

# **PUBLIC COMMENTS**

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

*Additional Signatures*

ORIGINAL SIGNATURES -

I. CHET PERRY  
3 PORTER SCHOOL ROAD  
BARRINGTON HILLS, IL 60010-2667

13 ea

June 27, 2016

Mr. Martin J. Mc Laughlin, Village President  
Ms. Colleen Konicek Hannigan, President Pro-Tem  
Mr. Fritz Gohl, Trustee  
Mr. Michael Harrington, Trustee  
Mr. Bryan C. Croll, Trustee  
Ms. Michelle Nagy Maison, Trustee  
Mr. Brian D. Cecola, Trustee  
Barrington Hills Village Hall  
112 Algonquin Road  
Barrington Hills, IL 60010

**RE: Petition for Removal of a Member of the Zoning Board of Appeals**

**Dear Gentlemen and Ladies:**

In accordance with Article 2 Section 4-1 of the Village Code of Barrington Hills I, and the other residents of the Village as signatories to this document, hereby submit a petition requesting the removal for cause of the Village President's appointee to the Zoning Board of Appeals (ZBA), Mr. Jan Goss.

Secion 2-4-2 of the Village code specifically provides that the Zoning Board of Appeals is vested with the following jurisdiction and authority:

- (A) To hear and decide appeals from and review any order, requirement, decision or determination made by the enforcing officer under the zoning regulations of this code.
- (B) To hear and pass upon applications for variations from the terms provided in the zoning regulations of this code in the manner prescribed by, and subject to, the standards established therein.
- (C) To hear all applications for special uses and amendments to the zoning regulations of this code in the manner prescribed by, and subject to, the standards established therein, and report said findings and recommendations to the board of trustees.
- (D) To hear and decide all matters referred to it or upon which it is required to pass under the zoning regulations of this code as prescribed by statute. (Ord. 63-1, 4-1-1963)
- (E) To adopt rules as determined by the board, not inconsistent with this code, which are reasonable and necessary for the implementation of any provision of the zoning regulations of this code. (Ord. 91-13, 3-25-1991)

- (F) To prepare and submit to the board of trustees a report and recommendation regarding each petition for disconnection of territory from the village, following public hearing and consideration of testimony and evidence. (Ord. 91-18, 6-24-1991)
- (G) To the extent provided in [title 4](#) of this code, to hear and decide appeals from and review orders, requirements, decisions or determinations made by the village building and zoning enforcement officer under the building regulations set forth in [title 4](#) of this code. (Ord. 92-14, 8-24-1992)

Part of the basis of our Village government is the premise that the composition of the Village Zoning Board of Appeals, as well as the Board of Trustees (all other Village boards and commissions) be such that no member can or will be predisposed to recommending or taking any legislative actions, or otherwise discharging their legally prescribed authority under the Village code, prior to hearing and evaluating all relevant and factual information pertaining to the issues.

At the June 20, 2016 regularly scheduled ZBA public meeting Mr. Goss went on a verbal tirade and diatribe for over 5 minutes castigating and denouncing all parties in the Barrington Hills community associated in any way with equestrian activities or opposing viewpoints to that of Mr. Goss, and categorically labeled those people collectively as "Radical Jihadist Equestrians". The term "Jihadist (group)" is used synonymously and is well understood today in virtually every sector of the globe to describe an al-Qaeda, ISIS (ISIL) or other similar radical Islamic terrorist group – a global group that has redefined the nature of conflicts in the 21<sup>st</sup> century. Mr. Goss's slanderous remarks denigrated the residents of this Village who have opposing viewpoints to those of Mr. Goss, as well as those of the Islamic faith. Expression of opposing viewpoints in our community, as a part of the United States, is not terrorism, but rather it is and expression of democracy. A transcript of Mr. Goss's statement is attached.

Through such actions, Mr. Goss has demonstrated that he lacks the ability of performing the responsibilities as a ZBA juror, which is to be fair, just, impartial, uncompromising and non-prejudicial in ones actions either now, or in the future, when discharging their administrative responsibilities in this appointed position. This was not the first of such prejudicial diatribe outbursts of Mr. Goss at a Village public meeting but without question it was the most reckless. As a result of such behavior he has repeatedly made clear that he is incapable of conducting himself in the professional and impartial and non-prejudicial manner required of one in such an appointed position by the Village President.

I, and the signatories of this petition. therefore proffer to the Village President and Village Board of Trustees that Mr. Goss' ill temperament, outlandish behavior, inflammatory rhetoric, and biased and predetermined points of view are wholly

incompatible with the demeanor and objectivity required of any person appointed to serve as a juror on the Zoning Board of Appeals.

Section 2-4-1 of the Village code specifically states, "The president of the village board and the board of trustees shall have the power to remove any member of said board for cause and after public hearing". Accordingly, I, and the signatories of this petition, call upon the Village Board of Trustees to exercise such authority and immediately relieve Mr. Goss of his position.

This petition has been signed by \_\_\_\_\_ residents from the Village of Barrington Hills who were in attendance at the ZBA meeting, have listened to the Village recording of Mr. Goss' statements, or viewed the transcript of Mr. Goss' speech.

Respectfully submitted by,

I. Chet Perry

Jan Goss Transcript

Discussion of Commercial Horse Boarding Text

ZBA Meeting - June, 2016

<https://soundcloud.com/vbhil/zba-062016-4-discussioncommercialhorseboardingzoningtext>

The time indexes are as on the soundcloud recording.

Floor passed to Jan Goss from Chairman Wolfgram

07:22 Mr. Chairman, I know how I feel, and I hope we will revisit this issue that has been, as alluded to, a mess for a dozen – certain 13 years or more. That caused profound division in our community and I think there was a problem before, two powerful and good citizens of our village started do have a disagreement.

07:46 There was a problem our words that we had before the disagreement because it didn't really ... uh ... there were operations that were not in compliance with our ordinance as they used to be before the two importance citizens (drafters comment: so other citizens are not "important"?) ... (snicker)... got into a dispute. So there was a need for some corrective action. And then it has taken place in a very contentious environment over a dozen years.

08:16 And the last thing I would say is that the final solution was a terrible solution that flew in the face of many citizens. And it passed because there was a ... the older regime had an ax to grind and it ground a very well. Many of us who went to the hearings over the period of years thought there was a great unfairness and are still unhappy. And this is a great opportunity to fix a wrong because in my view that ordinance that was passed was a terrible terrible wrong. And it not so .... The wrong is only a little bit about the provisions.. There are several provisions that I had reservations about. But the big wrong was the way it was done. And the fact.. the fact is that the intervenors came in and they pleaded their case to prevent the village whose leadership wanted to settle the lawsuit and they did here.... Study this carefully ... I didn't know about it.. The intervenors then said how ... uh.... it ... How come the village wasn't representing them and I guess those 12 might not have been represented ... (unintelligible)...

09:19 But the judge said ... a little differently than was presented here tonight ... The judge said "you know I am not dismissing this with prejudice. Because if you were to go into the background of how this happened and show the.... questionable things .... The 'skulldugery' I'll call it... Or the Chicago style politics ... As I might call it... And others would.... If you look at that ... If you beat up on the other side with those .... You might have a case and I have got to consider it."

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10:12 Yes there is a need to revisit this ... there is a crying need. There has been ..... something that looks and smells like a crime and I guess I'm supposed to use the word 'alleged' and I don't want to go into it... I don't want to litigate that ... I want to just fix what's wrong and the only way ... and the easiest way now to .. With the least amount of diversion is for us on this board to rewrite an ordinance that can prove to the village that we do like horse boarding. That we even like some commercial

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10:55 I'm sorry ... I didn't mean to be this excited. I really consider myself a friend of horses. I really consider myself a friend of the equestrian community. But I am not going to be bullied by them... And I feel like I have been bullied... And this community has been bullied - by only a handful. Most of the people who think that we are .. have been unfair have been convinced by radical jihadist equestrians. (Laughter by the ZBA board and Mr. Goss) ... I think it's a good phrase, don't you? Radical jihadist equestrians into believe that that the village is against them. And it's not true. (Wolfgram references Trump) They never were ... They never were against them. (... unintelligible..)

Wolfgram: Tone it down a little

Goss: .... I will...

11:36 A Very very few people in this community are not pro equestrian. Extremely ... There probably are some ... And there probably some that don't want even want to smell of horse manure. I like the smell of horse manure. And I don't mind ... of taking ... a ... Horses don't bother me. I don't even mind polo field. I don't mind Mr. LeCompte's place. I live 1/3 mile from Barry LeCompte's place. It doesn't bother me one iota. I don't like the way this ordinance was passed to favor one party with a lot of very big hanky panky. The hank.... An the old people who passed it .... The ancient regime ... some of them sitting out there (pointing to the audience) .... if they would admit that they were ... If they said that we were trying to fix a problem and we don't know if there's an easier way ... And yeah I guess it wasn't the best way to do it... But no! ... Instead of saying this wasn't the best way to do it, they said "hey we're right (... unintelligible..) You just ... They just do this to us". And I'm not going to have this done to us.

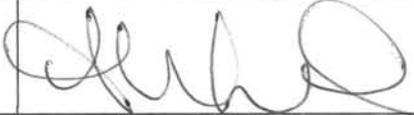
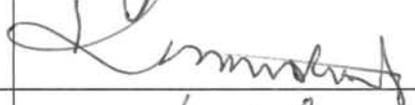
Wolfgram: Jan that's enough

Goss:

12:27 I think I will go a little further. It's anti rule of law. Its anti democracy the way they did it and I ... That's why I am angry .... I care much less about the actual ordinance than the way was done. It was really seedy and disgusting and Chicago politics and I don't want that in my village!

...I'm done. 12:48.

Signatory to the Petition dated June 27, 2016 to the Village of Barrington Hills, Board of Trustees to remove for cause Mr. Jan Goss from the Zoning Board of Appeals.

NAME	ADDRESS	SIGNATURE
Martha Komochi	362 Bateman Rd	
Austynne Newberg	362 Bateman Rd	
Damian Malagon	362 Bateman Rd	Damian Malagon
Ascena Moreno	362 Bateman Rd	<del>ascena Moreno</del>
Aria Albertelli	362 Bateman Rd	Aria Albertelli
Christy Traub	2 Far Hills Rd.	
Kelly Rauskat	362 Bateman Rd.	
Tomasz Helerowski	89 Meadow Hill Rd	T. Helerowski
Susan Helerowski	89 Meadow Hill	
Roma Hameed	362 Bateman Rd	Roma Hameed
Madelaine Vines	67 Windrush Ln	Madelaine Vines
Amy Robinson	1 Deepwood Rd	
Kelly Helerowski	1 Meadow Hill	

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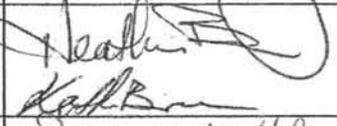
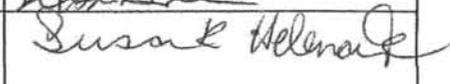
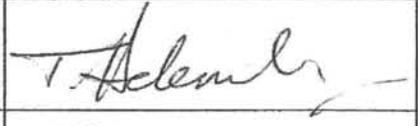
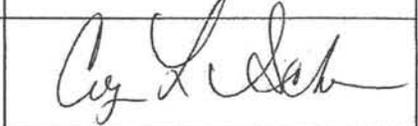
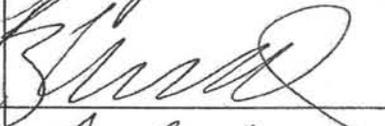
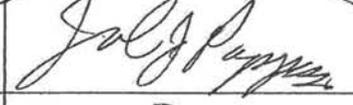
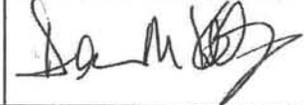
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Heather Bowen Keith Bowen	104 W. County line Rd Barrington Hills, IL 60010	
Susan Helenawski	89 Meadow Hill Rd	
Tomasz Helenawski	89 Meadow Hill 60016	
Penelope Goldsberry	1008 N. Highland Ave Arlington Hts, 60004	
Char Christian	181 F Old Sutton Barrington Hills	
Cindy Schuman	8. Country OAKS LN BARRINGTON HILLS	
Ginger Greenwood	27 Ridge B.H.	
Paula Jacobson	177 D Durdee Rd	
Jessica Cholewicki	27 Ridge Rd	
Jul Pappas	23 W. COUNTY LINE	
Marianne Pappas	23 W. County line Rd.	
Jan M. Goss	1860 Durdee Rd	

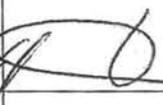
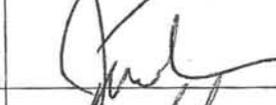
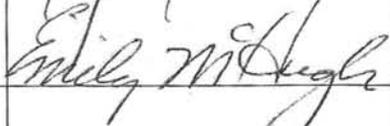
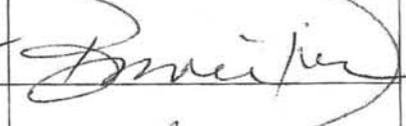
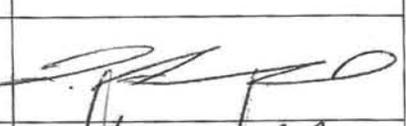
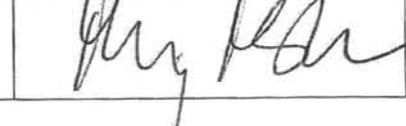
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Ken	239 B. H. W. W. W. W.	Ross Boque
<del>Ken</del>	181 FOLD SUTHER RD	KEN
Tedd Gagen	8 Roundstone	<del>Lufes</del>
Benbury Carstensen	257 Donelea	Benbury Carstensen
<del>Fundy</del>	3 EABLE RD	KURT ANDERSON
Marty Foley	21 Whaluku Ln	Marty Foley
Jeffrey Weinstein	63 Ridge Rd	<del>Jeffrey</del>
Patty Meroni	5 Bellwood Dr	PATTY MERONI
Charles J. Meroni Jr	5 Bellwood Dr	Charles F. Meroni Jr

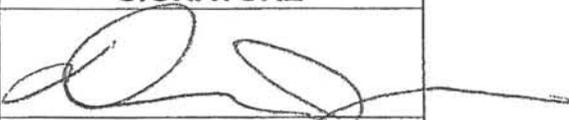
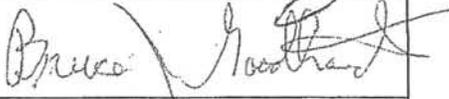
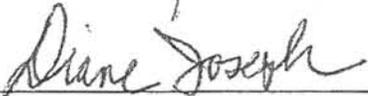
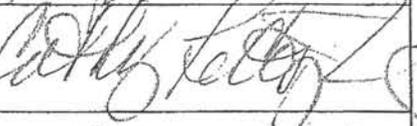
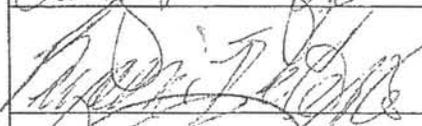
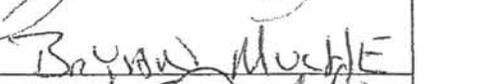
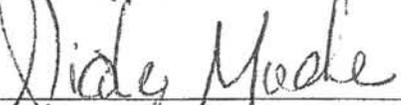
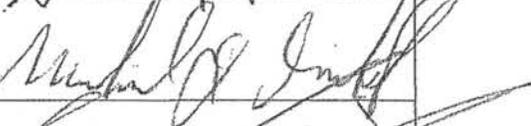
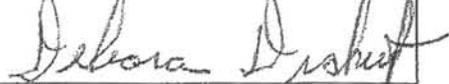
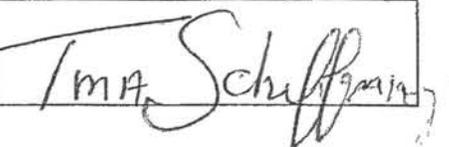
Signatory to the Petition dated June 27, 2016 to the Village of Barrington Hills, Board of Trustees to remove for cause Mr. Jan Goss from the Zoning Board of Appeals.

NAME	ADDRESS	SIGNATURE
RICHARD CLARK BENKENDORF III	7 BRAEBURN LN, BARRINGTON HILLS, IL	
LORELEI BENKENDORF	7 BRAEBURN LANE BARRINGTON HILLS IL	
LISA Schroeder	207 Spring Creek Barrington Hills, IL	Lisa Schroeder
Steven Schroeder	207 Spring Creek Barrington Hills, IL	
Carol Kersbaug	3 Braeburn Ln Barrington Hills, IL	
Clare Mantelma	63 Ridge Rd B. H. 60010	
Jeffrey Mantelma	63 Ridge Rd B.H. 60010	
Tara Johannsen	59 Ridge Rd Barrington, IL 60010	
John Johannsen	59 Ridge Rd Barrington, IL 60010	
John Rosene	208-A Braeburn Rd Barrington Hills, IL 60010	
Karen Rosene	208 A Braeburn Rd Barrington Hills IL	Karen Rosene
Jill Kiley	50 Braeburn Rd Barrington Hills IL	
Scott Kiley	50 Braeburn Rd Barrington Hills IL	

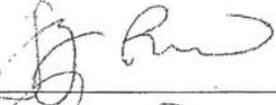
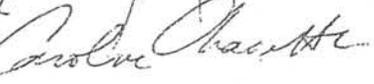
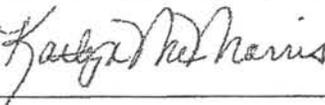
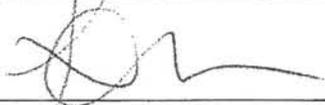
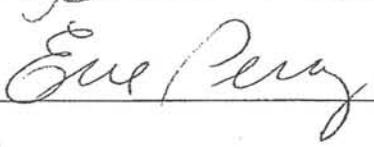
Signatory to the Petition dated June 27, 2016 to the Village of Barrington Hills, Board of Trustees to remove for cause Mr. Jan Goss from the Zoning Board of Appeals.

NAME	ADDRESS	SIGNATURE
LAURA KLEIN	10350 BURNHAM RD	
Holly Jann	7 Cross Timber Rd	
Randy JAVCH	7 Cross Timber Rd	
JIM NAUMANN	11241 HAEGERS BS	
MARY Naumann	11241 HAEGERS RD	
Emily McHugh	206 Bealwood	
Elaine M Ramesh Elaine M Ramesh	3 Ascot Lane	
BONNIE DUREA	1001 PUMTREE	
ROBERT DUREA	1001 PUMTREE	
CATHIE DUREA	1001 PUMTREE	
JOSPH ABBOWD	20 SURREY LN	
Laurin Abbey	20 SURREY LN	
MACIE MALINSKI	3205 SPRING CREEK RD 60210	

Signatory to the Petition dated June 27, 2016 to the Village of Barrington Hills, Board of Trustees to remove for cause Mr. Jan Goss from the Zoning Board of Appeals.

NAME	ADDRESS	SIGNATURE
DIANA JOSEPH	7 HICKORY LANE B. HILLS, FL	
BRUCE GOODHART	" "	
DIANE JOSEPH	" "	
76 HILLS	35 Postville	
Cathy Kellogg	350 Balsman Rd	
	" " "	
	159 Helm RD BARRINGTON HILLS, IL	
Katie Rose Tseronis	159 Helm Rd Barrington Hills	
Nicole Muche	159 Helm Rd B. Hills	
Michael Drake	157D HELM RD B. Hills	
Len Literni	157D Helm Rd Barrington Hills	
DEB Drake	157D HELM RD BARRINGTON HILLS	
TINA Schiffmayer	47 Brincker Rd Barrington Hills	

Signatory to the Petition dated June 27, 2016 to the Village of Barrington Hills, Board of Trustees to remove for cause Mr. Jan Goss from the Zoning Board of Appeals.

NAME	ADDRESS	SIGNATURE
Jennifer Rousseau	127 Buckley Rd. Barrington Hills IL 60010	
Nancy Mesic	67 Windrush Ln. Barrington Hills	
Caroline Charette	18 Barrington Hills Rd Barrington Hills, IL 60010	
Madeline Vines	67 Windrush Lane Barrington Hills, IL 60010	Madeline Vines
Katlyn McMorris	76 Meadow Hill Rd Barrington Hills, IL 60010	
Elizabeth Foos	90 Meadow Hill rd Barrington Hills, IL 60010	
Lauren Foos	90 meadow hill rd Barrington Hills, IL 60010	
Eve Perry	3 Porter School rd Barrington Hills, IL	

Signatory to the Petition dated June 27, 2016 to the Village of Barrington Hills, Board of Trustees to remove for cause Mr. Jan Goss from the Zoning Board of Appeals.

NAME	ADDRESS	SIGNATURE
Robert G. Abboud <i>R. G. Abboud</i>	13 Country Oaks Lane BH	<i>R. G. Abboud</i>
Patricia A. Abboud	13 Country Oaks Lane BH	<i>Patricia Abboud</i>
Joan G. Abboud <i>A. Robert Abboud</i>	209 Braeburn Rd. BH	<i>Joan H. Abboud</i>
<i>A. Robert Abboud</i>	209 Braeburn Rd BH	<i>A. Robert Abboud</i>
RUTH JACCORD	10697 BRAEBURN RD	<i>Ruth Jaccord</i>
<i>GLASS JACCORD</i>	10697 BRAEBURN ROAD	<i>GLASS JACCORD</i>

Signatory to the Petition dated June 27, 2016 to the Village of Barrington Hills, Board of Trustees to remove for cause Mr. Jan Goss from the Zoning Board of Appeals.

NAME	ADDRESS	SIGNATURE
Judith K Freeman JUDITH K FREEMAN	87 Otis Road Barrington Hills IL	Judith K Freeman
Alexis Freeman Alexis Freeman	87 Otis Road Barrington Hills IL	Alexis Freeman
Richard R. Perales	87 Otis Rd Barrington Hill	Richard R. Perales
John Mitchell Erlan JOHN MITCHELL ERLAN	63 Hillside Daley Barrington Hill	John Mitchell Erlan
Terrence J. Freeman	87 OTIS RD Barrington Hill IL	Terrence J. Freeman
KAREN SELMAN Karen Selman	116 Brinker Rd. Barrington Hills, IL	Karen Selman
Leslie A. Coolidge	375 Old Huron Rd Barrington Hills IL	Leslie Anne Coolidge
Jackie Knoop	32 Otis Rd. Barrington Hills IL	Jackie Knoop
STEVE KNOOP	32 OTIS RD BARRINGTON HILLS, IL	Steve Knoop

Ann Malinski	3205 Spring Creek Rd	Ann Mall
S. Balteusperer Gisela Balteusperger	11311 Haeger's Bend	S. Balteusperer
ELIZABETH SOYER	10415 Church Rd	Elizabeth Soyer
Tom Shimpf	10415 Church Rd	Tom Shimpf
Tracy Faulke	9 Raintree Place	Tracy Faulke
John Faulkes	9 Raintree Place	John Faulkes



**THE PAPPAS LAW GROUP LLC**

President McLaughlin and Board of Trustees  
Village of Barrington Hills  
July 19, 2016  
Page 1

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23 WEST COUNTY LINE ROAD  
BARRINGTON HILLS, IL 60010  
PHONE (847)772-5363  
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IN REPLY REFER  
TO FILE NO.

July 20, 2016

**PETITION OF JOHN J. PAPPAS, SR., PURSUANT  
TO ARTICLE 2, SECTION 4-1 OF THE VILLAGE  
CODE OF BARRINGTON HILLS, REQUESTING THE  
REMOVAL FOR CAUSE OF THE VILLAGE PRESIDENT'S  
APPOINTEE TO THE ZONING BOARD OF APPEALS  
(HEREINAFTER "ZBA"), TO WIT: MR. JAN GOSS**

TO: Mr. Martin J. McLaughlin, Village President  
Ms. Colleen Konicek Hannigan, President Pro-Tem  
Mr. Fritz Gohl, Trustee  
Mr. Michael Harrington, Trustee  
Mr. Bryan C. Croll, Trustee  
Ms. Michelle Nagy Maison, Trustee  
Mr. Brian D. Cecola, Trustee  
Barrington Hills Village Hall  
112 Algonquin Road  
Barrington Hills, IL 60010

1. On June 20, 2016 at the regularly scheduled Zoning Board of Appeals meeting, Mr. Goss, stated **as truth** the following regarding the Memorandum Opinion and Order of May 3, 2016 by Judge David B. Atkins in the case of James J. Drury, et al. v. Village of Barrington Hills:

"The court order dismissing Drury's Complaint was different then what was stated in public comments about that ruling (by John J. Pappas, Sr.). Goss stated as fact that the judge's decision to dismiss without prejudice was because the judge stated **"if you were to go into the background of how this happened and show the....**

President McLaughlin and Board of Trustees  
Village of Barrington Hills  
July 19, 2016  
Page 2

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**questionable things.... The ‘skulldugery’ I’ll call it... Or the Chicago style politics... As I might call it... And others would.... If you look at that... If you beat up on the other side with those.... You might have a case and I have got to consider it.”** (Emphasis supplied)

2. This public statement by Mr. Goss, was totally false and was calculated to mislead the other members of the Zoning Board of Appeals, and all residents of the Village of Barrington Hills.

3. That attached hereto as Exhibit “A” to this Petition is the Memorandum Opinion and order of Judge David B. Atkins of May 3, 2016. In Judge Atkins’ Memorandum Opinion, he never stated that “if you go into the background of how this thing happened there were questionable things, skulldugery; Chicago style politics. If you beat up on the other side you might have a case.” In fact, Judge Atkins, when he dismissed the Drury, et al. Complaint without prejudice, he stated as follows:

“The Complaint does note that the commercial boarding operations will contaminate ground water. Such an allegation is not taken lightly given the potential that contamination may have far-reaching affects on both the village and neighboring communities. **The Complaint, however, fails to explain what type of contamination is occurring, or why the text amendment is a unique contributor to the contamination. While such a claim is one that warrants serious examination, without additional explanatory factual allegations, it cannot be determine whether toxic contamination of ground water is occurring, an action that necessitates immediate attention, or if the current circumstances are akin to what occurs in natural environments in which animals exists”.** (Emphasis supplied.)

4. Judge Atkins’ order gave Drury, et al. leave to file an Amended Complaint which has been done. **Significantly, there are no factual allegations in the Amended Complaint raising the issue of ground water contamination by commercial boarding operations.**

5. Mr. Goss’s appointment by President McLaughlin to the Zoning Board of Appeals did not give Goss a license to lie, misrepresent, make false statements of fact or offensive, inflammatory, defamatory statements.

6. As an additional basis for the removal of Mr. Goss from the board of the ZBA is the fact

President McLaughlin and Board of Trustees  
Village of Barrington Hills  
July 19, 2016  
Page 3

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that Mr. Goss, at this June 20, 2016, on two occasions described Barrington Hills Equestrians who favor boarding of horses, as **RADICAL JIHADIST EQUESTRIANS**.

7. Although Mr. Goss's defamatory comments can be made by him with legislative immunity, they should not be spoken or otherwise utilized to describe numerous residents of the Village of Barrington Hills.

8. Mr. Goss's expressed comments demonstrate that what he is bringing to the table regarding the Drury Text Amendment is a fixed bias against boarding; instead of keeping an open mind and participating in hearings where the ideas of any village resident would be proffered, weighed, and considered before any decision regarding Mr. Drury's Text Amendment will be decided.

9. Attached hereto as Exhibit "B" is a transcript of the comments made by Mr. Goss at the June 20, 2016 ZBA meeting.

WHEREFORE, JOHN J. PAPPAS, SR., respectfully requests that President Mc Laughlin, and this Board of Trustees, have a public hearing regarding these petitions for removal of Mr. Goss as a member of the Barrington Hills ZBA, and remove Mr. Goss from said board for cause.

  
\_\_\_\_\_  
JOHN J. PAPPAS, SR.

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, )  
 )  
Plaintiff, )  
v. )  
 )  
VILLAGE OF BARRINGTON HILLS, an )  
Illinois Municipal Corporation, )  
 )  
Defendants. )

No. 15 CH 03461

Calendar 16

Judge David B. Atkins

JUDGE DAVID B. ATKINS

MAY 03 2016

MEMORANDUM OPINION AND ORDER

Circuit Court-1879

THIS CAUSE COMING ON TO BE HEARD on defendants' Motions to Dismiss, pursuant to 735 ILCS 5/2-615, the court having considered the briefs submitted, and the court being fully advised in the premises,

IT IS HEREBY ORDERED that defendants' motion is granted.

Background

This case arises from a dispute about a text amendment to the Village of Barrington Hills ("Village") Zoning Ordinance. On February 23, 2015, the the Barrington Hills Village Board passed the text amendment, which classified boarding and training horses on private property as a permissible use of Village land for agricultural purposes. (Compl. Ex. A) Plaintiffs James J. Drury III, Jack E. Reich, and James O'Donnell are property owners in the Village who opposed adoption of the text amendment. (Compl. ¶¶ 9-17) On February 27, 2015, Plaintiffs filed a three-count complaint against Defendant Village, alleging procedural and substantive due process claims in the adoption of the text amendment. (Compl. ¶¶ 47, 74, 151) On June 29, 2015, Plaintiffs were granted leave to voluntarily dismiss counts I and II of the complaint. Count III, alleging that the text amendment is an invalid exercise of the Village's police power, is the only remaining claim in Plaintiffs' complaint. (Compl. ¶ 75) On December 10, 2015, the court granted motions for nine parties to intervene in this action as Defendants due to their unrepresented interest in the litigation. Parties listed in this order included Barrington Hills Farms ("Barrington Hills") and Judith K. Freeman.

Defendants Barrington Hills and Judith K. Freeman filed motions to dismiss Plaintiffs' complaint pursuant to 735 ILCS § 5/2-615 on January 15, 2016. The remaining seven Defendant Interveners filed a motion to dismiss Plaintiffs' complaint pursuant to 735 ILCS § 5/2-615 on

EXHIBIT "A"

January 26, 2016. The matter was fully briefed and the court heard now rules, waiving oral argument.

### Legal Standard

Illinois is a fact-pleading jurisdiction. *Weiss v. Waterhouse Securities, Inc.*, 208 Ill. 2d 439, 451 (2004). A motion to strike or dismiss pursuant to 735 ILCS 5/2-615 challenges only the legal sufficiency of a pleading. *Jarvis v. South Oak Dodge, Inc.*, 201 Ill. 2d 81, 85 (2002). The central inquiry is whether the allegations, when considered in the light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief may be granted. *Jarvis*, 201 Ill. 2d at 86. The court may only consider the allegations of the pleading and the attached exhibits. *Haddick v. Valor Ins.*, 198 Ill. 2d 409, 413-14 (2001). A pleading should not be dismissed unless it appears there is no set of provable facts that would entitle plaintiff to recovery. *Id.*

In reviewing a motion pursuant to Section 2-615, the trial court is restricted to the "four corners of the complaint." *Baird & Warner Residential Sales, Inc. v. Mazzone*, 384 Ill. App. 3d 586, 591 (1st Dist. 2008). The court does not resolve credibility issues or questions of fact, because a Section 2-615 motion admits the truth of the factual allegations in the complaint. *Matson v. Dep't of Human Rights*, 322 Ill. App. 3d 932, 937 (2d Dist. 2001). While the plaintiff need not set forth evidence in the complaint, the plaintiff must allege facts sufficient to bring a claim within a legally recognized cause of action. *Weiss v. Waterhouse Securities, Inc.*, 208 Ill. 2d 439, 451 (2004); *see also, Anderson v. Vanden Dorpel*, 172 Ill. 2d 399, 408 (1996). Where there is a conflict between an attached exhibit and the allegations of a pleading, the exhibits control. *Bajwa v. Metro. Life Ins. Co.*, 208 Ill. 2d 414, 431-432 (2004).

### Discussion

There are three separate motions to dismiss presently before the court. Defendant Barrington Hills' motion argues that Plaintiffs' complaint fails to plead facts sufficient to establish that enactment of the text amendment bears no rational relationship to a legitimate government purpose. In support of this argument, Barrington Hills and Judith Freeman both argue that the complaint is comprised of conclusory statements regarding the Village's procedures in enactment of the text amendment, rather than facts supporting a claim that the ordinance is an invalid exercise of police power. Remaining Defendant Intervenors also argue that the complaint insufficiently states a claim for a constitutional violation of substantive due process.

Defendant Intervenors and Barrington Hills both rely upon the standard set forth in *Napleton v. Village of Hinsdale* to argue that the the complaint insufficiently states a claim for a constitutional violation of substantive due process. Plaintiffs argue that reliance upon *Napleton* is misplaced. In *Napleton*, Plaintiff, a property owner in Hinsdale, brought a facial and substantive due process challenge to amendments made by Defendant to its zoning code. *Napleton v. Vill. of Hinsdale*, 229 Ill. 2d 296, 300 (2008). The amendments in controversy were enacted to "remove depository and nondepository credit institutions as permitted uses" in certain zoning districts, and instead, "made them special uses for these districts." *Id.* at 302. The

complaint alleged that the amendments caused “immediate and irreparable economic harm” by diminishing Plaintiff’s property value by at least hundreds of thousands of dollars. *Id.* at 303. The *Napleton* court considered a motion to dismiss by the Defendant and dismissed Plaintiff’s complaint on the basis that it failed to sufficiently plead facts, instead alleging conclusory statements. *Id.* at 320. The court further stated that Defendant had taken the appropriate procedural steps to enact the amendments, and that the amendments bore a rational relationship to a legitimate government purpose. *Id.* at 321.

Plaintiffs argue that this case is distinguishable from the holding in *Napleton* on three bases: there is no evidence that the Village conducted studies or engaged in meaningful deliberation prior to adoption of the text amendment, the text amendment bears no nexus to the public welfare but was instead adopted to benefit an individual, and there are sufficient allegations in the complaint to demonstrate that the text amendment is not entitled to a presumption of validity. Barrington Hills, however, argues that the complaint purports conclusions, and does not allege facts sufficient to demonstrate that the text amendment bears a rational relationship to a legitimate government purpose, rendering it an impermissible exercise of police power.

The standard enumerated in Illinois is that an ordinance be examined under a rational basis test. *Id.* at 307. In *Napleton*, the court found the rational basis test an appropriate level of scrutiny for a zoning ordinance, as no fundamental right or classification is implicated in this examination. *Id.* To demonstrate that an ordinance is an invalid exercise of police power and thus a violation of a plaintiff’s substantive due process rights, the plaintiff has the burden of demonstrating that the ordinance bears no rational relationship to the public health, safety, morals, or welfare. *Aurora v. Burns*, 319 Ill. 84, 93 (1925). Legislation has the presumption of validity, and may interfere with private property rights if such interference is in pursuit of the preservation of public health, safety, morals, or welfare. *Dunlap v. Woodstock*, 405 Ill. 410, 414 (1950). Because this is a fact pleading jurisdiction, Plaintiffs must present facts sufficient to establish that the text amendment does not bear a rational relationship to the public good. *Id.* Alternatively, Plaintiffs may plead this claim by enumerating sufficient facts to establish that the amendment is unreasonable and arbitrary. *Id.*

Plaintiffs argue that the complaint cites several concerns that indicate there was an undue infringement of property rights. One such concern is the allegation that Defendants will have 45 or more horses and a parking lot that will dwarf Defendants’ home. This fact is presented without explanation as to why such actions cause damage to Plaintiffs. The court sees no reasonable inference as to how this impacts Plaintiff’s due process rights or what the relevance of this allegation is regarding the validity of the Village’s exercise of its police power. The complaint also alleges that Plaintiffs’ property is experiencing “deleterious impacts” from adjacent neighbors who are engaging in horse boarding, but it fails to explain these alleged impacts. The complaint states that Plaintiffs are denied the right to the peaceful and quiet enjoyment of their properties, but does not explain how this has occurred. In order to allege there has been an infringement of private property rights or depreciation of property value, Plaintiffs must provide sufficient factual allegations to demonstrate the specifics of the alleged infringement. The actions of Plaintiffs’ neighbors, who are allegedly engaging in commercial horse boarding, are not detailed. Notably, the complaint also fails to specify the distance from

Plaintiff's home to the commercial horse boarding. The Village of Barrington Hills is a sprawling community in which residents often have large tracts of land. It is unclear from the complaint whether any horses, or activities related to the commercial horse boarding, are ever near Plaintiffs' property. The complaint's statements that there will be excess traffic, horse trailers, and manure trucks as a result of the horse boarding, without any further explanation, are conclusory. The complaint as it stands does not present sufficient facts to establish that an undue infringement of Plaintiffs' property rights has occurred as a result of this text amendment.

Defendant Intervenor's argue that the complaint fails to plead facts sufficient to establish that the text amendment has a rational relationship to a legitimate government purpose. Plaintiffs disagree, and argue there are facts alleged that are sufficient to demonstrate that the text amendment was adopted to benefit an individual, rather than to promote the public welfare. Plaintiffs cite several facts in which the details of the process by which the amendment was adopted is outlined in an attempt to demonstrate the amendment was intended to benefit a single individual. These factual allegations are accepted as true, but Plaintiffs fail to present factual allegations that the text amendment was *not* intended to benefit a legitimate government purpose.

The complaint does note that the commercial horse boarding operations will contaminate groundwater. Such an allegation is not taken lightly given the potential that contamination may have far-reaching effects on both the Village and neighboring communities. The complaint, however, fails to explain what type of contamination is occurring, or why the text amendment is a unique contributor to the contamination. While such a claim is one that warrants serious examination, without additional explanatory factual allegations, it cannot be determined whether toxic contamination of groundwater is occurring, an action that necessitates immediate attention, or if the current circumstances are akin to what occurs in natural environments in which animals exist. The complaint fails to adequately present any other facts to support allegations that the text amendment lacks a rational relationship to a legitimate government purpose, or that it is an unreasonable and arbitrary extension of police power.

For all of the foregoing reasons, count III of Plaintiff's complaint must be dismissed. Although the court finds that Plaintiffs have not pleaded sufficient facts to maintain a cause of action, it is not apparent that no set of facts can be proven in this matter that would entitle Plaintiff to recover on its claims. Therefore this action should not be dismissed with prejudice. *Jackson v. Michael Reese Hosp. & Med. Ctr.*, 294 Ill.App.3d. 1, 18 (1997).

WHEREFORE, defendant Intervenor's motions to dismiss are granted in that the complaint is dismissed without prejudice. The motion hearing previously scheduled for May 4, 2016 is hereby stricken. Plaintiff is granted until May 25, 2016 to file its amended complaint consistent with this order. Defendants shall have until June 22, 2016 to answer or otherwise plead. This matter is continued to June 28, 2016 at 10:00 AM for a case management conference in courtroom 2102.

JUDGE DAVID B. ATKINS  
ENTERED:

MAY 03 2016

Judge David B. Atkins  
Circuit Court-1879

The Court.

The time indexes are as on the soundcloud recording.

Floor passed to Jan Goss from Chairman Wolfgram

07:22 Mr. Chairman, I know how I feel, and I hope we will revisit this issue that has been, as alluded to, a mess for a dozen – certain 13 years or more. That caused profound division in our community and I think there was a problem before, two powerful and good citizens of our village started do have a disagreement.

07:46 There was a problem our words that we had before the disagreement because it didn't really ... uh ... there were operations that were not in compliance with our ordinance as they used to be before the two importance citizens (drafters comment: so other citizens are not "important?") ... (snicker)... got into a dispute. So there was a need for some corrective action. And then it has taken place in a very contentious environment over a dozen years.

08:16 And the last thing I would say is that the final solution was a terrible solution that flew in the face of many citizens. And it passed because there was a ... the older regime had an ax to grind and it ground a very well. Many of us who went to the hearings over the period of years thought there was a great unfairness and are still unhappy. And this is a great opportunity to fix a wrong because in my view that ordinance that was passed was a terrible terrible wrong. And it not so .... The wrong is only a little bit about the provisions.. There are several provisions that I had reservations about. But the big wrong was the way it was done. And the fact.. the fact is that the intervenors came in and they pleaded their case to prevent the village whose leadership wanted to settle the lawsuit and they did here.... Study this carefully ... I didn't know about it.. The intervenors then said how ... uh.... it ... How come the village wasn't representing them and I guess those 12 might not have been represented ... (unintelligible)...

09:19 But the judge said ... a little differently than was presented here tonight ... The judge said "you know I am not dismissing this with prejudice. Because if you were to go into the background of how this happened and show the.... questionable things .... The 'skulldugery' I'll call it... Or the Chicago style politics ... As I might call it... And others would.... If you look at that ... If you beat up on the other side with those .... You might have a case and I have got to consider it."

09:45 Well, in fact .... the nice people (drafters comment: as opposed to the 'not nice' people?) who presented that case against uh..... who wanted it settled and the village board didn't want to go into all that because they wanted to have a healing process started. They have consistently tried to heal this village. And certain extreme radical equestrians had tried to exacerbate .... and for their own gain .... shove this down the village's throat.

10:12 Yes there is a need to revisit this ... there is a crying need. There has been ..... something that looks and smells like a crime and I guess I'm supposed to use the word 'alleged' and I don't want to go into it... I don't want to litigate that ... I want to just fix what's wrong and the only way ... and the easiest way now to .. With the least amount of diversion is for us on this board to rewrite an ordinance that can prove to the village that we do like horse boarding. That we even like some commercial

The time indexes are as on the soundcloud recording.

activities. But we're not going to destroy .... We're not going to destroy the protections of the Home Owners Occupation Ordinance. And we are not going to have an unlimited number of horses. And we are not going to let an equestrian do anything he damn well want because he's an equestrian, he's god and the rest of us don't exist.

10:55 I'm sorry ... I didn't mean to be this excited. I really consider myself a friend of horses. I really consider myself a friend of the equestrian community. But I am not going to be bullied by them... And I feel like I have been bullied... And this community has been bullied - by only a handful. Most of the people who think that we are .. have been unfair have been convinced by radical jihadist equestrians. (Laughter by the ZBA board and Mr. Goss) ... I think it's a good phrase, don't you? Radical jihadist equestrians into believe that that that the village is against them. And it's not true. (Wolfgram references Trump) They never were ... They never were against them. (... unintelligible..)

Wolfgram: Tone it down a little

Goss: .... I will...

11:36 A Very very few people in this community are not pro equestrian. Extremely ... There probably are some ... And there probably some that don't want even want to smell of horse manure. I like the smell of horse manure. And I don't mind ... of taking ... a ... Horses don't bother me. I don't even mind polo field. I don't mind Mr. LeCompte's place. I live 1/3 mile from Barry LeCompte's place. It doesn't bother me one iota. I don't like the way this ordinance was passed to favor one party with a lot of very big hanky panky. The hank.... An the old people who passed it .... The ancient regime ... some of them sitting out there (pointing to the audience) .... if they would admit that they were ... If they said that we were trying to fix a problem and we don't know if there's an easier way ... And yeah I guess it wasn't the best way to do it... But no! ... Instead of saying this wasn't the best way to do it, they said "hey we're right (... unintelligible..) You just ... They just do this to us". And I'm not going to have this done to us.

Wolfgram: Jan that's enough

Goss:

12:27 I think I will go a little further. It's anti rule of law. Its anti democracy the way they did it and I ... That's why I am angry .... I care much less about the actual ordinance than the way was done. It was really seedy and disgusting and Chicago politics and I don't want that in my village!

....I'm done. 12:48.