2014 IL App (1st) 121894-U

No. 1-12-1894

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SIXTH DIVISION
March 28, 2014

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JAMES J. DRURY, III, as Agent of the Peggy D. Drury Declaration of Trust U/A/D 02/04/00; and MICHAEL J. MCLAUGHLIN,	)	Appeal from the Circuit Court of Cook County.
Plaintiffs-Appellants,	)	
v.	)	No. 11 CH 03852
BENJAMIN B. LECOMPTE, CATHLEEN B. LECOMPTE, and NORTH STAR TRUST CO., as Successor Trustee of Harris Bank Barrington N.A., as Trustee Under Trust Number 11-5176,	)	The Honorable Franklin U. Valderrama,
Defendants-Appellees.	)	Judge Presiding.

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

O R D E R

¶ 1 *Held*: The circuit court erred in dismissing plaintiff property owners' amended complaint for injunctive relief against defendants, who were owners of a horse boarding facility, on the basis of failure to exhaust administrative remedies, mootness, and lack of justiciability. Where plaintiffs' amended complaint was pending in the circuit court after a cease and desist order

against defendants had been upheld by the municipal zoning board of appeals and confirmed on administrative review by the circuit and appellate courts, but defendants subsequently claimed they were in compliance with the zoning code on a basis defendants had formally waived during the administrative proceedings, plaintiffs were not required to litigate the waived issue before the zoning board of appeals before proceeding in court with their request for injunctive relief.

¶ 2 Plaintiff property owners, James Drury, III, as an agent of the Peggy D. Drury Declaration of Trust U/A/D 02/04/00, and Michael McLaughlin, sought injunctive relief against defendant adjacent property owners Dr. Benjamin LeCompte, Cathleen LeCompte (LeComptes), and North Star Trust Co., as successor trustee of Harris Bank Barrington N.A., as trustee under trust number 11-5176. In their amended complaint, plaintiffs alleged that defendants were operating a commercial horse boarding operation on their property in violation of the zoning laws of the Village of Barrington Hills (Village) and, despite plaintiffs' repeated requests, the Village refused to shut down the operation by enforcing the cease and desist letter that was issued to defendants, upheld by the Village's Zoning Board of Appeals (Zoning Board), and affirmed on administrative review by both the circuit court and this appellate court.

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

the Zoning Board of the Village code enforcement officer's decision.

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

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

¶ 6 I. BACKGROUND

¶ 7 Although the issue before this court is the dismissal of plaintiffs' 2011 amended complaint seeking injunctive relief, the origins of this litigation go back to 2007, when plaintiffs complained to the Village that the LeComptes were boarding horses on their property for a commercial purpose in violation of the Village's zoning laws. The LeComptes were the beneficial owners of 130 acres of property in the Village. The property was organized as Oakwood Farm of Barrington Hills, L.L.C. (Oakwood Farm) for the purpose of operating a horse farm. The property consisted of a single-family home where defendants resided, a stable, a riding arena, 60 stalls for horses, and other buildings.

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

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

¶ 10 The Village argued that the commercial boarding of horses was not a permitted use in an R-1 zoned district. The Village contended that, according to the definition of "agriculture" in the zoning code, the breeding and raising of horses was a permitted use in an R-1 zoned district but the distinct use of horse boarding was not a permitted use. The Village also argued that the drafters of the zoning code intended for the permitted uses in an R-1 zoned district to be

compatible with each other and Oakwood Farm's commercial boarding facility was not compatible with the other single family residences in the R-1 zoned district. When the chairman of the Zoning Board asked if home occupation use applied to this matter, the Village responded that the home occupation definition allowed people to board horses in a residential area. The provision allowing horse boarding as a permitted home occupation use was intended to enable people who had a four or five stall barn to board a couple of horses for neighbors or friends. However, given the zoning code's proscriptions against excessive traffic, noise, and disruptions to the tranquility of the residential area, the operation of a 60 to 70 stall horse boarding facility could not even be contemplated as a permitted home occupation use.

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

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

¶ 13 The LeComptes then filed a complaint for administrative review in the circuit court. The circuit court confirmed the Zoning Board's decision in January 2010, and the LeComptes appealed to this court.

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

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

¶ 16 Meanwhile, in a February 2011 letter to the Village attorney, defendants asked the Village to confirm in writing defendants' compliance with the zoning code. Defendants argued that subsection 5-3-4(D)(3)(g) of the code allowed unlimited horse boarding in their R-1 residential district as a home occupation as long as they complied with the operating hours of 8 a.m. through 8 p.m. Defendants asserted that, in addition to their exemption from Village regulations as an agricultural use, their new operating hours complied with subsection 5-3-4(D)(3)(g) and, thus,

meant that they were in compliance with the code. In a response letter, the Village attorney stated that "[i]t is and has been the Village's position that Oakwood Farms does not comply with the requirements of the home occupation provisions of the Village's zoning code." The Village attorney noted that defendants consistently took the position that their horse boarding activities did not constitute a home occupation in sworn testimony before the Zoning Board, in statements to the circuit court on administrative review, and in their brief to this appellate court. Defendants did not file any appeal to the Village attorney's letter.

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

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

¶ 19 This court also rejected the LeComptes' argument that their use of their stables for the commercial boarding of horses comported with the Village's zoning code. *Id.* at ¶ 34. Specifically, this court construed the zoning code definitions of "stable" and "accessory

building," and noted that the LeComptes' use of their stable was a primary use and not a subordinate use. *Id*.

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

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

pedestrian traffic than would be typical of residences in the neighborhood. *Id*. (citing Village of Barrington Hills Zoning Ordinance § 5-3-4(D)(3)(e)).

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

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

¶ 24 In November 2011, defendants moved to dismiss the amended complaint for mootness, lack of subject matter jurisdiction, and lack of justiciability pursuant to section 2-619(a)(1) of the Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(1) (West 2010)). Defendants argued that plaintiffs' injunctive relief action was rendered moot upon the issuance of a letter, dated March 15, 2011, to defendants from Don Schuman, the Village building and code enforcement officer (the Schuman letter). In this letter, Schuman noted defendants' request that the Village consider their use of Oakwood Farm for the boarding and training of horses as a home occupation. Schuman referenced defendants' submission of (1) an affidavit, which averred that they had limited their hours of operation to 8 a.m through 8 p.m. and asserted that this change meant that they were now conducting their boarding and training of horses as a home occupation use in compliance with subsection 5-3-4(D)(3)(g) of the Village's zoning code; and (2) an employee register, which listed the extent of their employees' work hours. Schuman stated that "it appears that the use of Oakwood Farm is a Home Occupation." Moreover, in a letter dated March 29, 2011, the Village attorney advised plaintiffs and defendants that the Schuman letter represented a final and official decision of that officer.

¶ 25 Defendants also argued that plaintiffs forfeited any judicial remedies by failing to exhaust their administrative remedies and follow through with their appeal of the Schuman letter before the Zoning Board. Specifically, defendants recounted that: (1) plaintiffs had appealed the Schuman letter to the Zoning Board in April 2011 but then, in June 2011, informed the circuit court that they would withdraw their Zoning Board appeal; (2) the circuit court, nevertheless, dismissed without prejudice plaintiffs' complaint for injunctive relief, finding that, as a result of

the Schuman letter, there was no justiciable controversy and the matter was moot; (3) counsel for plaintiffs argued to the Zoning Board in a letter that the doctrines of collateral estoppel and judicial estoppel precluded the Zoning Board from considering plaintiffs' appeal of the Schuman letter because the Zoning Board was legally bound by this appellate court's decision in *LeCompte*, 2011 IL App (1st) 100423, which had resolved the same matter at issue in plaintiffs' appeal of the Schuman letter; and (4) the Zoning Board ultimately dismissed plaintiffs' appeal of the Schuman letter for want of prosecution in August 2011. Defendants argued that plaintiffs' April 2011 appeal to the Zoning Board effectively divested the circuit court of subject matter jurisdiction. According to defendants, the sole issue adjudicated in the LeComptes' prior hearing before the Zoning Board was the question of whether their boarding of horses was an agricultural use of the land; the issue of the separate and distinct use of their land as a home occupation was never presented in the administrative proceeding and, thus, should not have been addressed on administrative review by this appellate court. Defendants argued that the Schuman letter rendered plaintiffs' amended complaint moot and plaintiffs forfeited any judicial remedies by failing to pursue their Zoning Board appeal of the Schuman letter, which was dismissed for want of prosecution.

¶ 26 Plaintiffs responded to the motion to dismiss, arguing (1) defendants' position that Oakwood Farm was a home occupation was irreconcilable with and refuted by this appellate court's September 2011 opinion; (2) the Schuman letter was irrelevant by virtue of this court's September 2011 opinion and did not render this case moot because the circuit court had statutory jurisdiction to grant plaintiffs injunctive relief where the Village failed to enforce its own zoning

laws; and (3), in the alternative, the motion to dismiss must be denied because the amended complaint presented genuine issues of disputed fact as to whether Oakwood Farm complied with the zoning code.

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

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

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

¶ 30 On May 31, 2012, the circuit court denied plaintiffs' motion to reconsider. The circuit court found that (1) section 11-13-15 of the Illinois Municipal Code did not provide a basis for

the court to exercise jurisdiction over this matter involving zoning code violations; (2) plaintiffs were required, but failed, to exhaust their administrative remedies prior to filing their lawsuit in this case; (3) the Schuman letter was admissible under the rules of evidence without need of further authentication; (4) although the appellate court discussed the home occupation provisions of the zoning code, it only ruled on the issue of whether the LeComptes' use was agricultural; and (5) plaintiffs' newly discovered evidence was not relevant to the jurisdiction issue before the court.

¶ 31 Plaintiffs timely appealed the circuit court's December 2011 and May 2012 orders.

¶ 32 II. ANALYSIS

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

¶ 34 A. Scope of 2011 Appellate Opinion

¶ 35 In supporting its decision to dismiss plaintiff's amended complaint, the circuit court stated that, although this court discussed the home occupation provisions of the zoning code, this court's September 2011 opinion ruled only on the issue of whether the LeComptes' use was agricultural. Defendants adopt this position and contend our 2011 opinion in the prior case did not affect or control the instant case because the prior case was between the LeComptes and the

Village on an unrelated zoning issue with a different factual scenario. Defendants argue that the home occupation discussion in our 2011 opinion was *obiter dictum* and does not control the instant appeal or prevent the Village from recognizing that defendants could change their operating hours and conditions to bring the farm into compliance with the Village home occupation provisions of the zoning code. Defendants contend this court's home occupancy discussion was neither germane nor necessary to our 2011 opinion, which was limited to the issue of whether boarding horses was an agricultural use under the code. Defendants assert that the issue of their compliance with the home occupation provisions of the code was never presented by the parties or briefed as an issue in the proceedings reviewed by this appellate court.

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

¶ 37 After the LeComptes lost before the Zoning Board and sought administrative review before the courts, the Village, in addition to countering the LeComptes' argument concerning

permitted agricultural uses, also argued to this court that the LeComptes' commercial boarding of horses did not qualify as a home occupation where the relevant code provisions permitted boarding and training of horses as a home occupation incidental to a permitted primary use of a property and the LeComptes had admitted that the primary use of the Oakwood Farm facility was horse boarding. See *Kravis v. Smith Marine, Inc.*, 60 Ill. 2d 141, 147 (1975) (an appellee may defend a judgment by raising a previously unruled-upon issue if the necessary factual basis for determining the issue is in the record); accord *Kuney v. Zoning Board of Appeals of City of De Kalb*, 162 Ill. App. 3d 854, 856 (1987).

¶ 38 Moreover, the LeComptes argued to this court that their use of their stables for commercial horse boarding comported with the Village's code and the Village intended for residents to commercially board horses. In refuting those claims, this court viewed the zoning code in its entirety, even discussed subsection 5-3-4(D)(3)(g) of the zoning code–the same section defendants now claim compliance with in this appeal–and concluded that the LeComptes' use did not comply with several provisions concerning home occupations in subsection 5-3-4(D). Specifically, this court concluded that Oakwood Farm's primary purpose was the commercial boarding of horses, which was a use that was not incidental and secondary to residential occupancy, and their commercial horse boarding operation could not be done in a manner that maintained the peace, quiet and domestic tranquility within their R-1 zoned residential district. *LeCompte*, 2011 IL App (1st) 100423, ¶¶ 34-39. In addition, when the LeComptes filed a petition for rehearing asking this court to strike our discussion of their failure to comply with the home occupancy provisions of the code, this court denied the petition, rejecting their argument

that the issue was not raised in the appeal.

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

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

¶ 41 This court's discussion of the home occupancy provision was not mere *obiter dictum* because even though Oakwood Farm was not a permitted agricultural use, it could have been a legal use if it complied with some other section of the Village's zoning code, like the home

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

¶ 42 B. Exhaustion of Administrative Remedies

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

¶ 44 Plaintiffs respond that they were not seeking to appeal an administrative decision; instead they filed a lawsuit under section 11-13-15 of the Illinois Municipal Code to enjoin defendants'

ongoing violation of the Village zoning code, as determined by the Zoning Board, circuit court, and this court. Plaintiffs argue the circuit court had independent jurisdiction to hear plaintiffs' injunctive relief case under section 11-13-15 of the Illinois Municipal Code, which empowers adjacent landowners to bring a legal proceeding to enforce laws when the municipality fails or is reluctant to act or acts in a manner contrary to the adjacent landowners' interests. See *Dunlap v. Village of Schaumburg*, 394 Ill. App. 3d 629, 638 (2009); *LaSalle National Bank v. Harris Trust & Savings Bank*, 220 Ill. App. 3d 926, 932 (1991).

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

court in 2011.

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

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

¶ 48 A justiciable matter is a controversy appropriate for review by the court, in that it is definite and concrete, as opposed to hypothetical or moot. *Owens v. Snyder*, 349 Ill. App. 3d 35, 40 (2004). "A moot question is one that existed but because of the happening of certain events has ceased to exist and no longer presents an actual controversy over the interests or rights of the party." *In re Nancy A.*, 344 Ill. App. 3d 540, 548 (2003). We agree with plaintiffs that the Schuman letter did not render their injunctive relief claim moot or nonjusticiable where this court ruled in 2011 that defendants' Oakwood Farm was in violation of the zoning code, defendants were still operating their commercial horse boarding facility impermissibly in an R-1 residential

district, and the relief provided in section 11-13-15 of the Illinois Municipal Code was an available remedy to plaintiffs. This is not a situation where an injunctive relief action was rendered moot because a zoning board had re-zoned the property; all that changed here was defendants' hours of operation at their commercial horse boarding facility.

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

¶ 50 Illinois courts have recognized several exceptions to the doctrine of exhaustion of administrative remedies. *Castaneda v. Illinois Human Rights Comm'n*, 132 Ill. 2d 304, 308 (1989). An aggrieved party may seek judicial review of an administrative decision without complying with the exhaustion of remedies doctrine where the administrative body's assertion of

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

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

before the Zoning Board.

¶ 52 Administrative proceedings had already been held on the Village's cease and desist order against defendants, and plaintiffs had already begun proceedings under section 11-13-15 before defendants revived the home occupancy issue they had previously and explicitly waived at the administrative hearings. It was only after plaintiffs filed this lawsuit for injunctive relief that defendants solicited the Schuman letter from Village officials. As discussed above, the home occupation issue was part of the Village's argument before the Zoning Board and this court, and no useful purpose would be served by requiring plaintiffs to institute another round of administrative hearings based on subsection 5-3-4(D)(3)(g) of the zoning code. Defendants' latest nuance of the home occupation issue, which is based on the operating hours discussed in subsection 5-3-4(D)(3)(g), is subsumed or rendered irrelevant by this court's 2011 opinion, which confirmed the cease and desist order and concluded that defendants' commercial horse boarding operation did not qualify as a permitted use under all the relevant provisions of the zoning code, including the permissible use of horse boarding as a home occupation.

¶ 53 It would be a strained application of the exhaustion doctrine to force plaintiffs to litigate before the Zoning Board essentially the same home occupation use issue that was formally waived by defendants during the 2008 administrative hearings but refuted anyway by the Village both at the administrative hearing sessions and again on administrative review before this appellate court. It is not reasonable to assume that the Zoning Board would reverse itself and now conclude that defendants' commercial horse boarding operation was a permissible home occupation use in a residential zone, which would be contrary to the Village's positions before

the Zoning Board in the 2008 hearing sessions and in the Village's brief on appeal to this court. To insist on the additional useless step of litigating before the Zoning Board the waived and irrelevant issue of home occupancy, which irrelevancy was confirmed in this court's 2011 opinion, would merely give lip service to a technicality and thereby increase costs and delay the administration of justice, which is the very thing the exhaustion of remedies rule tries to avoid. *Herman v. Village of Hillside*, 15 Ill. 2d 396, 408 (1958).

¶ 54 While plaintiffs could have abandoned their lawsuit for injunctive relief and pursued their appeal of the Schuman letter before the Zoning Board, their not doing so, under the circumstances of this case, is not interdictive of the remedy they chose. Plaintiffs chose a remedy most beneficial to them, just as defendants, in proceeding under their revised home occupation argument, chose the course they thought most beneficial to them. The remedy chosen by plaintiffs was appropriate to the predicament confronting them. They were attempting to prohibit a zoning violation which was declared by the Village, upheld by the Zoning Board, and confirmed by the circuit and appellate courts. Plaintiffs were an aggrieved party and their predicament was exacerbated by defendants acting to derail plaintiffs' properly filed lawsuit by raising before the Village anew the home occupation issue they had formally waived in 2008. Under the circumstances of this case, plaintiffs' choice of remedy was not incorrect and their complaint should not have been dismissed. This court's 2011 opinion remains in force and defendants cannot evade the effect of that ruling by using their subsequent solicitation of the Schuman letter as a fait accompli-shield to justify their noncompliance with the zoning code or to deprive plaintiffs of relief.

¶ 55 Therefore, we find that plaintiffs' injunctive relief complaint was properly before the circuit court, exhaustion of further administrative remedies was not necessary under the circumstances of this case, and plaintiffs' complaint was erroneously dismissed as moot and nonjusticiable by the circuit court.

¶ 56 III. CONCLUSION

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

¶ 58 Reversed and remanded.