

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
CIVIL DIVISION

MIAMI TOWNSHIP BOARD : CASE NO. 2019-CV-5444
OF TRUSTEES :
Plaintiff, : JUDGE E. GERALD PARKER, JR.
v. :
DARREN POWLETTE, ET AL. : MOTION TO DISSOLVE
Defendants. : INJUNCTION ISSUED 12/29/21

On December 29, 2021, the Court issued a Final Judgment Entry: Injunction (“Injunction”) against Defendants Darren Powlette (“Powlette”) and Stoney Hill Rustic Wedding, LLC (“Stoney Hill”) (collectively “Defendants”). Defendants respectfully request that this Court dissolve the Injunction. The Injunction was based upon the Court finding that, at that time, the Defendant’s activities violated the Miami Township Zoning Resolution Section 307 in that the use of the property for celebratory events, such as weddings, did not constitute “agritourism” and therefore the Township zoning authority was not prohibited by ORC 519.21(A).

Since the issuance of the Injunction, Stoney Hill has obtained from the Ohio Division of Liquor Control an Ohio Farm Winery Permit pursuant to ORC 4303.031. See Exhibit A attached hereto and made a part hereof. Pursuant to ORC 519.21(A), “a township may not prohibit the use of buildings for the vinting and selling of wine on a property as long as the property also cultivates grapes for wine making.” *Litchfield Twp Bd of Trs v. Forever Blueberry Barn, LLC*, 2020-Ohio-1508, 160 Ohio St.3d 70, ¶1, citing *Terry v Sperry*, 130 Ohio St.3d 125, 2011-Ohio-3364, ¶26..

Defendants respectfully request the Court to set this motion for hearing and to dissolve the Injunction. A Memorandum follows.

Respectfully submitted,

/s/Theresa A. Baker
Theresa A. Baker #0059122
Attorney for Defendants
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MEMORANDUM

Defendant, Stoney Hill, was issued an Ohio Farm Winery Permit (“A-2f Permit”) under ORC 4303.031 on July 27, 2022. As a holder of an A-2f Permit, Stoney Hill can, among other things, manufacture wine from grapes, fruits or other agricultural products grown on the property and sell that wine so produced.

Ohio Revised Code Section 519.21(A) states that a township has no power

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, including buildings or structures that are used primarily for vinting and selling wine and that are located on land any part of which is used for viticulture and no zoning certificate shall be required for any such building or structure. ORC 519.21(A)

A township has no zoning authority over the *use* of buildings or structures for the vinting and selling wine on a property so long as the property also cultivates grapes for wine making.

Terry v. Sperry, 130 Ohio St.3d 125, 2011-Ohio-3364, ¶¶26 and ¶28.

The Ohio Supreme Court held that

there are two circumstances under which the use of a property is exempt from township zoning regulations: (1) the property is used for agricultural purposes or (2) the construction or use of buildings or structures on the property is incident to an agricultural use of the land...We concluded that a township may not prohibit the use of a property for vinting and selling wine if any part of the property is used for viticulture...’Any’ can mean one vine.” *Litchfield Twp. Bd of Trs. V Forever Blueberry Barn, LLC*, 160 Ohio St.3d 70; 2020-Ohio-1508, ¶9, citing *Terry*, supra at ¶¶21 and 27.

Similar to the present case, in *Litchfield Twp*, supra, the defendant, Blueberry Barn, rented the barn for barn weddings and other social gatherings. The Litchfield Township Board of Trustees sought to enjoin the defendants from using the land for these weddings and other social gatherings. The Ohio Supreme Court held in *Litchfield Twp*, supra, that whether a building is used primarily for vinting and selling wine under RC 519.21(A) is a question of fact that must be proven by a preponderance of the evidence.

WHEREFORE, Defendants respectfully request the court to set this motion for an evidentiary hearing and to dissolve the Injunction pursuant to Ohio law.

Respectfully submitted,

/s/Theresa A. Baker
Theresa A. Baker #0059122
Attorney for Defendants

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document was filed electronically with the Clerk of Court using the CM/ECF system which will electronically send a true and correct copy of the foregoing document to Dawn M. Frick and Christopher T. Herman, Attorneys for Plaintiff, 8163 Old Yankee Street, Suite C, Dayton, Ohio 45458 on the date filed.

/s/Theresa A. Baker
Theresa A. Baker #0059122
Attorney for Defendants

**DEFENDANT'S
EXHIBIT**

A

Permit Number / Name / DBA	Class / Issue Status	Address (sort by City / Zip)	City/Twp of Premises	County	Agency Number	Other Info
8603110 STONE HILL RUSTIC WEDDINGS LLC DBA STONEY HILL FARM & WINERY View Ownership Disclosure Information	A2F / ISSUED 7/27/2022	7757 UPPER MIAMISBURG RD & UNIT A MIAMISBURG, OH 45342	MIAMI TWP	MONTGOMERY		NOT A QUOTA EXEMPT CLASS Site Location Vote: NO

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OWNERSHIP DISCLOSURE INFORMATION

8603110
STONE HILL RUSTIC WEDDINGS LLC
DBA STONEY HILL FARM & WINERY
7757 UPPER MIAMISBURG RD
& UNIT A
MIAMISBURG, OH
45342

Member Name	Interest	Office Held
DARREN POWLETTE	MANAGE MEM	PRESIDENT

Back