

IN THE COMMON PLEAS COURT
MONTGOMERY COUNTY, OHIO

MIAMI TOWNSHIP BOARD OF TRUSTEES,	:	CASE NO. 2019 CV 05444
Plaintiff,	:	Judge Richard Skelton
	:	
v.	:	
DARREN POWLETTE <i>et al.</i> ,	:	<u>PLAINTIFF, MIAMI TOWNSHIP</u>
Defendants.	:	<u>BOARD OF TRUSTEES' RESPONSE</u>
	:	<u>IN OPPOSITION TO DEFENDANTS'</u>
	:	<u>MOTION FOR SUMMARY</u>
	:	<u>JUDGMENT</u>

Now comes Plaintiff, Miami Township Board of Trustees (“Plaintiff”), by and through counsel, and hereby submits its response in opposition to Defendants’ Motion for Summary Judgment (“Motion”) on the issue whether Defendants, Darren Powlette and Stoney Hill Rustic Weddings, LLC (“Defendants”) are using the property located at 7757 Upper Miamisburg Road, Miami Township, Montgomery County, Ohio (hereinafter, “the Property”) for an unauthorized purpose under Plaintiff’s Township Zoning Resolution. The record evidence in this matter does not support Defendants’ claim that the present primary use of their wedding barn is for viticulture or agritourism, which are exceptions to the Zoning Resolution. Therefore, this Court should deny Defendants’ Motion and grant Plaintiff’s pending Motion for Summary Judgment filed September 30, 2021.

I. FACTUAL SUMMARY¹

Defendants' Motion describes numerous activities that occur on the Property that they allege satisfy the definitions of "agritourism" and "viticulture" under R.C. 519.21(A) and (C)(4), thereby exempting the Property from the Township Zoning Resolution. However, these exemptions do not apply based upon the record facts before this Court because the primary and advertised purpose of Defendants' wedding barn is for entertainment and the hosting of celebratory events such as weddings, wedding receptions, and graduation parties. (Powlette Dep., pp. 11, 18; see also Am. Compl., ¶¶ 9-10.)

First, Defendants' Motion is misleading as it relates to the Property's hay production. Although Defendants themselves engage in animal and poultry husbandry, they are uninvolved in the production of hay, other than hay grows on the Property. Defendants do not produce, bail, or sell hay grown at the property. Instead, a third party grows the hay, pays for his own fertilizer, harvests the hay, gives Defendants whatever amount of hay they need, and sells the remaining hay for his own profit. (Powlette Dep., p. 41.) Defendants receive no income from the third party's hay operation. (Id.) In fact, they have received no income from hay sales since 2018. (See Profit and Loss Statement, Exhibit D to Plaintiff's Motion for Summary Judgment.) The fact that a third-party grows hay on the Property and some of it is stored in the loft of the wedding barn does not connect the barn to agritourism. Certainly, guests do not come to a reception or party at the barn to see and learn how hay is stored.

Second, Defendants' primary use of the wedding barn is not for an agricultural purpose related to animal and poultry husbandry. Although Defendants occasionally put alpacas in the ground floor of the wedding barn on hot summer days, the bottom floor of the wedding barn is

¹ Plaintiff incorporates by reference the facts in the factual background section of its Motion for Summary Judgment filed on September 30, 2021 as if fully restated herein.

unfinished, and Defendant Powlette testified that Defendants *eventually* plan to lay a floor and build a wooden alpaca pen. (Powlette Dep., p. 77.) Defendants otherwise keep the alpacas in an outdoor pen connected to a commercial building that houses all of the items and materials used for their upkeep. (Id. at pp. 21, 52-53, 88.) Further, Defendants’ Motion does not state that the egg and poultry production occurs in the wedding barn. This is because it also occurs in the commercial building on another part of the Property where Defendants house the poultry.

Finally, Defendants do not use the wedding barn primarily for viticulture. Presently, Defendants admit that they have purchased equipment to increase the volume of wine production on the Property, but they have not placed that equipment into operation. (Id. at p. 33.) Powlette even admitted that he has not secured a license to sell wine, but is in the process of doing so. (Motion, p. 4.) Altogether, the alleged agritourism and viticulture uses are not connected to the use of the wedding barn, and hosting wedding events and celebratory events are not an exemption to the Zoning Resolution.

II. LAW AND ARGUMENT²

This Court should refuse to accept Defendants’ attempt to circumvent the Zoning Resolution with their razor thin and non-existent connection of the farm animals and an infancy grape growing operation to the celebratory events hosted in the wedding barn. Neither use meets the agritourism and viticulture exemptions for the wedding barn. The Second District Court of Appeals has already refused such an attempt to circumvent building regulations under R.C. 3781.06(B)(1). *See Powlette v. Bd. of Bldg. Appeals Dayton*, 2d Dist. Montgomery No. 28666, 2020-Ohio-5357, 162 N.E.3d 964, ¶ 55; *see also Gainer v. Cavanaugh*, 5th Dist. Stark No. 2020CA00151, 2021-Ohio-2173, ¶ 47 (finding that the appellants sought to circumvent the

² Plaintiff incorporates by reference the law and argument section of its Motion for Summary Judgment filed on September 30, 2021 as if fully restated herein.

obligation to comply with the building code requirements by using R.C. 3781.06 as a shield to protect a use that is not agricultural); *see, e.g., Boehm v Waltz*, 3d Dist. Hardin No. 6-87-10, 1989 WL 11196 (the agricultural use exemption embodied in R.C. 3781.06 does not extend to a structure used for agricultural purposes located in an urban area; the use of the land, not the structure, is controlling). Here, conversely, the use of the structure, not the land, should be the controlling and determinative factor whether the barn is actually used for agritourism or viticulture.

At Powlette's deposition a mere four months ago, he affirmed that Defendants have sold no wine from the Property and have no license to sell wine. (Powlette Dep., p. 63.) Powlette's Declarations of Intent put neither the Plaintiff nor any Montgomery County building officials on notice that his barn was primarily used for viticulture and was subject to the Ohio Building Code in Montgomery County because he did not disclose that the primary purpose of the structure was to host weddings. *See Powlette* at ¶ 61. Indeed, there is no evidence that the primary purpose of the wedding barn is viticulture. There simply is no connection between the celebratory events hosted at the wedding barn, and the alleged viticulture activities engaged in at the Property. Presently, Defendants Property, exclusive of the wedding barn, may meet the exception for agritourism-related activities, but their wedding barn is simply a party center distinct and separate from any of the agricultural or viticulture exemptions that exist in the Zoning Resolution.

The difference between traditional agritourism locations and Defendants' wedding barn is that Defendants' guests are not paying to see the farm, pick produce, and learn about farming. Rather, they pay a rental fee for the wedding barn for the purpose of having a celebratory event. They are not signing a rental agreement to visit the farm to learn about animal and poultry husbandry, or how to grow hay, or how barn-building techniques have changed through the centuries, and certainly not to engage in viticulture since the Property has not produced any wine.

It would be premature and improper to conclude that Defendants' Property meets the viticulture exemption, and that the principal purpose for the wedding barn is to engage in agritourism.

In order for an exemption to the Zoning Resolution to apply, this Court must find that the primary purpose for the wedding barn is viticulture and that there is a significant connection between the wedding barn and the other agricultural aspects of the Property that allow Defendants to hold celebratory events at the wedding barn. The record facts in this case simply do not support such a finding because the wedding barn is not used exclusively for agricultural or agritourism purposes under Section 307 of the Zoning Resolution. Indeed, the primary purpose of the wedding barn is to generate revenue from weddings and other celebratory events.

Guests do not interact with the farm animals inside the barn; they do so at another location on the Property. For instance, Defendants keep the alpacas in a fenced-in area with chickens and ducks near the commercial structure used for farm equipment and supplies. (Powlette Dep., p. 53.) On the rare occasion when the temperature rises above 90 degrees, Defendants temporarily move the alpacas from their outdoor pen into the unfinished first floor of the wedding barn. (Id. at p. 76.) Otherwise, the alpacas have no connection to the celebratory events hosted in the wedding barn, and there is no evidence that Defendants sheltered the alpacas in the wedding barn during a wedding, wedding reception, or graduation party. If guests want to interact with the alpacas and other animals, they visit those animals in their pens; they do not gain that experience in or at the wedding barn. Tellingly, Defendants' Property, exclusive of the wedding barn, may have been used for agritourism when it hosted schoolchildren to tour the farm and interact with the alpacas. (Id. at p. 11.) That experience did not occur in the wedding barn.

A wedding or graduation party is not an agritourism activity. Agritourism embodies the idea and principal purpose of farmgoers visiting a farm to pick apples, strawberries, peaches, and

other fruit; buying apple cider and farm-made jams and jellies; and seeing animals at the farm. It does not embody a large group of partygoers attending a celebratory event at a wedding barn, the principal purpose of which is to host such events, and offering the guests an opportunity to interact with farm animals ancillary to the celebratory purpose for which they are using the wedding barn. As indicated above, Defendants do not advertise the wedding barn as a place for guests to pet animals and learn about how hay is grown and baled, or how barn construction has differed over the centuries. Defendants also do not advertise the wedding barn as a winery. Instead, they advertise the Property as a place to hold weddings, graduation parties, and other celebratory events.

Due to Defendants' continued violation of the zoning code, this Court must deny their Motion and find that Plaintiff has no other adequate remedy at law other than to seek injunctive relief. Therefore, Plaintiff respectfully requests that this Court deny Defendants' Motion and grant its Motion for Summary Judgment filed September 30, 2021.

III. CONCLUSION

For the foregoing reasons, Plaintiff, Miami Township Board of Trustees respectfully requests that the Court deny Defendants' Motion for Summary Judgment and, alternatively, grant Plaintiff's Motion for Summary Judgment.

Respectfully submitted,

SURDYK, DOWD & TURNER CO., L.P.A.

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CERTIFICATE OF SERVICE

I hereby certify that on October 28, 2021, I electronically filed the foregoing with the Montgomery County Clerk of Courts, which will send notification of such filing to all counsel of record, and that I mailed and emailed a copy of the foregoing to the following counsel of record:

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