

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' MOTION</u>
	:	<u>FOR SUMMARY JUDGMENT</u>

Now comes Plaintiff, Miami Township Board of Trustees (“Plaintiff”), by and through counsel, and pursuant to Rule 56 of the Ohio Rules of Civil Procedure, respectfully moves this Honorable Court for an Order granting it summary judgment as to its claim for a permanent injunction under R.C. 519.24. There is no genuine issue as to any material fact because 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. A Memorandum in support of this Motion follows.

Respectfully submitted,

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

/s/ Edward J. Dowd

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Board of Trustees*

MEMORANDUM IN SUPPORT

I. INTRODUCTION AND FACTUAL BACKGROUND

This case arises out of the Defendants’ illegal and continued use of a wedding barn at 7757 Upper Miamisburg Road, Miamisburg, Ohio 45342 (the “Property”), which is a nuisance within the meaning of Chapter 3767 of the Ohio Revised Code. Pursuant to R.C. 519.24, Plaintiff instituted this action for a permanent injunction to prevent Defendants’ illegal and continued use of the wedding barn in violation of the Miami Township Zoning Resolution that controls the land within Miami Township. (Am. Compl., ¶¶ 2-3.) Defendant, Darren Powlette (“Powlette”) owns the land located at 7757 Upper Miamisburg Road, Miamisburg, Ohio, and his business, Defendant, Stoney Hill Rustic Weddings, LLC (“Stoney Hill”) is the entity that hosts weddings and other social gatherings at a barn located on the Property. (Id. at ¶¶ 4-6.)

On October 4, 2017, Powlette filed a Declaration of Intent Agricultural Exemption Form with Miami Township indicating that he would use the barn for viticulture and storage of agricultural products. (Id. at ¶¶ 4, 8; see also Carlson Dep. at Exhibit D¹.) Miami Township later discovered in February 2018 that the Property was being advertised online as a venue to host weddings and other special events. (Id. at ¶¶ 9-10.) Miami Township Zoning Inspector, Alex Carlson issued Defendants a Notice of Violation on May 8, 2018 for operating a wedding venue. (Id. at ¶ 10.) Powlette appealed the violation to the Township’s Board of Zoning Appeals (“BZA”),

¹ For ease of reference, the October 4, 2017 Declaration is attached hereto as **Exhibit A**.

which held a hearing and ultimately issued a decision affirming Carlson’s decision. (Id. at ¶¶ 11-13, 15.) Powlette appealed the BZA’s decision to the Montgomery County Common Pleas Court, and on May 30, 2019, Judge Timothy O’Connell affirmed the BZA’s decision to affirm Carlson’s Notice of Violation. (Id. at ¶¶ 16-17; see also Decision Order and Entry attached to the Amended Complaint as Exhibit 1.)² Despite Judge O’Connell’s decision, Powlette, as Stoney Hill’s statutory agent, and Stoney Hill continued to violate the Miami Township Zoning Resolution by hosting events at the wedding barn on the following dates: June 1, 2019; August 10, 2019; and September 14, 2019. (Id. at ¶¶ 19-20; see also Defendant Powlette’s Objections and Responses to Plaintiff’s Requests for Admission, Request Nos. 1,6, 8, and 11, attached hereto as **Exhibit B**.) Indeed, the Second District Court of Appeals unequivocally determined that Powlette hosts weddings at his barn, despite being ordered to stop work by the Montgomery County Building Regulation Division, cited by the Township’s BZA, and cited by the Miami Valley Fire District. *See Powlette v. Dayton Bd. of Bldg. Appeals*, 2020-Ohio-5357, 162 N.E.3d 964, ¶ 55 (2d Dist.).

Although Defendants have claimed that the Property is now being used for viticulture, presently there is no such use that would exempt the Property under the October 2017 Declaration of Intent. Defendant Powlette testified in this case that Stoney Hill hosts celebratory events such as weddings, wedding receptions, and graduation parties in the barn. (Powlette Dep., pp. 11, 18.) Alex Carlson, the Township Zoning Inspector who issued the notice of violation, testified, that weddings and graduation parties, in and of themselves, are not directly agriculturally related. (Carlson Dep., p. 56.) Powlette has rental agreements for customers, but he rents the barn free of charge to his friends. (Powlette Dep., pp. 22-23.) Although the current rental agreements do not require customers to purchase wine from the Property, the new rental agreements require the

² Defendants did not appeal the decision to the Second District Court of Appeals.

purchase of wine for events, and Defendants have booked those events for 2022. (Id. at pp. 25-26.) Powlette charges thousands of dollars for renting the wedding barn. (Id. at p. 85; see also Powlette Dep. at Exhibit 1, P91 – P148.)³ Powlette produced a Stoney Hill Farm Profit and Loss Statement for 2017-2020 that segregated sales related to the various uses of the Property. (See Powlette Dep. at Exhibit 1, P181.)⁴ He prepared the document, and testified that the agritourism sales encompass the celebratory events at the farm or tours. (Powlette Dep., p. 80.) He does not charge a fee for tours, thus the income is derived only from renting out the wedding barn. (Id. at pp. 80-81.) According to the statement, agritourism sales were \$0.00 in 2017; \$5,500.00 in 2018; \$20,213.00 in 2019; and \$59,700.00 in 2020. However, Powlette testified that the income from renting the wedding barn in 2018 and 2019 is much higher than what is reported on the statement. (Id. at pp. 84-85.) Despite the reported rental income being less than the actual sales, by comparison, the rental fees for the wedding barn greatly exceed the combined revenue generated from actual farm-related income on the Property. Stoney Hill Farms' combined income for turkey and hay sales for the same period were \$2,700.00 in 2017; \$3,750.00 in 2017; \$900.00 in 2019; and \$1,020.00 in 2020. (See Powlette Dep. at Exhibit 1, P181.)

Powlette further testified he has not sold any wine from the Property and that no past renters have decided to make their own wine. (Id. at pp. 29-30.) He also admitted that neither he nor Stoney Hill had a permit to sell wine from 2018 through 2020, and he has no permit or license from the Ohio Department of Commerce to conduct a wine selling operation on the Property (Id. at p. 32.) As of the date of his deposition, June 22, 2021, Defendants sold no wine from the Property and were not licensed to sell wine. (Id. at p. 63.) Simply put, Defendants are not presently using

³ For ease of reference, a copy of the rental agreements is referred hereto as **Exhibit C**, but will be filed under seal.

⁴ For ease of reference, a copy of the Profit and Loss Statement 2017-2020 is referred hereto as **Exhibit D**, but will be filed under seal.

the Property for viticulture, and Defendants have used, and continue to use, the Property in violation of the Township Zoning Resolution, the BZA's decision, and Judge O'Connell's decision affirming the BZA's decision. Indeed, Powlette admitted that there were more than eight events at the barn in 2020. (Id. at p. 38). To further prove the point that neither he nor Stoney Farm have, are, or will comply with the BZA and common pleas court decisions, Defendants held a wedding and graduation party the weekend before Powlette's deposition, and had twelve (12) more planned for the remainder of 2021. (Id. at pp. 67, 95-96).

There also is no relationship between the alleged agricultural/agritourism uses of the Property to the actual use of the barn, which is exclusively used to host celebratory events.⁵ Powlette testified that he gives a "tour" of the farm and talks about the old tobacco barn and takes guests to see the alpacas. (Id. at p. 50.) He also has turkeys and chickens that run around, but are penned at night (not in the barn). (Id. at pp. 61, 92.) Some guests request a hayride. (Id. at p. 62.) Powlette also testified that he built the horse barn (which is the wedding event space), but it is not used for horses and he modified the original plans to provide two bathrooms, a staging room, and kitchen for use in connection with the celebratory events. (Id. at p. 65.) Carlson and the Township investigated the activities conducted on the property that potentially related to agritourism, but advertisements for the Property focused on the party event center business (which was the basis of the Notice of Violation), instead of having people visit the animals and old barns. (Carlson Dep., pp. 27-28.) The Township's focus was more related to the party center due to complaints of loud music and other aspects associated with the wedding barn. (Id.) Carlson testified that visiting animals at the Property may be agritourism, but the other activities at the farm while animals are

⁵ On July 6, 2018, Powlette filed another Declaration of Intent Agricultural Exemption Form with Miami Township indicating that he would use the barn for agriculture, agritourism, hay storage, turkeys, chickens, and viticulture. (See Carlson Dep., at Exhibit F (attached hereto as **Exhibit E**.)

present do not transform a wedding into agritourism. (Id. at p. 55.) He also testified that engaging in agritourism does not give a property owner carte blanche approval to do what they like with the property. (Id. at pp. 57, 79-81.) If the property is used in a manner that is exempt from the zoning restriction but a structure is not used in the same way, then the structure may not be exempt. (Id. at 73.) Simply put, pictures of people interacting with animals does not turn a wedding into agritourism and, in this case, Defendants' use is no different than if guests go-karted past the animals. (Id. at pp. 78, 82.) The two simply are not connected and the wedding events are not an exemption.

Due to Defendants' continued violation of the zoning code, Plaintiff has no other adequate remedy at law other than to seek injunctive relief. Therefore, Plaintiff respectfully moves this Court for summary judgment.

II. LAW AND ARGUMENT

A. Summary Judgment Standard

Ohio Civil Rule 56(C) provides that summary judgment may be granted when the moving party demonstrates that (1) there is no genuine issue of material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) viewing the evidence most strongly in favor of the nonmoving party, 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. *State ex rel. Grady v. State Emp. Relations Bd.*, 78 Ohio St.3d 181, 183, 677 N.E.2d 343 (1997); *Leibreich v. A.J. Refrigeration, Inc.*, 67 Ohio St.3d 266, 268, 617 N.E.2d 1068 (1993).

Furthermore, when a motion for summary judgment is made and supported as provided in Civ.R. 56, an adverse party may not rest upon the mere allegations or denials of the party's pleadings. The party's response, by affidavit or as otherwise provided in this rule, must set forth

specific facts showing that there is a genuine issue for trial. *Dresher v. Burt*, 75 Ohio St.3d 280, 293, 662 N.E.2d 264 (1996). The non-moving party must submit admissible evidentiary material establishing the existence of genuine issues of material fact. *Mootispaw v. Eckstein*, 76 Ohio St.3d 383, 385, 667 N.E.2d 1197 (1996). If the party does not so respond, summary judgment must be entered against the party. Civ.R. 56(E).

B. Plaintiff is entitled to a permanent injunction against Defendants.

Revised Code 519.21 creates an exemption from restrictive zoning by townships. In relevant part, the statute provides:

(A) Except as otherwise provided ... sections 519.02 to 519.25 of the Revised Code confer no power on any township zoning commission ... to prohibit the ... use of buildings or structures incident to the use for agricultural purposes ... 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

R.C. 519.21(A). The statute also confers no power on a township to prohibit the use of any land in an agriculturally zoned district for use of the land for agritourism. R.C. 519.21(C)(4). “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).

Revised Code 519.24 gives Plaintiff the authority as a township to bring an action to prevent violations of its zoning regulations. Specifically, the statute provides:

In case any building is...used...in violation of...any regulation or provision adopted by any board of township trustees under such sections, such board...in addition to other remedies provided by law, may institute injunction, mandamus, abatement, or any other appropriate action or proceeding to prevent, enjoin, abate, or remove such unlawful...use. The board of township trustees may employ special counsel to represent it in any proceeding or to prosecute any actions brought under this section.

R.C. 519.24. Under R.C. 519.24, a board of township trustees, a county prosecuting attorney, or a township zoning inspector may file an action for an injunction to prevent any unlawful use of buildings or land. Because R.C. 519.24 grants the injunctive remedy, the township is “not required to plead or prove an irreparable injury or that there is no adequate remedy at law, as is required by Civ.R. 65.” *Baker v. Blevins*, 162 Ohio App.3d 258, 2005-Ohio-3664, 833 N.E.2d 327, ¶ 12, citing *Union Twp. Bd. of Trustees v. Old 74 Corp.*, 137 Ohio App.3d 289, 294, 738 N.E.2d 477 (12th Dist. 2000); see also *Fiore v. Larger*, 2d Dist. Montgomery No. CA 22949, 2009-Ohio-5408, ¶¶ 19, 20. Instead, the township must show only that the property is being used in violation of a zoning ordinance. *Union Twp.* at 295, 738 N.E.2d 477. The township has the burden, however, of proving its case for an injunction by clear and convincing evidence. *Concord Twp. Trustees v. Hazelwood Builders, Inc.*, 11th Dist. Lake App. No. 96–L–075, 1997 WL 286205, *2 (May 16, 1997).

Here, Plaintiff has lawfully brought this action to enjoin Defendants from further violating its Zoning Resolution by hosting weddings and other celebratory events on the Property because the weddings and other events hosted in the wedding barn are not incident to the use for agricultural purposes, and the barn is not primarily used for vinting and selling wine. Based upon the clear and convincing evidence in this matter, there is no genuine issue as to any material fact that Defendants are not using the wedding barn in connection with viticulture or agritourism. Powlette testified that although there are grape vines on the Property, Defendants have not sold any wine from the Property, and they do not have a permit or license from the Ohio Department of Commerce to conduct a wine selling operation on the Property. (Powlette Dep., pp. 29-30, 32.) At Powlette’s deposition a mere three months ago, he affirmed that Defendants have sold no wine from the Property and have no license to sell wine. (*Id.* at 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*, 2020-Ohio-5357, 162 N.E.3d 964, at ¶ 61. Indeed, there is no evidence that the primary purpose of the wedding barn is viticulture.

In *Litchfield Twp. Bd. of Trustees v. Forever Blueberry Barn, LLC*, the Supreme Court determined that:

The word “primary” is not synonymous with the word “majority,” particularly with respect to the amount of space or time devoted to a particular land use, for purposes of the statute providing that a township may not prohibit the use of buildings “used primarily for vinting and selling wine” that are located on land used for viticulture, and thus the amount of a building’s interior space, or the time dedicated to a use of the space, do not always control whether the use is the “primary” use.

160 Ohio St.3d 70, 2020-Ohio-1508, ¶ 14. Revised Code 519.21(A) prohibits Plaintiff’s intervention for buildings or structures that “*are* used primarily for vinting and selling wine,” but in this matter there is no evidence that Defendants *are primarily using* the wedding barn to produce and sell wine. Presently, there is no evidence that the primary use of the wedding barn is in any way connected to vinting and selling wine, especially given the fact that Powlette testified he has not sold any wine and the Stoney Hill Farm Profit and Loss Statement for 2017-2020 shows that agritourism profits for the Property are solely derived from renting the wedding barn for celebratory events. Powlette has only made one batch of wine. (Powlette Dep., p. 35.) Accordingly, this Court must find that Defendants’ alleged viticulture exemption does not apply to the Property, and that Defendants should be permanently enjoined from using the barn to host weddings and other celebratory events because its present use serves no basis for Defendants’ viticulture exemption from the Township’s Zoning Resolution.

Similarly, Defendants’ use of the wedding barn does not constitute agritourism. First, Judge O’Connell declined to make an advisory opinion about whether a barn being used for wedding venues would constitute agritourism if Powlette were also housing animals, hay, and/or farm equipment in the barn during the time of the wedding. (See Decision Order and Entry attached to the Amended Complaint as Exhibit 1, at p. 8.) In *Powlette*, the Second District Court of Appeals noted the BZA’s finding that:

[I]t appeared that Powlette had “only attempted to * * * hastily collect features of agriculture/farming properties to cloak the operation of the wedding venue as permissible agritourism.” According to Wyckoff, the BZA further concluded that Powlette’s “additions” had not changed the fact that there was “insufficient connectivity between the wedding venue and the agricultural features of the property such that the wedding venue’s operations remain[ed] the primary use of the property in contrast to being incidental to the overarching agricultural use of the property.

Powlette at ¶ 36. The *Powlette* Court also noted the BZA’s citation to that Court’s prior decision in *Dixon v. Caesarscreek Township Bd. of Zoning Appeals*, 2d Dist. Greene No. 2018-CA-1, 2018-Ohio-2549 that it had not held that weddings are *per se* permissible under the agritourism statute. *Id.* at ¶ 49; *see also Lusardi v. Caesarscreek Township Bd. of Zoning Appeals*, 2d Dist. Greene No. 2020-CA-8, 2020-Ohio-4401, ¶ 20 (declining to rule on whether celebratory events constitute “agritourism” as a matter of law because of the great variety of factual situations and it being “an issue that shades to gray quite quickly”).

The clear and convincing evidence proves that agritourism is not the purpose of the wedding barn; rather it is a commercial venture to generate revenue unrelated to any agricultural activity. Defendants are renting out the barn for thousands of dollars to host wedding receptions, graduation parties, and other celebratory events. As Alex Carlson testified, the Township’s investigation into the activities conducted on the Property showed that advertisements for the Property focused on the party event center business (which was the basis of the Notice of

Violation), instead of having people visit the animals and old barn. (Carlson Dep., pp. 27-28.) Defendants have acknowledged this fact as evidence by the fact that 100% of the “agritourism” revenue is generated through the rental of the wedding barn. Although visiting animals at the Property may be agritourism, the other celebratory event activities at the farm while animals are present do not transform a wedding, graduation, or other event into agritourism. (Id. at p. 55.) Defendant’s wedding barn is not exempt because it is not used in a manner that is exempt from the zoning restriction. (Id. at 73.) Here, Defendants’ use is no different from guests go-karting past the animals. (Id. at pp. 78, 82.) While the rest of the Property may be used for agriculture, including another building that houses animals and other implements related to farming (Powlette Dep., Exhibit 1 at P22)⁶, the evidence in this case is that the barn is used primarily for hosting weddings, graduation parties, and other celebratory events for significant commercial gain. Stoney Hill’s barn renters simply do not come to the wedding barn for agritourism. They come for a wedding reception, graduation, or some other celebratory event that has no connection to the agricultural aspect of the Property. Accordingly, this Court must further find that Defendants’ alleged agritourism exemption does not apply to the Property, and that Defendants should be permanently enjoined from using the barn to host weddings and other celebratory events because its present use serves no basis for Defendants’ agritourism exemption from the Township’s Zoning Resolution.

III. CONCLUSION

For the foregoing reasons, Plaintiff, Miami Township Board of Trustees respectfully requests that the Court enter summary judgment in its favor and issue a permanent injunction against Defendants, Darren Powlette and Stoney Hill Rustic Weddings, LLC.

⁶ For ease of reference, the animal and equipment barn is attached hereto as **Exhibit F**.

Respectfully submitted,

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

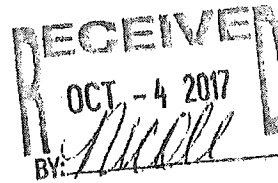
/s/ Edward J. Dowd
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edowd@sdtlawyers.com
cherman@sdtlawyers.com
Trial Attorneys for Miami Township
Board of Trustees

CERTIFICATE OF SERVICE

I hereby certify that on September 30, 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:

Gregory Page
GREGORY S. PAGE CO., LPA
7501 Paragon Road
Dayton, Ohio 45459
Attorney for Defendants

/s/ Edward J. Dowd
Edward J. Dowd (0018681)



Declaration of Intent – Agricultural Exemption

Please completely fill out the requested information and provide a property site plan along with your application.

PROPERTY INFORMATION

I the undersigned, declare that the proposed structure and improvement to the property located at:

7757 Upper Miamiishville Rd Dayton OH 45342

PROPERTY ADDRESS (STREET ADDRESS, CITY, STATE, ZIP)

Is to be used for an agricultural purpose as described in the Ohio Revised Code 519.01 and that any change in use will 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.

OWNER INFORMATION

OWNER CONTACT ADDRESS

7757 Upper Miamiishville Rd Dayton OH 45342

OWNER EMAIL (if available)

powletteronst@yahoo.com

OWNER TELEPHONE

937-609-2603

ALTERNATE PHONE

STRUCTURE AND CODE DEFINITION INFORMATION

DESCRIPTION OF STRUCTURE

BARN

SQUARE FOOTAGE

5376

PROPOSED USE

Viticulture, Storage of Agricultural Products

ORC 519.01 – 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.

ACKNOWLEDGEMENT

The terms and conditions of the aforementioned Declaration of Intent is hereby acknowledged and agreed on this 4TH day of October, 20 17.

[Signature]

Applicant Signature

Oct. 4, 2017

Date

DARREN POWLETTE

Applicant Printed Name

Subscribed and sworn to before me this 4th day of October, 20 17

By



[Signature]

Notary Public

My Commission Expires March 9, 2021

[Signature]

Notary Public

My Commission Expires

[Signature]

Miami Township Staff Signature

KYLE HUNKELMAN

Staff Printed Name

10/5/17

Date

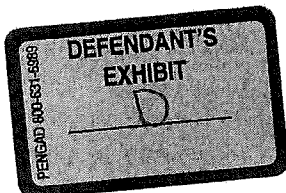
COMMUNITY DEVELOPMENT

DIRECTOR CHRISTOPHER E. SNYDER 2700 LYONS ROAD MIAMI TOWNSHIP, OHIO 45342
planning@miamitownship.com phone (937) 433-3426 fax (937) 433-8709 www.miamitownship.com

EXHIBIT

A

Administrative Record 0171



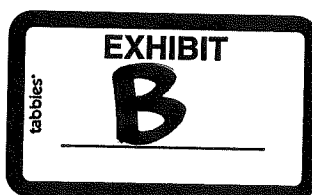
**IN THE COURT OF COMMON PLEAS
MONTGOMERY COUNTY, OHIO**

MIAMI TOWNSHIP BOARD OF TRUSTEES,	:	CASE NO. 2019 CV 05444
	:	Judge: Richard Skelton
Plaintiff,	:	DEFENDANT DARREN POWLETTE'S
v.	:	OBJECTIONS AND RESPONSES TO
	:	PLAINTIFF MIAMI TOWNSHIP
DARREN POWLETTE, <i>et al.</i> ,	:	BOARD OF REQUESTS FOR
	:	ADMISSIONS TO DEFENDANT
Defendant.	:	DARREN POWLETTE
	:	

Now comes Defendant, Darren Powlette, by and through Counsel, and hereby submits the following Objections and Responses to Plaintiff, Miami Township Board of Trustees, Requests for Admissions in accordance with the Ohio Rules of Civil Procedure.

DEFINITIONS AND INSTRUCTIONS

1. The terms "you," "your," "Defendant" or "Powlette" shall mean and refer to Defendant Darren Powlette and/or all persons, agents, and representatives acting or purporting to act on his behalf for any purpose whatsoever.
2. The terms "venue" or "barn" shall mean the structure constructed by you at 7757 Upper Miamisburg Rd (St. Rt. 725), Miamisburg, OH 45342, in which events are held.
3. The term "property" shall mean the whole property located at 7757 Upper Miamisburg Rd (St. Rt. 725), Miamisburg, OH 45342.
4. The term "event" or "events" shall mean weddings, wedding receptions, rehearsal dinners, graduation parties, birthday parties, reunions, group fund raisers and other special occasions.



5. The term "Plaintiff," "Township," "Trustees," or "Board" shall mean and refer to Plaintiff Miami Township, Montgomery County, Ohio, and/or all persons, agents, employees, and representatives acting or purporting to act on behalf of Miami Township Board of Trustees for any purpose whatsoever.
6. The term "Complaint" shall mean and refer to the Complaint filed by Miami Township Board of Trustees in the Common Pleas Court for Montgomery County, Ohio, captioned *Miami Township Board of Trustees v. Darren Powlette*, Case No. 2019 CV 05444.
7. "Document" shall mean each and every document as defined in Ohio Rule of Civil Procedure 34 in your possession, custody or control, however and by whomever prepared, produced, reproduced, disseminated or made, in any form (including without limitation electronically or magnetically stored data), wherever located, whether a copy, draft or original, including, but not limited to the following: letters, minutes, correspondence, notes or summaries of conversations, memoranda, agreements, desk calendars, appointment books, diaries, books, manuals, bulletins, circulars, catalogs, charts, electronic mail or e-mail transcripts, reports, studies, evaluations, analyses, graphs, notices, notes, notebooks, journals, statistical records, maps, laboratory results, medical records, radiology studies, paraffin blocks, glass slides, sketches, data sheets, data compilations, computer data sheets, photographs, movie film, videotapes, sound recordings, microphone, microfiche and any other written, printed, typed, recorded or graphic matter from which information can be obtained or can be translated through detection devices in a reasonably useful form.
8. The term "person" is defined as any natural person or any business, legal or

governmental entity or association.

9. The term "concerning" means relating to, referring to, describing, evidencing or constituting.
10. "Address" shall mean street number and street name, office or suite number, city or town, state and zip code.
11. The word "communication" means each and every disclosure, transfer or exchange of information (in the form of fax, e-mails, text messages, or otherwise), whether oral or in writing, and whether in person, by telephone, by mail, electronic communication or otherwise. The words "relating to" mean constituting or evidencing and directly or indirectly mentioning, describing, referring to, pertaining to, being connected with or reflecting upon the stated subject matter.
12. To "identify" a document means to state the type of document (e.g., letter, memo, notes, etc.), the date of the document, its author or originator, its addressee, those persons to whom copies were sent, a description of the subject matter of the document, and the identity of its custodian or present location. Please give this information in sufficient detail to enable a request for production or subpoena to sufficiently identify the documents sought. Instead of identifying the document in the manner set forth above, you may attach to your answers copies of the documents for which identification is sought, and specify the particular interrogatory to which the document is responsive.
13. To "identify" a person means to state the person's full name and present or last known home and business address and telephone numbers, the person's present or last known employer and position, and the nature and dates of any past or present affiliation

between the person and any party to this lawsuit.

14. In answering these discovery requests, you must disclose information which is in your possession, custody or control or within the possession, custody or control of your attorneys, agents, experts, investigators, or other representatives of you or your legal counsel. If you are able to answer part but not all of a discovery request, you must nevertheless answer to the maximum extent possible. If you are unable to answer any discovery request because you lack sufficient information, you must describe what information you cannot provide and state what efforts you have made to obtain the unknown information. Further, if any part of any answer is based on information or belief, you must identify the source of your information or the basis for your belief.
15. If you refuse to answer a discovery request on the grounds of privilege or work product, describe the basis of the claim fully and in detail in a privilege log so that Defendant may make an informed judgment about whether to move to compel the answer.
16. Pursuant to Rule 26(E) of the Ohio Rules of Civil Procedure, you are under a continuing duty to seasonably supplement all discovery responses. In addition, if you later discover or obtain additional information that is responsive to any interrogatory or request to produce, you must submit supplemental answers disclosing that information as promptly and as long before the trial date as possible.

FIRST SET OF REQUESTS FOR ADMISSIONS

1. Admit that an event was hosted at the venue on June 1, 2019.

ADMIT or DENY:

Objection. Irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Objection. Vague and confusing. The term “hosted” is not defined.

Answering subject to objection, admit an event occurred.

2. Admit that an event was hosted at the venue on June 14, 2019.

ADMIT or DENY:

Objection. Irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Objection. Vague and confusing. The term “hosted” is not defined.

Answering subject to objection, deny an event occurred.

3. Admit that an event was hosted at the venue on June 15, 2019.

ADMIT or DENY:

Objection. Irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Objection. Vague and confusing. The term “hosted” is not defined.

Answering subject to objection, deny an event occurred.

4. Admit that an event was hosted at the venue on June 25, 2019.

ADMIT or DENY:

Objection. Irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Objection. Vague and confusing. The term “hosted” is not defined.

Answering subject to objection, deny an event occurred.

5. Admit that an event was hosted at the venue on July 5, 2019.

ADMIT or DENY:

Objection. Irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Objection. Vague and confusing. The term “hosted” is not defined.

Answering subject to objection, deny an event occurred.

6. Admit that an event was hosted at the venue on August 10, 2019.

ADMIT or DENY:

Objection. Irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Objection. Vague and confusing. The term “hosted” is not defined.

Answering subject to objection, admit an event occurred.

7. Admit that an event was hosted at the venue on August 31, 2019.

ADMIT or DENY:

Objection. Irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Objection. Vague and confusing. The term “hosted” is not defined.

Answering subject to objection, deny an event occurred.

8. Admit that an event was hosted at the venue on September 14, 2019.

ADMIT or DENY:

Objection. Irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Objection. Vague and confusing. The term “hosted” is not defined.

Answering subject to objection, admit an event occurred.

9. Admit that an event was hosted at the venue on October 15, 2019.

ADMIT or DENY:

Objection. Irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Objection. Vague and confusing. The term "hosted" is not defined.

Answering subject to objection, deny an event occurred.

10. Admit that an event was hosted at the venue on October 18, 2019.

ADMIT or DENY:

Objection. Irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Objection. Vague and confusing. The term "hosted" is not defined.

Answering subject to objection, deny an event occurred.

11. Admit that you are the statutory agent upon whom process may be served for Stoney Hill Rustic Weddings, LLC

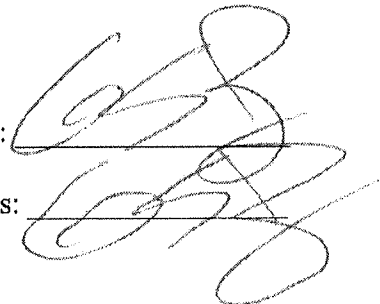
ADMIT OR DENY:

Objection. As "you" is defined in these discovery requests, multiple people would be statutory agent.

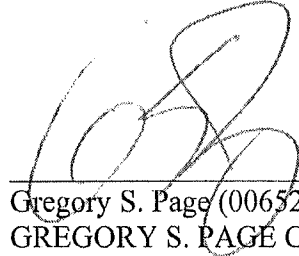
Answering subject to objection, Admit Darren Powlette is statutory agent.

As to Objections:

As to Admissions:

A handwritten signature in black ink, appearing to be 'D. Powlette', is written over two horizontal lines. The signature is cursive and somewhat stylized.

Respectfully Submitted,



Gregory S. Page (0065264)
GREGORY S. PAGE CO., LPA
7501 Paragon Road
Dayton, OH 45459
Telephone: (937) 434-1908
Facsimile: (937) 436-0008
Email: greg@gsplaw.com
Attorney for Defendant

Certificate of Service

I hereby certify that the foregoing Objections and Responses to Request for Admissions was served upon Edward J. Dowd, Esq., 8163 Old Yankee Street, Suite C, Dayton, OH 45458, Attorney for Plaintiff, on this 22nd day of June 2020 by ordinary U.S. Mail.

/s/Gregory S. Page

Gregory S. Page (0065264)



Declaration of Intent - Agricultural Exemption

Please completely fill out the requested information and provide a property site plan along with your application.

PROPERTY INFORMATION

I the undersigned, declare that the proposed structure and improvement to the property located at:

7757 Upper Miami Blvd
PROPERTY ADDRESS (STREET ADDRESS, CITY, STATE, ZIP)

Is to be used for an agricultural purpose as described in the Ohio Revised Code 519.01 and that any change in use will 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.

OWNER INFORMATION

OWNER CONTACT ADDRESS

7757 Upper Miami Blvd
OWNER EMAIL (if available)
powletteconst@yahoo.com

OWNER TELEPHONE

937-609-2603

ALTERNATE PHONE

STRUCTURE AND CODE DEFINITION INFORMATION

DESCRIPTION OF STRUCTURE

BANK BARN

SQUARE FOOTAGE

8,232 (3528 lower level, 3528 main, 1176 Hay Loft)

PROPOSED USE

Agriculture, Agritourism, Hay Storage, Turkeys, Chickens, Viticulture

ORC 519.01 - 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.

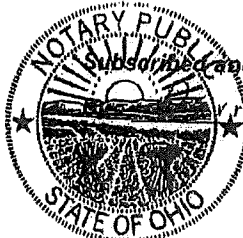
ACKNOWLEDGEMENT

The terms and conditions of the aforementioned Declaration of Intent is hereby acknowledged and agreed on this 6th day of July, 20 18.

DARRELL POWLETTE
Applicant Signature

DARRELL POWLETTE
Applicant Printed Name

July 6th 2018
Date



Subscribed and sworn to before me this 6th day of July, 20 18.

NANCY S. CULLEN Notary Public
in and for the State of Ohio
My Commission Expires Sept. 30, 2019

Nancy S. Cullen
Notary Public

Sept 30, 2019
My Commission Expires

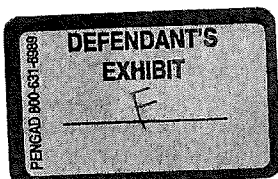
Miami Township Staff Signature

Staff Printed Name

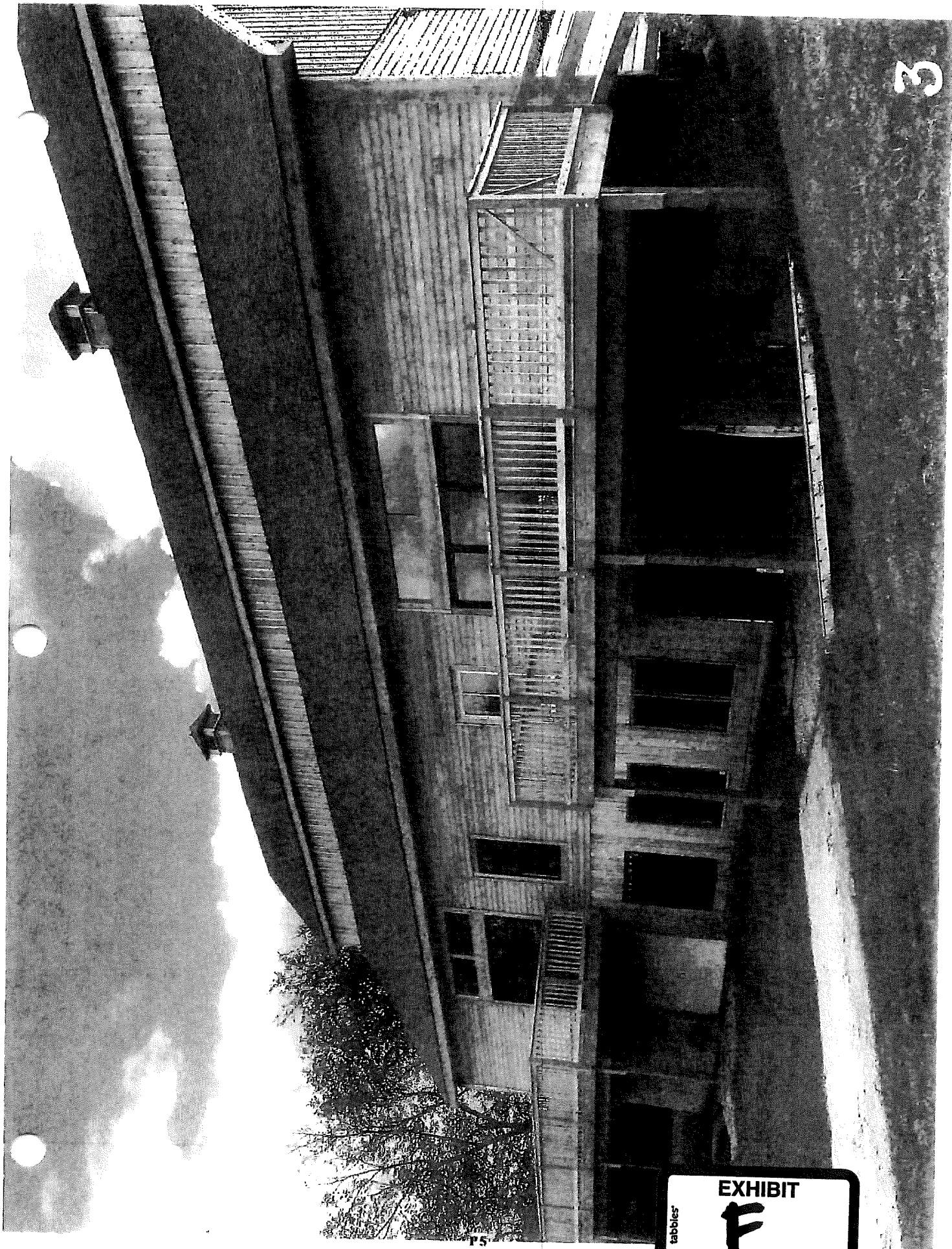
Date

COMMUNITY DEVELOPMENT

DIRECTOR CHRISTOPHER E. SNYDER 2700 LYONS ROAD MIAMI TOWNSHIP, OHIO 45342
planning@miamitownship.com phone (937) 433-3426 fax (937) 433-8709 www.miamitownship.com



Administrative Record 8
MT000203



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EXHIBIT
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