

**IN THE COMMON PLEAS COURT
MONTGOMERY COUNTY, OHIO**

MIAMI TOWNSHIP BOARD OF TRUSTEES, 2700 Lyons Road Miamisburg, Ohio 45342,	:	CASE NO.: 2019 CV 05444
	:	JUDGE: Richard Skelton
Plaintiff,	:	
	:	
v.	:	
	:	
DARREN POWLETTE, 7757 Upper Miamisburg Road Miamisburg, Ohio 45342,	:	<u>FIRST AMENDED COMPLAINT</u>
	:	<u>FOR PRELIMINARY AND</u>
and	:	<u>PERMANENT INJUNCTION</u>
	:	
STONEY HILL RUSTIC WEDDINGS LLC, c/o Darren Powlette 7757 Upper Miamisburg Road Miamisburg, Ohio 45342	:	
Defendants.	:	

Now comes Plaintiff Miami Township Board of Trustees, by and through the Miami Township Law Director, and Pursuant to Ohio Rule of Civil Procedure 15(A) files its amended complaint which herein says the follows:

1. The Board of Trustees of Miami Township, Montgomery County, Ohio; are duly elected by the citizens of Miami Township and as such, act on behalf of Miami Township ("Plaintiff").
2. Plaintiff is authorized by Ohio Revised Code § 519.24 of the Ohio Revised Code to institute injunction proceedings to prevent, adjoin, abate, or remove the

unlawful use of land in violation of R.C. § 519.01 through § 519.99 inclusive of the Ohio Revised Code, or any provision adopted by the Board under such sections.

3. Miami Township has adopted the Miami Township Zoning Resolution (“Zoning Resolution”) that controls the use of land within Miami Township.
4. Defendant, Darren Powlette, is the owner of a parcel of land located at 7757 Upper Miamisburg Road in Miami Township, Montgomery County, Ohio (the "Property") and more fully described as Permanent Parcel No. K45 02502 0093. The Property is located in an agricultural district and therefore subject to the Article 8 of the Miami Township Zoning Resolution. Unless otherwise exempted, a business use is not a permitted principal use within in an agricultural district. On October 4, 2017 Defendant, Darren Powlette, filed a Declaration of Intent Agricultural Exemption Form for a newly constructed structure on his property, located at 7757 Upper Miamisburg Road, pursuant to section 307 of the Miami Township Zoning Resolution.
5. Upon information and belief, Stoney Hill Rustic Weddings, LLC, is the entity that carries out the wedding/hosting operations and business at the Property located at 7757 Upper Miamisburg Road, in addition to or in conjunction with Darren Powlette.
6. Upon information and belief, and based on information easily available from the Ohio Secretary of State, Darren Powlette is the statutory agent for Stoney Hill Rustic Weddings, LLC.

7. Section 307(D)(1) of the Miami Township Zoning Resolutions states that “[a]n 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.”
8. Defendant Powlette stated in the Declaration that the barn would be used for viticulture, as well as the storage of agricultural products.
9. This request for an Agricultural Exemption was accepted and, notably, the Declaration of Intent form, which Defendant Powlette acknowledged and agreed to as evidenced by his signature, included the statement that “any change in use would be reported to the Miami Township Zoning Inspector and the proper Zoning Certificate and Montgomery County Building Permit for a change of use will be obtained.”
10. On February 2, 2018, Miami Township staff discovered that Defendants’ property was being advertised online as a venue to host weddings and other special events. The operation of a wedding/special events venue does not constitute agritourism or agriculture and is therefore not exempted from Article 8 of the Zoning Resolution. In addition, Defendants’ use of the structure as a wedding/special events venue is not a use incident to the agricultural purposes of the land. On May 8, 2018, a Notice of Violation from Miami Township Zoning Inspector, Alex Carlson, was issued to defendant for operating the wedding venue.

11. On May 25, 2018, Defendant Powlette appealed Carlson's violation regarding the wedding venue to the Miami Township Board of Zoning Appeals (hereinafter "BZA").
12. The Miami Township BZA held a hearing on Defendant Powlette's appeal on July 9, 2018.
13. During the July 9, 2018, BZA hearing, Defendant Powlette testified that, at the time of the zoning inspector's violation on May 8, 2018, he was in the process of enhancing the agricultural features of his property, including the barn that appeared to be used for weddings and receptions. Defendant Powlette stated that the property is used to produce hay, and that he had added various animals to the property which were to be primarily housed in the barn. Defendant Powlette further indicated that he intended to create a pond on the property and begin engaging in viticulture.
14. To date Defendant Powlette has not shown, advertised, nor testified, that he has grown a single grape vine on the Property.
15. On August 6, 2018, the BZA issued its decision, affirming the Zoning Inspector Carlson's decision.
16. On September 5, 2018, Defendant Powlette appealed the decision of the Miami Township BZA to the Common Pleas Court for Montgomery County, Ohio, case number 2018 CV 04129, assigned to the Honorable Judge Timothy N. O'Connell.

17. In an entry dated May 30, 2019, Judge O'Connell upheld the decision of the Miami Township BZA, stating that, "The Decision of the Miami Township, Ohio Board of Zoning Appeals is hereby AFFIRMED." (See attached as Exhibit 1)
18. In addition to the Court's May 30, 2019, Order, all parties, including Defendant Powlette, were given notice that the Court's Decision was a final appealable order, Defendant did not file an appeal.
19. Despite the Miami Township BZA's, and the Court's written decision, the Defendants continue to operate the illegal wedding/special events venue from the Property in violation of the Zoning resolution.
20. Witnesses have noted events held at the Property, in violation of the Miami Township Zoning Resolution, as upheld by this Court, on numerous dates including:
 - a. June 1, 2019
 - b. June 14, 2019
 - c. June 15, 2019
 - d. June 25, 2019
 - e. July 5, 2019
 - f. August 10, 2019
 - g. August 31, 2019
 - h. September 14, 2019
 - i. October 15, 2019
 - j. October 18, 2019

21. To this date, Defendants continue to advertise the Property as a wedding and event venue, in violation of the Zoning Resolution.

22. As Defendants continue to operate a non-exempt business in violation of the Zoning Resolution, Plaintiff has no other adequate remedy at law other than to seek injunctive relief.

23. Further, Plaintiff has, since the filing of the prior Complaint, become aware of Defendants' intentions to host future events, and Defendants' actions in furtherance of such business.

24. Pursuant to Ohio Rule of Civil Procedure 65(B)(2), Plaintiff requests that this Court consolidate the hearing for a preliminary injunction with the hearing of the trial on merits, as such testimony and evidence will, in all, likelihood, be duplicitious, and any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated upon the trial.

WHEREFORE, Plaintiff prays that a preliminary and permanent injunction be issued enjoining Defendants from continuing to use the Property in violation of the Miami Township Zoning Resolution, and for any and all other relief to which Plaintiff may be entitled, plus an order that Defendants pay all costs incurred in this action.

Respectfully submitted,

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

/s/ Edward J. Dowd

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Counsel for Miami Township Board of Trustees

CERTIFICATE OF SERVICE

I hereby certify that on January 21, 2020, a copy of the foregoing First Amended Complaint was served via the Montgomery County e-filing system on all registered parties of record and via U.S. First Class Regular mail on parties not registered as e-file system users.

/s/ Edward J. Dowd

Edward J. Dowd (0018681)

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

DARREN POWLETTE,

CASE NO.: 2018 CV 04129

Plaintiff(s),

JUDGE TIMOTHY N. O'CONNELL

-VS-

BOARD OF ZONING APPEALS MIAMI
TOWNSHIP OHIO et al.,

**DECISION ORDER AND ENTRY
AFFIRMING THE DECISION OF THE
MIAMI TOWNSHIP, OHIO BOARD
OF ZONING APPEALS**

Defendant(s).

This matter is before the Court on Appellant Darren Powlette's ("Powlette") appeal of the decision of the Miami Township, Ohio Board of Zoning Appeals (the "BZA") dated August 6, 2018. On February 19, 2019, the *Brief of Appellant* was filed. On March 18, 2019, the *Brief of Appellees The Miami Township Board of Zoning Appeals and Miami Township, Ohio Board of Trustees* was filed. On April 1 2019, *Appellant's Reply Brief* was filed.

I. STATEMENT OF THE CASE

Appellant is appealing the decision of the BZA finding violations of Zoning Resolution 801 for a barn (the "barn") located on the property at 7757 Upper Miamisburg Road, Miamisburg, Ohio ("the property"). Appellant is the owner of said property. A Notice of Violation was issued by Zoning Inspector Alex Carlson on May 8, 2018 against the barn on Appellant's property. Appellant Powlette denied the violation. After a public hearing on July 9, 2018, the BZA voted and issued a

Decision dated August 6, 2018 finding that Powlette’s use of the barn violated Zoning Resolution 801 and that Powlette’s use of the barn did not constitute agritourism under the R.C. The BZA affirmed the Zoning Inspector’s decision.

II. STANDARD OF REVIEW

Under R.C. 2506.04, a common pleas court may find that an administrative board’s decision is “unconstitutional, illegal, arbitrary, capricious, unreasonable or unsupported by the preponderance of substantial, reliable, and probative evidence on the whole record.” In *Duduckovich v. Housing Authority*, the Ohio Supreme Court elaborated, stating:

“[t]he Court of Common Pleas must weigh the evidence in the record

* * * to determine whether there exists a preponderance of reliable, probative, and substantial evidence to support the agency decision.

We caution, however, to add that this does not mean that the court may blatantly substitute its judgment for that of the agency, especially in areas of administrative expertise. The key term is “preponderance.”

If a preponderance of reliable, probative and substantial evidence exists, the Court of Common Pleas must affirm the agency decision * * *.”¹

Thus, the standard of review in administrative appeals is not de novo, and this Court must affirm the Board’s ruling unless it is arbitrary, capricious, unreasonable or unsupported by a preponderance of reliable, probative and substantial evidence. When resolving evidentiary conflicts, this Court must give due deference to the findings of the Board. Giving due deference to an administrative agency means that “an agency’s finding of facts are presumed to be correct and must be deferred to by a reviewing court unless that court determines that the agency’s findings are internally inconsistent, impeached by evidence of a prior inconsistent statement, rest upon improper

¹ *Duduckovich v. Housing Authority* (1979), 58 Ohio St.2d 202, 207, 389 N.E.2d 1113.

inferences, or are otherwise insupportable.”² Questions of witness credibility must be deferred to the board or agency which had the opportunity to observe the witnesses’ demeanor.³ The Second District has held that: “the trial court must affirm the decision of the administrative agency if it is supported by a preponderance of reliable, probative and substantial evidence.”⁴

III. LAW & ANALYSIS

Powlette asserts that he is entitled to a reversal of the decision of the BZA. The BZA and Miami Township, Ohio Board of Trustees (collectively “BZA”) argue to the contrary.

A. Public comment

The Court will initially deal with Powlette’s argument about whether public comment during a hearing can be considered by the BZA as evidence. Powlette argues that the BZA relied on unsubstantiated public comment in arriving at their Decision. Powlette asserts that this is not probative evidence. Powlette cites *Adelman Real Estate Co. v. Gabanic*⁵ in support of his argument.

The court in *Adelman* held that “[a] public hearing is one where members of the general public may speak and express their views on the question of governmental, political, and policy considerations as to whether certain legislation should be adopted. Adjudication hearings, however, are not subject to such public comment but, instead, involve the determination of rights of specific persons and whether such rights should be granted based upon evidence, not public opinion, presented at the hearing. Accordingly, in the limited weighing of the evidence to be undertaken by the common pleas court, consideration must be given to the nature of the evidence, including the question of whether it was given under oath and was subject to cross-examination.”⁶ The Second

² *Ohio Historical Society v. SERB* (1993), 66 Ohio St. 3d 466, 471, 613 N.E.2d 591.

³ *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St.2d 108, 407 N.E.2d 1265.

⁴ *In re Application for Conditional Use of Watkins* (2nd Dist. Feb. 18, 2000), 2000WL 192430.

⁵ *Adelman Real Estate Co. v. Gabanic* (1996), 109 Ohio App. 3d 689.

⁶ *Adelman Real Estate Co. v. Gabanic* (1996), 109 Ohio App. 3d 689, 691.

District Court of Appeals, though, has found public testimony to be reliable, probative, and substantial evidence based upon the specific facts of the case.⁷

The Court does not find that the testimony adduced at the hearing from the public as a whole was unsubstantiated and therefore not probative or reliable. The testimony from the members of the community was given under oath and subject to cross-examination by Powlette's attorney. Further, there was documentation, i.e. pictures, as to the facts testified to by members of the public. Additionally, Cheryl Dixon testified as a member of the public on behalf of Powlette and her testimony was not based on her observation of Powlette's barn or farm or her observation of his use of the property as of May 8, 2018.

The Court will review the testimony of the members of the public, along with the other testimony and evidence to decide whether the BZA's Decision was based on a preponderance of reliable, probative, and substantial evidence.

B. APPELLANT'S ASSIGNMENT OF ERROR NO. 1: The Decision of the BZA that Appellant's use of the property at the time of May 8, 2018 citation by the Zoning Inspector did not constitute agritourism under the RC is contrary to law and not supported in the record

Powlette argues that the BZA's decision that his use of the barn did not constitute agritourism under the R.C. was illegal, unreasonable, arbitrary, capricious and unsupported by a preponderance of substantial, reliable and probative evidence. Powlette asserts that he presented credible evidence that the barn was being used for agricultural purposes and that the use of the barn for weddings was permitted under the statute. Further, there was no evidence that weddings had occurred at the barn at the time the notice of violation was issued on May 8, 2018.

The BZA argues that Powlette's use of the barn at the time of the violation did not constitute agritourism, nor was it incident to any agricultural use of the property. The Oct. 4, 2017 Declaration of Intent to the Township indicated that Powlette would be using the barn for viticulture and storing of agricultural products. The barn was not being used for viticulture or the storing of

⁷ *In re Watkins* (Feb. 18, 2000), Montgomery App. No. CA 17723, 2000 Ohio App. LEXIS 551.

agricultural products but instead was being used to host weddings. At the time the May 8, 2018 citation was issued Powlette did not have any animals or poultry on his farm nor was any hay being stored in the barn. He was not growing grapevines on his property at the time of the citation nor was he using the barn for vinting or selling wine. The BZA asserts that the plain language of R.C. 901.80 does not pertain to Powlette’s use of the barn as a wedding venue under the circumstances present on May 8, 2018. The BZA made its determination that wedding venues are not agritourism based on the evidence presented regarding Powlette’s specific use of the barn on May 8, 2018.

“As used in sections 519.02 to 519.25 of the Revised Code, ‘agriculture’ includes farming; ranching; algaculture meaning the farming of algae; aquaculture; apiculture; horticulture; viticulture; 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; and 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.”⁸

R.C. 519.21(C) states: “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.”

⁸ R.C. 519.01

“‘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.”⁹

An “‘Agritourism provider’ means a person who owns, operates, provides, or sponsors an agritourism activity or an employee of such a person who engages in or provides agritourism activities whether or not for a fee.”¹⁰

The Notice of Violation at issue is dated May 8, 2018.¹¹ It states:

“801 VIOLATION OF A ‘ZONING DISTRICT: ARTICLE 8 SECTION’
801 OF MIAMI TOWNSHIP ZONING RESOLUTION; BUSINESS USE OF
PROPERTY NOT PERMITTED AS PRINCIPAL USE OF THIS
AGRICULTURAL ZONED PROPERTY[.] PROPERTY BEING USED IN
MANNER INCONSISTENT WITH PRINCIPAL PERMITTED USES OF
AGRICULTURAL DISTRICT; PRIMARY STRUCTURE UTILIZED AS
WEDDING VENUE[.]”

The BZA, after the hearing on July 9, 2018, issued a Decision finding that Powlette’s use of the barn at the time of the Zoning Inspector’s Decision on May 8, 2018 did not constitute agritourism under the R.C.¹² The BZA found that the only potential activities visitors could do as of May 8, 2018 were walking the trails of the property, touring Powlette’s residence, watching construction, or touring the barn.¹³ The BZA found that these activities as of May 8, 2018 did not constitute agritourism.¹⁴ The BZA went on to state that as of May 8, 2018 the barn did not have any stables or other designated areas for the storage of animals or agricultural produce.¹⁵ Further, the barn was not storing hay at the time. There was also evidence that Powlette had advertised the barn

⁹ R.C. 901.80(A)(2)

¹⁰ R.C. 901.80(A)(3).

¹¹ Administrative Record 2 filed on October 23, 2018.

¹² BZA Decision dated August 6, 2018 pg. 8 section II.

¹³ *Id* at pg. 9.

¹⁴ *Id.*

¹⁵ *Id* at pg. 10.

as being available for weddings prior to May 8, 2018¹⁶ and he had entered into a contract prior to May 8, 2018 to rent the barn for a wedding venue.¹⁷ The BZA found that based on this, having a wedding at the barn without any of the aforementioned items/activities is not a sufficiently agriculturally related activity to fall within the definition of agritourism.¹⁸

Powlette cites the Court to *Dixon v. Caesarscreek Twp. Bd. Of Zoning Appeals* for the proposition that themed based weddings are allowed under the definition of agritourism.¹⁹ The Second District Court of Appeals, though, never addressed that specific issue in *Dixon*. The Second District Court of Appeals issued a decision on whether or not a hearing needed to be held under R.C. 2506.03.²⁰ The sole assignment of error in *Dixon* was whether the trial court abused its discretion in failing to hold a hearing when the transcript did not contain the findings of fact by the BZA supporting its ultimate decision.²¹ Whether or not themed based weddings fit under the definition of agritourism was never addressed by the Second District Court of Appeals.

The Court notes that this administrative appeal deals solely with the barn and whether it was used for agritourism, and not Powlette's property as a whole, on May 8, 2018. Setting aside the ultimate question of whether theme based weddings constitute agritourism in general the Court will review the BZA's Decision as of May 8, 2018. At the time of the Notice of the Violation the BZA found that Powlette's use of the barn did not constitute agritourism. This finding by the BZA is supported by a preponderance of substantial, reliable and probative evidence. The BZA has argued that that determination was based on Powlette's specific use of the barn at the time of the violation, May 8, 2018. The BZA has argued that at the time of the violation the barn did not house any livestock, there was no viticulture or the selling of wine or the storage of agricultural products and Poweltte had entered into contract(s) to rent the barn for a wedding venue and was advertising the

¹⁶ Transcript of hearing pg. 34.

¹⁷ Transcript of hearing pgs. 50-51, 79-81, 98.

¹⁸ BZA Decision dated August 6, 2018 pg. 10.

¹⁹ *Dixon v. Caesarscreek Twp. Bd. Of Zoning Appeals* (June 29, 2018), Greene App. No. 2018-CA-1, 2018 Ohio 2549.

²⁰ *Dixon*, supra.

barn as being available to rent for weddings. The Court will not make an advisory opinion about whether a barn being used for wedding venues would constitute agritourism if Powlette was also housing animals, hay, and/or farm equipment in the barn during the time of the wedding.

“Reliable, probative, and substantial evidence” has been defined as: (1) ‘Reliable’ evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. (2) ‘Probative’ evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. (3) ‘Substantial’ evidence is evidence with some weight; it must have importance and value.”²²

Prior to the May 8, 2018 Notice of Violation Powlette had applied for an agricultural exemption for the barn at issue. Powlette’s Declaration of Intent – Agricultural Exemption dated October 4, 2017 states for proposed use of the barn at issue: “viticulture, storing of agricultural products.”²³ This exemption was approved on October 5, 2017.

The parties do not dispute that Powlette’s property is zoned agricultural. Further, the evidence before the BZA established that Powlette received an agricultural exemption for the barn for viticulture and storing of agricultural products. Powlette argues that there was no violation as of May 8, 2018 because no weddings had occurred at the barn as of that date. The Court does not find this argument well-taken. At the time of the Notice of Violation there was evidence presented to the BZA that Powlette had been advertising the barn as an event/wedding venue.²⁴ There was also evidence that Powlette had entered into a contract with Mrs. Miller on May 6, 2017 for use of the barn for a wedding that was to occur on May 19, 2018.²⁵ Powlette testified at the hearing before the BZA on July 9, 2018 that weddings on a farm are themed, because they are on a farm.²⁶ Mrs.

²¹ *Dixon*, supra.

²² *Bartchy v. State Bd. Of Educ.* (2008), 120 Ohio St.3d 205.

²³ Administrative Record 1 filed on Oct. 23, 2018.

²⁴ Transcript of hearing pgs. 34, 48.

²⁵ Exhibit J attached to transcript of hearing.

²⁶ Transcript of hearing on July 9, 2018 pg. 19.

Miller testified that there was no discussion of agritourism during her negotiations with Powlette.²⁷ There was also testimony that during the Miller's trips to the barn there was never any farm equipment stored there.²⁸ Powlette testified that on May 8, 2018 there was no poultry, alpacas or any animals on his farm or in the barn.²⁹ He also testified that there was no winch in the barn to lift hay bales, but that he could use his arms to lift it.³⁰ Powlette did testify that he stores hay in the loft in the barn, but he did not have any pictures of hay being stored in the barn loft.³¹ He stated that on May 8, 2018 the hay had just been cut down.³² The BZA heard evidence that Powlette had a webpage advertising his barn being available for rental. Powlette testified that this webpage did not mention agritourism, nor did it have anything on history, culture or educational activities relating to the barn or farm.³³

The BZA in their Decision expound that they do not feel themed based weddings constitute agritourism because weddings are not incidental to the agricultural/farm features of the property. That being said, the Decision by the BZA as to the Notice of Violation is clear that the BZA found that the use of the barn did not constitute agritourism as of May 8, 2018 under the R.C.³⁴ The appeal before this Court is based on the Notice of Violation dated May 8, 2018. This case is not a denial of an application for conditional use that would allow weddings on a farm, nor is it a denial of an application for agritourism activity, which Ms. Dixon had filed in her case in Greene County. In fact, Powlette was approved for an agricultural exemption for the barn for viticulture and to store agricultural products. The issue before the BZA and this Court was whether the use of the barn as of May 8, 2018 met the definition of agritourism. The ruling by this Court is not a ruling on

²⁷ Transcript of hearing pg. 79.

²⁸ *Id* at 81.

²⁹ *Id* at 34.

³⁰ *Id* at 40.

³¹ *Id* at pgs. 40-41.

³² *Id*.

³³ Transcript of hearing pg. 55.

³⁴ Decision pg. 8 section II.

whether themed based weddings meet the definition of agritourism in general. The ruling by this Court is regarding the BZA's Decision as to the use of Powlette's barn as of May 8, 2018.

The Court finds that the BZA's Decision to sustain the violation that on May 8, 2018 Powlette's use of the barn did not constitute agritourism under the R.C. was not illegal, unreasonable, arbitrary, or capricious and the Decision was supported by a preponderance of substantial, reliable and probative evidence. Accordingly, Appellant's first assignment of error is OVERRULED.

C. APPELLANT'S ASSIGNMENT OF ERROR NO.2: The Decision of the BZA that Appellant's use of the property at the time of May 8, 2018 Notice of Violation by the Zoning Inspector did not constitute agritourism under the Miami Township Zoning Regulation is contrary to law and not supported in the record

Powlette argues that he submitted a Declaration of Intent – Agricultural Exemption form for his barn that was compliant with Miami Township Zoning Resolution Section 307. This Agricultural Exemption was approved on October 5, 2017. Powlette asserts that since the time that he received the exemption he has used the barn for agricultural or agritourism purposes. Based on this he asserts that he is exempt from any Township Zoning regulations. He asks the Court to reverse the Decision of the BZA.

The BZA argues that its Decision is not contrary to law and is supported by the evidence in the record. Powlette's agricultural exemption for the barn was for viticulture, and the storing of agricultural products. The evidence presented at the hearing establishes that Powlette, as of May 8, 2018, was not engaged in viticulture or the storing of agricultural products. The BZA asserts that Powlette did not get an exemption for nor did his Declaration of Intent mention using the barn as a wedding/event venue. The BZA argues that Powlette did not request or receive an agritourism exemption for the purposes of operating a wedding or event venue in the barn.

The Notice of Violation at issue is dated May 8, 2018.³⁵ It states:

“801 VIOLATION OF A ‘ZONING DISTRICT: ARTICLE 8 SECTION’

³⁵ Administrative Record 2 filed on October 23, 2018.

801 OF MIAMI TOWNSHIP ZONING RESOLUTION; BUSINESS USE OF PROPERTY NOT PERMITTED AS PRINCIPAL USE OF THIS AGRICULTURAL ZONED PROPERTY[.] PROPERTY BEING USED IN MANNER INCONSISTENT WITH PRINCIPAL PERMITTED USES OF AGRICULTURAL DISTRICT; PRIMARY STRUCTURE UTILIZED AS WEDDING VENUE[.]”

Section 307 of the Miami Township Zoning Resolution states:

“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 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.”

The BZA, after the hearing on July 9, 2018, issued a Decision finding that Powlette’s use of the barn at the time of the Zoning Inspector’s Decision on May 8, 2018 did not constitute agritourism under the Zoning Resolution.³⁶ The BZA found that the definition of agritourism under Zoning Resolution 307(A)(2) mirrors the definition in R.C. 901.80(A)(2). Based on this, Section 801 Principal Permitted Uses for property were applicable. The BZA determined that Powlette’s

³⁶ BZA Decision dated August 6, 2018 pg. 14 section III.

use of the barn as a wedding venue did not constitute agritourism as of May 8, 2018. The BZA also held:

“Pursuant to Zoning Resolution 801, and subject to certain conditions outlined therein, the Principal Permitted Uses in the Agricultural Zoning District are: (i) Agriculture, including the principal dwelling unit; (ii) single family dwellings; (iii) churches, chapels, temples, synagogues or other buildings for religious worship; (iv) public parks, playgrounds, and community centers. Appellant’s use of the Property as a Wedding Venue does not fall within any of the aforementioned categories. As such, Appellant was in violation of the Zoning Resolution on May 8, 2018 and the Zoning Inspector’s Decision was proper.”³⁷

The Court incorporates the analysis from Section B of this Decision herein. The Court finds that there was substantial evidence before the BZA that Powlette was not engaged in viticulture as of May 8, 2018. Further, there was substantial evidence that he did not store animals in the barn, and that there was no hay in the barn at the time of the violation. Based on the previous analysis in Section B, the Court finds that the BZA’s Decision to sustain the violation that on May 8, 2018 Powlette’s use of the barn did not constitute agritourism under the Zoning Resolution was not contrary to law, unreasonable, arbitrary, or capricious and the Decision was supported by a preponderance of substantial, reliable and probative evidence.

The BZA also argues that Powlette did not receive an exemption to use the barn as a wedding or event venue. The Court does not find this argument well-taken. The Declaration of Intent – Agricultural Exemption gave Powlette an agricultural exemption for viticulture and storage of agricultural products for the barn. The Court is unwilling to find at this time that using the barn as a wedding or event venue would never fit within the definition of agritourism if the use of the barn also adhered to and complied with the definition of agritourism. This Decision, and the Decision of the BZA deals solely with Powlette’s use of the barn as of May 8, 2018. The Court finds that the evidence supports the determination that Powlette’s use of the barn as of May 8, 2018 did not constitute agritourism, further, the evidence shows that the barn was not used for viticulture or the storing of agricultural products.

Accordingly, Appellant's second assignment of error is OVERRULED.

IV. CONCLUSION

Accordingly, Powlette's Assignments of Error are OVERRULED. The Decision of the Miami Township, Ohio Board of Zoning Appeals is hereby AFFIRMED.

This is a final appealable order, and there is not just cause for delay for the purposes of Civ. R. 54. Pursuant to App. R. 4, the parties shall file a Notice of Appeal within thirty (30) days.

SO ORDERED:

TIMOTHY N. O'CONNELL, JUDGE

**To the Clerk of Courts:
Please serve the attorney for each party and each party not
represented by counsel with Notice of Judgment and its
date of entry upon the journal.**

SO ORDERED:

JUDGE TIMOTHY N. O'CONNELL

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³⁷ BZA Decision dated August 6, 2018 pg. 15 section III(B).

Defendant, Board Of Trustees Miami Township Ohio

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General Division
Montgomery County Common Pleas Court
41 N. Perry Street, Dayton, Ohio 45422

Case Number:
2018 CV 04129

Case Title:
DARREN POWLETTE vs BOARD OF ZONING APPEALS
MIAMI TOWNSHIP OHIO

Type:

Decision

So Ordered,

Timothy N. O'Connell