

**Miami Township
Board of Zoning Appeals
Thursday, July 9, 2018 at 7:15pm**

Members of the Board of Zoning Appeals present:

James Hamilton, Chairman
Fred Sinder
John Broz
Gregory Clatterbuck

Members of Miami Township Staff present:

Christopher Snyder, Director
Kyle Hinkelman, Deputy Director
Alex Carlson, Planner

Court Reporter:

Beverly L. Nagle, Blair Reporting Services

**A copy of the transcript from this meeting will be provided by request.*

Others Present:

Matthew Turton, 6600 Jamaica Road
Cheryl Turton, 6600 Jamaica Road
Thomas Campbell, 6940 Jamaica Road
Maris Marcus, 6940 Jamaica Road
Mike Schmitz, 6498 Jamaica Road
Steve Raiscly, 10250 Germantown Pike
Pam Sizemore, 7603 Upper Miamisburg Road
Robert Miller, 613 Mound Ave
William Sizemore, 7603 Upper Miamisburg Road
Dave Coffey, 6550 Jamaica Road
Vicky Warreb, 8091 South Union
R. Dean Miller 594 Oaknoll Drive
J. Miller 594 Oaknoll Drive
Cheri Dixon, 1934 Needmore Road
Lori Sparks, Sears Road
Christina Miller, 7346 Upper Miamisburg Road
James Hoskins, 7346 Upper Miamisburg Road
Darren Powelette, 7757 Upper Miamisburg
John Ruffolo, 7501 Paragon Road
Megan Cox, 6776 Jamaica Road
Valorie Hiu, Middletown, Ohio
Jim Cooper, 6650 Jamaica Road
Dave Coffey, 6550 Jamaica Road
Martin Filburn, 6735 Manning Road

GENERAL MEETING

Mr. Hamilton called the meeting to order at 7:15 PM.

THE OATH

Mr. Hamilton administered the Oath of Truth to the following people:

Alex Carlson
Darren Powelette
Tina Miller
Dave Coffey
Dean Miller
Tom Campbell
Cheryl Turton
Christina Miller
Matthew Turton
Martin Filburn
Robert Miller
Cheryl Dixon
Jim Cooper
Pam Sizemore
James Hoskins

NEW BUSINESS

1. Case # BZA 824-18 – Administrative Appeal – 7757 Upper Miamisburg Road

Mr. Hamilton announced the case to be heard as BZA 824-18 filed by Darren Powlette in regards to the property located at 7757 Upper Miamisburg Road that is currently zoned "A" Agricultural. Mr. Hamilton asked if staff would like to present a report.

Mr. Carlson came forward and stated that Mr. Darren Powelette has filed an appeal in regards to the violation letter he sent to Mr. Powelette citing the property located at 7757 Upper Miamisburg Road is in violation of Article 8, Section 801 of the Miami Township Zoning Resolution. He noted the violation letter was sent to Mr. Darren Powlette on May 25th, 2018.

Mr. Carlson explained that staff made the determination based on supporting evidence which he presented to the board. He noted the violation is in regards to a barn on the property being rented and used as a wedding venue which is not a permitted or conditional use for this property.

Mr. Clatterbuck asked if there is another pole barn located on the property that does not pertain to this case and Mr. Carlson confirmed that there was.

Mr. John Ruffolo, attorney for Mr. Powelette, came forward.

Mr. Ruffolo stated that Section 519.21 (C)(4) does not confer any power on the township zoning commission, board of township trustees, or board of zoning appeals to prohibit use in a district zoned for agricultural use, or agritourism.

Mr. Darren Powelette came forward to testify and was sworn in.

Mr. Powelette testified that his property located at 7757 Upper Miamisburg Road, Stoney Hill Farm, falls under the permitted use of "agricultural" under Section 801 of the Miami Township Zoning Resolution, including the principle dwelling unit on the property. He further explained that the agricultural use on the property exempts any zoning certificate requirement. He further noted that he has claimed an agriculture exemption for the barn on the property and explained how he felt the definition for agritourism would apply in this case.

Mr. Ruffolo presented photographs for the record and Mr. Yoder, attorney for the Board of Zoning Appeals, assigned each photo an Exhibit letter beginning with Exhibit A and through Exhibit M. Mr. Powelette described Exhibits A through M. with the exception of Exhibit J.

Mr. Ruffolo further asked Mr. Powelette questions relating to the status of his farm, his acquisition of farm animals, if a wedding that took place on the property on May 8th, and his agricultural use valuation application.

Mr. Yoder noted a copy of Mr. Powelette's agricultural use valuation application was entered into the record as Exhibit N.

Mr. Powelette testified that he filed his CAUV application was a renewal and on May 10, 2018 and claimed agritourism as his agricultural usage.

Mr. Ned Dowd, attorney for Miami Township, cross-examined Mr. Powelette in regards to when specifically the animals on the property were acquired, his promotion of an event venue, and his ownership of a Bed and Breakfast website. He further asked him to confirm he was receiving any compensation for events on the property to which Mr. Powelette replied he has.

Mr. Dowd submitted photographs, a Stoney Hill Rustic Weddings contract, and a notice from the Miami Valley Fire District as Exhibits 1-3 for the record.

Mr. Dowd continued to cross examine Mr. Powelette in regards to the Stoney Hill Bed and Breakfast website, the logistics of farming and the storing hay in the loft area, the location of poultry inside the barn and on the property.

Mr. Dowd again asked Mr. Powelette about information found on the Stoney Hill Bed and Breakfast website and the primary purpose of the barn which Mr. Powelette stated was agricultural and agritourism.

Mr. Dowd asked Mr. Powelette about the location of agritourism signage, and the usage and square footage of the buildings on the property and their occupancy. He further asked for details about the barn floor, available bathrooms, and kitchen facility and how they relate to a Stoney Hill Rustic Weddings contract.

Mr. Yoder entered the contract into the record as Exhibit 4.

Mr. Dowd continued to question Mr. Powelette about a wedding contract between Mr. Powelette's business and Ms. Tina Miller and what amenities were agreed upon.

Mr. Dowd further asked Mr. Powelette questions in regards to the proposed viticulture at time the violation was issued and if any structures used for events on the property have ever been used for viticulture or inspected by the fire department.

Mr. Powelette stated that inspections are not required because it is exempt because it is used for agriculture.

Mr. Dowd asked about an exchange between him and the fire marshal for the Miami Valley Fire District in regards to scheduling potential inspections and his response when asked if he was operating a commercial business out of the barn.

Mr. Powelette presented a letter he received from the Miami Valley Fire District and Mr. Dowd entered the letter into the record as Exhibit 5.

Mr. Dowd continued to question Mr. Powelette about the rooms in the barn and their amenities.

Mr. Ruffalo came forward to re-direct examination of Mr. Powlette and asked him to read a portion of the Ohio Revised Code and explain how it relates to charging fees for agritourism. He also asked Mr. Powelette about event contracts and the timing of his implementation of agritourism on the property.

Mr. Dowd cross examined Mr. Powelette further in regards to how weddings or events relate to permitted uses on the property and agritourism. Mr. Dowd further asked him about the timing of his event contracts, weddings, and his implementation of agritourism and the timing of his acquiring the farm animals.

Alex Carlson came forward and confirmed he had been sworn in.

Mr. Dowd questioned Mr. Carlson in regards to what was cited in the violation letter and what supporting evidence was presented to or gathered to make that determination.

Mr. Dowd also asked Mr. Carlson for information in regards to the permitting process for a Bed and Breakfast in Miami Township.

Mr. Ruffalo asked Mr. Carlson about his process in making the determination that the property was not operating under a permitted use and his knowledge of the Miami Township Zoning Resolution and the Ohio Revised Code. He also asked Mr. Carlson if

contact with Mr. Powelette was sought in regards to the use on the property prior to the violation being issued and

Mr. Carlson testified that staff had determined that there was not enough evidence to support the wedding venue use was agriculturally related.

Mr. Dowd called on Ms. Tina Miller to testify.

Ms. Tina Miller came forward and was sworn in.

Mr. Dowd began questioning Ms. Miller in regards to her renting the Stoney Hill Rustic Wedding facility for her daughter's wedding on May 19, 2018 of this year. He further questioned Ms. Miller in regards to her correspondence with Mr. Powlette and his associate, her tour of the facility, and a contract established between her family and Stoney Hill Rustic Weddings and what amenities she was told would be available to her.

Mr. Dowd entered photographs noted as Exhibit 6 and then Exhibit 7 into the record.

Mr. Dowd further asked Ms. Miller if agritourism, farm tours, or other activities related to agriculture were offered at the time of booking the venue or available to her the day of her event to which she replied there were not. He continued to ask Ms. Miller about the amenities available and presented to her the weeks leading up to her event and the day of the wedding and her discussions with Mr. Powelette during that time.

Mr. Dowd asked Ms. Miller about the photographs depicted in Exhibits 6 and 7 and asked her about the issues on the day of the wedding experienced by one of her guests who arrived in a wheel chair.

Mr. Dowd entered another photograph noted as Exhibit 8 into the record and Ms. Miller described the condition of the pond on the day of her event.

Mr. Ruffalo asked Mrs. Miller to confirm that at the time she was using the facility and on May 8, 2018 it wasn't ready which she did.

Mr. Hamilton asked if anyone else would like to give testimony.

Mr. Dave Coffey came forward and was sworn in.

Mr. Coffey stated that he lived nearby the property and wanted to speak on behalf of the residents who live in the area who are being effected by the use of the barn on the property.

Mr. Coffey spoke about agritourism and agricultural zoning and how it relates to the zoning code. He noted his difficulty in approaching the property and reach out to the property owner and informed the board about an ongoing case in the Miamisburg municipal court in relation to a Bed and Breakfast being run on the property in addition to the barn rental.

Mr. Coffey read portions of the Ohio Revised Code and Miami Township Zoning Resolution and spoke of how they relate to permitted uses on the property, the process of obtaining permitted uses, and the board's determination that the applicant is operating more than one business on the property. He also discussed comments on social media for the venue and noted concerns that fire safety measurements would not be met for the guests attending such events.

Mr. Coffey further noted a letter he sent a letter to the property owner asking to discuss his concerns which he stated was never replied to. He explained that the residents in the surrounding area have fought annexation and city expansion to keep their agricultural area quiet and free from commercial businesses and dense residential development. He noted he felt residents who live in the area fear permitting a commercial business in an agricultural area would encourage more businesses to be permitted in agricultural district.

Mr. Dean Miller came forward and was sworn in.

Mr. Miller explained that he was the husband of Ms. Tina Miller. He stated that not once was he told there would be anything agriculturally related in relation to his renting the property and further expressed concerns safety of the property as a wedding venue. He commented on his partial payment to Mr. Powelette because he felt he didn't honor his part of the contract.

Mr. Miller further noted conversations he had with Mr. Powelette in regards to the venue and future weddings and noted his safety concerns that the property is operated as a business. He further noted that Mr. Powelette never attempted to cancel the contract with him six months prior as he testified earlier. He also cited social media comments and expressed concern for future weddings taking place without an appropriate fire inspection, exits, handicap access or other such inspections required of a business.

Mr. Tom Campbell came forward and was sworn in.

Mr. Campbell came forward and stated his concerns regarding a business being run in an agricultural area and commented that he did not feel the property was being used with an intent for agritourism or agricultural use. He further commented on the noise he can hear from his property and the number of visitors to the property.

Ms. Cheryl Turton came forward and was sworn in.

Ms. Turton came forward and stated that she lived adjacent to Mr. Powelette's property. She commented on her concerns regarding drones flying over her property, conversations she has had with Mr. Powelette in regards to the use of barn, property screening, and shooting noise coming from Mr. Powelette's property frightening her animals, and her concern for the care of Mr. Powelette's recently obtained animals. She further noted she witnessed two weddings taking place on the property and had pictures as examples. She also noted her husband has witnessed three weddings on the property.

Ms. Christina Miller came forward and was sworn in.

Ms. Miller explained her support of the zoning inspector's decision in this case. She further noted her concerns that Mr. Powelette is trying to use the definition of agritourism in a way it was not intended. She stated her concerns for safety of the events being held at the property and told the board she did not believe the applicant was using the property for agritourism.

Mr. Matthew Turton came forward and was sworn in.

Mr. Turton stated he lived adjacent to Mr. Powelette and spoke of his ongoing conflicts with the applicant. He explained that he and his family have felt targeted and intimidated by Mr. Powelette because of his outspoken opposition to previous cases and past and current happenings on the property.

Mr. Turton further discussed what he felt was Mr. Powelette presented a fundamental error in his interpretation of the code and that he does not dispute his argument that the property is a farm. He noted however that he feels a wedding venue is not incident to the operations of a farm and is therefore not a permitted use nor exempt from any zoning regulations.

Mr. Tom Campbell who had previously been sworn in stated that that agritourism includes the stipulation that activities involve members of the public or are open to the public. He further commented that a wedding is a private event by invitation only.

Mr. Martin Filburn came forward and was sworn in.

Mr. Filburn stated that his property was being disrupted by the noise coming from the property. He expressed his concern for how the surrounding properties were being affected. He asked if this use is approved what is to stop him from opening a carryout on his property and having people pet his horses on the way out.

Mr. Robert Miller, 613 Mound Avenue came forward and was sworn in.

Mr. Miller stated that he is the prior owner of the property and that he has seen weddings taking place at neighboring properties multiple times and have visited the property numerous times.

Ms. Cheryl Dixon came forward and was sworn in.

Ms. Dixon spoke about her knowledge of agritourism and her experience in having weddings and other celebratory events on her 25 acre property. She noted a legal process she has been involved in with her township, the court of common pleas, and the Ohio Supreme Court to allow weddings on her farm.

Ms. Dixon noted that she didn't know anything about building code but suggested that Mr. Powelette could put a tent out for weddings without using the building. She further

noted she gave farm tours to visitors between the wedding ceremony and the reception where they talk about the farm.

Mr. Clatterbuck asked Ms. Dixon to confirm she spoke about the farm during her farm tours and that she is present while the events are taking place on the farm.

Ms. Dixon replied that her and her husband are present and do speak about the farm during tours. She added that all the events take place outside noting she doesn't have any buildings available for events.

Mr. Hamilton asked Ms. Dixon to confirm the events took place outside and Ms. Dixon stated that they do adding that the barn on her property housed livestock.

Mr. Dowd asked Ms. Dixon to confirm she does not have a building in which the weddings are held and that she promotes the weddings as agriculturally themed.

Ms. Dixon confirmed the weddings did not place inside a building and that the weddings are agriculturally themed because they take place on a farm.

Mr. Jim Cooper came forward and was sworn in.

Mr. Cooper asked Ms. Dixon if she was an attorney and Ms. Dixon stated she was not.

Ms. Pam Sizemore came forward and was sworn in.

Ms. Sizemore stated that she lives next door to the property. She explained she had pumpkins and offered hayrides on her property under agritourism noting she has also had six weddings on her property as Mr. Miller had suggested. She further explained that all the weddings were all for members of her family and no fees were charged.

Mr. Clatterbuck asked Ms. Sizemore to confirm that all the weddings on her property were for members of her family which she did so confirm.

Ms. Turton came forward and confirmed she was previously sworn in.

Ms. Turton spoke of a conversation she had with Mr. Powelette on the phone in regards to his not being present at an event happening on his property.

Mr. James Hoskins came forward and was sworn in.

Mr. Hoskins stated that he has lived in the area his whole life and explained he is not interested in living in an area that allows parties and would move away if that were to happen.

Mr. Hamilton asked if there were any closing remarks.

Mr. Dowd stated that the township's position is that weddings may take place on a family farm however once it turns into a business it is subject to zoning. He further explained that a wedding event within itself is not agricultural.

Mr. Dowd further explained that the township has the authority to regulate structures that are not incident or secondary to agricultural use, even though an exemption has been filed because it does not meet requirements to qualify for an exemption.

Mr. Dowd noted the barn was built to serve as an event venue and not to house livestock and partake in any other farm related activity.

Mr. Ruffalo stated that agritourism allows a person to provide agritourism activities with or without a fee. He noted that a second district board of zoning appeals has approved a decision by a lower court to permit weddings on her property.

He further noted that the production of hay alone would qualify the property as a farm. He explained that incidental does not mean the building has to be used for more than fifty percent farming and stated there was no evidence that there is a party barn. He stated it was improper to look at anything which happened after the violation letter was issued and that as an agritourism farmer that Mr. Powelette is entitled to conduct business accordingly.

At 10:16 p.m., Mr. Clatterbuck made a motion to close the public portion of the meeting and to go into private deliberation. Mr. Broz seconded the motion and the votes were all ayes. The motion passed.

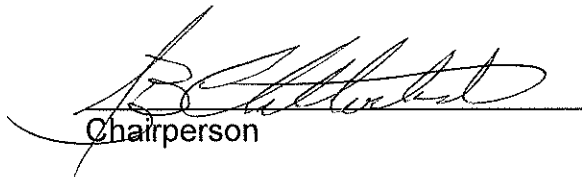
Mr. Clatterbuck made a motion to adjourn from private deliberations and Mr. Sinder seconded the motion. The vote was all ayes and the motion passed.

Mr. Clatterbuck made a motion to continue the case until August 6, 2018 at 6:00 p.m. and Mr. Broz seconded the motion. The vote was all ayes and the motion passed.

OTHER BUSINESS

At 11:48 p.m. Mr. Broz made a motion to adjourn and Mr. Sinder seconded that motion. The vote was all ayes and the motion passed.

Respectfully Submitted,
Kyle Hinkelman, Recording Secretary


Chairperson