

VILLAGE OF BARRINGTON HILLS

Zoning Board of Appeals NOTICE OF SPECIAL MEETING



Monday, August 1, 2016 ~ 7:30 pm
Countryside Elementary School - 205 W County Line Rd

AGENDA

1. Call to Order & Roll Call
2. [Public Comments](#)
3. [Vote] [Minutes June 20, 2016](#)
4. [Vote] [Minutes July 18, 2016](#)

CONTINUED PUBLIC HEARING

5. [Text amendment to Title 5 of the Zoning Ordinance relative to Horse Boarding filed by James J. Drury, III. Specifically, Applicant seeks an amendment to Sections 5-2-1 Zoning Definitions – Agriculture; Sections 5-3-4\(A\) Regulations for Specific Uses; 5-3-4 \(D\)2\(b\) Home Occupation Definition; 5-3-4\(D\)3\(c\)\(2\) and \(8\) Home Occupation Use Limitations; 5-3-4\(D\)3\(g\) Home Occupation – Boarding and Training of Horses; 5-5-2\(A\) Permitted Uses R-1 Accessory Uses; 5-5-3 Special Uses and 5-10-7 Special Uses.](#)

PUBLIC MEETING

6. [Discussion] Zoning History Relative to Horse Boarding
7. [Discussion] [Text amendment to Title 5 of the Zoning Ordinance relative to Horse Boarding filed by James J. Drury, III. Specifically, Applicant seeks an amendment to Sections 5-2-1 Zoning Definitions – Agriculture; Sections 5-3-4\(A\) Regulations for Specific Uses; 5-3-4 \(D\)2\(b\) Home Occupation Definition; 5-3-4\(D\)3\(c\)\(2\) and \(8\) Home Occupation Use Limitations; 5-3-4\(D\)3\(g\) Home Occupation – Boarding and Training of Horses; 5-5-2\(A\) Permitted Uses R-1 Accessory Uses; 5-5-3 Special Uses and 5-10-7 Special Uses.](#)
8. Adjournment

Chairman: Dan Wolfgram

NOTICE AS POSTED

VILLAGE OF BARRINGTON HILLS

Zoning Board of Appeals Meeting Minutes

Monday, June 20, 2016 ~ 7:30 pm

MacArthur Room

1. **Call to Order/Roll Call:** The Meeting was called to Order at 7:30 by Chairman Dan Wolfgram. On roll call, the following members were present:

- ❖ Dan Wolfgram, Chairman
- ❖ Debra Buettner
- ❖ Richard Chambers
- ❖ Patrick J. Hennelly

- ❖ David Stieper
- ❖ Jim Root
- ❖ Jan Goss

Absent: None

Staff Present: Robert Kosin, Village Administrator
Mary Dickson, Legal Counsel

2. **Public Comments:**

Chairman Wolfgram made a call for public comment. Public comment was received from nine residents, eight of whom spoke about the ZBA revisiting the horse boarding text, and one regarding the Old Hart Road project and the taking of a portion of her land as a result.

3. **Minutes:**

April 18, 2016

Member Goss moved, seconded by Member Chambers to approve the minutes of April 18, 2016, with the following correction: to show Member Stieper returning to the ZBA following hearing and the vote on the application regarding 337 Ridge Road.

On a voice vote, all Members voted “aye.” The Motion Carried.

4. **Discussion of Horse Boarding**

Discussion ensued regarding the current zoning text relative to horse boarding. Chairman Wolfgram reported that a new application for text amendment had been filed, and the Board of Trustees had provided some information for review. Counsel Dickson advised that the Board was interested in having the ZBA revisit the issue of horse boarding, and provided information therefore.

Chairman Wolfgram distributed a proposed flow chart for discussion, relative to the process the ZBA might undertake relative to consideration of an amendment to the existing horse boarding zoning text, if it was interested.

After discussion, all members indicated their support for revisiting the issue of horse boarding. Dates were discussed as follows: July 18, the ZBA will discuss historical information relative to horse boarding; August 15, members of various boards and commissions will be asked to present information relative to horse boarding. Thereafter ZBA members inclined to suggest other textual language will be invited to do so. Future meeting dates will be scheduled as needed.

The application filed by resident James Drury III will be considered for hearing in September.

5. **Adjournment**

Motion to adjourn by Member Stieper, seconded by Member Hennelly. On a voice vote, all members voting “aye.” The meeting stands adjourned at 8:55 p.m.

Approved: _____

Dated: _____

**VILLAGE OF BARRINGTON HILLS
ZONING BOARD OF APPEALS
MacArthur Room – Village Hall
Monday, July 18, 2016**

1. **Call to Order/Roll Call:** The Meeting was called to Order at 7:30 p.m. by Chairman Dan Wolfgram. On roll call, the following members were present:

❖ Dan Wolfgram, Chairman	❖ David Stieper
❖ Debra Buettner	❖ Jim Root
❖ Richard Chambers	❖ Jan Goss
❖ Patrick J. Hennelly	

Absent: None

Staff Present: Anna Paul, Village Clerk ~ Mary Dickson, Legal Counsel

2. **Call for Continuance**

Chairman Wolfgram made a public announcement that due to the number of people in attendance at the meeting, the meeting would have to be continued pursuant to the Illinois Open Meetings Act, 5 ILCS 120/1 *et seq.* and scheduled at a meeting location which could accommodate a larger number of individuals.

Objections were voiced by several residents to the continuance.

3. **Public Hearing**

Chairman Wolfgram opened the public hearing relative to the text amendment to Title 5 of the Zoning Ordinance concerning Horse Boarding filed by James J. Drury, III. Specifically, Applicant seeks an amendment to Sections 5-2-1 Zoning Definitions – Agriculture; Sections 5-3-4(A) Regulations for Specific Uses; 5-3-4 (D)2(b) Home Occupation Definition; 5-3-4(D)3(c)(2) and (8) Home Occupation Use Limitations; 5-3-4(D)3(g) Home Occupation – Boarding and Training of Horses; 5-5-2(A) Permitted Uses R-1 Accessory Uses; 5-5-3 Special Uses and 5-10-7 Special Uses.

Member Buettner moved to continue the public hearing to 7:30 p.m. August 1, 2016 at a location to be announced, seconded by Member Hennelly. On a roll call vote:

	Yes	No
Dan Wolfgram, Chairman	x	
Debra Buettner	x	
Richard Chambers	x	
Patrick J. Hennelly	x	
David Stieper		x
Jim Root	x	
Jan Goss		x

On said roll call, the Motion Carried.

4. **Adjournment**

Motion to adjourn by Member Hennelly, seconded by Member Chambers. On a voice vote, all members voting “aye.” The meeting stands adjourned at 7:46 p.m.

Approved: _____

Dated: _____

CERTIFICATE OF PUBLICATION

Paddock Publications, Inc.

Daily Herald

PUBLIC HEARING
Before the Zoning Board of Appeals
Village of Barrington Hills
Re: Text Amendment/Horse Boarding and Training

Notice is hereby given that a Public Hearing will be held on Monday, July 18, 2016 at 7:30 p.m. by the Zoning Board of Appeals of the Village of Barrington Hills at the Village Hall, 112 Algonquin Road, Barrington Hills, concerning a proposed text amendment to Title 5 of the Village's Zoning Ordinance relative to Horse Boarding filed by James J. Drury, III. Specifically, Applicant seeks an amendment to Sections 5-2-1 Zoning Definitions - Agriculture; Sections 5-3-4(A) Regulations for Specific Uses; 5-3-4 (D)2(b) Home Occupation Definition; 5-3-4(D)3(c)(2) and (8) Home Occupation Use Limitations; 5-3-4(D)3(g) Home Occupation - Boarding and Training of Horses; 5-5-2(A) Permitted Uses R-1 Accessory Uses; 5-5-3 Special Uses and 5-10-7 Special Uses.

A copy of the Zoning Ordinance and the proposed amendment thereto are available for examination at the office of the Village Clerk at the Village Hall, 112 Algonquin Road, weekdays between 9:00 a.m. and 5:00 p.m. Also a copy of this notice and amendment is available at the Village website www.barringtonhills-il.gov. All interested parties are invited to attend the Public Hearing and will be given an opportunity to be heard. Written comments on the application for text amendment to be made part of the record of this proceeding will be accepted in person, by fax or email in the office of the Village Clerk through 5 p.m. Friday, July 15, 2016. By: Village Clerk, Village of Barrington Hills, clerk@barringtonhills-il.gov, Fax 847.551.3050, Published in Daily Herald July 1, 2016 (4445579)

Corporation organized and existing under and by virtue of the laws of the State of Illinois, DOES HEREBY CERTIFY that it is the publisher of the DAILY HERALD. That said DAILY HERALD is a secular newspaper and has been circulated daily in the Village(s) of Algonquin, Antioch, Arlington Heights, Aurora, Barrington, Barrington Hills, Lake Barrington, North Barrington, South Barrington, Bartlett, Batavia, Buffalo Grove, Burlington, Campton Hills, Carpentersville, Cary, Deer Park, Des Plaines, South Elgin, East Dundee, Elburn, Elgin, Elk Grove Village, Fox Lake, Fox River Grove, Geneva, Gilberts, Grayslake, Green Oaks, Gurnee, Hainesville, Hampshire, Hanover Park, Hawthorn Woods, Hoffman Estates, Huntley, Inverness, Island Lake, Kildeer, Lake Villa, Lake in the Hills, Lake Zurich, Libertyville, Lincolnshire, Lindenhurst, Long Grove, Mt. Prospect, Mundelein, Palatine, Prospect Heights, Rolling Meadows, Round Lake, Round Lake Beach, Round Lake Heights, Round Lake park, Schaumburg, Sleepy Hollow, St. Charles, Streamwood, Tower Lakes, Vernon Hills, Volo, Wauconda, Wheeling, West Dundee, Wildwood, Sugar Grove, North Aurora, Glenview

County(ies) of Cook, Kane, Lake, McHenry and State of Illinois, continuously for more than one year prior to the date of the first publication of the notice hereinafter referred to and is of general circulation throughout said Village(s), County(ies) and State.

I further certify that the DAILY HERALD is a newspaper as defined in "an Act to revise the law in relation to notices" as amended in 1992 Illinois Compiled Statutes, Chapter 7150, Act 5, Section 1 and 5. That a notice of which the annexed printed slip is a true copy, was published July 1, 2016 in said DAILY HERALD.

IN WITNESS WHEREOF, the undersigned, the said PADDOCK PUBLICATIONS, Inc., has caused this certificate to be signed by, this authorized agent, at Arlington Heights, Illinois.

PADDOCK PUBLICATIONS, INC.
DAILY HERALD NEWSPAPERS

BY [Signature]
Authorized Agent

Control # 4445579



**PETITION FOR TEXT AMENDMENTS TO THE VILLAGE OF BARRINGTON HILLS
ZONING CODE**

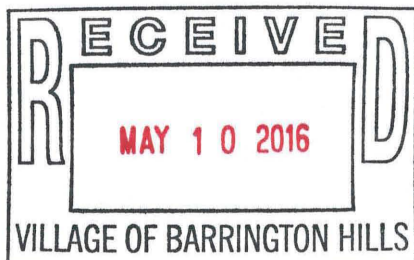
May 10, 2016

To: Ken Garrett, Zoning Enforcement Officer, Village of Barrington Hills, Illinois

The undersigned, James J. Drury III, a landowner and resident of the Village of Barrington Hills, Illinois ("Village"), with an address of 7 Deepwood Road, and affected by the subject matter addressed herein hereby petitions the Village for the following Text Amendments to the Village Code (hereafter, "Zoning Code"), and request that a Zoning Board of Appeals ("ZBA") notice of hearing on these amendments be published as prescribed by code no later than May 26, 2016 and hearing on such amendment be held on June 20, 2016 or as soon thereafter as can be accommodated by the ZBA.

The proposed Text Amendments amend Zoning Code Sections:

1. 5-2-1 (Zoning Definitions - Agriculture)
2. 5-3-4 (A) (Regulations for Specific Uses)
3. 5-3-4 (D) 2 (b) (Home Occupation Definition)
4. 5-3-4 (D) 3 (c) (2) (Home Occupation Use Limitations)
5. 5-3-4 (D) 3 (c) (8) (Home Occupation Use Limitations)
6. 5-3-4 (D) 3 (g) (Home Occupation - Boarding and Training of Horses)
7. 5-5-2-(A) (Permitted Uses R-1 Accessory Uses)
8. 5-5-3 (Special Uses)
9. 5-10-7 (Special Uses)



Zoning Code Sections 5-3-4 (A) (Regulations for Specific Uses)

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.

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.

Zoning Code Section 5-2-1 (Zoning Definitions - Agriculture)

AGRICULTURE: The use of land for agricultural purposes, including farming, dairying, pasturage, apiculture, horticulture, floriculture, viticulture, and animal and poultry husbandry, and (including the breeding, boarding, and training of horses and riders as a hobby or as an occupation; but not the boarding of horses) and the necessary accessory uses needed for handling or storing the produce; provided, however, that the operation of any such accessory uses shall be secondary to that of the normal agricultural activities, 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.

Zoning Code Section 5-3-4 (D) 2 (b) (Home Occupation Definition)

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

Zoning Code Section 5-3-4 (D) 3 (c) (2) (Home Occupation Use Limitations)

(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.~~

Zoning Code Section 5-3-4 (D) 3 (c) (8) (Home Occupation Use Limitations)

~~(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.~~

Zoning Code Section 5-3-4 (D) 3 (g) (Home Occupation - Boarding and Training of Horses),

~~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 (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)~~

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

Zoning Code Section 5-5-2(A) (Permitted Uses R-1 Accessory Uses)

~~Breeding, boarding, and training of horses, and rider instruction, as regulated under Section 5-34(A)(2) or Section 5-3-4(D) as applicable.~~

ORDINANCE AMENDING SECTIONS 5-2-1, 5-3-4, 5-5-3 and 5-10-7

5-2-1 Definitions:

That the following defined terms be added:

AFFECTED PARTIES: Adjacent property owners, private road association (if there is private road access from any Boarding Facility), and non-adjacent property owners located on the same public road as the Boarding Facility within one-quarter (1/4) mile in either direction.

BOARDED HORSES: Horses that are not owned by the landowners or occupants of the property where the horses are kept.

BOARDING FACILITY: Any facility or property space proposed to be used or used in connection with a Commercial Boarding operation.

COMMERCIAL BOARDING: The boarding of five (5) or more boarded horses on any property; provided that the maximum number of boarded horses shall not exceed twenty (20). Commercial Boarding is permitted where the landowner receives a Special Use Permit.

GRAZING ACRE: That fenced-in portion of a property onto which horses are normally allowed during daylight hours. Grazing acres include pastures, mud lots and paddocks, but not those portions of the property that include the residence, pool, tennis court or other sports fields, nor shall it include agricultural or hay fields, streams and wetlands, or other portions of the property not suitable for the pasturing of horses.

HORSE BOARDING: Supplying food and lodging to boarded horses for pay. Boarding of four (4) or fewer horses is permitted under and subject to the Home Occupation Ordinance.

5-3-4 REGULATIONS FOR SPECIFIC USES

5-5-3 SPECIAL USES

Section 5-5-3 (A) shall be amended to include the term "Commercial Boarding" to the list of Special Uses.

5-10-7 SPECIAL USES

A new subsection (1), Commercial Boarding, shall be added to Section 5-10-7, as follows:

Commercial Boarding is a permitted Special Use in R1 Districts within the Village, provided such Commercial Boarding operation complies with the provisions of this Section 5-10-7 (J). Special Use permits issued under this subsection (1) shall not exceed a period of five (5) years from the date of issuance, and thereafter, the property owner will need to reapply for another Special Use permit. In addition, no Special Use permit for Commercial Boarding shall be granted to any property owner or boarding operator who has been found in violation of Village zoning laws or for whom their Boarding Facilities do not or have not complied fully with the building permits issued them.

1. PURPOSE, INTENT AND INTERPRETATION: The purpose of this Section is to provide specific regulations for the operation of Commercial Boarding facilities within the Village. The boarding of horses for a Commercial Boarding operation must be managed in the context of the residential nature of the Village and its desire to maintain the peace, quiet and domestic tranquility within all of the Village's residentially zoned areas. In permitting Commercial Boarding, this Section shall be interpreted to respect and protect the rights of all residents to live in a peaceful, quiet and tranquil environment, and enjoy freedom from fire hazards, excessive noise, light and traffic and other nuisances associated with commercial operations.

2. APPLICATION: All landowners seeking a Commercial Boarding Special Use permit must comply with subsections (A) through (H) of this Section 5-10-7, and in addition to the requirements set forth in subsection (C) must submit to the ZBA with applicant's permit application:

(i) A site plan clearly indicating the size, location and setback from property lines of any buildings and other improvements, structures or facilities, such as pasturage, parking areas and riding arenas, intended by the applicant to be used in connection with the operation of a Commercial Boarding facility, as well as the current on-site land uses and zoning, current adjacent land uses and zoning, adjacent roadways, location of existing utilities, existing and proposed means of access, fencing and landscaping/screening.

(ii) A survey of the property prepared by an Illinois licensed land surveyor dated within ninety (90) days of the application.

(iii) Written statements by all Affected Parties granting their permission to the proposed Commercial Boarding.

(iv) A fire emergency plan developed in conjunction with and approved by the local fire department covering the subject property.

(v) Proof of availability of business insurance with the Village as named the party being covered sufficient to protect the Village from liabilities arising from the operation of the Commercial Boarding facility. The amount of insurance coverage shall be specified by the Village based on the size of the Commercial Boarding operation and such other factors as deemed relevant by the Village after consultation with its auditors and or insurance advisors.

(vi) Such other additional information as shall be requested by the ZBA.

3. CONSIDERATION: In considering a request for a Commercial Boarding Special Use permit, the ZBA shall consider the following factors:

(i) location of the property

(ii) configuration of the property

(iii) character of the surrounding neighborhood

(iv) proximity of each Boarding Facility to wetlands, artificial lakes or other watercourses

(v) vehicular access to each Boarding Facility

- (vi) available parking
- (vii) available pasture Grazing Acres
- (viii) manure disposal plan
- (ix) access, shared or otherwise
- (x) such other relevant factors as the ZBA may deem appropriate.

In addition, the Village Board of Trustees shall have the right to place further restrictions or requirements on the applicant as conditions for granting a Special Use permit.

In considering each Commercial Boarding Special Use, the ZBA will record in the public record the number and names of Affected Parties who have granted and denied their permission. If less than all Affected Parties have granted permission to the proposed Commercial Boarding, then the applicant shall have the burden of proving that the proposed operation will NOT interfere with the peace, quiet and domestic tranquility of all Affected Parties. Overriding the failure to obtain the unanimous permission of the Affected Parties shall require a simple majority vote by both the ZBA and Village Board of Trustees.

4. USE LIMITS: Special Use permits shall not exceed the following restrictions:

a. Horses

- (i) One (1) horse (boarded or resident/landowner-owned) per Grazing Acre
- (ii) A maximum of twenty (20) boarded horses per Commercial Boarding operation regardless of the total amount of Grazing Acres

b. Hours of operation:

- (i) Employees: from 6:00 A.M. to 7:00 P.M.; animal health emergencies may be addressed at any hour, if needed
- (ii) Boarding customers: from 8:00 A.M. to 7:00 P.M.
- (iii) Use of machinery: from 9:00 A.M. to 5:00 P.M.

5. FACILITIES AND OPERATIONS

a. Barn, riding, auxiliary buildings and parking area size: A Commercial Boarding FAR of 0.04, with a maximum combined Boarding Facility (not including the residence or other buildings not involved in the Commercial Boarding operation) limit of 25,000 square feet for barns, riding arenas, auxiliary buildings and parking areas, regardless of total property acreage.

b. Setback requirements for barn, arenas, auxiliary buildings and parking area: Minimum of one-hundred (100) feet PLUS thirty-seven (37) feet for each 5,000 square feet of combined barn/arena/auxiliary buildings/parking area, calculated proportionally, from all non-public road property lines. Setback requirements from public road property lines shall be as specified in the Village Zoning Code for R-1 properties. However, if the Affected Parties grant their written permission for an exception, this setback may be

reduced, provided the minimum setback is one hundred (100) feet. If an existing Commercial Boarding operator cannot meet the setback requirements and the Affected Parties will not provide their written permission to a reduction, the Village may grant the applicant a waiver, provided the applicant otherwise meets all other zoning requirements, there were no past or existing complaints by the Affected Parties with respect to the subject Commercial Boarding operation, and there are no current or past violations of the applicant with respect to compliance with the Village's zoning ordinances.

c. Fire Safety: Every Boarding Facility stable (not including the indoor arena) over 5,000 square feet must be equipped with readily accessible Fire Department approved fire extinguishers (1 for each 1,500 square feet of stable), an automated fire monitoring system connected to the local fire department system, and illuminated fire exits (signs and area emergency lighting). In addition, barns over 10,000 square feet must be equipped with a sprinkler or other fire suppressant system that covers all fire escape routes. Boarding Facilities must work with the Fire Department to train employees on evacuation procedures and extinguisher operation, and conduct drills quarterly. Upon request, the Commercial Boarding operator shall provide written procedures and logs demonstrating the conduct of the quarterly drills.

d. Traffic and Parking: The limits shall be:

(i) Parking lot size: Limited to 1 car space per boarded horse stall with a maximum of ten (10) spaces.

(ii) Events will require a Special User permit. Event parking can use paddock/pasture areas.

(iii) Private road access: Requires written permission of the road association

(iv) Class size: Will be limited to maximum size of 6; and no more than two classes per day.

e. Horse Trailer Parking: No overnight parking of non-resident horse trailers is permitted.

f. Lighting: The area immediately around entrances and walkways may be lighted for safety purposes. No other exterior night lighting is permitted. Outdoor arenas may not be lighted at night. Further, no light may emanate from the interior, such as from riding arena windows or translucent panels, if that light presents a non-residential profile or non-residential lumen levels.

g. Indoor bathroom facilities: Facilities shall be provided for employees and customers. Outdoor portable facilities shall not be used for Commercial Boarding operations.

h. Waste & Manure:

(i) Stalls must be cleaned (mucked) daily and the waste manure/bedding mix stored in an appropriately sized dumpster, then hauled to a public waste processing facility not less than once a week. Storage or spreading of manure on the property is not permitted. If manure is kept on premise, placement cannot be closer than 300 feet to neighboring properties

(ii) Piles of manure in pastures or paddocks are not allowed, and must be picked up and disposed of in accordance with the terms of subsection (viii)(a) above.

(iii) For all Commercial Boarding operations with an average of more than ten (10) horses (Boarded Horses or applicant-owned horses), the Village reserves the right to test nearby well water and streams and ponds for manure and animal related pollutants in excess of federal EPA and Illinois EPA guidelines and regulations. If there are excess levels that reasonably appear to be the result of the Commercial Boarding operation, the Commercial Boarding operation shall be closed immediately and remain closed until the remedies are implemented to avoid future problems, and the pollutants abate.

i. Facilities Upkeep: All Boarding Facilities must be maintained to a high level, inside and out, including painting or staining all wooden fences and walls, and sound roofing materials.

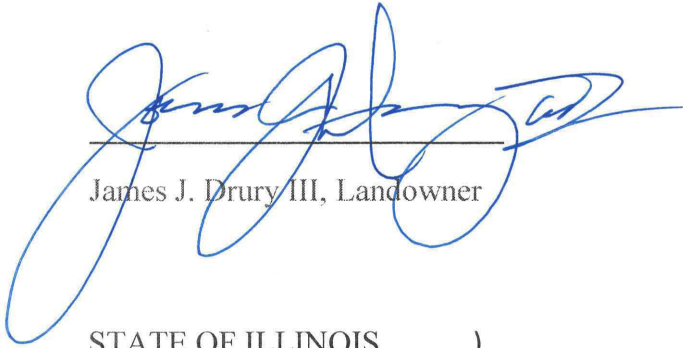
LIABILITIES: Each Commercial Boarding operator shall maintain business liability insurance to protect the Village from negligence and other lawsuits in amounts specified by the Village auditor or insurance advisor, which amount shall not be less than \$1,000,000.

NON-COMPLIANCE: In the case of non-compliance with the provisions of this Section and/or any additional restrictions imposed in the Special Use permit, the Village shall provide written notice to the Commercial Boarding operator. The written notice shall specify the area(s) of non-compliance and provide the operator with fourteen (14) calendar days to remedy the non-compliance (the "cure period"). If, after the expiration of the 14-day period, the Commercial Boarding operator has not complied with the terms of this Section or any additional restrictions imposed in the Special Use permit, the Village shall issue a cease and desist letter and such operator shall immediately suspend all Commercial Boarding operations until a compliance plan is submitted to the Village and approval of such plan is voted on by the Village Board of Trustees. If the Commercial Boarding operator continues to operate in non-compliance with the terms of this Section and any additional restrictions imposed in the Special Use permit beyond the 14-day cure period, the operator shall be subject to a fine of \$1,000 per day. Further, in connection with any enforcement action required to be taken by the Village against operator for continued violations after the cure period, operator shall reimburse the Village for any and all enforcement costs, including attorneys' fee and expenses.

EFFECTIVE DATE: Such amended definitions and additions contained herein are retroactive and in full force and effect as of June 26, 2006.

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Proposed Commercial Boarding Text Amendment

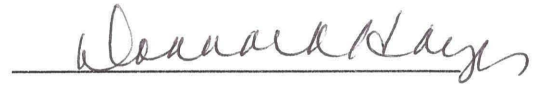


James J. Drury III, Landowner

May 10, 2016

STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

Subscribed and sworn to before me this 10th day of May, 2016.



Notary Public



PUBLIC COMMENTS

Public Comments are submitted by the public and are not reviewed or endorsed by the Village.



Anna Paul <apaul@barringtonhills-il.gov>

Horse Boarding Codes

Jameschammond@aol.com <Jameschammond@aol.com>

Wed, Jul 13, 2016 at 10:49 AM

To: apaul@barringtonhills-il.gov

Anna,

PLEASE inform the ZBA these documents were not prepared for Monday's hearing, but instead were submitted some years ago during another hearing process. I want to be sure they are clear on that.

Thank you again.

Jim

Village and County Horse Ordinance Examples, Environmental Considerations and Recommendations

Overview:

A number of villages similar to Barrington Hills have zoning regulations that address horse management, and most have a standard of one horse per acre. Some have also established rules specifying maximum private stable size and boarding of horses.

With groundwater contamination, waste management and other considerations, Barrington Hills should not allow a density of horses on private properties that can negatively affect and possibly threaten the groundwater supply for Barrington Hills residents or neighboring villages.

Villages Comparable to Barrington Hills:

Homer Glen: “Excluding horses owned by the property owner or occupant, up to three (3) horses may be boarded for remuneration provided that the total number of horses on the zoning lot not exceed 1 horse per acre.”

“Private stables, horse boarding and private indoor riding arenas must be located on a zoning lot of 2 acres or greater in size.”

Source: Homer Glen Zoning Ordinance 8.41 Private Stables, Private Indoor Riding Arena, Horse Boarding

Mettawa: “Horses, except as set forth in Section 15.309A, in a number not to exceed the resultant quotient obtained by dividing the total square foot area the single family residential lot upon which the horses are to be maintained by the number 40,000, provided that in the R-1, Single-Family Residence district, no horse shall be permitted upon any lot which does not contain at least 80,000 contiguous square feet of land. In addition, any accessory building intended or used for the stabling of horses shall contain a stall for each horse consisting of a minimum inside area, of eleven and one-half feet by eleven and one-half feet (11½ x 11½) but shall not exceed spaces for five (5) horses unless a special use permit therefore has been obtained pursuant to the terms of this Code. However, a loafing shed having a roof and at least three (3) enclosed sides, with the open side facing south shall be allowable as an accessory building.”

Source: Mettawa Zoning Ordinance 15.1202 Permitted Uses

Wadsworth: “STABLE, PRIVATE: A building housing equines and associated equipment. All private stables shall conform to Lake County Health Department

regulations. A lot for a private stable shall contain at least two (2) acres for the first equine and at least one additional acre for each additional equine. No equine shall be stabled, boarded, kept or trained for hire.

Source: Wadsworth Village Code 10-2-3: Definitions

Wayne: “Wayne allows one horse or pony per acre with a minimum lot size of two acres.”

“STABLE, PRIVATE: A building or structure, accessory in nature, which is located on a lot on which a dwelling is located, and which is designed, arranged, used or intended to be used for housing not more than one allowable horse or pony per acre, which horses or ponies are primarily for the use of the occupants of the dwelling, but in no event for hire.”

Source: Laura Shepard, Deputy Clerk - Village of Wayne (630-584-3090)

Counties In Barrington Hills:

Cook County: “Stables, private. Zoning lots must be at least three acres in size. No more than three horses are allowed on three acres, with one additional horse allowed for every acre in excess of three acres.” – Code 4.5A.6. L

Kane County: “Kane County does not have an ordinance, but they do have a standard operating procedure that says you can have one horse per acre, but use common sense with the way you plan it, making sure you have enough pasture for these horses.”

Source: Kendall County Ad Hoc Zoning Ordinance Committee Meeting Minutes of June 24, 2009

McHenry County: “The minimum lot or parcel for a private stable shall be two (2) acres.”

“The minimum gross lot area per horse over eight (8) months of age shall be fourteen thousand (14,000) square feet. However, private stables located on parcels of ten (10) or more acres shall not be subject to a minimum lot area per horse.” *Note: The minimum area per horse (14,000 SF) is considered to be the area dedicated to horse keeping according to meeting minutes.*

“No more than two (2) horses not belonging to the owner of a private stable may be boarded in such private stable.”

Source: McHenry County Code 403 Horses and Other Equines

Environmental Considerations:

“However, the hobby farm and equine facility horse populations¹ are increasing. Poor manure management practices, including spreading manure on frozen or compacted soils, manure application in excess of crop requirements, and improper manure storage can result in the contamination of surface and groundwater.”

Source: McHenry County Groundwater Protection Action Plan – October 2009

“A good rule of thumb is that a horse needs at least a gallon of water per 100 lbs of body weight. For your average horse, this equals 10 gallons a day. Water requirements vary greatly according to the weather and the level of work that the horse is doing. For instance, if your horse is exercising in hot, humid weather, he may need *2-4 times* the minimum amount.”

Source: Tufts Cummings School of Veterinary Medicine

“The nitrogen load from horse and goat waste can migrate to and impact ground water with elevated concentrations of nitrate and pathogenic bacteria. Limiting the density of animals per acre and managing wastes can prevent this. For example, the State of Montana has ordinance of one horse per acre. The risk to ground water depends on if the animal is corralled or allowed to roam, and if the area is grass covered or bare ground.

Horses have a habit of defecating and urinating in the same location in a corral which increases the risk of nitrogen contamination reaching ground water. For waste management ideas go to the UNR Extension web site <http://www.unce.unr.edu/water> and click on ‘Protecting Nevada’s Water’”. *Note: Montana’s total population is less than one fifth that of Cook County, IL alone.*

Source: www.ndep.nv.gov/bwpc/docs/domest_animals.pdf

“When not managed properly, horse manure (feces and urine) can pollute the environment, mainly as ground or surface water pollution due to the nutrients nitrogen, phosphorus, and carbon (organic matter). These nutrients can reach waterways as surface runoff or leachate from the manure pile.”

Source: <http://www.esc.rutgers.edu/publications/stablemgt/FS036.htm>

“Recent studies prepared for the Northeastern Illinois Planning Commission (Now CMAP) and separately for BACOG have indicated that groundwater quantity continues

1 A single horse produces seven to nine tons of manure a year.

to be the most limited natural resource that will influence the use and character of development in Barrington Hills and surrounding BACOG area.”

“Developing trends towards higher usage of the shallow aquifer, the vulnerability of the shallow aquifer to contamination, and constraints on alternative water supplies have resulted in concern for the sustainability of groundwater in the BACOG area.”

“As the significant land holders, the equestrian community of Barrington Hills may have the greatest opportunity to assure that horse raising, riding and associated activities have a positive impact on the environmental condition of land and water in the village. Safeguarding surface water (creeks, rivers, ponds, etc.) and groundwater must be an important everyday part of horse keeping.”

“Keep the size of intensively used (horse) areas small to help reduce the volume of polluted water.”

“Manage pastures to prevent heavy grazing. Avoid soil compaction and excessive removal of vegetation by timing the use of pastures and controlling the number of horses.”

Source: Village of Barrington Hills 2030 Comprehensive Plan, Amended July 14 2008

“One of the most significant discoveries was that the western edge of the Barrington area - dominated by Barrington Hills - is the area where the underground aquifers are most quickly recharged by water from the surface.” *Note: Aquifer waters migrate west to east in Barrington Hills.*

Source: December 2, 2009 Daily Herald: <http://www.dailyherald.com/story/?id=341183>

“As we grow population, we are using water at a rate that is not sustainable. Thus, groundwater supplies cannot be guaranteed beyond 2050”

“These reports suggest we must begin to make changes to the way we use, recharge, and protect the aquifers that have supplied us all these years. Many people think the water we use is primordial and comes from deep underground reservoirs of ancient glacial water. This is not the case in the Barrington area. Our ground water is supplied from surface water seeping and filtering into the shallow aquifers, typically 150 feet deep. This water is anywhere from months to decades old”

“Additionally, aquifers do not respect any boundaries”

- Robert G. Abboud, Barrington Hills Village President

Source: Quintessential Barrington March/April 2010 Issue

Recommendations:

Craft an ordinance that specifies the number of horses allowed per acre or square footage that is *dedicated* on residential property (i.e. fenced) to the keeping of horses. Establish a ratio of owned versus boarded horses for the purposes of the ordinance to accommodate for varying lot sizes in the village for private stable owners.

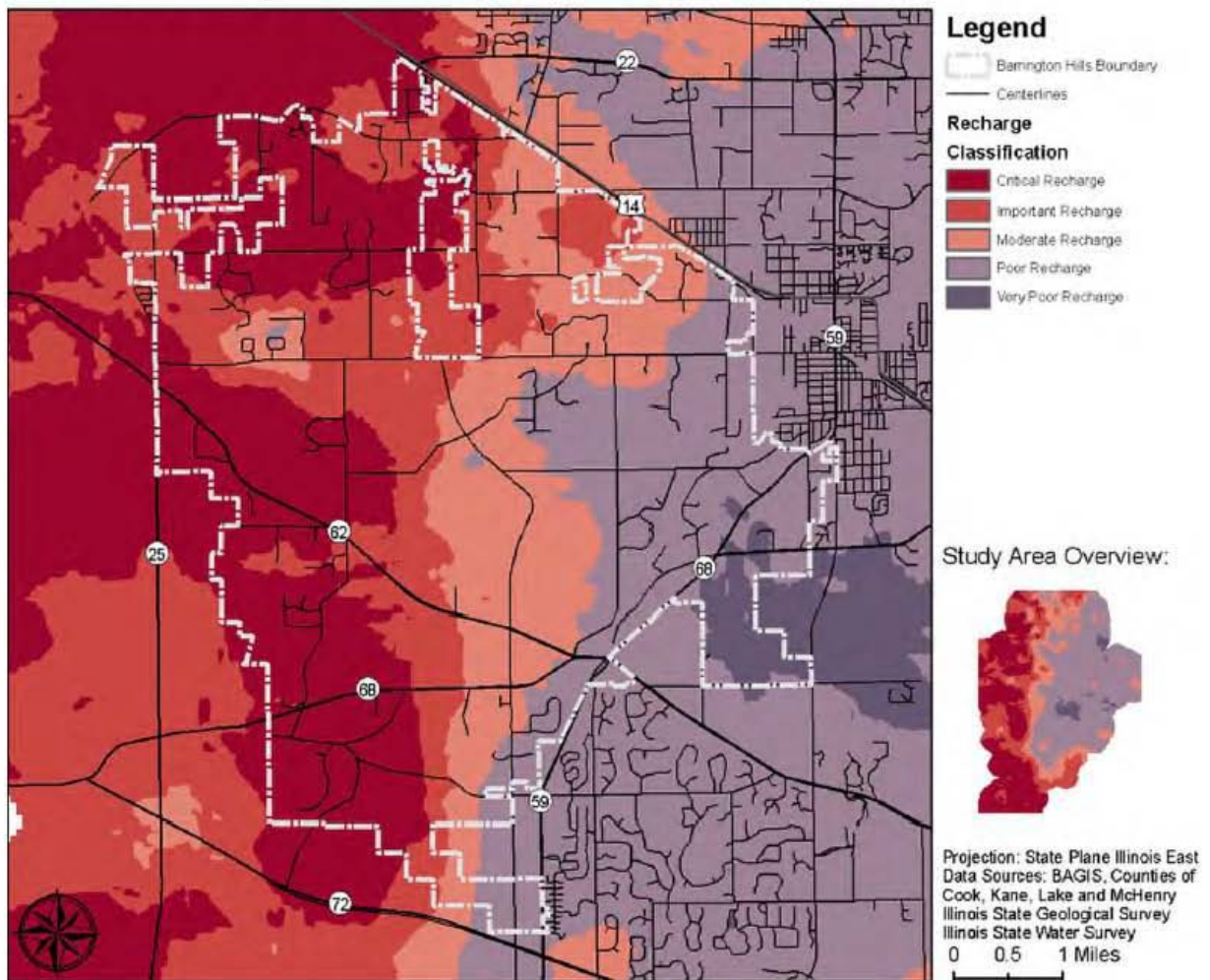
Since the boarding of horses is not licensed or inspected by the Illinois Department of Agriculture (unlike kennels or shelters for animals), there is no way to protect the welfare of horses, nor is there a system for Illinois or Barrington Hills to monitor or proper waste management or potential stored waste run off to adjacent properties or water resources.

Accordingly, the Equestrian Commission should work in conjunction with equestrian community to offer seminars and training on proper, environmentally conscious animal waste management practices. Furthermore, direct the Equestrian Commission to draft a simple waste management plan/report that considers the Illinois Livestock Management Act of 1996 and Illinois EPA guidelines for residents owning horses, regardless of number, for horse owners to submit on a reasonably periodic basis to the village.

Heavy, flooding rains are not uncommon in our area and contaminants from animal waste piles that are not contained on a suitable properly drained pad can travel miles to vital watersheds and neighboring properties. Since groundwater is so vital to village residents and surrounding communities, perhaps animal waste management should be the point of our present discussions. Protection of our environmental resources, present and future, should be the key theme of discussions.

Finally, consider the map that follows that depicts how critical water resource recharge from our village is to Barrington Hills residents and our neighbors to our east.

Barrington Hills Recharge Map



This is the portion of the recharge map that covers the Barrington Hills area. The entire western portion of the Barrington Hill area is a segment of the most important recharge area in the immediate region. Water from this recharge area supplies the groundwater in the region's drift aquifers as well as the underlying bedrock aquifer.

The poorer recharge areas, shown in grays, are in the eastern areas, and are found at higher surface elevations. The higher areas are associated with the glacial moraine which is largely composed of fine-grained materials such as silts and clays. Remember, these aquiclude and aquitard materials do not readily transmit water – a characteristic that defines poor recharge.

Comparisons of Village Horse Boarding Codes

Is horse boarding considered to be a “Home Occupation” in your village?

Bull Valley	No
Homer Glen	No
Mettawa	No
Wadsworth	No
Wayne	No
Barrington Hills Horse Boarding Amendment	Yes

What permission is required if a resident wishes to board horses in your village?

Bull Valley	Special Use Permit plus \$1,000 annual fee
Homer Glen	None
Mettawa	Special Use Permit
Wadsworth	Conditional Use Permit
Wayne	None
Barrington Hills Horse Boarding Amendment	None

Are there limitations to barn/stable size beyond the total Floor Area Ratio (FAR) of all combined property structures before a Special Use Permit is required?

Bull Valley	No
Homer Glen	Yes
Mettawa	Yes
Wadsworth	Yes
Wayne	Yes
Barrington Hills Horse Boarding Amendment	No

Does your village limit the number of horses kept on a residential property?

Bull Valley	“A reasonable number for family enjoyment”
Homer Glen	Yes, and no more than 3 boarded horses
Mettawa	Yes
Wadsworth	Yes
Wayne	Yes
Barrington Hills Horse Boarding Amendment	No

BURKE, WARREN, MacKAY & SERRITELLA, P.C.

MEMORANDUM

TO: Village of Barrington Hills
FROM: Burke, Warren, MacKay & Serritella, P.C.
RE: Comparison of Agricultural/Equestrian Zoning Ordinances
DATE: August 18, 2011

Village of Barrington Hills

OVERVIEW: The Village of Barrington Hills permits agricultural uses in all zoning districts but does not consider horse boarding to be an agricultural use. Horse boarding is only permitted in the context of the Home Occupation Ordinance.

1. Definitions:

Agriculture: The use of land for agricultural purposes, including farming, dairying, pasturage, apiculture, horticulture, floriculture, viticulture and animal and poultry husbandry (including the breeding and raising of horses as an occupation) and the necessary accessory uses for handling or storing the produce; provided, however, that the operation of any such accessory uses shall be secondary to that of the normal agricultural activities.

Village of Wayne

OVERVIEW: The Village of Wayne's Zoning Ordinance contains a separate Chapter entitled "Equestrian Development and Uses" that deals specifically with commercial and private equestrian uses and facilities and creates a separate zoning district called, "E commercial equestrian". Commercial and private stables can also be special uses in residence districts.

1. Definitions:

Agriculture: The use of twenty (20) acres or more of land for agricultural purposes, including farming, dairying, pasturage, agriculture, horticulture, floriculture, viticulture and animal and poultry husbandry, and the necessary accessory uses for packing, treating, or storing the produce; provided, however, that the operation of any such accessory uses shall be secondary to that of the normal agricultural activities

Village of Mettawa

OVERVIEW: The Village of Mettawa permits small scale boarding in residential districts as an accessory use and larger-scale boarding in residential districts pursuant to a special use permit.

1. Definitions:

Agriculture: All the processes of planting, growing, harvesting or crops in the open excluding the raising and feeding of livestock and poultry, dairy farming, farm buildings, and farm dwellings, and truck gardens, but including, flower gardens, apiaries, aviaries, nurseries, orchard, forestry, non-commercial green houses, and vegetable growing, however, no retail and/or roadside sales shall be permitted.

Stable: A detached accessory building the primary use of which is the keeping of horses

Stable, Private: A building or structure, accessory in nature, which is located on a lot on which a dwelling is located, and which is designed, arranged, used or intended to be used for housing not more than one allowable horse or pony per acre, which horses or ponies are primarily for the use of occupants of the dwelling, but in no event for hire.

Private Stable: A stable in which all horses kept on the premises are owned by the owner of the premises or members of his family, stable hands, and/or bona fide guests.

Semiprivate stable: A stable at which the operator provides for a fee, facilities to owners of horses for boarding care or training of ten (10) or more horses, including instruction in horsemanship. A bona fide sale of a horse shall not be considered to be supplying or renting of a horse by the operator to a member of the public.

2. Accessory Building:

No specific requirements for stables.

2. Accessory Buildings:

Private Stables: Stalls must be a minimum of 10' X 12'. On land between 2 and 3 acres in size, a maximum of 1,070 square feet is permitted. Size of stable increases with each additional acre, for example, a 5 acre parcel would permit a 1,745 square foot stable, up to a maximum of 2,800 square feet for any property, unless the property is over 10 acres and the owner obtains a special use permit.

2. Accessory Buildings:

Accessory buildings intended for the stabling of horses shall contain one stall for each horse and such stall must be a minimum of 11.5' X 11.5' and shall not exceed five (5) stalls without a special use permit.

3. Accessory Uses in Residence Districts:

Accessory uses in single-family districts include agricultural buildings and structures and private stables.

3. Accessory Uses in Residence Districts:

Accessory uses in single-family districts include private stables and noncommercial pursuit of agriculture, provided that no more than four (4) horses shall be kept on a 4-acre lot with one (1) additional horse permitted for each additional 4 acres.

3. Accessory Uses in Residence Districts:

Accessory uses in single-family districts include agriculture use and the keeping of horses not to exceed a certain number based on the property's square footage and further provided that the property must contain at least 80,000 square feet.

4. Special Uses:

No special use required for stabling of horses, which is currently only permitted in the context of the Home Occupation Ordinance.

4. Special Uses:

Special uses include commercial equestrian and commercial stables as well as private equestrian facilities, which are permitted in any zoning district. A special use for a commercial stable requires property containing at least twenty 20 acres. A special use for a private stable requires property containing at least 10 acres.

5. Commercial Equestrian District (as of right).

A Commercial stable in this District must be on property containing at least twenty (20) acres. If the horses are kept outside, then no more than one (1) horse per acre is permitted. If the horses are kept indoors, then one stall is required for each horse and such stall shall be a minimum of 12' X 12' with a maximum of 45 stalls and the no more than 100 horses is permitted on any property zoned for a commercial stable.

4. Special Uses:

Special Uses include agricultural buildings and structures including riding arenas and large stables for horses on owner-occupied property with no more than one (1) horse stall permitted per 40,000 square feet of land.



Village Clerk <clerk@barringtonhills-il.gov>

Submission of written testimony for the June 18 ZBA meeting

Jennifer Rousseau <rousseauj@dls.net>
To: clerk@barringtonhills-il.gov

Fri, Jul 15, 2016 at 9:55 AM

Please find the attached for inclusion in the ZBA meeting packet, thank you,

Jennifer Rousseau

Tudor Oaks Farm

L'Esprit Equestrian

2 attachments



2016 Horse Boarding - Contribution to the Community.docx
23K



2016 Horse Boarding Text Amendment in Barrington Hills submitted to VBH fv.docx
19K

Horse Boarding and Training in Barrington Hills:

Contributing to the Community for the Short and Long Term

Personal Introduction

- Jennifer Rousseau, residing at 127 Buckley Rd, Barrington Hills. Trainer and manager of all equestrian operations at Tudor Oaks Farm, located at 401 W. Cuba Rd, Barrington Hills, and owner, chief of instruction for L'Esprit Equestrian. I am a USEA Nationally Certified Level III instructor, meaning I am certified to train equestrians for the Olympic discipline of Eventing, also known as the triathlon of horse sports. I am also an advisor to the USEA Instructor Certification Program. In addition I am certified by the USHJA, which governs another Olympic equestrian discipline known as show jumping.

It is crystal clear that the will of our organized equestrian groups, equestrian residents, farm owners and concerned citizens, who fought for and supported every effort to amend the old zoning code, is directly in line with the Village of Barrington Hill's Comprehensive Plan:

- *Barrington Hills is an equestrian, intentionally open countryside oasis within a more chaotic urban metropolitan area.*
- *The largest percentage of land within the Village is devoted to "Equestrian Residential" use, or residential uses in excess of five (5) acres, totaling 72.3%.*
- *Barrington Hills is a community of residents acting as stewards for a quiet, secure and natural environment, unique within the metropolitan area, which supports the long term, sustainable use of property for equestrian-oriented, open countryside living.*
- *One characteristic which distinguishes Barrington Hills from other members of the BACOG is its equestrian tradition and the interrelationship with the natural environment in which the keeping of horses and the maintenance of the equestrian community requires the large-lots and interwoven trail system which, in turn, supports the long term sustainability of the sensitive natural environment.*

Providing necessary services for an equestrian community

- Horses are more than just pets; they are very large animals which require a great deal of care, attention and expertise. Horses are not machines; they are living, breathing beings with hearts and minds of their own. They can be unpredictable, unruly or simply may have had bad experiences, which cause their owners to seek professional help – sometimes only for the sake of their personal safety.
- Horse owners may use horses for trail riding and pleasure riding, or they may choose to be competitive in the Olympic disciplines of Eventing, show jumping or dressage. They may be interested in competing in the additional World Championship disciplines of endurance riding, combined driving, reining or vaulting, in the classic traditional sports of racing, or polo, or one of a number of growing horse sports, such as team penning or extreme cowboy competitions. Barrington Hills has produced many top equestrians, most recently, Olympic team hopeful Allison Springer.
- ***Whether horses are used for pleasure or sport, owners and riders need qualified expertise they can access, in their neighborhoods.***

- By offering riding lessons, local professional experts encourage people to try the sport.
- Professionally managed equestrian facilities may cater to both residents and non-residents, but they provide a valuable “feeder program” for new residents, new property owners, community leaders, and future stewards of our lifestyle.
- Local professionals train and coach equestrians in their equestrian pursuits, whether their goals are as modest as competing in the local mini-event or as lofty as representing the USA in the Olympic Games, or as simple as riding safely down the trails.
- All of these different equestrian enthusiasts need safe training areas with enclosed arenas; both indoor and outdoor arenas. These are large, safe enclosures where they can train young or difficulty horses, where they can learn to ride, gain skills, and learn best practices in horse management, riding and training.
- It is far more practical to have several large training facilities accessible to multiple horse owners, than to expect every horse owner to build an indoor and outdoor arena on their five acre lot.
- People who ride horses tend to cluster together for the conveniences that facilitate equestrian pursuits: Easy access to veterinary and farrier services, fencing and equestrian landscaping experts, feed, bedding and hay providers. They also seek access to equestrian professionals and training facilities. That is how equestrian communities are born – that is how Barrington Hills was born.

Preservation of open green space, rolling pastures and conservation of parks and wildlife

- When you drive through our community, the green spaces, rolling pastures, four board fencing over acres of beautiful grass dotted with horses is the “signature” landscape of our town.
- In fact, commercial boarding is our best guardian of the look and feel of the community. It is only by protecting the larger breeding and boarding operations that we will be able to retain this pastoral setting for future generations.
- The Village of Barrington Hill’s own published goals are specific:
 - *Support the continuation of appropriate agricultural, equestrian and ancillary uses land uses.*
 - *Encourage only those development patterns which enhance the equestrian based character of the community and avoid encroachment on natural resources and open space.*
 - *Protect the extensive system of public and private equestrian trails from the intrusion of other conflicting use, and assure the long term maintenance and preservation of the system which benefits property owners and riders throughout the community.*
- Equestrians are by definition conservationists. They are passionate warriors for the protection of parks, trails and wildlife refuges. The Spring Creek Forest Preserve which is the centerpiece of Barrington Hills is one of the last public lands which has been preserved in a very natural state with no intrusion of soccer fields, bicycle paths, parking lots and picnic tables. This is thanks to a comprehensive agreement between the different governing bodies including Cook County, the Barrington Hills Park District, with participation and input from the Fox River Valley Pony Club and the Riding Club of Barrington Hills
- As custodians of this beautiful park, members of the equestrian community work tirelessly to protect and preserve it for all to enjoy.

Response to Some of the Criticism and Opposition

- The primary quality necessary for any horse keeping operation is sufficient acreage. The Village of Barrington Hills is committed to the protection of large tracts of land:
 - *Perpetuating the keeping of horses and agricultural activities as a viable element of the community, along with the expansion of the interwoven open space and equestrian trail system*
 - *Preserving a community character which provides personal opportunities consistent with a countryside environment.*
- The term “horse factory” is not a valid term. Such an operation simply does not exist outside of PMU farms in Canada. The extremely high land value in Barrington Hills prohibits any viable commercial equestrian use other than a very high end operation serving a serious and dedicated brand of equestrian customer. Using the terms “horse factory” or “horse feed lots” are attempts to generate fear among non-equestrian property owners, using scare tactics and absolute fabrication of situations that will never, ever exist here, with or without regulation.
- The Village of Barrington Hills Comprehensive Plan also considers the historical nature of the town as follows:
 - *Equestrian activity is not a recent phenomenon to Barrington Hills or to the countryside area of the Village of Barrington. Since before World War I, equestrian farmers supplied the region with carriage or riding horses, and their names survive today in such roads as Otis, Buckley, and Hart.*
 - *Similar support existed when in 1994 the Riding Club of Barrington Hills conducted a survey of residents, over 90% of who responded that equestrian activity is an important part of the community character.*
 - *Such sentiment is borne out that since 1957 the Village has issued more building permits for stables for personal use than tennis courts, swimming pools, or other outdoor recreational structures. It is often been said that on horseback one can appreciate the environmental character of Barrington Hills, one tree at a time.*
- With respect to number of horses per acre: Every published study cited is referring to the amount of acreage required to **sustain a horse nutritionally**. In other words, they are studies of the grass/forage yield per acre relative to the nutritional requirements of the average equine. A horse consumes approximately 2.5% of his body weight per day, and so requires approximately 25 pounds of food per day. Horses are somewhat selective, meaning they will choose to eat some types of grass and not others; however, the yield of one acre of "mixed grasses" is generally considered to be sufficient to sustain one horse. The yield per acre can be enhanced with careful management, such as seasonal over seeding, manure removal, aeration, etc., but the one horse/one acre rule of thumb is a good start when a landowner is trying to keep horses nutritionally sustained by pasture.

Two things many of these studies do not address: Climate, and the stable-kept horse. Our northern climate requires that pasture kept horse be fed supplemental feeds for approximately 6 months of the year, and requires shelter or stabling for that same period.

In contrast to the pasture-kept horse, the stable-kept horse receives his entire ration of a hay and grain in the stables - with little or no pasture grass diet whatsoever. Typically, the stable-kept horse spends anywhere from 1 to 8 hours outside in a paddock designed for light exercise, not nutritional sustenance.

These "paddocks" are generally small, safe enclosures that several horses can be rotated through in the course of a day. **Therefore, the acreage required by the stable-kept horse is considerably less; arguably insignificant compared to horses kept outside on pasture.** I hope this clarifies the current language regarding number of horses that on ten or more acres, two horses per acre is permissible, and on less than ten acres, one horse per acre (not necessarily pastured acre) is the permissible number. That language is specifically designed to acknowledge the keeping of horses in stables as opposed to nutritionally sustained on pasture.

- Recently some ZBA members spoke on record and indicated that the current law is a "bad law", or "could be better". The simple fact is that the current law protects equestrians and non-equestrians in the best possible balance. By adding horse boarding and rider training to our existing permitted agricultural uses, we have closed the door to any other type of commercial activity, and provided for the safe and supportive resource of professional horse keeping and rider training, which is so necessary to a thriving equestrian community.

In summary, I would like to say that we feel a great sense of community here in our home of Barrington Hills, due in large part to the equestrian culture which is shared by so many of us, and which has historically been the common ground for so many residents. Common sense, education, discussion, openness to accept each other, with due consideration of our neighbors new and old, and respect for our heritage should be the path that brings us to great decisions for our community now, and for the future. The Zoning Board's actions going forward clearly must be to protect the character of the village, and to preserve the intent of the community, which is and always has been, as an equestrian community. The lawful presence of horse training and boarding facilities are inherent to that outcome.

Summary Notes for the 2014 Horse Boarding Text Amendment in Barrington Hills

Submitted by Jennifer Rousseau, 127 Buckley Rd, Barrington Hills, IL

History:

There was a single catalyst which drove the changes to the zoning code which were passed in December of 2014. That catalyst was the publishing of the court opinion from the 2011 lawsuit Drury v. LeCompte. In that published ruling, the judge made it clear in multiple statements that, in his opinion, **“horse boarding did not comport with the village code”** (as it was written at that time). Many farm owners and the local Riding Club sought legal counsel following that publication to try and understand how such a ruling might affect all other horse boarding in the village. The consensus, from multiple legal advisors and municipal experts, was that this published court ruling would indeed set precedent, and **place all horse boarding within the village at legal risk**. At that time, the ZBA took on the challenge of considering amendments to the zoning code to accommodate the activity of horse boarding, while protecting the rights of all landowners.

This language was not prepared in a vacuum, but rather came as the result of cumulating years of expert advice and testimony on the subject. However, it is important to understand that some of the expert testimony and equestrian commission recommendations were solicited prior to the above mentioned court ruling. The context of that pre-ruling testimony was that we were under the assumption that the home occupancy provision (as was written at that time) **permitted horse boarding**. The published court document changed that context 180 degrees. When considering testimony and recommendations prior to the published court opinion, please recognize that the circumstances changed dramatically, which renders some prior recommendations and testimony invalid.

Legal Status:

In 2015 James Drury sued the village for passing the text amendment, citing three issues:

1. The process was flawed.

2. The text amendment was written for the benefit of a single land owner: Berry LeCompte (who has been locked in a legal battle with Drury for many years).
3. That the trustees who voted in favor of the amendments were involved in a conflict of interest.

The village president quickly structured a settlement which would rescind the text amendment in exchange for the dropping of the lawsuit. It is important to understand that Mr. Drury has spent a great deal of money, reportedly in excess of 3 million dollars, in his legal battle with Mr. LeCompte. The speedy series of events from the filing of the lawsuit to the village's quick resolution smelled of collusion.

However, the village was thwarted in their attempt to settle, because 12 other landowners took up the battle to protect the text amendment as it stands today. They petitioned the court to co-defend against the Drury lawsuit, citing that if the village would not defend, then they had rights that were protected by the text amendment which they were entitled to defend. The judge:

1. Granted the 12 landowners the right to co-defend against the Drury lawsuit (agreeing that their rights were at stake)
2. Read the 12 landowners' statements in defense of the text amendment.
3. Dismissed the lawsuit on all three points due to lack of evidence.
4. Provided the plaintiff an opportunity to amend his complaint. He did so. The defendants, excluding the village, have filed motions to dismiss it on similar grounds to those in the successful dismissal granted this spring.

Clearly, this "test" of the 2014 text amendment validity, legality and impact was significant, and should be a strong measure of the resolve of local landowners to protect their rights to board horses and protect open space and the equestrian lifestyle that this village is renowned for.

Current status:

Mr. Drury is clearly not finished in his obsessive battle to "win" at all costs, regardless of the damage to the village community and other landowners. His

recent submission of his own text amendment, designed solely to benefit his court case, is firm evidence of his skewed motive.

Since enacting the text amendment, there has been no reporting of complaints or questionable operations, and no open floodgates of people building massive equestrian operations involving hundreds of horses. That is because, if you actually take the time to read carefully both the provisions and the restrictions that the current language encompasses you will see that, in fact, there are a full set of checks and balances which have and will continue to provide all landowners with equal protection of their rights and privacy.

Please accept this pared down examination of the current horse boarding language in our zoning regulations. I have tried to emphasize what the amendment does provide for, as well as, what it does not permit. There was a great deal of fear mongering and drama adherent to the process leading up to the passing of this amendment, and the facts were often lost in the melee.

What the ZBA Text Amendment, as passed in December 2014, **does:**

- Adds the words “boarding and training of horses and training of riders” to the ***existing definition of permitted agricultural use, within*** a residentially zoned property:
 - Existing permitted uses: Farming, dairying, pasturage, horticulture, floriculture, viticulture, breeding and animal husbandry including the breeding of horses.
- Recognizes that the buildings associated with breeding, boarding and training of horses and riders may exceed the size of the residence.
- Provides that properties under ten acres continue to be regulated under home occupation, with a limit of one horse per acre, and properties of ten or more acres be regulated under agriculture, with a maximum of two horses per acre.
- Requires that all buildings adhere to the **existing** setback rules, and that the maximum floor area ratio adheres to the **existing** code for residential properties.
- Adds specific hours for farm employees, riding instruction, and the operation of equipment.

- Limits and regulates waste management, lighting and nuisance such that it conforms to the **existing** zoning language.
- Addresses excessive road use and prohibits the use of portable toilets.
- Is consistent with the state of Illinois recognition of horse boarding under agriculture (as is the case in most states).
- **Mirrors the language which has protected our greatest historical equestrian communities, such as Middleburg, VA, Ocala, FL, Aiken, SC and many others.**
- Specifically, the retro-active provision: Protects the trustees who presided between 2006 and 2014, as well as the landowners who boarded horses during this time period, from any legal action, by applying this recognition retroactively to 2006, corresponding with the date when the **vague and indefensible** “notwithstanding” clause which was added to the zoning rules. This is the old wording: *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 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 (8:00) P.M. or sunset, whichever is later. (Ord. 06-12, 6-26-2006). **The 2011 published court opinion in Drury v LeCompte clearly stated that horse boarding did not comport with this zoning code language, therefore landowners and trustees alike were legally exposed.***
- **Balances the rights of all residents, equestrian and non-equestrian, while protecting our large equestrian tracts of land under the most long-term effective categorization, which is agriculture.**

What the ZBA Text Amendment, as passed in December 2014, **does not do:**

- **Does not** open the door to commercial zoning of any kind, because it is very **specific to agriculture**. Gas stations and 7-11's are not agriculture. (Note: In other equestrian communities across the country, removing horse boarding from agriculture and applying case by case special use permits has opened the door to challenges from other types of commercial and retail operations, costing those communities dearly to defend)
- **Does not** change the rate of taxation of properties to agriculture. The State of Illinois has its own criteria for what constitutes agricultural property – **that has not changed**. All of Barrington Hills is zoned residential, and the first five acres is taxed as such – **that has not changed**. **Barrington Hills permits agricultural activities within their residential zoning – that has not changed**.
- **Does not** incentivise residents to start mass boarding of horses – *bees and beehives would be a much cheaper and easier way to get an agricultural tax break.*

Summary:

Do not underestimate the resolve of the equestrian community and many other local landowners to protect the rights afforded under the 2014 text amendment. To date, the amendment is working. The road to the passing of this amendment represents a very divisive and contemptuous period in our village history. It would be a sad mistake for the current village board and the ZBA to take us back down that road at this moment for no apparent reason, other than to pacify Mr. Drury and his questionable motives. Please familiarize yourselves with all aspects of the process and the amendment, from the critical course change which was required after the publishing of the court opinion, to the testimony presented throughout the process, and in particular, to the failure of Drury to use his financial and legal strong-arm to block the democratic process. I thank you for your time and due consideration,

Jennifer Rousseau



Village Clerk <clerk@barringtonhills-il.gov>

(no subject)

JR Davls <JDavis@davisbancorp.com>
To: "clerk@barringtonhills-il.gov" <clerk@barringtonhills-il.gov>

Fri, Jul 15, 2016 at 4:59 PM

For inclusion in ZBA packet.

J.R. Davis

Chairman and CEO

[Davis Bancorp](#)

[\(847\) 998-9000 ext 4460](#)

jdavis@davisbancorp.com



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2 attachments

 **CHISR01A-#956339-v1-Public_Comment-ZBA_Meeting_7-18-16.docx**
37K

 **Email from Village Attorney-July 15, 2016.pdf**
181K

Public Comment for the Zoning Board of Appeals Meeting Scheduled for July 18, 2016

I am J.R. Davis, Chairman of Barrington Hills Farm, and a resident of the Village of Barrington Hills. I am speaking on behalf of Barrington Hills Farm and myself.

First, we want to thank each of you for your volunteer service on the Zoning Board of Appeals. Thank you for serving our community.

Unfortunately, Barrington Hills Farm is troubled by the Agenda posted for tonight's meeting. I attended the last ZBA meeting held on Monday, June 20, and listened to numerous public comments regarding the need to preserve horse boarding in the Village. During that meeting the ZBA engaged in a thoughtful conversation regarding the Village Code and whether there was a need to reconsider the provisions related to horse boarding. I left that meeting with the understanding that this would be a thoughtful process, which would take place over at least the next three ZBA meetings. It was my understanding that the ZBA would not be considering proposed amendments for horse boarding until this September, at the earliest. My understanding is similarly reflected in the minutes from that June 20 meeting. Yet, here we are, less than one month after that meeting, and the ZBA is purportedly voting on a horse boarding text amendment submitted by a single property owner. Barrington Hills Farm is deeply concerned with the recent change in scheduling and is disappointed that such a decision was made outside of the public eye.

Putting the new schedule aside, I urge each of you to think carefully about this proposed text amendment. The proposed amendment essentially seeks to repeal Village Ordinance 14-19, which was passed by the Village Board of Trustees on February 23, 2015, to expressly delineate the rights and obligations involved with boarding horses on R-1 property in the Village. The proposed amendment included on tonight's agenda was submitted by a single

property owner, but is positioned to impact the property rights of every R-1 property in the Village. Under Section 5-10-6 (F) of the Village Code, “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.” Because the property owner proposing this amendment is currently engaged in two separate lawsuits regarding horse boarding activities in the Village, this amendment will advance his individual interests.

However, your role as the Zoning Board of Appeals is to consider the interests of the general public. As a member of the general public, this issue is very important to me, and to Barrington Hills Farm. First, the Village holds itself out to the community as an equestrian community. As stated in the Village’s Comprehensive Plan, “Barrington Hills is a community of residents acting as stewards for a quiet, secure and natural environment, unique within the Chicago metropolitan area, which supports the long term, sustainable use of property for equestrian-oriented, open countryside living. One characteristic which distinguishes Barrington Hills from other [] communities is its equestrian tradition.” Maintaining this vision requires ordinances that allow for horse boarding. Further, since the adoption of the 2015 horse boarding text amendment on February 23, 2015, the Village of Barrington Hills has received zero complaints regarding horse boarding activities in the Village.¹

¹ On June 28, 2016, Barrington Hills Farm through its attorneys submitted a Freedom of Information Request to the Village seeking, “Any and all complaints sent to the Village of Barrington Hills (the “Village”) regarding horse boarding activities between February 23, 2015 and today. For purposes of this request, the Village includes all Village personnel, Village representative bodies, and members of those representative bodies, including but not limited to: the Village Board, the Village Board Members (Colleen Konicek Hannigan, Fritz Gohl, Michael Harrington, Bryan C. Croll, Michell Nagy Maison, and Brian D. Cecola), the Village President (Martin J. McLaughlin), the Village Zoning Board of Appeals Members (Daniel Wolfgram, David Stieper, Richard Chambers, Jim Root, Jan C. Goss, Debra Buettner, and Patrick J. Hennelly), the Village Clerk (Anna Paul), the Director of Administration (Robert Kosin), and any past Village Board Member or Zoning Board of Appeals Member, during that time period he/she was serving the Village.” On July 15, 2016, the Village’s

(cont'd)

Second, Barrington Hills Farm acquired a substantial portion of land in and adjacent to the Village with the intention of boarding horses for two non-profit organizations, the Hooved Animal Rescue & Protection Society of Barrington, Illinois (“HARPS”) and Veterans R&R. HARPS is a non-profit organization that takes in, rehabilitates, and finds new homes for horses and other hooved animals that have been abused and neglected by their owners. Veterans R&R is a non-profit organization that works to improve the lives of Veterans and Active Duty Military members. Barrington Hills Farm invested significant money and effort based on the Village’s identity as an equestrian community and the current ordinances in the Village Code. Barrington Hills Farm is committed to providing a benefit to the community at large and to veterans. This commitment is compatible with the Village’s Comprehensive Plan and the current Village Code. Both the Village’s longstanding image as an equestrian community, and Barrington Hills Farm’s purpose in acquiring land in Barrington Hills, will be devastated if this proposed amendment is adopted.

I urge each of you to consider the Village’s longstanding commitment to equestrian uses, and our interest as residents in maintaining the current Village Code provisions regarding horse boarding. Please do not deviate from your past plans to advance the interests of a single property owner. Instead, listen to your constituents and take the time to hear from the appropriate Village entities. I urge you to vote against this proposed amendment to the Village Code. Thank you.

(cont'd from previous page)

attorneys responded to this request stating, “To confirm, the Village does not have any records responsive to item 1 (complaints regarding horse from February 23, 2015 to present).”

Winterhalter, Brooke Anderson (CHI)

From: Sean Conway <seanconway@bond-dickson.com>
Sent: Friday, July 15, 2016 4:05 PM
To: Berman, Jennifer H (CHI)
Subject: Re: June 28, 2016 FOIA - Village of Barrington Hills

Hi Jennifer,

It was nice speaking with you in connection with this FOIA Request. To confirm, the Village does not have any records responsive to item 1 (complaints regarding horse from February 23, 2015 to present) or item 3 (transcript of the June 20, 2016 ZBA meeting). The Village is still working on a search of its records concerning item 2 and I will have the Village get those records to you as soon as possible. Thanks.

Sean P. Conway
Bond, Dickson & Associates, P.C.
400 S. Knoll Street, Unit C
Wheaton, IL 60187
Phone: (630) 681-1000
Fax: (630) 681-1020

On Fri, Jul 15, 2016 at 12:58 PM, Berman, Jennifer H <Jennifer.Berman@skadden.com> wrote:

Sean,

We just learned that the Village ZBA will be holding a public hearing and vote on James Drury's proposed Horse Boarding Text amendment during the upcoming ZBA meeting on Monday, July 18. We previously agreed to a two-week extension of the Village's time to respond to our FOIA requests—giving the Village until July 19 to respond—in reliance on the ZBA's representations that Mr. Drury's text amendment would not be considered for hearing until September. (See ZBA Meeting Minutes, June 20, 2016 (attached above)). However, in light of the fact that the hearing and vote has now been advanced to Monday, July 18, we would like to request that the Village provide its responses to our FOIA requests by 12 pm that day, so that we can review the responses in advance of the public hearing.

Please let me know whether you will be able to accommodate this request.

Best,

Jennifer

From: Sean Conway [mailto:seanconway@bond-dickson.com]
Sent: Tuesday, July 05, 2016 5:34 PM
To: Berman, Jennifer H (CHI)
Subject: Re: June 28, 2016 FOIA - Village of Barrington Hills

Thanks Jennifer. Much appreciated.

Sean P. Conway
Bond, Dickson & Associates, P.C.
400 S. Knoll Street, Unit C
Wheaton, IL 60187
Phone: [\(630\) 681-1000](tel:(630)681-1000)
Fax: [\(630\) 681-1020](tel:(630)681-1020)

On Tue, Jul 5, 2016 at 5:31 PM, Berman, Jennifer H <Jennifer.Berman@skadden.com> wrote:

Sean,

Apologies for the delay. We are fine with the Village's request for an extension to respond to our FOIA requests until July 19.

Thanks,

Jennifer

On Jul 5, 2016, at 4:59 PM, Sean Conway <seanconway@bond-dickson.com> wrote:

Hi Jennifer,

In the event the requested extension is not agreeable to you, the Village will need to extend its response time under section 3(e)(iv)(v) and (vi) of FOIA. Can you let me know at your earliest convenience? Thanks.

Sean P. Conway
Bond, Dickson & Associates, P.C.
400 S. Knoll Street, Unit C
Wheaton, IL 60187
Phone: [\(630\) 681-1000](tel:(630)681-1000)
Fax: [\(630\) 681-1020](tel:(630)681-1020)

On Tue, Jul 5, 2016 at 3:23 PM, Sean Conway <seanconway@bond-dickson.com> wrote:

Hi Jennifer,

I hope all is well. I am assisting the Village with this FOIA request. The Village is still working on gathering the records you have requested but is in need of some additional time to provide a full response. The Village anticipates having this request filled on or before July 19, 2016. Can you let me know if this response date is agreeable to you? Thank you for any courtesy on this and if you have any follow-up questions, do not hesitate to contact me.

Sean P. Conway
Bond, Dickson & Associates, P.C.
400 S. Knoll Street, Unit C
Wheaton, IL 60187
Phone: [\(630\) 681-1000](tel:(630)681-1000)
Fax: [\(630\) 681-1020](tel:(630)681-1020)

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Further information about the firm, a list of the Partners and their professional qualifications will be provided upon request.

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Further information about the firm, a list of the Partners and their professional qualifications will be provided upon request.

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Robert Kosin <rkosin@barringtonhills-il.gov>

Public comment

Jan-Dirk Lueders <jdl@cmtam.com>

Mon, Jul 18, 2016 at 3:22 PM

To: "rkosin@barringtonhills-il.gov" <rkosin@barringtonhills-il.gov>

Cc: Frauke Lueders <frauke.lueders@cmtam.com>

Dear Mr. Kosin:

In regards to this evening's ZBA meeting I would like it to be taken to protocol, that I am strongly opposed to the Horse Boarding Text amendment as filed by James J. Drury III. As you know the motivation behind the proposal is a personal neighborhood dispute and it does not serve the greater good of the community of Barrington Hills. James Drury is attempting to micro manage an activity that should be fostered and supported instead. If adopted it will have a significant negative impact on many properties in Barrington Hills and it will change forever the Barrington Hills "special way of life" that is so core to the history and present of our village.

Let's protect Barrington Hill's uniqueness. James Drury's proposal will destroy it.

Regards,

Jan-Dirk Lueders and Family, Barrington Hills residents since 2005

Jan-Dirk Lueders



Comment and Analysis of the Drury Text Amendment

7/28/16

Bruce Pfaff
254 Otis Rd.

Comment

The first and most important question is why should the Village revisit any ordinances relating to horse boarding?

As responses to FOIA requests covering over the past ten years have shown, the only complaints about horse boarding to reach the Village have been lodged against the LeComptes by the Drurys and friends. There are other horse boarding facilities in the Village and there have been no complaints to the Village about them. The Village rules and regulations have worked well for those residents.

The dispute between the Drurys and the LeComptes is a modern day Hatfield and McCoy dispute. No amount of rule-making will reduce the enmity between them. To the extent there is a dispute about the boarding operation, it is a product of the personal enmity between them and no rule change will ever cure that.

Have the LeComptes done things to offend the Drurys? Yes. Have the Drurys done things to offend the LeComptes? Yes. Is it the business of this Village government to step in the middle of this dispute? No. Should the Village by legislation choose the winner of their dispute? No.

Mr. Drury's text amendment asks the Village to ban the LeComptes from ever boarding horses on their property under any condition, *c.f.* 5-10-7.

The law has a remedy for someone whose neighbors creates an unreasonable condition on his property that adversely that property owner. It is called "nuisance." Mr. Drury has shown he has access to lawyers and the legal system. To the extent that the activities of the LeComptes are a "nuisance," then Mr. Drury may be entitled to legal relief. He should take his dispute to court if he really thinks the LeComptes are maintaining a "nuisance."

It is not the function of a Village government to choose sides in a private dispute between neighbors like the LeComptes and the Drurys. The Village should reject this proposed text amendment and any of its terms.

The section below analyzes the changes that the Drury Text Amendment would make to our Code.

Analysis of the Drury Proposed Text Amendment

1. 5-3-4 It deletes current boarding, training and instruction in riding rules.
2. 5-2-1 It inserts language prohibiting the boarding of horses
3. 5-3-4D It deletes language permitting the square footage of a barn to exceed the house.
4. 5-3-4D It deletes language that excludes a barn, stable or arena from the F.A.R. requirements.
5. 5-4-3D It deletes language limiting one boarded horse per acre [however, it replaces it with a more restrictive requirement of no more than one horse per acre, boarded or not.]
6. 5-3-4D It deletes the language re home occupation of boarding for properties less than 10 acres. It adds language indicating boarding of horse shall be a permitted home occupation but that no one other than family can do work other than between 0800 and 2000 hours.
7. 5-5-2A It deletes boarding, breeding and training as a permitted R1 accessory use.
8. New 5-2-1 adds definitions, includes “Affected Parties,” giving neighbors substantial new rights to interfere with horse boarding. Defines commercial boarding to be 5 or more horses and no more than 20 horses. Defines horse boarding and indicates boarding <5 horses is permitted under H.O.O.
9. 5-5-3 Commercial Boarding is now a special use.
10. 5-10-7 new section defining commercial boarding as a special use and the permit last only five years; anyone [Berry LeCompte] found to have been in violation of zoning laws can never get a special use permit.
11. 5-10-7 (1) it asserts this is a residential village not an equestrian village. [contrary to the Village’s Comprehensive Plan that establishes this as an equestrian community]
12. 5-10-7 (2) application for special use permit requires written statements of all “affected parties” granting their permission to the proposed commercial boarding. [rights of neighbors trump rights of property owner!]
13. 5-10-7(v) requires proof of available business insurance to name the Village as an additional insured [for no good reason]. Village is permitted to set the amount of coverage required. [How could the Village be liable for the operation of a boarding facility—there is no available precedent]

14. 5-10-7 (3) after an applicant for a special use permit satisfies all listed conditions for a permit, the Board of Trustees is permitted to establish new requirements. [unstated what they might be so they could be entirely arbitrary and punitive if the applicant was not in political favor].
15. 5-10-7 (3) if all Affected Parties do not consent to the request for a special use permit for commercial boarding, the applicant must then prove its operation will NOT interfere with domestic tranquility of all Affected Parties. [an absurd requirement that applies to no other special use permit application in our village].
16. 5-10-7 (4)(i) Special Use permits cannot allow more than one horse (boarded or owned by landowner) per Grazing Acre.
17. 5-10-7 (4)(ii) No more than 20 boarded horses are permitted per operation regardless of the amount of Grazing Acres. [if someone owned 200 grazing acres, still limited to 20 boarded horses].
18. 5-10-7 (b) (iii) use of machinery [undefined] is limited to the hours of 9 am – 5 pm. [there are no hours-of-operation restrictions on landowners for using equipment]
19. 5-10-7 (5) Creates a new limit on size of barns, arenas and ancillary buildings to a total of 25,000 square feet regardless of the acreage of the property.
20. 5-10-7 (5)(b) creates new and large setback requirements for barns, arenas, etc.
21. 5-10-7 (5) (c) Creates new requirements for fire suppression sprinklers and requires fire drills every three months.
22. 5-10-7 (5)(D) Creates a maximum of 10 parking spaces.
23. 5-10-7 (5)(e) Creates a prohibition on overnight parking of non-resident horse trailers.
24. 5-10-7(5)(f) Creates limitations on lighting that is different from any other village lighting ordinance. [discriminatory]
25. 5-10-7 (5)(h) Creates a new dumpster requirements and 300' set back rule that is inconsistent with existing ordinances (100'). [discriminatory]
26. 5-10-7 (5)(h)(iii) Creates a presumption that well water pollution was caused by a boarding operation and requires immediate shutdown of the boarding facility.
27. 5-10-7 (5)(i) Boarding facilities shall be maintained to a “high level” [undefined, could easily be arbitrarily enforced] [a requirement that does not apply to any other property owner in the Village]
28. 5-10-7 Liability insurance is required for at least 1M insuring the Village. [with no indication how the Village could ever be liable or need

insurance from the operation of a boarding facility] [does Barrington Hills CC provide liability insurance for the Village?]

29. 5-10-7 Non Compliance: Allows Village to shut down non-compliant facility in 14 days and to fine it \$1,000 per day.
30. 5-10-7 Retroactive Date: Proposed ordinance is made retroactive to 6/26/06, more than ten years back. [intended to affect the rights of the Drurys and LeComptes re past litigation almost certainly].

Documents in Support of Drury Text Amendment

Submitted by:
James J. Drury III

Submitted by Thomas R. Burney
ZANCK, COEN, WRIGHT & SALADIN, P.C.

Exhibit List

Drury Text Amendment

1. Petition and Proposed Text Amendment
2. Analysis of Consistency with Section 5-1-1 *et. seq.*
3. Ordinance No. 06-12 pertaining to “Home Occupations” within the Village
4. LeCompte v. the Village of Barrington Hills *958 N.E. 2d 1065 (2011)*
5. Drury v. LeCompte *2014 IL App Unpub. LEXIS 612*
6. Comparison of Village Horse Boarding Codes
7. Analysis of Agriculture/Equestrian Zoning Ordinances dated August 18, 2011
8. July 20 ,2011 Letter from Judith Freeman, former Chairman of the Zoning Board of Appeals to the Village Board submitting a proposed draft of a Commercial Horse Boarding Ordinance recommending a Special Use approach
9. Draft Language submitted with the Judith Freeman letter
10. Veto message from Mayor Marty McLaughlin to the Village Board dated January 6, 2014
11. Agreed Order of Settlement approved by the Village Board of the Village of Barrington Hills in connection with Drury v. the Village of Barrington Hills Civil Case No. 15CH3461

**PETITION FOR TEXT AMENDMENTS TO THE VILLAGE OF BARRINGTON HILLS
ZONING CODE**

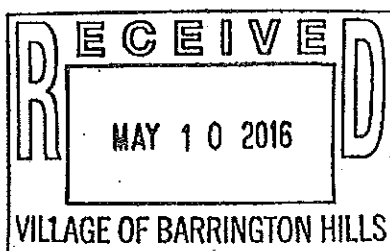
May 10, 2016

To: Ken Garrett, Zoning Enforcement Officer, Village of Barrington Hills, Illinois

The undersigned, James J. Drury III, a landowner and resident of the Village of Barrington Hills, Illinois ("Village"), with an address of 7 Deepwood Road, and affected by the subject matter addressed herein hereby petitions the Village for the following Text Amendments to the Village Code (hereafter, "Zoning Code"), and request that a Zoning Board of Appeals ("ZBA") notice of hearing on these amendments be published as prescribed by code no later than May 26, 2016 and hearing on such amendment be held on June 20, 2016 or as soon thereafter as can be accommodated by the ZBA.

The proposed Text Amendments amend Zoning Code Sections:

1. 5-2-1 (Zoning Definitions - Agriculture)
2. 5-3-4 (A) (Regulations for Specific Uses)
3. 5-3-4 (D) 2 (b) (Home Occupation Definition)
4. 5-3-4 (D) 3 (c) (2) (Home Occupation Use Limitations)
5. 5-3-4 (D) 3 (c) (8) (Home Occupation Use Limitations)
6. 5-3-4 (D) 3 (g) (Home Occupation - Boarding and Training of Horses)
7. 5-5-2-(A) (Permitted Uses R-1 Accessory Uses)
8. 5-5-3 (Special Uses)
9. 5-10-7 (Special Uses)



Zoning Code Sections 5-3-4 (A) (Regulations for Specific Uses)

5-3-4: REGULATIONS FOR SPECIFIC USES:

(A) Agriculture.

1) Other than these 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.

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.~~

Zoning Code Section 5-2-1 (Zoning Definitions - Agriculture)

AGRICULTURE: The use of land for agricultural purposes, including farming, dairying, pasturage, apiculture, horticulture, floriculture, viticulture; and animal and poultry husbandry; and (including the breeding, boarding, and training of horses and riders as a hobby or as an occupation; but not the boarding of horses) and the necessary accessory uses needed for handling or storing the produce; provided, however, that the operation of any such accessory uses shall be secondary to that of the normal agricultural activities, 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.

Zoning Code Section 5-3-4 (D) 2 (b) (Home Occupation Definition)

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~~

Zoning Code Section 5-3-4 (D) 3 (c) (2) (Home Occupation Use Limitations)

(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.~~

Zoning Code Section 5-3-4 (D) 3 (c) (8) (Home Occupation Use Limitations)

~~(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.~~

Zoning Code Section 5-3-4 (D) 3 (g) (Home Occupation - Boarding and Training of Horses),

~~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 (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)~~

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

Zoning Code Section 5-5-2(A) (Permitted Uses R-1 Accessory Uses)

~~Breeding, boarding, and training of horses, and rider instruction, as regulated under Section 5-34(A)(2) or Section 5-3-4(D) as applicable.~~

ORDINANCE AMENDING SECTIONS 5-2-1, 5-3-4, 5-5-3 and 5-10-7

5-2-1 Definitions:

That the following defined terms be added:

AFFECTED PARTIES: Adjacent property owners, private road association (if there is private road access from any Boarding Facility), and non-adjacent property owners located on the same public road as the Boarding Facility within one-quarter (1/4) mile in either direction.

BOARDED HORSES: Horses that are not owned by the landowners or occupants of the property where the horses are kept.

BOARDING FACILITY: Any facility or property space proposed to be used or used in connection with a Commercial Boarding operation.

COMMERCIAL BOARDING: The boarding of five (5) or more boarded horses on any property; provided that the maximum number of boarded horses shall not exceed twenty (20). Commercial Boarding is permitted where the landowner receives a Special Use Permit.

GRAZING ACRE: That fenced-in portion of a property onto which horses are normally allowed during daylight hours. Grazing acres include pastures, mud lots and paddocks, but not those portions of the property that include the residence, pool, tennis court or other sports fields, nor shall it include agricultural or hay fields, streams and wetlands, or other portions of the property not suitable for the pasturing of horses.

HORSE BOARDING: Supplying food and lodging to boarded horses for pay. Boarding of four (4) or fewer horses is permitted under and subject to the Home Occupation Ordinance.

5-3-4 REGULATIONS FOR SPECIFIC USES

5-5-3 SPECIAL USES

Section 5-5-3 (A) shall be amended to include the term "Commercial Boarding" to the list of Special Uses.

5-10-7 SPECIAL USES

A new subsection (1). Commercial Boarding, shall be added to Section 5-10-7, as follows:

Commercial Boarding is a permitted Special Use in R1 Districts within the Village, provided such Commercial Boarding operation complies with the provisions of this Section 5-10-7 (J). Special Use permits issued under this subsection (1) shall not exceed a period of five (5) years from the date of issuance, and thereafter, the property owner will need to reapply for another Special Use permit. In addition, no Special Use permit for Commercial Boarding shall be granted to any property owner or boarding operator who has been found in violation of Village zoning laws or for whom their Boarding Facilities do not or have not complied fully with the building permits issued them.

1. PURPOSE, INTENT AND INTERPRETATION: The purpose of this Section is to provide specific regulations for the operation of Commercial Boarding facilities within the Village. The boarding of horses for a Commercial Boarding operation must be managed in the context of the residential nature of the Village and its desire to maintain the peace, quiet and domestic tranquility within all of the Village's residentially zoned areas. In permitting Commercial Boarding, this Section shall be interpreted to respect and protect the rights of all residents to live in a peaceful, quiet and tranquil environment, and enjoy freedom from fire hazards, excessive noise, light and traffic and other nuisances associated with commercial operations.

2. APPLICATION: All landowners seeking a Commercial Boarding Special Use permit must comply with subsections (A) through (H) of this Section 5-10-7, and in addition to the requirements set forth in subsection (C) must submit to the ZBA with applicant's permit application:

(i) A site plan clearly indicating the size, location and setback from property lines of any buildings and other improvements, structures or facilities, such as pasturage, parking areas and riding arenas, intended by the applicant to be used in connection with the operation of a Commercial Boarding facility, as well as the current on-site land uses and zoning, current adjacent land uses and zoning, adjacent roadways, location of existing utilities, existing and proposed means of access, fencing and landscaping/screening.

(ii) A survey of the property prepared by an Illinois licensed land surveyor dated within ninety (90) days of the application.

(iii) Written statements by all Affected Parties granting their permission to the proposed Commercial Boarding.

(iv) A fire emergency plan developed in conjunction with and approved by the local fire department covering the subject property.

(v) Proof of availability of business insurance with the Village as named the party being covered sufficient to protect the Village from liabilities arising from the operation of the Commercial Boarding facility. The amount of insurance coverage shall be specified by the Village based on the size of the Commercial Boarding operation and such other factors as deemed relevant by the Village after consultation with its auditors and or insurance advisors.

(vi) Such other additional information as shall be requested by the ZBA.

3. CONSIDERATION: In considering a request for a Commercial Boarding Special Use permit, the ZBA shall consider the following factors:

(i) location of the property

(ii) configuration of the property

(iii) character of the surrounding neighborhood

(iv) proximity of each Boarding Facility to wetlands, artificial lakes or other watercourses

(v) vehicular access to each Boarding Facility

(vi) available parking

(vii) available pasture Grazing Acres

(viii) manure disposal plan

(ix) access, shared or otherwise

(x) such other relevant factors as the ZBA may deem appropriate.

In addition, the Village Board of Trustees shall have the right to place further restrictions or requirements on the applicant as conditions for granting a Special Use permit.

In considering each Commercial Boarding Special Use, the ZBA will record in the public record the number and names of Affected Parties who have granted and denied their permission. If less than all Affected Parties have granted permission to the proposed Commercial Boarding, then the applicant shall have the burden of proving that the proposed operation will NOT interfere with the peace, quiet and domestic tranquility of all Affected Parties. Overriding the failure to obtain the unanimous permission of the Affected Parties shall require a simple majority vote by both the ZBA and Village Board of Trustees.

4. USE LIMITS: Special Use permits shall not exceed the following restrictions:

a. Horses

(i) One (1) horse (boarded or resident/landowner-owned) per Grazing Acre

(ii) A maximum of twenty (20) boarded horses per Commercial Boarding operation regardless of the total amount of Grazing Acres

b. Hours of operation:

(i) Employees: from 6:00 A.M. to 7:00 P.M.; animal health emergencies may be addressed at any hour, if needed

(ii) Boarding customers: from 8:00 A.M. to 7:00 P.M.

(iii) Use of machinery: from 9:00 A.M. to 5:00 P.M.

5. FACILITIES AND OPERATIONS

a. Barn, riding, auxiliary buildings and parking area size: A Commercial Boarding FAR of 0.04, with a maximum combined Boarding Facility (not including the residence or other buildings not involved in the Commercial Boarding operation) limit of 25,000 square feet for barns, riding arenas, auxiliary buildings and parking areas, regardless of total property acreage.

b. Setback requirements for barn, arenas, auxiliary buildings and parking area: Minimum of one-hundred (100) feet PLUS thirty-seven (37) feet for each 5,000 square feet of combined barn/arena/auxiliary buildings/parking area, calculated proportionally, from all non-public road property lines. Setback requirements from public road property lines shall be as specified in the Village Zoning Code for R-1 properties. However, if the Affected Parties grant their written permission for an exception, this setback may be

reduced, provided the minimum setback is one hundred (100) feet. If an existing Commercial Boarding operator cannot meet the setback requirements and the Affected Parties will not provide their written permission to a reduction, the Village may grant the applicant a waiver, provided the applicant otherwise meets all other zoning requirements, there were no past or existing complaints by the Affected Parties with respect to the subject Commercial Boarding operation, and there are no current or past violations of the applicant with respect to compliance with the Village's zoning ordinances.

c. Fire Safety: Every Boarding Facility stable (not including the indoor arena) over 5,000 square feet must be equipped with readily accessible Fire Department approved fire extinguishers (1 for each 1,500 square feet of stable), an automated fire monitoring system connected to the local fire department system, and illuminated fire exits (signs and area emergency lighting). In addition, barns over 10,000 square feet must be equipped with a sprinkler or other fire suppressant system that covers all fire escape routes. Boarding Facilities must work with the Fire Department to train employees on evacuation procedures and extinguisher operation, and conduct drills quarterly. Upon request, the Commercial Boarding operator shall provide written procedures and logs demonstrating the conduct of the quarterly drills.

d. Traffic and Parking: The limits shall be:

(i) Parking lot size: Limited to 1 car space per boarded horse stall with a maximum of ten (10) spaces.

(ii) Events will require a Special User permit. Event parking can use paddock/pasture areas.

(iii) Private road access: Requires written permission of the road association

(iv) Class size: Will be limited to maximum size of 6; and no more than two classes per day.

e. Horse Trailer Parking: No overnight parking of non-resident horse trailers is permitted.

f. Lighting: The area immediately around entrances and walkways may be lighted for safety purposes. No other exterior night lighting is permitted. Outdoor arenas may not be lighted at night. Further, no light may emanate from the interior, such as from riding arena windows or translucent panels, if that light presents a non-residential profile or non-residential lumen levels.

g. Indoor bathroom facilities: Facilities shall be provided for employees and customers. Outdoor portable facilities shall not be used for Commercial Boarding operations.

h. Waste & Manure:

(i) Stalls must be cleaned (mucked) daily and the waste manure/bedding mix stored in an appropriately sized dumpster, then hauled to a public waste processing facility not less than once a week. Storage or spreading of manure on the property is not permitted. If manure is kept on premise, placement cannot be closer than 300 feet to neighboring properties

(ii) Piles of manure in pastures or paddocks are not allowed, and must be picked up and disposed of in accordance with the terms of subsection (viii)(a) above.

(iii) For all Commercial Boarding operations with an average of more than ten (10) horses (Boarded Horses or applicant-owned horses), the Village reserves the right to test nearby well water and streams and ponds for manure and animal related pollutants in excess of federal EPA and Illinois EPA guidelines and regulations. If there are excess levels that reasonably appear to be the result of the Commercial Boarding operation, the Commercial Boarding operation shall be closed immediately and remain closed until the remedies are implemented to avoid future problems, and the pollutants abate.

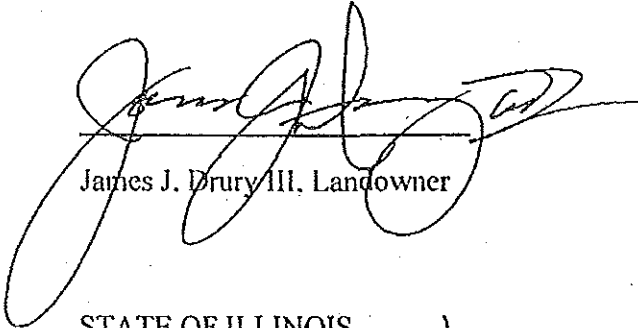
i. Facilities Upkeep: All Boarding Facilities must be maintained to a high level, inside and out, including painting or staining all wooden fences and walls, and sound roofing materials.

LIABILITIES: Each Commercial Boarding operator shall maintain business liability insurance to protect the Village from negligence and other lawsuits in amounts specified by the Village auditor or insurance advisor, which amount shall not be less than \$1,000,000.

NON-COMPLIANCE: In the case of non-compliance with the provisions of this Section and/or any additional restrictions imposed in the Special Use permit, the Village shall provide written notice to the Commercial Boarding operator. The written notice shall specify the area(s) of non-compliance and provide the operator with fourteen (14) calendar days to remedy the non-compliance (the "cure period"). If, after the expiration of the 14-day period, the Commercial Boarding operator has not complied with the terms of this Section or any additional restrictions imposed in the Special Use permit, the Village shall issue a cease and desist letter and such operator shall immediately suspend all Commercial Boarding operations until a compliance plan is submitted to the Village and approval of such plan is voted on by the Village Board of Trustees. If the Commercial Boarding operator continues to operate in non-compliance with the terms of this Section and any additional restrictions imposed in the Special Use permit beyond the 14-day cure period, the operator shall be subject to a fine of \$1,000 per day. Further, in connection with any enforcement action required to be taken by the Village against operator for continued violations after the cure period, operator shall reimburse the Village for any and all enforcement costs, including attorneys' fee and expenses.

EFFECTIVE DATE: Such amended definitions and additions contained herein are retroactive and in full force and effect as of June 26, 2006.

Proposed Commercial Boarding Text Amendment



James J. Drury III, Landowner

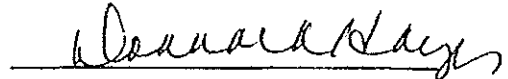
May 10, 2016

STATE OF ILLINOIS)

) ss

COUNTY OF COOK)

Subscribed and sworn to before me this 10th day of May, 2016.



Notary Public



5-1-1: TITLE:

This Title shall be known, cited and referred to as "The Village of Barrington Hills Zoning Ordinance".

5-1-2: INTENT AND PURPOSE:

This Title is adopted for the following purposes:

- (A) To promote and protect the public health, safety, morals, convenience and the general welfare of the people.

Current Text allows as a right throughout the Village, primarily zoned R-1 (Residential) property, does not promote or protect the public health, safety, morals, convenience and the general welfare of the people

- (B) To zone all properties in such a manner as to reflect their best use and to conserve and enhance their value.

Current Text allowing Commercial Use as a right on Residential R-1 Zoned property throughout the Village does not reflect their best use, nor does it conserve and enhance their value.

- (C) To prevent congestion by limiting the development of land to a degree consistent with the capacity of the Village to furnish adequate public services.

Current Text allowing Commercial Use on Residentially Zoned property only invites development which leads to congestion and places a potential tax burden on all Village property owners to pay for addition of services by the Village to support such development.

- (D) To prevent overcrowding of land with buildings and thereby insure maximum living and working conditions and thus prevent blight and slums.

Current Text allowing barns larger than homes does not ensure maximum living and working conditions and can contribute to blight and slums in an economic downturn.

- (E) To prevent residential, business and industrial areas alike from harmful encroachment by incompatible uses and to ensure that land allocated to a class of uses shall not be usurped by other inappropriate uses.

Current Text allows encroachment upon neighbors rights and does usurp their use by inappropriate commercial use.

- (F) To fix reasonable zoning standards to which buildings or structures shall conform.

Current Text is contrary to (F) does not call for any controls over structures.

- (G) To prevent such additions to, and alterations or remodeling of, existing buildings or structures as would not comply with the restrictions and limitations imposed hereinafter. (Ord. 63-1, 4-1-63)

Current Text has no restrictions relative to commercial structures.

- (H) To preserve and to improve the ecological balance in the area subject to this Title; to maintain and create high standards for air quality and water quality including ground water; to avoid disturbance of the terrain which may cause flooding; to avoid contamination of the ground water sources; to preserve the character of the community by preserving the area as a green belt area not subject to high density uses; to preserve the natural vegetation; and to avoid the ecological evils of urbanization. (Ord. 72-16, 12-18-72)

Current Text invites substantial intrusion of commercial operations in the Village without consideration to the impact of the total number of horses allowed on properties and commercial development therein, which could have a deleterious effect on contamination of ground water, and does not preserve the character of the community and preserve the area as a green belt area and can contribute to higher density uses and lead to the ecological evils of urbanization.

- (I) To prevent street congestion through adequate requirements for off-street parking and loading facilities.

Current Text is not specific as to parking and loading requirements.

- (J) To foster a more rational pattern of relationships between residential, business and industrial uses for the mutual benefit of all.

Current Text, given the retroactivity clause of the legislation and no identification of additional operators of large boarding facilities by the Village, was enacted for the benefit of one property owner and not for the mutual benefit of all.

- (K) To isolate or control the location of nuisance-producing uses.

Current Text allows throughout the Village potentially nuisance-producing commercial uses.

- (L) To provide protection against fire, explosion, noxious fumes and other hazards, in the interest of the public health, safety, comfort and the general welfare.

Commercial Text does not impose any controls on commercial buildings.

- (M) To define the powers and duties of the administrative officers and bodies, as provided hereinafter in this Title.

Commercial Text calls for no oversight by Village officials.

- (N) To prescribe penalties for the violation of the provisions of this Title, or of any amendment thereto. (Ord. 63-1, 4-1-63)

Current Text calls for no penalties for violations of provisions.

- (O) To classify, to regulate and restrict the use of property on the basis of family relationship. (Ord. 72-16, 12-18-72)

Current Text calls for no restrictions on larger parcels.

- (P) To insure high standards of light, air and open space in areas where people live and work. (Ord. 63-1, 4-1-63)

Current Text does not reference standards.

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.

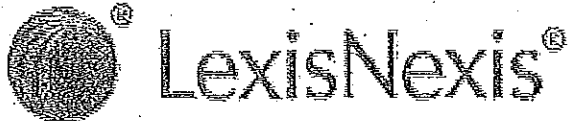
AYES: 7 NAYS: 0 ABSENT: 0

APPROVED THIS 26th day of June, 2006.

ATTEST:

Dolores G. Tranel
Village Clerk, Deputy

[Signature]
Village President



BENJAMIN B. LECOMPTE, CATHLEEN B. LECOMPTE, and NORTH STAR TRUST COMPANY, as Successor Trustee of Harris Bank Barrington N.A., as Trustee Under Trust Number 11-5176, Plaintiffs-Appellants, v. ZONING BOARD OF APPEALS FOR THE VILLAGE OF BARRINGTON HILLS; JONATHAN J. KNIGHT, Chairman; JUDITH FREEMAN, BYRON JOHNSON, NANCY MASTERSON, GEORGE MULLEN, KAREN ROSENE and MARK ROSSI as Members of the Zoning Board of Appeals, Defendants-Appellees.

No. 1-10-0423

APPELLATE COURT OF ILLINOIS, FIRST DISTRICT, THIRD DIVISION

2011 IL App (1st) 100423; 958 N.E.2d 1065; 2011 Ill. App. LEXIS 1014; 354 Ill. Dec. 869

September 21, 2011, Decided

SUBSEQUENT HISTORY: Related proceeding at *Drury v. LeCompte*, 2014 IL App (1st) 121894-U, 2014 Ill. App. Unpub. LEXIS 612 (2014)

PRIOR HISTORY: [***1] Appeal from the Circuit Court of Cook County. 09 CH 00934. Honorable Nancy J. Arnold, Judge Presiding. *LeCompte v. Zoning Bd. of Appeals for Barrington Hills*, 2011 Ill. App. Unpub. LEXIS 1559 (2011)

DISPOSITION: Affirmed.

SYLLABUS

The zoning board of the village where plaintiffs resided properly ordered plaintiffs to cease and desist using their property for the commercial boarding of horses, since the commercial boarding of horses was not a permitted agricultural use in the R-1 district in which plaintiffs resided.

COUNSEL: For PLAINTIFFS-APPELLANTS: Paul M. Bauch, Kenneth A. Michaels Jr., Carolina Y. Sales, Luke J. Hinkle, Of Counsel, Bauch & Michaels, LLC, Chicago,

Illinois.

For DEFENDANTS-APPELLEES: Douglas E. Wambach, George J. Lynch, Susan M. Horner, Of Counsel, Burke, Warren, MacKay & Serritella, P.C., Chicago, Illinois.

JUDGES: JUSTICE NEVILLE delivered the judgment of the court, with opinion. Justice Quinn and Justice Murphy concurred in the judgment and opinion.

OPINION BY: NEVILLE

OPINION

[*P1] [**1066] Plaintiffs, Dr. Benjamin LeCompte, Cathleen LeCompte (LeComptes), and the North Star Trust Company as successor trustee of Harris Bank Barrington N.A. and as trustee under trust number 11-5176, filed a complaint for administrative review of a final decision by the Zoning Board of Appeals (Zoning Board) for the Village of Barrington Hills (Village). The Zoning Board upheld a Village order directing the LeComptes to stop using their property for the commercial boarding of horses because it was not a

permitted agricultural use in an R-1 zoned district. The circuit court affirmed the Zoning Board's decision. We find that the commercial [***2] boarding of horses is not a permitted use of property in a R-1 zoned district because it is not agriculture as that term is defined in section 5-2-1 of The Village of Barrington Hills' Zoning Ordinance (Zoning Code). Therefore, we affirm the order of the circuit court.

[*P2] BACKGROUND

[*P3] The LeComptes are the beneficial owners of approximately 130 acres of property located at 350 Bateman Road, in the Village of Barrington Hills, Illinois. The property was organized in December of 2003, as Oakwood Farm of Barrington Hills, L.L.C. (Oakwood Farm) for the purpose of operating a horse farm. There are approximately 45 horses boarded at Oakwood Farm and 35 are owned by third [**1067] parties who signed an "Equine Training and Breeding Agreement." The other 10 horses are owned by the LeComptes and 2 of those horses are involved in breeding. The property consists of a single-family residence where the LeComptes reside with a stable and a riding arena, which is approximately 30,000 square feet, and there are 60 stalls for the horses and other buildings. In addition to boarding horses, the LeComptes also grow, cut and bale their own hay; raise, train and sell horses; provide pasturage; and provide veterinary [***3] services for the horses.

[*P4] The Village has been predominantly a residential community, with approximately 72.3% of its land dedicated to residential and agricultural property more than five acres in size, 24.6% of its land is forest preserves, 2.1% is residential property less than five acres in size, 0.7% is institutional, and 0.4% is business and industrial. Many of the residential properties are involved in equestrian activities and these activities remain an important part of the Village's character.

[*P5] Oakwood Farm is located in a residential district of the Village zoned R-1. The preamble to section 5-5-2 of the Village's Zoning Code provides (1) that agriculture is a permitted use for land located in an R-1 zoned district; (2) that other than accessory uses - uses incidental to and on the same or an adjacent zoning lot or lots under one ownership - only one of the enumerated permitted uses may be established on a zoning property; and (3) that no building or zoning lot shall be devoted to any use other than a use permitted in the zoning district.

Village of Barrington Hills Zoning Ordinance § 5-5-2 (Feb. 27, 2006).

[*P6] Section 5-2-1 of the Zoning Code defines "agriculture" as "[t]he [***4] use of land for agricultural purposes, including farming, dairying, pasturage, apiculture, horticulture, floriculture, viticulture and animal and poultry husbandry (including the breeding and raising of horses as an occupation)." Village of Barrington Hills Zoning Ordinance § 5-2-1 (added Dec. 18, 1972). Section 5-2-1 also defines "animal husbandry" as "[t]he breeding and raising of livestock, such as horses, cows and sheep." Village of Barrington Hills Zoning Ordinance § 5-2-1 (added June 27, 2005).

[*P7] On January 10, 2008, the Village's attorney delivered a cease and desist letter to the LeComptes which stated that the LeComptes' property, Oakwood Farm, was being used as a commercial horse boarding facility in violation of the Zoning Code and ordered the LeComptes to immediately cease and desist using the property for the nonpermitted use.

[*P8] The LeComptes filed an appeal with the Zoning Board. The Zoning Board conducted a hearing on August 13 and 28, 2008, which was attended by the parties to this appeal, the attorneys for the LeComptes and the Village, and members of the community. The issue before the Zoning Board was whether the commercial boarding of horses is agriculture, a permitted [***5] use of property in a R-1 zoned district under section 5-5-2(A) of the Zoning Code.

[*P9] During the hearing, the LeComptes admitted that they were using their property for the commercial boarding of horses. Dr. LeCompte argued that the commercial boarding of horses is agriculture as defined by section 5-2-1 of the Zoning Code. He also argued that since the commercial boarding of horses is a permitted agricultural use, according to section 5-3-4(A) of the Zoning Code, the Zoning Board was without authority to regulate the use of his property.

[*P10] [**1068] The attorney for the Village, Doug Wambach, argued that the commercial boarding of horses is not a permitted use in an R-1 zoned district. He also argued that, according to the definition of agriculture in section 5-2-1 of the Zoning Code, only the breeding and raising of horses is a permitted use in an R-1 zoned district and horse boarding is not. He further argued that the drafters of the Zoning Code intended that the

permitted uses in an R-1 zoned district would be compatible with each other and that Oakwood Farm's commercial boarding facility was not compatible with the other single-family residences in the R-1 zoned district.

[*P11] At the conclusion of [***6] the hearing, the Zoning Board made the following findings: (1) that the LeComptes are operating a commercial boarding facility in an R-1 zoned district; (2) that the commercial boarding of horses is not a permitted agricultural use in an R-1 zoned district; and (3) that because the commercial boarding of horses is not a permitted agricultural use, section 5-3-4(A) does not apply. Finally, the Zoning Board denied the LeComptes' petition to overturn the Village's order to cease and desist using Oakwood Farm for the commercial boarding of horses.

[*P12] The LeComptes filed a complaint for administrative review in the circuit court and requested that the Zoning Board's decision be reversed. The circuit court affirmed the Zoning Board's decision and the LeComptes appealed to the appellate court.

[*P13] After the LeComptes filed their reply brief in the appellate court, the Zoning Board filed a motion to strike the reply brief and argued that it contained arguments that were not presented in the administrative proceedings in the circuit court or in its initial appellate brief. The Zoning Board's motion to strike was taken with the case.

[*P14] ANALYSIS

[*P15] I. Standard of Review

[*P16] The LeComptes appeal from the circuit [***7] court's order affirming the Zoning Board's decision. Appellate courts review the decision of the administrative agency, herein the Zoning Board, not the circuit court. *Kimball Dawson, LLC v. City of Chicago Department of Zoning*, 369 Ill. App. 3d 780, 786, 861 N.E.2d 216, 308 Ill. Dec. 151 (2006). The Zoning Board was asked to interpret the Village's Zoning Code to determine whether the commercial boarding of horses is agriculture, a permitted use under the Zoning Code. The LeComptes have admitted that they were engaged in the commercial boarding of horses on their property. However, the parties disagree about whether or not the commercial boarding of horses is agriculture. We note that a mixed question of law and fact is one in which the facts are admitted or established, the rule of law is

undisputed, and the issue is whether the facts satisfy the statutory standard or whether the rule of law as applied to the historical facts is or is not violated. *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 391, 763 N.E.2d 272, 261 Ill. Dec. 302 (2001). The agency's application of a rule of law to a mixed question of law and fact will not be reversed unless it is clearly erroneous. *Cook County Republican Party v. Illinois State Board of Elections*, 232 Ill. 2d 231, 243-44, 902 N.E.2d 652, 327 Ill. Dec. 531 (2009). [***8] A decision is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been committed. *Cook County Republican Party*, 232 Ill. 2d at 244.

[**1069] [*P17] II. The Village's Zoning Code

[*P18] A. The Village is a Home Rule Unit of Government

[*P19] The threshold question we must decide is whether the Village had the power to promulgate the Zoning Code. We note that the Illinois Constitution makes the Village a home rule unit of government; therefore, it "may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare." *Ill. Const. 1970, art VII, § 6(a)*. As a home rule unit, the Village has the power to enact the Zoning Code (*County of Cook v. John Sexton Contractors Co.*, 75 Ill. 2d 494, 511-12, 389 N.E.2d 553, 27 Ill. Dec. 489 (1979)), as long as the legislative enactment comports with constitutional requirements. *Thompson v. Cook County Zoning Board of Appeals*, 96 Ill. App. 3d 561, 569, 421 N.E.2d 285, 51 Ill. Dec. 777 (1981). The Village also has the power to define the terms in its Zoning Code and the terms may be given a broader or narrower meaning than they otherwise would have. *County of Lake v. Zenko*, 174 Ill. App. 3d 54, 59-60, 528 N.E.2d 414, 123 Ill. Dec. 869 (1988) [***9] (citing *People v. Burmeister*, 147 Ill. App. 3d 218, 222, 497 N.E.2d 1212, 100 Ill. Dec. 850 (1986), appeal denied, 113 Ill. 2d 577, 505 N.E.2d 355, 106 Ill. Dec. 49 (1987)). Accordingly, we hold that the Illinois Constitution empowered the Village, a home rule unit, to enact its Zoning Code. *Ill. Const. 1970, art. VII § 6(a)*.

[*P20] B. The Rules of Statutory or Ordinance Construction

[*P21] Next, we must determine whether the

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Zoning Board's decision - that the commercial boarding of horses is not agriculture, a permissible use, according to the Villages' Zoning Code - was clearly erroneous. See Village of Barrington Hills Zoning Ordinance § 5-2-1 (added Dec. 18, 1972); § 5-5-2(A) (Feb. 26, 2006).

[*P22] The rules of statutory construction apply to municipal ordinances, like the Village's Zoning Code. *Pooh-Bah Enterprises, Inc. v. County of Cook*, 232 Ill. 2d 463, 492, 905 N.E.2d 781, 328 Ill. Dec. 892 (2009). When a court construes a zoning ordinance, "[e]ffect should be given to the intention of the drafters by concentrating on the terminology, its goals and purposes, 'the natural import of the words used in common and accepted usage, the setting in which they are employed, and the general structure of the ordinance.' [Citation.]" *Cosmopolitan National Bank v. County of Cook*, 103 Ill. 2d 302, 313, 469 N.E.2d 183, 82 Ill. Dec. 649 (1984). The [***10] best indication of legislative intent is the statutory language, given its plain and ordinary meaning. *Lauer v. American Family Life Insurance Co.*, 199 Ill. 2d 384, 388, 769 N.E.2d 924, 264 Ill. Dec. 87 (2002).

[*P23] C. Agriculture is a Permitted Use Under the Zoning Code

[*P24] With the rules of statutory construction in mind, we now review the Zoning Board's decision. The LeComptes argued before the Zoning Board that commercial horse boarding is a permitted agricultural use under section 5-5-2(A) of the Zoning Code. Village of Barrington Hills Zoning Ordinance § 5-5-2(A) (Feb. 26, 2006). They also argued that the terms breeding and raising, in the definition for agriculture in section 5-2-1 of the Zoning Code (Village of Barrington Hills Zoning Ordinance § 5-2-1), encompass the boarding of horses. The Village disagrees and argues that the boarding of horses is not a permitted use under section 5-5-2(A) of the Zoning Code and that the boarding of horses is not agriculture [***1070] based upon the definition of agriculture in section 5-2-1 of the Zoning Code.

[*P25] Section 5-5-2(A) of the Zoning Code provides that agriculture is a permitted use in an R-1 zoned district. Village of Barrington Hills Zoning Ordinance § 5-5-2(A) (Feb. 26, 2006). Section 5-5-2(A) [***11] sets forth the permissible uses in an R-1 zoning district as (1) agriculture, (2) single-family detached dwellings, (3) signs, and (4) accessory uses, incidental to and on the same or an adjacent zoning lot or lots under one ownership, as the principal use. Village of Barrington

Hills Zoning Ordinance § 5-5-2(A) (Feb. 26, 2006). Therefore, we must determine whether the Zoning Board erred when it found that the commercial boarding of horses is not agriculture, a permitted use, as defined by section 5-2-1 of the Zoning Code.

[*P26] D. The Commercial Boarding of Horses is Not Agriculture

[*P27] As previously indicated, section 5-2-1 defines agriculture as "[t]he use of land for agricultural purposes, including animal husbandry (including the breeding and raising of horses as an occupation)." Village of Barrington Hills Zoning Ordinance § 5-2-1 (added Dec. 18, 1972). The preamble to the definitions in section 5-2-1 provides that "[i]n the construction of this zoning title, the words and definitions contained in this chapter shall be observed and applied, except when the context clearly indicates otherwise." Village of Barrington Hills Zoning Ordinance § 5-2-1. Finally, the rules of statutory construction [***12] provide that when specific definitions of any terms are provided, those definitions, when reasonable, will be sustained to the exclusion of hypothetical indulgences. *R VS Industries, Inc. v. Village of Shiloh*, 353 Ill. App. 3d 672, 674, 820 N.E.2d 503, 289 Ill. Dec. 727 (2004).

[*P28] In support of their argument that commercial horse boarding is agriculture, the LeComptes focus on the term "including" that is used in the definition of agriculture and they argue that the use of the term "including" means that the list following the term is illustrative not exhaustive, and that the terms that follow are a partial list. We find the LeComptes' argument is consistent with cases construing the terms "includes" and "including." See *People v. Perry*, 224 Ill. 2d 312, 328, 864 N.E.2d 196, 309 Ill. Dec. 330 (2007); *Paxson v. Board of Education of School District No. 87*, 276 Ill. App. 3d 912, 920, 658 N.E.2d 1309, 213 Ill. Dec. 288 (1995). However, while the Zoning Code defined "agriculture" as land used for "agricultural purposes," and used the term "including" to provide examples of other uses of land for agricultural purposes, unless the boarding of horses is similar to other uses in the definition, the rules of statutory construction prevent us from saying that the Village intended for the commercial boarding [***13] of horses to be a use included in that list. *Perry*, 224 Ill. 2d at 328 (the preceding general term is to be construed as a general description of the listed items and other similar items).

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[*P29] Specifically, the LeComptes argue that the terms "breeding" and "raising" in the definition of "agriculture" encompass the boarding of horses. The definition of "agriculture" in section 5-2-1 lists animal husbandry as a use for agricultural purposes. Village of Barrington Hills Zoning Ordinance § 5-2-1 (added Dec. 18, 1972). The definition also includes the "breeding and raising of horses as an occupation" as an example of animal husbandry. Village of Barrington Hills Zoning Ordinance § 5-2-1 (added June 27, 2005). Because the Zoning Code does not define the terms "breeding" and "raising," we will look at a dictionary to give the terms their ordinary and popularly understood meaning. *O'Donnell v. City of Chicago*, 363 Ill. App. 3d 98, 107-08, 842 N.E.2d 208, [**1071] 299 Ill. Dec. 469 (2005) (citing *People v. Maggette*, 195 Ill. 2d 336, 349, 747 N.E.2d 339, 254 Ill. Dec. 299 (2001)); *In re Detention of Bailey*, 317 Ill. App. 3d 1072, 1086, 740 N.E.2d 1146, 251 Ill. Dec. 575 (2000) (A "court may look to dictionary definitions to derive the plain and ordinary meaning without rendering the term ambiguous.") (citing *In re A.P.*, 179 Ill. 2d 184, 198-99, 688 N.E.2d 642, 227 Ill. Dec. 949 (1997)).

[*P30] [***14] Webster's Third New International Dictionary defines the term "breeding" as "the action or process of bearing or generating", as gestation or hatching, or as the propagation of plants and animals. Webster's Third New International Dictionary 274(1986). Webster's also defines the term "raising" as "the breeding and care of animals", and it defines the term "raise" as breeding or caring for animals to maturity. Webster's Third New International Dictionary 1877 (1986). We note that Webster's defines "boarding" as the act of supplying meals and lodgings for pay. (Emphasis added.) Webster's Revised Unabridged Dictionary 160 (1913). We find that Webster's definitions make it clear that a person who boards horses engages in different acts from a person who breeds and raises horses.

[*P31] We note that the Zoning Code also defines "animal husbandry" as "[t]he breeding and raising of livestock, such as horses." Village of Barrington Hills Zoning Ordinance § 5-2-1 (added June 27, 2005). The definition does not include the commercial boarding of horses as part of the definition of animal husbandry. Based upon the Zoning Code's definition of agriculture and Webster's definitions of the terms breeding, [***15] raising, and boarding, we find that the drafters of the Zoning Code did not intend for the commercial boarding

of horses to be included in the definition of agriculture as a use for agricultural purposes. *Cosmopolitan National Bank*, 103 Ill. 2d at 313.

[*P32] We are unwilling to interpret the definition for agriculture in the Zoning Code to include the commercial boarding of horses as a use for agricultural purposes because the words in context do not support such an interpretation. *Cosmopolitan National Bank*, 103 Ill. 2d at 313; Village of Barrington Hills Zoning Ordinance § 5-2-1 (added Dec. 18, 1972). Therefore, following *Perry*, we find that, while the terms in the definition of "agriculture" that describe the uses for agricultural purposes are not exhaustive, if there are any other terms to be included in the description of uses of the land for agricultural purposes they should be *similar* to, not different from, as in this case, the listed terms. *Perry*, 224 Ill. 2d at 328; also see *Paxson*, 276 Ill. App. 3d at 920; *Kostecki v. Pavlis*, 140 Ill. App. 3d 176, 181, 488 N.E.2d 644, 94 Ill. Dec. 645(1986).

[*P33] E. Using Stables for the Commercial Boarding of Horses Does Not Comport With the Village's Zoning Code

[*P34] Next, the LeComptes [***16] argue that using their stables for the commercial boarding of horses comports with the Village's Zoning Code. We disagree. The Zoning Code defines a "stable" as "[a] detached accessory building the primary use of which is the keeping of horses." Village of Barrington Hills Zoning Ordinance § 5-2-1 (added Feb. 27, 2006). We note, however, that the Zoning Code also defines an "accessory building" as "subordinate to and serves a principal building or principal use." Village of Barrington Hills Zoning Ordinance § 5-2-1 (added Apr. 1, 1963). Although the stable may be an [**1072] accessory building, the LeComptes are not using the stable as an accessory building that is subordinate to a principal building or use. Therefore, because the LeComptes are using the stable for the commercial boarding of horses, which is a primary use and not a subordinate use, it is a use that does not comport with the Village's Zoning Code.

[*P35] F. Viewed in its Entirety, the Zoning Code Supports the Zoning Board's Decision

[*P36] The LeComptes also argued that the Village intended for residents to commercially board horses. In order to determine the intent of the Village when it

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enacted the Zoning Code, we must consider the Zoning [***17] Code in its entirety. *Orlak v. Loyola University Health System*, 228 Ill. 2d 1, 8, 885 N.E.2d 999, 319 Ill. Dec. 319 (2007) (citing *Perry*, 224 Ill. 2d at 323).

[*P37] Several sections of the Zoning Code support the conclusion that its drafters did not intend for the commercial boarding of horses to be a permitted primary use in an R-1 zoned district. For example, section 5-1-2 explains the "intent and purpose" of the Zoning Code and provides that it is "[t]o promote and protect the public health, safety, *** convenience and the general welfare of the people. *** [P]revent congestion *** overcrowding of *** residential, *** areas *** from harmful encroachment by incompatible *** inappropriate uses." Village of Barrington Hills Zoning Ordinance § 5-1-2. (Apr. 1, 1963).

[*P38] In addition, subsection 5-3-4(D) entitled "Home Occupation" explains that the residential tranquility of the neighborhood must remain paramount when a business is conducted from the principal building. Village of Barrington Hills Zoning Ordinance § 5-3-4(D) (added June 26, 2006). Subsection 5-3-4(D)(2) defines "home occupation" in pertinent part as "any lawful business, *** occupation *** conducted from a principal building or an accessory building in a residential [***18] district that *** [i]s incidental and secondary to the principal use of such dwelling unit for residential occupancy purposes." Village of Barrington Hills Zoning Ordinance § 5-3-4(D)(2) (added June 26, 2006). A home occupation must be conducted in a manner that (1) "provide[s] peace, quiet and domestic tranquility within all residential neighborhoods," (2) "guarantee[s] * * * freedom from [the] possible effects of business or commercial uses," and (3) cannot "generate significantly greater vehicular or pedestrian traffic than is typical of residences in the surrounding neighborhood of the home occupation." Village of Barrington Hills Zoning Ordinance § 5-3-4(D)(3)(e).

[*P39] The record reveals that commercial boarding at Oakwood Farm caused a significant increase in the traffic and noise in the neighborhood and resulted in complaints by the surrounding property owners. The record also reveals that Oakwood Farm's primary purpose is the commercial boarding of horses, which is a use that is not incidental and secondary to residential occupancy. While the Zoning Code does permit the boarding and training of horses as a home occupation, it must be done

in a manner that maintains the peace, quiet [***19] and domestic tranquility within all residential neighborhoods in an R-1 zoned district. See Village of Barrington Hills Zoning Ordinance § 5-3-4(D)(3)(g) (added June 26, 2006). We find that the commercial boarding of horses does not comport with the overall intent of the Zoning Code. Therefore, the Zoning Board's decision was not clearly erroneous.

[*P40] G. Section 5-3-4(A) Does Not Apply in This Case

[*P41] Finally, the LeComptes also argue that section 5-3-4(A), which restricts the [***1073] Village from "impos[ing] regulations or requir[ing] permits with respect to land used or to be used for agricultural purposes," applies in this case. Village of Barrington Hills Zoning Ordinance § 5-3-4 (Apr. 1, 1963). We disagree. Section 5-3-4(A) is clear that "[i]n the event the land ceases to be used solely for agricultural purposes, then, and only then, shall the provisions of the zoning title apply." Village of Barrington Hills Zoning Ordinance § 5-3-4 (Apr. 1, 1963). Here, because the LeComptes' property as used primarily for the commercial boarding of horses, which is not a use for agricultural purposes, section 5-3-4(A) of the Zoning Code did not apply. Accordingly, the Zoning Board's decision that section 5-3-4(A) [***20] did not apply was not clearly erroneous.

[*P42] H. The LeComptes' Cases Do Not Support Their Position

[*P43] The LeComptes rely on a number of cases to support their position. In *Tuftee v. County of Kane*, 76 Ill. App. 3d 128, 394 N.E.2d 896, 31 Ill. Dec. 694 (1979), the court held that the care and training of horses for show was an agricultural purpose. We find that the zoning ordinance in *Tuftee* is different from the Zoning Code in this case. Unlike the zoning ordinance in this case, in *Tuftee*, there was no definition for agriculture provided in the zoning ordinance. Therefore, because the *Tuftee* court had to resort to extrinsic sources, other cases and the dictionary to obtain a definition for terms in its zoning ordinance, it is distinguishable from this case. *Tuftee*, 76 Ill. App. 3d at 131-32. See *County of Knox ex rel. Masterson v. The Highlands, LLC*, 188 Ill. 2d 546, 556, 723 N.E.2d 256, 243 Ill. Dec. 224 (1999).

[*P44] In *Borrelli v. Zoning Board of Appeals*, 106 Conn. App. 266, 941 A.2d 966 (Conn. App. Ct. 2008) the

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facts are also distinguishable from the facts in our case. Although the zoning regulations in *Borrelli* contained a definition for "agriculture" similar to the definition of "agriculture" in our case, the descriptive phrase following "animal husbandry" "(including the breeding [***21] and raising of horses as an occupation)" in the Village's Zoning Code is not included in the zoning ordinance in *Borrelli*. *Borrelli*, 941 A.2d at 972-73. In addition, unlike the ordinance in our case, there is no definition for "animal husbandry" contained in the ordinance in *Borrelli*. *Borrelli*, 941 A.2d at 972-73. Therefore, *Borrelli* is also distinguishable from this case.

[*P45] The LeComptes also cite other Illinois cases, *People ex rel Pletcher v. City of Joliet*, 321 Ill. 385, 388, 152 N.E. 159 (1926), and *County of Knox ex rel Masterson v. Highlands, L.L.C.*, 302 Ill. App. 3d 342, 346, 705 N.E.2d 128, 235 Ill. Dec. 515 (1998), in support of their position. However, as the Zoning Board correctly states in its brief, these cases are also distinguishable. In both *City of Joliet* and *County of Knox*, the term "agriculture" was undefined and the courts resorted to extrinsic sources for a broad definition of those terms. *City of Joliet*, 321 Ill. at 388 ("ns [a]griculture' is another indefinite word which renders the statute more or less uncertain"; as such the court resorted to the broad dictionary definition of "agriculture"); *County of Knox*, 302 Ill. App. 3d at 346 (the court applied the dictionary definition of "agriculture" used by the [***22] supreme court in the *City of Joliet*).

[*P46] Finally, the LeComptes' reliance on *Steege v. Board of Appeals*, 26 Mass. App. Ct. 970, 527 N.E.2d 1176, 1178 (Mass. App. Ct. 1988), is misplaced because the term "agriculture" was not defined and decisions from other jurisdictions are not binding on this court. *Travel 100 Group, Inc. v. Mediterranean Shipping Co. (USA)*, 383 Ill. App. 3d 149, 157, 889 N.E.2d 781, [**1074] 321 Ill. Dec. 516 (2008). Accordingly, because the facts in the aforementioned cases are distinguishable from the facts in the instant case, we see no reason to follow these cases.

[*P47] We find that the commercial boarding of horses is not agriculture as defined by the Zoning Code. Accordingly, we hold that the Zoning Board's decision, that the commercial boarding of horses is not agriculture and is not a permitted use in an R-1 zoned district, was not clearly erroneous. Village of Barrington Hills Zoning Ordinance § 5-2-1, (added Dec. 18, 1972); § 5-5-2(A)

(June 27, 2006), *Cosmopolitan National Bank*, 103 Ill. 2d at 313.

[*P48] III. Zoning Board's Factual Findings

[*P49] Next, the LeComptes argue that the Zoning Board's decision contains erroneous factual findings because it did not accurately summarize comments from certain audience members who were not called to [***23] testify. The Zoning Board's factual findings are deemed *prima facie* true and correct, and its decision will not be disturbed on review unless it is contrary to the manifest weight of the evidence. *Scadron v. Zoning Board of Appeals*, 264 Ill. App. 3d 946, 949, 637 N.E.2d 710, 202 Ill. Dec. 171 (1994). A decision is contrary to the manifest weight of the evidence only where the reviewing court determines, viewing the evidence in the light most favorable to the agency, that no rational trier of fact could have agreed with the agency. *Scadron*, 264 Ill. App. 3d at 949. If there is any competent evidence supporting the agency's determination, it should be affirmed. *Scadron*, 264 Ill. App. 3d at 949 (citing *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76,88, 606 N.E.2d 1111, 180 Ill. Dec. 34 (1992)). We found nothing in the record to suggest that the Zoning Board's findings were unsupported by the evidence in the record. Therefore, because there was competent evidence supporting the Zoning Board's decision, we find that its factual findings were not against the manifest weight of the evidence.

[*P50] IV. Zoning Board's Motion to Strike Plaintiffs' Reply Brief

[*P51] The Zoning Board argues that the LeComptes' argument regarding the Illinois Open [***24] Meetings Act (5 ILCS 120/1 et seq. (West 2008)) in their reply brief should be stricken because it was not made in the administrative proceedings, in the circuit court or in its initial appellate brief. The LeComptes argue in their reply brief that the Zoning Board violated the Act when it (1) failed to vote in open meeting to have a closed session and identify the exception that allowed the closed session (5 ILCS 120/2(c)(4) (West 2008)), and (2) failed to indicate the results of the vote in the minutes (5 ILCS 120/2a (West 2008)). We find that this argument was not raised before the Zoning Board or in the complaint for administrative review; therefore, it is forfeited. *Western & Southern Life Insurance Co. v. Edmonson*, 397 Ill. App. 3d 146, 154, 922 N.E.2d 1133, 337 Ill. Dec. 556 (2009); *People ex rel. Hopf v. Barger*,

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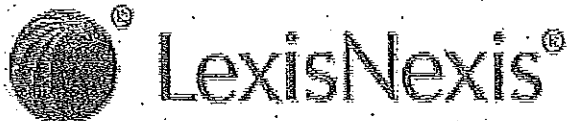
30 Ill. App. 3d 525, 539-40, 332 N.E.2d 649 (1975) (citing *Shaw v. Lorenz*, 42 Ill. 2d 246, 248, 246 N.E.2d 285 (1969)). Therefore, we see no need to address that issue.

[*P52] CONCLUSION

[*P53] We find (1) that the use of the land at Oakwood Farm for the commercial boarding of horses is not agriculture as defined in section 5-2-1 of the Zoning Code (Village of Barrington Hills Zoning Ordinance § 5-2-1 (added Dec. 18, 1972)), and (2) that since the [***25] commercial boarding [**1075] of horses is not

agriculture under section 5-5-2(A) of the Zoning Code, it is not a permitted use in an R-1 zoned district in the Village of Barrington Hills. Village of Barrington Hills Zoning Ordinance § 5-5-2(A) (June 27, 2006). After reviewing the record, we do not have a definite and firm conviction that the Zoning Board made a mistake. Accordingly, we hold that the Zoning Board's decision was not clearly erroneous, and the judgment of the circuit court is affirmed.

[*P54] Affirmed.



JAMES J. DRURY, III, as Agent of the Peggy D. Drury Declaration of Trust U/A/D 02/04/00; and MICHAEL J. MCLAUGHLIN, Plaintiffs-Appellants, v. BENJAMIN B. LECOMPTE, CATHELEN B. LECOMPTE, and NORTH STAR TRUST CO., as Successor Trustee of Harris Bank Barrington N.A., as Trustee Under Trust Number 11-5176, Defendants-Appellees.

No. 1-12-1894

APPELLATE COURT OF ILLINOIS, FIRST DISTRICT, SIXTH DIVISION

2014 IL App (1st) 121894-U; 2014 Ill. App. Unpub. LEXIS 612

March 28, 2014, Decided

NOTICE: THIS ORDER WAS FILED UNDER SUPREME COURT RULE 23 AND MAY NOT BE CITED AS PRECEDENT BY ANY PARTY EXCEPT IN THE LIMITED CIRCUMSTANCES ALLOWED UNDER RULE 23(e)(1).

SUBSEQUENT HISTORY: Appeal denied by *Drury v. LeCompte*, 2014 Ill. LEXIS 1036 (Ill., Sept. 24, 2014)

PRIOR HISTORY: [**1]

Appeal from the Circuit Court of Cook County, No. 11 CH 03852. The Honorable Franklin U. Valderrama, Judge Presiding.
LeCompte v. Zoning Bd. of Appeals for Barrington Hills, 2011 IL App (1st) 100423, 958 N.E.2d 1065, 2011 Ill. App. LEXIS 1014, 354 Ill. Dec. 869 (2011)

DISPOSITION: Reversed and remanded.

JUDGES: JUSTICE LAMPKIN delivered the judgment of the court. Presiding Justice Gordon and Justice Reyes concurred in the judgment.

OPINION BY: LAMPKIN

OPINION

ORDER

[*P1] *Held*: The circuit court erred in dismissing plaintiff property owners' amended complaint for injunctive relief against defendants, who were owners of a horse boarding facility, on the basis of failure to exhaust administrative remedies, mootness, and lack of justiciability. Where plaintiffs' amended complaint was pending in the circuit court after a cease and desist order against defendants had been upheld by the municipal zoning board of appeals and confirmed on administrative review by the circuit and appellate courts, but defendants subsequently claimed they were in compliance with the zoning code on a basis defendants had formally waived during the administrative proceedings, plaintiffs were not required to litigate the waived issue before the zoning board of appeals before proceeding in court with their request for injunctive relief.

[*P2] Plaintiff property owners, James Drury, III, as an agent of the Peggy D. Drury [**2] Declaration of Trust U/A/D 02/04/00, and Michael McLaughlin, sought injunctive relief against defendant adjacent property owners Dr. Benjamin LeCompte, Cathleen LeCompte (LeComptes), and North Star Trust Co., as successor trustee of Harris Bank Barrington N.A., as trustee under trust number 11-5176. In their amended complaint, plaintiffs alleged that defendants were operating a

commercial horse boarding operation on their property in violation of the zoning laws of the Village of Barrington Hills (Village) and, despite plaintiffs' repeated requests, the Village refused to shut down the operation by enforcing the cease and desist letter that was issued to defendants, upheld by the Village's Zoning Board of Appeals (Zoning Board), and affirmed on administrative review by both the circuit court and this appellate court.

[*P3] Defendants moved to dismiss the amended complaint for mootness, lack of subject matter jurisdiction, and lack of justiciability. Defendants argued that plaintiffs' injunctive relief action was rendered moot upon the issuance of a letter by a Village code enforcement officer, which stated that defendants' boarding and training of horses appeared to be a home occupation based [**3] on their hours of operation. Defendants also argued that plaintiffs forfeited any judicial remedies by failing to exhaust their administrative remedies and follow through with their appeal before the Zoning Board of the Village code enforcement officer's decision.

[*P4] The circuit court granted defendants' motion to dismiss. On appeal, plaintiffs contend the circuit court erred because their complaint was neither moot nor nonjusticiable. Plaintiffs argue that: (1) any change in defendants' operating hours had no effect on this appellate court's decision that defendants' commercial horse boarding operation did not comply with the Village's zoning code; (2) plaintiffs were not required to exhaust any administrative remedies before the Zoning Board prior to seeking injunctive relief in the circuit court; and (3) the circuit court denied plaintiffs due process by terminating discovery and failing to adjudicate the issue concerning the authenticity and validity of the Village code enforcement officer's letter.

[*P5] For the reasons that follow, we reverse the circuit court's dismissal of plaintiffs' amended complaint and remand this cause for further proceedings.

[*P6] I. BACKGROUND

[*P7] Although the issue before [**4] this court is the dismissal of plaintiffs' 2011 amended complaint seeking injunctive relief, the origins of this litigation go back to 2007, when plaintiffs complained to the Village that the LeComptes were boarding horses on their property for a commercial purpose in violation of the Village's zoning laws. The LeComptes were the

beneficial owners of 130 acres of property in the Village. The property was organized as Oakwood Farm of Barrington Hills, L.L.C. (Oakwood Farm) for the purpose of operating a horse farm. The property consisted of a single-family home where defendants resided, a stable, a riding arena, 60 stalls for horses, and other buildings.

[*P8] In January 2008, the Village's attorney sent a cease and desist letter to the LeComptes. The Village informed them that, pursuant to the Village zoning code, their operation of a commercial horse boarding facility was not one of the permitted uses of their property, which was located in a residential district of the Village zoned R-1. The only permitted uses within an R-1 zoning district were (1) single-family detached dwellings; (2) agricultural; (3) signs as regulated by the zoning code; and (4) accessory uses, which included home [**5] occupations. The LeComptes appealed this determination to the Zoning Board.

[*P9] At the August 2008 hearing sessions before the Zoning Board, the LeComptes admitted that they were using their property for the commercial boarding of horses. They argued, however, that this use was a permitted agricultural use of the property pursuant to the Village zoning code and, thus, the Zoning Board had no authority to regulate this use of the LeComptes' property. Dr. LeCompte acknowledged that the zoning code allowed horse boarding as a home occupation, but he emphasized that the LeComptes were not claiming that their use was a permitted accessory use incidental to the principal use by virtue of the home occupancy provisions, and he "would never even come to the [the Zoning] Board and say I'm a home occupation."

[*P10] The Village argued that the commercial boarding of horses was not a permitted use in an R-1 zoned district. The Village contended that, according to the definition of "agriculture" in the zoning code, the breeding and raising of horses was a permitted use in an R-1 zoned district but the distinct use of horse boarding was not a permitted use. The Village also argued that the drafters of the zoning [**6] code intended for the permitted uses in an R-1 zoned district to be compatible with each other and Oakwood Farm's commercial boarding facility was not compatible with the other single family residences in the R-1 zoned district. When the chairman of the Zoning Board asked if home occupation use applied to this matter, the Village responded that the home occupation definition allowed people to board

horses in a residential area. The provision allowing horse boarding as a permitted home occupation use was intended to enable people who had a four or five stall barn to board a couple of horses for neighbors or friends. However, given the zoning code's proscriptions against excessive traffic, noise, and disruptions to the tranquility of the residential area, the operation of a 60 to 70 stall horse boarding facility could not even be contemplated as a permitted home occupation use.

[*P11] Zoning Board member Byron Johnson commented on the record that, although the boarding of horses in the Village had been illegal, the Village knew that horse boarding was occurring on some scale. When the Village amended section 5-3-4(D) of the zoning code concerning home occupations to allow horse boarding and [**7] training pursuant to subsection 5-3-4(D)(3)(g), the Village did not want to allow large-scale horse boarding operations. Accordingly, the Village added an intent and purpose preamble to section 5-3-4(D) to clarify that the conduct of any home occupation, including horse boarding and training, must not infringe upon the rights of neighboring residents to enjoy the peaceful occupancy of their homes or change the character of the residential area. Consequently, when subsection 5-3-4(D)(3)(g) was added to the home occupation section, it permitted horse boarding and training subject to compliance with the various conditions set forth in section 5-3-4(D) of the zoning code.

[*P12] In November 2008, the Zoning Board concluded that the LeComptes were operating a commercial boarding facility impermissibly in an R-1 residential district and that the commercial boarding of horses was not a permitted agricultural use of the property. The Zoning Board denied the LeComptes' petition to overturn the Village's cease and desist order.

[*P13] The LeComptes then filed a complaint for administrative review in the circuit court. The circuit court confirmed the Zoning Board's decision in January 2010, and the LeComptes [**8] appealed to this court.

[*P14] While that appeal was pending, plaintiffs Drury and McLaughlin sent a letter to the Village in December 2010, asking the Village to take the necessary action against the LeComptes to enforce the January 2008 cease and desist letter. The Village responded that no further action would be instituted while the LeComptes' appeal to this appellate court was pending.

[*P15] In January 2011, plaintiffs filed in the circuit court a complaint against defendants seeking injunctive relief pursuant to *section 11-13-15* of the Illinois Municipal Code (*65 ILCS 5/11-13-15* (West 2010)). In response, defendants filed multiple motions to dismiss the complaint.

[*P16] Meanwhile, in a February 2011 letter to the Village attorney, defendants asked the Village to confirm in writing defendants' compliance with the zoning code. Defendants argued that subsection 5-3-4(D)(3)(g) of the code allowed unlimited horse boarding in their R-1 residential district as a home occupation as long as they complied with the operating hours of 8 a.m. through 8 p.m. Defendants asserted that, in addition to their exemption from Village regulations as an agricultural use, their new operating hours complied with subsection [**9] 5-3-4(D)(3)(g) and, thus, meant that they were in compliance with the code. In a response letter, the Village attorney stated that "[i]t is and has been the Village's position that Oakwood Farms does not comply with the requirements of the home occupation provisions of the Village's zoning code." The Village attorney noted that defendants consistently took the position that their horse boarding activities did not constitute a home occupation in sworn testimony before the Zoning Board, in statements to the circuit court on administrative review, and in their brief to this appellate court. Defendants did not file any appeal to the Village attorney's letter.

[*P17] On June 9, 2011, the circuit court dismissed plaintiffs' complaint, without prejudice, as moot. The circuit court ruled that a March 2011 letter from a Village officer to defendants stating that their land use was a home occupation resolved any issues brought in plaintiffs' complaint for injunctive relief.

[*P18] Meanwhile, on June 30, 2011, this court, upon administrative review of the LeComptes' appeal of the Zoning Board cease and desist order, confirmed the Zoning Board's decision in an unpublished order. The unpublished order was subsequently [**10] published as an opinion in September 2011. This court construed the Village's zoning code and ruled, in pertinent part, that the commercial boarding of horses was not an agricultural use as defined in the Village's zoning code. *LeCompte v. Zoning Board of Appeals for the Village of Barrington Hills*, 2011 IL App (1st) 100423, ¶¶ 24-32, 958 N.E.2d 1065, 354 Ill. Dec. 869.

[*P19] This court also rejected the LeComptes' argument that their use of their stables for the commercial boarding of horses comported with the Village's zoning code. *Id.* at ¶ 34. Specifically, this court construed the zoning code definitions of "stable" and "accessory building," and noted that the LeComptes' use of their stable was a primary use and not a subordinate use. *Id.*

[*P20] In addition, this court rejected the LeComptes' argument that the Village intended for residents to commercially board horses. *Id.* at ¶¶ 36-37. In reaching this determination, this court considered the entire zoning code and found that several sections established that the code did not intend for the commercial boarding of horses to be a permitted primary use in an R-1 zoned district. *Id.* at ¶ 37. Specifically, section 5-1-2 of the zoning code explained that the code intended to, *inter* [*11] *alia*, promote and protect the convenience and general welfare of the people and prevent congestion and overcrowding of residential areas from the harmful encroachment of incompatible and inappropriate uses. *Id.* (citing Village of Barrington Hills Zoning Ordinance § 5-1-2 (April 1, 1963)).

[*P21] Furthermore, "subsection 5-3-4(D) entitled 'Home Occupation,' explain[ed] that the residential tranquility of the neighborhood must remain paramount when a business is conducted from the principal building." *Id.* at ¶ 38 (quoting Village of Barrington Hills Zoning Ordinance § 5-3-4(D) (June 26, 2006)). The zoning code defined "home occupation" in pertinent part as "any lawful business, *** occupation *** conducted from a principal building or an accessory building in a residential district that *** [i]s incidental and secondary to the principal use of such dwelling unit for residential occupancy purposes." *Id.* (quoting Village of Barrington Hills Zoning Ordinance § 5-3-4(D)(2)). Moreover, a home occupation had to be conducted in a manner that was peaceful, quiet and domestically tranquil; guaranteed freedom from the possible effects of business or commercial uses; and did not generate significantly [*12] greater vehicular or pedestrian traffic than would be typical of residences in the neighborhood. *Id.* (citing Village of Barrington Hills Zoning Ordinance § 5-3-4(D)(3)(e)).

[*P22] This court found that, although the zoning code allowed the boarding and training of horses as a home occupation, it had to be done in a manner that maintained the peace, quiet and domestic tranquility of

all residential neighborhoods in an R-1 zoned district. *Id.* at ¶ 39 (citing Village of Barrington Hills Zoning Ordinance § 5-3-4(D)(3)(g)). This court concluded that the LeComptes' commercial boarding of horses did not comport with the overall intent of the zoning code where the record established that Oakwood Farm's primary purpose was the commercial boarding of horses, which was a use that was not incidental and secondary to residential occupancy, and Oakwood Farm's commercial boarding caused a significant increase in traffic and noise in the neighborhood and resulted in complaints by the surrounding property owners. *Id.* In a petition for rehearing, the LeComptes asked this court, *inter alia*, [*13] to strike the discussion of the boarding and training of horses as a home occupation, but this court denied that petition.

[*P23] Although plaintiffs' initial complaint for injunctive relief had been dismissed, without prejudice, as moot in June 2011, plaintiffs, with leave of court, filed in July 2011 the amended complaint at issue here. Plaintiffs sought injunctive relief pursuant to *section 11-13-15* of the Illinois Municipal Code. Plaintiffs alleged that defendants were operating a commercial horse boarding operation on their property in violation of the zoning laws of the Village and, despite plaintiffs' repeated requests, the Village refused to shut down the operation by enforcing the cease and desist letter that was issued to defendants, upheld by the Zoning Board, and confirmed on administrative review by both the circuit court and this appellate court.

[*P24] In November 2011, defendants moved to dismiss the amended complaint for mootness, lack of subject matter jurisdiction, and lack of justiciability pursuant to *section 2-619(a)(1)* of the Code of Civil Procedure (Code) (*735 ILCS 5/2-619(a)(1)* (West 2010)). Defendants argued that plaintiffs' injunctive relief action was rendered moot upon [*14] the issuance of a letter, dated March 15, 2011, to defendants from Don Schuman, the Village building and code enforcement officer (the Schuman letter). In this letter, Schuman noted defendants' request that the Village consider their use of Oakwood Farm for the boarding and training of horses as a home occupation. Schuman referenced defendants' submission of (1) an affidavit, which averred that they had limited their hours of operation to 8 a.m. through 8 p.m. and asserted that this change meant that they were now conducting their boarding and training of horses as a home occupation use in compliance with subsection

5-3-4(D)(3)(g) of the Village's zoning code; and (2) an employee register, which listed the extent of their employees' work hours. Schuman stated that "it appears that the use of Oakwood Farm is a Home Occupation." Moreover, in a letter dated March 29, 2011, the Village attorney advised plaintiffs and defendants that the Schuman letter represented a final and official decision of that officer.

[*P25] Defendants also argued that plaintiffs forfeited any judicial remedies by failing to exhaust their administrative remedies and follow through with their appeal of the Schuman letter [*15] before the Zoning Board. Specifically, defendants recounted that: (1) plaintiffs had appealed the Schuman letter to the Zoning Board in April 2011 but then, in June 2011, informed the circuit court that they would withdraw their Zoning Board appeal; (2) the circuit court, nevertheless, dismissed without prejudice plaintiffs' complaint for injunctive relief, finding that, as a result of the Schuman letter, there was no justiciable controversy and the matter was moot; (3) counsel for plaintiffs argued to the Zoning Board in a letter that the doctrines of collateral estoppel and judicial estoppel precluded the Zoning Board from considering plaintiffs' appeal of the Schuman letter because the Zoning Board was legally bound by this appellate court's decision in *LeCompte, 2011 IL App (1st) 100423, 958 N.E.2d 1065, 354 Ill. Dec. 869*, which had resolved the same matter at issue in plaintiffs' appeal of the Schuman letter; and (4) the Zoning Board ultimately dismissed plaintiffs' appeal of the Schuman letter for want of prosecution in August 2011. Defendants argued that plaintiffs' April 2011 appeal to the Zoning Board effectively divested the circuit court of subject matter jurisdiction. According to defendants, the sole issue [*16] adjudicated in the LeComptes' prior hearing before the Zoning Board was the question of whether their boarding of horses was an agricultural use of the land; the issue of the separate and distinct use of their land as a home occupation was never presented in the administrative proceeding and, thus, should not have been addressed on administrative review by this appellate court. Defendants argued that the Schuman letter rendered plaintiffs' amended complaint moot and plaintiffs forfeited any judicial remedies by failing to pursue their Zoning Board appeal of the Schuman letter, which was dismissed for want of prosecution.

[*P26] Plaintiffs responded to the motion to dismiss, arguing (1) defendants' position that Oakwood Farm was

a home occupation was irreconcilable with and refuted by this appellate court's September 2011 opinion; (2) the Schuman letter was irrelevant by virtue of this court's September 2011 opinion and did not render this case moot because the circuit court had statutory jurisdiction to grant plaintiffs injunctive relief where the Village failed to enforce its own zoning laws; and (3), in the alternative, the motion to dismiss must be denied because the amended complaint presented [*17] genuine issues of disputed fact as to whether Oakwood Farm complied with the zoning code.

[*P27] In their reply, defendants argued that (1) this appellate court never considered the issue of whether the LeComptes' current use of their property complied with the home occupation provisions of the zoning code; (2) the Schuman letter divested the circuit court of jurisdiction over plaintiffs' claim for injunctive relief, administrative review law applied to this case, and *section 11-13-15* of the Illinois Municipal Code did not create concurrent jurisdiction; and (3) the proper venue for the resolution of any factual disputes was the Zoning Board.

[*P28] On December 19, 2011, the circuit court granted defendants' motion and dismissed plaintiffs' amended complaint with prejudice for want of justiciability.

[*P29] Plaintiffs filed a motion to reconsider, arguing that jurisdiction existed in the court because *section 11-13-15* of the Illinois Municipal Code provided a cause of action for adjacent landowners to bring a suit for an alleged zoning ordinance violation. Plaintiffs also argued the circuit court failed to consider the authenticity of the Schuman letter and new evidence suggested defendants schemed with Village [*18] representatives to obtain dismissal of the injunctive relief action. Further, plaintiffs argued the circuit court erroneously concluded that the home occupation provisions of the zoning code were not an issue before the Zoning Board and circuit and appellate courts.

[*P30] On May 31, 2012, the circuit court denied plaintiffs' motion to reconsider. The circuit court found that (1) *section 11-13-15* of the Illinois Municipal Code did not provide a basis for the court to exercise jurisdiction over this matter involving zoning code violations; (2) plaintiffs were required, but failed, to exhaust their administrative remedies prior to filing their lawsuit in this case; (3) the Schuman letter was

admissible under the rules of evidence without need of further authentication; (4) although the appellate court discussed the home occupation provisions of the zoning code, it only ruled on the issue of whether the LeComptes' use was agricultural; and (5) plaintiffs' newly discovered evidence was not relevant to the jurisdiction issue before the court.

[*P31] Plaintiffs timely appealed the circuit court's December 2011 and May 2012 orders.

[*P32] II. ANALYSIS

[*P33] A motion to dismiss pursuant to *section 2-619* of the Code admits [*219] the legal sufficiency of the pleading and raises defects, defenses, or other affirmative matters that act to defeat the claim. *Keating v. 68th and Paxton, L.L.C.*, 401 Ill. App. 3d 456, 463, 936 N.E.2d 1050, 344 Ill. Dec. 293 (2010). When ruling on a 2-619 motion to dismiss, the issue is whether, after reviewing the pleadings, depositions and affidavits, there is a genuine issue of material fact that precludes dismissal, or whether dismissal is proper as a matter of law. *Id.*

[*P34] A. Scope of 2011 Appellate Opinion

[*P35] In supporting its decision to dismiss plaintiff's amended complaint, the circuit court stated that, although this court discussed the home occupation provisions of the zoning code, this court's September 2011 opinion ruled only on the issue of whether the LeComptes' use was agricultural. Defendants adopt this position and contend our 2011 opinion in the prior case did not affect or control the instant case because the prior case was between the LeComptes and the Village on an unrelated zoning issue with a different factual scenario. Defendants argue that the home occupation discussion in our 2011 opinion was *obiter dictum* and does not control the instant appeal or prevent the Village from recognizing that defendants [*220] could change their operating hours and conditions to bring the farm into compliance with the Village home occupation provisions of the zoning code. Defendants contend this court's home occupancy discussion was neither germane nor necessary to our 2011 opinion, which was limited to the issue of whether boarding horses was an agricultural use under the code. Defendants assert that the issue of their compliance with the home occupation provisions of the code was never presented by the parties or briefed as an issue in the proceedings reviewed by this appellate court.

[*P36] We disagree. When administrative hearings were held on the LeComptes' appeal of the Village's 2008 cease and desist letter, the LeComptes formally waived the home occupation provisions of the zoning code as a basis for finding that their commercial boarding of horses was a permitted use of their property in their residential area. Nevertheless, the Village, in addition to countering the LeComptes' argument that horse boarding was a permitted agricultural use of their property, also explained to the Zoning Board that Oakwood Farm's large scale commercial horse boarding operation did not comply with the code provisions that [*221] permitted horse boarding in residential zones as a home occupation. Furthermore, witnesses testified at the administrative hearings about the disruption to the residential neighborhood's peace and tranquility as a result of the LeComptes' horse boarding operation.

[*P37] After the LeComptes lost before the Zoning Board and sought administrative review before the courts, the Village, in addition to countering the LeComptes' argument concerning permitted agricultural uses, also argued to this court that the LeComptes' commercial boarding of horses did not qualify as a home occupation where the relevant code provisions permitted boarding and training of horses as a home occupation incidental to a permitted primary use of a property and the LeComptes had admitted that the primary use of the Oakwood Farm facility was horse boarding. See *Kravis v. Smith Marine, Inc.*, 60 Ill. 2d 141, 147, 324 N.E.2d 417 (1975) (an appellee may defend a judgment by raising a previously unruled-upon issue if the necessary factual basis for determining the issue is in the record); accord *Kuney v. Zoning Board of Appeals of City of De Kalb*, 162 Ill. App. 3d 854, 856, 516 N.E.2d 850, 114 Ill. Dec. 695 (1987).

[*P38] Moreover, the LeComptes argued to this court that their use [*222] of their stables for commercial horse boarding comported with the Village's code and the Village intended for residents to commercially board horses. In refuting those claims, this court viewed the zoning code in its entirety, even discussed subsection 5-3-4(D)(3)(g) of the zoning code—the same section defendants now claim compliance with in this appeal—and concluded that the LeComptes' use did not comply with several provisions concerning home occupations in subsection 5-3-4(D). Specifically, this court concluded that Oakwood Farm's primary purpose was the commercial boarding of horses, which was a use that was not incidental and secondary to residential occupancy,

and their commercial horse boarding operation could not be done in a manner that maintained the peace, quiet and domestic tranquility within their R-1 zoned residential district. *LeCompte, 2011 IL App (1st) 100423*, ¶¶ 34-39. In addition, when the LeComptes filed a petition for rehearing asking this court to strike our discussion of their failure to comply with the home occupancy provisions of the code, this court denied the petition, rejecting their argument that the issue was not raised in the appeal.

[*P39] Accordingly, the circuit [**23] court erroneously concluded that this court's 2011 opinion only ruled on the issue of whether the LeComptes' use was agricultural. A careful reading of the opinion establishes that this court not only rejected the LeComptes' argument that their horse boarding operation was a permitted agricultural use, but also accepted the Village's argument that the LeComptes' use was not in compliance with the necessary code requirements concerning home occupations as a permitted accessory use. The issue of the LeComptes' noncompliance with the home occupancy provisions of the code was integral to this court's ruling and a mere change in operating hours had no effect on that ruling because it did nothing to address this court's conclusions that (1) the stable was not an accessory building that was subordinate to a principal building, and (2) commercial horse boarding was inconsistent with the overall intent of the zoning code.

[*P40] The facts established that defendants' 30,000 square-foot horse barn contained 45 or more horses whose owners paid monthly rent to defendants. Moreover, the attendant horse trailers, manure trucks, and customer parking lot and vehicles dominated the property and dwarfed defendants' [**24] home. Defendants' inconsequential change in the operating hours of their business had no effect on this court's holding that the horse barn was not an accessory building and its primary use was commercial horse boarding in violation of the zoning code.

[*P41] This court's discussion of the home occupancy provision was not mere *obiter dictum* because even though Oakwood Farm was not a permitted agricultural use, it could have been a legal use if it complied with some other section of the Village's zoning code, like the home occupation section. This court, however, held that Oakwood Farm was not a permitted use because it did not comport with the Village's zoning

code's overall intent and purpose. Central to this court's opinion was the determination that, in order to comply with the zoning code, Oakwood Farm's stables had to be a subordinate, not a primary, use of the property. Because defendants were using the stable for the commercial boarding of horses, which was a primary use and not a subordinate use, it was a use that did not comport with the Village's zoning code. Defendants' alleged compliance with one subsection of the home occupancy provisions concerning the permissible operating hours [**25] for home occupation horse boarding cannot be reconciled with this court's ruling.

[*P42] B. Exhaustion of Administrative Remedies

[*P43] Defendants argue the circuit court correctly dismissed plaintiffs' amended complaint for injunctive relief based on mootness and lack of justiciability because plaintiffs failed to exhaust their administrative remedies. Defendants conceded at oral argument before this court that the circuit court had jurisdiction over plaintiffs' injunctive relief complaint when it was filed. Nevertheless, defendants contend that the issuance of the Schuman letter divested the circuit court of that jurisdiction and required plaintiffs to seek administrative relief by appealing the Schuman letter to the Zoning Board. According to defendants, where the plaintiffs had initiated an appeal of the Schuman letter before the Zoning Board but then abandoned it, they failed to exhaust their administrative remedies and dismissal of their injunctive relief lawsuit was proper.

[*P44] Plaintiffs respond that they were not seeking to appeal an administrative decision; instead they filed a lawsuit under *section 11-13-15* of the Illinois Municipal Code to enjoin defendants' ongoing violation of the Village [**26] zoning code, as determined by the Zoning Board, circuit court, and this court. Plaintiffs argue the circuit court had independent jurisdiction to hear plaintiffs' injunctive relief case under *section 11-13-15* of the Illinois Municipal Code, which empowers adjacent landowners to bring a legal proceeding to enforce laws when the municipality fails or is reluctant to act or acts in a manner contrary to the adjacent landowners' interests. See *Dunlap v. Village of Schaumburg*, 394 Ill. App. 3d 629, 638, 915 N.E.2d 890, 333 Ill. Dec. 819 (2009); *LaSalle National Bank v. Harris Trust & Savings Bank*, 220 Ill. App. 3d 926, 932, 581 N.E.2d 363, 163 Ill. Dec. 412 (1991).

[*P45] Plaintiffs assert that defendants' ongoing

zoning code violation was not a moot issue, and the disputed Schuman letter did not moot the case, divest the circuit court of jurisdiction, or require exhaustion of administrative remedies. Plaintiffs note that it was only after they sought injunctive relief in the courts that defendants solicited the disputed Schuman letter and asserted that plaintiffs must re-litigate the already ruled upon home occupancy issue, which defendants had previously waived at the 2008 Zoning Board hearings. Plaintiffs argue they properly sought court relief pursuant to *section 11-13-15*, [**27] which expressly states that "the court with jurisdiction *** has the power" to resolve complaints under *section 11-13-15*, and nothing in *section 11-13-15* places the resolution of lawsuits to enjoin zoning code violations within the exclusive jurisdiction of administrative agencies. Plaintiffs contend that *section 11-13-15* is its own remedy, makes no mention of exhausting administrative remedies, and cases applying *section 11-13-15* show that it provides a remedy to adjacent landowners outside of the administrative review process. Moreover, plaintiffs assert that the Schuman letter plainly shows the Village has failed to act where there was a clear violation of its own zoning code, as determined by this appellate court in 2011.

[*P46] Plaintiffs also explain that their appeal of the Schuman letter to the Zoning Board was a defensive action, filed out of an abundance of caution. Plaintiffs state that they continued to prosecute the instant lawsuit and challenged the jurisdiction of the Zoning Board, arguing that the doctrines of collateral estoppel and judicial estoppel precluded the Zoning Board from considering the Schuman letter appeal because the Zoning Board was legally barred by this court's [**28] 2011 opinion, which had resolved the same home occupancy matter at issue in the Schuman letter.

[*P47] Because these arguments present only issues of law, our review is *de novo*. See *In re A.H.*, 207 Ill. 2d 590, 593, 802 N.E.2d 215, 280 Ill. Dec. 290 (2003). For the reasons discussed below, we conclude that plaintiffs' choice of remedy was not incorrect and their complaint should not have been dismissed because, under the circumstances of this case, the exhaustion of administrative remedies was not necessary.

[*P48] A justiciable matter is a controversy appropriate for review by the court, in that it is definite and concrete, as opposed to hypothetical or moot. *Owens v. Snyder*, 349 Ill. App. 3d 35, 40, 811 N.E.2d 738, 285

Ill. Dec. 251 (2004). "A moot question is one that existed but because of the happening of certain events has ceased to exist and no longer presents an actual controversy over the interests or rights of the party." *In re Nancy A.*, 344 Ill. App. 3d 540, 548, 801 N.E.2d 565, 279 Ill. Dec. 891 (2003). We agree with plaintiffs that the Schuman letter did not render their injunctive relief claim moot or nonjusticiable where this court ruled in 2011 that defendants' Oakwood Farm was in violation of the zoning code, defendants were still operating their commercial horse boarding facility impermissibly [**29] in an R-1 residential district, and the relief provided in *section 11-13-15* of the Illinois Municipal Code was an available remedy to plaintiffs. This is not a situation where an injunctive relief action was rendered moot because a zoning board had re-zoned the property; all that changed here was defendants' hours of operation at their commercial horse boarding facility.

[*P49] The statutory relief extended to citizens under *section 11-13-15* of the Illinois Municipal Code provides enforcement authority where municipal officials are slow or reluctant to act, or are otherwise not protective of the private citizen's interests. *Dunlap*, 394 Ill. App. 3d 638. However, if there is an ordinance violation, the usual remedy would be to object before the zoning board of appeal. "[A] party aggrieved by administrative action ordinarily cannot seek review in the courts without first pursuing all administrative remedies available to him." *Illinois Bell Telephone Co. v. Allphin*, 60 Ill. 2d 350, 358, 326 N.E.2d 737 (1975). This rule allows full development of the facts before the agency, allows the agency an opportunity to utilize its expertise, and may render judicial review unnecessary if the aggrieved party succeeds before [**30] the agency. *Id.* The exhaustion rule, however, can produce very harsh and inequitable results if strictly applied. *Id.* Consequently, although our courts have required comparatively strict compliance with the exhaustion rule, exceptions have been recognized pursuant to the time-honored rule that equitable relief will be available if the remedy at law is inadequate. *Id.*

[*P50] Illinois courts have recognized several exceptions to the doctrine of exhaustion of administrative remedies: *Castaneda v. Illinois Human Rights Comm'n*, 132 Ill. 2d 304, 308, 547 N.E.2d 437, 138 Ill. Dec. 270 (1989). An aggrieved party may seek judicial review of an administrative decision without complying with the exhaustion of remedies doctrine where the administrative

body's assertion of jurisdiction is attacked on its face and in its entirety on the ground that it is not authorized by statute. *One Way Liquors, Inc. v. Byrne*, 105 Ill. App. 3d 856, 861, 435 N.E.2d 144, 61 Ill. Dec. 655 (1982). A party may also seek judicial review where issues of fact are not presented and agency expertise is not involved. *Canel v. Topinka*, 212 Ill. 2d 311, 321, 818 N.E.2d 311, 288 Ill. Dec. 623 (2004). In addition, where multiple remedies exist before the same administrative agency and at least one has been exhausted, the exhaustion of [**31] remedies rule is not required. *Allphin*, 60 Ill. 2d at 358; *Kuney*, 162 Ill. App. 3d at 857; *Pecora v. County of Cook*, 323 Ill. App. 3d 917, 927-28, 752 N.E.2d 532, 256 Ill. Dec. 652 (2001). Furthermore, exhaustion is not required if the administrative remedy is inadequate or futile or in instances where the litigant will be subjected to irreparable injury due to lengthy administrative procedures that fail to provide interim relief. *Castaneda*, 132 Ill. 2d at 309.

[*P51] Under the circumstances of this case, we hold that exhaustion was unnecessary. Whether the Schuman letter's determination was correct is not the controlling question in the present posture of the case. Nor are we overly concerned with defendants' assertion that they have not yet argued before the Zoning Board that they need only comply with the operating hour requirements specified in subsection 5-3-4(D)(3)(g) for horse boarding home occupations, which predicament is self-induced by their decision to formally waive the home occupation issue during the 2008 administrative proceedings. The problem before us is the procedural snarl brought about by defendants' course of conduct after the plaintiffs properly availed themselves of the relief provided by section 11-13-15 [**32] of the Illinois Municipal Code. Defendants minimize their waiver of the home occupancy issue at the 2008 Zoning Board hearings and magnify the plaintiffs' refusal to proceed, on jurisdiction grounds, with their appeal of the Schuman letter before the Zoning Board.

[*P52] Administrative proceedings had already been held on the Village's cease and desist order against defendants, and plaintiffs had already begun proceedings under section 11-13-15 before defendants revived the home occupancy issue they had previously and explicitly waived at the administrative hearings. It was only after plaintiffs filed this lawsuit for injunctive relief that defendants solicited the Schuman letter from Village officials. As discussed above, the home occupation issue

was part of the Village's argument before the Zoning Board and this court, and no useful purpose would be served by requiring plaintiffs to institute another round of administrative hearings based on subsection 5-3-4(D)(3)(g) of the zoning code. Defendants' latest nuance of the home occupation issue, which is based on the operating hours discussed in subsection 5-3-4(D)(3)(g), is subsumed or rendered irrelevant by this court's 2011 opinion, which [**33] confirmed the cease and desist order and concluded that defendants' commercial horse boarding operation did not qualify as a permitted use under all the relevant provisions of the zoning code, including the permissible use of horse boarding as a home occupation.

[*P53] It would be a strained application of the exhaustion doctrine to force plaintiffs to litigate before the Zoning Board essentially the same home occupation use issue that was formally waived by defendants during the 2008 administrative hearings but refuted anyway by the Village both at the administrative hearing sessions and again on administrative review before this appellate court. It is not reasonable to assume that the Zoning Board would reverse itself and now conclude that defendants' commercial horse boarding operation was a permissible home occupation use in a residential zone, which would be contrary to the Village's positions before the Zoning Board in the 2008 hearing sessions and in the Village's brief on appeal to this court. To insist on the additional useless step of litigating before the Zoning Board the waived and irrelevant issue of home occupancy, which irrelevancy was confirmed in this court's 2011 opinion, [**34] would merely give lip service to a technicality and thereby increase costs and delay the administration of justice, which is the very thing the exhaustion of remedies rule tries to avoid. *Herman v. Village of Hillside*, 15 Ill. 2d 396, 408, 155 N.E.2d 47 (1958).

[*P54] While plaintiffs could have abandoned their lawsuit for injunctive relief and pursued their appeal of the Schuman letter before the Zoning Board, their not doing so, under the circumstances of this case, is not interdictive of the remedy they chose. Plaintiffs chose a remedy most beneficial to them, just as defendants, in proceeding under their revised home occupation argument, chose the course they thought most beneficial to them. The remedy chosen by plaintiffs was appropriate to the predicament confronting them. They were attempting to prohibit a zoning violation which was

declared by the Village, upheld by the Zoning Board, and confirmed by the circuit and appellate courts. Plaintiffs were an aggrieved party and their predicament was exacerbated by defendants acting to derail plaintiffs' properly filed lawsuit by raising before the Village anew the home occupation issue they had formally waived in 2008. Under the circumstances of this case, [*35] plaintiffs' choice of remedy was not incorrect and their complaint should not have been dismissed. This court's 2011 opinion remains in force and defendants cannot evade the effect of that ruling by using their subsequent solicitation of the Schuman letter as a fait accompli-shield to justify their noncompliance with the zoning code or to deprive plaintiffs of relief.

[*P55] Therefore, we find that plaintiffs' injunctive relief complaint was properly before the circuit court,

exhaustion of further administrative remedies was not necessary under the circumstances of this case, and plaintiffs' complaint was erroneously dismissed as moot and nonjusticiable by the circuit court.

[*P56] III. CONCLUSION

[*P57] Under the foregoing circumstances, plaintiffs were not required to exhaust any administrative remedies before proceeding with their injunctive relief action in the circuit court. The judgment of the circuit court dismissing plaintiffs' amended complaint for injunctive relief is reversed and the cause is remanded for further proceedings before the circuit court.

[*P58] Reversed and remanded.

Comparisons of Village Horse Boarding Codes

Is horse boarding considered to be a "Home Occupation" in your village?

Bull Valley	No
Homer Glen	No
Mettawa	No
Wadsworth	No
Wayne	No
Barrington Hills Horse Boarding Amendment	Yes

What permission is required if a resident wishes to board horses in your village?

Bull Valley	Special Use Permit plus \$1,000 annual fee
Homer Glen	None
Mettawa	Special Use Permit
Wadsworth	Conditional Use Permit
Wayne	None
Barrington Hills Horse Boarding Amendment	None

Are there limitations to barn/stable size beyond the total Floor Area Ratio (FAR) of all combined property structures before a Special Use Permit is required?

Bull Valley	No
Homer Glen	Yes
Mettawa	Yes
Wadsworth	Yes
Wayne	Yes
Barrington Hills Horse Boarding Amendment	No

Does your village limit the number of horses kept on a residential property?

Bull Valley	"A reasonable number for family enjoyment"
Homer Glen	Yes, and no more than 3 boarded horses
Mettawa	Yes
Wadsworth	Yes
Wayne	Yes
Barrington Hills Horse Boarding Amendment	No

Use of the words "board" and "boarding" refer to the housing, feeding and caring for horses not owned by the property owner.

BURKE, WARREN, MacKAY & SERRITELLA, P.C.

MEMORANDUM

TO: Village of Barrington Hills
FROM: Burke, Warren, MacKay & Serritella, P.C.
RE: Comparison of Agricultural/Equestrian Zoning Ordinances
DATE: August 18, 2011

Village of Barrington Hills

OVERVIEW: The Village of Barrington Hills permits agricultural uses in all zoning districts but does not consider horse boarding to be an agricultural use. Horse boarding is only permitted in the context of the Home Occupation Ordinance.

1. Definitions:

Agriculture: The use of land for agricultural purposes, including farming, dairying, pasturage, apiculture, horticulture, floriculture, viticulture and animal and poultry husbandry (including the breeding and raising of horses as an occupation) and the necessary accessory uses for handling or storing the produce; provided, however, that the operation of any such accessory uses shall be secondary to that of the normal agricultural activities.

Village of Wayne

OVERVIEW: The Village of Wayne's Zoning Ordinance contains a separate Chapter entitled "Equestrian Development and Uses" that deals specifically with commercial and private equestrian uses and facilities and creates a separate zoning district called, "E commercial equestrian". Commercial and private stables can also be special uses in residence districts.

1. Definitions:

Agriculture: The use of twenty (20) acres or more of land for agricultural purposes, including farming, dairying, pasturage, agriculture, horticulture, floriculture, viticulture and animal and poultry husbandry, and the necessary accessory uses for packing, treating, or storing the produce; provided, however, that the operation of any such accessory uses shall be secondary to that of the normal agricultural activities

Village of Mettawa

OVERVIEW: The Village of Mettawa permits small scale boarding in residential districts as an accessory use and larger-scale boarding in residential districts pursuant to a special use permit.

1. Definitions:

Agriculture: All the processes of planting, growing, harvesting or crops in the open excluding the raising and feeding of livestock and poultry, dairy farming, farm buildings, and farm dwellings, and truck gardens, but including, flower gardens, apiaries, aviaries, nurseries, orchard, forestry, non-commercial green houses, and vegetable growing, however, no retail and/or roadside sales shall be permitted.

Stable: A detached accessory building the primary use of which is the keeping of horses

Stable, Private: A building or structure, accessory in nature, which is located on a lot on which a dwelling is located, and which is designed, arranged, used or intended to be used for housing not more than one allowable horse or pony per acre, which horses or ponies are primarily for the use of occupants of the dwelling, but in no event for hire.

Private Stable: A stable in which all horses kept on the premises are owned by the owner of the premises or members of his family, stable hands, and/or bona fide guests.

Semiprivate stable: A stable at which the operator provides for a fee, facilities to owners of horses for boarding care or training of ten (10) or more horses, including instruction in horsemanship. A bona fide sale of a horse shall not be considered to be supplying or renting of a horse by the operator to a member of the public.

2. Accessory Building:

No specific requirements for stables.

2. Accessory Buildings:

Private Stables: Stalls must be a minimum of 10' X 12'. On land between 2 and 3 acres in size, a maximum of 1,070 square feet is permitted. Size of stable increases with each additional acre, for example, a 5 acre parcel would permit a 1,745 square foot stable, up to a maximum of 2,800 square feet for any property, unless the property is over 10 acres and the owner obtains a special use permit.

2. Accessory Buildings:

Accessory buildings intended for the stabling of horses shall contain one stall for each horse and such stall must be a minimum of 11.5' X 11.5' and shall not exceed five (5) stalls without a special use permit.

3. Accessory Uses in Residence Districts:

Accessory uses in single-family districts include agricultural buildings and structures and private stables.

3. Accessory Uses in Residence Districts:

Accessory uses in single-family districts include private stables and noncommercial pursuit of agriculture, provided that no more than four (4) horses shall be kept on a 4-acre lot with one (1) additional horse permitted for each additional 4 acres.

3. Accessory Uses in Residence Districts:

Accessory uses in single-family districts include agriculture use and the keeping of horses not to exceed a certain number based on the property's square footage and further provided that the property must contain at least 80,000 square feet.

4. Special Uses:

No special use required for stabling of horses, which is currently only permitted in the context of the Home Occupation Ordinance.

4. Special Uses:

Special uses include commercial equestrian and commercial stables as well as private equestrian facilities, which are permitted in any zoning district. A special use for a commercial stable requires property containing at least twenty 20 acres. A special use for a private stable requires property containing at least 10 acres.

4. Special Uses:

Special Uses include agricultural buildings and structures including riding arenas and large stables for horses on owner-occupied property with no more than one (1) horse stall permitted per 40,000 square feet of land.

5. Commercial Equestrian District (as of right).

A Commercial stable in this District must be on property containing at least twenty (20) acres. If the horses are kept outside, then no more than one (1) horse per acre is permitted. If the horses are kept indoors, then one stall is required for each horse and such stall shall be a minimum of 12' X 12' with a maximum of 45 stalls and the no more than 100 horses is permitted on any property zoned for a commercial stable.

July 20, 2011

President and Board of Trustees
Village of Barrington Hills
112 Algonquin Road
Barrington Hills, IL 60010

RE: Commercial Horse Boarding

Dear President and Trustees:

After many months of discussion of the commercial horse boarding issue in Barrington Hills, we have reached a consensus on a proposed manner of regulating boarding in the Village. 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 specific language that we have discussed and are proposing is attached hereto as Exhibit A.

As you are aware, this issue has been under consideration for several years and numerous meetings and discussions have taken place with regard to it. We have had various "white papers" submitted to us by the Equestrian Commission and a number of proposals that have been made by the Legal Committee, the Equestrian Commission and others. We are aware of the situation with Oakwood Farms and the recent holding by the Illinois Appellate Court denying the claim by Oakwood Farms that horse boarding is agriculture and therefore a permitted use.

In 2005, the ZBA recommended and the Board of Trustees approved changes to the Home Occupation Ordinance, which allowed horse boarding as a home occupation. While we considered simply allowing all boarding operations to operate as home occupations, we felt that was not the best approach. Larger boarding operations can have impacts on the surrounding properties. In these circumstances, we are recommending that larger boarding operations should be required to obtain a Special Use Permit. The special use permit requirement would allow the community to have some involvement in whether such operations are appropriate at that particular location and, if so, under what conditions they should operate. As a result, we are suggesting that those facilities that board ten (10) horses or more be regulated as Special Uses. We discussed, at length, requiring stables or barns of a certain size to also obtain a Special Use Permit, but in the end determined that was burdensome and potentially overreaching.

We feel that the attached proposal represents a good balance between preserving and protecting the equestrian nature of the Village while taking into account the concerns of residents who might be impacted by larger boarding facilities.

Very truly yours,

Judith Freeman -- Chairman
Zoning Board of Appeals

cc: Copy to each of the ZBA members

0297610002099447.1

Submitted by Thomas R. Burney
ZANCK, COEN, WRIGHT & SALADIN, P.C.

EXHIBIT A

5-2-1 DEFINITIONS

ANIMAL HUSBANDRY: The breeding, raising, training and boarding of domestic livestock.

LIVESTOCK: Horses, cattle, sheep, llamas, alpacas, donkeys and other domestic farm animals that create a similarly limited impact on property and adjoining landowners and occupants, but specifically excluding dogs and cats.

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 non-commercial agricultural purposes, except with respect to the erection, maintenance, repair, alteration, remodeling or extension of buildings or structures used or to be used for any agriculture purposed upon such land.

5-3-4(D)(3)(g) Home Occupation: The breeding, raising, training and boarding of livestock is a permitted home occupation subject to the provisions of subsections 3(a) – 3(f), excluding 3(a)(2), 3(b)2, 3(c)(2) and 3(c)4 of this Section 5-3-4(D); provided that no persons engaged to facilitate such boarding, breeding, raising or training other than the immediate family residing on the premises, shall be permitted to carry out their activities except between the hours of six o'clock a.m. and eight o'clock p.m. or sunset, whichever is later, other than in emergency situations. It is further provided that no person engaged to facilitate such boarding, breeding, raising or training shall operate machinery or vehicles on the premises other than passenger cars or light trucks except between the hours of six o'clock a.m. and eight o'clock p.m. or sunset, whichever is later. The harvesting of crops in connection with the breeding, racing, training and boarding of livestock after sunset is permitted under this Section.

5-3-13 REGULATIONS FOR COMMERCIAL HORSE BOARDING:

- (A) **SPECIAL USE:** Commercial horse boarding is a permitted special use in the R1 District within the Village subject to the provision of Section 5-10-7, provided, however, no special use permit for commercial horse boarding shall be granted unless such commercial horse boarding operation also complies with the provisions of this Section 5-3-13.
- (B) **PURPOSE AND INTERPRETATION:** The purpose of this Section 5-3-13, is to provide specific regulations for the operation of commercial horse boarding facilities within the Village. The boarding of horses in the Village is a desirable activity from the point of view of the equestrian community and the Village at large but such activity must be managed in the context of the residential nature of the Village and its desire to maintain the peace, quiet and domestic tranquility within all of the Village's neighborhoods. It is the further intent of this ordinance to regulate the operation of commercial horse boarding facilities so that the general public and neighboring residences will enjoy reasonable freedom from fire hazards, excessive noise, light and traffic and other nuisances.
- (C) **DEFINITIONS:** For purposes of this Section 5-3-13, defined terms shall have the meanings ascribed to them in Section 5-2-1 and this Subsection 5-3-13(C).

BOARDING: The keeping and/or sheltering of horses in which the owners or occupants of the property do not have an ownership interest in exchange for money, provided, however, boarding of horses shall not include a livery stable.

COMMERCIAL HORSE BOARDING: The boarding of ten (10) or more horses.

LIMITED-FACILITY BOARDING: The boarding of nine (9) or fewer horses, which shall be a permitted use without the need for a special use permit, and regulated as a Home Occupation under Section 5-3-4 of the Zoning Code.

LIVERY STABLE: A stable where horses are kept for hire.

PRIVATE STABLE: A barn, stable, arena or other facility where horses owned by the owner or occupant of the property are kept.

(D) FACILITY REQUIREMENTS:

- (i) All buildings, excluding stables, used in connection with commercial horse boarding, shall be considered accessory uses and shall comply with the setback requirements for agricultural buildings and structures.
- (ii) Stables used in connection with commercial horse boarding shall be considered accessory uses and shall comply with the setback requirements for stables
- (iii) All buildings, including, but not limited to stables, used in connection with commercial boarding shall be considered agricultural buildings for the purpose of building permit review and shall be classified as utility buildings under the BOCA 1990 Building Code, so constructed, equipped and maintained to address fire and safety hazards in accordance with Village Ordinances and the BOCA Building Code.

(E) SCOPE: In the course of reviewing any request for a special use permit required under this Section 5-3-13, the Zoning Board of Appeals may limit the number of horses permitted to be boarded at any one time and shall consider the following factors in its determination: (i) location of the property, (ii) configuration of the property, (iii) character of the surrounding neighborhood, (iv) storm water drainage, (v) vehicular access to the boarding facility, (vi) parking plan, (vii) manure disposal plan, (viii) lighting plan, and (ix) such other factors as the Zoning Board of Appeals may deem appropriate for consideration concerning healthy, safety and welfare of the community and surrounding neighborhood.

(F) SPECIAL USE APPLICATION REQUIREMENTS: In addition to any requirements of Section 5-10-7, an applicant for a special use permit for commercial horse boarding shall submit the following documentation and information:

- (i) A site plan clearly indicating the size, location and setback from property lines of any buildings and other improvements, structures or facilities, such as pasturage, parking areas and riding arenas, intended by the applicant to be used in connection with the operation of a commercial horse boarding facility, as well as the current on-site land uses and zoning, current adjacent land uses and zoning, adjacent roadways, existing and proposed means of access, fencing and landscaping/screening.
 - (ii) Such other additional information necessary to a decision by the Zoning Board of Appeals.
- (G) EXCLUSIONS: Nothing in this Section 5-3-13, shall be construed to apply to private stables or to limited-facility boarding facilities.

5-9-3(D)(3) Stables: Notwithstanding the foregoing provisions of this Section 5-9-3 (D), any non-conforming barn, stable, arena or other structure used for an equestrian purpose which is destroyed or damaged by fire or other casualty or other acts of God may be restored or rebuilt to the same extent as existed prior to such fire or other casualty, including any such nonconformity.



Robert Kosin <rkosin@barringtonhills-il.gov>

(no subject)

Marty <mclkn6@aol.com>

Mon, Jan 26, 2015 at 5:34 PM

To: mmclaughlin@barringtonhills-il.gov, clerk@barringtonhills-il.gov, Robert Kosin <rkosin@barringtonhills-il.gov>

**VETO MESSAGE FROM THE VILLAGE PRESIDENT
OF THE VILLAGE OF BARRINGTON HILLS**

January 6,
2014

To the Honorable Trustees of the Village of Barrington Hills:

In accordance with Sections 1-5-4 and 1-5-12 of the Village Code and Sections 3.1-45-5 and 3.1-40-45 of the Illinois Municipal Code, I hereby veto Ordinance No. 14-19 entitled "AN ORDINANCE AMENDING TITLE 5, ZONING REGULATIONS SET FORTH IN CHAPTERS 2, 3 AND 5 REGARDING HORSE BOARDING", which was passed by the Village Board of Trustees on December 15, 2014.

My opposition to this Text Amendment is well known, and I believe supported by a majority of the residents of the Village of Barrington Hills as evidenced by testimony and written submission to the Clerk. I join my fellow residents in being suspect about the reasons for the speed at which the majority of the Zoning Board of Appeals and the Board of Trustees determined to adopt the Text Amendment at issue – particularly when this issue had been the subject of lengthy debate in 2011, but never formally addressed. I believe the only change in circumstance which forced the series of special meetings to adopt the Text Amendment was a change in legal circumstances for one property owner in the Village. This is not a good reason to change the Village Code and its effect on all residents of the Village. The fact that the Text Amendment is to serve only one resident is brutally apparent given the retroactive nature of the Text Amendment.

Our Village working with South Barrington just settled 18 years of legal wrangling with Sears litigation which cost our taxpayers over \$1.5 million dollars. Now, the majority of the Zoning Board of Appeals and the Board of Trustees seem interested in only putting the Village right back, squarely in litigation yet again, because I am sure, like me, that you have heard the repeated threats of litigation should the Village Board adopt the Text Amendment. The temporary Village attorney and special counsel has provided a clear opinion as to the jeopardy a change in the law can cause. Yet, the majority of the Board seems not to care.

Lest there be any question, I want to make clear that I am a supporter of the Village's equestrian heritage. I support horse boarding. But, I do not support this text amendment. I believe we should mirror the countless other municipalities in the State of Illinois and allow large scale horse boarding through the grant of a Special Use Permit. Such a process will allow the Village to remain in authority over the operation of these commercial operations to protect the Village and the neighbors of such operations. The Zoning Board of Appeals recognized the value of the Special Use Approval for horse boarding in 2011, but does not now. One should ask, what has changed that we now are forced to allow commercial horse boarding as of right, by amending the definition of agriculture?

I am firmly opposed to this measure. Accordingly, I must return this Ordinance to the Village Board of Trustees with my veto. Pursuant to Sections 1-5-4 and 1-5-12 of the Village Code and Sections 3.1-45-5 and 3.1-40-45 of the Illinois Municipal Code, I hereby return Ordinance No. 14-19 entitled "AN ORDINANCE AMENDING TITLE 5, ZONING REGULATIONS SET FORTH IN CHAPTERS 2, 3 AND 5 REGARDING HORSE BOARDING", to the next regular meeting of the Village Board of Trustees, occurring not less than 5 day after the date of passage, with the foregoing objections, vetoed in its entirety.

Sincerely,

Martin J. McLaughlin,
Village President, Village of Barrington Hills

Dated: _____

Submitted by Thomas R. Burney
ZANCK, COEN, WRIGHT & SALADIN, P.C.

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

JAMES J. DRURY III, as agent of the)	
Peggy D. Drury Declaration of Trust U/A/D)	
02/04/00, Jack E. Reich and)	
James T. O'Donnell,)	
Plaintiffs,)	
-v-)	No. 15-CH- 3461
-v-)	
VILLAGE OF BARRINGTON HILLS,)	
an Illinois Municipal Corporation,)	
Defendant.)	

AGREED ORDER OF SETTLEMENT

The Court being advised that the Plaintiffs and the Defendant have agreed to a settlement of this action, the terms of which are incorporated below:

A. The Plaintiffs, and each and every one of them, are the individuals named in the Complaint and particularly described in paragraphs 5 and 9 through 16 of the Complaint for Declaratory Judgment and Injunction.

B. The Defendant, Village of Barrington Hills, is an Illinois municipal corporation organized and existing pursuant to the Illinois Municipal Code 65 ILCS 5/1-1 *et seq.* and as such exercises jurisdiction and control over the property subject to this lawsuit.

C. Plaintiffs brought this action *inter alia* pursuant to the Declaratory Judgment Act, 735 ILCS 5/2-701, wherein Plaintiffs sought a declaration of rights regarding the legal validity of the Commercial Horse Boarding Text Amendment (Ordinance No. 14-19 entitled "*An Ordinance Amending Title 5 Zoning Regulations Set Forth In Chapter 2, 3 and 5 Regarding Horse Boarding.*") "Commercial Horse Boarding Text Amendment" attached as Exhibit A to its Complaint and pursuant to the Injunction statute 735 ILCS 5/11-101, requesting this Honorable Court to permanently enjoin the enforcement of the Commercial Horse Boarding Text Amendment. This action for de novo judicial review was brought pursuant to 65 ILCS 5/11-13-25 within ninety (90) days of the date that the Village Board adopted the Commercial Horse Boarding Text Amendment.

D. On June 29, 2015 on Plaintiffs' motion, this Court voluntarily non-suited Counts I and II of the Complaint.

E. Prior to authorizing its attorneys to present this settlement agreement to this Honorable Court the Village Board held a properly noticed Public Hearing/meeting on September 23, 2015 affording all interested persons the opportunity to be heard.

F. The Legal Notice of the Public Hearing was published in the Daily Herald newspaper, a newspaper of general circulation within the Village of Barrington Hills, more than fifteen (15) days prior to said hearing, on September 8, 2015. A copy of the legal notice appearing in the paper is attached hereto as Exhibit A.

G. Notice was also sent via regular mail to all persons who provided their address at any of the meetings conducted by the Zoning Board of Appeals in 2014 in connection with the Public Hearings on the commercial horse boarding text amendment on September 9, 2015. A copy of the Notice to the interested public is attached hereto as Exhibit B.

H. Notice of the public hearing also appeared on the Village's website, not less than 15 days before the public hearing, from September 4, 2015 through September 23, 2015. A copy of the website Notice is attached hereto as Exhibit C.

I. Notice was also sent via regular mail to all Litigants in connection with the instant litigation on September 11, 2015. A copy of the Notice to the Litigants is attached hereto as Exhibit D.

J. Notice was also sent via electronic mail to all Attorneys of record for all of the Litigants in connection with the instant litigation regarding the commercial horse boarding text amendment on September 11, 2015. A copy of the Notice to the Attorneys for the Litigants is attached hereto as Exhibit E.

K. The Village Board, at properly noticed Village Board Meetings, after careful deliberations in Executive Session under the pending litigation exception to the Open Meetings Act, 5 ILCS 120/2(c)11 on September 28, 2015 and again on October 26, 2015, in Executive Session and thereafter, in Open Session, voted to settle this matter on the terms and conditions set forth in this Agreed Order of Settlement.

L. The Court finds that it has jurisdiction of all of the Parties and the subject matter herein and it has the authority to enter this Agreed Order.

M. The Plaintiffs and the Defendant agree that it is in their best interests and the best interests and the best interests of the residents of the Village that this matter be fully and fairly resolved, without any further resort to the Court for relief.

WHEREFORE, the Parties adopt the preambles set forth above as if fully set forth herein and adopt the following terms and conditions as their Agreed Order of Settlement and acknowledge that the same are supported by sufficient consideration:

1. The Plaintiffs and the Defendant agree that this Agreed Order constitutes a final and binding order with respect to the Village pertaining to the Commercial Horse Boarding Text Amendment.

Defendant judicially admits as follows:

- a. Count III of Plaintiffs' Complaint states a viable cause of action.
- b. The Village Board, after careful analysis and upon closer scrutiny has determined that the Commercial Horse Boarding Text Amendment, on the date of entry of this Agreed Order and at the time of its adoption, bears no rational relationship to the public health, safety, comfort, morals or general welfare and is otherwise unlawful, in that it alters the residential character of the Village, does not take into consideration the impact of large scale commercial horse boarding on the character of the Village, it does not consider the effect of such on the residential roadways within the Village, relative to traffic in residential areas and the detrimental effect of large trucks on the Village roadways, does not take into consideration the potential noise implications of large scale commercial horse boarding on the residential character of the Village, does not impose a limitation on the number of commercial horse boarding facilities within the Village and has a potentially negative impact upon property values within the Village, among other things.
- c. The Commercial Horse Boarding Text Amendment is at the time of entry of this Agreed Order and was at the time of its adoption unreasonable, unlawful, and null and void *ab initio*. due to said Commercial Horse Boarding Text Amendment being inconsistent with the standards contained in the Village Ordinance as alleged in paragraph 132 of the Complaint.
- d. The Village, its officers, agents, servants and employees are permanently enjoined from enforcing the terms of the Commercial Horse Boarding Text Amendment.

3. The Attorneys for the Plaintiffs have represented to the Court that they are authorized by all of the named Plaintiffs to enter into this Agreed Order of Settlement; said Attorneys have explained the terms and conditions of this Agreed Order of Settlement to all of the named Plaintiffs; and that said named Plaintiffs have affirmed to said Attorneys that they understand the contents herein and agree to the terms and conditions contained herein.

4. The Attorneys for the Defendant have represented to the Court that they are authorized by the corporate authorities of the Village to enter into this Agreed Order of Settlement and that the Village has the authority to enter into this Agreed Order of Settlement.

5. The Plaintiffs and the Defendant agree that none of the Parties to this proceeding shall recover of and from any other party any costs which such party has sustained in connection with this cause. All such costs having been paid and shall remain with and be taxed to the party which has heretofore incurred such costs.

IT IS HEREBY ORDERED THAT:

A. The recitals set forth above are incorporated herein by reference in their entirety and made part hereof.

B. The Commercial Horse Boarding Text Amendment is null and *void ab initio*.

C. Counts I and II are hereby voluntarily dismissed, with prejudice.

D. Judgment is entered on Count III, against the Village pursuant to the terms of this Order.

F. This Court shall retain jurisdiction of the above-entitled action for the purpose of construing, implementing and enforcing the provisions of this Settlement Agreement.

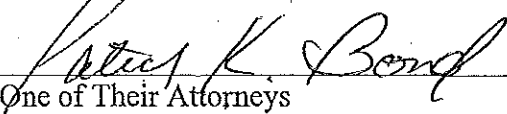
DATED: November _____, 2015

ENTER:

Honorable Judge David Adkins

AGREED:

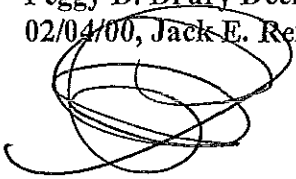
VILLAGE OF BARRINGTON HILLS

By: 

One of Their Attorneys
Patrick Bond (ARDC No. 6193855)
BOND AND DICKSON
400 S. Knoll Street, Unit C
Wheaton, IL 60187
Phone: (630)681-1000
patrickbond@bond-dickson.com

AGREED:

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

By: 

One of their attorneys
Thomas R. Burney (ARDC No. 0348694)
Law Office of Thomas R. Burney, LLC
40 Brink Street
Crystal Lake, IL 60014
Phone: (815)459-8800
Fax: (815) 459-8429

**Village of Barrington Hills
Special Village Board
Public Meeting Notice**

The Village Board of Trustees, in February 2015, amended the Village Code to regulate large scale commercial horse boarding operations through a Text Amendment to the Village Code. Previously, horse boarding was regulated under the Home Occupation provisions of the Code. Since the adoption of the Amendment, a lawsuit has been filed challenging the Text Amendment. The Village Board is committed to permitting commercial horse boarding and equestrian activities within the Village. The Board is deliberating the current regulatory scheme in an effort to determine the most appropriate method to regulate large scale commercial horse boarding operations in such a way as to preserve the existing character of the community. The Board is exploring all of the Village's options, including the possible settlement of the pending litigation.

The Village Board is seeking input from the public on this issue at a Special Village Board Meeting, scheduled for Wednesday, September 23, 2015 at 6:30 p.m. at Countryside Elementary School, located at 205 West County Line Road, Barrington, IL. If you are unable to attend, please feel free to e-mail written comments to clerk@vhill.gov by September 22, 2015.

Please go to vhill.gov/news.html for more information, including viewing a copy of the lawsuit in the case entitled, James J. Drury III v. Village of Barrington Hills, Case No.: 2015 CH 3461

**VILLAGE OF
BARRINGTON HILLS
BOARD OF TRUSTEES
AGENDA**

Special Called Meeting
Wednesday, September 23,
2015, 6:30 p.m.
Countryside

Elementary School
205 West County Line Road,
Barrington Hills, Illinois.

- I. CALL TO ORDER
- II. ROLL CALL
- III. PLEDGE OF ALLEGIANCE
- IV. PUBLIC COMMENT:
REGARDING THE POTENTIAL SETTLEMENT OF PENDING LITIGATION, JAMES J. DRURY III V. VILLAGE OF BARRINGTON HILLS, CASE NUMBER: 2015 CH 03461, CHALLENGING THE CURRENT ZONING FOR HORSE BOARDING AND TRAINING FACILITIES IN THE VILLAGE OF BARRINGTON HILLS RESULTING FROM THE 2015 TEXT AMENDMENT

(All persons wishing to speak shall state their names before offering comment. Commentary shall be limited to 3 minutes or such other time as the Board of Trustees may set. After speaking, speakers shall remain at the podium for any questions from the Village President or Village Trustees, if requested.)

V. ADJOURNMENT
Published in Daily Herald
September 8, 2015 (4418608)

CERTIFICATE OF PUBLICATION

Paddock Publications, Inc.

Daily Herald

Corporation organized and existing under and by virtue of the laws of the State of Illinois, DOES HEREBY CERTIFY that it is the publisher of the DAILY HERALD. That said DAILY HERALD is a secular newspaper and has been circulated daily in the Village(s) of Algonquin, Antioch, Arlington Heights, Aurora, Barrington, Barrington Hills, Lake Barrington, North Barrington, South Barrington, Bartlett, Batavia, Buffalo Grove, Burlington, Campton Hills, Carpentersville, Cary, Deer Park, Des Plaines, South Elgin, East Dundee, Elburn, Elgin, Elk Grove Village, Fox Lake, Fox River Grove, Geneva, Gilberts, Grayslake, Green Oaks, Gurnee, Hainesville, Hampshire, Hanover Park, Hawthorn Woods, Hoffman Estates, Huntley, Inverness, Island Lake, Kildeer, Lake Villa, Lake in the Hills, Lake Zurich, Libertyville, Lincolnshire, Lindenhurst, Long Grove, Mt. Prospect, Mundelein, Palatine, Prospect Heights, Rolling Meadows, Round Lake, Round Lake Beach, Round Lake Heights, Round Lake park, Schaumburg, Sleepy Hollow, St. Charles, Streamwood, Tower Lakes, Vernon Hills, Volo, Wauconda, Wheeling, West Dundee, Wildwood, Sugar Grove, North Aurora

County(ies) of Cook, Kane, Lake, McHenry and State of Illinois, continuously for more than one year prior to the date of the first publication of the notice hereinafter referred to and is of general circulation throughout said Village(s), County(ies) and State.

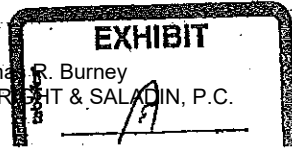
I further certify that the DAILY HERALD is a newspaper as defined in "an Act to revise the law in relation to notices" as amended in 1992 Illinois Compiled Statutes, Chapter 7150, Act 5, Section 1 and 5. That a notice of which the annexed printed slip is a true copy, was published September 8, 2015 in said DAILY HERALD.

IN WITNESS WHEREOF, the undersigned, the said PADDOCK PUBLICATIONS, Inc., has caused this certificate to be signed by, this authorized agent, at Arlington Heights, Illinois.

PADDOCK PUBLICATIONS, INC.
DAILY HERALD NEWSPAPERS

BY Laulla Baltz
Authorized Agent

Control # 4418688



Submitted by Thomas R. Burney
ZANCK, COEN, WRIGHT & SALADIN, P.C.

Village of Barrington Hills
Special Village Board
Public Meeting Notice

The Village Board of Trustees, in February 2015, amended the Village Code to regulate large scale commercial horse boarding operations through a Text Amendment to the Village Code. Previously, horse boarding was regulated under the Home Occupation provisions of the Code. Since the adoption of the Amendment, a lawsuit has been filed challenging the Text Amendment. The Village Board is committed to permitting commercial horse boarding and equestrian activities within the Village. The Board is deliberating the current regulatory scheme in an effort to determine the most appropriate method to regulate large scale commercial horse boarding operations in such a way as to preserve the existing character of the community. The Board is exploring all of the Village's options, including the possible settlement of the pending litigation.

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Please go to vbhil.gov/news.html for more information, including viewing a copy of the lawsuit in the case entitled, *James J. Drury III v. Village of Barrington Hills*, Case No.: 2015 CH 3461

EXHIBIT

Submitted by Thomas R. Burnley
ZANCK, COEN, WRIGHT & SALADIN, P.C.

Village of Barrington Hills
Special Village Board
Public Meeting Notice

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VILLAGE OF BARRINGTON HILLS
BOARD OF TRUSTEES

AGENDA

Special Called Meeting
Wednesday, September 23, 2015, 6:30 p.m.
Countryside Elementary School
205 West County Line Road, Barrington Hills,
Illinois.

I. CALL TO ORDER

II. ROLL CALL

III. PLEDGE OF ALLEGEANCE

IV. PUBLIC COMMENT: REGARDING THE POTENTIAL SETTLEMENT OF PENDING LITIGATION, JAMES J. DRURY III v. VILLAGE OF BARRINGTON HILLS, CASE NUMBER: 2015 CH 03461, CHALLENGING THE CURRENT ZONING FOR HORSE BOARDING AND TRAINING FACILITIES IN THE VILLAGE OF BARRINGTON HILLS RESULTING FROM THE 2015 TEXT AMENDMENT

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V. ADJOURNMENT

Village of Barrington Hills
Special Village Board
Public Meeting Notice

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VILLAGE OF BARRINGTON HILLS
BOARD OF TRUSTEES

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EXHIBIT

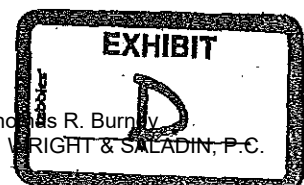
Submitted by  Thomas R. Bailey
ZANCK, COOPER & SALADIN, P.C.

Village of Barrington Hills
Special Village Board
Public Meeting Notice

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Please go to vbhil.gov/news.html for more information, including viewing a copy of the lawsuit in the case entitled, *James J. Drury III v. Village of Barrington Hills*, Case No.: 2015 CH 3461





BOND DICKSON
ATTORNEYS AT LAW

September 11, 2015

VIA E-MAIL TRANSMISSION

Mr. Thomas Burney
Law Offices of Thomas Burney
40 Brink Street
Crystal Lake, Illinois 60014

Mr. James P. Kelly
Matuszewich & Kelly, LLP
101 N. Virginia Street, Suite 150
Crystal Lake, Illinois 60014

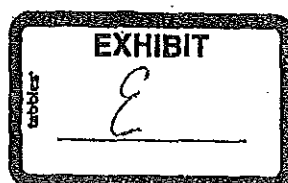
Mr. Terrence J. Freeman
Law Offices of Terrance J. Freeman, P.C.
1250 Grove Avenue, Suite 200
Barrington, Illinois 60010

Patrick Fitzgerald
Mark E. Rakoczy
SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP
155 North Wacker Drive
Chicago, Illinois 60606

Re: *Drury v. Village of Barrington Hills*
Case No. 2015 CH 03461
Our File No. 14-1056

Gentlemen:

As you may be aware, Bond, Dickson & Associates, P.C. represents the Village of Barrington Hills. In connection with that representation, the Village Board has been assessing its legal options relative to the above referenced matter. In order to assist the Board of Trustees in determining the appropriate course of action for the Village, there will be a Special Village Board Meeting held on Wednesday, September 23, 2015, at 6:30 p.m. at Countryside Elementary School, located at 205 W. County Line Road in Barrington Hills. The Village Board will be seeking input from the Public to guide its decision relative to analyzing the possibility of settling the pending litigation as well as alternate ways of regulating commercial horse boarding operations.



Submitted by Thomas R. Burney
ZANCK, COEN, WRIGHT & SALADIN, P.C.

Drury v. Village of Barrington Hills
September 11, 2015
Page 2

A copy of the Meeting Notice was published in the Daily Herald Newspaper, along with the Agenda for said Meeting. The Meeting Notice and Agenda are posted on the Village website and were included in the Village Newsletter. In addition thereto, each person who participated in or attended the various Public Hearings on the Commercial Horse Boarding Text Amendment before the Zoning Board of Appeals and the Village Board were provided a copy of the Meeting Notice and Agenda. Each of your respective Clients was provided with notice from the Village relative to the Meeting Notice and the Agenda.

As a courtesy, I am providing you herewith a copy of the Special Village Board Public Meeting Notice and the Agenda for said Special Called Meeting. The Board will not be deliberating on this matter at the Special Meeting. The board will simply be receiving input from the public as set forth above.

Should you have any questions regarding this Meeting, please feel free to contact me.

Very truly yours,

BOND, DICKSON & ASSOCIATES, P.C.

/s/ Patrick K. Bond

Patrick K. Bond

PKB/amo
Attachments

Public Comment for the Zoning Board of Appeals Meeting Scheduled for July 18, 2016, and Continued to August 1, 2016

I am J.R. Davis, Chairman of Barrington Hills Farm, and a resident of the Village of Barrington Hills. I am speaking on behalf of myself, a landowner and resident of Barrington Hills, and as Chairman of Barrington Hills Farm, a 602-acre tract of land in the northwest corner of Barrington Hills, originally owned by Alex and Barbara MacArthur as Strathmore Farms, and then by Fritz Duda. First, we want to thank each of you for your volunteer service on the Zoning Board of Appeals. Thank you for serving our community.

On behalf of Barrington Hills Farm and the greater Barrington Hills equestrian community, I respectfully request that the Zoning Board of Appeals (“ZBA”) table its consideration of the Zoning Ordinance text amendment submitted by Mr. James J. Drury III, until it has completed the process it set forth in its June 20, 2016 meeting. I request that the ZBA continue tonight’s meeting by discussing the history of horse boarding in the Village as the ZBA set forth in its June 20, 2016 meeting as the first step in this process.

In furtherance of this request, I would like to take this opportunity to provide you with some historical information. First, the Village has continually represented itself as an equestrian community. This proposition is evidenced on the Village’s website, which prominently states “The Village of Barrington Hills: A unique rural equestrian community . . . an oasis of another time.” It is evidenced in the Village’s Comprehensive Plan, which was amended and adopted most recently in 2008. The Comprehensive Plan states, “Barrington Hills is a community of residents acting as stewards for a quiet, secure and natural environment, unique within the Chicago metropolitan area, which supports the long term, sustainable use of property for equestrian-oriented, open countryside living. One characteristic which distinguishes

Barrington Hills from other [] communities is its equestrian tradition.” The Plan also describes the existing conditions as follows: “[m]ost residences are located on individual lots of five (5) or more acres, many for an equestrian lifestyle and for the appreciation of tradition of equestrian activities associated with these five acre lots.” Consistent with these representations, the Village Code provides for horse boarding on property within the Village and in 2015, adopted additional regulations regarding the boarding and training of horses. (See Village Code 5-3-4(A).) Since that 2015 horse boarding text amendment was adopted on February 23, 2015, the Village of Barrington Hills has received zero complaints regarding horse boarding activities in the Village.¹

As a member of the Village, this issue is very important to me, and to Barrington Hills Farm. Barrington Hills Farm acquired a substantial portion of land in and adjacent to the Village with the intention of boarding horses for two non-profit organizations, the Hooved Animal Rescue & Protection Society of Barrington, Illinois (“HARPS”) and Veterans R&R. HARPS is a non-profit organization that takes in, rehabilitates, and finds new homes for horses and other hooved animals that have been abused and neglected by their owners. Veterans R&R is a non-profit organization that works to improve the lives of Veterans and Active Duty Military members. Barrington Hills Farm invested significant money and effort based on the Village’s identity as an equestrian community and the current ordinances in the Village Code. Barrington

¹ On June 28, 2016, Barrington Hills Farm, through its attorneys, submitted a Freedom of Information Request to the Village seeking, “Any and all complaints sent to the Village of Barrington Hills (the “Village”) regarding horse boarding activities between February 23, 2015 and today. For purposes of this request, the Village includes all Village personnel, Village representative bodies, and members of those representative bodies, including but not limited to: the Village Board, the Village Board Members (Colleen Konicek Hannigan, Fritz Gohl, Michael Harrington, Bryan C. Croll, Michell Nagy Maison, and Brian D. Cecola), the Village President (Martin J. McLaughlin), the Village Zoning Board of Appeals Members (Daniel Wolfgram, David Sticper, Richard Chambers, Jim Root, Jan C. Goss, Debra Buettner, and Patrick J. Hennelly), the Village Clerk (Anna Paul), the Director of Administration (Robert Kosin), and any past Village Board Member or Zoning Board of Appeals Member, during that time period he/she was serving the Village.” On July 15, 2016, the Village’s attorneys responded to this request stating, “To confirm, the Village does not have any records responsive to item 1 (complaints regarding horse from February 23, 2015 to present).”

Hills Farm is committed to providing a benefit to the community at large and to veterans. This commitment is compatible with the Village's Comprehensive Plan and the current Village Code. Both the Village's longstanding image as an equestrian community, and Barrington Hills Farm's purpose in acquiring land in Barrington Hills, will be devastated by the proposed amendment.

Tonight, I hope that you will continue to delve into the Village's equestrian roots, and listen to the voices of your community. I urge you to table any discussion regarding amendments to the text of the horse boarding portions of the Village Code until you have completed this process.

However, should you continue discussion of the Drury Amendment tonight, there are two fundamental problems with this amendment that you must recognize. First, this amendment was initiated to advance the interests of an individual, not the public at-large. Under Section 5-10-6 (F) of the Village Code, "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 proposed amendment seeks to repeal Village Ordinance 14-19, which was passed by the Village Board of Trustees on February 23, 2015, to expressly delineate the rights and obligations involved with boarding horses on R-1 property in the Village. However, as I stated before, there have been no complaints regarding horse boarding since the 2015 ordinance was enacted, and there has been no evidence that this amendment was initiated to serve the interests of the general public. Further, the property owner proposing this amendment is currently engaged in two separate lawsuits regarding horse boarding activities in the Village. This amendment advances the individual interests of Mr. Drury, and will not further the public interest. Because this amendment does not advance the public interest, it should not be recommended.

Second, this text amendment, initiated by a single Village resident diminishes the property rights of all other R-1 property owners in the Village. I ask that the ZBA consider whether it is appropriate for one resident to initiate a text amendment that will diminish the property rights of multiple other landowners, but that appears to have no adverse effect on this resident's own property. I also ask that the ZBA delineate the underlying authority that allows an individual resident to propose such an amendment to the Village Code. Without this requisite authority, Mr. Drury's amendment should not be considered by the ZBA.

I urge each of you to consider the Village's longstanding commitment to equestrian uses, and our interest as residents in maintaining the current Village Code provisions regarding horse boarding. Please do not deviate from your past plans to advance the interests of a single property owner. Instead, listen to your constituents and take the time to hear from the appropriate Village entities. I urge you to table this proposed amendment to the Village Code.

Thank you.

To the Village of Barrington Hills' Zoning Board of Appeals:


On behalf of Barrington Hills Farm and the greater Barrington Hills equestrian community, I write to respectfully request that the Zoning Board of Appeals ("ZBA") table its consideration of the Zoning Ordinance text amendment recently submitted by Mr. James J. Drury III (the "Drury Amendment"), which is currently scheduled for a public hearing and vote at the August 1, 2016 ZBA Meeting.

The Drury Amendment was proposed in May of 2016 and was first addressed at the June 20, 2016 ZBA Meeting. During that meeting, the ZBA indicated that it would hold a public hearing on the Amendment in September. In an effort to gather information that would help inform the ZBA's consideration of the Amendment, Barrington Hills Farm—an organization committed to maintaining the Village's equestrian vision by providing educational seminars for new and veteran horse owners—submitted a request under the Illinois Freedom of Information Act, 5 ILCS 140/1, *et seq.*, seeking, among other things, (1) all complaints sent to the Village regarding horse boarding activities since the enactment of Village Ordinance 14-19 (a 2015 Zoning Ordinance that clarified residents' rights to board horses on their property), and (2) all documents, correspondence, or other materials reflecting communications to or from the Village regarding Barrington Hills Farm.

The hearing on the Drury Amendment is now less than two business days away, and the Village still has not yet provided a complete production in response to the FOIA requests that Barrington Hills Farm submitted over a month ago. Barrington Hills Farm does not know whether the remaining records will be of consequence, but the ZBA should not be forced to proceed where additional records may be material to its decision. Barrington Hills Farm thus respectfully urges the ZBA to table the consideration of the Drury Amendment until the Village has completed its FOIA production. Postponing a vote on the Amendment will not prejudice any party, and will ensure that the ZBA has the opportunity to consider all relevant information before resolving an issue of great importance to Barrington Hills community members.

Thank you for your consideration and your continued service to our community.

Sincerely,



J.R. Davis
Barrington Hills Farm

PUBLIC COMMENTS FOR THE BARRINGTON HILLS ZONING BOARD
OF APPEALS MEETING SCHEDULED FOR JULY 18, 2016, AND
CONTINUED TO AUGUST 1, 2016

My name is Pearl Zager. I am an attorney with the firm of Vedder Price, and I represent Barrington Hills Farm. Barrington Hills Farm is the organization that acquired the 600 acres known as the “Duda property” in 2014.

Barrington Hills Farm has an interest in this amendment because some of the land it acquired is still within the boundaries of the Village, and all of its land is within the peripheral planning zone for purposes of the Village’s Comprehensive Plan. Also, one of the intended uses of the property acquired by Barrington Hills Farm is the construction of an equestrian facility with adjacent pasture and farm land for use by the Hooved Animal Rescue and Protection Society (HARPS) and Veterans R&R. Barrington Hills Farm views this use as complimentary to the equestrian activity in the Village and expects the equestrian community to be among the supporters of these charitable organizations.

Barrington Hills Farm believes that the Zoning Code text amendment proposed by James J. Drury III is flawed for several reasons.

1. Given that there have not been any complaints to the Village about horse boarding operations since the latest Zoning Code amendment governing horse boarding was adopted in 2015, it is not clear what issues the amendment is intended to address or what constituency it is serving.
2. Many of the provisions of the proposed amendment do not make sense from a practical point of view. For example, in proposed Zoning Code section 5-3-4(D)3(g), regarding boarding horses and training horses and riders as a permitted home occupation:

(a) Only the immediate family of the home owner who reside on the premises are allowed to carry out the functions of boarding and training horses and their riders before 8 am and after 8 pm or sunset, whichever is later. The person who owns the boarded horse cannot feed or groom the horse or muck the stall herself unless she does it between the hours of 8 am and 8 pm or sunset. For the horse owner who is employed in downtown Chicago or elsewhere and has a long commute and a long workday, this provision eliminates any early morning opportunities to perform those functions. This restriction to family members who reside on the premises means the adult son or daughter who participates in the home occupation but no longer lives with mom and dad cannot handle any of the boarding or training duties except during those prescribed hours. This restriction precludes the home owners’ family from taking a vacation together and having a third party (whether a paid employee or friendly volunteer) care for the animals in their absence on a 24/7 basis.

(b) No vehicles or machinery, except those owned by the immediate family of the home owner who reside on the premises, may be operated on the premises except between hours of 8 am and 8 pm or sunset. This means the home owners cannot employ non-family members or non-resident family members to do any of the early morning boarding work if the non-family or non-resident family workers use their own vehicles or equipment. However, the non-family

and non-resident family workers can operate any of the vehicles and machinery owned by the immediate family who resides on the premises at any time of day or night. This restriction cannot be intended to address a noise issue, as a family-owned tractor makes the same amount of noise as the same tractor owned by a third party.

(c) If the aim of the vehicle restriction is to reduce traffic on the Village roads, is there empirical evidence that the vehicles and machinery operated and transported by third party boarding service and product providers are more burdensome on the roads in the Village than all of the other service and product deliveries that home owners (with and without horses) use on a daily basis? Consider that many home owners hire outside cleaning services, landscapers, personal trainers, caterers, repairmen, home remodelers or order products delivered by UPS or Federal Express, all of which use the same roads.

(d) There are various degrees of boarding contract terms. These more restrictive provisions may adversely affect the home owners' ability to enter into a boarding contract that is less than a full service agreement, where there is an adjustment on the price in consideration for the non-resident horse owner performing some of the boarding functions, if the non-resident horse owner is not regularly available during the permitted hours.

(e) Conversely, the home owner who does not board anyone else's horses, but who has the same number of horses, can hire anyone he wants, family or not, and operate any vehicle or machinery on the premises to carry out any of the same functions that the boarding operation does before 8 am and after 8 pm or sunset. The public interest purpose of these proposed amendments reducing the hours during which boarding and training facilities may conduct specific activities and expanding the people and activities that are restricted is not clear.

3. There is no need to distinguish "commercial" boarding operations. There are other Village codes in place governing septic system requirements and animal waste management (as noted in the existing provisions of Zoning Code Section 5-3-4 (A)2(iii)). Title 7 of the Village Code is sufficient to regulate nuisances and other health concerns, such as noise, light pollution, manure disposal and odor issues with any horse boarding operations, regardless of size or type of ownership.

4. The special use provisions in Section 5-10-7 of the proposed amendment have the effect of precluding the existence or continuation of any horse boarding that falls within the proposed definition of "Commercial Boarding". The proposed special use permit expires after 5 years. There is no incentive to invest the capital required to operate a horse boarding facility if the owner has no certainty that he/she will be able to continue operating after 5 years, even if he/she is in compliance with all applicable codes and regulations. It also eliminates any value of the horse boarding operation as a going concern for anyone who does obtain the special use permit, leaving the owner with nothing to sell at the end of the 5 year term except a pile of used equipment.

5. The conservation, health and welfare issues that the proposed amendment appears to attempt to address are not dependent on the ownership of the horses. The number of horses, the size of the land, and the design and operation of the facilities and equipment are the relevant factors. Those are issues that need to be addressed in tandem with other departments in the

Village and other sections of the Village Code. The Zoning Code should not be used to circumvent a comprehensive, integrated approach to any known issues or future planning goals.

6. If the purpose for amending the horse boarding provisions of the Village Code is more global and intended to address and implement some of the visions in the Village's Comprehensive Plan, then it does not seem appropriate for the ZBA to accept, without broad public input and an appropriate time line, a proposed amendment prepared by one private resident. If this is the purpose, then the ZBA should be investigating other communities approaches to horse boarding, as it did through its prior Village attorneys in 2011, as well as other similarly situated equestrian communities across the country. It should be researching best practices for conserving equestrian land and natural resources and balancing those goals. This information is readily available from professionals in the field, like John Blackburn of Blackburn Architects, whom Barrington Hills Farm has employed to design the equestrian facility that will be used by HARPS and the Veterans R&R. Mr. Blackburn writes and blogs extensively on barn design and equestrian land management and is the author of Healthy Barns by Design. He addresses issues such as the environmental impact of facilities on soil and water and waste management in his planning. Information on other communities' equestrian property regulations are available from equestrian societies like the national Equine Land Conservation Resource, an organization on which Mr. Blackburn and Dawn Davis, a resident of Barrington Hills, serve as directors.

For these reasons, Barrington Hills Farm believes that the Zoning Code text amendment proposed by Mr. Drury does not advance the public interest and should not be recommended.

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Letter to Barrington Hills Zoning Board of Appeals July 30, 2016

Introduction

I am John Blackburn senior principal and founder of Blackburn Architects, a firm specializing in equestrian design with over 30 years of experience. I am a licensed architect in the state of Illinois and have designed and constructed an equestrian facility in Barrington Hills, Angel Grace Farm, for Dennis and Stacey Barsema. My firm has designed over 200 equestrian facilities located in over 30 states ranging in size from small private horse barns (of 5 horses or less on 5 acres) to larger facilities with both private and public stabling of multiple horses many with 50 or more horses on hundreds of acres of land. I have worked in many communities with issues similar to those facing Barrington Hills today.

I am also the author of the book, [Healthy Stables by Design](#), which focuses on the design of equine facilities that provide a healthy environment for horses as it balances the horse's needs with the owner's goals and the demands of the site. The "site" as I describe in my book refers to the property on which the facility is built, the community in which it is located, the specific environmental conditions in the area as well as the building and zoning codes and other land restrictions that can often limit or prevent equine activities, purposefully or otherwise. My design philosophy has been to demonstrate how critical it is to understand these "restrictions" and design a facility that is compatible with all requirements.

I submit this letter as a board member and representative of the Equine Land Conservation Resource (ELCR) and as an equestrian architect, who has spent his entire professional career designing for horses and planning the farms that stable them in support of equine activities throughout the country and specifically today in Barrington Hills.

The Issue

The Zoning Code text amendment proposed by James J. Drury III is not, in my opinion, the proper means to address the alleged "issue." As I understand it, this amendment seeks to restrict horse boarding because of one person's concern that horse boarding as a permitted land use can have a negative impact on the environment, the aesthetic natural beauty of Barrington Hills, property values, and the general quality of life in the community.

Thus, Mr. Drury has proposed revisions to the current zoning ordinance with the purpose of preventing this alleged negative impact. The proposed zoning modifications have been designed to limit the amount of horse boarding by establishing restrictions on the minimum amount of acreage (one grazing acre per horse), the number of horses (maximum of 20 horses), the number of years a special use permit for horse boarding will exist (5 years after issuance), the hours of operation for horse boarding activities, the size of barns and other auxiliary buildings, and the lighting on the property.

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Barrington Hills has long been known for its equine heritage and the reputation as one of the leading equestrian communities in the country. That equestrian life style has contributed substantially to the real estate value as a residential community and made it one of the most valued residential communities in the suburban Chicago area. As a result of its success and its bucolic beauty, Barrington Hills is experiencing pressure from suburban growth and that suburban sprawl increases the pressure on horse lands (horse farms, land values, hay production, equine support businesses, etc.). These growth pains are not limited to your community. As an equestrian designer and an active member of the ELCR, I see this everyday in communities throughout the country. You are not unique in this problem but you have a great opportunity to plan for this development without destroying what you have. **In my opinion, this amendment is a step in the wrong direction. There is another way.**

I feel strongly that excessive restriction of equine activity or the over regulation of zoning horse activities to “protect” these values in a community can actually have the opposite effect. There are any number of communities where the unique benefits that equestrian lifestyles bring to a community have been lost through implementation of overly restrictive or inappropriate restrictions of zoning and land use changes similar to what is being considered in Barrington Hills. Many of these communities were created around equestrian activities that provided aesthetic beauty, added value that people appreciated, and created a sense of uniqueness for the community. Land values and quality of live are probably the most appreciated benefits of these equestrian communities.

There are plenty of examples where the two coexist successfully and others where they do not. There are too many examples of where restrictive regulations have been put into place and have in effect “killed the golden goose” that brought a unique benefit to the community and “put the community on the map.”

Proper planning and management practices for horse farms if followed can accomplish the same goal of protecting the community without destroying the equine community or curtailing equine activities. I want to emphasize one important point: **horse boarding is not the problem. The problem is the management and operating procedures that are not followed.** Poor management and operational procedures are not unique to equine facilities. That can happen with any development whether it is single family, multi-family, commercial, or industrial development. The answer is intelligent planning.

My experience with designing for horses has shown me that proper planning, operation and maintenance are the best means to this end. It is not as simple as restricting boarding operations. That in my opinion is a reactive impulse that can be more detrimental to a community than doing nothing. I don't necessarily recommend that nothing be done. I do recommend that through the incorporation of Best Management Practices (BMP) and the institution of sustainable land management principles we can better achieve the communities overall goals for both equestrian and non equestrian residents and preserve a wide range of equine activities at the same time maintaining the benefits of this unique equestrian community

There are many examples where proper Best Management Practices (BMP) have been followed successfully in a variety of locations and preserved equine activities and the benefits they bring to everyone in that community. As a member of the American Horse Council and a board member of the Maryland Horse Council where I am an executive member of the Horse Farm Stewardship Committee, I participate in the process of educating and assisting horse farm

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owners and communities in how they can make their farm sustainable and obtain certification as such. We have over 35 sustainable horse farms in Maryland. The program not only brings recognition to the owners of those farms and environmental benefits to their community, but also contributes to the economy and property values and overall quality of life for the entire community, both equestrian and non-equestrian.

Often times the restrictions that lead to killing the golden goose happen through lack of understanding. Let's take minute to reflect on the benefits horses bring to Barrington Hills. Equine activities bring a whole host of benefits to a community that may not be recognized or just overlooked by its residents. Those benefits include: economic, aesthetic and environmental benefits.

Economic Benefits: Horses have a strong positive economic impact on our communities. Horse business and horse industry "can be significant economic drivers, creating tourism and cottage industry for communities," This "economic benefit is hard to deny". "Horses require professionals from vets to hay growers and from farriers to trainers." All farms whether they are small or large require these services. Actually they can more readily controlled and managed when it is a larger farm than when it is multiple smaller farms.

"A community that is open and receptive to horses will find that the economic impact of these cottage industries far outweigh the cost of providing municipal services for them. A well-maintained and equine friendly horse event facility or trail system will also lead to horse tourism, a great advantage for local businesses, hotels and restaurants." Management is the operative word, not blanket restrictions.

More residential and commercial development are going to bring more roads, more parking lots, more power lines and costly infrastructure, more institutional support facility i.e. schools, fire stations, sewage treatment facilities, etc. Large equestrian properties have a significant lower environmental impact on an area than intense residential development. "A large sprawling field or pasture with healthy horses grazing increases real estate sales, property values and the economic benefit that brings."

Aesthetic Benefits: While desirable landscapes are important to the overall quality of our communities, scenic vistas and view sheds are often destroyed during sudden change and uncontrolled development. Barrington Hills has that now. When development is not properly planned or managed it can have a dramatic impact upon the landscape and have a negative impact on the communities unique sense of place.

Horse properties with their open pastures, miles of fencing, that can be nicely landscaped and provide a rural and bucolic sense of scale could be lost forever with all the benefits associated with it if not properly managed.

Environmental Benefits: "Benefits accrue to the community from having horses in the neighborhood ranging from socioeconomic to environmental." They should not be limited but can be "better recognized and incorporated through land use planning efforts." Eliminating or over restricting horse boarding is not the answer. It's the management and planning for these activities that is important. "The first step in making this a reality is an understanding of what types of benefits can be gained from encouraging horse farms in the landscape." These include the important ecological contributions to the environment such as:

- Provision of wildlife habitat
- Watershed and stream protection
- Groundwater recharge

Letter to Barrington Hills Zoning Board of Appeals

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Soil conservation
Maintenance of biodiversity

Horses have a very positive impact on an area's ecology. Well maintained horse facilities protect ground water and waterways, conserve soil, and encourage biodiversity.

Conclusion:

As an equine design professional I ask that you not attempt to "resolve" your concern for horse boarding by overly restricting that activity, but instead look to putting in place zoning procedures that encourage the pursuit of Best Management Practices and encourage improved sustainability of horse properties by maximizing the resiliency of the land and waters that serve the community. These will not only address the horse boarding concerns but other equine related concerns while not restricting horse activities at the expense of what makes Barrington Hills a unique and valued equestrian community. These BMP's will in turn generate cost savings and multiple benefits over time and allow you to set an example for other equine communities that feel the pressure of unplanned development.

Horses are important, not just to a small group of residents, but to the economic, physical, emotional, and environmental well-being of the entire community. In short the community of Barrington Hills needs its horses.

Reference: This letter contains information that was obtained from www.ELCR.org, the web site for the Equine Land Conservation Resource.

Footnote:

What are Best Management Practices: BMP's are highly localized. While all BMP issues apply to all horse facilities, the actual implementation tactics vary greatly by region.

BMP are "methods and techniques designed to mitigate damage to environment while simultaneously utilizing resources in the most efficient way possible." They apply to water quality, air quality, and soil quality. When BMPs are appropriately applied they control and prevent pollution from entering waterways and the air, protect the soil on the property and the quality of life for the entire community. These are especially important "in the context of the rural-urban interface" i.e. the suburbs.

Though these benefits can be accomplished to a degree by all horse farms they can best be accomplished by well managed horse farms through the implementation of Best Management Practices.

Respectfully submitted by John A Blackburn, Blackburn Architects PC
Equine Land Conservation Resource, Board of Directors



Anna Paul <apaul@barringtonhills-il.gov>

Equine Boarding

Kenneth A. Johnson <johnsonkaj@comcast.net>
To: apaul@barringtonhills-il.gov

Mon, Aug 1, 2016 at 12:59 PM

Barrington Hills Zoning Board meeting

Intro

Ken Johnson
214 N. Brockway St.
Palatine
Boarder in Barrington Hills

I am a RCBH member, and Trail Rep., and have a Cook County horse and rider license

First and foremost I want to thank the people of Barrington Hills for giving me and others the opportunity to enjoy this area. We are very grateful for that. In my opinion the people who ride here whether residents or not are the salt of the earth. They love animals and they love nature

I have had three horses in my life time and have been a boarder here in Barrington Hills for 40 years at Fox and KC Farms. In that entire time, to my knowledge, there has not been one complaint regarding the boarding facility of either of those Farms.

All of us who ride here respect this community and know that it's a privilege to be here and not a right. I hope you will reconsider your position of restricting horse boarding and realize that we are your friends here in Barrington Hills and respect the opportunity to be here.



Village Clerk <clerk@barringtonhills-il.gov>

Tonight's zoning meeting, please add to file.

Debra Hasanoglu <Debrajeann@aol.com>
To: Clerk@vbhil.gov

Mon, Aug 1, 2016 at 3:01 PM

To whom this may concern:

I am not able to attend the zoning committee meeting this evening but would like to express my concerns in regards to the issue of allowing boarding facilities to remain active in the community of Barrington Hills or not. I am a member of the Barrington Hills Polo club since 2007. I have had the opportunity to drive through the beautiful rolling hills of Barrington on several occasions and have been awed at the impeccable care given by its community. I understand the need to stand guard to protect such a jewel. In the issue at hand is it really horses and equestrians that threaten this community? Has it been thought that the real danger is in giving ear to the intentions of one man that wishes to inflict pain and hostile actions in retribution to something he believes has been done to him. In the process dividing what once was a bonded and harmonious community. I do not believe the issues of car lights and traffic are the problem. An equestrian farm with beautiful horses and its participants enriches a community in both its landscape and its legend. A boarding facility is simply a sharing of Barrington Hills open spaces and it's history of passionate equestrian activities.

This sharing has been going on since the 1800's.

Have we become so petty as to live by rule of a mans translation and misinterpretations of a zoning law. The crime here is the history you are writing with this fight. Muddying a community that was respected for its harmony and agreement amongst its people. There should be some shame in all of this don't you think? This is agonizing to those of us that wish to preserve what was and what is.

Debra Hasanoglu
175 East Delaware Place
Chicago, Illinois 60611

Sent from my iPhone

Mr. Chairman and Members: I am A. Robert Abboud, 209 Braeburn Road.

I have ~~two~~ brief comments for the Record.

1. Mr. Drury claims authority to file the Amendment which is under consideration because he is a "LANDOWNER". I find no public record listing Mr. Drury as a "LANDOWNER" in his own name as his Petition claims. I, therefore, ask the Zoning Board of Appeals, QUO WARRANTO. Unless the claim of Land Ownership is documented and verified, this proceeding is ultra vires and thus a waste of taxpayer time and dollars.

2. The Drury Petition for Amendment states: "Such amended definitions and additions contained herein are retroactive and in full force and effect as of June 26, 2006". This language unconditionally violates both the Federal and Illinois State Constitutions. Both the U.S. and Illinois Constitutions declare unequivocally that NO EX POST FACTO LEGISLATION shall be passed. And, yet, the Drury Petition proposes to retroactively nullify the Village Code to benefit one constituent to the detriment of everyone else. This is akin to a bill of Attainder barred by Article 1, Section 9 of the U.S. Constitution and prohibited in the Statutes of all 50 states, including ILLINOIS. *The only limited possible exception is when rights are expanded or added but not where rights are being curtailed.*

Barrington Hills

Christy and I chose Barrington Hills as the place to live and raise our family for three reasons: 1) the people were friendlier here, and 2) the equestrian nature of this community, and 3) the 5 acre zoning which made a more beautiful community.

The equestrian activities were quite noticeable, with the hunt riding across roadways, the Pony Club kids riding at the Riding Center and learning to care for horses, the adult Riding Club members on the Community's trails, and the occasional horse shows and polo.

We loved seeing those things and eventually became part of most of them. Also we noticed a stronger sense of community because of those shared activities and equestrian spirit.

And we became aware of the infrastructure necessary for those activities to exist: the trainers, and teachers and mentors for the Pony Club kids, and boarding in the community, and trails to ride on.

The community pitched in and made these things happen.

Regarding boarding, an equestrian community cannot exist without sufficient boarding facilities. And we are grateful to those landowners who provide horse boarding to our community's riders. Without that our equestrian community would lose its equestrians and beautiful unique character.

I would not want to live in another Schaumburg. And we start moving that direction if we oppress horse boarding by making its existence difficult or impossible.

Before throwing out something significant it is wise to ask what you are giving up. Barrington Hills is one of the most

beautiful villages in America, partly from its horse farms and partially from the natural land conservation an equestrian cause.

And it's one of the only areas around a big city in the U.S. that offers both

5 acre minimum zoning and a vibrant equestrian community.

To chip away at the foundations of these things is akin to ruining a great painting - it's rare, it's beautiful, and it's more beloved all the time as other communities in the U.S. surrender to short term siren call of development, and take their path towards becoming another Schaumburg.

Citizens may later regret having taken that direction, but once it's begun the movement towards the lowest common denominator is unstoppable.

Therefore I strongly support horse boarding regulation and zoning in Barrington Hills as it currently exists, and ask all citizens to think deeply about what community they want to leave their children and grandchildren.

Thanks to all of you for listening and considering my thoughts.
Bryan Cressey.

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Via Fax and U.S. Mail

March 15, 2011

Dr. & Mrs. LeCompte
350 Bateman Road
Barrington Hills, IL 60010

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 of 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.

Sincerely,

Don Schuman

Don Schuman
Building and Code Enforcement Officer
847-551-3003

A HOME RULE COMMUNITY

*Entered in Record @ Request
of Robert Aboud.*