercial boarding since 2005, and the ZBA conducted 36 meeting or public hearings on horse boarding or commercial boarding between 2005 and December 3, 2014. Multiple proposed text amendments

were brought to the Village board to address commercial boarding. SF 161,162. There were four (4) different petitions for text amendments concerning commercial horse boarding brought in 2014, plus a petition for the ZBA itself. SF 161, 162 . ZBA Chairman Knight also recognized in May of 2010 that it was a mistake not to consider the larger horse boarding facilities in the home occupation ordinance (HOO), and that the ZBA was struggling to bring them [large boarding barns] into the “fold”. SF 54. The ZBA Chairman stated, “As a matter of fact, in September of 2009, prior to September of 2009, we were having discussion commercial boarding in conjunction with agriculture as a text amendment.” ZBA RTP Feb 14, 2011 Pg.6 ln 19-22. SF 49. He further recognized that the ZBA had asked the Board to stay enforcement against large facilities for commercial boarding while the issue of larger barns is being addressed. SF 54. The Village attorney during the February 14, 2011 ZBA meeting advised the ZBA that large scale/commercial boarding was not permitted under the Zoning Code. SF 63. Considering the number of large boarding barns in the Village this spurred the ZBA to take action. The ZBA Chairman in February 2011 stated that they have been “screwing around” with a horse boarding amendment for 4 years. SF 66. He recognized that the ZBA sent a text amendment to Village Board in 2009 and no action was taken on the amendment. SF 67, 68, & 69. In May of 2010 the Village attorney opined that “many of the large horse boarding facilities operating in the village cannot meet the stringent requirements of the Home Occupation Ordinance and are thus in violation.” SF 44. In June of 2010 the ZBA continued to discuss a text amendment for commercial horse boarding and a white paper concerning boarding. SF 43, 45, & 178. The ZBA again in 2011 considered a text amendment concerning horse boarding. The ZBA prepared a text amendment 2010 to address horse boarding, however the Village took no action on this amendment. SF 43, 70.

There was a clear need for the Village to take action to clear up these long standing issue of commercial horse boarding in the Village. The ZBA and the Village had been working on addressing commercial horse boarding since 2008. In addition to the need to bring large boarding facilities into the “fold”, it was clear that there was confusion created by the 06-12 section 5-3-4-(D) 3 (g) and the *LeCompte I* decision. SF 69, 75. It was the clear intent of the Village to accommodate the 13 or more large barns which were operating in the Village and their legal status was unclear. SF 13. The Village Board had a reasonable legislative basis to adopt an ordinance dealing with commercial horse boarding when there were numerous large boarding barns operating in the Village possibly in violation of the Village’s ordinance. Further, the Village’s current HOO (06-12) created confusion with the “Notwithstanding” provision as to the conditions under which horse boarding was permitted. Village Trustee Messer voted to adopt 14-19 because “Absolutely there was” confusion concerning hose boarding. SF 104, 105. The *LeCompte I* decision further caused confusion as to the legality of both large and small boarding operations. The Riding Club hired an attorney to file a petition to settle the horse boarding issue. Further, there was strong public interest in horse boarding. The Village Community Survey of July 2014 showed 64% support for equestrian boarding helping protect open space and maintain large land parcels. SF 205, 206. This survey shows clear community support for hose boarding in the Village.

The Village’s adoption of 14-19 was clearly related to a legitimate legislative purpose. It was undisputable that the Village’s interest to have a clear and unambiguous zoning ordinance concerning horse boarding. The Village was in fact an equestrian community, it is reasonable to have clear regulations concern horse boarding. The Village prior to 14-19 did not have clear zoning regulations concerning horse boarding. Further, the Village had large horse boarding

facilities which were operating since before the Village was incorporated, which appeared, based upon the Village interpretation of the “Notwithstanding” clause to be operating in violation of the existing ordinances. It is a reasonable legislative purpose is to provide for clear and unambiguous regulations which codify horse boarding operations. Especially considering that some boarding facilities have been operating in the Village since at least 1957.

Ordinance Was Not For One Person

The record clearly demonstrates that the 14-19 was not adopted for one person as Plaintiff's assert. To the contrary 14-19 was adopted in the interest of the community. As argued above, the Village has a long history of attempting to determine how to address horse boarding and large scale horse boarding.

The issue of large scale horse boarding had been festering since 2005. ZBA Member Stieper stated that the issue of large scale boarding should have been addressed 8 years earlier referring to 2006. SF 199. The Village has held 36 ZBA meetings between May 2005 and December 15, 2014 concerning horse boarding. SF 30. Further, at the December 2, 2014 and December 3, residents spoke of the need for the ordinance. The ZBA held 10 meetings or hearings from May 2014 to December 3, 2014 on developing a text amendment for horse boarding. These meetings lead to the ZBA developing what is no 14-19. The Riding Club believed that it was in their interest to amend the code to provide for horse boarding and filed a petition with the Village to regulate horse boarding. The Riding Club's petition was similar to LeCompte's original petition. The Barrington Hills Polo Club intervened in this case based on their belief that 14-19 was in their interest. John Pappas intervened in this case and has stated that 14-19 benefited his property. SF 222. At the time of the adoption of 14-19 Trustee Messer stated that it was for the benefit of the entire community and not for one person. SF 204.

Trustee Meroni, on oath stated that 14-19 was not adopted for one person but to establish clear and unambiguous rules for boarding horses by all residents. SF 224. ZBA Member Anderson testified that retroactivity did not favor LeCompte. SF 211. The undisputable facts are that the Village has been working to develop a horse boarding ordinance since prior to 2008 to address the global issue of commercial horse boarding based upon the widespread interest in horse boarding.

Finally the text of 14-19 is clear that the ordinance was not for one person but for the Village as a whole. SF 181, Unlike 06-12, 14-19 the agricultural provision had express requirements on properties of 10 acres or more had express requirements which benefited the community such as 1) the owner of the property was required to operate the horse boarding operation, 2) waste management protocols are required, 3) lighting is regulated, 4) a nuisance provision which specifically identified nuisance, 5) a limitation of the number of horses per acre is established, no more than 2 horses per acre, 6) regulations concerning traffic, 6) a requirement to provide toilet facilities, and 7) a requirement to comply with floor area ratio requirements. In addition 14-19 contained separate provisions for boarding as a home occupation and limited the number of horses boarded of not to exceed 1 per acre, established signage regulations and limitations of number of employees. A simple comparison of the 06-12 and 14-19 shows that 14-19 is a comprehensive regulation for both large boarding operations and home occupations.

The Plaintiffs' own expert land planner Mr. Gourguechon a expert land planner testified that the individual provisions of 14-195-3-4 2a) were not contrary to the public interest, specifically, sec. i, "it makes sense to have hours of operation" , sec. ii, it is not against public welfare to require the property owner to operate the business, sec. iii requiring a waste management plan is in the public interest, sec. iv, he agreed that having lighting restrictions was

in the public welfare. SF 189. Provisions of 14-19 that are in the public interest are by definition not in the interest of only one person.

Retroactivity Is a Lawful Use of Municipal Police Powers And Was Not Adopted For One Person

As a matter of law the retroactivity provision in Ordinance 14-19 is lawful. The Village Board clearly expressed its intention that the definition of agricultural was retroactive. The Village in 14-19 expressly stated, in relevant part:

The use of land for agricultural purpose, . . . This definition of Agriculture shall not be construed as encompassing or extending to daily or hourly rental of horses. Such amended definition is retroactive and in full force and effect as of June 26, 2006.

The testimony in this case, rather than mere speculation, clearly demonstrates that the retroactivity provision has a specific purpose and is not for the benefit of one person. ZBA Member Anderson testified, regarding retroactivity, “ What I'm saying is that the home occupation ordinance had some bad language in it that was put in in June of 2006. I was frustrated by that because nobody could give me an explanation of why that language went in. So if we are going to clean up the ordinance, let's get rid of the language and make it retroactive. SF 210, 207, 208, 209. He further, testified that the retroactivity provision was not for LeCompte. SF 211. ZBA Chairman Freeman also testified that the retroactivity provision was incorporated to take the ordinance back to 2006, because the language in the 06-12 “Notwithstanding” (adopted in 2006) “gummed up” everything. SF 214- 215. She further testified that she spoke to barn managers who believed that they would be adversely affected if the ordinance was not retroactive. SF 216.

Retroactivity was discussed during the ZBA public hearings on December 2 and December 3, 2014. During these discussions of retroactivity the Village attorney, Mary Dickson, advised the ZBA that that First, a governmental entity, such as the Village of Barrington Hills, is

within its legal right to adopt changes to its ordinances and to adopt retroactivity clauses.”

SF217.

It is well settled that legislatures are free to make retroactive laws. *Landgraf V. USI Film Products*, 511 U.S. 244, 267 (1994). The United States Supreme Court found that “The Constitution's restrictions [on retroactivity], of course, are of limited scope. Absent a violation of one of those specific provisions, the potential unfairness of retroactive civil legislation is not a sufficient reason for a court to fail to give a statute its intended scope.” *Landgraf V. USI Film Products*, 511 U.S. 244, 267 (1994). “The presumption against statutory retroactivity has consistently been explained by reference to the unfairness of imposing new burdens on persons after the fact. Indeed, at common law a contrary rule applied to statutes that merely removed a burden on private rights by repealing a penal provision (whether criminal or civil); such repeals were understood to preclude punishment for acts antedating the repeal.”(underline added)Id. 511 U.S. 244, 270–71. The seminal issue when determining retroactivity of a law is whether the legislature “has expressly prescribed the statute's proper reach. If Congress has done so, of course, there is no need to resort to judicial default rules.” Id at 511 U.S. 244, 280. “Under the *Landgraf* test, if the legislature has clearly indicated what the temporal reach of an amended statute should be, then, absent a constitutional prohibition, that expression of legislative intent **must** be given effect. However, when the legislature has not indicated what the reach of a statute should be, then the court must determine whether applying the statute would have a retroactive impact, *i.e.*, “whether it would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed.” *Landgraf V. USI Film Products* 511 U.S. 244 (1994).” *Commonwealth Edison Co. v. Will County Collector*, 196 Ill. 2d 27, 38, (2001). (emphasis added). *Landgraf* recognized retroactivity

and established a two test approach for analyzing retroactivity. In addition, Plaintiffs' rely on *Caveney v. Bower*, 207 Ill. 2d 82, (2003) to suggest that an analysis beyond the clear expression of retroactive be conducted to determine retroactivity and that the Statute on Statues amends every statute. This is incorrect. *Canevey* can be distinguished, the amendatory statute subject to *Canevey* had no clear indication of retroactivity and the amendment specifically stated that “[n]o inference shall be drawn from this amendatory Act * * *”*Caveney v. Bower*, 207 Ill. 2d 82, 95, (2003). The Statute on Statue provides that when there is no expressed statutory retroactivity provision and a substantive right is impacted, then the amendment is prospective. *Id.* at 95. The first prong of *Landgraf* applies in instant case as there was a clear expression of the retroactive intent of 14-19.

Plaintiffs further argue that *Commonwealth* identifies factors to be considered in a constitutional challenge to retroactivity and cite to 3 factors. This argument is a red herring. The Court was careful in its language to specifically state that “these factors apply to determining whether a retroactive **tax measure** is’ .. ‘so harsh and oppressive as to transgress the constitutional limitation”” *Id.* at 43 (emphasis added). Moreover, *Commonwealth* held that:

We have carefully considered the principles discussed in *Landgraf* and conclude that the approach to retroactivity described in that opinion provides the appropriate means of determining when new legislation should be applied to existing controversies. We further observe that the *Landgraf* test adequately resolves the “tension” reflected in our case law in decisions such as *Armstead*, *Atkins* and *Digirolamo*. **Accordingly, we hereby adopt the approach to retroactivity set forth in *Landgraf*.**

Commonwealth at 39, (emphasis added) The Court went on to state that “In light of section 4, the *Landgraf* analysis in Illinois becomes quite simple. Indeed, with respect to a statutory amendment or repeal, it is virtually inconceivable that an Illinois court will ever go beyond step one of the *Landgraf* approach. Again, step one requires a court to ascertain whether the

legislature has clearly indicated the temporal reach of the amended statute.” *Caveney v. Bower*, 207 Ill. 2d 82, 94, (2003). The inquiry ends as to the retroactivity when the legislature clearly expresses its intent that the legislation is retroactive. It should be further noted that the Village Attorney advised the ZBA that it was within its right to adopt retroactivity clauses. **Exhibit W**. In this case the no further inquire is needed.

The Village of Barrington Hills when adopting Ordinance 14-19 clearly and unequivocally expressed their intent that the definition of agriculture is retroactive to June 26, 2006. No further inquiry need be conducted as to the lawfulness of the retroactivity of this ordinance as the Village clearly expressed that the ordinance is retroactive to June 26, 2006. *Landgraf* specifically provided that the expressed intent of the legislative body must be given effect, and no further inquiry need be given if the legislature expressed its intent. *Id.* At 38. Moreover, the Court in *Landgraf* found that:

Requiring clear intent assures that Congress itself has affirmatively considered the potential unfairness of retroactive application and determined that it is an acceptable price to pay for the countervailing benefits. Such a requirement allocates to Congress responsibility for fundamental policy judgments concerning the proper temporal reach of statutes, and has the additional virtue of giving legislators a predictable background rule against which to legislate.” *Landgraf*, 511 U.S. at 272–73.

It was also made clear by the Village’s own attorney at the Zoning Board of Appeals (hereinafter ZBA) hearings it was clearly within the power of the Village to adopt retroactive provisions in 14-19. SF217. She told the ZBA on December 3, 2014, that “First, a governmental entity, such as the Village of Barrington Hills, is within its legal right to adopt changes to its ordinances and to adopt retroactivity clauses.” SF 217 Pg. 122 ln. 15-18.

Although, there is no need to proceed further. Plaintiff make many unsubstantiated allegations that the retroactivity language is unconstitutional based upon campaign contributions

and that the ordinance was adopted for only one person, these allegations are merely conclusion based on unrelated facts, in short they are red herrings, which must be addressed.

The Retroactivity Provision is in the Interest of the Entire Community Not for One Person.

Plaintiff's argument that a retroactive provision in the ordinance is improper because the Village, to their knowledge, had not used retroactive provisions in previous legislation has no merit. The failure to use a retroactive provision in the past is not a bar to using a retroactivity provision when the Village deems it appropriate. The Village may have never been confronted with an ordinance which required a retroactive effect. The facts are clear and undisputed that the Village enacted the retroactivity provision in the public interest.

In this case, the clear testimony from ZBA Members Anderson and Freeman the retroactivity provision was to clarify the confusion created by 06-12. Trustee Messer and Meroni approved the 14-19 for the same reason. The retroactivity clause in 14-19 was not adopted for one person but for a legitimate legislative purpose.

The Schuman Letter Was Properly Issued

The letter issued by the Village's Compliance code compliance officer on March 15, 2011 was not the result of corruption as the Plaintiffs' allege. LeCompte requested to operate Oakwood Farm as a home occupation and the Village attorney responded by denying his request. SF 126. LeCompte spoke to members of the chairman Equestrian Commission Dan Lundmark, and the Riding Club president, and Paddy McKeivitt concerning the interpretation of the notwithstanding clause in 5-3-4 D (g) as it applies to horse boarding in the Village. SF 127. As a result of this discussion they arranged a meeting between the Village President, LeCompte and McKeivitt and Lundmark on February 21, 2011 to discuss LeCompte's concern relative to the Villages interpretation of the "Notwithstanding" clause. SF 128. At the meeting LeCompte

explained that he believed the Village attorney was misinterpreting the ordinance concerning home occupation. SF 129. At the Village President's discussed the request from LeCompte with the Village attorney and request LeCompte submitted an affidavit as to why he had the right to operate Oakwood Farm as a home occupation. SF 130, 133. The Village had Oakwood Farm inspected and issued the March 15, 2011 letter. SF 131, 132, 135. The Schuman letter was drafted by the Village Administrator and reviewed by Schuman, who directed the Village Clerk to sign the letter. SF133. There is nothing improper with the Village Clerk signing correspondence for the code enforcement officer.

Drury and McLaughlin appealed the issuance of the Schuman Letter which acknowledged that LeCompte was in compliance with the HOO. 136. Drury asserted that based on *Lecompte I Oakwood Farms* was barred from operating as a home occupation. SF 137 The Village's attorney rejected Drury's argument. SF 138. The Plaintiffs' claim that the meeting with the Village President and the issuance of the Schuman Letter was the result of a campaign contribution from LeCompte to Trustee Messer, candidate Meroni and candidate Selman. However, Meroni and Selman were not elected when the meeting took place or the letter issues. In addition, the Village President was not a recipient of a campaign contribution from LeCompte. Trustee Messer on oath stated he was not aware of, or consulted regarding, the Schuman letter. SF 139. Steve Knoop who solicited these contributions from LeCompte testified that there was "Absolutely not" a connection between the contributions and the Schuman Letter. SF 147. Plaintiffs' allegation that the Schuman letter is a *quid pro quo* for a campaign contribution is a conclusion spun from unrelated facts and not supported by the undisputed testimony of Knoop, Messer, and affidavit of Meroni. LeCompte's discussion with the Village President is nothing

more than a citizen bringing his concern that a law was being misinterpreted to his government officials. There is nothing improper in meeting and speaking with the Village's elected officials.

Campaign Contributions

Plaintiffs' allegation that campaign contributions to village trustee candidates were illegal or unlawful is the compilation of unrelated facts to spin a story of corruption, and not based upon facts. LeCompte gave village trustee candidates Stieper, Messer, Meroni and Selman campaign contributions of \$5000 each. SF 140, 141, 142 . LeCompte was solicited for these contributions by Steve Knoop, he did not offer these contributions. SF 108. The candidates improperly endorsed these checks to a political PAC. The Illinois State Board of Elections (SBOE) was notified of these violations and conducted an investigation and hearing. SF145. The SBOE found that "there is nothing in the record to suggest that the reporting violations were in any way willful or intentional. Rather, the evidence clearly establishes that the reporting violation were the result of inexperience and confusion." SF 145.

LeCompte's contributions to village candidates were just that contributions to candidates for office. These contributions were made on February 11, 2011, and the Schuman Letter was issued on March 15, 2011, before these candidates took office. There was no guarantee that these candidates would win their offices, and the only candidate that held office at the time was unaware of the Schuman Letter. SF 139. Further, LeCompte did not offer any of these candidates' contributions, they solicited him. These allegations by the Plaintiffs are unsupported by any facts and had no relationship to the adoption of 14-19 three years later.

The Village's Decision to Not Enforce its Cease and Desist Order Against LeCompte Was Not Improper

Contrary to Plaintiffs' assertion that the Village's decision not to enforce the cease and desist order against LeCompte was made based upon the Village's a quid pro quo, it was based

on the Village's desire to amend its zoning to provide for large horse boarding operations, and not to prematurely penalize any barn owner, including LeCompte. SF 220. ZBA Member Freeman at the August 28, 2008 meeting of the ZBA recommended to the Village to defer any enforcement because of the ZBA would soon take up the commercial horse boarding issue and whatever was decided would apply to all barns equally. SF 120. ZBA Member Mullen took the position that there should no enforcement until the ZBA's recommendation is resolved. SF 128. Member Johnson argued that enforcement of the cease and desist should be delayed pending the Village's decision to make changes to horse boarding and that the changes are equally applied. SF 220. Chairman Knight argued that enforcement should be delayed and stated, "...And you'll recall that a couple years ago—well, actually more recently with Oakwood Farms on the cease and desist, we requested of the board that they withhold action on that pending this board coming up with a text amendment that would address the larger parcels of property so that they could come into compliance in some way, shape or form for commercial boarding of horses and I think that's where we stand right now on that issue....." SF 121.

The Village's decision not to enforce the cease and desist order was proper. The Village ZBA sought to delay the enforcement to allow for the development of an ordinance which would provide for the boarding of horses which boarding facilities could comply with and not prejudice LeCompte or other property owners.

Drury's Comes to This Court With Unclean Hands

This case is not about the constitutionality of 14-19 but Drury's vendetta against LeCompte for an undisclosed and unknown reason. Prior to this litigation Drury was the President of the Barrington Polo Club. The Barrington Polo Club leased LeCompte's polo field and some of members boarded their horses at Oakwood Farms. Although this polo field is

across the street from Drury's home, he never complained about the noise or horse boarding. SF 149- 151. Drury negotiated the lease for the field. SF 149. Drury further organized an annual charity polo match from 1996 -1998 which was held on Oakwood Farm's polo field. SF 151. Drury for an unknown reason complained about Oakwood Farms boarding operation and filed an adjacent property owner lawsuit against LeCompte. SF 152. This case was dismissed twice and reversed and remanded to the trial court on appeal. *James J. Drury III et al. v. Benjamin LeCompte et al.*, 2014 IL App (1st) 121894-U. Further, Drury through his company contributed \$12,500 in 9/15/10, and \$1,600 on 8/19/2011, to the Common Sense Party. The Common Sense Party ran candidates against Messer, Selman, and Meroni. He also contributed \$999 to Unite Barrington Hills 3/25/13, which supported only two candidates, Martin McLaughlin running for President of the Village of Barrington Hills and Colleen Konicek/Hannigan running for Trustee of Barrington Hills. Unsurprisingly, Trustee Konicek/Hannigan was the only Village Trustee to vote against adoption of 14-19 on December 15, 2014. On January 8, 2015, Village President Martin McLaughlin vetoed the Village Boards approval of 14-19. On January 26, 2015 he issued a veto letter. On February 23, 2015 the Village Board overrode the McLaughlin's veto, with the only vote cast against the override made by Koncek/Hannigan. On October 26, 2015 at a regular Village Board meeting both McLaughlin and Konicek/Hannigan voted to approve a settlement of this case with Drury, by a vote of 3 trustees in favor, two trustees opposed and one trustee abstaining. SF 159. McLaughlin then voted with to approve. Following the Village Board meeting of October 26, 2015, Trustee Gohl, who voted against the settlement agreement, went to the Penny Road Pub for something to eat, where he saw President McLaughlin sitting with Mr. Burney, Drury's Attorney, and two other individuals. SF 160.

It is clearly an inconsistent position for Drury to take that Oakwood Farm was not in violation of the Village Code when the Barrington Polo Club was using Oakwood Farms to play polo and board horses, and after the polo club ceased using Oakwood Farm it is in violation of the Zoning Code for boarding horses and using the polo field for charity events. The noise, manure, buildings, and traffic, that Drury complained about, did not inexplicably change after his club stopped using Oakwood Farm. This case is about Drury and not the constitutionality of 14-19.

The ZBA Properly Adopted 14-19 and Responded to the Village Boards Request for Information

The Village received four (4) petitions to amend the Village Code pertaining to horse boarding in the summer of 2014. SF 161 These Petitions were filed by the Riding Club of Barrington Hills, LeCompte, Drury, and Hammond. SF 162, 169. The ZBA held 10 public meetings and hearings concerning horse boarding from the time these petitions were filed until the adoption of 14-19. SF 163, 164, 168. There was extensive public participation on both sides of the horse boarding issue. SF 165. The ZBA recommended the LeCompte amendment to the Village Board, with extensive modifications made by the ZBA. SF 171, 172. The Village Board reviewed the proposed text amendment at its September 22, 2014 meeting. The Board requested that the ZBA conduct more research on the property tax impact, if the text amendment would open the door to commercial activity, and the number of horses on the property, as well as to allow additional input from the public. SF 172. The Village Administrator on October 17, 2014 sent a letter to the ZBA, posing seven (7) questions concerning the Text Amendment requesting that the ZBA provide answers to the Board on; husbandry; property tax; planning; engineering;

environment; enforcement; and clarification. The Board however did not ask the ZBA for additional information concerning engineering, enforcement, environment or clarification. 173, Contrary to the Plaintiffs' assertion the ZBA fully responded to the Boards questions at its October 20, 2014 meeting and solicited additional expert testimony at its December 2, 2014 public hearing. SF 174, 184, 185, 186. The ZBA on December 2, 2014 hear testimony on the tax impact and enforcement, and commercial impact of the ordinance. SF 175, 184, 185, 186. The ZBA held two days of hearing on what would become 14-19. SF 180.

ZBA Member Anderson then consolidated all four petitions for text amendments and developed a ZBA text amendment. SF 179. Public hearings were then held on the ZBA text amendment on December 2 and 3, 2014. SF 180. During the hearings, Member Goss stated that: "I really do think that the zoning code needs to be refined and amended so that existing operations that have long existed in this community and have caused no problem could feel secure that they can continue to exist with no problems." SF 182. He further stated that: "The need to accommodate our larger property owners is tremendous. . . We benefit so much from Tudor Oaks and Horizon Farms and these bigger properties, and Mr. LeCompte's property, in so many ways. SF 198. This statement clearly indicated that the 14-19 was not being drafted for one person but the entire Village. Elaine Remesh testified that there was a benefit to the entire community, horse boarding is an amenity in the Village. SF 187. Jennifer Rousseau a professional equestrian trainer in the Village testified that horse boarding protected the community. SF 190.

Ordinance 06-12 and 06-3 Were Never Valid

Intervenors assert that Ordinance 06-12 and 06-3 were never lawfully adopted by the Village and have filed a Motion for Declaratory Judgment seeking to have the court determine

the invalid of these ordinances. Intervenor's motion is currently pending. These ordinances were never adopted by a roll call vote as required by law, 65 ILCS 5/3.1-40-40. With 06-3 and 06-12 invalid, the Village in fact has had no horse boarding regulations since before 2006. It is undisputable that it is a reasonable exercise of the Village's zoning power to adopt horse boarding regulations in an equestrian Village such as Barrington Hills. Ordinance 14-19 in fact may be the first horse boarding ordinance in the Village.

Conclusion

Ordinance 14-19 is constitutional. In construing the validity of a municipal ordinance, the same rules are applied as those which govern the construction of statutes. *Napleton v. Vill. of Hinsdale*, 229 Ill. 2d 296 (2008). In this case the Plaintiffs' challenge the constitutionality of the ordinance on facial grounds. To invalidate the ordinance on facial grounds the Plaintiffs' must show that ordinance does not bear a rational relationship to any legitimate legislative purpose and is arbitrary and unreasonable. *Id.* 229 Ill. 2d 296 (2008). The Plaintiffs have no facts which support that there was no rational relationship to any legitimate legislative purpose and that the ordinance is arbitrary and unreasonable. Plaintiffs string together unrelated incidents to claim that the ordinance is not in the public health, safety, and welfare, and that the 14-19 was adopted for the benefit of one person.

It is undisputed that the Village is an equestrian community and therefore it is therefore is necessary and not unreasonable for horses to be boarded in the Village. Further, the undisputed facts are that that horse boarding both small scale and large scale has been occurring in the Village since before its incorporation in 1957. At the time 14-19 were adopted there were approximately 13 large barns in operation, including Oakwood Farm. Nothing has changed

except that horse boarding of both small and large operations are recognized and regulated by the Village.

Contrary to the Plaintiffs' unsubstantiated claims that the Village ordinance was adopted for one person, there is extensive undisputed facts that since the adoption of 06-12 that confusion surrounded horse boarding. SF 80,93,103,104,106, 107, 214. The Village knew that 06-12 was defective and took no action. The and ZBA held 36 meeting and public hearing between 2005 and 2015 in an attempt to address horse boarding and the confusing "Notwithstanding" language in 06-12. The basis of the retroactivity clause was to eliminate the confusion and harm done by the clause and to protect other barn owners from potential litigation. The Village clearly expressed the temporal reach of the retroactivity clause.

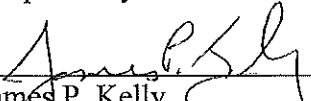
Ordinance 14 -19 was clearly in the public health, safety and welfare. It provided clear regulations for horse boarding that existed in the Village. For the first time the Village limited the number of horses to be boarded based upon the type of boarding, and the acreage of the property. Under 06-12 there were no expressed limits on the number of horses which could be boarded on a five acre parcel. 14-19 limited the number of horses boarded on five (5) acres to (1) per acre. On larger farms, over 10 acres, two (2) horse per acre could be boarded. 14-19 required manure management policies, toilets, regulated lighting and required the operator of the boarding facility to actually own the property. All of these requirements are reasonable and serve a legitimate legislative purpose, to regulate horse boarding.

Contrary to Plaintiffs' assertion that 14-19 was adopted for LeCompte based upon a campaign contribution, the undisputed testimony of Village Trustee Messer, and Meroni is that their vote to adopt 14-19 was not to benefit LeCompte but to benefit the Village at large.

The Village had the reasonable legislative purpose of resolving the long standing “dirty little secret”, to regulate large scale horse boarding and to correct the confusing language concerning boarding horses as a home occupation.

WHEREFORE, Intervenors respectfully request that summary judgment be granted in their favor.

Respectfully submitted:



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Exhibit

A

STATEMENT OF FACTS.

History the Village

1. The Village of Barrington Hills was incorporated in 1957. Comprehensive Plan, Village of Barrington Hills, Amended August 25, 2008, pg. 2. **Exhibit B**
2. Mr. Lundmark stated, "Horses have been boarded in the territory of the village since 1937." ZBA RTP 5-19-10 Page 17 lines 3-4, **Exhibit C**
3. The Chairman of the Village's Equestrian Commission, when testifying before the Zoning Board of Appeals on August 15th, 2005, advised the ZBA that Barrington Hills has long been associated with the boarding of horses. The riding club in the Village was formed in 1937. ZBA RTP 8/15/2005 pg. 19 ln. 16-20 **Exhibit D**
4. Prior to the Incorporation of the Village horse boarding was common in the Village. Comprehensive Plan, Village of Barrington Hills, Amended August 25, 2008, pg. 1 **Exhibit B**
5. The Village has always been an equestrian community. Comprehensive Plan, Village of Barrington Hills, Amended August 25, 2008, **Exhibit B**
6. The Village of Barrington Hills adopted its first Comprehensive Plan on September 23, 1957. Comprehensive Plan ,Village of Barrington Hills, Amended August 25, 2008, pg. 1. **Exhibit B**
7. The Village's Comprehensive Plan provides for an equestrian community allowing the keeping of horses Comprehensive Plan ,Village of Barrington Hills, Amended August 25, 2008, pg. 9 **Exhibit B**
8. The Village is a semi-rural community existing of estates and equestrian trail system. Comprehensive Plan ,Village of Barrington Hills, Amended August 25, 2008, Appendix A-8, **Exhibit B**.
9. The Village adopted an Ordinance 05-01 when it determined that it is in the best interest of the Village to provide for the establishment of an Equestrian Commission to provide, expertise in the area of equestrian activities. Ordinance 05-01. **Exhibit E**
10. The Village in 2005 also adopted Village Ordinance 05-02 when it was determined that it is in the best interest of the Village to provide for the establishment of equestrian trails. Ordinance 05-02. **Exhibit F**

11. Ordinance 05-02 required that easements for equestrian trails be provided for on new tentative plats of subdivisions in the Village. **Exhibit F**
12. The overall strategy of the Village amongst other things is to support the keeping of horses and the use and expansion of the interwoven equestrian trail system. Comprehensive Plan ,Village of Barrington Hills, Amended August 25, 2008, pg. 14 **Exhibit B** .
13. The Chairman of the ZBA Johnathan Knight stated that: We made a decision a long time ago that the commercial boarding facilities were within the character of the community. The Village attorney opined that there were 13 large horse boarding operations in the Village which were in violation ZBA RTP February 14, 2011 pg. 100 **Exhibit G**
14. The Chairman of the Equestrian Commission also stated that for years the Village had turned a blind eye to the boarding of horses in the Village. And proposed that the ZBA and the Equestrian Commission develop an ordinance that allows the boarding of horses in the Village. The Chairman of the Equestrian Commission also acknowledged that there are a larger horse boarding “Commercial horse boarding” facilities which are operating in the Village to include Horizon Farms. ZBA RTP 8/15/2005, pg. 23 ln. 1-13 **Exhibit D**.

Prior to 2006 the Village Code Concerning Horse Boarding was Confusing

15. The ZBA Chairman and Trustee Schueppert, at the 7/18/05 meeting acknowledged that large scale horse boarding was occurring in the Village. ZBA RTP 7/18/2005 Pg. 47. Ln 17-19, 47 ln 20 –pg. 49 ln. 2. **Exhibit I** .
16. The Village Board unanimously “felt that the boarding of horses on equestrian property in the Village should be a permitted and welcome. That it encouraged the equestrian nature of the community and fosters some of the nature of what Barrington Hills is about”. Trustee Schueppert. ZBA RTP 7/18/2005 Pg. 43. Ln 16-22. **Exhibit I** .
17. The Village Board requested that the Zoning Board of Appeals ZBA investigate the amendment of the zoning code relative to the boarding of horses. ZBA RTP 8/15/2005 pg. 11 ln.2-9 **Exhibit D**
18. The horse boarding prior to 2006 was an agricultural use which was recognized by the Village. The Village Attorney reported the decision of Cook County Circuit Court in Village of Barrington Hills v. Irwin, (04 MC3 004983) . The court ruled that both agriculture and residential uses were allowed on R-1 property. ZBA RTP 8/15/2005 Pg. 13 ln 14-21. Mr. Wambach, the Village Attorney after describing the decision in the Irwin case, stated that “Boarding of horses in my opinion is - - would be a **was a permitted agricultural use under the definitions we have in our code and anybody could board horses.**” ZBA RTP 8/15/2005 pg. 15 ln. 17-18 **Exhibit D**

19. In 2005 both agricultural use and residential use of R-1 property was permitted. ZBA RTP 8/15/2005 Pg. 15. **Exhibit D**
20. In Irwin boarding animals, such as dogs, in the Village was considered animal husbandry and determined to be an agricultural use under the Zoning Code by a trial court in 2005. ZBA RTP 8/15/2005 pg. 11 ln.2, pg. 17 ln 19-22. **Exhibit D**
21. The Court further determined that on R-1 property both single family residences and agricultural uses were permitted. ZBA RTP 8/15/2005 pg. 13 ln.2- pg. 14 ln. **Exhibit D**
22. The Village as the result of the Irwin decision adopted an ordinance to exclude dogs and cats from the definition of animal husbandry. ZBA RTP 8/15/2005 pg. 14 ln. 3-5. **Exhibit D**
23. The Village attorney reported that the Village Board discussed as to the meaning of the court's decision as it related to horses, and the confusion between whether boarding of horses was agricultural, a home occupation, or "What is that? ZBA RTP 8/15/2005 Pg. 14 ln. 20 – Pg. 15 -2. **Exhibit D**
24. The Village Attorney also acknowledged that a lot of residents in the Village were boarding horses. ZBA RTP 8/15/2005 pg. 15 ln. 17-18. **Exhibit D**
25. He also acknowledged that residents can have multiple permitted uses on their property under the zoning code. ZBA RTP 8/15/2005 pg. 16 ln. 14-16. **Exhibit D**
26. The Village Attorney opined that the boarding of horses "would be a permitted agricultural use under the definitions we have in our ordinance and anyone could board horses." ZBA RTP 8/15/2005 pg. 17 ln. 4-7. **Exhibit D**
27. The Village Board requested that the ZBA look into the issue of commercial use of land in the Village. ZBA RTP 8/15/2005 pg. 18 ln. 1-19. **Exhibit D**
28. Dan Lundmark the Village Equestrian Commission chairman, testified at the 8/15/2005 ZBA following the Mr. Wamback's comments that horse boarding was essential in the community and horse boarding including commercial horse boarding has occurred prior to the incorporation of the Village. ZBA RTP 8/15/2005 pg. 18 ln. 1-19 **Exhibit D**

Zoning Code

29. The ZBA at the direction of the Village Board reviewed home occupations occurring in the Village, including horse boarding, and recommended an amendment to the

Village Code concerning home occupations. The Village Board amended its zoning code to regulate home occupations, including the boarding of horses on February 27, 2006. Ordinance 06-3. **Exhibit i**.

30. Between August 15, 2005 and December 15, 2014, the ZBA conducted approximately 36 meetings and public hearing concerning horse boarding. **i**. (Village List)
31. Ordinance 06-3 was not adopted by a roll call vote by the Village Board as reflected in the minutes of the Village Board on February 27, 2006. **Exhibit i**
32. Ordinance 06-3 permitted home occupations including the boarding of horses in a stable and the training of horses and their riders, limiting the hours employees could be on the property and when equipment could be operated, exculpating horse boarding from the other provisions of the Ordinance by stating “**Notwithstanding the foregoing**, the boarding of horses in a stable and the training of horses and their riders shall be a permitted home occupation.” Ordinance 06-3. **Exhibit I**
33. Ordinance 06-3 did not address horse boarding as an agricultural use. **Exhibit i**
34. Ordinance 06-3 did not expressly limit the number of horses which could be boarded on residential property. **Exhibit i**.
35. The Village less than 4 months after the adoption of Ordinance 06-3, adopted Ordinance 06-12, regulating horse boarding in the Village as a home occupation. **Ordinance 06-12. Exhibit J**.
36. Ordinance 06-12 was not adopted by a roll call vote by the Village Board as reflected in the minutes of the Village Board on June 26, 2006. **Exhibit J**.
37. Ordinance 06-12 amended Sections 5-2-1 and 5-3-4 of the Village Zoning Code pertaining to “Home Occupations” in the Village. **Exhibit J**.
38. Ordinance 06-12 did not expressly limit the number of horses allowed on R-1 property.
39. In Section 5-3-4 (D)3 g provides for boarding of horses as a home occupation and states:

Boarding And Training Of Horses: Notwithstanding anything to the contrary contained in this subsection (D), the boarding of horses in a stable and the training of horses and their riders shall be a permitted home occupation; provided, that no persons engaged to facilitate such boarding, other than the immediate family residing on the premises, shall be permitted to carry out their functions except between the hours of eight o'clock (8:00) A.M. and eight o'clock (8:00) P.M. or sunset, whichever is later, and further provided that no vehicles or machinery, other than that belonging to the immediate

family residing on the premises shall be permitted to be operated on the premises except during the hours of eight o'clock (8:00) A.M. and eight o'clock (8:00) P.M. or sunset, whichever is later. **Exhibit J**

40. The confusion concerning the "Notwithstanding" language in Section 5-3-4 (D) 3.g. arose in January 2008. The Village issued a stop work order to the owners of 99 County Line Road, (known as Deerwood Farms), for construction of a "commercial horse boarding facility". **Exhibit K**.
41. Deerwood Farms, attorney, Bruce Tinkoff, wrote the Village that he had a "substantial difference of opinion [with the Village] as to section (g)." The Village asserted that the all of requirements of Section (D) apply. The owners attorney, wrote that "Subsection (g) does to state Subject to the terms and conditions otherwise state in this Section D above" as you suggest, It clearly and unequivocally states "Notwithstanding anything to the contrary". This in plain and concise English excludes anything that would otherwise exclude the same." E-mail Bruce Tinkoff to Douglas Wambach January 21, 2008. **Exhibit L**
42. The Village and Deerwood Farms resolved this matter by making a Restrictive Covenant to avoid any confusion over the use of the property, allowed Deerwood Farms to Board Horses as home occupation **Exhibit M**.
43. In May 2010, the ZBA held a public hearing at the Countryside School on a draft ordinance concerning commercial horse boarding based upon the Village's Equestrian Commissions White Paper presented to the ZBA on March 17, 2010 to address the commercial horse boarding in residential districts. ZBA RTP May 19, 2010 Pg. 6 ln. 2 – 7. In 2. **Exhibit N**
44. The Village Attorney however at the May 19, 2010 ZBA hearing the Village attorney, opined that all provisions of the home occupation code applied to horse boarding, and that multiple barns in the Village were illegal. He stated: "At the time larger facilities were operating in the village in a manner that exceeded the scope of the Home Occupation Ordinance..... Specifically, Section 5-3-4(D)(3)(g) provides that the boarding of horses in a stable and the training of horses of horses and their riders is a permitted home occupation subject to the provisions of section 5-3-4(D).....Many of the large horse boarding facilities currently operating in the village cannot meet the stringent requirements of the Home Occupation Ordinance and thus are thus in violation" May 19, 2010 ZBA RTP Pg. 10 ln. 16 – **Exhibit O**
45. In June 2010 the ZBA continued to discuss a proposed amendments to the zoning code pertaining to commercial horse boarding and a White Paper on horse boarding provided by the Village's Equestrian Commission. ZBA RTP June 23, 2010. **Exhibit P**

46. Mr. McKivitt speaking on behalf of the Riding Club identified reasons for having large facilities to board horses in the Village including horse owners may not want to care for their horses year round on their property. ZBA RTP June 23, 2010 Pg. 14 ln. 4-14. **Exhibit P**
47. Mr. Pfaff told the Zoning Board of Appeals that Oakwood Farm did not look commercial, and "it's a beautiful place." ZBA RTP June 23, 2010 Pg. 34 ln. 14 - 28. **Exhibit P**
48. The June ZBA hearing on the proposed horse boarding ordinance was continued to August 18, 2010 for further hearing. ZBA RTP June 23, 2010 Pg. 119 ln. 24 -Pg. 120 ln. 1. **Exhibit P**
49. On February 14, 2011#### recognized that it discussed commercial boarding in 2009 and before, ZBA Chairman Knight stated that commercial boarding was discussed "As a matter of fact, in September of 2009, prior to September of 2009, we were having discussion commercial boarding in conjunction with agriculture as a text amendment." ZBA RTP Feb 14, 2011 Pg.6 ln 19-22. **Exhibit Q**
50. The Chairman of the ZBA on February 14, 2011 stated that the ZBA sent a proposed ordinance concerning horse boarding to the Village Board on September 23, 2010 and the Board "did nothing with it." ZBA RTP Feb 14, 2011 Pg. 5 ln 19-24. **Exhibit Q**
51. The Chairman further acknowledged there were a number of large horse boarding facilities for quite some time in the Village. ZBA RTP Feb 14, 2011 Pg.8 ln 5-7. **Exhibit Q**
52. Mr. Knight further acknowledged that when the 2006 home occupation ordinance was developed it was an "oversight" not to consider the larger horse boarding operations. ZBA RTP Feb 14, 2011 Pg. 10 ln 2-5. **Exhibit Q**
53. Mr. Knight stated acknowledged that larger boarding operations were operating in violation of the zoning code for years and years and that is was the ZBA's job to equitably "bring them into conformance". ZBA RTP Feb 14, 2011 Pg. 10 ln 8-15 **Exhibit Q**
54. Mr. Knight in the May 2010 ZBA meeting said I think the mistake we made, and you were part of that process, as was I, in the home occupation act, recognizing the horse activity, equestrian activity, is that we didn't consider the larger facilities and, you know, I don't know how many there are, there might be eight, ten,12, I don't know exactly, but we have been struggling with how do we bring them into the fold, if you will, and recognize that a larger property is going to have a different equation to be dealt with than the five-acre site where somebody has horses on their property and that's what we are trying to do. And I would add as well that in any discussions we've had with property owners that are currently not in conformance with the laws we have today, this board did request that the Board of Trustees withhold any action on

enforcement until such time as we had a text amendment that would address that situation of the larger property owners so we are trying to get there in this process. ZBA RTP 5/19/10 Pg. 52 **Exhibit R**

55. He further, acknowledged that “commercial boarding” was allowed as a home occupation. ZBA RTP Feb 14, 2011 Pg. 24 ln 4-5. **Exhibit Q**
56. ZBA member Valin acknowledged at the February 14, 2011 meeting that the issues of applying special use as well as home occupation has been considered for 5 years. ZBA RTP Feb 14, 2011 Pg. ln 2-6. **Exhibit Q**
57. The ZBA discussed and considered of using “special use permits” as an option for allowing large boarding facilities to operate.
58. At the February 14, 2011 James Drury’s attorney, Mr. Burney argued that he had “grave concerns” about using the special use permits. ZBA RTP 2/14/11 Pg. 27 ln 8-14. **Exhibit Q**
59. At the February 14, 2011 ZBA meeting the Board also discussed the 2009 proposal which it made to the Village board which included amending the definition of animal husbandry to allow for the breeding, raising, training, and boarding of domestic livestock, which included horses. ZBA RTP Feb 14, 2011 Pg. 29 ln 13-24. **Exhibit Q**
60. The Board was also considering striking the “Notwithstanding” language in provision in provision “D” concerning horse boarding. ZBA RTP Feb 14, 2011 Pg. 31. **Exhibit Q**
61. Chairman Knight also acknowledged that commercial boarding has been going on for years and the board had the job of bringing the large farms into conformance: He stated: “that this [referring to commercial boarding], apparently, was an oversight when we discussed the home occupation, got into agricultural use and boarding, that it was an oversight at the time that we did not consider the larger operations. And recall that we have been tasked with the job of trying to find a way to equitably bring these larger facilities into conformance with the Zoning Code. That's our job. It's nothing more or nothing less than that.
We recognize as a board, it's been stated on the record in the past, they have been here, they have been operating, although illegally, for years and years and years and we're trying to figure out a way to bring them into conformance in an equitable fashion. That's basically it.” ZBA RTP 2/14/11 Pg. 10 ln. 11-15. **Exhibit Q**.
62. Before the ZBA considered amending the code concerning horse boarding Mr. Knight further acknowledged that larger boarding facilities have been operation for more than 50 years. ZBA RTP Feb 14, 2011 Pg.34 ln 29-31. **Exhibit Q**

63. The Village attorney opined that large-scale commercial boarding was and is illegal and not permitted under the Village Zoning Code. ZBA RTP 2/14/2011 Pg.9 In 18-21. **Exhibit Q**
64. Mr. Knight as Chairman of the ZBA admonished Mr. Burney, that the purpose of the meeting was to correct an oversight and bring large horse boarding facilities into conformity, and not to “pick the Village apart” ZBA RTP Feb 14, 2011 Pg. 53 In 17-24. **Exhibit Q**
65. In March of 2011, the ZBA determined that the numerous previous hearing concerning horse boarding were not properly noticed, and Mr. Knight restated that “it was the goal of the ZBA “to try to figure out a way to allow those larger operations that have not been able to conform to the Home Occupation Act to come into compliance by something that we could come up with; is that correct? . . . and that we made a conscious decision not to incorporate commercial horse boarding in the Home Occupation Act because it did not work.” ZBA RTP March 21, 2011 Pg. 53 In 15 – Pg. 54 In 2. **Exhibit R**
66. Mr. Knight specifically stated that the ZBA had been “screwing around” with the horse boarding issue for 4 years. ZBA RTP March 21, 2011 Pg. 57 In 6-8. **Exhibit R**
67. The ZBA in May of 2011 reviewed the history of the horse boarding text amendment presented in 2009 to the Village Board, but no action was taken. ZBA RTP May 16, 2011 Pg. 20 In 16 – Pg. 21 In 3. **Exhibit S**
68. The ZBA was able to determine that in 2009 it appeared that no action was taken until a “global” discussion of horse boarding and agriculture was considered ZBA RTP May 16, 2011 Pg. 21 In. 13-24 **Exhibit S**
69. At the same February 14, 2011 meeting the Village attorney opined that the Village could not use the special use permits to make the larger facilities legal uses. ZBA RTP Feb 14, 2011 Pg. 9 In 2-6. **Exhibit Q**
70. In June of 2011 the ZBA reviewed two proposals concerning the amendment of the Village Code concerning horse boarding, both prepared in 2010. One prepared by the Village’s Equestrian Commission and one prepared by the Village Attorney at the direction of the ZBA. ZBA RTP June 20, 2011 Pg. 30 In 2-17. **Exhibit T**
71. The competing interpretations of the “Notwithstanding” provision in 5-3-4-(D) 3 g. concerning horse boarding was discussed. ZBA RTP June 20, 2011 Pg. 87 In. 2-7 **Exhibit T**
72. The ZBA in July of 2011 continued its discussion of commercial horse boarding. The Village attorney acknowledged that there is nothing at all about horse boarding, commercial horse boarding in the Village Code. ZBA RTP July 18, 2011 Pg. 19 In 24 -Pg. 20 In 2. During these discussions the Village attorney recognized that Laura

- Pedians horse boarding operation was no different then LeCompte's however the Village has taken no action. ZBA RTP July 18, 2011 Pg. 186 ln. 17-23. **Exhibit U**
73. The ZBA at the conclusion of the July 2011 meeting voted to send a suggestion to the board to have a special use to the Village Board. ZBA RTP July 18, 2011 Pg. 189 ln. 16-17. **Exhibit U**
74. The ZBA heard and denied Drury appeal of the compliance letter sent to LeCompte allowing Oakwood Farms to operate as a home occupation. ZBA RTP August 15, 2011 Pg. 186 ln. 17-23. **Exhibit V**
75. Mr. Drury, a Plaintiff in this case and a Petitioner before the ZBA on August 15, 2011 refused to be sworn in. ZBA RTP August 15, 2011 Pg. 12 ln. 2-6. **Exhibit V**
76. On June 18, 2012 The ZBA held a public hearing on a proposed text amendment of the Home Occupation Ordinance/Agriculture concerning horse boarding. . ZBA RTP July 18, 2011 Pg. 12 ln. 2-6. **Exhibit U**
77. In 2012 ZBA Public Hearing to amend the home occupation ordinance a resident stated that "Obviously, the words notwithstanding anything to the contrary has been discussed many times throughout this village and I think that's why we are here tonight." ZBA RTP 6/18/2012 Pg. 8 ln 10. **Exhibit W**
78. Testimony at the hearing was that large scale horse boarding was conducted well prior to the 06-12 ordinance, and that Horizon Farm a large facility in the Village was boarding and training "a couple hundred horses." ZBA RTP 6/18/2012 Pg.9. ln. 1-4 **Exhibit W**
79. The public hearing concerning an amendment to the Home Occupation Ordinance/Agriculture concerning horse boarding continued before the ZBA RTP July 16, 2012 Pg. 1-2. **Exhibit X**
80. ZBA Member Anderson acknowledged that 2/3 of the written responses indicated horse boarding was not allowed in the Village, and this belief was incorrect. ZBA RTP July 16, 2012 Pg. 8. **Exhibit X**
81. Anderson also stated that the community was being "ripped apart" by minor tweaks to the Ordinance. ZBA RTP July 16, 2012 Pg. 13. **Exhibit X**
82. The ZBA discussed "what do we do about the large barns that are in existence for boarding horses . . . Are they legal? Further, the ZBA acknowledged that the 06-12 had no limitation on the number of horses that could be boarded, and you could not distinguish between commercial boarding and boarding as a home occupation. The point of the ordinance was to bring some definition to large scale boarding. ZBA RTP July 16, 2012 Pg. 9 ln 12 – Pg.11 ln 24. **Exhibit X**

83. ZBA Member Anderson acknowledged that commercial boarding was allowed in the Village he stated that “We, you know, you can have commercial boarding in this village, just not in my backyard.” July 16, 2012 Pg. 17 ln. 2-3. **Exhibit X**
84. The ZBA after extensive discussion concerning a horse boarding text amendment. ZBA RTP July 16, 2012 Pg. 39. **Exhibit X**
85. The ZBA also heard testimony and discussed that if the larger properties could not board horses that the properties could be converted to subdivisions and that the character of the community would change. ZBA RTP July 16, 2012 Pg. 37 **Exhibit X**
86. Deleted.
87. In August 2011 the ZBA was again discussing horse boarding relative to an appeal of the Schuman letter, which advised LeCompte that he was in compliance with the Village Home Occupation ordinance. **Exhibit Y**
88. Byron Johnson a ZBA member involved in the drafting of 06-12 admitted that some members of the community found the notwithstanding provision “confusing”. Johnson Dep. 8/11/2020 pg. 13 ln 18 to Pg. 14 ln 20. **Exhibit Z**
89. Byron Jonson believe that the “Notwithstanding” provision in 06-12 section g was additive. Johnson Dep. 8/11/2020 Pg. 16 ln 2-8, **Exhibit Z**
90. In August of 2011 during the discussion of the “Notwithstanding” provision Mr. Lundmark, chairman of the Equestrian Commission, pointed out that Horizon Farms had 200 had 200 horses on the property. ZBA RTP 8/15/2011 Pg. 34 ln. 12. **Exhibit AA**
91. The former owner Horizon Farms stated that they were breeding and training about 220-240 horses on the property. ZBA RTP 12/2/2014 Pg.125- 126. **Exhibit NNNN**
92. At the June 20, 2011 ZBA meeting a discussion was held concerning the multiple interpretation of the “notwithstanding provision” of 06-12. Mr. Pfaff stated “...And the other part is the proposed changes on page 4 of 23 which is 5-3-4, sub D, sub 3, sub G, Which just a rewritten version of the Home Occupation Ordinance because that first clause notwithstanding anything to the contrary has been subject to competing interpretations and I think it's better to rewrite it along the lines that I've suggested so that people don't have competing interpretations of what the language means”. ZBA RTP 6-20-2011 Pg. 86 ln 21 **Exhibit T** .
93. Kurt Anderson a ZBA member and author of Ordinance 14-19 found the Notwithstanding provision confusing . When asked “Do you believe that the notwithstanding language made it confusing as far as who could board horses?” he answered Very much so. Anderson Dep. 2/18/2020 Pg. 135 ln 19, Pg.136 to ln.13. **Exhibit CC**

94. On September 21, 2011 the decision in *LeCompte v. Zoning Bd. of Appeals for Vill. of Barrington Hills*, 2011 IL App (1st) 100423, ¶ 34, was issued which held that horse boarding was not allowed on agricultural property. **Exhibit DD**
95. The Village Attorney at the ZBA meeting of July 18, 2011 advised the ZBA that based on the decision in *LeCompte v. Zoning Bd. of Appeals for Vill. of Barrington Hills*, 2011 IL App (1st) 100423, “that essentially what the court held is that, no, boarding facilities are not agriculture and, therefore, not permitted in an R1 district, which puts the Village in a position where we are now, you know, that position we is we’ve discussed at prior meetings, there are a number of boarding facilities here or at least anecdotally are here and operating and essentially they have all, based on this opinion, now become in violation of our zoning code.” ZBA RTP July 18, 2011, Pg.13 ln. 13-24 **Exhibit DD**.
96. The Village knew about other large boarding facilities operating in violation of the HOO in 2011. The Village attorney stated “We know about Laura Pedian. We haven't done anything about Laura Pedian even though she's really no different than Oakwood Farms, really. So we haven't done anything about her pending all of this stuff that came up with Oakwood Farms and seeing where everything goes and seeing what we are doing here. And I don't presume that when we pass this, we are immediately going to run out to Laura Pedian and knock on her door and say you got to stop doing that unless you come in for a permit.” ZBA RPT 7-18-2011 Pg. 185 line 24 - pg. **Exhibit EE**
97. The Village Attorney advised the ZBA on July 18, 2011 that “I think it's important to understand that as we go through these proposed changes or suggested changes to the - - to the zoning code that would presumably allow the boarding facilities that are currently operating to somehow come into compliance in one way or another.” ZBA RTP July 18, 2011, Pg.14 ln. 11-16. **Exhibit EE** .
98. The Village Attorney told the ZBA that the “purpose of this was to, again, I think to clarify this whole, I guess, question, about what the notwithstanding language in the Home Occupation Code means ZBA RPT 7-18-11 Pg. 121 ln. 4-7. **Exhibit EE** .
99. On July 18, 2011 the Village attorney Mr. Wambach admitted that there was significant _____ concerning the “notwithstanding” provision of Home Occupation Ordinance dealing with horse boarding. ZBA RPT 7/18/11 Pg. 147 line 3. **Exhibit EE** .
100. The Chairman of the ZBA also was unclear as to how the home occupation ordinance applied to horse boarding. She stated “I mean, coming into this issue when it first showed up, the way the Home Occupation Ordinance was constructed and the way it approached boarding, I’m not sure that we could really enforce any thinking because I was unclear what applied.” ZBA RTP 7/18/11 Pg. 90 ln. **Exhibit EE**.

101. Trustee Harrington realized that the word notwithstanding confused some people as to the meaning of the Home Occupation Ordinance. But my understanding from others that they didn't think it was clear, my recollection is a lot of it was around the notwithstanding. The word notwithstanding seemed to be something that confused people. Harrington Dep July 27, 2020 pg. 15. **Exhibit FF**
102. Village Trustee Harrington voted to adopt ordinance 14-19 believe the language in 06-12 was vague and confusing. Harrington Dep. July 27, 2020. Pg. 142 **Exhibit FF** .
103. There was extensive discussion as to confusion caused by the notwithstanding language over time. See below.

MR. WAMBACH: Because there was significant confusion about the notwithstanding language. ZBA RTP 7-18-2011 Page 147 line 7 **Exhibit EE**

MR. WAMBACH: Well, they are already, I mean, again, depending on what your definition of a Home Occupation Ordinance, they are all either legal Home Occupation Ordinances or they are all illegal boarding facilities. ZBA RTP 7-18-2011 Page 175 line 14 **Exhibit EE**

MR. WAMBACH: I think to clarify this whole, I guess, question, about what the notwithstanding language in the Home Occupation Code means and to specifically say what of the other provisions in 5-3-4-3, which are the use limitations, would apply to home occupation boarding or small-scale boarding and whatever you want to call it. And I'm not sure that 3a, that all of 3a through f, except for 3(a)2 and 3(c)2, I think we may have to exclude a few other things if we just want to -- does everybody have the Home Occupation? ZBA RTP 7-18-11 Page 121 line 5 **Exhibit EE**

MR. PFAFF: ...And the other part is the proposed changes on page 4 of 23 which is 5-3-4, sub D, sub 3, sub G, Which just a rewritten version of the Home Occupation Ordinance because that first clause notwithstanding anything to the contrary has been subject to competing interpretations and I think it's better to rewrite it along the lines that I've suggested so that people don't have competing interpretations of what the language means. ZBA RTP 6-20-2011 page 86 line 21 **Exhibit HH**

MEMBER STIEPER: I've heard you comment before, Dr. LeCompte, so I actually have looked at the ordinance from that standpoint. And the way I interpret it, and I, you know - well, I'm not going to speculate what the courts will do, but I think if you go to 3(G), it clearly says, you know, notwithstanding the foregoing, which basically means in spite of what was written, the boarding of horses in a stable and training of horses and riders shall

be permitted under Home Occupation. So I think that language, well, you say well, how can, you know, I can't do my, I can't do my horses, you know, my horses aren't going to stay inside where nobody can see them and all the rest because it's not really a typical business like home occupation being a lawyer or accountant or when you do something in your house. But I think that's why that provision 3(G) was inserted in there because what it states is notwithstanding the foregoing, which really means in spite of what is written above, you shall be able to do this activity, which is the boarding and training of horses. ZBA RTP 11-9-2016 Page 29 line 12 **Exhibit II**

PRESIDENT

MCLAUGHLIN: Can I finish my testimony, please? And we actually from the Village desk, we sent out letters to the property owners as Mr. Harrington was pounding the table for clarity. We sent out letters to the other and all property owners stating that horse boarding was not in fact illegal and was in its home occupation and smaller nature legal in its capacity as defined by home occupation. So the Village was actually proactive in trying to counteract Mr. Harrington's clarity campaign. McLaughlin deposition 6- 22- 2020 Page 103 line 3 **Exhibit JJ**

THE WITNESS: Yeah, it doesn't seem unreasonable to me, but I can see how others might see it differently. It's your opinion, my opinion.

BY MR. BURNEY: Okay. This is an opinion we agree on. Thank you, sir.

Witness: **Not necessarily**. I'm saying it's your opinion and you're entitled to it and it's not unreasonable. I don't know. If you want to debate, we'll debate, but. I'm not sure I have an opinion on this. Harrington Deposition July 27, 2020 Page 129 line 3 **Exhibit KK**

JOHNSON: Yes. I think there is -- if I recall, I think G may have been added, but this was the final product. direct your attention to the exhibits that we have, and if you could look at Exhibit B?

A. B.

Q. Yes. That should be the fourth page? A. Yes. I see that, yes.

Q. Okay. Now, if you could look through that. That is -- if you can just identify B, it appears to be ordinance 06-12. Do you recognize this?

A. Yes, sir.

Q. Okay. And if you go to the last page of the ordinance, you will see that the Village Board adopted it on June 26th, 2006?

A. I'm sorry. I missed the question.

Q. Do you see that it was signed on June 26th, 2006?

A. Yes.

Q. Okay. So this is the ordinance that you were involved in -- the ZBA was involved in

proposing to the Village Board in June of 2006?

A. Yes. I think there is -- if I recall, I think G may have been added, but this was the final product.

Q. Okay, because

you were on the ZBA until 2010, was there some confusion concerning that Section G to your knowledge?

A. I understand it was subject to interpretation.

Q. Okay. But there was different interpretations, right?

A. On the part of some people, yes.

Q. Okay. So there was confusion between different people as to what that G meant, correct?

A. There was -- from the standpoint of the Zoning Board, I don't think there was any question as to what G meant. I'm aware that other people interpreted G differently than we did.

Q. Okay. Let me ask you, do you find it confusing at all, Section G?

A. I would say no. I mean it is part of the home occupation rule so in total, it is part of what was adopted by the Board.

Q. Okay. All right. Now, you said some people had different interpretations. Were those different people members of the public that had different interpretations?

A. Yes.

Q. Okay. Now, you think that this Section G is clear? Is that your testimony?

A. Well, my understanding of G is it is part of the rest of the home occupation rules. At the time that it was developed, I don't think the Zoning Board had G, but when it came back to us, it did. So it was added. But I think it was additive to the rest of home occupation rules with respect to boarding of horses.

Q. The language which says -- the first sentence says "notwithstanding anything to the contrary". Do you see that?

A. Yes.

Q. And that means in spite of anything to the contrary, right?

A. Well, I guess it means in addition to. JOHNSON DEPOSITION 8-11-2020 Page 13 line 21 **Exhibit LL**

MR KELLY: Okay. I would like to direct your attention to it. You have reviewed the 2006 ordinance?

MR DRURY: Yes. I'm familiar with the occupation ordinance as it existed at one time.

Q. Through 2015, right? Is that the ordinance we are talking about?

A. Is that when the Anderson thing took over? Yes.

Q. Now, this is a copy of the ordinance. Anywhere in this ordinance, do you know, is there a limitation on the number of horses you can have on property -- residential property in Barrington Hills?

A. Not specifically.

Q. Okay. Now, you agree that in Barrington Hills, if you have 5 acres zoned R-1, you could have horses on the property, right? A. Right.

Q. Okay. Now, in this particular ordinance, there is a language that is on the third page under G, and it says notwithstanding anything to the contrary. Do you see that?

A. Where on the page would that be?

Q. It is actually the fifth page, which I believe is the last page of the document?

A. Yes.

Q. Do you see that notwithstanding language?

A. Right.

Q. Now, do you know what the word notwithstanding means?

A. **I'm not a lawyer. I have been told it means something along the lines that it is additive, in addition to.**

Q. Let me ask you a question. You say you are not a lawyer. As -- ordinances are written for the residents of the Village to read, right?

A. Yes.

Q. So you shouldn't have to be a lawyer to read an ordinance to figure out what your Village's rules are, right? Is that fair?

A. **99.5 percent of this document is absolutely crystal clear, what it says.**

Q. Okay. But my question to you was you shouldn't have to be a lawyer to read a Village ordinance to understand it, right?

A. I understand the Village ordinance **totally.**

Q. Sir, I ask you again --

A. Are you asking me if I understand one word --

Q. I'm not asking you --

A. -- out of 800 that I don't quite understand? It doesn't understate the clear message conveyed by this document to the community in terms of residential protection.

Q. Sir, that is not my question. My question is you shouldn't have to be a lawyer to understand a Village ordinance, right?

A. I don't know. I can't answer that question.

Q. So you don't think that Village ordinances are written to be understood by residents?

MR. BURNEY: Objection. That's not what he said. It's a mischaracterization of his testimony.

MR. KELLY: I'm not questioning him at all as to a legal definition of the word. He said that he is not a lawyer, which would seem to indicate you might need to be a lawyer to understand this language.

my question?

Sir, can you answer

A. I understood this document totally for except one word.

Drury Deposition 8-28-20 Page 90 line 20 **Exhibit MM**

104. Trustee Messer when asked if there was confusion as to how could board horses in the village before the adoption of 14-19, testified "Absolutely there was." Messer Dep. 2/19/20 Pg. 148- ln. 2-10. **Exhibit NN**
105. Mr. Messer then described how 14-19 resolved this confusion. Messer Dep. 2/19/20 Pg. 148- ln 11 – pg. 149 ln 18. **Exhibit NN**
106. The Village President, Martin McLaughlin could not explain the "notwithstanding" provision in 06-12, and only referred to the opinion of Mr. Johnson, however he could not describe the opinion. McLaughlin Dep. 6/22/20 Pg. 95 – 97. **Exhibit OO**
107. Trustee Harrington testified that understood that the "notwithstanding" provision in 06-12 "seemed to be confused some people". Harrington Dep. 8/24/20 Pg. 15 ln 9-13. **Exhibit FF**

Oakwood Farms

108. LeCompte Purchased Oakwood Farms in December 1995. Oakwood Farms consisted of approximately 130 acres and began boarding horses at that time, Oakwood Farms was zoned R-1. Horse Boarding occurred on Oakwood Farm Prior to LeCompte's ownership. LeCompte Affidavit **Exhibit EEE**.
109. LeCompte applied for and was granted building permit to reconstruct and improve his barns and riding area. He was granted certificates of occupancy after the construction was completed. October 17, 2007 and an accessory building in November 20, 2007. **Exhibit EEE**
110. In the spring of 2005 LeCompte's were granted a permit to construct an indoor riding arena. **Exhibit EEE**
111. In 2007 LeCompte applied that for a permit to build the final phase of the new barn, however, the Village building department would not issue a permit. As the barn did not comply with the Storage provision of the BOCA. The Village amended its code to allow the construction of LeCompte's facility. Ordinance. **Exhibit. EEE**.
112. In December 2007 Drury complained about the Oakwood Farm's operation, although Village had provided LeCompte with certificates of occupancy in November. **Exhibit EEE**
113. Drury was aware that LeCompte was boarding horses prior to 2000 as he entered into agreements with Oakwood Farms on behalf of the Barrington Polo Club to use LeCompte's Polo field. **Group Exhibit VV**
114. On January 10, 2008 the Village sent a letter to LeCompte Ordering him to cease and desist from horse boarding, without specifying the specific section of the Village Code which he was violation. **Exhibit WW**.

115. LeCompte appealed the cease and cease and desist order to the ZBA. ZBA RTP 8/13/2008. **Exhibit XX**.
116. LeCompte asserted that the boarding of horses on his property was a permitted agricultural use of the property. ZBA RTP 8/13/2008 PG 10-17. **Exhibit XX**
117. Village Trustee Schueppert in 2008 stated that Oakwood Farm could claim horse barding as an agricultural use. **Exhibit YY**.
118. DELETED
119. The ZBA denied LeCompte's appeal of the cease and desist order on August 28, 2008. **Exhibit ZZ**.
120. Although the ZBA denied the LeCompte's appeal, the Chairman of the ZBA and the ZBA made the recommendation to the Board of Trustees to "postpone any enforcement action of the cease and desist order until such time -- as we make a recommendation on the text amended that will be before us at the next meeting." ZBA RTP 8/28/08 pg. ln 4-11. **Exhibit ZZ**.
121. LeCompte then filed a lawsuit for administrative review of the denial of his appeal by the ZBA. *LeCompte v. Zoning Board of Appeals for Village of Barrington Hills*. (Herein after *LeCompte I*). **Exhibit DD**
122. On February 14, 2011, during the pendency of the litigation in *Lecompte I*, the ZBA held a meeting to discuss commercial horse boarding, which included bringing larger facilities, like LeCompte's, into conformance with the Code, including grandfathering these larger operations as a legal nonconforming use. ZBA RTP 02/14/11. **Exhibit BBB**.
123. LeCompte asserted that his horse boarding operation was an agricultural use of the property. **Exhibit DD**.
124. The Village prevailed and LeCompte appealed to the Court of Appeals. On June 26, 2011 a decision was issued, and the opinion was published on September 21, 2011. *LeCompte v. Zoning Bd. of Appeals for Vill. of Barrington Hills*, 2011 IL App (1st) 100423. **Exhibit DD**
125. This decision held that horse boarding does not comport with the village code. *LeCompte v. Zoning Bd. of Appeals for Vill. of Barrington Hills*, 2011 IL App (1st) 100423 ¶ 33. **Exhibit DD**

Schuman Letter

126. LeCompte requested that Oakwood Farms become a home occupation. The Village Attorney Mr. Wambach on February 15 wrote back that Oakwood Farm stating that he could not be a home occupation. **Exhibit EEE Aff**
127. LeCompte spoke to the Chairman of the Village's Equestrian Commission and a member of the commission regarding Ordinance 06-12 section 5-3-4 (D)3(g) concerning horse boarding. **Exhibit FFF . (Affidavit)**
128. The Chairman of the Equestrian Commission Dan Lundmark and member of the President of the Riding Club of Barrington Hills, Paddy McKeivitt arranged a meeting between Lundmark, McKeivitt, LeCompte and the Village President Abboud and LeCompte on February 21, 2011, to discuss concerns with horse boarding. Messer Dep. Feb. 19, 2020 Pg. 51 Ln. 18-21, **Exhibit EEE & NN (affidavit).**
129. LeCompte explained his position that he believed that the Village Attorney was misinterpreting the Zoning Code pertaining to home occupations. **Exhibit EEE .**
130. LeCompte submitted an affidavit on March 4, 2011 attesting that he was in compliance with the Home Occupation Ordinance of the village, although he asserted that he continued to maintain the right to operate his facility as an agricultural use pursuant to Zoning Code provision 5-3-4 (A) depending on the decision of the Appellate Court. **Exhibit EEE .**
131. The Village inspector went to Oakwood Farm and March 7, 2011 to determine if Oakwood was in compliance with the Home Occupation Ordinance. **Exhibit EEE .**
132. On March 15, 2011 the Village issued a compliance letter to LeComptes for the operation of Oakwood Farm as a Home Occupation, This letter became known as the Schuman Letter. **Exhibit LLL .**
133. The Schuman Letter was apparently drafted by Robert Kosin and revised by the by the Village Code Enforcement Officer Don Schuman, and then signed by the Village Clerk at Schuman's direction. ZBA RTP 12/3/14 Pg. 107 ln 24 – Pg. 108 ln.3 **Exhibit MMM .**
134. The Village President indicated he would discuss this Oakwood's compliance with the home occupation ordinance with the Village attorney. He later requested that LeCompte provide him with an affidavit demonstrating that he was in compliance with the Home Occupation Ordinance. **Exhibit EEE .**

135. Schuman found that Oakwood Farm was in compliance with the Home Occupation provisions of the Zoning Code, and could operate his boarding facility. **Exhibit EEE** .
136. April 28, 2011 Drury/McLaughlin filed appeal to Clerk re: Finding by Don Schuman that Oakwood Farms complied with the Home Occupation Ordinance ZBA RTP August 15, 2011 Pg. 7. ln. 5-11. **Exhibit PPP**
137. Drury's attorneys provided a letter to the Chairman of the ZBA on July 18, 2011 asserting that the court decision in *LeCompte I* bars the Village from granting LeCompte the right to board horses as a home occupation. ZBA RTP August 15, 2011 Pg. 7-10. **Exhibit QQQ**
138. The Village attorney responded that the appellate court decision did not pertain to LeCompte as home occupation and does not bar the LeCompte from operating as a home occupation. ZBA RTP August 15, 2011 Pg. 7-10. **Exhibit PPP**
139. Village Trustee Messer, a practicing attorney, was not aware of the Schuman Letter and was not consulted with regard to the issuance of the Schuman Letter. Messer Dep. 2/19/20 Pg. 47 ln. 13-14. **Exhibit NN** .

Campaign Contributions 2011

140. On February 10, 2011 Steve Knoop solicited campaign contributions from LeCompte for candidates running for the Village of Barrington Hills Board of Trustees, candidate Patty Meroni, Karen Selman, and Joseph Messer. Dep. Knoop 2/13/20 pg. **Exhibit SSS** .
141. LeCompte contributed to \$5,000 to each candidate, in addition he contributed \$5,000 to candidate Stieper. **Exhibit TTT and EEE**.
142. The candidates Meroni, Selman and Messer improperly endorsed these checks to a political PAC, Save Five Acres. **Exhibit EEE** .
143. The State Board of Elections was notified by Mr. Knight the campaign chair of Stieper of the campaign violation. **Exhibit VVV and EEE** .
144. DELETED
145. The SBOE hearing officer, on June 5, 2011 found that "there is nothing in the record to suggest that the reporting violations were in any way willful or intentional. Rather, the evidence clearly establishes that the reporting violation were the result of inexperience and confusion." **Exhibit WWW** .
146. Knoop stated that the \$5,000 contributions and the Shuman Letter were not linked. Knoop Dep. Pg. 29 ln 7-12. **Exhibit SSS** .

147. Knoop testified that that there was “Absolutely not” a connection between the campaign contributions and the Schuman letter. Knoop Dep. Pg. 32 ln. 23. **Exhibit SSS**
148. Meroni and Selman had not been elected when the Schuman Letter was written on March 15, 2011.

Drury Corruption

149. Prior to this litigation, James Drury, was the President of the Barrington Polo Club, which leased and played polo on LeCompte’s polo field at Oakwood Farm, which was directly across the street from Drury’s property. **Exhibit VVV (leases).**
150. Members of the Barrington Polo Club boarded horses at Oakwood Farm. ZBA RPT 9/9/14 Pg. 49 Ln. 4-9. **Exhibit RRR**
151. Drury organized an annual charity fundraising polo event for breast cancer, called the Tiffany Classic on LeCompte’s property, Oakwood Farm, between 1996 and 1998. Rosene Dep. 02/14/2020 Pg. 47 ln 3-18, Pg. 53 ln 14-22. **Exhibit UUU.**
152. James Drury, the principal Plaintiff in this cause on January 30, 2011 filed an adjacent property owner case against the owners of Oakwood Farm, Benjamin B. LeCompte and his wife on January 31, 2011, *James J. Drury III et al. v. Benjamin LeCompte et al.* Case No. 11-CH-03852, asserting that Oakwood Farm was operating a horse boarding facility in violation of the Village Zoning Code. **Exhibit WWW**
153. This case was dismissed twice and reversed and remanded to the trial court on appeal. *James J. Drury III et al. v. Benjamin LeCompte et al.*, 2014 IL App (1st) 121894-U.
154. Drury through his company contributed \$12,500 in 9/15/10, and \$1,600 on 8/19/2011, to the Common Sense Party. The Common Sense Party ran candidates against Messer, Selman, and Meroni. **Exhibit ZZZ**
155. Drury also contributed \$999 to Unite Barrington Hills 3/25/13, which supported only two candidates. Martin McLaughlin running for President of the Village of Barrington Hills and Colleen Konicek/Hannigan running for Trustee of Barrington Hills. **Exhibit ZZZ (same as above).**
156. Trustee Konicek/Hannigan was the only Village Trustee to vote against adoption of 14-19 on December 15, 2014. Trustee Harrington incorporated his written remarks in the minutes to explain that 14-19 was need and the existing ordinance was confusing and vague. **Exhibit AAAA (Minutes)**

157. On January 8, 2015, Village President Martin McLaughlin vetoed the Village Boards approval of 14-19. On January 26, 2015 he issued a veto letter. **Exhibit BBBB** .
158. On February 23, 2015 the Village Board overrode the McLaughlin's veto, with the only vote cast against the override made by Konicek/Hannigan. **Exhibit CCCC**.
159. On October 26, 2015 at a regular Village Board meeting both McLaughlin and Konicek/Hannigan voted to approve a settlement of this case with Drury, by a vote of 3 trustees in favor, two trustees opposed and one trustee abstaining. McLaughlin then voted with to approve. **Exhibit DDDD** .
160. Following the Village Board meeting of October 26, 2015, Trustee Gohl, who voted against the settlement agreement, went to the Penny Road Pub for something to eat, where he saw President McLaughlin sitting with Mr. Burney, Drury's Attorney, and two other individuals. **Exhibit EEEE (affidavit)**

Ordinance 14-19

161. In the summer of 2014 four petitions to amend the Village's Code pertaining to horse boarding were submitted the Village. The petitions were filed by the Riding Club of Barrington Hills, James Drury, and Benjamin LeCompte, and James C. Hammond. **Exhibits FFFF** .
162. Benjamin LeCompte filed his petition on June 17, 2014, Barrington Riding Club of Barrington Hills on June 30, 2014, James J. Drury August 13, 2014 James C.. Hammond on July 29, 2014. **Exhibit FFFF**
163. The ZBA held 10 public meetings concerning horse boarding to include the 4 petitions for text amendments. in 2014. **Exhibit GGGG** .
164. There 4 public hearings on the various text amendments, July 28, 2014, and September 9, 2014, September 11, 2014, December 2, 2014 and December 3 2014.
165. During these hearings there was extensive comment by the public supporting or objecting to the various text amendments.
166. The Riding Club was concerned regarding the decision in *LeCompte I* barring horse boarding in the Village, and retained an attorney to review the decision. Yeterian Dep. 10/8/2020 Pg. 36. Ln 23 –Pg. 37 ln.37. **Exhibit III**
167. The Riding Club attorney opined on May 19 2014, in a letter to the Riding Club, that the decision in *LeCompte I*, absolutely has an adverse impact on the Riding Club and places at risk any boarding facility in Village. **Exhibit HHHH**.

168. The ZBA held public hearings and meetings concerning horse boarding text amendments and horse boarding in general:

May 19, 2014 – Discuss Horse Boarding

June 16, 2014 – Discuss Horse Boarding
July 21, 2014 - Public Hearing Riding Club of Barrington Hills Text Amendment
LeCompte Horse Boarding Text Amendment

August 18, 2014 - LeCompte Horse Boarding Text Amendment
Riding Club Horse Boarding Text Amendment
Hammond Horse Boarding Text Amendment
Drury Horse Boarding Text Amendment
ZBA Horse Boarding Text Amendment

September 9, 2014- Public Hearing
Drury Horse Boarding Text Amendment
Hammond Horse Boarding Text Amendment

September 11, 2014- Public Hearing
Discussion of
LeCompte Horse Boarding Text Amendment
Riding Club Horse Boarding Text Amendment
Hammond Horse Boarding Text Amendment
Drury Horse Boarding Text Amendment
ZBA Horse Boarding Text Amendment

October 20, 2014 - Discussion of
LeCompte Horse Boarding Text Amendment
Riding Club Horse Boarding Text Amendment
Hammond Horse Boarding Text Amendment
Drury Horse Boarding Text Amendment
ZBA Horse Boarding Text Amendment

December 2, 2014 Public Hearing
ZBA Horse boarding Text Amendment

December 3, 2014- ZBA Horse Boarding Text Amendment

Group Exhibit GGGG

169. The Riding Club of Barrington Hills submitted a petition to amend the Zoning Code to allow the boarding of horses in the Village on June 30, 2014. **Exhibit FFFF**.
170. The ZBA on September 11, 2014 voted to recommend LeCompte's proposed horse boarding text amendment to the Village Board for approval. **Exhibit JJJJ**.

171. LeCompte's proposed text amendment had been substantially amended by the ZBA. ZBA RTP 9/11/2014 Pg. 149 ln.1-6 **Exhibit JJJJ**
172. The ZBA submitted a proposed text amendment concerning the boarding of horses in the Village to the Village Board for review. The Village Board reviewed the text amendment at it September 22, 2014 board meeting. The Board requested that the ZBA conduct more research on the property tax impact, if the text amendment would open the door to commercial activity, and the number of horses on the property, as well as to allow additional input from the public. **Exhibit KKKK (board minutes.)**
173. The Village Administrator on October 17, 2014 sent a letter to the ZBA, posing 7 questions concerning the Text Amendment requesting that the ZBA provide answers to the Board on; husbandry; property tax; planning; engineering; environment; enforcement; and clarification. The Board however did not ask the ZBA for additional information concerning engineering, enforcement, environment or clarification. **Exhibit LLLL .**
174. The ZBA responded to each of the questions in the October 17, 2014 letter on October 21, 2014, following the October 20, 2014 ZBA meeting. Each of the questions was addressed at the October 20, 2014 ZBA meeting. Further, concerning the matters of taxation, planning, and enforcement, witnesses were called to attend the December 2, 2014 Public Hearing. The ZBA also found that no additional information was need pertaining to engineering, environment, clarification, and husbandry. **Exhibit MMMM.**
175. The ZBA heard testimony regarding the tax impact, the commercial impact and the enforcement of the ordinance on December 2, 2014. ZBA RTP 12/02/2014. **Exhibit NNNN**
176. ZBA member Anderson did not take the October 21, 2014 letter from Kosin as a directive from the Village Board but rather, a request for some answers to questions. Anderson Dep. 2/18/20 pg. 86 ln. 2-5. **Exhibit CC .**
177. Member Anderson testified that ZBA had a number of studies and white papers which had previously answered the Village Board's questions. Anderson Dep. 2/18/20 pg. 87 ln. 4-8. **Exhibit CC .**
178. Member Anderson testified that all of the questions from the Board had been previously addressed in testimony. Anderson Dep. 2/18/20 pg. 89 ln. 5-10. **Exhibit CC.**
179. ZBA member Anderson took Drury', LeCompte's, and Hammond's and the Polo Club's text amendment and edited them and consolidated to develop the text amendment he presented. He further stated that "It was an accumulation of all 3

proposed text amendments. Don't suggest that this only LeCompte. It wasn't. There was 3 text amendments that were amendments that were presented, and I edited them and consolidated them down. I found that that it was best placed in agriculture, not home occupation". Anderson Dep 2/18/20 Pg. 97 ln 16 **Exhibit CC**

180. The ZBA held public hearings on December 2nd and 3rd of 2014 on the text amendment that Anderson drafted. **Exhibit. NNNN and PPPP**.
181. This draft Ordinance made the definition of agriculture retroactive, a provision for boarding of horses on property under 10 acres and properties larger than 10 acres, establishing limits on the number of horses which could be boarded and other regulations. **Exhibit QQQQ**
182. ZBA Member Goss at the 12/3/2014 public hearing state that: "I really do think that the zoning code needs to be refined and amended so that existing operations that have long existed in this community and have caused no problem could feel secure that they can continue to exist with no problems." ZBA RTP 2/3/14, Pg. 4 ln.18-23 **Exhibit PPPP**
183. The ZBA held two days of hearings concerning the proposed Text Amendment. ZBA RPT 12/2/14 and 12/3/14 **Exhibit NNNN and PPPP**
184. The ZBA at the 12/2/14 hearing heard from Mr.Kuntz the Algonquin township assessor concerning the tax impact of the ordinance and from Mr. Savoy regarding the compatibility of horse boarding with the Village's Comprehensive Plan which he wrote. ZBA RPT 12/2/14 and 12/3/14 **Exhibit NNNN and PPPP**
185. The ZBA on 12/2/14 also heard from Mr. Schuman the Code Enforcement Officer. **Exhibit NNNN**
186. ZBA member Anderson stated that "There were a number of people that were brought in. Real estate tax experts. There were horse boarding experts brought in. People that have a significant background in equine maintenance, if you will, or boarding. There were people brought in to discuss zoning. So yes, I do remember people being brought in. Do I recall who specifically brought in which expert? No, I don't recall that." Anderson Dep. 2/18/2020 Pg. 72 ln. 2-10. **Exhibit CC**.
187. Elaine Remesh clearly stated that that 14-19 had a public purpose for the entire Village, it was an amenity for an equestrian community. 9/23/14. **Exhibit RRRR**
188. Trustee Messer testified that he voted for 14-19, for the benefit of the entire Village not for the benefit of one person. Messer Dep. March 11, 2020 Pg. 147 ln 19 – Pg 148 ln 1. **Exhibit Exhibit NN**
189. Jacques Gourguechon the Plaintiff's expert land planner stated that testified that the individual provisions of 14-195-3-4 2a) were not contrary to the public interest,

specifically, sec. i “it makes sense to have hours of operation”, sec. ii, it is not against public welfare to require the property owner to operate the business, sec. iii, requiring a waste management plan is in the public interest, sec. iv, he agreed that having lighting restrictions was in the public welfare.” Gourguechon Dep. 12/07/20 pg 83 – 90. **Exhibit SSSS**

190. Jennifer Rousseau a professional equestrian trainer opined that larger boarding operations are one of the best guardians of an equestrian community, and protect the community by providing easy access to veterinarian services, feed, bedding and training. She also believed that all 28 of the larger boarding facilities in the Village were at risk due to the decision in *LeCompte I*. She does not know either Drury, or LeCompte, however she stated that 14-19 is a well thought out solution for the protection of an equestrian community. **Exhibit TTTT affidavit.**
191. Mr. McGinley a resident of the Village, whose family operated Horizon Farms in the Village, boarding 200 horses, explained the benefit of horse boarding to the Village as it maintained the semirural nature of the community, and the reduced the congestion caused by additional subdivisions. He testified that : So I think that's why we live here, and I think for people on the other side of the decision, please keep in mind that there is a protective quality to horse boarding that gives all of us benefits. So the text amendment to expand the definition of agriculture so it can be effective in protecting our community is vital. ZBA RTP 12/ 3/14 Pg. 93 ln 2. **Exhibit PPPP**
192. LeCompte testified that an amended ordinance he suggested would limit the number of horses boarded, provide for manure management, regulate lighting and traffic. ZBA RTP July 21, 2014 Pg. 9 – 16. **Exhibit UUUU**
193. Attorney Ocrant provided an opinion the ZBA as to the need to make the ordinance retroactive. She testified that the retroactivity provision would remedy the Village’s equal protection violations. ZBA RTP July 21, 2014, Pg. 16 ln. 21 –Pg. 21 – ln. 22. **Exhibit UUUU**
194. There was discussion both for and against the petition for large scale boarding at the July 21, 2014 meeting. **Exhibit UUUU**
195. The ZBA held hearings on September 9, 2014 on Drury, Hammond and LeCompte’s petitions for text amendments regarding horse boarding. ZBA RTP 9/9/14. **Exhibit XXXX.**
196. The ZBA continued public hearings on September 11, 2014 concerning proposed horse boarding text amendments. ZBA RTP 9/11/14. **Exhibit HHHH .**
197. The ZBA had conducted a public hearing on an amendment proposed by the board, and drafted by ZBA member Anderson. ZBA RTP 12/02/14. **Exhibit NNNN**

198. ZBA member Goss state that the zoning code really needs to be refined and amended concerning horse boarding, and that “The need to accommodate our larger property owners is tremendous. . . We benefit so much from Tudor Oaks and Horizon Farms and these bigger properties, and Mr. LeCompte's property, in so many ways. ZBA RTP 12/03/14. Pg 4 ln. 9 – Pg. 6 ln. 14. **Exhibit PPPP**
199. ZBA member Stieper acknowledged that the issue of large scale boarding has been an issue since he was on the Plan Commission drafting the Comprehensive Plan in 2008. ZBA RTP 12/03/14. Pg. 39 ln.24- Pg. 40 ln. 4. **Exhibit PPP**
200. Mr. Stieper, a member of the Plan Commission, admitted that in 2008 that the Village Board, knowing that large scale horse boarding in the Village directed the Plan Commission “not to deal with it” referring to large scale horse boarding in the Comprehensive Plan published in 2008. Stieper Dep. December 9, 2020, Pg. 81 ln. 15-21. **Exhibit YYYYY**
201. Matt Yeterian a resident of the Village testified that the horse boarding is a benefit to the equestrian community. He was the president of the Riding Club which had about 500 members. He described the benefit to the Village in that many residents do not have the time or expertise to keep their horses in their back yard and they need a board their horses. Yeterian Dep. 10/08/20 78 ln 13. **Exhibit IIII**
202. Matt Yeterian admitted that the decision in *LeCompte I* caused anxiety in the Riding Club which resulted in the Club hiring an attorney to bring a petition to amend the zoning code to protect horse boarding. Yeterian Dep. 10/08/20 30 ln 22- Pg. 31 ln. 9. **Exhibit IIII**.
203. ZBA Member Anderson testified that 14-19 was designed to address the issue of commercial horse boarding. He testified that:

Q. What problem was that designed to address?

A. To address the home occupation and all of the other things that we are dealing with right now, and to -- well, let me step back. The ordinance as a whole was designed to address the dirty little secret that has been in Barrington Hills for at least as long as I have lived here, and from what I can tell since the Village was incorporated. And that is that commercial boarding as you define it, or as somebody defines it, has been going on in this Village from its inception. The problem being -- the problem is that it never has been policed by the Village unless somebody complains. We can go back to the testimony in many of the public hearings where David Stieper specifically indicates that there is at least 14 boarding operations going on in the Village back in 2011. Anderson Dep. 2/18/20 Pg. 101 -102. **Exhibit CC** .

204. Village Board Trustee Messer did not vote for 14-19 to benefit Benjamin LeCompte, he voted to benefit the residents of the Village, he also acknowledged that there was confusion in the community as to who could board horses. He characterized the horse boarding problem occurring for years with the Village having a don't ask don't tell policy. He believed that Ordinance 14-19 resolved the horse boarding problem in the Village. Messer Dep March 11, 2020 Pg. 147-148. **Exhibit NN**
205. The Village in 2014 conducted a community survey from June 2, 2014 to July 2014, which showed that what the Village could do to better serve the residents were to: Allow horse boarding and disallow bike lanes, clarify the rules concerning horse boarding, change the ordinance to allow commercial horse boarding, give clarity to the ordinances, stop harassing people with horses, allow horse boarding because it is consistent with our community. **Exhibit AAAAA** . Pg12-14.
206. The Community Survey in the Village showed that 82.6% believe that the equestrian trail system is integral to the village, 94.4% boarded horses in the Village, 64.1 believed that equestrian boarding help protect open space and maintain large land parcels., 39% believed that former Horizon Farms should be used for horse boarding, and 72% believed the former Horizon Farms property should be used for equestrian riding. **Exhibit AAAAA** . Pg. 18 -20.

Retroactivity

207. ZBA member Anderson testified that he incorporated the June 26, 2006 retroactive date in 14-19 "because that was the date that the home occupation ordinance was amended to put in some what I would describe as confusing language." Referring to Ordinance 06-12. Anderson Dep. 2/28/20 Pg. 60 ln. 2-5. **Exhibit CC** .
208. Member Anderson also testified that he did not find it unusual to incorporate a retroactive provision particularly when there had been problems interpreting the home occupation provision with this particular language in it. . Anderson Dep. 2/28/20 Pg. 64 ln. 2-7. **Exhibit CC** .
209. Member Anderson also testified that in what became 14-19, due to the extensive revisions to the home occupation provisions, the retroactivity provision was added to "clean things up." Anderson Dep. 2/28/20 Pg. 86 ln. 1-9. **Exhibit CC**
210. Member Anderson testified that: What I'm saying is that the home occupation ordinance had some bad language in it that was put in in June of 2006. I was frustrated by that because nobody could give me an explanation of why that language went in. So if we are going to clean up the ordinance, let's get rid of the language and make it retroactive. Anderson Dep. 2/28/20 Pg 98 ln.9-16. **Exhibit CC** .
211. Member Anderson testified that retroactivity did not favor LeCompte. Anderson Dep. 2/28/20 Pg. 97 ln.16-19 **Exhibit CC** .

212. Member Anderson also testified that there was no urgency in moving this text amendment forward. Anderson Dep. Pg. 69 ln.11 – Pg. 70 ln. 19. **Exhibit CC**
213. ZBA Chairman Freeman testified that she was contacted by various barn managers who were concerned the text amendment would adversely affect their barns unless the amendment was retroactive. They believed it was necessary to protect them. Freeman Dep. 2/12/20 pg 73-77. **Exhibit BBBB**
214. ZBA Chairman Freeman further testified that as to the confusion caused by the 06-12 section (g), the notwithstanding provision, and what the clause meant, and the need to clarify this provision. Freeman Dep. 2/12/20 Pg. 73-77. **Exhibit BBBB**
215. Chairman Freeman also testified that “My recall, and this was back in May or June, so I'd have to go back to my notes, was that that specific date was the date in 2006 when the Village trustee adopted the language that had this notwithstanding clause in it that has gummed up the works ever since. So that specific dates back to the date that the old code was changed to the existing code. That’s what it’s linked back to. Freeman Dep. 2/12/20 Pg. 73-77. **Exhibit BBBB**
216. The Village attorney advised the ZBA that “First, a governmental entity, such as the Village of Barrington Hills, is within its legal right to adopt changes to its ordinances and to adopt retroactivity clauses.” ZBA RTP 12//03/14 Pg. 122 ln. 15-18. **Exhibit PPPP**

Cease and Desist

217. Member Freeman stated I'd like an opportunity to suggest that we also be able to consider the recommendation to the Village to defer any action on this matter. ZBA RTP 8/28/08 Page 74 line 19. **Exhibit CCCCC**
218. ZBA Member Mullen said “Now we need to send a communicate to the Village Board requesting that they withhold enforcement of the cease and desist order until we resolve our committee's recommendation.” ZBA RTP 8-28-08 page 80 line 4 **Exhibit CCCCC**
219. ZBA Chairman Knight recommend “ ...At the same time, when we said do not enforce, that also implied that there won't be any fines or penalties assessed.” ZBA RTP 8-28-08 page 80 line 10 **Exhibit CCCCC**
220. ZBA Member Johnson stated “ ...I would say is they would delay, you know, the effectiveness of the cease and desist until they make the determination if they are going to make any changes. ZBA RTP 8/28/08 page 82. In addition he said..... we'll decide and the Village Board of Trustees decides if there are going to be changes. If there's changes, we apply the same rules to everybody, including Dr. LeCompte and all these other alleged boarding operations.” Pg. 87 **Exhibit CCCCC**

221. Chairman Knight stated:” ...And you’ll recall that a couple years ago—well, actually more recently with Oakwood Farms on the cease and desist, we requested of the board that they withhold action on that pending this board coming up with a text amendment that would address the larger parcels of property so that they could come into compliance in some way, shape or form for commercial boarding of horses and I think that’s where we stand right now on that issue.....” ZBA RTP 6-23-10 Page 36 line 19 **Exhibit DDDDD**
222. John J. Pappas stated his believe on oath that the retroactivity provision protected his operation. Pappas Affidavit **Exhibit EEEEE**.
223. The Village of Barrington Hills Zoning Code permits the agricultural use of R- 1 zoned property. **Exhibit FFFFF**
224. Ordinance 14-19. **Exhibit GGGGG**
225. Trustee Patty Meroni stated the 14-19 was in the best interest of the Village and not for one person. **Exhibit HHHHH**