ORIGINAL

ZONING BOARD OF APPEALS
BARRINGTON HILLS, ILLINOIS

ZONING TEXT AMENDMENT	)
DRAFT PRESENTED	)
AGRICULTURE	)
	)
SUCH OTHER BUSINESS AS MAY BE	)
PRESENTED	)

REPORT OF PROCEEDINGS at the hearing of the above-entitled cause before JONATHAN J. KNIGHT, Zoning Board of Appeals Chairman, at 112 Algonquin Road, MacArthur Room, Barrington Hills, Illinois, on the 23rd day of September, 2009, at the hour of 7:30 p.m.

ZONING BOARD OF APPEALS MEMBERS PRESENT:

MR. JONATHAN J. KNIGHT, Chairman
MR. JUDITH FREEMAN
MS. NANCY MASTERSON
MS. KAREN ROSENE
MR. BYRON JOHNSON
MR. JOSEPH S. MESSER
MR. GEORGE MULLEN

ALSO PRESENT:

MR. ROBERT KOSIN, Director
MR. JOSEPH von MEIER, Village Attorney

Reported by: Cynthia L. Peesel, CSR
CSR License No. 084-002656

1 just be a disaster if they go in and amend this and
2 don't understand.
3 CHAIRMAN KNIGHT: I'm more than willing, and
4 I think if it happened, Trustee Ramesh would verify
5 that. At the board meeting a couple board meetings
6 ago I was asked, it was on the animal rescue facility,
7 some of the board members questioned me at length
8 about what was intended to clarify in their mind what
9 it all meant and it was very helpful that's why I
10 started going to board meetings to, when these
11 questions do come up, and I'm happy to have anybody
12 there to back me up on this, to explain why we did
13 something, and I don't think that's an issue. I think
14 Mr. Lundmark, it's important that he's here because he
15 understands why we are doing what we are doing and,
16 you know, you can back me up if necessary.
17 MR. LUNDMARK: I have your back.
18 CHAIRMAN KNIGHT: Thanks. Are we ready to
19 make a recommendation to our board from this point?
20 MR. JOHNSON: We had a question over here.
21 I guess we just ought to ask it without getting
22 involved with legal issues but the timing of the
23 changing of the definition of animal husbandry versus
24 any legal action we have before us.

1 MR. von MEIER: I don't think that makes any
2 difference to the Village's case. Moving forward on
3 the definition in the Code at the time of citation.
4 MR. JOHNSON: But, again, I was highly
5 influenced by the old definition.
6 MR. von MEIER: That's right, which is what
7 the Village is pushing forward with their case on is
8 based on the old definition and we'll continue to do.
9 So any changes effect activity that happens subsequent
10 to that change in the Code. It doesn't have any
11 effect on activity that happened prior to.
12 MR. MESSER: No ex post facto laws.
13 MR. JOHNSON: The judge wouldn't mind that
14 to be sort of unreasonable.
15 MR. von MEIER: We could just as easily be
16 restricting the definition and we couldn't then go
17 back and say you are now subject to this more
18 restrictive definition.
19 MR. MESSER: The Constitution doesn't allow
20 that.
21 CHAIRMAN KNIGHT: It's interesting there is
22 no Roman numeral four here, at least in the copy I
23 have.
24 MR. von MEIER: That got left out in the

1 editing room there.

2 MR. KOSIN: They are the Legal Committee,

3 not the mathematics. The text follows one to the

4 other.

5 CHAIRMAN KNIGHT: Anything else that we want

6 to discuss here? I know they put in language here

7 that talked about horses, cattle, sheep, llama,

8 alpacas, donkeys or other livestock create a similar

9 impact on property and adjoining landowners, but do we

10 want language in there that says including but not

11 limited to? Or, I'm just asking that as a legal

12 point. Mr. Messer, what -- on page 1.

13 MR. MESSER: They used a footnote for that.

14 Is that done throughout Code, footnotes like that?

15 That seems kind of odd. Look on the first page.

16 Usually you would have that right into the text,

17 wouldn't you, instead of a footnote?

18 CHAIRMAN KNIGHT: Or was that a footnote

19 just creating awareness or.

20 MR. von MEIER: I think that you would just

21 pull that footnote back up into the full section.

22 CHAIRMAN KNIGHT: Would you say including

23 but not limited to other recognized domestic live

24 animals or?

1 MS. FREEMAN: I think the language was good.
2 MR. LUNDMARK: The concern was pigs.
3 MR. MESSER: Vietnamese potbelly pigs.
4 MR. JOHNSON: Horse guys don't like hogs.
5 MR. LUNDMARK: There was a concern expressed
6 from residents, aren't pigs agriculture, and I don't
7 want a bunch of pigs next to me.
8 MS. MASTERSON: You won't have a problem
9 with that with the swine flu now.
10 MR. JOHNSON: It used to just say horses and
11 other things and now we have --
12 MR. LUNDMARK: Right, that's the way
13 Bruce -- and I actually made that point to him, I'm
14 like, okay, all these make sense but are we hurting
15 our --
16 CHAIRMAN KNIGHT: If somebody is going to
17 say it doesn't say you can't have pigs here and I'm
18 hungry, I want to raise my pigs.
19 MR. von MEIER: I think that Bruce tried to
20 deal with that by saying create a similar impact on
21 property and adjoining landowners.
22 MR. MESSER: But my question is maybe should
23 livestock be a defined term in the statute? Is that
24 what we are -- I don't see -- footnoting it like this

1 is a odd way to do it.
2 CHAIRMAN KNIGHT: What is livestock?
3 MS. FREEMAN: Can we just take out little
4 one and put a paren that says including, and then go
5 down here, horses, cattle, sheep, blah, blah, blah.
6 MR. MESSER: You want to make it clear that
7 livestock is defined as horses, cattle, sheep.
8 MS. FREEMAN: Sorry. So then you just put
9 this in parentheses and put it in there and then you
10 are done.
11 MR. von MEIER: I like Joe's idea of just
12 defining livestock as an amendment, text amendment to
13 the definition section.
14 MR. KOSIN: Let me jump in. Then all we
15 would be doing is if we overlook some barnyard animal,
16 we would only be dealing with it in the livestock
17 definition rather than animal husbandry each time.
18 MR. von MEIER: Right. We are not --
19 CHAIRMAN KNIGHT: We are not allowing
20 chickens or roosters.
21 MR. KOSIN: We are waiting for that
22 delegation to come forward.
23 CHAIRMAN KNIGHT: I'm just saying in my
24 research of other codes, they limited one rooster per

1 property.

2 MR. JOHNSON: Is rooster a home occupation?

3 I don't think so. Is it?

4 MR. MESSER: I'm not going to get into that

5 kind of minutia because I'm off this board if we are.

6 MR. JOHNSON: I'm not making any motions

7 tonight.

8 CHAIRMAN KNIGHT: If somebody cares to make

9 a motion, I think within that motion we would include

10 a stipulation that -- Attorney von Meier, would it be

11 the suggestion that you would define, you know,

12 livestock as -- put that as a specific definition to

13 include horses, cattle, sheep, rather than have it

14 stipulated in the text of 5-3-4(D)(3)(g) home

15 occupation?

16 MR. von MEIER: I think that's a better idea

17 is to add it to section 5-2-1 of the Code.

18 CHAIRMAN KNIGHT: Okay. So any motion then

19 I would assume would include a recommendation to the

20 board to accept the text as outlined here in section

21 Roman numeral one, two and three. We would eliminate

22 section five and at the same time allow counsel to put

23 this animal husbandry under definitions. Would that

24 be correct? And then there would be one other

1 contingency that we would have to place that enactment
2 of this -- is that the proper word, enactment of this
3 text amendment is contingent upon authorization by the
4 board to conduct an open hearing on the horse boarding
5 issue and subsequent approval of a text amendment
6 related to the horse boarding issue and those would
7 then be enacted concurrently the effective date. Does
8 that make sense? Now, who would like to make that
9 motion?
10 MR. JOHNSON: How do we get in the
11 understanding that we have that in doing this, our
12 understanding continues to be that home occupation
13 portion of the Code is the only part that currently
14 permits commercial boarding of horses?
15 CHAIRMAN KNIGHT: I don't think we have to
16 say that. I think the Code, like a poker hand, the
17 Code speaks for itself. Would that be a fair
18 statement?
19 MR. JOHNSON: Until somebody plays the
20 agriculture card.
21 CHAIRMAN KNIGHT: Well, but --
22 MR. von MEIER: I think that implicitly by
23 delaying your enactment of the change to definition of
24 agriculture, you are saying that you are not -- you

1 are not allowing or permitting or opening the door for
2 commercial boarding outside of home occupation.
3 CHAIRMAN KNIGHT: So I can't make motions,
4 who wishes to make?
5 MS. FREEMAN: On a small note, can I just
6 ask a question? If Mr. von Meier is going to go back
7 and write a definition of livestock to go into 5-2-1,
8 and we know right now that there is a, you know, lack
9 of interest in including pigs in that definition,
10 shall we exclude them so that we don't have a vague
11 definition that someone is going to come back and try
12 and push --
13 CHAIRMAN KNIGHT: That would leave the door
14 open. If we become too specific, then somebody can
15 make the argument well, you were specific with pigs
16 and I have this other kind of animal that we are
17 unaware of.
18 MS. FREEMAN: Agreed. They could. But that
19 doesn't mean like just because we didn't say it, we
20 can say but specifically excluding pigs. That doesn't
21 mean that anything other than a pig.
22 MR. von MEIER: We already specifically
23 excluded dogs and cats from animal husbandry.
24 CHAIRMAN KNIGHT: Okay. So why don't you

1 add pigs to that?

2 MS. MASTERSON: There is a pig that is a pet

3 that college kids have.

4 MS. FREEMAN: That's not a home occupation.

5 That's a pet.

6 CHAIRMAN KNIGHT: We are not not permitting.

7 MR. JOHNSON: Pigs that smell. Pigs that

8 smell, okay.

9 MS. MASTERSON: Pigs that eat slop.

10 MR. JOHNSON: Why not?

11 MS. FREEMAN: If we all know right now, why

12 would we open ourselves up to not --

13 MR. MESSER: We don't want to have a pig in

14 a poke here, do we?

15 CHAIRMAN KNIGHT: I don't have a problem

16 with that. Does anyone else if you want to include

17 that in your definition or are we getting off base

18 here?

19 MR. KOSIN: We went down this path because

20 apparently animal husbandry was broadly defined to

21 specifically include dogs and cats and so we went out

22 to specifically exclude dogs and cats and left the

23 animal husbandry world in this pre-PETA world concept,

24 in that end of it. Our trouble is I've always been

1 directed by counsel is this listing effect is that we
2 start leaving an interpretation of why did you -- and
3 what has happened humorously in other jurisdictions is
4 the definition of a household pet, and that has gone
5 down the path of trying to determine whether or not
6 pygmy potbellied pig is a pet, whether or not a duck
7 that was given to a little girl by her grandparents
8 was a pet and it brings out --
9 CHAIRMAN KNIGHT: Depends on how hungry you
10 are.
11 MR. KOSIN: Right. So I just -- if the
12 animal is in there, it would, again, back to this
13 proverbial multi-pelted cat, it would be creating a
14 nuisance of such degree that we can then pursue the
15 other provisions of the title rather than going into
16 even defining if that is, indeed, a pig and going down
17 as some owners in Elgin have determined whether or not
18 they had a German Shepherd or truly a timber wolf, as
19 they told the rest of the neighbors in the
20 neighborhood and they have undertaken all sorts of
21 analysis, in that regard.
22 CHAIRMAN KNIGHT: So what you are saying is
23 let's just not go down that road?
24 MR. JOHNSON: We'll know a pig when we see

one. Deal with it, right?

CHAIRMAN KNIGHT: We've sort of hashed this out. Who would like to make a motion? Mr. Messer, your first motion?

MS. MASTERSON: Why don't we have our recording secretary read and then you --

CHAIRMAN KNIGHT: I cannot make a motion.

MS. FREEMAN: I'll try it. How about if I try it. I am ready to try this. I move that -- oh, how do I define this document, though?

CHAIRMAN KNIGHT: Let's just call this Exhibit 1. Can we do that?

MR. von MEIER: That's fine.

CHAIRMAN KNIGHT: Let's call it Exhibit 1 as presented by the Legal Committee.

MS. FREEMAN: So I move that with respect to Exhibit 1, the ZBA recommend to the Village Board that it approve the proposed change under Roman numeral one that starts with the language entitled Proposed 5-3-4(D)(3)(g) Home Occupation.

Second, that the Village Board approve under Roman numeral two the language starting with section 5-3-4(A) Agriculture.

With respect to Roman numeral three, that

1 the Village Board approve the language starting with
2 5-2-1 Animal Husbandry.
3 Further, that Village attorney shall provide
4 language in the form of an amendment to section 5-2-1
5 of the existing code to include a specific definition
6 of the term domestic livestock, and that footnote one
7 to the proposed change to the Code under
8 5-3-4(D)(3)(g) be stricken from the suggested change.
9 And lastly, that the Village's approval of
10 these changes include an enactment date that is
11 commensurate with those changes to be submitted to the
12 Village at a future date subsequent to public hearings
13 on the subject of commercial boarding, and without
14 such proposed changes being submitted to the Village,
15 that there shall be no enactment of these changes.
16 CHAIRMAN KNIGHT: Would it be appropriate to
17 ask that that motion be amended to restate the latter
18 part of that request that your motion -- is it
19 appropriate for me to suggest something along those
20 lines? I would just like to say what we are asking is
21 contingent upon the board authorizing the ZBA to hold
22 public hearings on the horse boarding operation.
23 MS. FREEMAN: It's in there.
24 MR. von MEIER: I think that's within

1 Judy's --
2 MS. FREEMAN: We can't give them a
3 suggestion.
4 CHAIRMAN KNIGHT: We want them to authorize.
5 MS. FREEMAN: Wouldn't that be a separate
6 motion?
7 MR. von MEIER: Separate motion to request.
8 MR. MESSER: The only thing I might add is
9 that we recommend that the Village Board not adopt
10 5-9-3.
11 CHAIRMAN KNIGHT: We are not even presenting
12 that. We are not presenting that to them.
13 MR. MESSER: They won't see this?
14 MS. MASTERSON: I'd like to see an updated
15 copy to e-mail that to us.
16 MR. JOHNSON: It's in Exhibit 1.
17 MR. MESSER: I want to explain why we
18 didn't -- it will be a corrected Exhibit 1?
19 CHAIRMAN KNIGHT: What we are authorizing,
20 Mr. Kosin --
21 MR. KOSIN: I'm sorry, you started out with
22 sending the board this as Exhibit 1 and you have a
23 cover memo to it and you went off into two directions.
24 One, was that the chair wanted a condition on the

1 first -- this is before you read anything further,
2 understand that you need to enact something
3 concurrently for my other conditions and that was part
4 but the other part about it is that does leave hanging
5 out in the wind, sort of speak, 5-9-3. Why didn't
6 we -- you articulated responses to every position here
7 and then 5-9-3.
8 MR. MESSER: We specifically want to reject
9 5-9-3 as set forth in Exhibit A and recommend that the
10 board utilize existing 5-9-3 from the Code.
11 MR. JOHNSON: Can't we just make that an
12 amendment of Judy's?
13 MS. FREEMAN: Absolutely.
14 MR. MESSER: So moved or.
15 CHAIRMAN KNIGHT: So the motion has been
16 made by Member Freeman and seconded by Mr. Messer.
17 MR. JOHNSON: That includes an amended
18 motion.
19 MS. FREEMAN: The amended motion, it sounds
20 like we are going to call out 5-9-3 and specifically
21 ask them not to act on it.
22 MR. MESSER: Right.
23 CHAIRMAN KNIGHT: That's the discussion that
24 we are having right now.

1 MS. FREEMAN: That's fine. That's fine. So
2 we would -- I would amend my motion to further request
3 that the board not act on the language under Roman
4 numeral five starting with the language 5-9-3
5 Nonconforming Agricultural Activities and Structures.
6 CHAIRMAN KNIGHT: Okay. Any discussion?
7 MS. MASTERSON: I would still like to
8 know --
9 CHAIRMAN KNIGHT: The motion has been made
10 and it's been seconded by Mr. Messer. Any discussion?
11 MS. MASTERSON: I'd like to know why we
12 can't just give them a completed document and say, you
13 know, this is what we've done and, you know. Why do
14 they have to go back and forth? We have been looking
15 at all kind of things.
16 CHAIRMAN KNIGHT: Well, that raises a valid
17 point that, you know, on occasion we'll have -- we can
18 say, gee, this is what we looked at, board, and this
19 is what we came up with and my question is, and I'll
20 ask this of Mr. Kosin, and I can't recall what we've
21 done in the past but we've given them basically
22 language that doesn't include the stuff that we've
23 tossed out. We gave them the revised version; is that
24 correct?

1 MR. von MEIER: I think you can definitely
2 do that and that's the way I'll draft it and it won't
3 have reference to 5-9-3, but I think that Joe's point
4 that there may be people at the board meeting speaking
5 to them about the inclusion of language to amend 5-9-3
6 and the ZBA wanted to make a point to the board to say
7 we considered that and we specifically rejected that,
8 so do what you want, board, but know how we feel about
9 it, and that's how it will show up in my
10 recommendation.
11 CHAIRMAN KNIGHT: You are right because in
12 fact the Board of Trustees I believe did see all of
13 this stuff so we want that board to know that we took
14 the work of the --
15 MS. MASTERSON: Here and here and here and
16 now we have a clean piece of paper.
17 CHAIRMAN KNIGHT: We'll say this is what we
18 recommend, this is what we tossed out. Yeah, I agree
19 with that. So that just eliminates the need for
20 unlimited discussion on stuff that we've vetted. And
21 I will be at the board meeting to back that up. Okay.
22 Any other questions or discussion points?
23 Could we have a roll call vote on the recommendation
24 that was made by motion by Member Freeman.

1 MR. MESSER: Eloquently made by Member
2 Freeman.
3 CHAIRMAN KNIGHT: Eloquently made. I'm not
4 going to repeat it but I could.
5 COURT REPORTER: Member Freeman.
6 MS. FREEMAN: Yes.
7 COURT REPORTER: Mr. Messer.
8 MR. MESSER: Yes.
9 COURT REPORTER: Member Rosene.
10 MS. ROSENE: Yes.
11 COURT REPORTER: Member Johnson.
12 MR. JOHNSON: Yes.
13 COURT REPORTER: Member Mullen.
14 MR. MULLEN: Yes.
15 COURT REPORTER: Member Masterson.
16 MS. MASTERSON: Yes.
17 COURT REPORTER: Chairman Knight.
18 CHAIRMAN KNIGHT: Yes.
19 It's unanimous. The recommendations as made
20 by motion by Member Freeman will go to the board with
21 our recommendation to -- as stated. Is there any
22 other business before the board?
23 MS. FREEMAN: To your point, do we need to
24 make a motion to ask the Village to ask us to hold the

1 public hearing?

2 CHAIRMAN KNIGHT: Yes. Yes. Well, we've

3 stated in the one motion that we don't want that to be

4 enacted until we have dealt with the next issue, so we

5 can't deal with the next issue unless, you are

6 correct, we make a recommendation to the board they

7 allow us to hold discussions on the horse boarding

8 issue. So I would entertain a motion to that subject.

9 MS. FREEMAN: I'm going to make Byron do

10 that.

11 MR. JOHNSON: I'm already shut.

12 MR. MULLEN: We make a motion to authorize

13 the ZBA to conduct a hearing on language for a text

14 amendment on commercial boarding.

15 CHAIRMAN KNIGHT: The motion has been made

16 by Member Mullen. Is it seconded?

17 MR. MESSER: Second.

18 CHAIRMAN KNIGHT: Member Messer seconds the

19 motion. Discussion?

20 (No response.)

21 CHAIRMAN KNIGHT: No discussion. Let's have

22 a roll call please.

23 COURT REPORTER: Member Freeman.

24 MS. FREEMAN: Yes.

1 COURT REPORTER: Mr. Messer.
2 MR. MESSER: Yes.
3 COURT REPORTER: Member Rosene.
4 MS. ROSENE: Yes.
5 COURT REPORTER: Member Johnson.
6 MR. JOHNSON: Yes.
7 COURT REPORTER: Member Mullen.
8 MR. MULLEN: Yes.
9 COURT REPORTER: Member Masterson.
10 MS. MASTERSON: Yes.
11 COURT REPORTER: Chairman Knight.
12 CHAIRMAN KNIGHT: Yes.
13 So the motion passes unanimously to request
14 of the board that they authorize us to hold public
15 hearings to discuss the horse boarding issue.
16 Anything else before the board this evening?
17 (No response.)
18 CHAIRMAN KNIGHT: Does our trustee in the
19 corner have any questions?
20 (No response.)
21 MR. JOHNSON: She doesn't talk as much as
22 George used to.
23 CHAIRMAN KNIGHT: Well, I will entertain a
24 motion.

1 MR. MULLEN: So moved.
2 CHAIRMAN KNIGHT: You got to make the
3 motion.
4 MR. MULLEN: To adjourn.
5 CHAIRMAN KNIGHT: Member Mullen. Second?
6 MS. FREEMAN: I'll second.
7 CHAIRMAN KNIGHT: Member Freeman. All in
8 favor?
9 (Chorus of ayes.)
10 CHAIRMAN KNIGHT: Meeting adjourned at 9:47.
11 (WHICH WAS AND IS ALL OF THE
12 MATTERS PRESENTED AT SAID MEETING.)
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1 STATE OF ILLINOIS)
2) SS.
3 COUNTY OF C O O K)
4
5 I, CYNTHIA L. PEESEL, Certified Shorthand
6 Reporter and Notary Public doing business in the City
7 of Chicago, County of Cook, and State of Illinois,
8 state that I reported in machine shorthand the matters
9 presented at the public meeting of the Barrington
10 Hills Zoning Board of Appeals on the 23rd day of
11 September, 2009, and that the foregoing is a true and
12 correct transcript of my shorthand notes so taken as
13 aforesaid, and contains all the matters presented at
14 said meeting, to the best of my knowledge and ability.
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21 Cynthia L. Peesel
License No. 084-002656
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