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APPELLATE COURT 1ST DISTRICT

DOCKET NO. 1-23-0869

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JAMES J. DRURY III, as agent of the Peggy D. Drury Declaration of Trust U/A/D 02/04/00, Jack E. Reich and James T. O'Donnell, Plaintiffs-Appellants, v. VILLAGE OF BARRINGTON HILLS, an Illinois Municipal Corporation, Defendant-Appellee, and BENJAMIN B. LECOMPTE III, CATHLEEN B. LECOMPTE, JOHN J. PAPPAS, SR., BARRINGTON HILLS POLO CLUB, INC. and VICTORIA KELLY Intervenors-Defendants-Appellees.	Appeal from the Circuit Court of Cook County, County Department, Chancery Division Circuit Court Case No. 15 CH 3461 Trial Judge: David B. Atkins Date of Notice of Appeal: 05/15/23 Date of Post Judgment Motion Order: None Date of Judgment(s): 12/16/21 and 04/24/23

SEPARATE APPENDIX TO THE BRIEF OF THE APPELLANTS

Attorney for Appellants:

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ORAL ARGUMENT REQUESTED

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PLAINTIFFS
EXHIBIT 2

THE VILLAGE OF BARRINGTON HILLS

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

TELEPHONE
(847) 551-3000

FACSIMILE
(847) 551-3050

I, Dolores G. Trandel, do hereby certify that I am the duly appointed and qualified Village Clerk of the Village of Barrington Hills, Cook, Kane, Lake and McHenry Counties, Illinois, a municipal corporation, and the keeper of its ordinances, resolutions, records and Corporate Seal, that the attached is a true and complete copy of Ordinance 14-19, AN ORDINANCE AMENDING TITLE 5, ZONING REGULATIONS SET FORTH IN CHAPTERS 2, 3 AND 5 REGARDING HORSE BOARDING passed on the 23rd day of February, 2015.

I DO FURTHER CERTIFY that the original, of which the attached is a true and correct copy, is entrusted to me as the Village Clerk of said Village for safekeeping, and that I am the lawful custodian and keeper of the same.

IN WITNESS WHEREOF, I have affixed my name as Village Clerk and caused the seal of said Village to be affixed hereto this 9th day of March, 2015.

Dolores G. Trandel
Village Clerk

Seal

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PASSED by the Board of Trustees of the Village of Barrington Hills, the 15th day of December, 2014. Roll Call.

AYES: 5 (Harrington, Meroni, Selman, Messer, Gohl)
NAYES: 1 (Konicek)
ABSENT: 1 (McLaughlin)
ABSTAIN: 0

Veto Reported by the Village President at the Board of Trustee's Meeting of January 26, 2015.

A Veto Override was Passed by the Board of Trustees of the Village of Barrington Hills, thE 23rd Day of February 23, 2015. Roll Call.

AYES: 5 (Harrington, Meroni, Selman, Messer, Gohl)
NAYS: 2 (Konicek, McLaughlin)
ABSENT: 0
ABSTAIN: 0

ATTEST:

Dalores J. Trandel
Village Clerk

EXHIBIT A

TEXT AMENDMENT

The ZBA recommends to the Village Board that is pass an ordinance to amend the Zoning Code as follows (strike-through represents language deleted from the existing Zoning Code and bold, underline represents language added to the existing Zoning Code):

Chapter 2
ZONING DEFINITIONS

5-2-1: DEFINITIONS:

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

Chapter 3
GENERAL ZONING PROVISIONS

5-3-4: REGULATIONS FOR SPECIFIC USES:

(A) Agriculture.

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

2

2 Boarding and Training of Horses and Rider Instruction:

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

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

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

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

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

v) Nuisance causing activities: It is unlawful for any person operating a Boarding and Training Facility to allow or permit any animal to cause serious or habitual disturbance or annoyance by frequent or habitual noisy conduct, which shall annoy, injure or endanger safety, health, comfort or repose of others. Noisy conduct is defined as noise which can be heard continuously within

an enclosed structure off the property of the Boarding and Training Facility for more than fifteen (15) minutes and which annoys, injures or endangers the safety, health, comfort or repose of others. In addition to the foregoing specific limitations, no Boarding or Training Facility shall cause or create any act, which endangers public health or results in annoyance or discomfort to the public, said act being defined as a nuisance under Title 7, Chapter 1 of this Code.

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

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

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

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

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

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

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

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

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

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

3. Use Limitations:

a. Employee Limitations:

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

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

b. Structural Limitations:

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

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

c. Operational Limitations:

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

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

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

(4) No routine attendance of patients, clients, customers, subcontractors, or employees (except employees and subcontractors as provided in subsection (D)3a(2) of this section) associated with any home occupation shall be permitted at the premises of the home occupation, provided, however, that the attendance of up to four (4) persons at any one time may be allowed for the purpose of receiving private instruction in any subject of skill. "Routine attendance" means that the conduct of the home occupation requires persons, other than the owner or permitted employees and

subcontractors, to visit the premises of the home occupation as part of the regular conduct of the occupation, without regard to the number, frequency, or duration of such visits.

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

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

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

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

d. Signage And Visibility:

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

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

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

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

g. Boarding and Training Of Horses and Riders: The boarding and training of horses and rider instruction shall be a permitted home occupation. For properties of less than ten acres these activities are regulated under Section 5-3-4(D) herein, and in addition must comply with the restrictions under Section 5-3-4(A)2i, iii, and viii. For properties of ten acres or larger, these activities are regulated solely under Section 5-3-4(A)2 herein. ~~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. (Ord. 06-12, 6-26-2006)~~

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

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

EXHIBIT B

ZBA FINDINGS OF FACT/RECOMMENDATION

December 8, 2014

To: President and Board of Trustees
Village of Barrington Hills

RE: ZBA Application for Text Amendment - Horse Boarding

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

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

FACTS

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

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

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

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

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

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

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

FINDING

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

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

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

RECOMMENDATION

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

Respectfully submitted,

Judith K Tree, Chair, Zoning Board of Appeals

Zoning Board of Appeals
Village of Barrington Hills

EXHIBIT C

TEXT AMENDMENT "CLEAN COPY"

Exhibit C

Chapter 2

ZONING DEFINITIONS

5-2-1: DEFINITIONS:

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

Chapter 3

GENERAL ZONING PROVISIONS

5-3-4: REGULATIONS FOR SPECIFIC USES:

(A) Agriculture:

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

2) Boarding and Training of Horses and Rider Instruction:

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

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

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

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

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

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

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

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

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

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

. . .

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

Exhibit C

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

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

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

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

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

3. Use Limitations:

a. Employee Limitations:

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

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

b. Structural Limitations:

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

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

c. Operational Limitations:

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

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

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

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

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

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

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

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

d. Signage And Visibility:

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

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

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

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

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

. . .

Exhibit C

Chapter 5

RESIDENTIAL DISTRICTS

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

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

Tab 2

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

JAMES DRURY, *et al.*, Plaintiffs, v. VILLAGE OF BARRINGTON HILLS, Defendant.	No. 2015-CH-3461 Calendar 16 Judge David B. Atkins

JUDGE DAVID B. ATKINS
DEC 16 2021
Circuit Court-1879

ORDER

THIS CASE COMING TO BE HEARD on Intervenors' Motion for Summary Judgment, Plaintiffs' Motion for Summary Judgment, and Intervenors' Motion for Declaratory Judgment, the court having considered the briefs submitted and being fully advised in the premises,

THE COURT HEREBY FINDS AND ORDERS:

1. This is a dispute over the constitutionality of a certain ordinance (14-19, the "Ordinance") adopted in 2014 by the Defendant Village of Barrington Hills regarding the commercial boarding of horses. Plaintiffs argue the Ordinance, and in particular a retroactivity provision therein, is facially invalid both because as a matter of law and because it was adopted solely for the benefit of one individual, Intervenor Benjamin B. LeCompte III. Intervenors[1] argue the provision is within the Village's authority to enact and that in fact it was enacted for its general welfare and not for the benefit of any one individual.

2. Turning first to the facial validity of the Ordinance's retroactivity provision, the court finds summary judgment is appropriate as the question is one purely of law. The parties agree that Illinois law on the subject is governed by *Commonwealth Edison Co. v. Will County Collector*;[2] in which the Illinois Supreme Court largely adopted and further detailed the United States Supreme Court's approach under *Landgraf v. USI Film Products*.[3] Both Courts instruct that while there is a default presumption against applying statutes retroactively, courts must

[1] As noted in prior orders in this case and as the basis for granting the various Intervernors' leave to intervene, the Village itself no longer contests this matter due to a change in the members of its Board who have taken a different position on the issues. While Plaintiffs make much of the Village's admissions on the legal claims in this case the court is not persuaded its current opinion has any bearing on whether it in fact had the authority in 2014 to enact the Ordinance's retroactivity provision under Illinois law.
[2] 196 Ill. 2d 27 (2001)
[3] 511 U.S. 244 (1994)

generally[4] still do so when the relevant legislature clearly indicates an intent to apply it as such. The court here thus would not need to resort to default presumptions even if the statute at issue did have retroactive effect (as the Ordinance very clearly indicates an intent to apply back to 2006, but as the Courts in *Landgraf* and *Commonwealth Edison* made clear "retroactive effect" is a term of art. A statute is not "retroactive" for purposes of the rule merely because it has any legal effect on past conduct, and court instead must ask whether the new rule "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."[5] The Court's analysis makes clear that the rule focuses on new and/or increased burdens on private rights as a corollary to the prohibitions on *ex post facto* laws and bills of attainder, not laws that would *decrease* or remove such burdens. "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."[6] The Ordinance in this case both clearly intends to apply back to 2006 and only does so to *allow* the commercial boarding of horses during that time period, not to impose any new prohibition on past conduct, and as such *Landgraf* does not suggest any bar against its effect.

3. As to the second argument, that the Ordinance is invalid because it was enacted solely to benefit Mr. LeCompte, it is readily apparent the court cannot resolve that question at summary judgment. While both sides move for such ruling and claim the relevant facts are undisputed, they rely on substantially separate and often contradictory facts, including statements by different individuals with knowledge of the Village Board's actions in 2014 stating the Ordinance was or was not enacted for LeCompte's benefit, disputed accusations that LeCompte inappropriately influenced members of the Board to enact the Ordinance, etc. It is axiomatic that summary judgment is a drastic remedy only appropriate in cases where the dispute is solely legal in nature, and this is clearly not such a case. The parties here raise entirely competing narratives of events going back as far as 1994 in such a manner as can only be resolved at trial.

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[4] A legislature's clear intent to apply a statute retroactively would only be ignored if there were some specific constitutional bar against it, which the Court in Landgraf described as "now modest." 511 U.S. at 272

[5] *Landgraf*, 511 U.S. at 280

[6] *Id* at 270-71 (emphasis in original)

4. Finally, on the subject of such long-past events, Intervenors move for the first time in a separate motion for a declaration that two other ordinances adopted in 2006 (the "2006 Ordinances"), and which the 2014 Ordinance substantially replaced as they related to horse boarding, are also invalid for procedural defects in their adoption, arguing that if so the 2014 Ordinance has a more compelling basis for its adoption. The court is not persuaded such a declaration would have any significant effect on this case as all parties (including apparently the Village when enacting the 2014 Ordinance) have at all relevant times acted under the assumption that the 2006 Ordinances were valid, and even if such a challenge were appropriate it is also severely untimely. To the extent the facts in this case *are* undisputed it is a matter of public record that the parties have been involved in extensive litigation for many years over related matters, including over a cease and desist order arising out of LeCompte's alleged violation of the very statutes he now seeks to argue were never valid some 12 years later. His argument that he had "no reason to investigate" the 2006 Ordinances throughout this and including appellate litigation interpreting the language of the same statutes is wholly unpersuasive.

5. For these reasons, the instant motions are all denied. This matter is continued for case management and to set a trial date to February 10, 2022 at 10:30 AM.

JUDGE DAVID B. ATKINS
ENTERED:
DEC 16 2021
Circuit Court-1879

Judge David B. Atkins

The court.

Tab 3

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

JAMES J. DRURY III, as agent of the Peggy D. Drury Declaration of Trust U/A/D/ 02/04/00, JACK E. REICH, and JAMES T. O'DONNELL,
Plaintiffs,

v.

VILLAGE OF BARRINGTON HILLS,
Defendant.

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

Intervenors.

No. 2015-CH-3461

Calendar 16

Judge David B. Atkins

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

TRIAL ORDER

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

THE COURT HEREBY ORDERS:

Background

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

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

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

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

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

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

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

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

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

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

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

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

Legal Standards

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

Discussion and Findings

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

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

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

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

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

At trial, the court finds this theory collapsed entirely.

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

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[8] Intervenors' Exhibit 35

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ENTERED: JUDGE DAVID B. ATKINS

APR 24 2023

DBA

Circuit Court-1879

Judge David B. Atkins

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

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

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

Tab 4

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

JAMES J. DRURY III, as agent of the Peggy D. Drury Declaration of Trust U/A/D 02/04/00, Jack E. Reich and James T. O'Donnell,	)	
Plaintiffs,	)	**No. 15-CH- 3461**
-v-	)	
VILLAGE OF BARRINGTON HILLS, an Illinois Municipal Corporation,	)	
Defendant,	)	
BENJAMIN B. LECOMPTE III, CATHLEEN B. LECOMPTE, JOHN J. PAPPAS, SR., BARRINGTON HILLS POLO CLUB, INC. and VICTORIA KELLY,	)	
Defendants-Intervenors.	)	

JOINT STIPULATIONS OF FACT BETWEEN PLAINTIFFS AND VILLAGE

Plaintiffs, James J. Drury III, as agent of the Peggy D. Drury Declaration of Trust U/A/D 02/04/00, Jack E. Reich, and James T. O'Donnell, by their attorneys, The Law Office of Thomas R. Burney, LLC and the Defendant, Village of Barrington Hills ("Village"), by its attorneys, Bond Dickson & Conway, submit the following Stipulations of Fact for the bench trial in the above-captioned case:

1. With respect to the Schuman Letter dated March 15, 2011, obtained by LeCompte, although the letter appears to have been signed by Don Schuman, the Village admits that the Schuman Letter was not personally signed by Schuman. (Village's Response to Plaintiffs' Request to Admit Facts and Genuineness of Documents, ¶ ¶ 43-45.) *The Schuman letter dated March 15, 2011, is Plaintiffs' Exhibit 18.*

2. On March 28, 2014, the First District Appellate Court in *LeCompte II* reversed the dismissal of the Drury-McLaughlin Lawsuit and remanded the case to the Circuit Court for further proceedings. (Intervenors' Answer to Complaint filed 4/22/19, ¶ *26; LeCompte II*, 2014 IL App (1st) 121894-U, ¶ 57.)

3. Before the Drury-McLaughlin lawsuit was reinstated, LeCompte had continued to operate a large-scale commercial horse boarding operation relying on the authority of the "Schuman Letter", and the Village took no action to enforce the cease and desist order or the judgment it had secured in *LeCompte I.* (Village's Answer to Complaint filed 9/22/16, ¶ 47; *LeCompte II,* 2014 IL App (1st) 121894-U, ¶ 24.)

4. Trustees Joseph Messer and Patti Meroni were members of the Village Board which refused to act to enforce the Village's Zoning Ordinance against Oakwood Farm and the cease and desist order against commercial horse boarding at Oakwood Farm; and refused to levy any fines to recover some of the in excess of $150,000.00 in legal fees and costs that the Village expended in defending the 2006 Zoning Ordinance against LeCompte's actions before the Circuit Court of Cook County and the Appellate Court in *LeCompte I.* (Village's Answer to Complaint filed 9/22/16, ¶ 85; Village's Response to Plaintiffs' Request to Admit Facts and Genuineness of Documents, ¶ 42.)

5. On July 20, 2011, Judith Freeman ("Freeman"), the then chairman of the Zoning Board of Appeals, sent a letter to the Village Board of Trustees (**"Freeman Letter"**). (Village's Response to Plaintiffs' Request to Admit Facts and Genuineness of Documents, ¶ 49.) *The Freeman Letter is Plaintiffs' Exhibit 26.*

6. The Freeman Letter referred to the recent ruling of the Appellate Court in *LeCompte I.* In the letter, Freeman requested that the Village Board review and discuss a proposal that larger boarding operations, specifically 10 horses or more, be required to obtain a special use permit. *The Freeman Letter is Plaintiffs' Exhibit 26.*

7. The Freeman Letter enclosed the ZBA's proposed changes to the zoning code and stated: "We are respectfully requesting that you review and discuss our proposal and if it is acceptable to you, that you refer it back to the Zoning Board of Appeals to conduct a public hearing so that we may make the appropriate recommendation to the Board of Trustees for its adoption." *The Freeman Letter is Plaintiffs' Exhibit 26.*

8. The Village Board on August 22, 2011 took no action on the request and recommendations contained in the Freeman Letter. (Village's Response to Plaintiffs' Request to Admit Facts and Genuineness of Documents, ¶ 51.)

9. The Village Board did not initiate any new text amendments in 2011, 2012 and 2013 concerning large scale horse boarding operations. (Village's Response to Plaintiffs' Request to Admit Facts and Genuineness of Documents, ¶ 52.)

10. The ZBA did not conduct any public hearings on any new text amendments in 2011, 2012 and 2013 concerning large scale commercial horse boarding operations. (Village's Response to Plaintiffs' Request to Admit Facts and Genuineness of Documents, ¶ 53.)

11. No action or initiative on a text amendment concerning large scale commercial horse boarding operations was undertaken by the Village until after the Drury-McLaughlin Lawsuit was reinstated by the Appellate Court. (Village's Answer to Complaint filed 9/22/16, ¶ 46.)

12. On December 2, 2014, the ZBA held a public hearing on the Anderson II Text Amendment. (Village's Response to Plaintiffs' Request to Admit Facts and Genuineness of Documents, ¶ 74.) *The 12/02/14 Transcript of Proceedings is Plaintiffs' Exhibit 44.*

13. At the public hearing on December 2, 2014, four (4) witnesses testified in connection with the commercial horse boarding text amendment (Anderson II Text Amendment). (Village's Answer to Complaint filed 9/22/16, ¶65.)

14. One of the witnesses presented by the Village as an expert land planning witness was Konstantine Savoy. Konstantine Savoy testified at the hearing that he had no opinion on whether the text amendment satisfied the standards in the Village Code; that he was not prepared to render such an opinion; and that he was not tasked to specifically give comment or criticism relative to the specific text amendment. He testified that it would take much further study involving his firm and an interdisciplinary team to render such an opinion. He agreed such an analysis and study would include an analysis of when horse boarding becomes commercial as a threshold issue, and the impact on surface and subsurface water supplies, traffic and other resulting environmental impacts. In his 30+ years as a professional land planner involved in assisting in the drafting of zoning regulations, he could not recall a single instance of an ordinance ever having been adopted that contained a retroactivity provision like the Anderson Text Amendment. He could not identify any community that permits large scale commercial horse boarding as a matter of right. Evidence was introduced that, based on a survey of five (5) communities (Mettawa, Wayne, Bull Valley, Homer Glen and Wadsworth), all five (5) communities which provided for commercial horse boarding adopted the special use approach. (Village's Answer to Complaint filed 9/22/16, ¶¶ 65-66.)

15. Mr. Schuman, the Village's building and zoning official, testified. He offered to prepare and present to the ZBA a list of items he deemed created enforcement issues. During his testimony, he identified several of these issues. His testimony supported a permit requirement approach rather than the permitted as a matter of right approach. In all of his years with the Village, Schuman has never seen the Village adopt an ordinance with a retroactivity provision. Although he has been the building and zoning officer of the Village for the last 8 ½ years, he was not consulted or asked for his opinion on the issues he addressed in his testimony. (Village's Answer to Complaint filed 9/22/16, ¶67.)

16. Mr. Kosin, the Village's Administrator, could not identify any other property but Oakwood Farm which was in violation of the Village's Home Occupation restrictions. In his tenure at the Village, which dates back to 1982, he cannot ever recall an ordinance adopted by

the Village with a retroactivity provision included in it. (Village's Answer to Complaint filed 9/22/16, ¶68; Plaintiffs' Ex. 44, pp. 20-22.)

17. A request was made by residents to the ZBA for additional time to respond to the witnesses. Said request for continuance was denied by the ZBA and the ZBA closed the public hearing on December 3, 2014. (Village's Answer to Complaint filed 9/22/16, ¶ 64.) *The 12/03/14 Transcript of Proceedings is Plaintiffs' Exhibit 45.*

18. On December 15, 2014, the Village Board held a special meeting. (Village's Response to Plaintiffs' Request to Admit Facts and Genuineness of Documents, ¶ 87; Intervenors' Answer to Complaint filed 4/22/19, ¶ 70; Village's Answer to Complaint filed 9/22/16, ¶ 70.)

19. Village President Martin McLaughlin was unable to attend the special meeting on December 15, 2014. Trustee Konicek read a statement from Village President McLaughlin at the December 14, 2014, meeting. (Village's Response to Plaintiffs' Request to Admit Facts and Genuineness of Documents, ¶¶ 90-92; Written Statement of Village President Martin J. McLaughlin (VOBH 1020-1024).) *The McLaughlin Written Statement is Plaintiffs' Exhibit 47.*

20. On January 8 [*sic* 6], 2015, Village President Martin McLaughlin vetoed the Anderson II Text Amendment. (Village's Response to Plaintiffs' Request to Admit Facts and Genuineness of Documents, ¶¶ 93-94; Village's Answer to Complaint filed 9/22/16, ¶ 71.)

21. At the Village Board meeting on January 26, 2015, the Village President read his message vetoing the Anderson II Text Amendment into the public record. (Intervenors' Answer to Complaint filed 4/22/19, ¶ 72; Village's Answer to Complaint filed 9/22/16, ¶ 72; Village's Response to Plaintiffs' Request to Admit Facts and Genuineness of Documents, ¶ 94.) *The McLaughlin Veto Message is Plaintiffs' Exhibits 48 and the Village Board Meeting Minutes from 1/26/15 is Plaintiffs' Exhibit 49.*

22. On February 23, 2015, the Village Board voted to override the President's veto and approve Anderson II Text Amendment by a vote of 5-2 with Trustees Messer, Meroni and Selman voting in favor of the override. (Village's Answer to Complaint filed 9/22/16, ¶¶ 73-74.) *The Village Board Meeting Minutes from 2/23/15 is Plaintiffs' Exhibit 51.*

23. On April 7, 2015, the 2015 consolidated election took place. Selman and Meroni lost their bids for reelection. Messer chose not to seek re-election, and was, therefore not on the ballot for this election. (Village's Response to Plaintiffs' Request to Admit Facts and Genuineness of Documents, ¶¶ 100-101.)

24. The Village has admitted in its answer to Plaintiffs' Complaint in this lawsuit that the Anderson II Text Amendment approved by the Village and enacted as Ordinance 14-19 does not promote the general health, safety and welfare of the Village. (Village's Answer to

Complaint filed 9/22/16 *e.g.* at ¶¶ 2, 9, 102-103, 109-110, 115-117, 120, 122-125, 136-137, 140-151.)

25. Other than LeCompte, the Village has not cited any other property owner for violating the home occupation provisions with respect to renting horse stalls to third persons for a fee between 2008 and September 30, 2020, the date the Village served its Response to Plaintiffs' Request to Admit Facts and Genuineness of Documents. (Village's Response to Plaintiffs' Request to Admit Facts and Genuineness of Documents, ¶ 103.)

26. On September 21, 2007, architect Steven Steffens informed the Village that after visiting the LeCompte property ("Oakwood Farm") and current horse stables, it was his "opinion that the facility is a public stable," and he listed code issues and violations and concluded that "the existing facility is non-compliant with the Village's adopted code as it exceeds the maximum allowable area by approximately 23,319sf and maximum allowable height of approximately 10'-0". All deficiencies and non-conforming elements of the existing facility must be rectified prior to the review of any further proposed structures at this location." (Village's Response to Plaintiffs' Request to Admit Facts and Genuineness of Documents, ¶ 114.) *The 09/21/07 Steffens Memo is Plaintiffs' Exhibit 73.*

Respectfully submitted,

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

JAMES J. DRURY III, as agent of the Peggy D. Drury Declaration of Trust U/A/D 02/04/00, Jack E. Reich and James T. O'Donnell,	)	
Plaintiffs,	)	**No. 15-CH- 3461**
-v-	)	
VILLAGE OF BARRINGTON HILLS, an Illinois Municipal Corporation,	)	
Defendant,	)	
BENJAMIN B. LECOMPTE III, CATHLEEN B. LECOMPTE, JOHN J. PAPPAS, SR., BARRINGTON HILLS POLO CLUB, INC. and VICTORIA KELLY,	)	
Defendants-Intervenors.	)	

JOINT STIPULATIONS OF FACT

Plaintiffs, James J. Drury III, as agent of the Peggy D. Drury Declaration of Trust U/A/D 02/04/00, Jack E. Reich, and James T. O'Donnell, by their attorneys, The Law Office of Thomas R. Burney, LLC; the Defendant Village of Barrington Hills, by its attorneys, Bond Dickson & Conway; and the Intervenors Benjamin B. LeCompte, III, Cathleen B. LeCompte, John J. Pappas, Sr., Barrington Hills Polo Club, Inc. and Victoria Kelly, by their attorneys Matuszewich & Kelly and The Pappas Law Group, LLC submit the following Stipulations of Fact for the bench trial in the above-captioned case. In making this Joint Stipulations of Fact, the Parties specifically limit their agreement to the truth of the facts stated, and do not make any joint representation as to the relevance of the facts set forth or to any interpretation of the facts to allegations at issue in the above-captioned case. [1]

[1] References to "Complaint" herein refer to Plaintiffs' Corrected First Amended Verified Complaint for Declaratory Judgment, Injunction, and Other Relief filed on June 30, 2016.

1. The Village of Barrington Hills ("Village" or "Barrington Hills") is an Illinois municipal corporation organized and existing pursuant to the Illinois Municipal Code, 65 ILCS 5/1-1 *et seq.* (Village's Answer to Complaint filed 09/22/16, ¶ 16; Intervenors' Answer to Complaint filed 4/22/19, ¶ 16.)

2. On December 15, 2014, the Village Board voted to approve Ordinance 14-19 titled "An Ordinance Amending Title 5 Zoning Regulations Set Forth in Chapter 2, 3, and 5 Regarding Horse Boarding", and Ordinance 14-19 was later adopted on February 23, 2015. (Intervenors' Answer to Complaint filed 4/22/19, ¶¶ 1, 70.)

3. Ordinance No. 14-19 is the subject of the legal challenge in this lawsuit filed by Plaintiffs. *Ordinance No. 14-19 is Plaintiffs' Exhibit 2.*

4. Ordinance 14-19 was adopted by the Village Board over the veto of then-Village President, Martin McLaughlin. The veto of the Village President was reported at the Village Board of Trustees' meeting on January 26, 2015. (Ordinance 14-19; Intervenors' Answer to Complaint filed 4/22/19, ¶ 72.)

5. On February 27, 2015, Plaintiffs, James J. Drury III, Jack E. Reich, and James T. O'Donnell, initiated this lawsuit by filing a complaint against the Village challenging Ordinance 14-19 as permitting commercial horse boarding operations as a matter of right on residential property in the Village. (Complaint filed 02/27/15.)

6. Oakwood Farms is the residential property owned and occupied by the Intervenors, Benjamin B. LeCompte III, Cathleen B. LeCompte (collectively "LeCompte"). The address of the property is: 350 Bateman Road in Barrington Hills. (Amended Petition to Intervene filed on 8/20/15, ¶ 8.)

7. LeCompte, in addition to having a large barn on his property with horse stalls, has a polo field on the property of Oakwood Farms. (Amended Petition to Intervene filed on 8/20/15, ¶ 9.)

8. As of September 2007, an inspection of the stable facility at Oakwood Farms by the Village reported the existence of four interconnected buildings (two horse stables, one riding arena, and one storage shed) and the facility's square footage as 29,619 square feet in total floor area. (LeCompte's Response to Plaintiffs' Amended Request to Admit Facts and Genuineness of Documents, ¶ 19(1) and ¶ 19(2); 8/13/08 ZBA Transcript, p. 66.)

9. According to the records of the Cook County Assessor, LeCompte's residence located on his property is 9,847 square feet in size. *The Cook County Assessor record is Plaintiffs' Exhibit 71.*

10. Defendant-Intervenor, Barrington Hills Polo Club, Inc. ("Polo Club"), is a not-for-profit corporation with its principal office located at 208 A Braeburn Road in Barrington Hills. (Amended Petition to Intervene filed on 8/20/15, ¶ 3.)

11. Shamrock Farms is the residential property owned and occupied by the Intervenor John J. Pappas, Sr. The address of the property is: 23 W. County Line Road in Barrington Hills. (Petition to Intervene filed on 7/23/15, ¶ 2.)

12. Plaintiff, James J. Drury III, owns and occupies property located at 7 Deepwood Road and 5 Deepwood Road in Barrington Hills ("Drury Property"). The Drury Property is adjacent to Oakwood Farms. (Complaint, ¶ 8; Drury Deposition, p. 12.)

13. Plaintiff, Jack Reich, and his wife own and occupy property located at 110 Brinker Road and 106 Brinker Road in Barrington Hills ("Reich Property"). (Complaint, ¶ 11; Reich Affidavit - Ex. P to Complaint.)

14. Plaintiff, James T. O'Donnell, and his wife own and occupy the property located at 1 Ridgecroft Lane, in Barrington Hills ("O'Donnell Property"). (Complaint, ¶ 13.)

15. By virtue of Village Ordinance 06-12 dated June 26, 2006, the Village permitted its residents to engage in horse-boarding activities on their residential property as a home occupation. (Village's Response to Plaintiffs' Request to Admit Facts and Genuineness of Documents, ¶ 1.) *Ordinance 06-12 dated June 26, 2006 is Plaintiffs' Exhibit 1.*

16. On January 10, 2008, the Village issued a cease and desist order against LeCompte. (Village's Answer to Complaint filed 09/22/16, ¶30; Intervenors' Answer to Complaint filed 4/22/19, ¶30; Village's Response to Plaintiffs' Request to Admit Facts and Genuineness of Documents, ¶¶ 5-6.) *The January 10, 2008 cease and desist order is Plaintiffs' Exhibit 6.*

17. The cease and desist order advised LeCompte of his rights to appeal the Village's determination. (LeCompte's Response to Plaintiffs' Amended Request to Admit Facts and Genuineness of Documents, ¶ 3.)

18. LeCompte appealed the cease and desist order to the Village Zoning Board of Appeals ("ZBA"). (Village's Response to Plaintiffs' Request to Admit Facts and Genuineness of Documents, ¶ 8.)

19. As of August 13, 2008, the date of a Zoning Board of Appeals hearing at which LeCompte testified LeCompte had about 45 to 50 horses at the barn Oakwood Farms. LeCompte admits that at one point in time, 5-6 horses belonged to them and the total number of horses on the property may have reached 45. (LeCompte's Response to Plaintiffs' Amended Request to Admit Facts and Genuineness of Documents, ¶ 22; 8/13/08 ZBA Transcript, p. 66.)

20. At the August 13, 2008, hearing of the ZBA, LeCompte testified that he "never claimed to be a home occupation" and "would never even come to this Board and say I'm a home occupation." (LeCompte's Response to Plaintiffs' Amended Request to Admit Facts and Genuineness of Documents, ¶ 28.)

21. On November 4, 2008, the Zoning Board of Appeals denied LeCompte's appeal of the cease and desist order and issued a written decision. (LeCompte's Response to Plaintiffs' Amended Request to Admit Facts and Genuineness of Documents, ¶ 4; Village's Response to Plaintiffs' Request to Admit Facts and Genuineness of Documents, ¶¶ 10-11.) *The ZBA decision dated November 4, 2008, is Plaintiffs' Exhibit 7.*

22. LeCompte further appealed the Village's issuance of the cease and desist order by filing a lawsuit in the Circuit Court of Cook County against the Village in *Benjamin B. LeCompte, et al. v. Zoning Board of Appeals For The Village of Barrington Hills, et al.* (Civil Case No. 09 CH 00934). This lawsuit is also referred to by the parties as "***LeCompte I***". (Village's Answer to Complaint filed 09/22/16, ¶ 19; Intervenors' Answer to Complaint filed 4/22/19, ¶ 19; Village's Response to Plaintiffs' Request to Admit Facts and Genuineness of Documents, ¶12.)

23. On January 15, 2010, the Circuit Court issued a decision in *LeCompte I* that was adverse to LeCompte. The Circuit Court upheld the cease and desist order, and LeCompte appealed the Circuit Court's decision. (Intervenors' Answer to Complaint filed 4/22/19, ¶ 20; LeCompte's Response to Plaintiffs' Amended Request to Admit Facts and Genuineness of Documents, ¶ 5; 01/15/20 Memorandum Opinion and Order in 09 CH 00934; Village's Response to Plaintiffs' Request to Admit Facts and Genuineness of Documents, ¶¶ 13-15.)

24. *[INTENTIONALLY DELETED]*

25. On December 17, 2010, in a letter to the Village, Drury attorney Stephen Schulte requested that "the Village take all necessary actions to immediately enforce the cease and desist Order [against LeCompte] by no later than December 31, 2010 (almost three years after its issuance) and take all steps necessary to recover all fines assessed against the LeComptes since January 10, 2008." (Village's Answer to Complaint filed 9/22/16, ¶ 22.)

26. On January 7, 2011, Village attorney George Lynch (of Burke, Warren, MacKay & Serritella, P.C.) wrote back in response to the letter from Schulte to Wambach and informed Schulte that the Village had "directed that no further legal action be taken while the appeal is pending." (Village's Response to Plaintiffs' Request to Admit Facts and Genuineness of Documents, ¶¶ 23-24.) *The Lynch letter dated January 7, 2011, is Plaintiffs' Exhibit 10.*

27. *[INTENTIONALLY DELETED]*

28. On February 15, 2011, Village attorney Douglas Wambach (of Burke, Warren, MacKay & Serritella, P.C.) sent a letter to LeCompte's attorney Kenneth A. Michaels, Jr. (of Bauch & Michaels, LLC). (LeCompte's Response to Plaintiffs' Amended Request to Admit Facts and Genuineness of Documents, ¶ 26.) *The February 10, 2011, Wambach letter is Plaintiffs' Exhibit 12.*

29. *[INTENTIONALLY DELETED]*

30. On February 10, 2011, LeCompte made campaign contributions to the election campaigns of village trustees Joe Messer ("Messer"), Patty Meroni ("Meroni"), and Karen Selman ("Selman"). (Intervenors' Answer to Complaint filed 4/22/19, ¶ 79; Village's Answer to Complaint filed 09/22/16, ¶ 79; LeCompte's Response to Plaintiffs' Amended Request to Admit Facts and Genuineness of Documents, ¶ 6-7; Village's Response to Plaintiffs' Request to Admit Facts and Genuineness of Documents, ¶ 31.) *The three LeCompte checks dated February 10, 2011, is Plaintiffs' Exhibit 11.* LeCompte also made a campaign contribution to the election campaign of David Stieper ("Stieper") on February 8, 2011.

31. On February 20, 2011, LeCompte wrote emails to David Stieper and Steven Knoop. (LeCompte's Response to Plaintiffs' Amended Request to Admit Facts and Genuineness of Documents, ¶ 11.) *The LeCompte emails dated February 20, 2011, are Plaintiffs' Exhibits 13 and 14.*

32. ~~On February 21, 2011, on Presidents Day, LeCompte attended a meeting with the then Mayor Robert Abboud, Paddy McEvitt and Dan Lundmark. (LeCompte's Response to Plaintiffs' Amended Request to Admit Facts and Genuineness of Documents~~, ¶ 10.)

33. On March 1, 2011, LeCompte received an email communication from Dan Lundmark. The subject matter of the email is "affidavit". (LeCompte's Response to Plaintiffs' Amended Request to Admit Facts and Genuineness of Documents, ¶ 12.) *The March 1, 2011, Email is Plaintiffs' Exhibit 15.*

34. Lundmark's email to LeCompte states:

> "Hi,
> Here is the exact language Bob used as to what needs to be in your affidavit.
>
> -you understand that the village views your property as primarily residential.
> -you are subject to the home occupation ordinance.
> -you have modified your practices to be compliant with the home occupation ordinance.
> -your buildings are in compliance with the village building code.
>
> Hopefully, this will work.
>
> Dan"

(LeCompte's Response to Plaintiffs' Amended Request to Admit Facts and Genuineness of Documents, ¶ 12.)

35. LeCompte obtained a letter dated March 15, 2011, from Don Schuman, the Village's Building and Code Enforcement Officer (the **"Schuman Letter"**). The letter was addressed to Dr. and Mrs. LeCompte and stated:

> "Dear Dr. & Mrs. LeCompte,
>
> The Building Department has received and examined your affidavit dated March 4, 2011. You have asked to consider the use of Oakwood Farm as a Home Occupation. The affidavit states the terms by which the use is a Home Occupation. Similarly, you submitted an employee register in support of the extent of your employee's hours.
>
> Your Home Occupation pertains to boarding and training horses, which is a use specifically referenced in subsection (g) of Section 5-3-4(D)3 of the Zoning Ordinance. Based on the information in your affidavit, it appears that the use of Oakwood Farm is a Home Occupation."

(Village's Response to Plaintiffs' Request to Admit Facts and Genuineness of Documents, ¶¶ 43-44.) *The Schuman letter dated March 15, 2011, is Plaintiffs' Exhibit 18.*

36. A complaint was filed by George Schueppert on March 14, 2011, with the Illinois State Board of Elections that involved the campaign contributions made by LeCompte to Messer, Meroni, and Selman. (Certified Copies of Complaint from State Board of Election; Village's Answer to Complaint filed 9/22/16, ¶ 80; Village's Response to Plaintiffs' Request to Admit Facts and Genuineness of Documents, ¶ 34.) *The certified Schueppert Complaint is Plaintiffs' Exhibit 19.*

37. Benjamin LeCompte was one of several named respondents in the State Board of Election Case No. 11 CD 006 (*Schueppert v. Save 5 Acres et al.*) *The certified Confirmation of Receipt of Hearing Notice to LeCompte is Plaintiffs' Exhibit 20.*

38. On March 20, 2011, a preliminary closed hearing on the Schueppert complaint was conducted. LeCompte was one of several respondents who appeared and gave testimony before the State Board of Elections. Hearing Examiner Mark Greben issued a written recommendation and oral report. (Certified Copy of Oral Report of Preliminary Closed Hearing of 3/18/11 of State Board of Elections in *Schueppert v. Save 5 Acres et al.*). *The certified Oral Report is Plaintiffs' Exhibit 21.*

39. It was the written recommendation of Hearing Examiner Mark Greben that there was enough evidence adduced at the preliminary hearing to order a public hearing on the complaint to determine if the three (3) Election Code sections alleged to be violated by the Schueppert complaint were violated by any one or all of the respondents, either individually or in concert with one another. (Certified Copy of Oral Report of Preliminary Closed Hearing of 3/18/11 of State Board of Elections in *Schueppert v. Save 5 Acres et al.*)

40. Selman, Messer, and Meroni each acknowledged at the preliminary hearing before the Board of Elections that they each accepted a check from LeCompte made payable to them in the amount of $5,000 each. Selman, Messer, and Meroni each acknowledged that they did a endorsement of their respective check to Save 5 Acres. (Certified Copy of Oral Report of Preliminary Closed Hearing of 3/18/11 of State Board of Elections in *Schueppert v. Save 5 Acres et al.*)

41. On June 15, 2011, the State Board of Elections issued a Final Order on the Schueppert complaint finding violations of sections 5/9-8.5 and 5/9-25 of the Election Code. (Certified Copy of Final Order of State Board of Elections in *Schueppert v. Save 5 Acres et al.*) *The certified Final Order dated June 15, 2011 is Plaintiffs' Exhibit 24.*

42. *[INTENTIONALLY DELETED]*

43. On April 25, 2011, Judy Freeman was appointed as the Chairperson of the Zoning Board of Appeals. (Village Board Minutes from April 25, 2011 Regular Meeting.)

44. On July 20, 2011, Judith Freeman ("Freeman"), the then chairman of the Zoning Board of Appeals, sent a letter to the Village Board of Trustees (**"Freeman Letter"**). (Village's Response to Plaintiffs' Request to Admit Facts and Genuineness of Documents, ¶ 49.) *The Freeman Letter is Plaintiffs' Exhibit 26.*

45. On December 19, 2011, the Circuit Court dismissed *James Drury III v. Benjamin B. LeCompte, et al* (Cook Co. Civil Case No.11 CH 3852) (referred to by the parties as the Drury-McLaughlin Lawsuit or ***LeCompte II***), and on May 31, 2012, the Circuit Court denied the motion to reconsider that decision. Drury and McLaughlin appealed the Circuit Court's decisions. (*LeCompte II*, 2014 IL App (1st) 121894-U, ¶¶28-30; Intervenors' Answer to Complaint filed 4/22/19, ¶ 45; Village's Answer to Complaint filed 9/22/16, ¶ 45.)

46. On March 28, 2014, the First District Appellate Court in *LeCompte II* reversed the dismissal of the Drury-McLaughlin Lawsuit and remanded the case to the Circuit Court for further proceedings. (Intervenors' Answer to Complaint filed 4/22/19, ¶ *26; LeCompte II*, 2014 IL App (1st) 121894-U, ¶ 57.)

47. On June 17, 2014, LeCompte filed a petition for a text amendment on the same subject matter of horse boarding as a matter of right on all residential zoned land in the Village and expressly provided that the text amendment would be applied retroactively to June 26, 2006. This is referred to by the parties and in the Plaintiffs' complaint as the **"LeCompte Text Amendment"**. (Village's Answer to Complaint filed 9/22/16, ¶ 51; I-LEC 006-010) *The June 17, 2014 LeCompte Petition is Plaintiffs' Exhibit 34.*

48. On July 21, 2014, the Zoning Board of Appeals conducted a public hearing on the LeCompte Text Amendment and the Riding Club's Text Amendment. *The Notice of Public Hearing is Plaintiffs' Exhibit 35.* (Intervenors' Answer to Complaint filed 4/22/19, ¶ 52; Village's Answer to Complaint filed 9/22/16, ¶ 52; Village's Response to Plaintiffs' Request to Admit Facts and Genuineness of Documents, ¶ 56; Notice of Public Hearing before ZBA for 7/21/14.)

49. Two other property owners, Drury and James Hammond, each filed petitions for text amendments providing for a special use approach on commercial horse boarding operations in the Village. (collectively referred to in the Complaint as the "Drury and Hammond Text Amendments"). (Village's Answer to Complaint filed 9/22/16, ¶ 53; VOBH 1637-1649.)

50. On September 9, 2014, the Zoning Board of Appeals conducted public hearings on the Drury and Hammond Text Amendments. (Village's Answer to Complaint filed 9/22/16, ¶ 54; Intervenors' Answer to Complaint filed 4/22/19, ¶ 54.)

51. On September 11, 2014, the Zoning Board of Appeals deliberated on the LeCompte Text Amendment which included the following provision:

> "Retroactivity: Subject to the severability clause in scion 1-2-4, with the exception of the above subsection 5-3-4(A)(a), which specifically states otherwise, the entirety of the additions in 5-2-1 and 5-3-4(A) and the deletion of 5-3-4(D)3(g) shall be primarily and secondarily retroactive and are in full force and effective as of June 26, 2006, *nunc pro tunc*."

(LeCompte's Response to Plaintiffs' Amended Request to Admit Facts and Genuineness of Documents, ¶ 14.)

52. On September 11, 2014, over written objections made by Drury, the Zoning Board of Appeals voted 5-2 to recommend approval of the LeCompte Text Amendment as amended by Kurt Anderson of the ZBA. The approved amendment to the LeCompte Text Amendment is referred to the parties as the **"Anderson I" Text Amendment**. (Village's Answer to Complaint filed 9/22/16, ¶ 55; Village's Response to Plaintiffs' Request to Admit Facts and Genuineness of Documents, ¶¶ 57, 61; *see also* "NOTE" in Anderson I Text Amendment.) *The Anderson I Text Amendment is Plaintiffs' Exhibit 36.*

53. The Anderson I Text Amendment did not contain a retroactivity provision. (Village's Response to Plaintiffs' Request to Admit Facts and Genuineness of Documents, ¶ 58.)

54. On September 22, 2014, the Village Board considered the Anderson I Text Amendment and objections were raised. The Village Board voted to table the consideration of the Anderson I Text Amendment. (Intervenors' Answer to Complaint filed 4/22/19, ¶ 56; Village's Answer to Complaint filed 9/22/16, ¶¶ 56-57; Village's Response to Plaintiffs' Request to Admit Facts and Genuineness of Documents, ¶¶ 62-63.)

55. At the September 22, 2014, Village Board meeting, the Board passed a motion to send the Anderson I Text Amendment back to the ZBA with instructions to the ZBA. (Village's Response to Plaintiffs' Request to Admit Facts and Genuineness of Documents, ¶ 63; VOBH Meeting Minutes 9/22/14.) *The 9/22/14 Minutes is Plaintiffs' Exhibit 39.*

56. On October 17, 2014, the Village Administrator Robert Kosin, in a Memo to the ZBA, identified the questions and issues the Village Board, at its September 22, 2014 meeting, directed the ZBA to research. This is referred to by the parties as the **"Kosin Memo" or "Kosin Letter"**. (Village's Response to Plaintiffs' Request to Admit Facts and Genuineness of Documents, ¶¶ 64-65; Village's Answer to Complaint filed 9/22/16, ¶ 57.) *The Kosin Memo/Kosin Letter is Plaintiffs' Exhibit 40.*

57. On October 20, 2014, the Zoning Board of Appeals convened its regularly scheduled monthly meeting. At that meeting the ZBA was in possession of the Kosin Letter. (Village's Response to Plaintiffs' Request to Admit Facts and Genuineness of Documents, ¶¶ 66-67.) *The 10/20/14 Notice of Meeting is Plaintiffs' Exhibit 41.*

58. On October 20, 2014, Kurt Anderson introduced a new text amendment which is referred to by the parties as the **"Anderson II"** Text Amendment. *Anderson II is Plaintiffs' Exhibit 43.* (Village's Response to Plaintiffs' Request to Admit Facts and Genuineness of Documents, ¶¶ 68-69.)

59. The Anderson II Text Amendment contained a retroactivity provision. (Village's Response to Plaintiffs' Request to Admit Facts and Genuineness of Documents, ¶ 70; Village's Answer to Complaint filed 9/22/16, ¶ 60.)

60. The Anderson II Text Amendment permitted commercial horse boarding as a matter of right with conditions in residential districts depending on the lot size. (Village's Answer to Complaint filed 9/22/16, ¶ 60.)

61. The ZBA scheduled two (2) special meetings on November 10, 2014, and November 12, 2014, for the purposes of conducting a public hearing on the commercial horse boarding text amendment, and thereafter for purposes of making a recommendation to the Village Board on said text amendment. (Village's Answer to Complaint filed 9/22/16, ¶ 61.)

62. The November 10, 2014, and November 12, 2014, special meetings were cancelled. (Village's Answer to Complaint filed 9/22/16, ¶ 62.)

63. On December 2 and 3, 2014, the ZBA held a public hearing on the Anderson II Text Amendment. (Village's Response to Plaintiffs' Request to Admit Facts and Genuineness of Documents, ¶ 74.) *The 12/02/14 Transcript of Proceedings is Plaintiffs' Exhibit 44.*

64. On December 3, 2014, the ZBA voted to recommend the Village Board approve the Anderson II Text Amendment by a vote of 4 to 3. (Village's Response to Plaintiffs' Request to Admit Facts and Genuineness of Documents, ¶ 86; Intervenors' Answer to Complaint filed 4/22/19, ¶ 69; Village's Answer to Complaint filed 9/22/16, ¶ 69.) *The 12/03/14 Transcript of Proceedings is Plaintiffs' Exhibit 45.*

65. After the December 3, 2014, ZBA vote to recommend the Village Board approve the Anderson II Text Amendment, a special meeting was called for the Village Board on December 15, 2014. (Village's Response to Plaintiffs' Request to Admit Facts and Genuineness of Documents, ¶ 87.)

66. On December 15, 2014, the Village Board held a special meeting. (Village's Response to Plaintiffs' Request to Admit Facts and Genuineness of Documents, ¶ 87; Intervenors' Answer to Complaint filed 4/22/19, ¶ 70; Village's Answer to Complaint filed 9/22/16, ¶ 70.)

67. [INTENTIONALLY DELETED]

68. On December 15, 2014, the Village Board approved the Anderson II Text Amendment by a vote of 5 to 1. (Village's Response to Plaintiffs' Request to Admit Facts and Genuineness of Documents, ¶ 88; Intervenors' Answer to Complaint filed 4/22/19, ¶ 70; Village's Answer to Complaint filed 9/22/16, ¶ 70.)

69. On January 8 [*sic* 6], 2015, Village President Martin McLaughlin vetoed the Anderson II Text Amendment. (Village's Response to Plaintiffs' Request to Admit Facts and Genuineness of Documents, ¶¶ 93-94; Village's Answer to Complaint filed 9/22/16, ¶ 71.)

70. At the Village Board meeting on January 26, 2015, the Village President read his message vetoing the Anderson II Text Amendment into the public record. (Intervenors' Answer to Complaint filed 4/22/19, ¶ 72; Village's Answer to Complaint filed 9/22/16, ¶ 72; Village's Response to Plaintiffs' Request to Admit Facts and Genuineness of Documents, ¶ 94.) *The McLaughlin Veto Message is Plaintiffs' Exhibits 47-48 and the Village Board Meeting Minutes from 1/26/15 is Plaintiffs' Exhibit 49.*

71. On February 23, 2015, the Village Board voted to override the President's veto and approve the Anderson II Text Amendment enacted as Ordinance 14-19. (Village's Response to Plaintiffs' Request to Admit Facts and Genuineness of Documents, ¶ 95; Intervenors' Answer to Complaint filed 4/22/19, ¶ 73; Village's Answer to Complaint filed 9/22/16, ¶ 73.) *The Village Board Meeting Minutes from 2/23/15 is Plaintiffs' Exhibit 51.*

72. Ordinance 14-19 amended the definition of agriculture retroactive to June 26, 2006. The retroactivity provision states as follows:

> "Such amended definition is retroactive and in full force and effect as of June 26, 2006." (Ordinance 14-19.)

(Village's Response to Plaintiffs' Request to Admit Facts and Genuineness of Documents, ¶ 98.)

73. On December 7, 2016, by amendment to the Zoning Code, the Village repealed Ordinance 14-19 when it passed Ordinance 16-22. (Ordinance 16-22.) The amendment repealed "the changes to horse boarding approved in 2014, and return[ed] the text to that which existed prior to such amendment." *Ordinance No. 16-22 is Plaintiffs' Exhibit 3.*

74. [INTENTIONALLY DELETED]

75. Between December 1, 2014 and December 31, 2015, John J. Pappas, Sr. or anyone on his behalf did not file any permit application(s) for any building construction at or on Shamrock Farms with the Village because John J. Pappas filed building applications with the Village in 1983 and 1985 for his horse barn and indoor arena. The Village issued building permits and certificates of occupancy for construction of his horse barn and indoor arena in 1983 and 1985. Between December 1, 2014 and December 31, 2015, the Village issued no building permits for any building construction at/on Shamrock Farms. (Pappas' Response to Plaintiffs' Amended Request to Admit Facts and Genuineness of Documents, ¶¶1-2.)

76. Between 2011 and December 14, 2020, Pappas has never been issued a cease and desist alleging a violation of the home occupation ordinance in force and effect during that time period or at any other time for violation of the home occupation ordinance for boarding other persons horses for a fee because at all relevant times Pappas was in full compliance with the entire home occupation ordinance that was in force and effect at all relevant times.

77. Oakwood Farms has generated the following gross revenues for the years 2011 to 2015:

2011	$367,481
2012	$286,964
2013	$321,809
2014	$145,293
2015	$157,731

(LeCompte's Response to Plaintiffs' Amended Request to Admit Facts and Genuineness of Documents, ¶21.) *Oakwood Farms Revenues 2011-2015 is Plaintiffs' Exhibit 67.*

78. On January 16, 2008, Village attorney Douglas E. Wambach (of Burke, Warren, MacKay & Serritella, P.C.) informed Dr. and Mrs. LeCompte in a letter as follows:

"Dear Dr. and Mrs. Barry LeCompte:

On behalf of the Village of Barrington Hills, I am writing this letter to clarify its position relative to the issuance of a building permit for the "Phase III stable". Based on information recently delivered to us by the Village, we have determined that prior to the building permit being issued, you will have to either obtain a variation from the sideyard setback requirement or revise the plan so the proposed Phase III stable is not built within the sideyard setback.

This requirement is in addition to the items specified in my letter dated November 20, 2007."

(I-LEC 548.) *The 01/16/08 Wambach Letter is Plaintiffs' Exhibit 75.*

79. On June 10, 2008, Village attorney Douglas E. Wambach (of Burke, Warren, MacKay & Serritella, P.C.) informed Dr. and Mrs. LeCompte in a letter as follows:

> "Dear Dr. and Mrs. Barry LeCompte:
>
> On behalf of the Village of Barrington Hills, this is to advise you that your recent submittal for a building permit for Phase III for your stable and riding arena complex will not be processed until there is a resolution of the zoning code violation the Village has made with respect to this facility."

(I-LEC 549.) *The 06/10/08 Wambach Letter is Plaintiffs' Exhibit 76.*

80. The Village of Barrington Hills Zoning Map 2014 is an accurate representation of the zoning in the Village, and the map has not materially changed, during the time period of 2011 to 2015.

Respectfully submitted,

Counsel for Plaintiffs,

By: /s/ Thomas R. Burney
Law Office of Thomas R. Burney
40 Brink Street, Crystal Lake, IL 60014
Phone: 815-459-8800
Email: tburney@zcwlaw.com

Counsel for Defendant Village of Barrington Hills,

By: /s/: Mary Dickson
Mary Dickson
Bond, Dickson & Associates, P.C.
400 S. Knoll Street, Unit C
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By:
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By:
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Tab 5

PLAINTIFFS
EXHIBIT 1

ORDINANCE NO. 06-12

ORDINANCE AMENDING SECTIONS 5-2-1 AND 5-3-4 OF THE VILLAGE CODE BY REDEFINING AND ADDING RULES AND REGULATIONS PERTAINING TO "HOME OCCUPATIONS" WITHIN THE VILLAGE

WHEREAS, the Village of Barrington Hills (the "Village") regulates "Home Occupations" operating within the boundaries of the Village in order to provide peace, quiet and domestic tranquility within all residential neighborhoods within the Village and in order to guarantee to all residents freedom from nuisances, fire hazards, excessive noise, light and traffic, and other possible effects of business or commercial uses being conducted in residential districts; and

WHEREAS, Section 5-2-1 of the Village Code, presently contains the following definition of Home Occupation:

> A 'home occupation' is any occupation or profession carried on by a member of the immediate family residing on the premises, in connection with which there is no display that will indicate from the exterior that the building is being utilized in whole or in part for any purpose other than that of a dwelling; there is no commodity sold upon the premises; no person is employed other than a member of the immediate family residing on the premises; and no mechanical or electrical equipment used except such as is permissible for purely domestic or household purposes. A professional person may use his residence for consultation, emergency treatment or performance of religious rites but not for the general practice of his profession. No accessory building shall be used for such home occupation. Notwithstanding the foregoing, the boarding of horses in a stable and the training of horses and their riders shall be a permitted home occupation; provided further 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 8:00 AM and 8:00 PM or sunset, whichever is later, and additionally 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 8:00 AM and 8:00 PM or sunset, whichever is later.

WHEREAS, in order to promote the health, safety, morals and general welfare of the Village and to better and more accurately regulate Home Occupations within the Village, the President and the Board of Trustees of the Village find and believe it to be in the best interest of the Village that Sections 5-2-1 and 5-3-4 of the Village Code be amended as provided in this Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Barrington Hills, Cook, Kane, Lake and McHenry Counties, Illinois, as a home rule municipality, the following:

Section 1. Incorporation of Preambles. The Village Board hereby finds that the recitals contained in the preambles to this Ordinance are true and correct and does incorporate them into this Ordinance by this reference.

Section 2. Definitions. That portion of Section 5-2-1 of the Village Code, Definitions, titled, "Home Occupation," shall be, and the same hereby is, deleted in its entirety.

Section 3. Regulations for Specific Uses. Section 5-3-4 of the Village Code, Regulations for Specific Uses, shall be, and the same hereby is, amended by adding the following:

"(D) HOME OCCUPATION

INTENT AND PURPOSE:

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

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

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

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

b. Is incidental and secondary to the principal use of such dwelling unit for residential occupancy purposes; and

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

3. Use Limitations.

a. Employee Limitations.

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

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

b. Structural Limitations.

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

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

c. Operational Limitations.

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

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

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

(4) No routine attendance of patients, clients, customers, subcontractors, or employees (except employees and subcontractors as provided in Subparagraph 3.a.(2) of this Section)

associated with any home occupation shall be permitted at the premises of the home occupation, provided, however, that the attendance of up to four persons at any one time may be allowed for the purpose of receiving private instruction in any subject of skill. "Routine attendance" means that the conduct of the home occupation requires persons, other than the owner or permitted employees and subcontractors, to visit the premises of the home occupation as part of the regular conduct of the occupation, without regard to the number, frequency, or duration of such visits.

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

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

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

d. Signage and Visibility.

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

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

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

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

g. Boarding and Training of Horses. Notwithstanding anything to the contrary contained in this Section 5-3-4(D), the boarding of horses in a stable and the training of horses and their riders shall be a permitted home occupation; 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 8:00 AM and 8:00 PM 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 8:00 AM and 8:00 PM or sunset, whichever is later."

Section 4. Validity. Should any part or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of the Ordinance as a whole or any part thereof other than the part declared to be invalid.

Section 5. Superseder and Effective Date. All resolutions, motions and orders, or parts thereof, in conflict herewith, are to the extent of such conflict hereby superseded; and this Ordinance shall be in full force and effect from and after its passage and approval in the manner provided by law.

PASSED THIS 26th **day of** June **, 2006.**

AYES: 7 **NAYS:** 0 **ABSENT:** 0 .

APPROVED THIS 26th **day of** June **, 2006.**

ATTEST:

Dolores G. Iandoli

Village Clerk, Deputy

Village President

Tab 6

PLAINTIFFS
EXHIBIT 151

2011 EVENTS LEADING TO SCHUMAN LETTER

01.15.2010 Circuit Court upholds ZBA decision in *LeCompte I* LeCompte appeals the decision

[Stipulation of Fact, ¶22-23]

01.31.2011 Original Drury Complaint Filed (*LeCompte II*)

02.08.2011 LeCompte issues $5,000 check to David Stieper

02.10.2011 LeCompte issues $5,000 checks to:

- Trustee Messer
- Trustee Meroni
- Trustee Selman

[Plfs Ex. 11; Stipulation of Fact, ¶30]

02.20.2011 LeCompte Email to Stieper/Knoop: "Prototype Letter" from Village President Abboud

[Plfs Ex. 13; Stipulation of Fact, ¶31]

02.21.2011 President's Day meeting at Village Hall: LeCompte, Abboud, Lundmark, McKevitt

[LeCompte RTA Response, ¶10]

03.01.2011 Lundmark Email to LeCompte: Exact Language for Affidavit

[Plfs Ex. 15; Stipulation of Fact, ¶33-34]

03.04.2011 LeCompte Affidavit: "I am in compliance"

[Plfs Ex. 16-17]

03.14.2011 Stieper Campaign Event - Abboud says LeCompte "matter taken care of"

03.13.2011 Complaint for Violation of the Campaign Disclosure Act signed – Filed with Board of Elections next day

[Plfs Ex. 19; Stipulation of Fact, ¶36]

03.15.2011 Schuman Letter issued

[Plfs Ex. 18; Stipulation of Fact, ¶35]

Tab 7

PLAINTIFFS
EXHIBIT 152

2014/2015 SIGNIFICANT EVENTS

03.28.2014 Appellate Court Ruling in *LeCompte II*—Reinstating Drury-McLaughlin Lawsuit

[Stipulation of Fact, ¶46]

06.17.2014 LeCompte Petition for Text Amendment

[Stipulation of Fact, ¶47]

07.21.2014 ZBA Regular Meeting - Commercial Boarding on Agenda (Hearing on LeCompte Petition)

[Stipulation of Fact, ¶48]

08.18.2014 ZBA Regular Meeting - Commercial Boarding on Agenda

09.09.2014 ZBA Special Meeting - Commercial Boarding on Agenda

09.11.2014 ZBA Special Meeting - Commercial Boarding on Agenda (**"Anderson I"** Presented and Recommended for Approval)

[Plf. Ex. 36]

09.22.2014 Village Board tables **Anderson I** - directs further study

[Stipulation of Fact, ¶54]

09.24.2014 Supreme Court denies LeCompte petition for leave to appeal in *LeCompte II*

10.17.2014 **Kosin Memo** to ZBA with Board directive—further study

[Plf. Ex. 40]

10.20.2014 ZBA Initiated Petition (**"Anderson II"**)

[Plf. Ex. 43; Stipulation of Fact, ¶58]

11.10.2014 ZBA Special Meeting on **Anderson II** Cancelled for Improper Notice

[Stipulation of Fact, ¶61-62]

11.12.2014 ZBA Special Meeting on **Anderson II** Cancelled for Improper Notice

[Stipulation of Fact, ¶61-62]

12.02.2014 ZBA Hearing on **Anderson II**

[Stipulation of Fact, ¶63]

12.03.2014 ZBA Hearing Special Meeting – Vote to Recommend Approval of **Anderson II** to Village Board

[Stipulation of Fact, ¶63-64]

12.15.2014 Special Meeting of Village Board Called (Village President known to be unavailable to attend)—Board Vote to Approve **Anderson II**

[Stipulation of Fact, ¶66, 68]

01.08.2015 President McLaughlin Veto

[Stipulation of Fact, ¶69]

02.23.2015 Board overrides President's Veto—Enacts **Ordinance 14-19**

[Plf. Ex. 2; Stipulation of Fact, ¶71]

02.27.2015 Drury files lawsuit against Village (with Reich & O'Donnell) – Cook County Case No. 15-CH-3461

04.07.2015 Election held. Selman & Meroni were not re-elected, Messer did not run

Tab 8

PLAINTIFFS
EXHIBIT 177

ZONING CODE CHANGES

EXHIBIT
Interveners
176

The ZBA recommends to the Village Board that is pass an ordinance to amend the Zoning Code as follows (strike-through represents language deleted from the existing Zoning Code and bold, underline represents language added to the existing Zoning Code):

Chapter 2
ZONING DEFINITIONS

5-2-1: DEFINITIONS:

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

Chapter 3
GENERAL ZONING PROVISIONS

5-3-4: REGULATIONS FOR SPECIFIC USES:

(A) Agriculture.

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

VOBH001657

PLAINTIFFS EXHIBIT 43, p. 4

PRE ANDERSON - ORDINANCE 06-12 ADOPTED IN 2006

Chapter 3
GENERAL ZONING PROVISIONS

5-3-4: REGULATIONS FOR SPECIFIC USES:

(A) Agriculture: The provisions of this title shall not be exercised so as to impose regulations or require permits with respect to land used or to be used for agricultural purposes, or with respect to the erection, maintenance, repair, alteration, remodeling or extension of buildings or structures to be used for agricultural purposes upon such land, except that such buildings or structures for agricultural purposes may be required to conform to building or setback lines. In the event that the land ceases to be used solely for agricultural purposes, then, and only then, shall the provisions of this title apply. (Ord. 06-12, 06-26-2006)

ANDERSON DELETIONS

5-3-4: REGULATIONS FOR SPECIFIC USES:

(A) Agriculture: The provisions of this title shall not ~~be exercised so as to~~ impose regulations or require permits with respect to land used or to be used for agricultural purposes, ~~or with respect to the erection, maintenance, repair, alteration, remodeling or extension of buildings or structures to be used for agricultural purposes upon such land, except that such buildings or structures for agricultural purposes may be required to conform to building or setback lines. In the event that the land ceases to be used solely for agricultural purposes, then, and only then, shall the provisions of this title apply.~~ (Ord. 06-12, 06-26-2006)

ANDERSON TEXT ORDINANCE 14-19 ADOPTED IN 2015

5-3-4: REGULATIONS FOR SPECIFIC USES:

(A) Agriculture

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

EXHIBIT
Plaintiffs
177

Tab 9

PLAINTIFF'S EXHIBIT 200

Overview of the Barrington Hills Zoning Board of Appeals (ZBA)

- The ZBA serves two main functions: (1) Administrative: interpreting zoning ordinances and (2) Legislative: making recommendations to Village Board or other Governmental Bodies.

- The ZBA is composed of 7 residents appointed by Board of Trustees, with terms of 1 to 5 years. Board Members are volunteers and serve without compensation.

- ZBA meetings by statute are always open to the public and all issues brought before the Zoning Board of Appeals are reviewed without bias or preferential treatment, and are conducted in a non-antagonistic manner.

- Issues typically involve Variances, Special Uses, Map and Text Amendments. (Text Amendments involve changing the zoning statutes, whereas map amendments involve changing the zoning of a parcel).

- Petitioners are entitled to be heard by the ZBA, whose "due process" is required to be fair and equitable and is not arbitrary or capricious.

- ZBA meetings can be legal, fact-finding proceedings or can be held for informational purposes. When sworn testimony is given and is subject to cross-examination, hearings by legal definition are adversarial.

- The ZBA makes findings of facts based on the testimony of expert and lay witnesses. Decisions must be based on facts presented to the ZBA in an open meeting.

- The ZBA's decision-making process follows the standards set forth in the Village Code.

- The ZBA has authority by Village statute to grant Variances within prescribed limits. However, it can only make recommendations to the Village Board regarding Special Uses and Map and Text Amendments. Village Board may approve or deny the recommendations of the ZBA.

- Decisions on Variances require the concurring votes of five Members for approval. Decisions on recommendations to Village Board require four concurring votes for approval.

- The ZBA does welcome comments from the public, as there are often circumstances or questions that should be brought to the attention of the ZBA so that nothing is overlooked in the questioning of those bringing petitions before the Zoning Board of Appeals.

- The ZBA does not enjoy the luxury of advocacy. Decisions are not based on a popular vote or by private lobbying of Board Members. Board Members by statute must be open and un-biased in their consideration of petitions before them.

- It is an absolute invasion of privacy of any Board Member and inappropriate for a Village resident or non-resident, to distribute to the public at large the email address or fax number of a Board Member in the hopes of influencing that Board Member by an influx of information on a pending issue. Information must not be distributed privately to Board Members.

- All information that any member of the public wishes to transmit to Zoning Board Members must be submitted through the Village Clerk:

  Village Clerk
  Village of Barrington Hills
  112 Algonquin Road
  Barrington Hills, Illinois 60010-5199
  Phone: 847.551.3000
  clerk@barringtonhills-il.gov

- VILLAGE CODE is available on the Village Website at www.barringtonhills-il.gov.

Source http://barringtonhills-il.gov/wp-content/uploads/2021/04/ZBAOverview.pdf

Tab 10

PLAINTIFFS
EXHIBIT 153

VILLAGE CODE

of

BARRINGTON HILLS, ILLINOIS

1977

Code current through:

Ord. 21-21, passed 12-16-2021

Published by:

STERLING CODIFIERS

an

American Legal Publishing Company

525 Vine Street * Suite 310 * Cincinnati, Ohio 45202

1-833-226-3439 * www.amlegal.com

PREFACE

This code of the Village of Barrington Hills, as supplemented, contains ordinances up to and including ordinance 21-21, passed December 16, 2021, and resolution 98-5, passed February 23, 1998. Ordinances of the Village adopted after said ordinance supersede the provisions of this code to the extent that they are in conflict or inconsistent therewith. Consult the Village office in order to ascertain whether any particular provision of the code has been amended, superseded or repealed.

Sterling Codifiers

Cincinnati, Ohio

CHAPTER 2

SAVING CLAUSE

SECTION:

1-2-1: REPEAL OF GENERAL ORDINANCES:

All general ordinances of the Village passed prior to the adoption of this Village Code are hereby repealed, except such as are referred to herein as being still in force or are by necessary implication herein reserved from repeal (subject to the saving clauses contained in the following sections), from which are excluded the following ordinances which are not hereby repealed: tax levy ordinances; appropriation ordinances; ordinances relating to boundaries, and annexations; franchise ordinances and other ordinances granting special rights to persons or corporations; ordinances granting special uses or approving planned developments; contract ordinances and ordinances authorizing the execution of a contract or the issuance of warrants; salary ordinances; ordinances establishing, naming or vacating streets, alleys or other public places; improvement ordinances; bond ordinances; ordinances relating to elections; ordinances relating to the transfer or acceptance of real estate by or from the Village; all special ordinances; ordinances designating depositories for money or securities; and administrative ordinances or resolutions not in conflict with or inconsistent with these provisions. (1977 Code)

1-2-2: PUBLIC UTILITY ORDINANCES:

No ordinance relating to railroads or railroad crossings with streets and other public ways, or relating to the conduct, duties, service or rates of public utilities shall be repealed by virtue of the adoption of this Village Code or by virtue of the preceding Section, excepting as this Village Code may contain provisions for such matters, in which case this Village Code shall be considered as amending such ordinance or ordinances in respect to such provisions only. (1977 Code)

1-2-3: COURT PROCEEDINGS:

(A) No new ordinance shall be construed or held to repeal a former ordinance, whether such former ordinance is expressly repealed or not, as to any offense committed against such former ordinance or as to any act done, any penalty, forfeiture or punishment so incurred, or any right accrued or claim arising under the former ordinance, or in any way whatever to affect any such offense or act so committed or so done, or any penalty, forfeiture or punishment so incurred or any right accrued or claim arising before the new ordinance takes effect, save only that the proceedings thereafter shall conform to the ordinance in force at the time of such proceeding, so far as practicable.

(B) This Section shall extend to all repeals, either by express words or implication, whether the repeal is in the ordinance making any new provisions upon the same subject or in any other ordinance.

(C) Nothing contained in this Chapter shall be construed as abating any action now pending under or by virtue of any general ordinance of the Village herein repealed and the provisions of all general ordinances contained in this Code shall be deemed to be continuing provisions and not a new enactment of the same provision; nor shall this Chapter be deemed as discontinuing, abating, modifying or altering any penalty accrued or to accrue, or as affecting the liability of any person, firm or corporation, or as waiving any right of the Village under any ordinance or provision thereof in force at the time of the adoption of this Village Code. (1977 Code)

1-2-4: SEVERABILITY CLAUSE:

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Village Code or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Code, or any part thereof. The Village Board of Trustees hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective. (1977 Code)

Tab 11

ATTACHMENT B

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

JAMES J. DRURY III, as agent of the Peggy D. Drury Declaration of Trust U/A/D 02/04/00, Jack E. Reich and James T. O'Donnell,	)	
Plaintiffs,	)	No. 15-CH- 3461
-v-	)	
VILLAGE OF BARRINGTON HILLS, an Illinois Municipal Corporation,	)	
Defendant,	)	
BENJAMIN B. LECOMPTE III, CATHLEEN B. LECOMPTE, JOHN J. PAPPAS, SR., BARRINGTON HILLS POLO CLUB, INC. and VICTORIA KELLY,	)	
Defendants-Intervenors.	)	

PLAINTIFFS' CREDIBILITY OF WITNESSES ANALYSIS

This Attachment B sets out the testimony of the witnesses in great detail because "in determining whether a particular ordinance is, in fact, in the interest of the public welfare, each case must be determined upon its peculiar facts" *Harmon v. City of Peoria* 373 Ill. 594. 600 (1940).

Statements re: Computer problems/Can't find Emails

The Court finds it significant that Dr. LeCompte as well as a number of Intervenors' witnesses, including three of the main actors in connection with securing the adoption of the Ordinance in unison testified as to their inability to produce emails and other correspondence directly responsive to Plaintiffs' Request to Produce. A copy of the Request to Produce is attached

as **Exhibit 4** to these Findings of Fact. The emails and correspondence requested are highlighted on the document.

LeCompte claimed that he did not produce any emails before 2011 because he had lost all of his emails prior to that date. In connection with the emails to Mr. Knoop and Stieper he pathetically claimed that they were sent on an email from the Four Seasons in Scottsdale and thus were not recoverable to him. These emails were also sent to another email address he admitted belonged to his wife. His explanations that these emails were not available to him [1]are not believable.

The few emails Plaintiffs secured from the Village officials (Stieper and Freeman) and from John Rosene (all of which are incriminating) were all sent to the Village Official's personal address[2]. (Freeman, Messer, Stieper). Because he sent these emails to their personal emails they were shielded from disclosure in connection with the Village's very thorough document production response[3].

The evasiveness was not limited to LeCompte. Knoop, Messer, and Anderson all claimed they did not produce any emails because they had changed computers and the emails were lost. Both Messer and Anderson are attorneys and officers of the Court and thus owe a higher duty to comply with lawful discovery requests.

These exhibits were not produced to the Plaintiffs in response to their Supreme Court Rule 237 document requests. Clearly, they should have been produced. The Intervenor, LeCompte, and

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[1] The emails he regularly sent were also in his wife's name.
[2] The incriminating emails included:
2011 emails to Knoop and Stieper **(Pls Ex's. 13 and 14)**:
Email to Freeman **(Pls' Ex. 180)**
Email to Yeterian **(Pls' Ex. 175)**
[3] Transparency in communications is the very purpose of the Overview **(Pls Ex 200)** which he avoided in the manner he communicated with Village officials.

his witnesses, Messer, Meroni, Anderson and Knoop did not produce this correspondence, all of which was extremely prejudicial to LeCompte. All of these witnesses evinced a similar excuse- that the emails to/from LeCompte were outside of their control because they had changed email addresses or some variation on that theme.

Trial by concealment is the unseemly consequence of discovery abuse and Illinois courts are not powerless when confronted with such. "Our discovery procedures are meaningless unless a violation entails a penalty proportionate to the gravity of the violation" *Buehler v Whalen* 70 Il1. 2d 51, 67 (1970).

The discounting of these witnesses credibility is a proportionate consequence of this type of discovery abuse. "Discovery is not a tactical game" (Williams v A.E. Stanley Mfg. 83 Ill. 2d **559,** 566 (1981); Ostendorf v Int. Harvester Co. 89 Ill. 2d 277, 282 (1982) nor a "poker game in which players enjoy an absolute right always to conceal their cards until played. We find ample room for a rule designed to enhance the search for truth" Williams v Florida 399 U.S. 78, 82 (1970). It is the concealment factor which serves to turn a truth-seeking process into an exercise of gamesmanship. Here this Court's finding that LeCompte, Messer, Meroni, Knoop and Anderson's testimony is not credible has foreclosed that corrupting possibility.

Benjamin LeCompte's Testimony Is Not Entitled to Any Weight

Every incriminating document that Plaintiffs secured was not provided by LeCompte, Messer or Anderson. LeCompte's, Messer's and Anderson's excuses for not producing all of the emails responsive to the several requests are not credible.

The Court is tasked with considering this testimony in assessing the credibility of these witnesses. *See In re adoption of K.B.D.*, 2012 IL App (1st) 121558, ¶ 204 (upholding the trial court's finding that a party's credibility was significantly lacking where in testimony she was

evasive at times, yet recalled other information with detail, had an "excuse for everything" such as someone hacking into her Facebook account).

Shifting explanations as to missing and unavailable emails undermines credibility. *Bankdirect Capital Fin., LLC v. Capital Premium Fin., Inc.*, No. 15 C 10340, 2018 U.S. Dist. LEXIS 57254, at *24-25 (N.D. Ill. Apr. 4, 2018). Further, "common sense and experience always have a role to play in drawing inferences and must not be ignored." *Id.* at *4. "[A] combination of events, each of which seems mundane in isolation, may present a very different picture when considered together." *Id.*

Of course, since Plaintiffs have been prevented from accessing the correspondence by a series of lame excuses by LeCompte and the Village officials who participated, one is left to put together the pieces.

For example, in connection with LeCompte's emails to Knoop and Stieper in February 2011 **(Pls' Exs 13 and 14)** LeCompte evidenced an intent following his large campaign contributions to actively lobby for a change in the law to benefit him.[4] When he lost the appeal on the Schuman letter in the Drury case, can anyone seriously accept that he was not an active participant in the pace and the conduct of the hearings on the text amendment in 2014. He was caught in a bold faced lie during the trial as to whether he had lobbied any members of the ZBA or sought their input on his text amendment. The email produced by Judy Freeman **(Pls' Ex. 180)** gives lie to LeCompte's sworn testimony.

In that email he specifically seeks the ZBA Chairman's preapproval of his proposed amendment:

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[4] We ask the Court to recall LeCompte's significant admission that it was Drury filing his lawsuit in late January 2011 that galvanized him to reach out to Knoop and Stieper.

> If there is any part of it that you cannot support or could only support with additional language, please let me know, as I don't want to submit anything that could not get the approval of the majority of the members of the ZBA.

He further requests her to expedite the process so it does not "get bogged down in a lengthy debate over modifications like happened the last time".

Of great significance to LeCompte's credibility are these facts that are contrary to his testimony where he swore that:

- He did not reach out to a Village official for help in securing a text amendment that benefitted his circumstances.
- He did not lobby for an expedited consideration and approval.

Furthermore:

- He did send this message to Ms. Freeman's private email in derogation of the Policy of the ZBA to send all communications with the ZBA to and thru the Village Clerk
- He did not produce it.
- It was clearly within the scope of the document production request as evidenced by Ms. Freeman's attorney producing it.

Under all of these circumstances it is simply not credible to believe that LeCompte produced all of the emails responsive to the Document Production Request and it is not credible given his mode of operating that he did not continue to lobby Freeman Anderson and other members of the ZBA to expedite the proceedings and recommend a text amendment that relieved him from the legal consequences of his violation of the Village's Home Occupation Ordinance.

Another email that expressed LeCompte's state of mind was directed to the Riding Club President at the time, Mr. Yeterian. (**Pls' Ex. 175**). There he wrote:

> Apparently, the majority of the board, from what I have been told, think that the only mission of the riding club is to keep up the trails and flip eggs on Sunday morning. Maybe they are correct, and quite possibly I have been under the false illusion over the past twenty years that an equally important purpose of the club was to support the equestrian nature and heritage of the Village.
>
> Obviously, I must have been incorrect in assuming that the trails would be of little value if the assault upon the equestrian community resulted in an insidious withering of the equestrian activities within the village. Having said this, if the riding club's true mission is only keeping up the trails and hosting occasional breakfasts, then certainly

participating in and handsomely benefiting financially from the Kaloway Cup, as they have for the past 10 years, is far beyond their mission. To this extent the club has the right to do as they wish but must be willing to **accept the consequences** of their decision. (e.s.)

This letter is striking in several respects.

- An earlier witness, John Rosene had testified that LeCompte never threatened the Riding Club or the other equestrian clubs. Yet the very document produced by Rosene contains such a threat.
- LeCompte himself testified that he did not threaten the equestrians but in fact he did in his own unmistakable terms, "willing to **accept the consequences** of their decision"
- The demeaning email also betrays a significant element in the testimony presented by the Intervenors at trial. The Court will recall that Intervenors called a number of witnesses who all identified themselves as equestrians
- Of those 15 witnesses [5]called by the Intervenors to testify only the three expert were not "equestrians".
- On the Village Board the equestrians comprised a majority. Messer, Meroni, Selman and Harrington or their spouse were all self-identified equestrians. On the ZBA Freeman, Anderson and Karen Rosene (John Rosene's wife) were equestrians.
- The other witnesses called by the Intervenors identified themselves as equestrians (John Rosene, Sally Robinson, Jennifer Rousseau and Jason Elder).
- The equestrians exercised an undue authority at the Village during this period.
- Their [6]passion for their cause blinded them to their responsibility to the Constitution and the public welfare.
- The significance of LeCompte's message was that as goes LeCompte, so goes the equestrian community. He evinced the false sense that if his illegal operation was closed down the equestrian community would fail.
- He demonstrated his willingness to deny the equestrians the many favors he bestowed upon them if they did not march in lock step with him and get behind him. The record established that he supported the polo club and its annual event-the Kaloway Cup which in his words "handsomely" benefitted the equestrians

In the very limited emails that were produced located and submitted by Plaintiffs into evidence, the words and directives in the emails Dr. LeCompte sent are evidence of his intent at the time. They were written and are to be considered in light of the chain of events that were occurring. *See Quick v. Michigan Millers Mutual Insurance Co.*, 112 Ill. App. 2d 314, 320 (2nd Dist. 1969) ("A

[5] Steven Knoop, Joseph Messer, Konstantine Savoy, Dale Kleszynski, Tomasz Helenowski, John Rosene, Sally Robinson, Patti Meroni, Michael Harrington, Jennifer Rousseau, James Plonczynski, Jason Elder, Kurt Anderson, John J. Pappas, Sr. and Benjamin B. LeCompte III (15 witnesses called by Defendants-Intervenors ("Intervenors").

[6] All of them either did not run again or were defeated in the next election. The three ZBA members were replaced.

person's state of mind can be manifested no better than by his written or oral expression evidencing this state to others. Whenever intention is itself a distinct and material fact in a chain of circumstances, it may be proved by testimony of contemporaneous oral declarations.")

"The value of emails and texts messages can be particularly significant in litigation due to the fact that the ease of sending or replying to such messages can cause people to say things they might not otherwise say in traditional correspondence. Indeed, they are often replete with unrehearsed, spontaneous statements that surpass in simplicity and frankness and ease of understanding other far more complicated bits of evidence." *Bankdirect Capital Fin., LLC v. Capital Premium Fin., Inc.*, No. 15 C 10340, 2018 U.S. Dist. LEXIS 57254, at *27-28 (N.D. Ill. Apr. 4, 2018). "Simply stated, '[e]lectronic communications have the potential to ... provide the proverbial 'smoking gun.'" *Id.* [citations omitted.]

The series of LeCompte's emails to Knoop and Stieper in 2011 and his email to Ms. Freeman in 2014 evidence his intent and bear on the chain of events in 2011 that lead to the Schuman letter and the chain of events in 2014 which resulted in the adoption of the Ordinance. Plaintiffs respectfully submit that these emails are the "proverbial smoking gun".[7]

- No expert testimony that LeCompte's property will be devalued if Ordinance 14-19 invalidated. Intervenors in 21 days of trial never introduced any expert testimony

[7] LeCompte claims that he was commercially boarding on the property since before the adoption of Ordinance 06-12. However, the evidence and testimony refute that claim:

- In his appeal in 2008 he never claimed to be grandfathered in due to his alleged commercial horse boarding predating the adoption of Ordinance 06-12.
- In the petition for a variation Mrs. LeCompte filed in 2005 and in the testimony she offered in support of that petition she never indicated to the ZBA that commercial horse boarding was occurring at Oakwood and in fact expressly testified that enclosing the riding arena was for her own personal use.
- Nor in any of the building permit applications for new barn construction did LeCompte disclose that the barns were being constructed to permit the conduct of commercial horse boarding at Oakwood available to the general public.

demonstrating that LeCompte suffered a loss in value due to invalidation of Ordinance 14-19. Yet, that is what they asserted in their Petition to intervene.

- The list of errors and inconsistencies in LeCompte's testimony go on:

a. He was dead wrong that it is perfectly appropriate to talk to ZBA members and to communicate with them privately because they are legislators. That position runs contrary to the Open Meetings Act 5 ILCS 120/2 et seq which in the definitions provides, "Quasi-adjudicative body" means an administrative body charged by law or ordinance with the responsibility to conduct hearings, receive evidence or testimony and make determinations based hereon.

See also Irshad Learning Center v. County of DuPage, 804 F.Supp.2d 697,711 (2011), "The duties the Board [referring to the DuPage County Zoning Board]—hearing evidence and making a decision based on the evidence—are adjudicatory in nature…"

The type of communications he conducted with members of the ZBA offend the ZBA Overview (**Pls' Ex. 200**) discussed in greater detail in Section C-5. LeCompte no more had the right to communicate orally and in writing with the members of the ZBA than he does with this Court.

b. He testified he was not a party to the Campaign Violations, but he was. The caption of the case clearly spells out his name (**Pls. Ex. 19**)

c. He never advised the Court that he replaced the contributions with contributions after the election to the PAC that supported Messer, Meroni, Selman and when he did those substitute contributions were contrary to view he testified in Court opposed to contributing to PAC's.

- His exhibit **Int's Ex.190** was riddled with errors, misrepresentations and half-truths. LeCompte took full credit for preparing the exhibit and vouching for its accuracy. Cross examination demonstrated that three of the five excerpts are inaccurate. Either he cited to the wrong line in the transcript or attributed a statement to the wrong individual or took an excerpt entirely out of context (Jon Knight's statements he attributed to horse boarding were in reference to a an entirely different operation.)

- Conclusion. LeCompte's testimony is so entirely biased and self-serving that it should be disregarded in its entirety.

John Pappas' testimony is not entitled to any weight

Mr. Pappas petitioned this Court to intervene under false pretenses. He represented to the Court *inter alia* that the declaration of the invalidity of Ordinance 14-19 will substantially deprive

him of the right to the use his property in that he would be prohibited from boarding horses in his barns; and that invalidation will result in the devaluation of his property. See ¶¶41-42 of Amended Petition to Intervene.

With respect to the alleged loss in value Dale Kleczynski, the real estate valuation witness called by the Intervenors, never testified that Mr. Pappas property would be devalued by the repeal of Ordinance 14-19. He did not arrive at any opinion that Pappas' property values were damaged since Ordinance 14-19 was repealed.

And it certainly would have been very difficult for Mr. Kleczynski to arrive at that opinion as Mr. Pappas confirmed in his testimony that he hasn't changed his operations since 1983 when he purchased his property. According to Pappas, he has continued to operate as he has pre-Ord 06-12, during 06-12, during the short life of Ordinance 14-19 and after its repeal.

He demonstrated in his testimony that his property is the icon for larger commercial barn operations. The photos he identified demonstrate that he has no neighbors. One can look to the north, the south, the east and to the west and see no residences—a condition so unlike the conditions existing between the LeCompte operation and the Drury properties. His property is located at the northeast corner of two of the busiest roads in the Village, Ridge Road and W. County Line Road.

His credibility was sorely tested with his espousal of the "Historical violations defense" theory[8]. Attorneys Pappas, Messer and Freeman are the propagators of the absurd theory that

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[8] The document he introduced with respect to the Hirsch property (Deerwood Farm), the property the Intervenors testified was cited for violating the home occupation provisions, demonstrates that the Hirsch's resolved their dispute by entering into a covenant agreeing to comply with the Village zoning restrictions. (See **Ints' Ex. 33**)

Ordinance 14-19 and the retroactivity clause was to protect the other barn owners from prosecution for historic violations. The theory is that the Village could reach back 8 years from the time Ordinance 14-19 was adopted to prosecute other large barn owners for not operating consistently with the home occupation regulations in Ordinance 06-12. This theme was also picked up by LeCompte. It is a theory founded on a foundation of straw. It is grounded in conjecture, not fact; surmise not the evidence in the record; and wholly fanciful and speculative. It runs completely contrary to the due process and equal protection clauses of the US and Illinois Constitutions. It runs afoul of the two-year statute of limitations on municipal violations ((735 ILCS 5/13-202).

LeCompte was served with a Notice to cease and desist not based upon historic violations but current operations and ordered to cease operating in violation of the Village's zoning regulations. The historic violations defense is an act of desperation and further undermines the credibility of LeCompte and these three witnesses LeCompte called.

LeCompte is the only property owner cited by Village for violating the HOO and ordered to cease and desist (besides Hirsch who complied with the Village's regulations). LeCompte is the only property owner who was found in violation of the Village's regulations and that finding was affirmed by the ZBA, the Circuit Court and the Appellate Court. LeCompte is the only one who benefitted from the retroactivity clause (See in Attachment A under Retroactivity) and the only one who stood to benefit from promoting a patently false threat.

Respectfully, the testimony of John Pappas failed to rebut the plaintiff's evidence which effectively extinguished the ordinance's presumption of validity.

Kurt Anderson's Testimony Is Not Entitled to Any Weight

- Noone captures the utter inconstancy and the lack of credibility than Kurt Anderson. He is the poster child for flip flops.
- His flip in 40 days from recognizing that retroactivity benefitted LeCompte to including it and then voting for it is well documented in the trial of this cause.
- There is no denying he reversed his position and failed to offer any basis for that reversal.
- His testimony that Ordinance 14-19 and the retroactivity clause was not for the benefit of LeCompte is not believable given his clear-cut statement on September 11, 2011, that retroactivity was for LeCompte's benefit.
- Anderson is another one who lamely asserted that he had lost access to his emails. It strains credulity to accept that LeCompte was not in communication with Anderson about what he wanted in the Anderson II amendment. Nor can it be seriously accepted that Anderson drafted that without LeCompte's input.
- Anderson offered inconsistent positions on who prepared Anderson II. He testified he did it himself at the ZBA and at trial but at the voting meeting when his colleague asked him on December 2 who did it and expressed incredulity at his statement that he did he back tracked and referenced a Susan Fitch as contributing. **Pls. Ex.45 at 104**
- Freeman signed a sworn Stipulation that was filed in this matter in lieu of a live appearance in which she stated that "Ms. Freeman worked with ZBA Member Kurt Anderson to draft the Anderson II Text Amendment. Among the amendments to the Anderson I Text Amendment was the inclusion in Anderson II of a retroactivity provision"¶54 of Stipulation of Testimony of Judith Freeman.

- There is an inconsistency between Anderson on the source/distribution of the December 3 amendments. Anderson states that the genesis of his last-minute amendments resulted from discussions and/or testimony presented by Mr. Schuman the night before **Pls. Ex. 45** at 107. Yet a comparison to the amendments proposed by Mr. Anderson on December 3 and the remarks by Mr. Schuman on December 2 (**Pls Ex 44** at 86-115) bear little resemblance to one another. Schuman unmistakably indicated that he would prefer that the text amendment be rewritten to clearly set forth that a permit is required. Nowhere in Anderson's last-minute amendments does that language appear. **Pls Ex 44** at 103. For example, Schuman admitted he had not prepared any written comments to the draft text amendment, he did not submit any comments in writing and his input had not been sought by Anderson before it was submitted in mid-October until the evening of December 2. **Pls Ex 44** at 105-06. Yet Anderson mistakenly asserts that it was Schuman's comments that formed the basis of his last-minute amendments to the text amendment. Furthermore, Schuman raised several other concerns about the Ordinance including the excessive square footage that the barns could be built to, the unlimited height and the uncertainty as to any setbacks. Yet Mr. Anderson presented no amendments to address those concerns. Given all of the alleged concern about clarity in the regulation of large-scale horse boarding one would think that the proponents of this text amendment would proceed with caution. But an examination of these transcripts evidence that Mr. Anderson and the proponents of this text amendment on the ZBA did not conduct themselves in a prudent manner. Instead they rushed to judgment rather than continuing the hearing or initiating another public hearing to address the legitimate concerns they heard from Mr. Schuman, Mr. Savoy, Mr. Stieper

Mr. Wolfgram and the members of the public about the text amendment before them. Instead, they blindly voted on these amendments.

Anderson's testimony and opinions that Anderson II and the retroactivity clause were not adopted for the benefit of LeCompte is not believable or credible and should be disregarded for all of the reasons identified above

Judy Freeman's Testimony Is Not Entitled to Any Weight

Her stipulation too should not be accorded any weight on the key issues in this case—Ordinance 14-19 and the retroactivity benefitted the public as a whole and not only LeCompte for the following reasons:

- She regularly and repeatedly communicated on personal emails rather than Village assigned emails on business related to the ZBA and particularly LeCompte's text amendment and the effort to legalize his operation through a text amendment.
- She strenuously opposed treating large scale commercial horse boarding as Agriculture in 2008 in connection with her voting to sustain the cease and desist finding LeCompte violated Ordinance 06-12.

> "What I'm having trouble with is if you take a literal interpretation of what this appeal is all about and draw it to an illogical conclusion anyone in the village could build a barn that has larger square footage than their home, call it agricultural and bring in 500 horses. And that to me could never have been intended by the way the code is written." **Int's Ex. 82** at pp. 68-69.

- And yet when she voted for Ordinance 14-19 that is exactly the approach she voted for.
- She eloquently stated the case for regulating these operations through a special use in 2011. **(Pls. Ex. 26)**

- She voted to eliminate the retroactivity clause in September 2014.
- Inconsistent with her positions in 2008 and 40 days earlier in 2014 she voted to recommend approval of Anderson II with retroactivity.

She has had so many shifting, inconsistent positions on the regulation of this use that her opinions expressed in the stipulation that Ordinance 14-19 promotes the public welfare and was not adopted for the benefit of LeCompte are valueless.

Plaintiff understands that it is a difficult and unpleasant task to tell public officials that their testimony regarding firmly held beliefs is of little weight. What must be understood however is that valuable property rights and the rule of law always prevail over the zeal of a small but over-represented element of the community. The evidence is overwhelming that Ordinance 14-19 in derogation of the historical background; departed from the normal procedural sequence; and substantively departed from the normally accepted decisional criteria. The specific sequence of events leading up the decision detailed above provide further evidence of the unconstitutionality of Ordinance 14-19.

Certainly, the main witnesses offered by the Intervenors have failed to demonstrate that Ordinance 14-19 promoted the public welfare.

Intervenors Other Witnesses

John Rosene's Testimony is not Entitled to any Weight

John confirmed that the Polo Club owns no barns and does not engage in commercial horse boarding. He has effectively confirmed that the statements made on his behalf in the Petition to Intervene are false...

In that Petition he represented to the Court in a conclusory fashion that:

40. The Polo Club has a strong interest in boarding its horses in the Village.

He then signed a document that represented to the Court the nonsensical allegations that:

> 41 The Text Amendment allows the Petitioners to lawfully board horses in their barns, or in other barns in the Village.
> 42. The declaration of the invalidity of the lawfully adopted Text Amendment will result in a substantial deprivation of the Petitioners right to the use of their property in that they would be prohibited from boarding horses in their barns.
> 43. Further, the invalidation of the Text Amendment will result in the devaluation of the Petitioner's property, in that horses can no longer be boarded on their property.

Given Mr. Rosen's testimony that the Polo Club owns no property the statements supporting the intervention are baseless.

John Rosene demonstrated his extreme bias for equestrians. "The Village government has got some shaky characters in it." One need only recall the cross examination of John Rosene lost his composure when questioned on the special use for the Kallaway Cup and when asked to account for his statements in **Pls' Ex. 173** where he condemned the new residents who were not participating in the activities promoted by the Riding Club[9]. John Rosene was argumentative and unresponsive.

The Other Intervenors Lay Witnesses (Tomasz Helenowski, Sally Robinson, Patti Meroni, Michael Harrington, Jennifer Rousseau, Jason Elder)

Plaintiffs respectfully suggest that the testimony of these witnesses called by the Interevenors offered nothing to support Intervenors case. The most significant testimony was from former Trustee Harrington who testified without reservation that the "Notwithstanding" clause was not confusing. He unabashedly testified that he was not confused by that phrase. To him, "notwithstanding" seemed pretty clear. He hears the word "notwithstanding" and sees it in a lot

[9] Even if the Court wants to view the statements in Pls' Ex. 173 in the light most favorable to the witness and the Intervenors, there is no denying that Mr. Rosene repeatedly testified that the statements contained in the document were opinions he held when he wrote them and opinions that he held on the day he testified.

of contracts. His view is that word means regardless of everything that you read before here, here's another provision. Or in other words, he explained, here is some more information that needs to be considered. He admitted that in offering his defense of Ordinance 14-19 he did not consider the retroactivity clause.

Other than presenting a witness in their case in chief which contradicted a central tenet in their defense these witnesses certainly did not advance Intervenors' burden of establishing that Ordinance 14-19 was adopted for the public benefit.

THE EXPERT WITNESS TESTIMONY

Planning Testimony

In comparing the testimony of the three planners, Jacques Gourguechon for the Plaintiff and Kon Savoy and Jim Plonczynski for the Intervenors, it is apparent that Gourguechon's opinions have demonstrated from a planning standpoint why Ordinance 14-19 offends the public welfare and does not advance a public purpose.

Jacques Gourguechon

Mr. Gourguechon's testimony was long and detailed. Based on his 45 years of professional experience he offered well-reasoned opinions grounded in solid land use planning and zoning principles. He painstakingly explained why the retroactivity clause made a mockery of zoning. His testimony provided a firm understanding and explanation of the protections afforded to the overwhelmingly residential community that comprises the Village. He concisely explained the loss of protections to this residential community by virtue of the Ordinance.

His testimony debunks the claim repeated multiple times in the 21 days of trial by the Intervenors that the Village is an equestrian community. He demonstrated through the description

of the key planning documents including the Comprehensive Plan, **Pls' Ex. 77** that such an assertion is false. That document, as well as Gourguechon's testimony and the Plaintiffs' video unmistakably identifies the Village as a residential community.

Kon Savoy and Jim Plonczynski

Kon Savoy and Jim Plonczynski testified that they are of the opinion that Ordinance 14-19 is consistent with the Comprehensive Plan but amazingly could not identify a single instance where that Plan references commercial horse boarding. The cross examination by the Village's attorney repeatedly demonstrated that Savoy's reliance on the Comprehensive Plan was based on phrases and language taken out of context and he was unable to identify a single reference in the Plan that supported his central opinion. Savoy admitted that the purpose of a special use approach like the one recommended by the ZBA in 2011 allowed the public to weigh the impacts of a proposed use on neighboring lands and that a permitted use as a matter of right approach like that permitted under Ordinance 14-19 takes that right away. He acknowledged that conditions in a special use enable the community to guarantee that the use will operate as agreed to so as not to exercise an adverse impact on surrounding uses. He admitted that a special use approach would be consistent with the goals and objectives of the Comprehensive Plan. He acknowledged his testimony on December 2, 2014 when he testified he had no opinion on whether Ordinance 14-19 promoted the public welfare; that it would take an interdisciplinary study to arrive at such an opinion and that he knew of no other ordinance with a retroactivity in it or permitted large scale commercial horse boarding as a matter of right. He was unaware that the ZBA recommended approval of Ordinance 14-19 the next night. In his testimony before this Court he had not conducted the interdisciplinary study he had identified at the ZBA on December 2, 2014. He was not aware of any specifics on

Ordinance 14-19. He had no information on whether Ordinance 14-19 was adopted for the benefit of one individual. He was not aware that Ordinance 14-19 was repealed.

It was established on *voir dire* that James Plonczynski's opinions were disclosed by counsel even before the Intervenors formally retained him. His inspection of the other barns he testified to consisted of nothing more than windshield surveys and then only to the extent that he could view the barn and its operation from the adjoining street network.[10] He was so ill prepared by the attorneys for the Intervenors that he did not know that Shamrock Farms was owned by Mr. John Pappas. He too had never encountered a retroactivity clause in a zoning ordinance nor was he aware of any other community that permits large scale horse boarding as a matter of right. He agreed that when the Comprehensive Plan was adopted, Ordinance 06-12 was in place and that Mr. Savoy would not have recommended a Comprehensive Plan inconsistent with current Village Zoning regulations. He was adamant in his opinion that if amendments were proposed to Ordinance 14-19 after the public hearing had been closed that a new public hearing should have been scheduled.

Conclusion: Both Savoy's and Kleczynski's opinions are filled with so many flaws and the absence of any meaningful bases that their opinions should be disregarded by the Court. In comparison, the two witnesses for the Intervenors made significant admissions which further support the unconstitutionality of the ordinance. Neither knew of any other zoning ordinance with a retroactivity clause. Both confirmed that other communities regulate this use via special use not permitted as a matter of right. Neither have conducted the necessary analysis to testify that

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[10] The Court will recall that many of the barns shown in the video were obscured from view from the street either due to the significant distances from the street or the existence of dense screening.

Ordinance 14-19 promotes the public welfare. The two Intervenors' witnesses opinions do not hold up to scrutiny Jacques Gourguechon's opinions do.

Appraisal Testimony

Mike Marous.

The Plaintiffs' expert real estate appraiser identified the negative impact that Oakwood Farms and Ordinance 14-19 is having on the Drury properties. He opined based on comparable sales that the Drury properties are suffering a loss of 5-10% or as much as $300,000.00, a significant loss in value to a residential property owner.

Marous identified the intensity of the use in close proximity to the Drury residences permitted under Ordinance 14-19 and the availability on the market of several other more advantageously located properties (not immediately adjacent to a large commercial boarding operation and not clearly visible from the only access point to the Drury properties) in the Village and in other communities in the immediate area. He offered well-reasoned opinions grounded in solid real estate appraisal principles.

Dale Kleczynski

Mr. Kleczynski offered no opinion on the loss to LeCompte or Pappas if their operations were limited to their own personal use or operations in line with the restrictions under Ordinance 06-12. Kleczynski [11]participated in the subterfuge of redating his report to delay the close of Discovery in 2021 to cover up the attorneys purposeful delay in producing the report.

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[11] The subterfuge was worked by Intervenors attorneys in delaying the release of Kleczynski's report. The date of the letter his original report was attached to was dated October 5 but at the behest of counsel for the intervenors the report was redated to October 26. The Intervenors were under a court order to deliver the reports to Plaintiffs' counsel

Kleczynski entire opinion was premised on faulty information. Intervenors counsel never advised him that Ordinance 14-19 had been repealed. As a consequence, the overwhelming majority of sales he relied upon were comparing values when 06-12 and the 2016 ordinance were in effect. The irrelevancy of these sales is simply too apparent to be ignored. No wonder he did not find any resulting impact in value. Thus his core opinion that Ordinance 14-19 did not adversely impact property values is so superficial as to be meritless.

This fact alone would be sufficient to instill grave doubts as to the validity of any other conclusions which might flow from Mr. Kleczynski. Mr. Kleczynski's opinion are flawed by the information he was provided and thus his opinions like his data should be disregarded. His testimony does not inspire confidence in the validity of his conclusions. When testimony is conflicting the trier of fact is required to ascribe credibility to the witnesses and weight to their testimony. (First National Bank of Skokie v Village of Morton Grove 12 Ill. App. 3d 589, 594)

PLAINTIFFS LAY WITNESSES

Jim Drury

He explained with clarity how LeCompte's use of his property was adversely affecting his and his wife's quiet use and enjoyment of their properties due to the visual blight of the large commercial operations built immediately adjacent to the private road that both properties share and which is clearly visible from one entering and leaving his property. He identified the increase in traffic not only on Deepwood but along Bateman Rd as well as the odors the sounds and general commercial activity occurring at LeCompte's property inconsistent with the effects of a non-

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on or before October 15 to allow them to complete the depositions of Intervenors expert witnesses. It appears that the witness participated in delaying the production of the report.

commercial use He testified that as a result of LeCompte's operation he built a substantial landscaped berm at significant expense to shield his property from LeCompte's operations.[12]

In his opinion Ordinance 14-19 was adopted for the benefit of one property owner only, namely LeCompte. Ordinance 14-19 allowed the barn to be bigger than a residence, required no setback requirements, permitted hundreds of horses to be boarded on the Oakwood Farms property and permitted in excess of 250,000 sq ft of barns all of which severely impact Drury's use of his property.

He explained that he and his wife Peggy have lived with this structure, the commercial horse boarding operations, and the deleterious effects that have been adverse to them for at least 14 years for as long as 14 hours per day. Three appellate courts have heard and considered this operation. In the first case the Appellate Court affirmed the cease and desist order that LeCompte was in violation of the Village Zoning Ordinance. In the second and third appellate court opinions the Appellate Court reversed the trial court and reinstated both of Mr. Dury's complaints finding that each stated a cause of action.

He initiated and continues to pursue the adjacent property owners suit because he is one who believes in the legal system and that justice will win out. He has relied on the Village's zoning restrictions which does not permit commercial activities in residential districts. He strongly believe in standing up for the rule of law.

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[12] Their aerial photographs demonstrate that LeCompte has shielded himself from his own intense commercial operations by a long tree lined drive and a setback of several hundred feet from Bateman Road. To access his residence LeCompte does not have to drive by the large barns, trailers and other evidence of his commercial horse boarding operations like the Drury's do.

James O'Donnell

He testified to the unusual haste in the proceedings to enact Ordinance 14-19. In his opinion it was rushed through, the public not given an opportunity to present experts, retroactivity favored one property owner, LeCompte. In his opinion Ordinance 14-19 would permit a barn to be larger than the house and no setback requirements could be imposed. He believed Ordinance 14-19 imposes nuisances on adjacent properties and affords no protections to neighbors.

He was concerned with the unlimited lack of protection that Anderson II opened up compared to the protections afforded by home occupation. In his opinion, common sense would say Anderson II did violate the public health, welfare and safety in the Village, based on the protections that it removed that were existing under the 2006 Home Occupation Ordinance and the 2016 Home Occupation Ordinance. Under Home Occupation, a commercial horse boarding operation is invisible, is not to be a distraction and a nuisance to neighbors and to the neighborhood. A neighbor should not be able to tell boarding is going on. The operation is not unsightly. There is no excess traffic. It was idyllic Barrington Hills.

David Stieper

It takes a lot of courage to stand up to the mentality evident in the proceedings at the ZBA on December 2 and 3. (See **Pls' Exs.44 and 45.**)

Throughout all of the proceedings he kept his cool and in a measured demeanor, like he did in court, expressed in a cogent manner the well-reasoned basis for his opposition to the Text Amendment. Whether he was seeking to secure a continuance or attempting to secure a vote on a number of proposed amendments, he did so in a professional manner.

A review of the transcripts discloses that he was engaged in the proceedings and put to the Village's witnesses relevant and pointed questions.

Mr. Kelly and Pappas' attacks on him (He is angry) at the argument at the Motion for a Directed Verdict of late he is "disgruntled" are unwarranted and not supported by the record.

He demonstrated the same calm during his direct and cross examination and provided the Court with a firsthand eyewitness view of the proceedings.

Mayor Marty McLaughlin

His letter on December 15 and his veto message were succinct and to the point and laid it out eloquently the factual basis why this text amendment was for the benefit of LeCompte and was not adopted for the public welfare. Like David Stieper, Mayor McLaughlin's testimony was laser sharp in demonstrating that the text amendment amounted to taking sides in the Drury-LeCompte lawsuit.

Mayor McLaughlin accurately perceived that the claims of confusion, and clarity over the "Notwithstanding" clause were nothing more than advertising campaigns and that the threat to other barn owners was nothing more than a scare tactic.

CONCLUSION

The Court finds that on the basis of the credibility of the witnesses and an evaluation of the bases offered for their respective opinions that the Plaintiffs' witnesses have met the burden of producing strong and compelling evidence rebutting the presumption of validity of Ordinance 14-19 and establishing that Ordinance 14-19 is arbitrary and facially invalid inasmuch as it is without substantial relation to the public health, safety and welfare and that the intervenors witnesses have utterly failed to counter that evidence, testimony and opinion.

Respectfully submitted,
Counsel for Plaintiffs,

By: /s/ Thomas R. Burney

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Respectfully submitted,
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By: /s/ Mollie Dahlin

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Tab 12

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

JAMES J. DRURY III, as agent of the Peggy D. Drury Declaration of Trust U/A/D 02/04/00, JACK E. REICH and JAMES T. O'DONNELL,	
Plaintiffs,	Case No.15-CB-3461
-V-	
VILLAGE OF BARRINGTON HILLS, an Illinois Municipal Corporation,	
Defendant,	
BENJAMIN B. LECOMPTE III, CATHLEEN B. LECOMPTE, JOHN J. PAPPAS SR., BARRINGTON HILLS POLO CLUB, INC., AND VICTORIA KELLY,	
Defendants-Interveners.	

REPORT OF PROCEEDINGS of the trial before the

CIRCUIT JUDGE DAVID ATKINS,

ON THE 28TH DAY OF DECEMBER, 2022.

APPEARANCES:

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For Defendants.

OTHER APPEARANCES:

PATRICK MCPHERSON, COURT REPORTER

I N D E X

E X H I B I T S

weeks -- after Jim Drury filed his lawsuit to enforce the Village's case and desist order.

Do you recall an email on that date, sir, which I'm showing you as Plaintiff Exhibit 13? And let's scroll through this, sir, and then let's start with Page 1. This is from CBLeCompte@aol. CBLeCompte is your wife.

Is that correct, sir?

A. Well, we use the same email.

Q. Thank you for clarifying that. So this is an email that came from you?

A. From me.

Q. All right. And do you recall this email that you sent, in this particular instance, to David Steeper?

A. Very well. And you heard a lot about it in this testimony, in this trial. Is that correct, sir?

A. Well, I remember writing it.

Q. Okay. And that's what's always confused me, sir.

A. I'm sorry.

Q. That's what's always confused me. You remember writing it, but we didn't get it from you. This doesn't have a LeCompte stamp on it. We had asked for all the documents and correspondence that you had, with any of the whole myriad of people, and you acknowledge you didn't produce it, right, sir?

A. I didn't have it.
Q. You didn't have this email?
A. Because I didn't write it on my computer.
Q. You wrote it on your wife's computer?
A. No. I was at the Four Seasons in Scottsdale, and I didn't get my computer -- I'm probably one of the more technologically challenged people. I didn't get my computer until May, on my birthday, of '11.

So I had to go into the Residence Club office. They had a computer there, and I wrote the letter on the computer or the email. It wasn't on my computer.

Q. So you just testified that you remember this letter very well, but because it wasn't on your computer, that's why you didn't disclose it to us when we asked for it.
A. I didn't have it.
Q. You didn't have the letter, sir?
A. No, I did not have the letter.
Q. You had emails that went back to you from the individuals you wrote to, to the CBLeCompte address, didn't you, sir?
A. No.
Q. Well, let's see.
A. You're talking about emails back from this letter?

Q. Yes, sir.

A. I don't remember anything coming back from that letter.

Q. And is it your testimony that you have turned over every document that was on your computer, that you wrote or received from a wide array of people, that I identified as Village officials in my document production request? Is it your testimony that you've turned over everything, sir?

A. It's my testimony that I went back and searched for everything you had asked, and I turned over whatever I could find.

Q. And there was nothing you found that you didn't withhold or claim some privilege on. Is that correct, sir?

A. Nothing that was relevant to your request.

Q. So, if this letter was on your computer, would you agree that this was relevant to my request?

A. If that letter had been on my computer? Yes, I would agree with that.

Q. Well, continuing on with the letter, did you write any other letters on this -- where were you in Arizona?

A. Four Seasons.

Q. Did you write any other letters to any of the elected officials, from that location, concerning this subject of the qualifying as a home occupation?

A. Yes.

Q. So there are other letters that you wrote, from that place in the Four Seasons, that you did not find and have not disclosed?

A. Yes. The same computer. Yes.

Q. Okay. And these are all emails, sir. There are no "snail mail" or other personal delivery kind of documents that you might have had that were within the realm of the documents that were requested?

A. I don't recall any. What do you call it; snail mail?

Q. Yeah. I'm calling U. S. Mail snail mail, sir.

A. I don't recall anything by U. S. Mail. No.

Q. So when you say there were other emails that you sent out of the Four Seasons, what did those concern; were they related to the requests that I made in our production request?

A. Well, the email to Steeper and Knuth, I would say both would be related to your request. Had I had them, I didn't have them. I couldn't find them. They weren't on my computer.

Q. Were there any other emails that you wrote from the Four Seasons that weren't on your computer that you can recall that you wrote to any of the Village officials?

A. I may. I know Patty McKevit called me or emailed me. I may have emailed him back. I don't remember that.

Q. But you can't find that email.

A. Say that again?

Q. You cannot find that email.

A. I have no emails, just so I understand, on my computer back past 2013; none for any reason.

Q. So I'm very familiar. So what happened to all your emails before 2013, sir?

A. I don't know. AOL changed the way that they -- there was a difference with what AOL did, I don't know. But I went back and looked, and I have nothing past 2013 on anything, not just this.

Q. So you're telling me that you don't have a cloud-based system that you employ with your emails that would allow you to retrieve emails back to 2013?

Is that what you're telling the Court?

A. I don't have a cloud-based system. My wife has a cloud on her phone.

Q. Does your wife's email address had a cloud-based system or not, sir?

A. I don't think this -- she has one it says cb@aim.com. I don't ever use that one. I use CBLeCompte@aol.com, but I don't know that she does have a

cloud-based system that interfaces with my computer.

Q. When we were asking for these documents, did you go to your wife's phone and seek to obtain documents from your wife's phone that were related to the production request we made?

A. To my wife's phone? No.

Q. But you think she has a cloud-based system on her phone?

A. She does now. I get these bills every month or so, $2.99 from Apple for a cloud thing. I don't know if she did, then or not, but I didn't go to her phone.

Q. So you're telling me that in response to my production request, any documents related in 2011 or 2012 or even part of 2013 were not disclosed, because you're saying all of them disappeared?

A. No, I'm not saying anything disappeared. When I got your production request, what I did: I went through all -- first, my paper files. Okay? Because a lot of the stuff I gave you pre-dated; when it predated me getting my computer, which was in May of 2011.

I went through all my paper files trying to find things that I thought were responsive to your request. Then I went through my computer files trying to find things to respond to your request. Then I took the train downtown to

Mr. Michael's office and went through two or three boxes of material that we turned overin the first lawsuit that Mr. Drury had against me, went through those boxes to see if there were things responsive to your request.

I spent hours going through things to respond to your request. And I gave you everything that I could find that was responsive to your request.

Q. And my question is this, and what you determined is that you could not give me anything in terms of emails in 2011 or 2012 because you couldn't find them on your computer. Is that what you're saying?

A. Couldn't find them in my computer; couldn't find them printed out in my paper file. And many times, I'll save something to my computer. I didn't find them there. I, specifically, looked for these two because I knew you were going to ask about them, but I don't have them.

Q. So we will get to it in a second. Let's go back to this Exhibit 13. Let's go to the end of the email chain for a moment, please. The prototype letter -- this is a prototype letter that you prepared. Is that correct, sir?

A. Yes.

Q. And this is a document that you did not turn over to me.

A. That document, I believe, was prepared -- was done

Tab 13

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

JAMES J. DRURY III, as agent of the Peggy D. Drury Declaration of Trust U/A/D 02/04/00, JACK E. REICH and JAMES T. O'DONNELL,	
Plaintiffs,	Case No.15-CB-3461
-V-	
VILLAGE OF BARRINGTON HILLS, an Illinois Municipal Corporation,	
Defendant,	
BENJAMIN B. LECOMPTE III, CATHLEEN B. LECOMPTE, JOHN J. PAPPAS SR., BARRINGTON HILLS POLO CLUB, INC., AND VICTORIA KELLY,	
Defendants-Interveners.	

REPORT OF PROCEEDINGS of the trial before the

CIRCUIT JUDGE DAVID ATKINS,

ON THE 28TH DAY OF DECEMBER, 2022.

APPEARANCES:

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For Defendants.

OTHER APPEARANCES:

PATRICK MCPHERSON, COURT REPORTER

I N D E X

E X H I B I T S

THE COURT: But your question's related to the dismissal and the sanctions, right?

MR. BURNEY: Sanctions, yes. The date's there.

THE COURT: So how is that relevant to what you just explained to me?

MR. BURNEY: Because he's trying to use this to defeat the Drury lawsuit, Your Honor; this letter.

THE COURT: Okay.

MR. KELLY: Judge, I would say it's not relevant to this case, number one. Number two, this shows the Plaintiff's real motive in this case. It has nothing to do with this lawsuit. If they wanna make that argument, there's another lawsuit that they can use. I mean, this is an abusive process, essentially. That's what they're doing in this case.

THE COURT: Okay. I understand --

MR. KELLY: I object. That's still not relevant.

THE COURT: Well, I'm going to allow him to answer. I'm not sure, at this juncture, the relevance of what you're exploring right now. I understand where you're going with it, but if we can get to it.

MR. BURNEY: Thank you, Your Honor.

THE COURT: Okay.

Q. (BY MR. BURNEY) Does this statement, in the first

two sentences of this paragraph, express your intention with respect to what you would do with this letter?

A. Yes.

Q. Thank you, sir. Now, would you agree with me that this asks to Mr. Knuth and the prototype letter was a direct result of the Drury lawsuit?

A. Yes.

Q. And was it your intention to use this letter as a threat to Mr. Drury to force him to withdraw his lawsuit; was that your intention, sir?

A. I wouldn't call it a threat. We wanted to get the lawsuit dismissed, and that's what this was about. I wasn't threatening anybody.

Q. So this letter was intended to persuade Mr. Drury and Mr. McLaughlin to withdraw the lawsuit.

MR. KELLY: Objection to the form of the question; characterization.

THE COURT: Overruled with what his intention was.

THE WITNESS: The purpose of the letter was to try to help us get the case dismissed. I don't know if it's for them to withdraw it or get it dismissed or if there's a difference there.

Q. Now, that lawsuit, that was filed by Winston and Strawn. Is that correct, sir?

A. Yes.

Q. And it sought a junction relief to close down your commercial boarding operation. Is that correct, sir?

A. Yes.

Q. And if and when Mr. Drury prevails, you are going to have to pay attorney's fees.

Do you understand that, sir?

MR. KELLY: Objection. Calls for legal conclusion.

THE COURT: Sustained.

Q. (BY MR. BURNEY) And this is the lawsuit, the Drury lawsuit, that is presently pending before Judge Walker today. Is that correct, sir?

A. Yes.

MR. KELLY: Objection. Relevance.

THE COURT: Overruled.

Q. (BY MR. BURNEY) And because of the Schuman letter, you have been able to postpone the decision on the Drury lawsuit for 10 years. Isn't that true, sir?

MR. KELLY: Objection. Calls for conclusion.

THE COURT: Sustained.

Q. The Schuman letter was issued in March 15th, 2011; correct, sir?

A. Yes.

Q. And to this day, there has not been a decision on

the Drury lawsuit, has there, sir?

MR. KELLY: Objection. Relevance.

THE COURT: Overruled. He can answer.

THE WITNESS: There's been no decision.

Q. (BY MR. BURNEY) And part of the reason that some of the years as to why there hasn't been a decision on the Drury lawsuit is because of the Schuman letter.

Would you agree with me, sir?

A. The reason there hasn't been a decision on the Drury lawsuit?

Q. Yes, sir.

A. I'm not sure I could say that.

Q. Did your attorneys, Mr. Michael, use the Schuman letter as a defense to the Drury lawsuit, sir?

A. Yes.

Q. And did the appellate court in LeCompte II, rule on the Drury -- I'm sorry, on the Schuman letter?

A. That I'm not sure about.

Q. Okay, so that's a matter of record. So it's the combination of the Schuman letter and this Ordinance 14-19 that have been used as defenses by your attorneys to prevent a judgment on the Drury lawsuit to enforce the cease and desist order. Do you agree, sir?

A. I think those are two things that have been used.

I think there are others, too.

Q. And it's when it was clear to you, in 2014, that the Drury lawsuit was going to get reinstated, that you then went back to work to find another strategy to keep yourself open. Would that be a fair characterization, sir?

A. I would --

MR. KELLY: Objection. It calls for doctor's, counsel's mental state as it's clear to you.

THE COURT: Overruled. You can answer.

THE WITNESS: Repeat it, please.

Q. (BY MR. BURNEY) In 2014, the appellate court reinstated the Drury lawsuit. Am I right about that, sir?

A. Yes.

Q. And it was in 2014, that you then began submitting that in 2014, you submitted your text amendment with retroactivity in it to the Village of Barrington Hills.

Is that correct, sir?

A. Yes.

Q. And so wouldn't you agree with me that you have used the Schuman letter and then what became 14-19 as defenses to the Drury lawsuit?

A. Partly, yes.

Q. Now, going back to this letter again, was this correspondence, in your recollection, sent to anybody else

Tab 14

PLAINTIFFS
EXHIBIT 3

112 Algonquin Road
Barrington Hills, IL 60010
847.551.3000

village@vbhil.gov
www.vbhil.gov

I, Anna L. Paul, do hereby certify that I am the duly appointed and qualified Village Clerk of the Village of Barrington Hills, Cook, Kane, Lake and McHenry Counties, Illinois, a municipal corporation, and the keeper of its ordinances, resolutions, records and Corporate Seal, that the attached is a true and complete copy of Ordinance 16-22, AN ORDINANCE AMENDING TITLE 5, ZONING REGULATIONS SET FORTH IN CHAPTERS 2, 3, 5 AND 10 REGARDING HORSE BOARD - ZONING BOARD OF APPEALS TEXT AMENDMENT, passed and approved on the 7th day of December, 2016.

I DO FURTHER CERTIFY that the original, of which the attached is a true and correct copy, is entrusted to me as the Village Clerk of said Village for safekeeping, and that I am the lawful custodian and keeper of the same.

IN WITNESS WHEREOF, I have affixed my name as Village Clerk and caused the seal of said Village to be affixed hereto this 13th day of December, 2016.

VILLAGE OF BARRINGTON HILLS CORPORATE SEAL ILLINOIS
Seal

Village Clerk

AN ORDINANCE AMENDING TITLE 5, ZONING REGULATIONS SET FORTH IN CHAPTERS 2, 3, 5 AND 10 REGARDING HORSE BOARDING – ZONING BOARD OF APPEALS TEXT AMENDMENT

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

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

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

WHEREAS, in accordance with its power and authority, on February 23, 2015, the Village Board adopted Ordinance 14-19 "An Ordinance Amending Title 5, Zoning Regulations Set Forth in Chapter 2, 3, and 5 Regarding Horse Boarding;" and

WHEREAS, earlier this year, the Zoning Board of Appeals commenced discussion of the current zoning regulations regarding commercial horse boarding in the Village; and

WHEREAS, Section 5-10-6(B) of the Village's Municipal Code provides that the Zoning Board of Appeals may initiate an amendment to the zoning code; and

WHEREAS, pursuant to this authority, the Zoning Board of Appeals initiated an amendment ("Amendment") to the zoning code to remove from the village code the changes to regulations regarding commercial horse boarding which were made through adoption of Ordinance No. 14-19; and

WHEREAS, the Amendment, attached hereto and made a part hereof by reference as Exhibit "A," was submitted for public hearing in compliance with the requirements of the zoning code and statutes of the State of Illinois; and

WHEREAS, Notice of Public Hearing with respect to the Amendment was published in the Daily Herald Newspaper in the Village of Barrington Hills, as required by the village code and statutes of the State of Illinois; and

WHEREAS, pursuant to said Notice, the Zoning Board of Appeals of the Village of Barrington Hills conducted a Public Hearing on the Amendment on November 9, 2016 and after hearing the Amendment, the Zoning Board of Appeals voted 6-1 to recommend approval of the Amendment, said vote resulting in a recommendation to the Village Board to adopt the Amendment; and

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

WHEREAS, the President and Village Board of Trustees has considered the matter and determined that the ZBA proposed text amendment to Title 5 Zoning Regulations relative to horse boarding be approved, as such action is believed to be in the best interests of the Village and its residents.

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

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

SECTION TWO: That Title 5 Zoning Regulations, Chapters 2, 3, 5 and be amended as set forth in Exhibit "A."

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

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

Ayes: 5 Nays: 2 Absent: 0

PASSED AND APPROVED by the President and Board of Trustees of the Village of Barrington Hills, Illinois, this 7th day of December, 2016.

APPROVED:

Village President

ATTEST:

Village Clerk

EXHIBIT A

ZBA TEXT AMENDMENT

Proposed Text Amendment:

The following proposed text amendment would repeal the changes to horse boarding approved in 2014, and return the text to that which existed prior to such amendment.

Text which is stricken will be eliminated, underline text will be returned to the Code, and rest will remain as written.

Section 5-2-1

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

Section 5-3-4

(A) Agriculture: The provisions of this title shall not be exercised so as to impose regulations or require permits with respect to land used or to be used for agricultural purposes, or with respect to the erection, maintenance, repair, alteration, remodeling or extension of buildings or structures used or to be used for agricultural purposes upon such land, except that such buildings or structures for agricultural purposes may be required to conform to building or set back lines. In the event that the land ceases to be used solely for agricultural purposes, then, and only then, shall the provisions of the zoning title apply.

~~1. Permits: Other than those regulations specifically provided for in subsection (A)2a of this section, the provisions of this title shall not impose regulations or require permits with respect to land used or to be used for agricultural purposes.~~

~~2. Boarding And Training Of Horses And Rider Instruction:~~

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

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

(2) Activities Located On Same Lot: No property shall be allowed to conduct the activities subject to the regulations under this subsection (A)2 that is not located on the same zoning lot or lots under the same ownership and/or control as the residence of the owner or operator of the related facility.

(3) Waste Management: All barns shall have an animal waste management protocol consistent with published acceptable standards and in full compliance with section 7-2-5 of this code.

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

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

(6) Number Of Horses: There shall be a limit on the number of horses that a boarding and training facility is allowed to board such that there shall not be in excess of two (2) boarded horses per zoning lot acre.

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

~~(8) Toilets. Properties subject to the provisions of this subsection (A)2 shall provide indoor toilets for use by employees, boarders and riders and shall not rely on outdoor portable toilets for ordinary operations.~~

~~(9) Floor Area Ratio: Properties subject to the provisions of this subsection (A)2 shall comply with the maximum floor area ratio requirements applicable to single family detached dwellings as specified in section 5-5-10-1 of this title. (Ord. 14-19, 12-15-2014)~~

Section 5-3-4 (D)

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

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

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

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

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

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

3. Use Limitations.

a. Employee Limitations:

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

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

b. Structural Limitations:

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

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

c. Operational Limitations:

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

(2) The floor area ratio (FAR) of the area of the building used for any such home occupation shall not exceed 0.01 (exclusive of garage floor area devoted to permissible parking of vehicles used in connection with the home occupation) ~~with the exception of any barn, stable, or arena.~~

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

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

(5) No vehicle or mechanical, electrical, or other equipment that produces noise, electrical or magnetic interference, vibration, heat, glare, emissions, odor, or radiation outside the principal building or accessory building containing the home occupation that is greater or more frequent than that typical of vehicles or equipment

used in connection with residential occupancy shall be used in connection with any home occupation.

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

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

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

d. Signage And Visibility:

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

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

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

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

g. Boarding And Training Of Horses ~~And Riders~~: Notwithstanding anything to the contrary contained in this Section 5-3-4(D), t~~T~~he boarding ~~and training~~ of horses in a stable and the training of horses and their riders ~~and rider instruction~~ 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 8:00 AM and 8:00 PM 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 8:00 AM and 8:00 PM or sunset, whichever is later. ~~For properties of less than ten (10) acres these activities are regulated under this subsection (D), and in addition must comply with the restrictions under subsections (A)2a(1), (A)2a(3), and (A)2a(8) of this~~

~~section. For properties of ten (10) acres or larger, these activities are regulated solely under subsection (A)2 of this section. (Ord. 14-19, 12-15-2014)~~

Section 5-5-2(A)

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

EXHIBIT B

ZBA FINDINGS OF FACT/RECOMMENDATION

November 29, 2016

To: President and Board of Trustees
Village of Barrington Hills

RE: **Application for Text Amendment - ZBA - Horse Boarding**

This is to advise you that the Zoning Board of Appeals (ZBA) held a public hearing on November 9, 2016 regarding a proposed amendment to the zoning code relative to horse boarding. The Application for such purpose was submitted by the ZBA, on a vote of 3-2with two absent for consideration, pursuant to Section 5-10-6 (B) of the Village Code. The public hearing was held at Countryside Elementary School, where a quorum was present. Notice of the hearing was published in compliance with the Open Meetings Act, and published in a timely manner in the Daily Herald.

The ZBA heard testimony from ZBA members in presentation of the proposed amendment, and from the public at large.

FACTS

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

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

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

> F) Findings of Fact and Recommendations of the Zoning Board of Appeals: Within a reasonable time after the close of the hearing on a proposed amendment, the Zoning Board of Appeals shall make written findings of fact and shall submit same together with its recommendation to the Board of Trustees of the Village. . . .

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

The ZBA text amendment, as proposed, would remove all changes wrought by what has been referred to as the "Anderson II amendment" in its entirety through amendment as written under Sections 5-2-1, 5-3-4(A), 5-3-4(D)2(b), 5-3-4(D)3(c)(2), 5-3-4(D)3(c)(8), 5-3-4(D)3(g), 5-5-2(a), 5-5-3 and 5-10-7 of the Village Zoning Code of Barrington Hills and reinstate the prior home occupation ordinance under Section 5-2-1 and 5-3-4 of the Village Code.

The transcript of the public hearing relative to the text amendment is available through the Office of the Village Clerk.

FINDING

Following the close of the public hearing on November 9, 2016, the ZBA commenced discussion of the facts presented on the ZBA Application for Text Amendment.

From the facts presented, the Text Amendment is proposed by the ZBA, thus it does not serve to benefit any one applicant, and the ZBA concludes that it serves the interests of the Village in that the amendment will remove from the village code the language of "Anderson II" which allows commercial horse boarding as of right within the R-1 zoned district.

RECOMMENDATION

The ZBA recommends, on a vote of 6-1, the adoption of the ZBA-proposed Text Amendment.

Respectfully submitted,

Zoning Board of Appeals
Village of Barrington Hills

APPEAL TO THE FIRST DISTRICT APPELLATE COURT OF ILLINOIS FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, CHANCERY DIVISION

JAMES J. DRURY III, as agent of the Peggy D. Drury Declaration of Trust U/A/D 02/04/00, Jack E. Reich and James T. O'Donnell,	)	**No. 15-CH- 3461**
Plaintiffs-Appellants,	)	**Honorable Judge David B. Atkins, presiding**
-v-	)	
	)	**Per Supreme Court Rule 303**
VILLAGE OF BARRINGTON HILLS, an Illinois Municipal Corporation,	)	
Defendant-Appellee.	)	
BENJAMIN B. LECOMPTE III, CATHLEEN B. LECOMPTE, JOHN J. PAPPAS, SR., BARRINGTON HILLS POLO CLUB, INC. and VICTORIA KELLY	)	

NOTICE OF APPEAL

Plaintiffs-Appellants, James J. Drury III, as agent of the Peggy D. Drury Declaration of Trust U/A/D 02/04/00 ("Drury"), Jack E. Reich ("Reich") and James O'Donnell ("O'Donnell") (collectively "Plaintiffs"), by their attorneys, The Law Office of Thomas R. Burney, hereby appeal to the Appellate Court of Illinois, First District, from the following Orders entered by the Circuit Court of the Cook County, County Department, Chancery Division:

1. Order entered on December 16, 2021, denying Plaintiffs' Motion for Summary Judgment attached as Exhibit A; and

2. Order entered on April 24, 2023, granting judgment in favor of the Intervenors and against the Plaintiffs on Plaintiffs' Corrected First Amended Verified Complaint for Declaratory Judgment, Injunction, and Other Relief attached as Exhibit B.

WHEREFORE, Plaintiffs-Appellants, JAMES J. DRURY III, as agent of the Peggy D. Drury Declaration of Trust U/A/D 02/04/00 JACK E. REICH and JAMES O'DONNELL, pray that the Appellate Court for the First District enter an order reversing the Circuit Court's orders entered on December 16, 2021 and April 24, 2023 enter judgment in favor of the Plaintiffs, herein and for such other and further relief as the Appellate Court deems just and proper.

DATED: May 15, 2023

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

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

Thomas R. Burney (ARDC No. 0348694), tburney@zcwlaw.com
THE LAW OFFICE OF THOMAS R. BURNEY, LLC
Firm No. 58886
240 Deer Run
Crystal Lake, IL 60013
Telephone: (312) 636-7627

Exhibit A

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

JAMES DRURY, *et al.*, Plaintiffs, v. VILLAGE OF BARRINGTON HILLS, Defendant.	No. 2015-CH-3461 Calendar 16 Judge David B. Atkins

JUDGE DAVID B. ATKINS
DEC 16 2021
Circuit Court-1879

ORDER

THIS CASE COMING TO BE HEARD on Intervenors' Motion for Summary Judgment, Plaintiffs' Motion for Summary Judgment, and Intervenors' Motion for Declaratory Judgment, the court having considered the briefs submitted and being fully advised in the premises,

THE COURT HEREBY FINDS AND ORDERS:

1. This is a dispute over the constitutionality of a certain ordinance (14-19, the "Ordinance") adopted in 2014 by the Defendant Village of Barrington Hills regarding the commercial boarding of horses. Plaintiffs argue the Ordinance, and in particular a retroactivity provision therein, is facially invalid both because as a matter of law and because it was adopted solely for the benefit of one individual, Intervenor Benjamin B. LeCompte III. Intervenors[1] argue the provision is within the Village's authority to enact and that in fact it was enacted for its general welfare and not for the benefit of any one individual.

2. Turning first to the facial validity of the Ordinance's retroactivity provision, the court finds summary judgment is appropriate as the question is one purely of law. The parties agree that Illinois law on the subject is governed by *Commonwealth Edison Co. v. Will County Collector*;[2] in which the Illinois Supreme Court largely adopted and further detailed the United States Supreme Court's approach under *Landgraf v. USI Film Products*.[3] Both Courts instruct that while there is a default presumption against applying statutes retroactively, courts must

[1] As noted in prior orders in this case and as the basis for granting the various Intervernors' leave to intervene, the Village itself no longer contests this matter due to a change in the members of its Board who have taken a different position on the issues. While Plaintiffs make much of the Village's admissions on the legal claims in this case the court is not persuaded its current opinion has any bearing on whether it in fact had the authority in 2014 to enact the Ordinance's retroactivity provision under Illinois law.
[2] 196 Ill. 2d 27 (2001)
[3] 511 U.S. 244 (1994)

generally[4] still do so when the relevant legislature clearly indicates an intent to apply it as such. The court here thus would not need to resort to default presumptions even if the statute at issue did have retroactive effect (as the Ordinance very clearly indicates an intent to apply back to 2006, but as the Courts in *Landgraf* and *Commonwealth Edison* made clear "retroactive effect" is a term of art. A statute is not "retroactive" for purposes of the rule merely because it has any legal effect on past conduct, and court instead must ask whether the new rule "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."[5] The Court's analysis makes clear that the rule focuses on new and/or increased burdens on private rights as a corollary to the prohibitions on *ex post facto* laws and bills of attainder, not laws that would *decrease* or remove such burdens. "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."[6] The Ordinance in this case both clearly intends to apply back to 2006 and only does so to *allow* the commercial boarding of horses during that time period, not to impose any new prohibition on past conduct, and as such *Landgraf* does not suggest any bar against its effect.

3. As to the second argument, that the Ordinance is invalid because it was enacted solely to benefit Mr. LeCompte, it is readily apparent the court cannot resolve that question at summary judgment. While both sides move for such ruling and claim the relevant facts are undisputed, they rely on substantially separate and often contradictory facts, including statements by different individuals with knowledge of the Village Board's actions in 2014 stating the Ordinance was or was not enacted for LeCompte's benefit, disputed accusations that LeCompte inappropriately influenced members of the Board to enact the Ordinance, etc. It is axiomatic that summary judgment is a drastic remedy only appropriate in cases where the dispute is solely legal in nature, and this is clearly not such a case. The parties here raise entirely competing narratives of events going back as far as 1994 in such a manner as can only be resolved at trial.

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[4] A legislature's clear intent to apply a statute retroactively would only be ignored if there were some specific constitutional bar against it, which the Court in Landgraf described as "now modest." 511 U.S. at 272

[5] *Landgraf*, 511 U.S. at 280

[6] *Id* at 270-71 (emphasis in original)

4. Finally, on the subject of such long-past events, Intervenors move for the first time in a separate motion for a declaration that two other ordinances adopted in 2006 (the "2006 Ordinances"), and which the 2014 Ordinance substantially replaced as they related to horse boarding, are also invalid for procedural defects in their adoption, arguing that if so the 2014 Ordinance has a more compelling basis for its adoption. The court is not persuaded such a declaration would have any significant effect on this case as all parties (including apparently the Village when enacting the 2014 Ordinance) have at all relevant times acted under the assumption that the 2006 Ordinances were valid, and even if such a challenge were appropriate it is also severely untimely. To the extent the facts in this case *are* undisputed it is a matter of public record that the parties have been involved in extensive litigation for many years over related matters, including over a cease and desist order arising out of LeCompte's alleged violation of the very statutes he now seeks to argue were never valid some 12 years later. His argument that he had "no reason to investigate" the 2006 Ordinances throughout this and including appellate litigation interpreting the language of the same statutes is wholly unpersuasive.

5. For these reasons, the instant motions are all denied. This matter is continued for case management and to set a trial date to February 10, 2022 at 10:30 AM.

JUDGE DAVID B. ATKINS
ENTERED:
DEC 16 2021
Circuit Court-1879

Judge David B. Atkins

The court.

Exhibit B

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

JAMES J. DRURY III, as agent of the Peggy D. Drury Declaration of Trust U/A/D/ 02/04/00, JACK E. REICH, and JAMES T. O'DONNELL,
Plaintiffs,

v.

VILLAGE OF BARRINGTON HILLS,
Defendant.

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

Intervenors.

No. 2015-CH-3461

Calendar 16

Judge David B. Atkins

TRIAL ORDER

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

THE COURT HEREBY ORDERS:

Background

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

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

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

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

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

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

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

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

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

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

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

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

Legal Standards

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

Discussion and Findings

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

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

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

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

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

At trial, the court finds this theory collapsed entirely.

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

[8] Intervenors' Exhibit 35

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ENTERED: JUDGE DAVID B. ATKINS

DBA APR 24 2023

Judge David B. Atkins Circuit Court-1879

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

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

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

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE COOK JUDICIAL CIRCUIT
COOK COUNTY, ILLINOIS

JAMES J. DRURY III, ET AL.
Plaintiff/Petitioner

v.

VILLAGE OF BARRINGTON HILLS, ET AL.
Defendant/Respondent

Reviewing Court No: 1-23-0869
Circuit Court/Agency No: 2015CH03461
Trial Judge/Hearing Officer: DAVID B. ATKINS

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