

CULTIVATING A BETTER UNDERSTANDING OF AGRICULTURAL EXEMPTIONS

JESSICA LOGOTHETIDES, J.D. AND TODD PAULUS, REHS



TOPICS TO BE COVERED

- Brief lesson on law
- Statutes relating to agricultural structures
- Related laws
 - Building
 - Agritourism
 - Fire
 - Zoning
- Examples
- Case Studies In Case Law

BRIEF LESSON ON LAW

- **Constitution** – supreme law of the land, creates separation of powers and delegates certain authority to the legislative and judicial branches
- **Statutes** – Ohio Revised Code, (Laws) Ohio Administrative Code (Rules) – as long as government-made laws do not violate the constitution, they remain valid
- **Case (or common) law** – statutes and constitution are subject to interpretation as to their meaning. Laws cannot possibly address every legal situation. Case law interprets or refines statutes and constitution. So, Case law is precedent that has been set based on prior judicial decisions, rather than specific statutes or regulations passed by a legislature
 - Case law is binding within all courts at the same level or lower within the jurisdiction
 - A higher Court can overrule existing case law

BRIEF LESSON ON LAW

- OHIO REVISED CODE - codified law of the state written and passed by the state legislature. The Revised Code is organized into 31 general titles broken into chapters dealing with individual topics of law
- OHIO ADMINISTRATIVE CODE - a compilation of administrative rules adopted by state agencies. State agencies adopt rules to carry out the policies and intent of laws passed by the General Assembly.
- BUDGET BILL - Ohio operates on a biennial budget with its fiscal year running from July 1 - June 30. The operating budget sets policy and allocates the state's financial resources. During the budget process, the General Assembly enacts and amends various statutes/codes.

Ohio Judicial Structure

Various decisions to be discussed made in appeals courts



(Source: Ohio Supreme Court Website)

LAWS - STRUCTURES

- ORC 3781.06 (A)(1) Any building that may be used as a place of resort, **assembly**, education, entertainment, lodging, dwelling, trade, manufacture, repair, storage, traffic, **or occupancy by the public**, any residential building, and all other buildings or parts and appurtenances of those buildings erected within this state, shall be so constructed, erected, equipped, and maintained that they shall be safe and sanitary for their intended use and occupancy.

LAWS – EXEMPTION FOR AGRICULTURAL STRUCTURES

- ORC 3781.06 (B) Sections 3781.06 to 3781.18, 3781.40, and 3791.04 of the Revised Code **do not apply to any of the following:**
 - (1) Buildings or structures that are **incident to [directly and immediately related to] the use for agricultural purposes** of the land on which the buildings or structures are located, provided those buildings or structures are not used in the business of retail trade. For purposes of this division, a building or **structure is not considered used in the business of retail trade if fifty per cent or more of the gross income received from sales of products in the building or structure by the owner or operator is from sales of products produced or raised in a normal crop year on farms owned or operated by the seller.**

LAWS – EXEMPTION INTENT

- **INTENT** : The purpose of the building code is to ensure that buildings are safe for people to use, but buildings or structures on land used for agricultural purposes are often exempt from the code provisions because they are not frequently inhabited by many people.

LAWS – WHAT IS AGRICULTURE?

- ORC 3781.06 (C) As used in sections 3781.06 to 3781.18 and 3791.04 of the Revised Code:

1) "Agricultural purposes" include agriculture, farming, dairying, pasturage, apiculture (bees), algaculture meaning the farming of algae, horticulture, floriculture, viticulture (grapes), ornamental horticulture, olericulture (vegetables), pomiculture (fruit), and animal and poultry husbandry.

LAWS – ZONING CERTIFICATE - AGRICULTURE

- ORC 3781.061 Exemption for building or structure used in agriculture.

Whenever a county zoning inspector under section 303.16 of the Revised Code, or a township zoning inspector under section 519.16 of the Revised Code, **issues a zoning certificate that declares a specific building or structure is to be used in agriculture**, such building is not subject to sections 3781.06 to 3781.20, 3781.40, or 3791.04 of the Revised Code.

More on this later.....



CASE #1 - WEDDING BARN / ORCHARD, 2014

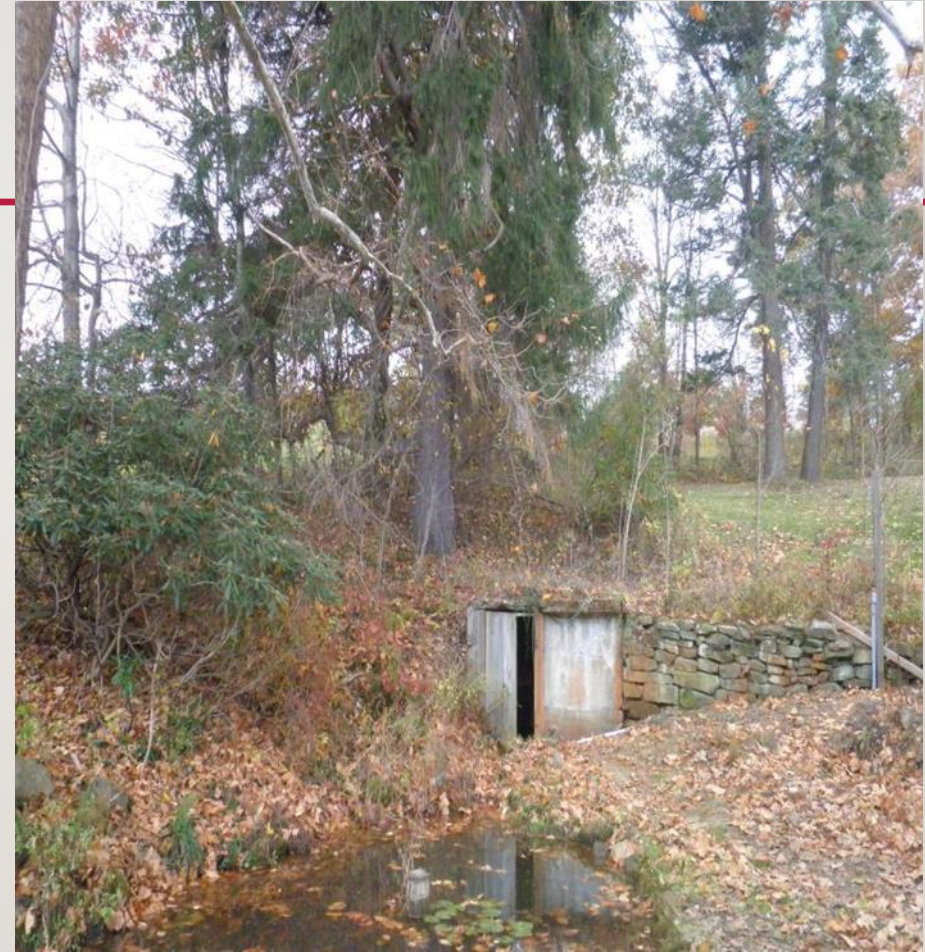


CASE #1 - WEDDING BARN / ORCHARD, 2014

- Wedding in 2014, outbreak occurs. Linked to venue epidemiologically – Orchard.
 - Structures:
 - Bungalow home built 1914
 - Barn used for wedding receptions and other events
 - Colonial home built 1992
 - Cottage built in 2014
 - Three septic systems, all failing. The 2014 cottage was recently illegally installed consisted of a tank with tail-line into the woods
 - All structures served by a spring



WEDDING BARN / ORCHARD

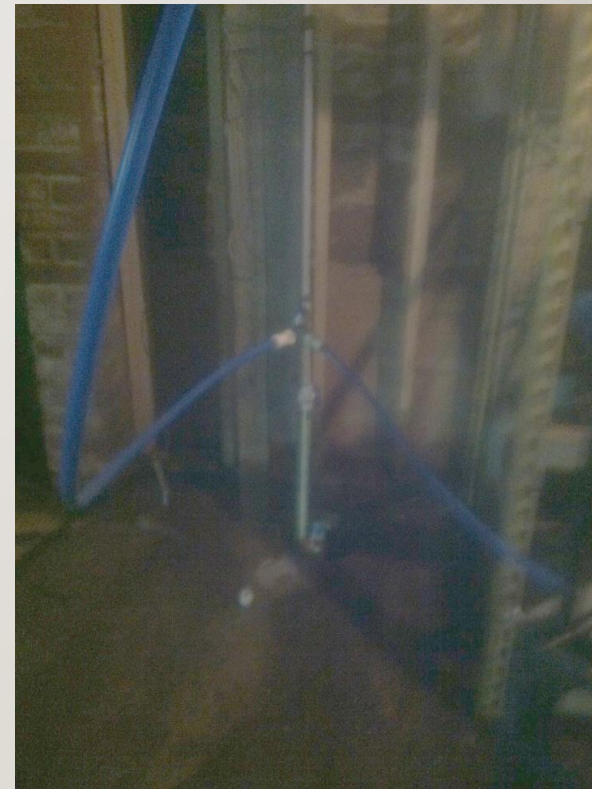


WEDDING BARN / ORCHARD

SUBMERSIBLE PUMP



PLUMBING – LOWER LEVEL OF BARN



WEDDING BARN / ORCHARD

VIOLATIONS OF

- Health
- Building
- Zoning
- Fire
- Did not contest findings, came into compliance

CASE #2 WEDDING BARN - 2018



CASE #2 WEDDING BARN - 2018

2011



2018



CASE #2 WEDDING BARN - 2018



CASE #2 WEDDING BARN - 2018

2018 TIMELINE

- June 14– Applied to zoning for conditional use
- July 5 – BZA Hearing held, approved but must comply with all state and local fire, health, safety, and occupancy regulations
- July 10 – CBO issues order to stop assembly occupancy
- July 14 - Fire dept. EMS responds to call for assistance and finds 80+ people at wedding reception
- July 16 – Owner denies fire safety inspector access to property
- July 16 – Health department issues a public health order regarding water, sewage, and plumbing systems

CASE #2 WEDDING BARN - 2018

2018-2021 TIMELINE

- Sept. 13 – Board of Building Appeals conducted an appeal hearing for order issued by CBO, Order was Upheld
- February 8, 2019 Judgement Entry issued after owners filed appeal of Building Appeals with the Court of Common Pleas
- 2019-2021 Lawsuits and appeals....
- June 28, 2021 Fifth Appellate District (██████ v. *Cavanaugh*) – Trial Court Opinion upheld in favor of County

CASE #2 WEDDING BARN - 2018



Court's Analysis

The Court finds that the [REDACTED] Barn does not meet the requirements pursuant to R.C. 3781.06 and is not exempt from regulations by the Stark County Building Department. To qualify for this exemption, the land must have an agricultural purpose, the structure must be incident to the agricultural use of the land, and the structure must not be used in the business of retail trade. Instead, the evidence demonstrates that the [REDACTED] Barn is used as a place of gathering for social events. The testimony presented at both the Stark County Board of Building Appeals and Ohio Board of Building Appeals shows that the [REDACTED] used [REDACTED] Barn for assembly purposes (see Stark County transcript page 4 to 6, 12, 15, 19-21, 27-32, 41-43; (Ohio transcript page 12, 20-23). The [REDACTED] have testified at both hearings that they've used the [REDACTED] Barn for events for close to 18 years, and their own website even advertises such use to even hold events and weddings. The Court is not convinced that an agricultural use of land exemption applies.



Moreover, the [REDACTED] in an attempt to receive a conditional use permit with the [REDACTED] Township Zoning Appeals, describes [REDACTED] Farm as “an event and rustic wedding facility.” In a sense, the [REDACTED] are taking the position of a “legal chameleon,” changing the designation of the property according to the situation. This is substantiated by the testimony of Todd Paulus from the Stark County Health Department (Stark County transcript page 12-13) and Chip Welch and Paul Beegan of the Ohio Board of Building Appeals (Ohio transcript page 29-30).

Furthermore, the Court disagrees with the [REDACTED] argument that the fifty per cent test found in R.C. 3781.06(B)(1) is applicable since it applies to “structures incident to the use of land for agriculture.” The test applies only to places of “retail trade”, i.e. in connection with “sales of products produced or raised in a normal crop year farms owned or operated by the seller.” R.C. 519.01. The Ohio statutes were designed to protect a farmer’s ability to sell their agriculture products to the public, not to operate a place of public assembly. Since the Court chose to follow the standard of review as suggested by the [REDACTED] this Court finds that the preponderance of evidence before it supports the reasonableness and lawfulness of the order and any rule of the Board of Building Standards upon which the order is based in its application to the particular set of facts or circumstances involved in the appeal. It is clear to this Court that the Appellees have met the burden of proof to establish that the preponderance of the evidence

SIMILAR CASE

- *Powlette v. Bd. of Bldg. Appeals Dayton, 2nd Dist.*
 - Montgomery County Building Regulation Division issued the landowner a stop work order because they constructed a barn without permits and were using it as a public assembly.
 - Court concluded the conversion of the barn to public assembly (to host weddings and a bed & breakfast) was an impermissible change of use. Given the fire and safety concerns for attendees of the events, stop work order was warranted.

EXEMPT OR NOT EXEMPT: THAT IS THE QUESTION

AGRICULTURAL EXEMPTION MAY APPLY

- Wineries
- Berries, flowers
- Honey
- Orchard
- Agritourism
- Dog breeding and boarding (Case # 2005-P-0022) 11th Appellate District
- Nursery

(PROBABLY) NOT AGRICULTURALLY EXEMPT

- Bakeries in a barn
- Wedding venues
- Food establishment
- “Agricultural” conference center
- Goat cheese manufacturing – goat milk from offsite
- Bulk herbal supplements – packaging
- Landscaping (*Gabanic v. Apanius*, 1986 Ohio App.)

AGRITOURISM



2016 AGRITOURISM LAW

1. Protects agritourism operators from legal liability for injuries that are due to the inherent risks of engaging in agritourism activities.
2. Limits county and township zoning authority over agritourism land uses.
3. Clarifies how agritourism activities affect a farm's eligibility for Current Agricultural Use Valuation (CAUV) property tax assessment.

AGRITOURISM PROVIDER, (SIMPLIFIED)

- Agritourism provider”: Owns, operates, provides, or sponsors agriculturally related educational, historical, cultural, or recreational activities to the general public on a farm that is engaged in commercial “agricultural production” and is at least 10 acres in size or earns an average gross income of \$2500 from agricultural production.

AGRITOURISM

SOME CODES DO APPLY

- **Agritourism providers can be subject to building code regulations.** The agritourism law did not change how Ohio's building code applies to agricultural structures—those provisions can still apply in certain situations.
- **Agritourism providers can be subject to fire code regulations.** Agritourism providers can be subject to fire code regulations....more on this later.

- **Examples:** corn mazes, hay rides, cider mills, pumpkin patches, petting farms, U-pick operations
- Weddings *are not* agritourism



CASE #3 VITICULTURE - WINERY - *EXEMPT*



CASE #3 VITICULTURE - WINERY

LICENSES

- A-2F - ORC 4303.031 Ohio farm winery that grows and manufactures wine, from grapes, fruits, or other agricultural products on land it owns and uses only for agriculture.
- B-2A - ORC 4303.071 Sale of wine to retail permit holder.
- S-1 - ORC 4303.232 Sale of beer or wine (less than 250,000 gallons per year) to personal consumer via mail order.
- D-6 - ORC 4303.182 Sale of intoxicating liquor on Sunday for the same sales privileges (barring any local option elections that might impact privileges) the permit holder has Monday through Saturday.

CASE #3 VITICULTURE - WINERY



FACTORS

- Has 0.3 acres planted in grapes
- Purchase juice in addition to grapes grown on property
- Sells wine made on premises
- Allows people into structure, has restrooms

HEALTH DEPARTMENT RELATED

- Illegally installed septic system
- Using water well from old limestone strip mining operation previously on the site

CASE #3 VITICULTURE - WINERY



WATER – LIQUOR CODE

Ohio Administrative Code 4301:1-1-17

- (C) All such premises shall be provided with an adequate supply of hot and cold running water from a source satisfactory to the board or department of health of the health district in which such premises are located.

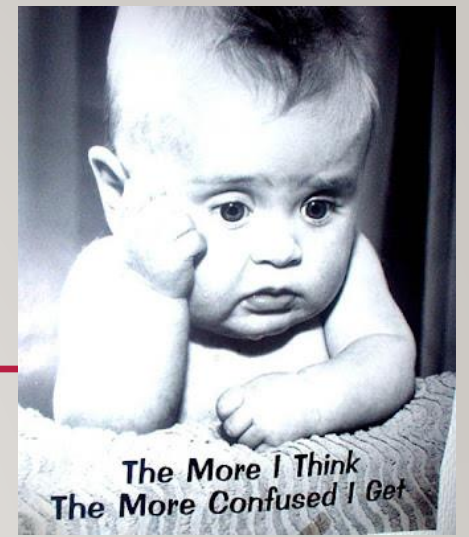
TOILET/SEWAGE – LIQUOR CODE

- (F)(3) Toilet facilities of a type and kind approved by the board or department of health of the health district in which the permit premises are located, if the permit premises are located in a place where a public water supply and a public sewage system are not available. Such toilet facilities shall be installed in accordance with specifications of such board or department of health.

CONSIDERATIONS

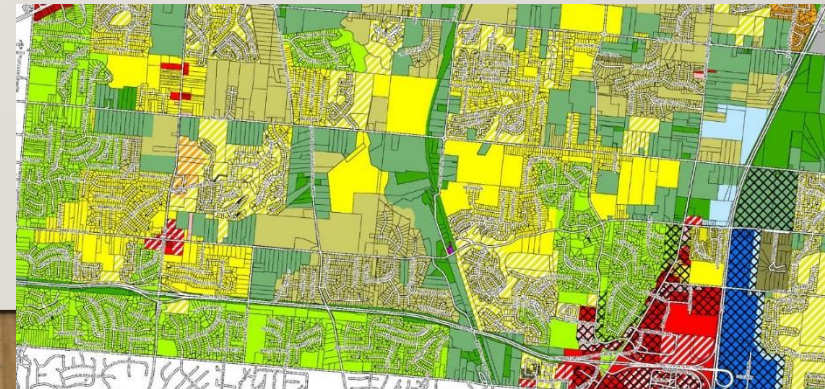
FACTORS TO CONSIDER

- Laws are difficult to interpret, many situations fall into gray areas
- Structures with multiple uses
- Agriculture advocates push for exemptions
- Judgement of zoning inspector
- Interpretation by prosecutor
- Sewage and wastewater are not exempted
- Water supply is not exempted, and may be PWS
- Plumbing may be exempt
- Process waste-OHIO EPA, should not be land applied
- Department of Agriculture policies
- Department of Commerce, Division of Liquor Control policies



ZONING

- Revised Code Chapter 519 governs zoning in the unincorporated territory of a Township
- R.C. 519.02 authorizes township trustees, in the interest of the public health and safety, to adopt resolutions limiting the size and location of buildings and other structures and the uses of land for trade, industry, residence, recreation, or other purposes.
- However, the statutory scheme recognizes certain exceptions—Agricultural Exemption.



AGRICULTURAL EXEMPTION-ZONING

- R.C. 519.01 defines “agriculture.”
- The Ohio Revised Code “confers no power” on townships:
 - To prohibit the use of any land for agricultural purposes.
 - To prohibit the construction or use of buildings or structures incident to the use for agricultural purposes of the land on which such buildings or structures are located.
 - Including buildings/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)

AGRICULTURAL EXEMPTION-ZONING

- Townships may regulate agriculture in some circumstances:
 - In a platted subdivision approved under law or
 - In an area of 15 or more lots approved under law that are contiguous to one another
 - Then the township may regulate:
 - Agriculture on lots of one acre or less.
 - Buildings or structures incident to the use of land for agricultural purposes on lots greater than one acre but not greater than five acres by: set back building lines; height; and size.
 - Dairying and animal and poultry husbandry on lots between 1 and 5 acres when at least 35% of the lots are developed. R.C. 519.21(B)
- R.C. 519.21(C) also limits the regulation of specific activities such as farm markets/agritourism

ZONING EXPLAINED

- R.C. 519.21(A) provides two circumstances under which the use of property is exempt from township zoning regulation:
 - 1) The property is used for agricultural purposes
 - To determine if the property is exempt from zoning, it is necessary to examine the statutory meaning of “agriculture.”
 - Definition of 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.”
 - 2) The construction or use of buildings or structures on the property is incident to an agricultural use of the land, including structures that are used primarily for vinting and selling wine and that are located on any land part of which is used for viticulture.
 - 1) Incident to-structure must be directly and immediately related to agricultural use and it must be either usually or naturally and inseparably dependent upon agricultural use. *State v. Huffman*, 20 Ohio App.2d 263, 269, 253 N.E.2d 812, 817 (3rd Dist. 1969)
 - 2) Fact specific inquiry

CASE STUDIES

- *Litchfield Twp. Bd. of Trustees v. Nimer*, 9th Dist.
 - Landowner operated a beef jerky processing facility
 - Facility for the beef jerky business was not used in conjunction with the care of cattle. Testimony revealed the landowner was only caring for 21 cattle on the property while the processing of beef jerky required thousands of pounds of meat that came from outside sources.
- *Columbia Twp. Bd. of Zoning Appeals v. Otis*, 9th Dist.
 - Landowner operated Halloween Haunted Hayrides which included flashing lights, horror sounds, actors in costumes etc.
 - Court concluded while Landowner's original hayrides may constitute an agricultural use, there came a point at which the activity evolved into something which could no longer fall within the definition of agriculture.



CASE STUDIES



- *Miami Twp. Bd. of Trustees v. Powlette* 2nd Dist.
 - Landowner transformed a horse-barn into a venue for weddings and special events.
 - No evidence that use of barn was incident to any agricultural use. Instead, the barn was constructed to serve as an event venue in a rural setting.
- *Siebenthaler Co. v. Beavercreek Twp. Bd. of Zoning Appeals*, 2nd Dist.
 - Landowner operated a Garden Center-used as retail sales for nursery stock grown on the property.
 - Evidence demonstrated that the Garden Center is incident to the agricultural use of the property.

CASE STUDIES



- *Terry v. Sperry*, 130 Ohio St.3d 125
 - Landowner operates Winery and property itself contains 20 grape vines, 12 of which were harvested.
 - Court concluded because there was agricultural use of the property (viticulture), the township may not regulate buildings primarily used for vinting and selling wine that are located on land any part of which is used for agriculture.
- *Litchfield Twp. Bd. of Trustees v. Forever Blueberry Barn, L.L.C.*, 160 Ohio St.3d 70
 - Landowner operated a barn as a rental facility for wedding receptions and other gatherings also produced/sold wine.
 - Supreme Court interpreted primarily language in R.C. 519.21(A) and concluded that the primary use of the barn, and the events therein, was to facilitate the sale of wine.

FIRE CODE

- O.F.C. 101.2.2: Activities, locations and persons subject to the Ohio Fire Code
 - The scope of this code includes, but is not limited to, property owned by the State of Ohio or other political subdivisions of the state, all residential premises (including, but not limited to, one, two and three family dwellings), and agricultural premises.

FIRE CODE

- O.F.C. 102.1.2 Agricultural uses and locations
 - The construction and design provisions of this code, including any construction permit requirements, shall not apply to structures:
 - i. Subject to section 3781.061 of the Revised Code, or
 - ii. Otherwise exempt from the building code as listed in rule 1301:7-7-80 of the Administrative Code because such structures are being used for agricultural purposes as described in division (B)(1) of section 3781.06 of the Revised Code.
 - **Exception** to paragraph 102.1.2 (i) and (ii): **If the conditions at the structure constitute a distinct hazard to life or property or the occupancy of structure constitutes a change of use or occupancy** of the structure from one of the exempt uses listed in this division to another occupancy classification subject to this code or the building code as listed in rule 1301:7-7-80 of the Administrative Code
- Distinct Hazard: "...clear, explicit, and easily perceived danger."- *Abdalla's Tavern v. Dept. Of Commerce, Div. Of State Fire Marshal*, 7th Dist. Jefferson No. 02 JE 34, 2003-Ohio-3295, ¶ 56

CASE STUDIES



- *Griffith v. Rielage*
 - In connection with the operation of an Equestrian center, persons working at the facility were permitted by the owner to reside in apartments in the barn.
 - Court held- “distinct hazard clearly existed in this case where there are members of the public, including young children, residing in a structure that is highly combustible and without properly placed first-floor hazard-warning devices or fire-suppressant devices, and which fails to have a means of egress to permit residents to effectively escape a fire when one occurs in the barn.”



Mike DeWine, Governor
Jon Husted, Lt. Governor

Department
of Commerce

Division of State Fire Marshal
Sheryl MacFeld, Director



Technical Bulletin 19-005
August 2019

Fire Safety at Agritourism Facilities

It has become very popular to host wedding events and other meetings or gatherings in rustic settings. Many agricultural properties are converting old barns into event centers – or building new barns for this purpose. Because of the nature of these facilities, however, fire hazards often exist that may not be present at other such venues. These include:

- Highly flammable/combustible materials, such as exposed timbers, hay and straw
- Storage of chemicals and flammable liquids
- Minimal exits
- Candles
- Flammable drapery and fabrics
- Pyrotechnics / fireworks / flame effects
- Unapproved cooking devices

Therefore, even though these settings create beautiful backdrops for events, the importance of proper fire safety in such buildings cannot be overstated. It is a common misconception that the Ohio Fire Code does not apply to such facilities. This is not true. Although agricultural facilities may be exempt from the Ohio Building Code in certain circumstances, **such facilities are not exempt from the Ohio Fire Code.**

To ensure the safety of the public who will be attending events at agritourism facilities, basic fire safety precautions must be taken when these facilities are converted or constructed. Required fire safety features will depend on the exact building specifications and building layout. However, the following should be considered when event buildings are being designed and/or converted:

- A fire *alarm* system is required in A-2 occupancies
- A fire *suppression* system is required in any A-2 occupancy that is over 5,000 sq. ft. or that has an occupant load of 100 or more
- Any required fire suppression system will have to cover the entire floor where the A-2 occupancy is located
- A-2 occupancies must be separated from other occupancies in the building by 2-hour rated fire door assemblies
- If occupants loads in the facility will exceed 50 people, exit doors must swing outward or in the direction of egress travel
- Portable fire extinguishers must be present
- Exits, exit signage and exit lighting must be provided and must be sufficient for the specific facility
- Fire apparatus access roads must be available and maintained
- If commercial cooking equipment is used or if grease laden vapors are going to be produced, the cooking equipment must have a hood suppression system
- If a carbon dioxide (CO₂) system is used (with more than 100 pounds of CO₂) a detection system must be provided

CONCLUSION

- Many laws intersect the world of agriculture, including:
 - Environmental health
 - Building (and plumbing)
 - Zoning
 - Fire
- For environmental health - water and sewage, there are NO EXEMPTIONS
- Otherwise, though agricultural exemptions can be confusing, case law has set precedent for many situations.
- Local and state departments need to make a concerted effort to work together

CONTACTS

- Jessica Logothetides, J.D., Stark County Prosecutor's Office
 - jllgothetides@starkcountyohio.gov
 - (330)451-7947
- Todd Paulus, REHS, Stark County Health Department
 - paulust@starkhealth.org
 - (330)451-1475