

Ohio Zoning Law and Agriculture

Peggy Kirk Hall

OSU Agricultural & Resource Law Program



Zoning and Agriculture

Zoning and Agriculture

“Powers not conferred” - ORC 519.21 (A)

- Ohio zoning law “confers no power” on townships:
 - To prohibit the use of any land for agricultural purposes

Zoning and Agriculture

“Powers not conferred” - ORC 519.21 (A)

- ... “confers no power” on townships (cont.):
 - To prohibit the construction or use of buildings or structures
 - That are incident to agricultural use of the land on which such buildings or structures are located
 - 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
 - And no zoning certificate shall be required for any such building or structure

Zoning and Agriculture

"Agriculture includes. . ." - ORC 519.01

- Farming; ranching;
- 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;
- 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.

Zoning and Agriculture

Exceptions to “Powers not conferred” ORC 519.21 (B)

- Townships may regulate agriculture in some circumstances
 - In a platted subdivision approved under subdivision law,
 - In an area of 15 or more lots approved under subdivision law that are contiguous to one another, even if divided by a road

Zoning and Agriculture *(cont.)*

Exceptions to “Powers not conferred” - ORC 519.21 (B)

- Then the township may regulate:
 - Agriculture on lots of one acre or less
 - Set back building lines, height, and size of buildings or structures incident to the agricultural use of land
 - Dairying and animal and poultry husbandry
 - On lots between 1 and 5 acres
 - When at least 35% of the lots are developed
 - And after 35% of the lots are developed, dairying and animal/poultry husbandry shall be considered a nonconforming use of land pursuant to ORC 519.19.

Zoning and Agriculture *(cont.)*

Exceptions to “Powers not conferred”- ORC 519.21 (B)

- But . . . the above exception:
 - “Confers no power on any township zoning commission, board of township trustees, or board of zoning appeals
 - To regulate agriculture, buildings or structures, and dairying and animal and poultry husbandry on lots greater than five acres.”

Zoning and Agriculture

Court Cases

- *Lexington Township v. O'Brien*
 - Township sought removal of a moving van box used as a barn for horse, deer, goats
 - Court of Appeals: Box is exempt under 519.21 as “incidental to agriculture”
 - “Animal husbandry” need not include the breeding and selling of livestock; the keeping of farm animals meets the definition
 - Court of Appeals, Fifth District, Stark County
 - 1997 Ohio App. LEXIS 3905

Zoning and Agriculture

Court Cases

■ *Hill v. Tate Township*

- Violation of setback requirements for construction of a “garage addition” that landowner claimed was incidental to agricultural use of the property.
- Court of Appeals:
 - A structure is incident to agricultural use of the land where the structure is "directly and immediately" related to or "usually or naturally and inseparably" dependent upon an agricultural use on the land.
 - A factual determination for the trier of fact.
 - Court of Appeals, Twelfth District, Clermont County
 - 1996 Ohio App. LEXIS 3961

Zoning and Agriculture

Court Cases

- *Keynes Bros. v. Pickaway Township*
 - Denial of variance for commercial grain elevator
 - Court of Appeals: Incidental agricultural use analysis for structures includes a determination of whether the use is on the same land on which the agricultural use is taking place.
 - Court of Appeals, Fourth District, Pickaway County
 - 1988 Ohio App. LEXIS 1028

Zoning and Agriculture

Court Cases

- *Carver v. Deerfield Township*
 - Challenge of zoning citation for operating a business in a residential district.
 - Small tractor repair business on farm had evolved into a tractor dealership and showroom.
 - Landowner claimed exemption based on agricultural use
 - Court of Appeals: commercial sale of tractors does not constitute agricultural use.
 - Court of Appeals, Eleventh District, Portage County
 - 1999 Ohio App. LEXIS 3988

Zoning and Livestock Facilities

- The definition of “agriculture” in ORC 519.01 specifically includes references to livestock:
 - 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

Zoning and Livestock Facilities

- Therefore, livestock facilities are “agriculture” that township zoning may not prohibit or require zoning certificate for.
- Unless a 519.21(B) exception applies.

Zoning and Livestock Facilities

- ORC 519.21(B)
 - In a platted subdivision approved under subdivision law,
 - In an area of 15 or more lots approved under subdivision law that are contiguous even if divided by a road
- Then the township may regulate:
 - Agriculture on lots of one acre or less
 - Set back building lines, height, and size of buildings or structures incident to the agricultural use of land
 - Dairying and animal and poultry husbandry
 - On lots between 1 and 5 acres
 - When at least 35% of the lots are developed
 - And after 35% of the lots are developed, dairying and animal/poultry husbandry shall be considered a nonconforming use of land pursuant to ORC 519.19.

Zoning and Livestock Facilities

ORC 903.25

- Ohio Livestock Environmental Permitting Program includes an additional exemption from zoning:
 - An owner or operator of an animal feeding facility who holds a permit through the LEPP *or* who is operating under an approved operation and management plan,
 - Shall not be required by any political subdivision
 - to obtain a license, permit, or other approval
 - pertaining to manure, insects or rodents, odor, or siting requirements for installation of an animal feeding facility

Zoning and Livestock Facilities

Township attempts to Regulate CAFOs

■ *Meerland Dairy v. Ross Township*

- Dairy obtained required LEPP permits for a proposed 2100 cow dairy
- Ross Township zoning regulation :
 - Defines a concentrated feeding facility as an “agribusiness” that requires conditional use permit
 - Purpose: to regulate (all other) factors reasonably and rationally related to safety and health
- Meerland’s argument: zoning regulation violates 903.25

Zoning and Livestock Facilities

Township attempts to Regulate CAFOs

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- Ross Township zoning regulation :
 - Defines a concentrated feeding facility as an “agribusiness” that requires conditional use permit
 - Purpose: to regulate (all other) factors reasonably and rationally related to safety and health
- Meerland: zoning regulation violates 903.25
- Common Pleas Court: Meerland must first be denied the permit before challenging regulation
- Second District Court of Appeals – affirmed
- Township is seeking review by the Ohio Supreme Court

Zoning and Farm Markets

Exceptions to “Powers not conferred” - ORC 519.21

- Ohio zoning law “confers no power” on townships:
 - To prohibit the use of any land for a farm market in an agricultural, industrial, residential, or commercial district
 - If 50% or more of gross income received from the market is derived from produce raised on farms owned or operated by the market operator in a normal crop year
- Does it matter what other products are sold in addition to farm produce?
 - No; unless prohibited elsewhere under Ohio law

Zoning and Farm Markets

Exceptions to “Powers not conferred” - ORC 519.21

- But for farm markets, zoning may regulate:
 - Size of the structure, size of parking areas that may be required, set back building lines, and egress or ingress
 - If such regulation is necessary to protect the public health and safety

Zoning and Farm Markets

Court Cases

- *Salem Township v. Watson*
 - Landowner has burden of proof to establish that more than 50% of income is from produce raised on market operator's farms
 - Whether 50% is met is an issue of fact to be determined by the trier of facts
 - Court of Appeals, Second Appellate District, Champaign County
 - 2007 Ohio 2429

Zoning and Farm Markets

Court Cases

- *Columbia Township v. French*
 - Township sought to enjoin sawmill and mill working business in residential area
 - Owner claimed “farm market” since trees were harvested from owner’s land
 - Court: Processing of trees and conversion into finished wood products removed goods from the farm market exemption
 - Court of Appeals, Ninth Appellate District, Lorain County
 - 1994 Ohio App. LEXIS 1497

Peggy Hall

The Ohio State University
Agricultural & Resource Law Program
aglaw@osu.edu

