

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO

CIVIL DIVISION

MIAMI TOWNSHIP
BOARD OF TRUSTEES,

Plaintiff,

-vs-

DARREN POWLETTE, et al.,

Defendants.

* CASE NO. 2019 CV 05444
*
* JUDGE SKELTON
*
*
* DEFENDANTS' MOTION FOR
* SUMMARY JUDGMENT
*
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*

Now come Defendants, by and through Counsel, and pursuant to Ohio Civil Rule 56 hereby move this Court for summary judgment. There are no genuine issues of material facts which remain to be litigated and Defendants are entitled to judgment as a matter of law. Defendants motion is supported by Ohio law, the Affidavits of Jeff Sutherland, Adam Z. Smith and Kelsey Cooney, the depositions of Darren Powlette, Chris Snyder and Alex Carlson, and the following Memorandum.

Respectfully Submitted,

/s/ Gregory S. Page

Gregory S. Page (0065264)

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Attorney for Defendants

MEMORANDUM

Defendants' Motion for summary judgment should be granted. Plaintiff's only claim against the Defendants in the First Amended Complaint is that the Defendant's "continue to operate illegal wedding/special events venue from the Property in violation of the Zoning resolution."

The undisputed facts reveal that the Defendants are not violating any legitimate zoning regulation. They are using the Property as an agritourism facility, which is a permitted use under the zoning resolution, as a matter of law. As such, Defendants are entitled to judgment as a matter of law and Defendants' Motion for Summary Judgment should be granted.

I. STATEMENT OF FACTS

Powlette acquired the property at 7757 Upper Miamisburg Road in Miami Township, Ohio ("the Property") in May of 2016. Since at least 2003, the 26-acre Property has been used to grow and bale hay. Prior to Powlette owning the Property, the farm supplied between 800 -900 bales of hay each year. *See Affidavit of Darren Powlette*. Since Powlette has owned the Property, the hay production has increased dramatically. To be sure, in 2017 the hat production increased to 2000 bales of hay per year. *Id.* In 2020, hay production exceeded 3,000 bales of hay. *Powlette Deposition at pg. 11*. The hay is grown and harvested at least three times during the year. *Id. at 40*. Powlette stores the hay he retains in the loft of the Barn and uses the hay to feed his alpacas and provide base layers for his chicken coops. *Id. at 71*. Powlette stores the equipment he uses to

transport the hay and feed his alpacas in the barn. *Id. at 76*. In addition, in very hot summer months, the alpacas use the unfinished portion of the barn to help them stay cool and out of the sun. *Id.*

In addition to the hay production (which involves the use of the Barn in essence 365 days a year), Powlette also raises a herd of alpacas on the Property. *Id. at 11*. The alpacas regularly use the Barn during the hot summer months in order to stay cool and out of the sun. *Id. at 76*.

Powlette also has egg producing chickens on the Property. He raises and feeds the chickens and then collects and sells the eggs that are produced.

In addition to the poultry husbandry and poultry production, Powlette also raises free range turkeys on the Property. Each year he brings in a number of turkeys. He feeds them, raises them, and then shortly before Thanksgiving he has them harvested in Amish country and sells them. *Id. at 61-62*.

In addition, in the summer of 2018, Powlette planted a vineyard on the property. *Id. at 11*. He started with 40 grapevines. *Id. at 12*. In 2021, he significantly increased the size of the vineyard by adding an additional 50 grapevines. *Id.* He has grown and continues to grow Marquis grapes on the Property. *Id. at 13*. He has produced wine on the Property in the Barn and has significantly increased the volume of wine he can produce by purchasing two large 55-gallon fermenters. *Id. at 33*. He is in the process of securing a license to sell the wine produced on the Property in the Barn.

Powlette also uses the Property for celebratory events such as weddings and wedding receptions. *Id. at 18*. In that capacity, he is an agritourism provider, who owns, operates, provides and/or sponsors an agritourism activity.

When visitors come to the Property for a wedding or other celebratory event, they enjoy full access to the Property. The guests interact with the alpacas, feed the alpacas, and Powlette provides them with an educational history of the animals, how they are raised and the value they bring to the farm. The guests have unhindered access to the animals and are provided an educational experience while on the Property.

As the *Affidavit of Jeff Sutherland* reveals, the interaction with the animals was of paramount importance to their celebration. “We chose Stoney Hill Farm for our special occasion because several friends who had their special day at Stoney Hill Farm recommended it. . . During our reception, Darren gave tours of the farm and educated our families and guests about the Alpacas that reside there. . . .Darren went into detail about the farm animals’ history and habitats. . . . Our guests and families told us this was one of the best most educational events they have ever been to and were so excited that it was so close to home. . . We’ve had so many send us their pictures with the Alpacas and their day with family on the farm!”

Other guests have had similar experiences. Adam Smith noted: “Ever since my wife and I began to imagine our perfect wedding day, we knew we wanted it to be on a farm. Darren’s farm not only had alpacas, one of my favorite animals, it had a beautiful barn on the premises....Darren share some interesting facts about the alpacas and how they are fantastic at guarding smaller livestock and that their fleece makes a similar thread to wool. My wedding

party all took photos with the alpacas, and we loved seeing the chickens and turkeys too. *See Affidavit of Adam Z. Smith.*

Kelsey Cooney also had her celebration at the Property. She notes, “In choosing a venue it was important for me to find a farm where myself and my guests were able to learn about and interact with animals. Stoney Hill Farm was the perfect location as we were able to interact with and ask questions about the alpacas before, during and after our celebration. I would recommend Stoney Hill Farm to anyone that wants to gain a deeper understanding of alpacas and other animals.”

In addition, the guests of the Property are provided the opportunity to tour the Property. To be sure, in 2019, before Covid hit, Powlette estimates that he provided over 30 tours of his Property. During the tours, Powlette educates his guests about all of the animals on the Property, not just the alpacas. He informs the guests of the why he chooses to raise free range turkeys rather than turkeys raised in a coop. He describes the process of raising egg producing chickens and the precautions he must take to protect the chickens from predators.

In addition, during the tours, he shows them the historic barn on the Property. He educates the guests on the construction methods used in building old barns, including the Mortise and Tenon joints, which is likely the oldest construction technique in the world, dating back some 7,000 years. *Powlette Deposition at 60.* He describes for his guests the differences between these ancient construction methods and the methods currently being used today in the construction of barns and other agricultural structures. *Id.*

In addition, during the events held on his Property, Powlette personally offers his guests hayrides of the Property using the tractor he stores in the Barn.

Powlette provides a wide range of agriculturally related activities, education, and history for the guests at his celebratory events. This is garden variety agritourism.

Miami Township would have the Court believe that a celebratory event held on a farm can NEVER constitute agritourism. *See Deposition of Alex Carlson at pg. 55-57.* This is simply an untenable position. To be sure, The Ohio Department of Commerce directly contradicts the Township's position.

ODC has issued a Bulletin that is relevant to the issue. Technical Bulletin 20-001, February 2020, attached to the Deposition of Chris Snyder as Exhibit C, called:

“Fire Safety at Agritourism Facilities”.

The Bulletin reads:

“It has become very popular to host wedding events and other meetings or gatherings in rustic settings. Many agricultural properties are converting old barns into event centers—or building new barns for this purpose.”

Obviously, the Ohio Department of Commerce views old barns, and new ones, as “agritourism facilities.” ODC clearly believes that hosting wedding events or other meetings or gatherings in rustic settings constitutes “agritourism.” Otherwise, the Bulletin would not be issued for “agritourism facilities.”

Strangely, no one from Miami Township has ever contacted anyone from the ODC or any agency of the State of Ohio to determine whether the use of these structures for weddings and other celebratory events is “agritourism.” See generally, *Deposition of Chris Snyder*, *Deposition of Alex Carlson*. In fact, Miami Township has not consulted with anyone outside of the Township to discuss the issue or get an opinion on its archaic, rigid position. *Id.*

II. LAW AND ARGUMENT

A. SUMMARY JUDGMENT STANDARD

For summary judgment to be appropriate, it must appear that: (1) there is no genuine issue as to any material fact to be litigated; (2) the moving party is entitled to judgment as a matter of law; (3) reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made, such party being entitled to have the evidence construed most strongly in his favor. *Harless v. Willis Day Warehousing, Inc.*, (1978), 54 Ohio St. 2d 64, 66. The burden of showing that there is no genuine issue as to any material fact is on the moving party. *Harless*, at 66. In considering a motion for summary judgment, the court views the evidence in a light most favorable to the non-moving party. *Id.*

Where the non-moving party bears the burden of production at trial, such party must produce evidence as to each issue to which the burden applies. *Wing v. Anchor Media, Ltd.*, (1991), 59 Ohio St. 3d 108. To withstand a motion for summary judgment, the non-moving party cannot merely rest on the allegations of the pleadings. Rather, the non-moving party must affirmatively set forth the material facts which preclude summary judgment. *Celotex Corp. v. Catrett*, (1986), 477 U.S. 317. Where the non-movant fails to meet this obligation, the moving

party is entitled to summary judgment. *Johnson v. Great American Moving Co.*, (1988), 44 Ohio App. 3d 71. In showing that there is a genuine issue for trial, only disputes over facts that might affect the outcome of the suit (*i.e.*, ‘material’ facts) may preclude summary judgment. *Anderson v. Liberty Lobby* (1986), 477 U.S. 242, 248.

B. STATUTORY INTERPRETATION

Statutory interpretation presents a question of law. *Scasny v. Village of Mayfield*, 2016-Ohio-5517, 69 N.E.3d 1219, (App. 8 Dist. 2016), citing *Riedel v. Consol. Rail Corp.*, 125 Ohio St.3d 358, 2010-Ohio-1926, 928 N.E.2d 448, ¶ 6. The necessity of considering the facts or the evidence to determine whether a legislative act applies to a particular case does not turn the issue of statutory interpretation into a question of fact. *Id.*

In this case, the facts are undisputed, and Court must determine whether Powlette’s current use of the Property constitutes agritourism.

C. ZONING RESOLUTION

Miami Township Zoning Resolution Section 307 provides:

SECTION 307 | AGRICULTURAL EXEMPTION TO A ZONING CERTIFICATE

A. In claiming an agricultural exemption, the following definitions as used in sections 519.02 to 519.25 of the Ohio Revised Code shall apply:

1. "agriculture" includes farming; ranching; aquaculture; algaculture meaning the farming of algae; apiculture and related apicultural activities, production of honey, beeswax, honeycomb, and other related products; horticulture; viticulture, winemaking, and related activities; animal husbandry, including, but not limited to, the care and raising of livestock, equine, and fur-bearing animals; poultry

husbandry and the production of poultry and poultry products; dairy production; the production of field crops, tobacco, fruits, vegetables, nursery stock, ornamental shrubs, ornamental trees, flowers, sod, or mushrooms; timber; pasturage; any combination of the foregoing; the processing, drying, storage, and marketing of agricultural products when those activities are conducted in conjunction with, but are secondary to, such husbandry or production.

2. “agritourism” means an agriculturally related educational, entertainment, historical, cultural, or recreational activity, including you-pick operations or farm markets, conducted on a farm that allows or invites members of the general public to observe, participate in or enjoy that activity.

B. An applicant may submit a Declaration of Intent – Agricultural Exemption form in lieu of obtaining a zoning certificate for structures that will be used exclusively for agricultural or agritourism purposes. The structure being exempted will not be required to have a permit on file and no fee will be required.

C. In association with the exemption form, an applicant will be required to provide a property site plan that clearly shows the location and size of the exempted structure for Township records.

In this case, Powlette has twice submitted a Declaration of Intent-Agricultural Exemption form that was compliant with the ordinance. In 2017, Powlette identified his use of the property to include hay storage. In fact, when he submitted the Declaration. Miami Township stamped the required property site plan as “Zoning Approved” on October 5, 2017. Since receiving his that agricultural exemption, Powlette has continuously used the Property for agricultural or agritourism purposes. When Powlette expanded the use of his Property and the barn, he filed a second Declaration of Exemption, which included, *inter alia*, agrotourism. He submitted the required site plan with this Declaration as well. Significantly, since this Declaration was filed, Miami township has NEVER revoked the exemption. As such, the barn is exempt from Township Zoning if Powlette is engaged in agritourism.

Powlette has complied with Miami Township's Zoning Ordinance. However, it is important to also note that *R.C. 519.21* also provides a restriction of township authority with regard to property used in agriculture.

R.C. § 519.21 provides, in pertinent part:

“Powers not conferred on township zoning commission by chapter:

(A) Except as otherwise provided in divisions (B) and (D) of this section, sections 519.02 to 519.25 of the Revised Code confer no power on any township zoning commission, board of township trustees, or board of zoning appeals to prohibit the use of any land for agricultural purposes or the construction or use of buildings or structures incident to the use for agricultural purposes of the land on which such buildings or structures are located... and no zoning certificate shall be required for any such building or structure. . . .

(C) Such sections confer no power on any township zoning commission, board of township trustees, or board of zoning appeals to prohibit in a district zoned for agricultural, industrial, residential, or commercial uses, the use of any land for: . . .

4. Agritourism. However, a board of township trustees, as provided in section 519.02 of the Revised Code, may regulate such factors pertaining to agritourism, except farm markets as described in division (C)(1) of this section, as size of a structure used primarily for agritourism, size of parking areas that may be required, setback building lines for structures used primarily for agritourism. and egress or ingress where such regulation is necessary to protect public health and safety. Nothing in division (C)(4) of this section confers power on a township zoning commission, board of township trustees, or board of zoning appeals to require any parking area to be improved in any manner, including requirements governing drainage, parking area base, parking area paving, or any other improvement. Nothing in division (C)(4) of this section confers power on a township zoning commission, board of township trustees, or board of zoning appeals to prohibit the use of any land or the construction or use of buildings or structures that are used primarily for vinting and selling wine that are located on land any part of which is used for viticulture as provided in division (A) of this section.

In this case, Miami Township lacks the authority to regulate Powlette's agritourism activities or his use of the building incident to this agricultural use as a matter of law.

Ohio townships have no inherent or constitutionally granted police or zoning power. *Yorkavitz v. Bd. of Columbiana Twp. Trustees*, 166 Ohio St. 349, 351, 142 N.E.2d 655 (1957). Accordingly, the zoning authority possessed by townships in the state of Ohio is limited to that which is specifically conferred by the General Assembly." *Bd. of Bainbridge Twp. Trustees v. Funtime, Inc.*, 55 Ohio St.3d 106, 108, 563 N.E.2d 717 (1990).

Zoning resolutions are in derogation of the common law and deprive a property owner of certain uses of his land to which he would otherwise be lawfully entitled. Therefore, such resolutions are construed in favor of the property owner. *Willow Grove, Ltd. v. Olmsted Twp.*, 2015-Ohio-2702, 38 N.E.3d 1133, (App. 8 Dist. 2015), citing *Terry v. Sperry*, 130 Ohio St.3d 125, 2011-Ohio-3364, 956 N.E.2d 276, ¶ 18-19. (*Emphasis added*).

Restrictions on the use of real property by ordinance, resolution or statute must be strictly construed, and the scope of the restrictions **cannot be extended** to include limitations not clearly prescribed by the State of Ohio. *State ex rel. Erica Scadden Zoning Enforcement Officer Franklin County Development Department v. Arthur Willhite*, 2002-Ohio-1352, 02-LW-1099, 01AP-800. (*Emphasis added*). Moreover, any "[a]mbiguity [in a zoning regulation] must be construed against the zoning resolution because it is a police power exercise that constricts property rights." *Id.*, citing, *Freedom Twp. Bd. of Zoning App. v. Bd. of Mental Retardation* (1984), 16 Ohio App.3d 387, 390.

In this case, rather, than liberally construing the relevant statutes in favor of the property owner, Miami Township seeks to expand the limitations set forth in RC 519.21, despite the fact that the expansion of these limitations are "not clearly prescribed" in the statute.

D. AGRITOURISM

Simply put, if the agricultural activities Powlette is engaged in on the Property constitute agritourism, he is zoning compliant.

Agritourism means an agriculturally related educational, entertainment, historical, cultural, or recreational activity, including you-pick operations or farm markets, conducted on a farm that allows or invites members of the general public to observe, participate in, or enjoy that activity. *R.C. § 901.80(A)(2)*.

There can be no doubt that the Property is a farm engaged in “agriculture.” The Property produces hay, is engaged in animal husbandry, is engaged in poultry husbandry and the production of poultry products. These facts are not in dispute. Additionally, Powlette is also engaged in viticulture and the vinting of wine on the Property.

The question before this Court is straightforward. Does Powlette’s use of the Property constitute agritourism?

Agritourism is an “agriculturally related educational, entertainment, historical, cultural, or recreational activity...conducted on a farm that allows or invites members of the general public to observe, participate in, or enjoy.” To be engaged in “agritourism,” Powlette only has to satisfy **one** of these criteria.

“Educational” means “intended or serving to educate or enlighten.”¹ At the celebratory events he hosts, Powlette regularly educates his guests, both young and old, about the animals on his farm, the products the farm produces, as well as the history of farm structures and

¹ Oxford Dictionary

construction techniques used in the building of those structures. This evidence is undisputed. As such, Powlette and his guests are plainly engaged in agriculturally related education activities on his farm during these celebratory events.

“Entertainment” has been defined as “[T]he action of providing or being provided with amusement or enjoyment.”² Clearly, a farm-based wedding is, among other things, the gathering of guests in an agricultural setting. The guests regularly interact with the alpacas and other farm animals on the property. They feed the animals. They take pictures with the animals and the children get to run around and play in the fields. The guests are provided hayrides and other agriculturally related activities during these events. The guests are without question “being provided with amusement and enjoyment” related to an agricultural activity. This is also undisputed.

“Historical” means “of or concerning history; concerning past events, belonging to the past, not the present.”³ Ohio history is replete with references to farm weddings and weddings held at the home of a bride or groom. Historically, weddings did not take place in a church. It was not until the mid-1800s that churches became the primary venue for weddings. Prior to that time, for rural residents in particular, the wedding would take place on the family farm or at the family residence. Within this historical context, having a wedding on a farm is, in and of itself, consistent with Ohio’s rural, agrarian history.

“Cultural” means “relating to the ideas, customs, and social behavior of a society.”⁴ Not unlike the historical context of a farm wedding, the current social behavior and customs of our

² Oxford Dictionary

³ Oxford Dictionary

⁴ Oxford Dictionary

society begs for weddings to be held in rustic settings. To be sure, in 2017, fifteen percent (15%) of all weddings in the United States took place on a farm. Statistics show that less than thirty percent (30%) of weddings in the United States were held in a religious institution. For better or worse, there has been a significant cultural shift in Ohio and across our country with regard to how weddings are celebrated. Accordingly, our culture, particularly in this region, is shifting towards holding weddings in rustic, scenic settings rather than at religious institutions.

“Recreation” means, “[A]ctivity done for enjoyment when one is not working.”⁵ Certainly, “recreation” includes weddings, reunions, and other celebratory events. Having the opportunity to gather with friends and family in a rural setting, to interact with and feed farm animals, and to enjoy simply being on a farm is “recreation.” Doing all of these activities on a 26-acre farm, amongst rolling hayfields and an array of livestock is obviously an agriculturally related activity.

Powlette is engaged in agritourism. Most certainly when construing the agritourism statute in a manner that favors the property owner, which this Court must, it is simply beyond doubt that the activities being conducted on the farm before, during and after the celebratory events is agritourism as a matter of law.

Miami Township’s zoning regulation must be strictly construed as a restriction on private property rights. Moreover, Miami Township cannot expand the scope of any restrictions prescribed by the statute. However, in this case, Miami Township seeks to narrowly construe the definition of agritourism rather than construe it in a manner in favor of the property owner.

When considering the wide range of agriculturally related activities the guests of the

⁵ Oxford Dictionary

Property engage in; and, combining that with the Court's obligation to construe ambiguities in the statute in favor of the landowner; it is beyond dispute that Powlette is engaged in lawfully permitted agritourism on the Property.

For the foregoing reasons, Defendants respectfully request that this Court GRANT their Motion for Summary Judgment.

Respectfully Submitted,

/s/ Gregory S. Page

Gregory S. Page (0065264)

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Attorney for Defendants

Certificate of Service

I hereby certify that the foregoing was served upon all Counsel of Record via the Montgomery County Clerk of Courts E-Filing system on this 30th day of September 2021.

/s/ Gregory S. Page
Gregory S. Page (0065264)

GENERAL AFFIDAVIT

The within named person (Affiant), Kelsey Cooney, who is a resident of Greene County, State of Ohio, personally came and appeared before me, the undersigned Notary Public, and makes this his/her statement, testimony and General Affidavit under oath or affirmation, in good faith, and under penalty of perjury, of sincere belief and personal knowledge that the following matters, facts, and things set forth are true and correct, to the best of his/her knowledge:

I, Kelsey Cooney, am writing to confirm that I had my wedding at Stoney Hill Farm on Saturday September 26, 2020.

In choosing a venue it was important for me to find a farm where myself and my guests were able to learn about and interact with animals. Stoney Hill Farm was the perfect location as we were able to interact with and ask questions about the alpacas before, during and after our celebrations.

I would recommend Stoney Hill Farm to anyone that wants to gain a deeper understanding of alpacas and other animals.

Dated this 27 day of August, 2021.

~~Kelsey Cooney~~ Kelsey Cooney
Signature of Affiant

State of Ohio

County of Greene

Subscribed and sworn to, or affirmed, before me on this 27 day of August, 2021 by Affiant Kelsey Cooney.


Signature of Notary Public

My Commission Expires:



AARON WILLIAMS
Notary Public
State of Ohio
My Comm. Expires
December 8, 2025

To whom it may concern:

Ever since my wife and I began to imagine our perfect wedding day, we knew we wanted it to be on a farm. Darren's farm not only had alpacas, one of my favorite animals, it had a beautiful barn on the premises and the perfect farmhouse that we had always dreamed of. His farm, Stony Hill, will always be a special memory for us. To say that it was perfect feels like an understatement.

Darren shared some interesting facts about the alpacas and how they are fantastic at guarding smaller livestock and the fleece makes a similar thread to wool. My wedding party all took photos with the alpacas and we loved seeing the chickens and turkeys too. We were so entertained by Nibbler and his buddies and even learned something while there too!

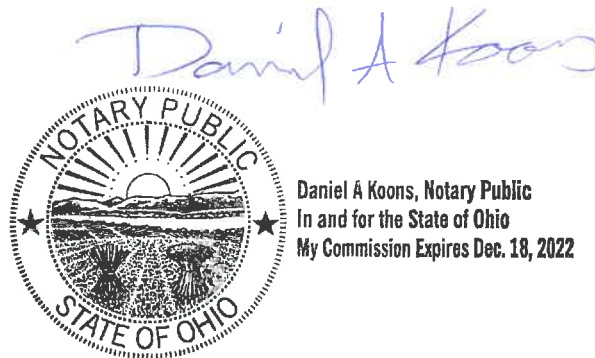
Our dog, Charlotte, was able to join us on our special day. Where other places told us no animals, because it was a farm, Darren had no reservations about it whatsoever. She loved having so much space to roam around and seemed to have such a wonderful time celebrating with us, something that truly meant the world to my wife and I.

I was so excited when Darren agreed to let us use his farm for our wedding day because I knew just how perfect it was. I truly hope others will be able to cherish their own memories there in the future!

Sincerely,



Adam Z. Smith



GENERAL AFFIDAVIT

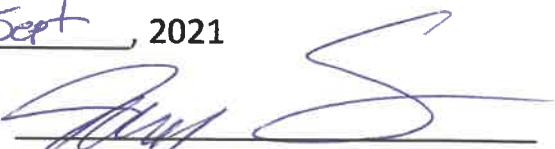
STATE OF OHIO
COUNTY OF MONTGOMERY

PERSONALLY came and appear before me, the undersigned Notary, the within named Jeff Sutherland, who is a resident of Montgomery County, State of Ohio and makes this his statement and General Affidavit upon oath and affirmation of belief and personal knowledge that the following matters, facts and things set forth are true and correct to the best of his knowledge:

We chose Stoney Hill Farm for our special occasion because several friends who had their special day at Stoney Hill Farm recommended it and also family members who were married on a farm and others who chose this type of educational environment for their special occasions. During our reception, the owner, Darren gave tours of the farm and educated our families and guest about the Alpacas that reside there as well as the chickens and turkeys. Darren went into detail about the farm animals' history and habitats. Darren also educated everyone on the wine vineyard at Stoney Hill Farm and how they make their own wine. Our guest and families told us this was one of the best most educational events they have ever been to and were so excited that it was so close to home in rural Montgomery County. We've had so many send us their pictures with the Alpacas and their day with family on the Farm!
We will definitely be recommending this beautiful, educational farm to all of our friends and family for their special day!

Jeff Sutherland

DATED this 10 day of Sept, 2021


Signature of Affiant

SWORN to and subscribed before me, this 10th day of Sept, 2021


NOTARY PUBLIC



KEITH THOMAS HOLLEY
Notary Public
State of Ohio
My Comm. Expires
May 5, 2026