2017 IL App (2d) 170010-U
Nos. 2-17-0010 & 2-17-0011, Cons.
Order filed September 28, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

CATHY LORENZ and JAMES LORENZ, Plaintiffs-Appellees, v. THE VILLAGE OF WAYNE; THE ZONING BOARD OF APPEALS OF THE VILLAGE OF WAYNE; MICHAEL GRICUS, as Zoning Enforcement Officer of the Village of Wayne; ARNIE HETZEL, as Member of the Zoning Board of Appeals of the Village of Wayne; HEATHER HOWLAND, as Member of the Zoning Board of Appeals of the Village of Wayne; JAMES MIGELY, as Member of the Zoning Board of Appeals of the Village of Wayne; ROGER ORBAN, as Member of the Zoning Board of Appeals of the Village of Wayne; HEIDI P. PEARSON, as Member of the Zoning Board of Appeals of the Village of Wayne; ANN MARZANO; MICHAEL ANASTASIO, THE NORTH COUNTRY IN WAYNE COMMUNITY ASSOCIATION; BARBARA BARAN; FRED SZPONER; CHARLES SHARPLESS; and MARILYN CATALANO, Defendants (The Village of Wayne and Michael Anastasio, Defendants-Appellants; The North Country	)	Appeal from the Circuit Court of Kane County. No. 16-MR-207 Honorable

in Wayne Community Association, Defendant-Appellee; George H. Koutny, Intervenor).	)	David R. Akemann, Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices Hutchinson and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: After rejecting arguments asserting a lack of jurisdiction, we determined that Village of Wayne Ordinance 94-24 (approved Oct. 4, 1994) unambiguously does not prohibit a private horse stable to be built on the property in question as an accessory use. Therefore, we affirmed the trial court's judgment reversing the decision of the Village of Wayne Zoning Board of Appeals, which had ruled to the contrary.

¶ 2 At issue in this case is whether a Village of Wayne (Village) ordinance allows plaintiffs, Cathy and James Lorenz, to build a private horse stable on their property. After a Village official denied their building permit application, the Lorenzes appealed to the Village's Zoning Board of Appeals (ZBA), which affirmed the official's decision. The Lorenzes then appealed to the trial court, which reversed the ZBA's ruling. Defendants, the Village and a neighbor of the Lorenzes, Michael Anastasio, now appeal the trial court's ruling, arguing that the trial court misinterpreted the ordinance. Anastasio additionally argues that the ZBA lacked jurisdiction to consider the Lorenzes' appeal, depriving the trial court of jurisdiction to consider their subsequent appeal. The Lorenzes, in turn, question this court's jurisdiction based on the fact that the ZBA did not file an appeal from the trial court's order. In addition to the Lorenzes, the North Country in Wayne Community Association (NCIWCA) has also filed an appellee's brief. We affirm the trial court's judgment reversing the ZBA's ruling.

¶ 3 I. BACKGROUND

¶ 4 The Lorenzes reside at 6N983 Brewster Creek Circle in Wayne. Their property is located within the North Country in Wayne subdivision. The North Country in Wayne was annexed to

the Village in 1978, after previously being unincorporated land. According to the annexation agreement, the land was to be "a Planned Development as a Special Use under the W-1 Single Family Residence District" of the Village. The agreement also allows a commercial stable, stating that the property:

> "now commonly known as Lamplight Stables may be used as a horse stable with accessory uses including residential uses for stable employees in existing residential units. *** The term 'horse stable' as used in this paragraph shall be deemed to include a private riding club for the use of members and their guests including the serving of food and meals on such premises ***, and the sale of alcoholic beverages to their members and guests."

The agreement states that certain property could be used as offices and that "all other numbered lots not otherwise specifically described in this paragraph may be utilized only for single family residential uses as a Planned Development." All dwellings, except certain designated cluster housing, were to be single family residences. The agreement refers to various "units" of land. The Lorenzes' property is located within Unit 3, which was to contain cluster housing.

¶ 5 The annexation agreement further provides generally for horse stables as follows:

> "On all lots in the SUBJECT PREMISES four (4) acres or more in area, private horse stables may be erected to stable any number of horses otherwise permitted by applicable VILLAGE ordinances. On all lots in the SUBJECT PREMISES two (2) acres or more in area, private horse stables *** may be erected, provided not more than one (1) horse shall be kept and maintained for each two (2) acres of a lot, with a two (2) acre lot being a minimum for the keeping of any horses."

¶ 6 Village Ordinance 9-78 (approved April 10, 1978) incorporated the terms of the

annexation agreement.[1] It zoned the annexed property "as a special use planned development under the W-1 Single Family Residence District of the Village."

¶ 7 Ordinance 89-13 (adopted May 16, 1989) established the "Wayne Zoning Ordinance." It states, as pertinent here:

> "the *uses* permitted in a Planned Development may include any one or more of the following *uses*: single-family detached homes, cluster homes, where not more than two dwelling units may be part of a single structure, professional offices, but such uses shall not exceed 5% of the gross land area of the Planned Development, *private horse stables*, private riding clubs and other private recreational clubs or facilities for the use of members, including restaurant facilities and a private bar, operated for profit or not and any other related used [*sic*] permitted or authorized under any of the residence districts of this Ordinance." (Emphases added.) *Id.*

Ordinance 89-13 also has a provision requiring that half of the land devoted to cluster housing consist of common open space. The ordinance allows single-family homes in the W-1 zoning areas to have private horse stables as an accessory use.

---

[1] Anastasio argues that ordinance 9-78's contents may not be considered because the ordinance was not part of the record before the ZBA. It is true that in general, a reviewing court may not consider any new or additional evidence when reviewing an administrative agency's decision. 735 ILCS 5/3-110 (West 2016). However, in such situations, we may still judicially notice documents containing readily verifiable facts that will aid in the case's efficient disposition. *Travelers Insurance v. Precision Cabinets, Inc.*, 2012 IL App (2d) 110258WC, ¶ 36. This is true of ordinance 9-78.

¶ 8 Unit 3 remained undeveloped for over a decade. In 1993, the owner of Unit 3 (a trust) filed an application to amend the zoning ordinance to allow for single family detached residences on the property. After negotiations, the Village passed Village Ordinance 94-24 (approved Oct. 4, 1994), which is the main ordinance at issue in this case. The ordinance states as follows, in relevant part. The subject property consists of approximately 25 acres and is "included within and is part of the North Country in Wayne Planned Development, approved pursuant to Ordinance No. 9-78, on April 10, 1978." *Id.* The "North Country in Wayne Planned Development is located within the W-1 Single Family Residence District of the Village." *Id.* The proposed amendment was a major change to the prior ordinance "because the elimination of the open space within the original cluster housing area of the Subject Property alters the concept or intent of the original planned development and eliminates a particular type of housing approved as part of the original development." *Id.* The ordinance was adopted pursuant to, and in compliance with, the provisions contained in a letter agreement dated August 25, 1994, between the Village, NCIWCA, the trustee, and the developer. *Id.* The findings of fact in the September 19, 1994, "Report and Recommendations of the Plan Commission" were also adopted as part of the ordinance.[2] *Id.*

¶ 9 Under the heading "Rezoning," ordinance 94-24 states: "The Subject Property is hereby zoned as an amended Special Use as a Class I Planned Development in the W-1 Single Family Residence District of the Village ***." *Id.* Under the heading "Residential Density; Lot Sizes and Setbacks," the ordinance states that there are to be five single family detached residential

[2] This document does not appear in the record. The record does contain a September 9, 1994, report from the Village's attorney to the plan commission, and the September 12, 1994, minutes of the plan commission.

units on lots of four or more acres. *Id.* "Setback and other zoning requirements for the Subject Property shall be in accordance with the existing regulations applicable to the W-1 Single Family Residence District of the Village." *Id.* Other parts of the ordinance provide that no part of the property was required to be used to satisfy prior open space requirements. *Id.* There was to be an equestrian easement, at least twenty feet wide, around the perimeter of the property. "Fencing or other obstructions placed within the Conservation Easement or on the perimeter" were limited to corral or split rail type fencing, and subject to the approval of NCIWCA and the Village. *Id.*

¶ 10 Beneath the heading "Declaration of Covenants, Conditions and Restrictions" the ordinance states:

> "The Trustee shall by appropriate instrument and covenant impress the Subject Property with a declaration of covenants, conditions, easements and restrictions ("Declaration") in form and substance substantially similar to the covenants, conditions, easements and restrictions generally applicable to the other units of North Country. The Declaration shall, without limitation of the foregoing, provide for architectural approval of any docks or piers constructed on the Subject Property, and shall further provide that the Subject Property shall have membership in the existing North Country in Wayne Community Association. The Village shall reasonably approve the provisions of the Declaration.
>
> The Declaration shall also provide for the matters set forth in this Ordinance and *shall provide that the Subject Property may not be hereafter used other than for single family detached homes on minimum lots or parcels of four (4) acres or more*." (Emphasis added.)[3] *Id.*

[3] The declaration for Unit 3 allows for private horse stables on lots of two or more acres,

¶ 11 The ordinance provides that "[d]evelopers and successor purchasers of lots within the Subject Property shall comply with all existing ordinances of the Village, except as may be *expressly modified* by this Ordinance." (Emphasis added.) *Id.* Relatedly:

> "If any pertinent existing ordinances or resolutions of the Village are in any way inconsistent with or in conflict with the provisions hereof, then the provisions of this Ordinance shall constitute a lawful and binding amendment thereto and shall supersede the terms of said inconsistent ordinances or resolutions thereof as they may relate to the Subject Property or to the North Country in Wayne Planned Unit Development." *Id.*

The ordinance "readopted, ratified and confirmed in all respects" ordinance 9-78, "except as to any provisions of said Ordinance which are in conflict" with the current ordinance or certain other ordinances.[4] *Id.*

¶ 12 The letter agreement dated August 25, 1994, which is referenced and incorporated in ordinance 94-24, calls for amending the relevant ordinances to delete any references to cluster housing, delete any requirements that Unit 3 comply with open space provisions, and "provide that the Subject Property shall be developed and used for not more than five (5) single family detached residences on minimum lot sizes of four (4) acres or more consistent with the W-1 Single Family Residence Zoning Classification of the Village."

¶ 13 Section 10-11-8 of the Village Code (amended July 20, 1993), which deals with planned unit developments, has language almost identical to that previously quoted in ordinance 89-13. See *supra* ¶ 7. Section 10-11-8 states that Class I planned developments:

---

as do the declarations for Units 1 and 2.

[4] The other ordinances include ordinance 89-13 (adopted May 16, 1989).

> "may include any one or more of the following *uses*: single-family detached homes, cluster homes (where not more than 2 dwelling units may be part of a single structure), professional or government offices, but such use shall not exceed five percent (5%) of the gross land area of the planned development, *private horse stables*, private riding clubs and other private recreational facilities for the use of members, including restaurant facilities and a private bar, operated for profit or not, and any other related uses permitted or authorized under any of the residence districts of this Title." (Emphases added.) *Id.*

¶ 14 In March 2005, the Lorenzes applied for a zoning variance in order to build a swimming pool, pool house, and private horse stable on their property. They believed that they were entitled to build such structures but requested a variance because the structures were not limited to the rear yard but rather would also be located in the side yard. The ZBA unanimously approved a zoning variance, and the Lorenzes built the swimming pool and pool house; they did not build the stable at that time.

¶ 15 The zoning variance expired after one year. Many years later, on April 22, 2013, the Lorenzes filed a building permit application to construct the stable. Various individuals objected to the application, and a decision on the application was delayed due to litigation not relevant here. Finally, on August 14, 2015, Michael Gricus, who was the Village director of building and zoning, denied the application. In his decision, Gricus cited ordinance 94-24, the 1994 letter agreement, and section 10-11-8 of the Village Code. He stated that although section 10-11-8 listed a variety of uses for planned unit developments (including private horse stables), ordinance 94-24 listed only single family detached residential units as a permitted use. Correspondingly, the letter agreement stated that the property was to be developed and used for not more than five

single-family detached residences. He concluded that only a single-family detached home was allowed on the property, and he declined to issue a building permit for a private stable. On September 2, 2015, Gricus sent a second letter correcting a typographical error in his initial decision.

¶ 16 The Lorenzes appealed Gricus's decision to the ZBA on September 16, 2015. The ZBA held public hearings on the matter on October 28, 2015, and November 18, 2015. We summarize the relevant evidence from the ZBA hearing. Kate McCracken testified that she represented the owners and developer of Unit 3 in 1994 during discussions leading to the zoning change. It was her understanding that the letter agreement and ordinance provided that cluster housing would be eliminated, equestrian and conservation easements would be created, and the single-family detached residences on the lots would be covered by the W-1 zoning classification. There was never any discussion about prohibiting stables in Unit 3, and it was McCracken's understanding that they would be allowed, subject to the declaration of covenants, conditions, and restrictions, as they related to Unit 3. That declaration, which was recorded on December 7, 1994, indicated that stables could be built in Unit 3 on the five lots. McCracken's recollection was that the ordinance and the declaration were drafted at the same time and that the Village reviewed the declaration before its recordation.

¶ 17 Freddy Iozzo testified that he joined the Village's planning commission around 1990 and was still a member. In 1994, there was no discussion about eliminating or prohibiting horses in Unit 3; the planning commission never considered that "this was not going to be equestrian." Iozzo agreed that the Village passed the ordinance, rather than the plan commission.

¶ 18 Kenneth Shepro testified that he was the Village attorney in 1994, when the Village reached a settlement agreement with NCIWCA and the developer. The main point of the 1994

letter agreement was to eliminate cluster homes and substitute single-family homes. He did not "have a clear recollection of what the understanding was or the extent to which" accessory uses were discussed at that time. His report to the plan commission on the issue did not refer to any prohibition of accessory uses or stables. Shepro drafted the ordinance, and his understanding was that the declaration and the ordinance were to be recorded at about the same time. When he typically prepared or reviewed covenants, he would include a provision that would give the Village the right but not the obligation to enforce them.

¶ 19 Shepro thought "the only express removal of any previous entitlement would have been restricted to the cluster home provisions of any previous ordinance." Shepro agreed that ordinance 94-24 allowed only one of the "permitted uses" listed for W-1 districts, and that a rule of statutory interpretation provided that the expression of one thing meant the exclusion of all other things. However, he later agreed that because ordinance 94-24 readopted all non-conflicting provisions of ordinance 9-78, and ordinance 9-78 allowed stables, stables remained a permitted use in that they were not specifically eliminated.

¶ 20 The Lorenzes also introduced the affidavit of Gail Zwemke as evidence. She averred that she was an attorney; she was president of the NCIWCA from 1991 to 1994; she met with McCracken on multiple occasions to negotiate the settlement agreement on behalf of NCIWCA; and she recalled no discussions about excluding stables or other accessory structures or uses from Unit 3. Zwemke averred that NCWICA's goal was to limit Unit 3 to five single family residences on minimum lot sizes of four acres, and to have Unit 3 subject to the same covenants and restrictions as Units 1 and 2. These goals were NCWICA's focus in writing the settlement agreement; NCIWCA did not have the goal of prohibiting accessory uses and structures beyond those allowed in the other units. McCracken contacted Zwemke sometime before December 12,

1994, and said that there was a mistake in drafting the Unit 3 declaration in that it limited the number of horses permitted to one as a matter of right. She asked on behalf of the Unit 3 developer and owners that NCIWCA adopt a formal waiver allowing multiple horses. NCIWCA then passed a motion approving a covenant waiver to allow two horses as a matter of right on the Unit 3 lots.

¶ 21 Gricus testified as follows. He had been the Village's director of building and zoning since the mid-1990's. In 2005, he wrote the Lorenzes a letter stating that their proposed accessory structures, namely an in-ground pool, pool house, and private stable, were appropriate under the zoning code but needed a variance due to their proposed locations. The ZBA later issued an ordinance granting the variances. In 2013, the Lorenzes submitted a new permit application and drawings for the stable, and Gricus told them in 2014 that they appeared to comply with the Village Code. However, after litigation against the Lorenzes ensued, Gricus saw a reference to ordinance 94-24, of which he had previously been unaware. Based on reading that ordinance and talking to the current Village attorney, Gricus determined that private stables were not a permitted use, and he denied the Lorenzes' permit application in August 2015. He had never read the annexation agreement or ordinance 9-78. He interpreted section 10-11-8 of the Village Code as a "list of principal uses that are permitted in a planned development." He believed that because no accessory uses were listed in ordinance 94-24, all accessory uses were prohibited in Unit 3, including light poles, garages, pools, sheds, gazebos, decks, and patios. Gricus further testified that a private horse stable could not be a principal use without a special-use approval, and that North Country in Wayne was the only planned development in the Village.

¶ 22 Anastasio testified that he was a lawyer, had been an officer of the NCIWCA at one time, and was a Village trustee. He owned a one-acre and adjoining half-acre lot in the North Country in Wayne, and he owned a five-acre lot across the street that was not within the planned development. He had built a seven-stall horse stable on the five-acre lot. Anastasio believed that there were "legal reasons, property rights reasons, property values reasons, and fairness reasons" why the Lorenzes should not be allowed to build a stable

¶ 23 On January 27, 2016, the ZBA, with two of six members dissenting, affirmed Gricus's decision to deny the building permit application. The ZBA majority similarly found that ordinance 94-24 listed only one of the six uses otherwise permitted in a Class I planned unit development under 10-11-8, being detached single-family homes, and therefore no other uses were permitted.

¶ 24 In contrast, the dissenting members of the ZBA found ordinance 94-24 to be ambiguous. They noted that the 1978 annexation agreement allowed for horses on lots of 2 or more acres; that a 1994 staff report from the Village attorney stated that the five residential lots would be consistent with the W-1 single family residence zoning classification of the Village; that ordinance 94-24 states that "[s]etbacks and other zoning requirements for the Subject Property shall be in accordance with the existing regulations applicable to the W-1 Single Family Residence District of the Village" (Village Ordinance 94-24 (approved Oct. 4, 1994)); that W-1 zoning allows accessory uses such as private horse stables, fences, and patios; that ordinance 94-24 allows for fencing, which was an accessory use inconsistent with the majority's decision; that ordinance 94-24 further provides for equestrian easements; and that the majority's decision was contrary to the ZBA's 2005 decision to allow the Lorenzes to construct a private stable on their property. The dissenting members stated that the evidence presented at the hearing showed that

the property was never intended to be zoned W-1 single family residential without any accessory uses, and a contrary conclusion was based solely on an error of omission of the drafters and the Village board that approved the ordinance. The dissenting members further stated that the majority's decision would affect the property value of all lots within Unit 3 because existing accessory uses would be deemed in violation of ordinance 94-24, and no future accessory uses would be permitted, including fences, decks, patios, porches, pools, detached garages, private stables, or storage sheds.

¶ 25 The Lorenzes appealed to the trial court, which reversed the ZBA's ruling on December 7, 2016. The trial court reasoned as follows. Ordinance 94-24 amended ordinance 9-78 but also readopted it, with exceptions, so both ordinances had to be considered. Ordinance 94-24 also incorporated other documents by reference, namely: the 1994 letter agreement; the findings of fact in the Report and Recommendations of the Planning Commission dated September 19, 1994; the terms of ordinance 89-13; and the terms of the annexation agreement adopted on January 16, 1978. Reading all of these documents together showed that the legislative intent of ordinance 94-24 was to eliminate cluster housing and certain open space requirements, and to provide that Unit 3 would be developed and used for "not more than five (5) single family detached residences on minimum lot sizes of four (4) acres or more consistent with the W-1 Single Family Residence Zoning Classification of the Village."

¶ 26 The trial court stated that the ZBA relied on one provision of ordinance 94-24 stating that the property "may not be hereafter used other than for single family attached homes on minimum lots or parcels of four (4) acres or more." Village Ordinance 94-24 (approved Oct. 4, 1994). However, it was not clear that the ordinance eliminated accessory uses for single family residences, including private horse stables. A conclusion that no accessory uses were permitted

did not consider the ordinance as a whole. For example, in the same section relied on by the ZBA, the Village was required to reasonably approve the provisions of the declaration, and the declaration provides for private stables. Additionally, ordinance 94-24 allows for fences or other obstructions, and other obstructions would constitute " 'other uses.' " The ordinance also mandates an equestrian easement on Unit 3 properties.

¶ 27 The trial court found that the special use planned development was "impressed into" the W-1 district and not completely independent of it. The trial court concluded:

> "Ordinance 94-24, when analyzed in the manner as above set forth, amends only the permitted uses in Unit 3 and does not eliminate the accessory uses and structures, including, but not limited to private stables, that are otherwise provided as accessory uses to the principal permitted use of single family residences within the W-1 District."

The Village and Anastasio then appealed the trial court's ruling to this court.

¶ 28 II. ANALYSIS

¶ 29 A. Jurisdiction

¶ 30 1. Anastasio's Argument

¶ 31 We first address Anastasio's argument that the ZBA did not have jurisdiction to consider the Lorenzes' appeal, depriving the trial court of jurisdiction to consider their subsequent appeal. Anastasio had sought to dismiss the appeals in both forums. Anastasio brought his motion to dismiss pursuant to section 2-619(a)(1) of the Code of Civil Procedure (735 ILCS 5/2-619(a)(1) (West 2016)), which allows for the involuntary dismissal of an action based on lack of subject matter jurisdiction. The ZBA orally voted to deny the motion to dismiss. The trial court also denied the motion, ruling that the Lorenzes had substantially complied with the relevant statute, which was sufficient to vest the ZBA with jurisdiction. We review *de novo* a grant or denial of

a motion to dismiss pursuant to section 2-619(a)(1). *R.L. Vollintine Construction, Inc. v. Illinois Capital Development Board*, 2014 IL App 4th 130824 ¶ 23.

¶ 32 Anastasio cites section 11-13-12 of the Illinois Municipal Code (65 ILCS 5/11-13-12 (West 2016)), which provides:

> "An appeal to the board of appeals may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality. The appeal shall be taken within 45 days of the action complained of by filing, *with the officer from whom the appeal is taken* and with the board of appeals a notice of appeal, specifying the grounds thereof. *The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken*."
>
> An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of appeals, after the notice of appeal has been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. ***
>
> The board of appeals shall fix a reasonable time for the hearing of the appeal and give due notice thereof to the parties ***." (Emphases added.)

The Village Code has a provision with almost identical language, also requiring that a notice of appeal be filed with the officer. Village Code § 10-4-5(B) (adopted May 16, 1989). This requirement is laid out under the subheading "Initiation of Appeals." However, the same provision has a subheading of "Processing" which states: "An appeal shall be filed with the village clerk. The village clerk shall forward the appeal to the zoning board of appeals for processing in accordance with the statutes of the state." Village Code § 10-4-5(C) (adopted May 16, 1989).

¶ 33 Anastasio argues that although Gricus issued a written decision denying the Lorenzes' building permit application, the Lorenzes did not file their notice of appeal with Gricus, who was "the officer from whom the appeal [was] taken" (65 ILCS 5/11-13-12 (West 2016)), but rather only with the Village clerk. Anastasio maintains that the filing of a notice of appeal with Gricus was a mandatory jurisdictional and procedural prerequisite that could not be waived or excused. Anastasio argues that although the Village could certainly impose an additional "processing" requirement for filing a notice of appeal to the ZBA with the Village clerk, it had no authority to excuse compliance with the mandatory statutory requirement.

¶ 34 Anastasio asserts that grants of power to administrative agencies are legislatively-delegated authority, grounded in statute rather than common law, and therefore must be strictly construed. See *Simmons v. Illinois Liquor Control Comm'n*, 92 Ill. App. 3d 387, 389 (1980). He cites *M.L. Ensminger Co v. Chicago Title & Trust Co.*, 74 Ill. App. 3d 677, 678 (1979), in which the court stated that "[s]ubstantial compliance with notice provisions has been held to be insufficient where the statutory provisions are not merely technical requirements but are jurisdictional." Anastasio also relies on the substantive holdings in two cases, *West Suburban Bank v. Advantage Financial Partners, LLC*, 2014 IL App (2d) 131146, and *Kirk v. Village of Hillcrest*, 15 Ill. App. 3d 415 (1973). In *West Suburban Bank*, we held that the trial court did not acquire personal jurisdiction over the defendant because a private detective agency's license had expired before it was appointed as a special process server. *West Suburban Bank*, 2014 IL App (2d) 131146, ¶¶ 17-20. In *Kirk*, we invalidated an amendment to a zoning ordinance because the published notice of the hearing for the zoning change incorrectly identified the subdivision number. *Kirk*, 15 Ill. App. 3d at 416. We stated that the published notice was "mandatory, jurisdictional and must correctly describe the subject property." *Id.* at 417.

¶ 35 The Lorenzes respond that they filed their appeal with the Village clerk as directed by the Village Code and by the Village's oral instructions. They maintain that the fact that they did not personally serve Gricus did not affect the ZBA's jurisdiction because Gricus was acting in a functionary capacity for the Village, and he attended and testified at the hearings. The Lorenzes argue that they were never notified of any improper filing, but rather the Village accepted their application for appeal by scheduling and holding the ZBA hearings.

¶ 36 We ultimately agree with the Lorenzes that the ZBA had jurisdiction over their appeal. We find the cases cited by Anastasio largely distinguishable because *M.L. Ensminger Co.* and *Advantage Financial Partners* dealt with service of process on a party, and *Kirk* involved a published notice for a municipal hearing. In contrast, the current situation involves compliance with a statutory provision for filing an administrative appeal. Moreover, although *Simmons* states that statutes granting power to administrative agencies must be strictly construed (*Simmons*, 92 Ill. App. 3d at 389), our supreme court held in *Jones v. Industrial Comm'n*, 188 Ill. 2d 314, 328 (1999), that statutes governing appeals, including those involving administrative review, are to be liberally construed.

¶ 37 Our supreme court's analysis in *Jones* is relevant to the jurisdictional issue at hand, and it is entitled to greater weight than the appellate cases relied on by Anastasio. In *Jones*, a party seeking review of an Industrial Commission decision had to file a request for summons with the circuit court clerk within 20 days of receiving the Commission's decision. *Id.* at 316. The party was also required to provide the clerk proof that the Commission had been paid the probable cost of preparing the record. *Id.* The issue was whether the circuit court had obtained subject matter jurisdiction over an appeal from the Commission where the party provided proof of timely payment only *after* filing a request for and obtaining the summons. *Id.* at 316-17.

¶ 38 Our supreme court stated that it had consistently held that a timely filing of a request of summons and exhibitions of proof of payment for the record were "jurisdictional requirements which must be strictly adhered to in order to vest the circuit court with jurisdiction over an appeal from the Commission." *Id.* at 320. However, it further stated that it had held in other cases that "substantial compliance" with the statute was sufficient to vest the trial court with jurisdiction where the appeal process had been timely initiated. *Id.* at 322. The supreme court stated that although the summons in the case before it was issued before the party showed the clerk proof of payment of costs, the purpose of the proof (being to relieve the Commission of the inconvenience of contesting the summons based on lack of payment for the record) had been met. *Id.* at 326-27. It stated that statutes granting a right to appeal must be liberally construed to allow a case to be considered on its merits; that statutes must be construed so that they may be applied in a practical and commonsense manner; and that because the legislature had granted the right to judicial review in workers' compensation cases, the court would not presume that the legislature intended that a party lose that right on technical grounds. *Id.* at 328. It concluded that the party had satisfied the statute's material provisions such that jurisdiction properly vested in the circuit court. *Id.* at 327.

¶ 39 We recognize that *Jones* involved a notice of appeal from the Industrial Commission to the circuit court, whereas this case deals with a notice of appeal from a municipal zoning administrator to a municipal zoning board of appeals. However, although the court's power to adjudicate is generally conferred by the Illinois Constitution, the legislature controls the court's power to adjudicate in the area of administrative review. *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 336 (2002). Therefore, in both *Jones* and the instant case, the reviewing body's power was constrained by the legislative requirements. *Jones* teaches us that

the deadline for filing an appeal demands strict compliance, but in certain situations where an appeal was timely initiated, a substantial compliance test may be applied to determine whether the reviewing entity acquired subject matter jurisdiction of the appeal. See *Jones*, 188 Ill. 2d at 321-24; see also *Davis v. Human Rights Comm'n*, 286 Ill. App. 3d 508, 517 (1997) (notice of appeal invokes subject matter jurisdiction).

¶ 40 Turning to the case at hand, the Lorenzes timely-filed their notice of appeal, meeting the threshold requirement for the substantial compliance test to apply. See *Jones*, 188 Ill. 2d at 321. Under section 11-13-12, they should have filed the notice of appeal with Gricus because he was the "officer from whom the appeal [was] taken." Instead, they filed their notice with the Village clerk. The purpose of section 11-13-12's requirement is apparently to provide notice to the officer and/or the municipality and require the officer to transmit the record to the board of appeals. See 65 ILCS 5/11-13-12 (West 2016). Here, these goals were satisfied by notice to the Village clerk, as: Gricus was also a Village employee; there should have been no surprise to the parties involved that the Lorenzes may have filed their notice of appeal with the clerk, as that is the procedure outlined in the Village's "processing" portion of its ordinance; the ordinance required the clerk to forward the appeal to the ZBA, ensuring that it was notified, and the clerk did so; the ZBA held an evidentiary hearing, so it did not limit itself to the documents examined by Gricus; and all relevant parties were aware of the hearing, at which Gricus himself testified. We believe that, under the unique circumstances of this case, the Lorenzes substantially complied with section 11-13-12's requirement of serving the officer by instead serving the Village clerk, such that the ZBA acquired jurisdiction. Accordingly, we find no error in the denials of Anastasio's motions to dismiss. To conclude otherwise would result in punishing the

Lorenzes for following the Village Code, even where their appeal was otherwise timely-filed and satisfied the purpose of section 11-13-12.

¶ 41 2. The Lorenzes' Argument

¶ 42 The Lorenzes argue that this appeal should be dismissed because the ZBA is the real and necessary defendant but has not appealed the trial court's ruling. The Lorenzes further argue that the Village "surrendered its right to challenge the ZBA decision" because it did not participate in the ZBA hearings. The Lorenzes cite *Safanda v. Zoning Board of Appeals*, 203 Ill. App. 3d 687 (1990). There, this court held that the trial court correctly dismissed the City of Geneva from an appeal from its zoning board of appeals' decision. *Id.* at 692. We stated that because the city did not involve itself in the administrative hearing, it voluntarily gave up the right to challenge the board's decision. *Id.*

¶ 43 Looking first at the ZBA, section 3-107 of the Administrative Review Law (735 ILCS 5/3-107 (West 2016)) requires that a plaintiff appealing an administrative agency's decision name the agency, in addition to all parties of record, as a defendant. However, our supreme court has referred to this requirement as joining the agency as a "nominal party defendant" (*Speck v. Zoning Board of Appeals*, 89 Ill. 2d 482, 486 (1982)), as opposed to a necessary party. In *Speck*, our supreme court explicitly held that an administrative body that functions in an adjudicatory or quasijudical capacity does not have standing to appeal a trial court's reversal of its decision on administrative review. *Speck*, 89 Ill. 2d at 485. *Speck*, like the instant case, involved a zoning board of appeals, so the ZBA could not appeal the trial court's decision.[5] As such, the ZBA clearly cannot be deemed a necessary party to the appeal.

[5] Administrative agencies with additional managerial functions, such as maintaining and managing pension funds, are not subject to this limitation. *Petrovic v. Department of*

¶ 44 Regarding the Village, the Lorenzes essentially question its standing to be an appellant.[6] We note that, contrary to the Lorenzes' argument, the Village is not seeking to reverse the ZBA's decision but is rather challenging the trial court's decision to reverse the ZBA, which procedurally distinguishes this situation from *Safanda*. More importantly, the Lorenzes themselves named the Village as a party in the trial court and did not object to its standing at that time, thereby forfeiting the issue for review. See *Greer v. Illinois Housing Development Authority*, 122 Ill. 2d 462, 508 (1988).

¶ 45 B. Standard of Review

¶ 46 We now set forth the applicable standard of review. In an appeal to the appellate court following the decision by a circuit court on administrative review, we review the decision of the administrative agency rather than the circuit court's judgment. *Provena Covenant Medical Center v. Department of Revenue*, 236 Ill. 2d 368, 386 (2010). When the parties dispute an administrative agency's factual findings, we apply a manifest weight of the evidence standard. *Id.* at 387. Where the dispute is over an agency's conclusion on a point of law, we review the agency's decision *de novo*. *Id.* An intermediate standard applies for mixed questions of law and fact, which occurs where the dispute pertains to the legal effects of a set of facts. *Hanks v. Illinois Department of Healthcare & Family Services*, 2015 IL App (1st) 132847, ¶ 19. We review mixed questions of law and fact for clear error. *Provena Covenant Medical Center*, 236 Ill. 2d at 387. *Id.*

Employment Security, 2016 IL 118562, ¶ 17.

[6] We recognize that standing and jurisdiction are distinct issues. *People v. Vasquez*, 2013 IL App (2d) 120344, ¶ 22.

¶ 47 As particularly relevant here, the proper interpretation of an ordinance is a question of law, so a reviewing court is not bound by the administrative agency's interpretation. *North Avenue Properties, L.L.C. v. Zoning Board of Appeals*, 312 Ill. App. 3d 182, 190 (2000). Similarly, the initial question of whether an ordinance is ambiguous is a question of law subject to *de novo* review. *Id.* However, if we conclude that the ordinance is ambiguous, we give some deference to the municipality's interpretation of its own ordinance. *Shadid v. Sims*, 2015 IL App (1st) 141973, ¶ 7; *cf. Board of Education v. Illinois Educational Labor Relations Board*, 2015 IL 118043, ¶ 15 (we are not bound by an agency's interpretation of a statute, but that interpretation is relevant if there is a reasonable debate about a statute's meaning). Rules of statutory construction apply to municipal ordinances. *City of Chicago v. Janssen Pharmaceuticals, Inc.*, 2017 IL App (1st) 150870, ¶ 16. We must ascertain and give effect to the drafter's intent, which is best indicated by the ordinance's language, when given its plain and ordinary meaning. *Id.* We view all provisions of the enactment as a whole, and we interpret words and phrases in light of other relevant provisions, rather than construing them in isolation. *Id.* We will presume that the legislating body did not intend absurdity, inconvenience, or injustice. *Id.*

¶ 48 C. Parties' Arguments

¶ 49 The Village argues that its designation of Unit 3 as a "Special Use as a Class I Planned Development" shows that the property in question is unique and does not conform to conventional zoning, but the trial court's reversal of the ZBA's decision renders the designation meaningless and effectively causes Unit 3 to be improperly rezoned as W-1 single-family residences.

¶ 50 The Village maintains that ordinance 89-13 and section 10-11-8 of the Village Code list six permitted uses in a planned unit development, and it argues that ordinance 94-24 expressly

limits the property to only one of those uses, being single-family detached homes. The Village maintains that ordinance 94-24 could have listed any of the other possible permitted uses, including private horse stables, but did not, thereby excluding them. The Village cites the maxim of *expressio unius est exclusio alterius*, which means that expressing one thing excludes another. *Village of LaFayette v. Brown*, 2015 IL App (3d) 130445, ¶ 26. Applied to statutes, it means that where a statute lists the things to which it applies, omissions indicate exclusions. *Id.* According to the Village, ordinance 94-24's clear and unambiguous language allows for only single family residences, so the trial court should not have reviewed the "historical record" of the ordinances and documents. The Village maintains that before ordinance 94-24, private horse stables were not a permitted use for Unit 3, and after adopting ordinance 94-24, the Village chose to continue to not permit stables in Unit 3.

¶ 51 The Village contends that the trial court acknowledged that the permitted uses in Unit 3 appeared to be limited to single-family residences but was confused as to what effect that interpretation would have on accessory uses, ultimately concluding that it would result in a prohibition on any accessory uses. The Village argues that the trial court was incorrect, because ordinance 94-24 contemplates other permitted accessory uses allowed in the W-1 single family residential classification, as shown by the ordinance's provision: "Setback and other zoning requirements for the Subject Property shall be in accordance with the existing regulations applicable to the W-1 Single Family Residence District of the Village." Village Ordinance 94-24 (approved Oct. 4, 1994). The Village argues that all other zoning requirements not inconsistent with ordinance 94-24 apply, thereby allowing accessory uses such as detached garages, gazebos, and pools.[7] The Village argues that although W-1 zoning and the planned

[7] In contrast to its current position, in the trial court the Village argued that "a finding that

development ordinances allow private horse stables, this use is inconsistent with ordinance 94-24's prohibition against stables, and therefore not allowed. The Village further argues that the trial court's focus on accessory uses goes beyond the issue presented and is therefore improper. Last, the Village argues that the trial court never found that the ordinance was ambiguous, but it nevertheless improperly considered extrinsic evidence in making its ruling.

¶ 52 Anastasio asserts some arguments similar to those of the Village, so we summarize only his additional arguments. Anastasio points out that section 10-11-5(G)(2) of the Village Code (adopted May 16, 1989), which pertains to planned developments, requires that the final plat show "in detail the design, location and use of all buildings and overall land development," with the exception of single-family residences. Anastasio argues that if any type of private horse stable had been intended, it was section 10-11-5(G)(2) required that it be shown in detail in the final plat. Anastasio argues that an interpretation of ordinance 94-24 that allows private horse stables impermissibly re-writes section 10-11-5(G)(2) and the final recorded plat, along with the ordinance itself.

¶ 53 Anastasio maintains that the interpretation that a private horse stable is not permitted is further dictated by section 10-1-4(B)(1) of the Village Code (adopted May 16, 1989), which requires that, in the event of inconsistencies between applicable ordinances regarding the use of land or buildings, among other things, the more restrictive burden applies. Anastasio also argues that the letter agreement requires that the declaration "shall provide that the Subject Property may not be hereafter used other than for single family detached homes on minimum lots or

---

Ordinance No 94-24 does not permit accessory uses on the Unit 3 properties is not an unreasonable result regardless of whether accessory uses are allowed in other areas" of the Village.

parcels of four (4) acres or more," and the declaration for Unit 3 correspondingly states that "[o]nly residential dwellings" may be located on the lots. Anastasio maintains that regardless of any other provisions of the declaration "that may have been inserted in the Unit 3 Covenants by the owners/developers to account for potential future zoning amendments," such provisions may not supersede the single-family home limitation in ordinance 94-24 and the Village Code. See *Boschelli v. Villa Park Trust & Savings Bank*, 23 Ill. App. 3d 82, 85 (1974) (covenants do not supersede applicable zoning ordinances, rather the more restrictive provisions will prevail).

¶ 54 Anastasio takes the position that any interpretation that a private horse stable is impliedly an accessory use would impermissibly render meaningless ordinance 94-24 and the planned development ordinances. Anastasio argues that if the Village had intended that Unit 3 permit all of the accessory or other uses allowed in a W-1 district, the Village would have just re-zoned Unit 3 as a W-1 district. Anastasio argues that to allow all of the W-1 uses would be absurd because the lot sizes and layouts are different in the North Country in Wayne than those in a standard zoning district. He argues that smaller one-acre lots in Unit 2, which directly adjoin the Lorenzes' lot, are limited to residential use and are also not permitted to have a private horse stable. Anastasio asserts that although there are four references to "W-1" in ordinance 94-24, these references are limited to either identifying the fact that the development is physically located in the W-1 zoning district or to establishing compliance standards applicable to the construction of single-family detached dwellings permitted by ordinance 94-24. Anastasio argues that nothing in the ordinance states that W-1 principal or accessory uses of a private horse stable are allowed. Anastasio also maintains that the question of other accessory uses is not before this court, so we lack jurisdiction to consider the issue. He alternatively argues that although ordinance 94-24 unambiguously excludes private horse stables from Unit 3 lots, it does

not have the same preclusive effect with respect to other accessory uses not specially enumerated, such as swimming pools and sheds.

¶ 55 The Lorenzes counter that ordinance 94-24 is ambiguous because it is susceptible to two reasonable and conflicting interpretations. They argue the ordinance repeatedly states that their property is subject to W-1 zoning, which allows accessory uses including private horse stables, yet it lists only single-family detached homes as a permitted use. They maintain that the fact that they received a variance to build a horse stable in 2005 on the same property, although not determinative, affirms that the ordinance is ambiguous. The Lorenzes argue that reading ordinance 94-24 in context also shows that private horse stables are permitted. Specifically, the annexation agreement allows stables on lots of two or more acres, and it also requires that Unit 3's covenants be similar in form and substance to those for Units 1 and 2, which permit stables. The recorded covenants for Unit 3 likewise permit stables. The Lorenzes argue that all of the witnesses involved with drafting the 1994 letter agreement and ordinance 94-24 testified that horse stables were never excluded as an accessory use. The Lorenzes also note that courts resolve any residual ambiguities in zoning ordinances in the property owner's favor. *Monat v. County of Cook*, 322 Ill. App. 3d 499, 506 (2001).

¶ 56 NCIWCA takes a slightly different position. It argues that ordinance 94-24 is unambiguous in that it is not reasonably subject to an interpretation that stables and accessory uses are prohibited. NCIWCA argues that the phrase "private horse stable" in section 10-11-8 of the Village Code (amended July 20, 1993) ("private horse stables, private riding clubs and other private recreational facilities for the use of members, including restaurant facilities and a private bar") refers only to a type of private recreational club or facility for use by members, not a stable used as an accessory to a single-family residence. NCIWCA contrasts this language to the

definition of private stable in the Village's Code, which defines "STABLE, PRIVATE" as "[a]n *accessory* building detached from a dwelling that is located on a lot on which a dwelling is located***." (Emphasis added.) Village Code § 10-2-1 (amended July 17, 2012). NCIWCA maintains that section 10-11-8's reference to "uses" is referencing only principal uses, and the zoning code defines "USE, PRINCIPAL" as "[t]he main use of land or buildings as distinguished from a subordinate or accessory use. (Such use may be either 'permitted' or 'special.')" *Id.* It defines "BUILDING, ACCESSORY" as "[a] subordinate building or portion of a principal building, the use of which is incidental to that of the principal building and customary in connection with that use." *Id.* NCIWCA argues that not only has the Village listed private stables within the W-1 district and every other residential district as a permitted accessory use, it even excludes stables from counting toward the maximum number of accessory buildings allowed on a lot and deems a stable as not being an obstruction in any required rear yard.

¶ 57 NCIWCA argues that in order to determine the intent behind ordinance 94-24, it is necessary to read it along with the original entitlement and in context. NCIWCA argues that the annexation agreement and its corresponding ordinance 9-78 permit stables throughout the development on every lot of at least two acres; the covenants for Units 1, 2, and 3 permit stables; ordinance 94-24 is silent on stables, but never rescinds the prior allowance of stables; and ordinance 94-24 could not be given effect unless and until Unit 3 covenants were approved similar in form and substance to those for Units 1 and 2. NCIWCA argues that the operative question is whether a reading of ordinance 94-24 as allowing stables and accessory uses conflicts with the annexation agreement and ordinance 9-78. According to NCIWCA, the Village already answered this question in the negative by approving the Unit 3 covenants and by granting the 2005 variations specifically to permit construction of the stable and other accessory structures.

NCIWCA argues that perhaps even more telling of the encouragement of horses throughout North Country in Wayne is that almost every lot adjoins an equestrian easement and bridle path, which could have potentially unlimited equestrian use.

¶ 58 NCIWCA further notes that the annexation agreement states that one lot "now commonly known as Lamplight Stables *may be used as a horse stable with accessory uses* including residential uses for stable employees in existing residential units." (Emphasis added.) NCIWCA argues that the Village relies on the enumerated uses in section 10-11-8 but does not consider that stables were made part of the list when the planned unit ordinance was passed in 1978 precisely to allow Lamplight Stable to have a private stable as the principal use. NCIWCA also points out that the annexation agreement allows offices and one dwelling unit on another lot. All other lots "may be utilized *only* for single family residential uses" (emphasis added), with cluster housing permitted on certain lots. NCIWCA argues that no one takes the position that the provision allowing "only" single-family residential uses in the annexation agreement conflicts with the agreement's allowance of private horse stables or other accessory uses, so ordinance 94-24's change of Unit 3 from duplexes to detached single-family housing similarly does not create a conflict.

¶ 59 In response to the Village's position that the owners of Unit 3 could have requested to rezone the land to W-1 if they wanted all W-1 requirements to apply, NCIWCA argues that the zoning ordinance already allows a planned unit development to have the standard zoning requirements apply. NCIWCA also emphasizes that the Village itself requires that major changes to planned developments comply with the preliminary plat procedure for planned development. Village Code § 10-11-6 (adopted May 16, 1989). NCIWCA contends that a removal of Unit 3 from the planned development additionally could not occur because the

property does not have direct access to public streets and is part of a master engineered development subject to multiple sets of covenants and private governance.

¶ 60 NCIWCA argues that Anastasio's argument about plats is also without merit because only principal uses on the lots were required to be shown on final plats. NCIWCA asserts that nowhere on the plats for Units 1 or 2 were there any details about stables or accessory buildings, as the Village deemed them incidental to the principal use of the single-family homes whose locations would be decided through building permits.[8]

¶ 61 Last, NCIWCA argues that if ordinance 94-24 is found to be ambiguous, it must be deemed to allow stables and accessory uses. In addition to pointing out, like the Lorenzes, that residual ambiguities in zoning ordinances are to be resolved in favor of the property owner, NCIWCA argues that every witness involved in negotiating, drafting, and implementing ordinance 94-24 was clear that stables were to be permitted in Unit 3.

¶ 62 D. Our Resolution

¶ 63 Our first task is to determine whether ordinance 94-24 is unambiguous or ambiguous on the subject of whether private horse stables are permitted in Unit 3. An ordinance is ambiguous if it "is susceptible to being interpreted in more than one way by reasonably well-informed people." *People v. Martino*, 2012 IL App (2d) 101244, ¶ 26. Again, this is an issue that we review *de novo*. *North Avenue Properties, L.L.C.*, 312 Ill. App. 3d at 190.

¶ 64 Contrary to the Village's assertion that the "historical record" should not be considered in construing ordinance 94-24, the ordinance expressly incorporates the 1994 letter agreement and the 1994 Report and Recommendations of the Plan Commission. It also "readopted, ratified and confirmed in all respects" ordinance 9-78 (which in turn incorporated the annexation agreement)

[8] The plats for Units 1 and 2 are not part of the record.

except where it conflicted with ordinance 94-24 or certain other ordinances including ordinance 89-13. Ordinance 94-24 also contains repeated references to the W-1 zoning district, which is regulated through the Village Code. Accordingly, we may consider all of these sources in determining the plain meaning of ordinance 94-24.

¶ 65 Ordinance 94-24 states that the "Subject Property is hereby zoned as an amended Special Use as a Class I Planned Development in the W-1 Single Family Residence District of the Village." Village Ordinance 94-24 (approved Oct. 4, 1994). The ordinance has other references to the property as being "in" or "within" the W-1 district. We agree with the Village and Anastasio that these references do not equate to the property being zoned as W-1, which would have clearly allowed stables.

¶ 66 The Village and Anastasio primarily rely on two provisions in the ordinance to support their position that private stables are prohibited. The first is the statement, "The maximum residential density on the Subject Property shall be five (5) single family detached residential units on a minimum of four (4) acres or more." However, this provision is expressly related to residential density, to the extent that it appears under the heading: "Residential Density; Lot Sizes and Setbacks." It provides no indication of the drafters' intent regarding private stables.

¶ 67 The second provision is the statement: "The Declaration shall also provide for the matters set forth in this Ordinance and shall provide that the Subject Property may not be hereafter used other than for single family detached homes on minimum lots or parcels of four (4) acres or more." The Village and Anastasio compare this to section 10-11-8, which otherwise allows various uses in a planned development, including cluster homes, offices, and "private horse stables, private riding clubs and other private recreational facilities for the use of members." Village Code § 10-11-8 (amended July 20, 1993). They argue that because

ordinance 94-24 lists just one of the several otherwise permissible uses, it excludes all of those other uses, which include private horse stables.

¶ 68 Although such an argument has intuitive appeal and would provide a simple, direct way to resolve the issue at hand, it fails to take into account the sources that were incorporated into ordinance 94-24, nor does it consider the ordinance as a whole. The 1978 annexation agreement states that Lamplight Stables could be used "as a horse stable with accessory uses including residential uses." Thus, the principal use of the Lamplight property was that of a "horse stable," with an accessory use for residential purposes. The annexation agreement further states: "The term 'horse stable' as used in this paragraph shall be deemed to include a private riding club for the use of members and their guests including the serving of food and meals on such premises." Ordinance 89-13 (adopted May 16, 1989) parallels the language of the annexation agreement by allowing "private horse stables, private riding clubs and other private recreational clubs or facilities for the use of members, including restaurant facilities and a private bar, operated for profit or not." The same language is present in section 10-11-8. Thus, we agree with NCIWCA that the "uses" listed in section 10-11-8 are principal uses for the property, as opposed to accessory uses.

¶ 69 This interpretation is supported by the changes emphasized in the 1994 letter agreement. It states that the relevant ordinances will be amended to delete any references to cluster housing, to delete any requirements that Unit 3 satisfy open space provisions, and "provide that the Subject Property shall be developed and used for not more than five (5) single family detached residences on minimum lot sizes of four (4) acres or more *consistent with* the W-1 Single Family Residence Zoning Classification of the Village." (Emphasis added.) That is, the zoning for the entire planned development allowed for stables on properties of two or more acres, and the letter

agreement did not seek to alter that allowance but instead sought to eliminate open space requirements and change the housing from cluster units to a maximum of five single-family homes, each on four or more acres. Ordinance 94-24 itself highlights these intended changes. Correspondingly, the ordinance allows an equestrian easement of not less than 20 feet in width around the entire perimeter of Unit 3, which is consistent with allowing horses on Unit 3 properties.

¶ 70 Moreover, a construction of the ordinance that allows for "only" single-family homes could also result in the disallowance of any accessory uses, which would be an absurd result considering the size of the lots. Although the Village and Anastasio assert that the issue of anything beyond a private stable is not before us, we construe an ordinance presuming that the legislating body did not intend absurdity, inconvenience, or injustice (*Janssen Pharmaceuticals, Inc.*, 2017 IL App (1st) 150870, ¶ 16), so we may broadly consider the effect of defendants' interpretation. Also, although defendants maintain that accessory uses other than private stables are allowed, this was not the position taken by the Village in the trial court or by Gricus at the ZBA hearing; Gricus testified that all accessory uses were prohibited in Unit 3, including light poles, garages, pools, sheds, gazebos, decks, and patios. However, an interpretation that all accessory uses are prohibited is contrary to the language of ordinance 94-24 itself, as it allows "fencing," "docks," and "piers." Additionally, the ordinance states that "[s]etback and other zoning requirements for the Subject Property shall be in accordance with the existing regulations applicable to the W-1 Single Family Residence District of the Village" (Village Ordinance 94-24 (approved Oct. 4, 1994)), which supports an interpretation that W-1 accessory uses are allowed. The Village argues that this language means that all other zoning requirements not inconsistent with ordinance 94-24 apply. However, we have determined that ordinance 94-24 prohibits

private horse stables as a principal use, which does not equate to prohibiting them as an accessory use.

¶ 71 The Village and Anastasio both contend that if the Village had intended to allow horse stables as an accessory use, it would have simply rezoned the property as W-1. However, as NCIWCA points out, the Village Code dictates the procedure for amending a planned unit development, and such a change further would not have been feasible given that Unit 3 is surrounded by the planned development. Moreover, ordinance 94-24 makes changes unique to Unit 3, such as the equestrian easement and a conservation easement. It also provides that Unit 3 be governed by NCIWCA, just like the other property in the North Country in Wayne, and have a declaration of covenants substantially similar to those for Units 1 and 2.

¶ 72 Anastasio's argument about horse stables not being allowed because they are not shown on the final plat is also not persuasive, as the requirement would logically apply to only principal, rather than accessory, structures. Indeed, Anastasio takes the position that other accessory uses are allowed, even though they are not recorded on the plat.

¶ 73 In sum, applying *de novo* review, we conclude that the plain language of ordinance 94-24 and the sources incorporated therein unambiguously allow for private horse stables as an accessory use on the lots in Unit 3. As such, the ZBA erred in ruling to the contrary.

¶ 74 Even if, *arguendo*, the ordinance could also be reasonably interpreted as prohibiting private horse stables, creating ambiguity about the issue, the ultimate resolution would be the same. Where a statute is ambiguous, we may look beyond the statute's language and consider extrinsic evidence of legislative intent. *Schramer v. Tiger Athletic Ass'n of Aurora*, 351 Ill. App. 3d 1016, 1020 (2004); see also *Getto v. City of Chicago*, 392 Ill. App. 3d 232, 238 (2009) (municipal ordinances are construed in the same manner as statutes).

¶ 75 We start with the declaration of covenants, conditions, and restrictions. Ordinance 94-24 states that the declaration shall be "substantially similar" to those for the other units in the North Country of Wayne, and that the "Village shall reasonably approve the provisions of the Declaration." Village Ordinance 94-24 (approved Oct. 4, 1994). The declaration for Unit 3 expressly allows private horse stables. McCracken's recollection was that the declaration and ordinance were drafted at about the same time and that Shepro reviewed the declaration before it was recorded.

¶ 76 McCracken additionally testified that she represented the owners and developer of Unit 3 in the negotiations leading to the zoning change, and that it was her understanding that private horse stables would be allowed in Unit 3. Shepro, the Village attorney who drafted ordinance 94-24, testified that he thought "the only express removal of any previous entitlement would have been restricted to the cluster home provisions of any previous ordinance." He did not recall discussing accessory uses. Although Shepro agreed with the maxim of *expressio unius est exclusio alterius*, he subsequently agreed that because ordinance 94-24 readopted all non-conflicting provisions of ordinance 9-78, and ordinance 9-78 allowed stables, stables remained a permitted use in that they were not specifically eliminated.

¶ 77 In Zwemke's affidavit, she averred that she negotiated the letter agreement on behalf of NCIWCA in 1994. NCIWCA did not have the goal of prohibiting accessory uses and structures beyond those allowed in the other units, and she did not recall any discussions about excluding stables or other accessory structures. Upon being informed by McCracken that the declaration mistakenly limited the number of horses in Unit 3 to one as a matter of right, in December 1994 NCIWCA approved a covenant waiver to allow two horses as a matter of right in Unit 3.

¶ 78 Iozzo testified that he was a member of the Village's plan commission in 1994, and the planning commission never considered that Unit 3 was "not going to be equestrian." Shepro's report to the plan commission about the changes to Unit 3 and the September 12, 1994, minutes of the plan commission do not mention private horse stables.

¶ 79 Shepro, McCracken, Zwemke were the only signatories to the 1994 letter agreement, which was incorporated into and formed the basis for ordinance 94-24. According to all three of these individuals, there was no intent to prohibit private horse stables from Unit 3 properties. McCracken and Zwemke expressly stated that they thought that stables would be allowed. Iozzo likewise testified that the plan commission believed that horses would be allowed in Unit 3. Documentary evidence supports this conclusion, especially the fact that the declaration for Unit 3, which the Village was to "reasonably approve" before its recordation, allows private horse stables. Therefore, even if ordinance 94-24 was ambiguous, the extrinsic evidence shows that private horse stables were not prohibited as an accessory use on Unit 3 properties.

¶ 80 III. CONCLUSION

¶ 81 For the reasons stated, we affirm the judgment of the Kane County circuit court, which reversed the ZBA's ruling affirming Gricus's denial of the Lorenzes' building permit application. We conclude that ordinance 94-24's unambiguous language does not prohibit private horse stables as an accessory use on Unit 3 properties.

¶ 82 Affirmed.