

July 18, 2011

TO: Judith Freeman, Chairperson
Zoning Board of Appeals
Village of Barrington Hills
112 Algonquin Road
Barrington Hills, Illinois 60010

Dear Judy:

We are writing to you to extend our congratulations to the ZBA and the Village of Barrington Hills. As you and current/former ZBA members may already know, the ZBA and our Village, having invested hundreds of thousands of resident taxpayer dollars in legal expenses with Burke, Warren for defense in the legal proceedings filed by Berry LeCompte appealing the Village cease and desist order and ZBA's decision against him at both the Circuit Court and Appellate Court levels, prevailed again and recently won the case in the Illinois Appellate Court. We are sure you are feeling vindicated – finally. We would like to summarize briefly before providing a more complete statement.

On Thursday, June 30, 2011, three Illinois Appellate Court justices (Neville, Quinn, and Murphy) unanimously affirmed the decision of the ZBA (on behalf of our Village), and the decision of the Circuit Court, that the LeComptes' commercial boarding of horses is not a permitted use under the Village of Barrington Hills Zoning Ordinances and thus is illegal.

The ZBA and the Village will be pleased to know that the Appellate Court further affirmed:

1. The commercial horse boarding operation at Oakwood Farm is not agriculture.
2. A stable is defined as an accessory building in the Village's zoning code "subordinate to and serving a principal building or principal use." The LeComptes are not using their stable as an accessory building that is subordinate. 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 zoning code.
3. Several sections of the zoning code support the conclusion that its drafters did not intend the commercial boarding of horses to be a permitted use in an R-1 zoned district. In addition, section 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 or an accessory building..." "The record reveals that commercial boarding at Oakwood Farms caused a significant increase in traffic and noise in the neighborhood and resulted in complaints by the surrounding property owners." Commercial boarding of horses does not comport with the overall intent of the zoning code which is intended to

maintain the peace, quiet, and domestic tranquility within all residential neighborhoods in an R-1 zoned district.

4. The cases cited by the LeComptes do not support their position, and are found to be "distinguishable" from their case.
5. The LeComptes' claims that the ZBA's decision contained erroneous factual findings are not supported. The Appellate Court held that the ZBA's factual findings are deemed *prima facie* true and correct; that there was competent evidence supporting the ZBA's decision; and that its decision will not be disturbed on review.
6. The intent of the Village's zoning code must be considered in its entirety when determining compliance. Claiming overall compliance, in accordance with a single section or subsection, is not legally sufficient.

The ruling in this higher court, the Appellate Court of Illinois, takes precedence and is dispositive and binds the ZBA and Village to its Order; and the legal doctrines of collateral estoppel and judicial estoppel prevent rehearing by the ZBA of this issue.

We share in the satisfaction that the ZBA and the Village must be feeling having prevailed throughout this long, arduous and expensive legal proceeding, in order to defend its January 2008 decision to order the LeComptes to cease and desist their commercial horse boarding operation. Our families look forward to returning to the peaceful residential tranquility that characterized our neighborhood years ago, and trust that the substantial fines to be collected from the LeComptes for violating our zoning code laws will be put to good use within our community.

MORE SPECIFICALLY

On April 28, 2011 we filed an appeal of the letter dated March 15, 2011 which purported to be from Don Schuman (Schuman letter") and letter dated March 29, 2011 from George J. Lynch ("Lynch letter") regarding the incorrect application of the Home Occupation Ordinance and Village Zoning Code by Village Official(s) relating to Oakwood Farm. The March 15, 2011 letter was premised on an unprecedented interpretation of the Home Occupation Ordinance and commercial horse boarding operations at Oakwood Farm. This letter specifically referenced solely subsection (g) of Section 5-3-4(D)3 of the Village Zoning Code for its conclusion "it appears that the use of Oakwood Farm is a Home Occupation."

We were notified by Mr. Wambach that this appeal was scheduled for hearing before the ZBA on August 15, 2011.

On June 30, 2011 the Illinois Appellate Court ruled unanimously and issued an Opinion/Order in the case of *Benjamin B. LeCompte, et al. v. Zoning Board of Appeals For The Village of Barrington Hills, et al.*, Case No. 1-10-0423 which held the commercial horse boarding operation of the LeComptes at Oakwood Farm violates the zoning ordinances of the Village of Barrington Hills. The Illinois Appellate Court affirmed the Circuit Court's ruling

dated January 15, 2010 and ZBA decision dated November 4, 2008 that the LeComptes and their commercial horse boarding operation at Oakwood Farm are not in compliance with the Village Zoning Code. The Appellate Court Order is incorporated into this letter and attached hereto as Exhibit 1 and is binding on the Village of Barrington Hills and the ZBA which was a party in this appeal.

Relevant portions of the Appellate Court's Order are set forth below:

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 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.

(Ill. App. Ct. Order at 2, Ex. 1.)

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 (April 1, 1963).

(Order at 3.)

During the hearing, the LeComptes admitted that they were using their property for the commercial boarding of horses. . . .

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.

(Order at 4.)

At the conclusion of 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.

(Order at 5.)

The LeComptes have admitted that they were engaged in the commercial boarding of horses on their property.

(Order at 5-6.)

B. The Rules of Statutory or Ordinance Construction

...

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 (2009). When construing 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.'" *Cosmopolitan Nat. Bank v. Cook County*, 103 Ill. 2d 302, 313 (1984). The best indication of legislative intent is the statutory language, given its plain and ordinary meaning. *Lauer v. American Family Life*, 199 Ill. 2d 384, 388 (2002).

(Order at 7.)

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

Next, the LeComptes 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 February 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 April 1, 1963). Although the stable may be an 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.

(Order at 11-12.)

F. Viewed in its Entirety, the Zoning Code Supports the Zoning Board's Decision

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 enacted the Zoning Code, we must consider the Zoning Code in its entirety. *Orlak v. Loyola University Health System*, 228 Ill. 2d 1, 8 (2007), citing *Perry*, 224 Ill. 2d at 323.

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 (April 1, 1963).

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 district that is 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) (added June 26, 2006).

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 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.

(Order at 12-13.)

The Appellate Court's Order decided the issues in the pending appeal and ruled:

1. First, The zoning code must be considered in its entirety – overruling and voiding Schuman/Lynch letters and any other attempt to claim legality based on compliance with less than the entirety of the zoning code. In Section F (page 12) the Court states, “In order to determine the intent of the Village when it enacted the Zoning Code, we must consider the Code in its entirety. *Orlak v. Loyola University Health System*”. (See also Section B at p. 7). As discussed below the Court went on to demonstrate the violations of multiple sections of the Village's Zoning code. Schuman/Lynch erroneously relied on alleged compliance with just one subsection (g) – actually just one sentence – of the Home Occupation Ordinance.
2. Second, the LeComptes' commercial boarding operation is illegal. “We find that the commercial 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”).” (see “Order”, page 2) Continuing, “Although a stable may be an 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 Zoning Code.” (See Order page 12).
3. Third, the LeComptes' commercial boarding operation does not comply with multiple requirements of the Home Occupation Ordinance. In Section F (page 12) the Court stated, “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 2^{6th}, 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 district that is incidental and secondary to the principal use of such dwelling unit for the residential occupancy purposes.” 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.” In contrast with these requirements the Court stated, “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. (Order page 13).

4. Fourth, it upheld the legality and appropriateness of the Village Cease and Desist Order. In affirming the Circuit Court's decision in January 2010 to uphold this Zoning Board's denial in November 2008 of the LeComptes' cease and desist appeal, the Appellate Court upholds the legality and correctness of the Village's January 2008 cease and desist letter that the commercial horse boarding operations at Oakwood Farm are in violation of the Village Code.

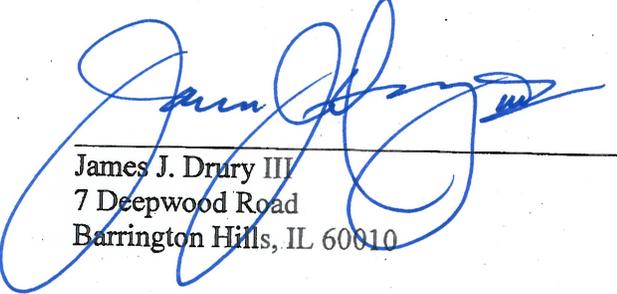
This ruling by the Illinois Appellate Court on June 30, 2011 is dispositive of our appeal filed on April 28, 2011. The ZBA and Village are bound by this Illinois Appellate Court Order. The legal doctrine of collateral estoppel precludes rehearing by the ZBA of an issue that has been resolved in a prior proceeding. *Taylor v. Peoples Gas Light & Coke Co.*, 275 Ill. App. 3d 655, 660 (1st Dist. 1995) (citing *In re Nau*, 153 Ill. 2d 406, 424 (1992); *Local No. 193, Int'l Brotherhood of Electrical Workers, AFL-CIO v. City of Springfield*, 211 Ill. App. 3d 166 (1991)). Based on the facts, arguments and legal authority presented by the Village in the LeCompte appeal and the Appellate Court ruling, the Village is now collaterally estopped from relying on the March 15, 2011 letter (or March 29, 2011 letter) that Oakwood Farm "appears" to be a home occupation.

Furthermore, the legal doctrine of judicial estoppel also prevents rehearing by the ZBA of this issue. The doctrine of judicial estoppel postulates that "a party who assumes a particular position in a legal proceeding is estopped from assuming a contrary position in a subsequent legal proceeding." *Barack Ferrazzano Kirschbaum Perlman & Nagelberg v. Loffredi*, 342 Ill.App.3d 453, 460 (1st Dist. 2003) (quoting *Bidani v. Lewis*, 285 Ill. App. 3d 545, 550 (1st Dist. 1996)). The purpose of the doctrine is "to promote the truth and to protect the integrity of the court system by preventing litigants from deliberately shifting positions to suit the exigencies of the moment." *Id.* Judicial estoppel is "an equitable concept 'provid[ing] that a party who prevails on one ground in a lawsuit cannot turn around and in another lawsuit repudiate the ground.'" *Ogden v. Whiting*, 179 F.3d 523, 526 (7th Cir. 1999) (citing *Chaveriat v. Williams Pipe Line Co.*, 11 F.3d 1420, 1427 (7th Cir. 1993) ("A litigant is forbidden to obtain victory on one ground and then repudiate that ground in a different case in order to win a second victory.")). The ZBA is now precluded from hearing our appeal because the Village prevailed in the LeCompte appeal. There is no longer any issue for the ZBA to hear or to resolve regarding Oakwood Farm and its illegal commercial horse boarding operation because the Illinois Appellate Court has decided this issue.

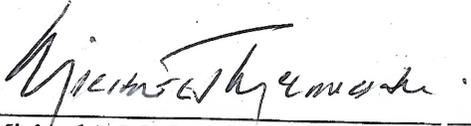
We previously requested that the Village take all necessary actions to enforce the January 10, 2008 cease and desist letter issued by the Village to the LeComptes regarding their illegal commercial horse boarding operation. On January 7, 2011 Village Counsel advised our counsel by letter that "[o]nce the Appeal has been decided, the Village will, if necessary, revisit the matter."

The Illinois Appellate Court has now issued its ruling and decided the commercial horse boarding operation at Oakwood Farm violates the Village Zoning Code. We accordingly respectfully renew our prior request and expect the Village to take all necessary actions to immediately enforce the three-and-half year old January 10, 2008 cease and desist letter, provide relief to the LeComptes' neighbors and shut down the illegal commercial horse boarding

operation at Oakwood Farm. We further request that the Village take all steps necessary to recover all fines assessed against the LeComptes and Oakwood Farm since January 10, 2008. Based on a fine of up to \$500.00 per day indicated in the January 10, 2008 cease and desist letter, this amounts to a fine of up to \$644,000 as of July 20, 2011. This revenue will cover the "considerable sums" expended by the Village in the LeCompte matter referenced in the January 7, 2011 letter from Village Counsel. The Village could obviously also use this money for various Village needs – especially in light of the economic situation over the past few years. The Village has a fiduciary obligation to act in the best interests of all of the residents and not to allow a single resident to violate the law to the detriment of the other residents.



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Michael J. Mc Laughlin
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cc: Village Board of Trustees (w/enclosure)