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Ohio Second Appellate District Affirms “Wedding Barn” Not Exempt from Building Code

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On November 20, 2020, the Court of Appeals of Ohio, Second Appellate District, affirmed a judgment upholding a stop work order of a “Wedding Barn” on appellant’s property that appellant asserted had primarily been used for agriculture since 2003. *Powlette v. Bd. of Building Appeals City of Dayton*, 2nd Dist. Montgomery No. 28666, 2020-Ohio-5357.

Appellant acquired the 26-acre property at issue in May 2016. He used the property to grow hay and raised turkeys, chickens, and alpacas in the barn on the property. Given this agricultural use, appellant secured an agricultural exemption from Miami Township for the barn he was constructing on his property in 2017. In 2018, appellant submitted an additional Declaration of Intent-Agricultural Exemption in which he added agritourism to the proposed uses of the barn. Appellant also obtained a current agricultural use valuation from the Montgomery County Auditor. Appellant contended that under these circumstance the barn was exempt from the Ohio Building Code.

Nearly a year after the barn was constructed, the Montgomery County Building Regulation Division (MCBRD) issued a stop work order. The stop work order found the “Wedding Barn” non-compliant with R.C. 3781.11 for failing to (1) first obtain approval for constructing a wedding chapel; (2) submit construction documents for review or approval; (3) get inspections or inspection approval; and (4) acquire a Certificate of Occupancy for wedding events. The Board of Building Appeals (BBA) upheld the stop work order. At the Montgomery County Court of Common Pleas, appellant argued that the stop work order should be overturned as the “Wedding Barn” retained the benefits of an agricultural use exemption; and it was used for agricultural purposes and, therefore, exempt from the Ohio Building Code.

The trial court affirmed the BBA’s decision to uphold the MCBRD’s stop work order. Appellant appealed to the Second Appellate District.

The Second Appellate District affirmed the trial court's judgment and determined that the "Wedding Barn" could not retain its agricultural exemption under the circumstances presented and could not escape application of the Ohio Building Code. The structure was being used for both agricultural and public assembly occupancy purposes and given its issues of fire safety and life safety for attendees of events in the "Wedding Barn," it was a public nuisance. Furthermore, the Appellate Court affirmed that the MCBRD was not estopped from issuing a stop work order, as appellant had represented the barn was agriculturally exempt, and the stop work order was issued upon being notified of its true purpose—for weddings.

If you have questions concerning agritourism or other AgLaw related topics, please contact [Tom Fusonie](#), [Dan Shuey](#), or [Andrew Guran](#).