

Memorandum

Date: August 6, 2014
To: President Underwood and Members of the Long Grove Village Board
From: Victor P. Filippini, Jr.
Betsy L. Gates
Re: Manure Storage at 1650 Bernay Lane- Le Savanne Subdivision

The Village recently received complaints from several residents regarding storage of manure on the horse farm property at 1650 Bernay Lane in the Le Savanne Subdivision (the "Property"). The complaints included concerns about the number of horses kept on the Property, the amount of manure being stored on the Property, odors and dust generated by the stored manure, and impacts of the stored manure on stormwater runoff and water wells. This memorandum summarizes options that may be available to the Village and the affected residents to address their concerns.

I. Village Code

Section 10-4-15(E) of the Village Code contains the following objective standards governing where manure may be stored on the property:

- Manure must not be stored less than 50 feet from any adjoining parcel;
- Manure must not be stored less than 150 feet from any occupied residence; and
- Manure must not be stored within the required setback area for the parcel upon which the horse is kept.

Additionally, Section 5-9-7(F) of the Zoning Code requires that, in all zoning districts¹:

- All refuse containers and areas of permitted outdoor storage shall be enclosed on at least three sides in a manner sufficient to completely screen such container or storage areas from view from adjoining parcels and public or private streets; and

¹ Section 11 of Ordinance 78-O-6 provides that, except as otherwise provided in the Ordinance, the provisions of the Zoning Code shall be applicable to Le Savanne of Long Grove. The Ordinance's restrictions on the Property include execution of the Declaration, discussed further in Section II below, which includes a requirement that "all manure shall be stored in a roofed enclosure, effectively screened with 16-mesh screen wire." The Ordinance does not otherwise vary the generally-applicable Zoning Code requirements for outdoor storage areas on the Property or in Le Savanne.

- No refuse containers or storage areas may be located between a principal structure and its front or corner side lot line.

The Village Code also provides that certain activities may be declared an unlawful nuisance or hazard if they are conducted in a manner that is unduly harmful or prejudicial on other property owners or the general public. The enforcement of such regulations is subjective, and the Village has substantial discretion in assessing a potential nuisance or health hazard. Potentially-applicable regulations include the following:

- Stored manure must be removed “on a regular basis at reasonable times so as not to constitute a health hazard,” Section 10-4-15(E);²
- It is unlawful to cause or allow any “offal, filth, or noisome substance to be collected, deposited, or to remain in any place, to the prejudice of others,”³ Section 8-9-1(B); and
- It is unlawful to “throw or deposit any offal or other offensive matter, or the carcass of any dead animal, in any watercourse, lake, pond, spring, well, common sewer, street or public highway,” Section 8-9-1(C), or to “corrupt or render unwholesome or impure the water of any spring, river, stream, pond, or lake, to the injury or prejudice of others,” Section 8-9-1(D).⁴

If the Village determines that a nuisance condition exists on the Property, the Village Superintendent or Village Manager is authorized to serve a written notice on the owner or occupant requiring that person to abate the nuisance within a reasonable time. See Section 8-9-2. If a property owner fails to abate the nuisance, the Village can file a violation action in the Circuit Court, and a property owner has the right to challenge the Village’s determination of a nuisance condition.

II. Ordinance No. 78-O-6 and the Declaration

On April 25, 1978, the Village Board approved Ordinance No. 78-O-6 granting a special use permit for a planned unit development for Le Savanne of Long Grove. Ordinance No. 78-O-6 authorized the use of the Property (referenced in the Ordinance as Lot 43 in the Le Savanne Subdivision) for an outdoor riding arena. But this use was subject to the execution and recordation of a “Declaration” setting forth various restrictions on the use of the Property.⁵

² In Lake County, the County Health Department has ultimate jurisdiction over whether a condition creates a health hazard. Although the Village has the authority to assert that a nuisance exists under the aegis of public health, compliance with the County Health Department standards may be an effective defense against such a nuisance claim.

³ Section 8-8-2 of the Village Code provides that it is unlawful to deposit “uncovered piles of refuse, garbage, offal, or carcasses of dead animals” within the Village and any such uncovered piles are declared to be a nuisance. But Section 8-8-2 contains an exception for “normal farming uses or barnyard uses.” Thus, to find a violation of Section 8-8-2, the Village would need to make a determination that the manure storage on the Property exceeds “normal” farming or barnyard uses. Again, to the extent that the County Health Department has established standards that are satisfied, this may be a defense to a citation under Section 8-8-2.

⁴ Statewide water quality standards exist that would provide a baseline for determining whether a person’s activities are rendering a watercourse “unwholesome or impure.”

⁵ The Declaration provides that it will remain in force until December 31, 2002, and thereafter for successive ten-year terms unless it is amended or terminated by a written instrument executed by the owner of the Property and two-thirds of the adjoining property owners. We are not aware that any

Regarding keeping horses and storing manure on the Property, the Declaration provides several objective standards, as follows:

- Section 1: No more than 27 horses may be kept or used on the Property, only 25 of which may be boarders owned by persons other than the owner or occupant of the Property;
- Section 3: Manure shall be removed from the horse stalls at least once a day;
- Section 4: Manure shall be stored in a roofed enclosure, screened with 16-mesh screen wire; and
- Section 4: All manure shall be removed from the premises at least every two weeks from April 1 to October 31 of each year and at least every 45 days from November 1 to March 31 of each year.

Once recorded, the restrictions contained in the Declaration are for the benefit of, and may be enforced by, the owners of the lots in Le Savanne subdivision that abut the north, east, and west boundaries of the Property.⁶

The Village's approval of the Le Savanne subdivision was conditioned on the execution and recordation of the Declaration. Nothing in the Ordinance No. 78-O-6, however, expressly authorizes the Village to enforce the Declaration, nor does the Village have any enforcement rights under the terms of the Declaration itself.

We reviewed photographs of the Property that show manure being stored in an uncovered area that is enclosed by wooden fencing. Based on this information, the owner appears to be in violation of the Declaration's requirement that manure be stored in a roofed enclosure that is screened with 16-mesh screen wire. The Declaration is a private covenant between the owner of the Property and the owners of the abutting lots, so the abutting owners—not the Village—have the right to enforce it. If the owners of the properties wish to abate any perceived violations of the Declaration's requirements, they have the right to do so by bringing a private enforcement action in a proceeding at law or in equity.

termination of or amendments to the Declaration have been executed or recorded. Therefore, it appears that the Declaration remains in force.

⁶ Section 6 of the Declaration states: "The covenants and restrictions herein contained are for the benefit of and may be enforced by the owner or owners of any lot in said Savanne of Long Grove which abuts the North, East, or West boundaries of the Subject Premises ('Benefited Lots') by proceeding at law or in equity or by any other competent proceeding."