BEFORE THE BOARD OF ZONING APPEALS OF BAINBRIDGE TOWNSHIP, GEAUGA COUNTY, OHIO

In Re: Appeal of Zoning Inspector’s Interpretation and Administration of Zoning Resolution in October 25, 2019 Letter and November 7, 2019 Revocation of Zoning Certificate directed to Kelly’s Working Well Farm d/b/a Chagrin Valley School

CLOSING BRIEF OF KELLY’S WORKING WELL FARM D/B/A CHAGRIN VALLEY SCHOOL

NOW, Kelly’s Working Well Farm d/b/a Chagrin Valley School (“Chagrin Valley School,” “CVS” or “Nonprofit”), by and through its counsel, files this Closing Brief in the Appeal of Zoning Inspector’s Interpretation and Administration of Zoning Resolution As Applied to Kelly’s Working Well Farm d/b/a Chagrin Valley School. In support, Chagrin Valley School states as follows:

I. STATEMENT OF FACTS

On July 12, 2012, Ms. Clark and Mr. William Rowe purchased a 6-acre parcel of land in Bainbridge Township located at 16519 S. Franklin Street, Chagrin Falls, Ohio 44023. BZA12-19-2019 Record, p. 16. On December 26, 2012, Ms. Clark incorporated Kelly’s Working Well Farm as an Ohio nonprofit corporation on December 26, 2012, “to create a small scale, diversified educational farm based on permaculture principles that would serve as a model of sustainable,
community-based agriculture, while teaching about and providing food and other products to the community.” Id. at 17. The goal of the farm is to create a “place where community members could come to learn about sustainable agriculture, make crafts using natural materials, and connect with animals and nature just minutes away from downtown Chagrin Falls.” See Chagrin Valley School’s website, available at https://chagrinvalleyschool.org. The nonprofit describes itself as a “501(c)(3) school, community center and permaculture farm.” Id. The Zoning Inspector visited Kelly’s Working Well Farm at some point in 2016 or 2017 after the building known as the “tree barn” was built on the property and found the same operations on the farm as exist today. BZA12-19-2019 Record, p. 59. The Zoning Inspector stated that at the time she believed that it was “an enrichment program for homeschool students.” Id. Ms. Clerk and Mr. Rowe’s agricultural business model has not changed since the inception of Kelly’s Working Well Farm d/b/a Chagrin Valley School.

On August 1, 2018, Kelly’s Working Well Farm registered a trade name of “Chagrin Valley School” with the Secretary of State, which mirrored the purposes stated in the Initial Articles of Incorporation for the Farm: “agriculture and education.” BZA12-19-2019 Record, p. 18. The nature of the business remained unchanged with the filing of a trade name registration, but allowed the nonprofit to effectively market its full-time, self-directed educational farm-immersion programming for children ranging from 5-18 years old. Id. The goal of the educational programming for children is to allow homeschool-registered children a place that encourages learning through the everyday experience of a permaculture farm environment. Id. at 19-23.
The Chagrin Valley School operates as a farm that regularly engages in agritourism by charging a fee for its educational activities to participants. \textit{Id.} The Chagrin Valley School's agritourism educational activities are largely governed by the principles of permaculture farming and democratic decisionmaking. \textit{Id.} The Chagrin Valley School’s agricultural business model has allowed Ms. Clark and Mr. Rowe to lay the foundation for the long-term agricultural success of the farm’s production, design and its customer base and community involvement. \textit{Id.} at 19-23, 56; Township’s Exhibit 7 (Appellant’s 990s); Appellant’s Exhibit CL-3 (Farm Development Timeline). The Farm’s development since 2016 has taken off and includes massive improvements to the Farm’s gardens, pasture, workshops, orchards and swales. BZA12-19-2019 Record, p. 24-25.

Chagrin Valley School is not certified by the State of Ohio as a private school and has no interest in offering state-approved courses of instruction to participants in its educational programming at the farm. BZA12-19-2019 Record, p. 19-20, 47. CVS also provides the farm environment as a recreational environment for yoga instruction for a fee as part of its agritourism operations. \textit{Id.} at 23.

The business revenues of the nonprofit farm include sales of products from the farm; grants and donations; fees for participation in organized educational, recreational and cultural programming for members of the public; and, in the next year, fees from a Farmers’ Market. \textit{Id.} at 39, 45 and Appellant’s Exhibit CL-1. The nonprofit has several staff members who are paid through these revenues.

After many years of operation during which the Township Zoning Inspector understood the Chagrin Valley School to be a homeschool coop on a farm and, therefore, largely beyond her
zoning enforcement power, the Township reversed course and decided that the primary use of the land was that of a "private school" rather than a farm. BZA12-19-2019 Record, p. 56, 59. On October 25, 2019, the Zoning Inspector along with Assistant Fire Chief Lovell showed Ms. Clark a letter at an in-person meeting and stated that Ms. Clark must cease operations until a conditional use permit was obtained for the use of the farm property as a school. *Id.* at 31.

On November 7, 2019, the Township Zoning Inspector delivered a "Revocation of Zoning Certificate" to Ms. Clark stating that "zoning certificate number 15454 issued at 16519 Franklin St. on May 13, 2016 for a 34' x 26' barn/accessory structure is hereby revoked and declared null and void. Said certificate has been revoked for the following reason(s): Per Chapter 109.07(a)(4) of the Bainbridge Township Zoning Resolution, 'The work or use is not being conducted in accordance with the approved application and plans.'" *Id.* at 32.

Ms. Clark appealed the Zoning Inspector’s interpretation and administration of the Township’s Zoning Resolution as applied to Kelly’s Working Well Farm d/b/a Chagrin Valley School on November 14, 2019. A hearing was held by the Board of Zoning Appeals on December 19, 2019.

II. LEGAL BACKGROUND

Townships have no inherent zoning power and a township’s authority to adopt local zoning regulations is limited to its authority expressly delegated and specifically conferred by statute. *Dinardo v. Chester Twp. Bd. of Zoning Appeals*, 186 Ohio App.3d 111, 118, 2010-Ohio-40, 926 N.E.2d 675 (11th Dist.) quoting *Meerland Dairy, LLC v. Ross Twp.*, 2d Dist. No. 07CA0083,
2008 Ohio 2243 at 7. A township may adopt zoning regulations pursuant to the authority conferred by R.C. 519.02, but Ohio’s General Assembly explicitly withheld power from township zoning commissions, boards of township trustees and boards of zoning appeals “to prohibit the use of any land for agricultural purposes or 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...and no zoning certificate shall be required for any such building or structure.” R.C. 519.21(A). Whether the primary use of a property is agricultural is a question of fact that “need only be proven by a preponderance of the evidence.” Litchfield Twp. Bd. of Trs. v. Forever Blueberry Barn, LLC, 2019-Ohio-322; 129 N.E.3d 1035 (9th Dist.), ¶ 6.

Pursuant to the same section, “structures ‘incident’ to agricultural purposes of the land are exempt from zoning” even when located in a residential district. Schabel v. Troyan, 11th Dist. Geauga Nos. 2010-G-2953 and 2010-G-2954, 2011 Ohio 2452, ¶ 36. Where the primary purpose of the land use is agricultural, structures used on the property incident to that use are exempt from zoning. Id. p. 37-38. Whether a structure use is “incident to agricultural use” is a question of fact and the use of the structure must be “directly and immediately related to agricultural use and must be either usually or naturally and inseparably dependent on agricultural use.” State v. Huffman, 20 Ohio App.2d 263, 269, 253 N.E.2d 812 (3rd Dist.1969). A landowner seeking to utilize the zoning exception for buildings incident to agriculture in R.C. 519.21(A) is not required to show that the structure itself is incident to agricultural purposes, but that the structure is incident to the use for agricultural purposes of the “land on which such buildings or structures are located.” R.C. 519.21(A); Terry v. Sperry, 130 Ohio St.3d 125, 131, 2011-Ohio-3364, 956 N.E.2d 276. Thus, a building used primarily to vint and sell wine must be located on land
used for viticulture, but that use does not need to be “a secondary or subordinate use of the property or that viticulture be the primary use of the property. A township may not prohibit the use of a property for vinting and selling wine if any part of the property is used for viticulture.”

_Terry v. Sperry_, 130 Ohio St.3d 125, 131, 2011-Ohio-3364, 956 N.E.2d 276 (holding that a structure used to make and sell wine was agriculturally exempt even if the property housed only one vine). In determining whether structures incident to agricultural purposes of the land are exempt from zoning, courts will look at both the use of the property primarily for agricultural purposes where the structures are located and the use of the structure. _Schabel v. Troyan_, 11th Dist. Geauga Nos. 2010-G-2953 and 2010-G-2954, 2011 Ohio 2452, ¶¶ 36-37.

In addition to the jurisprudence around “structures incident” to agricultural purposes of the land, Ohio has extended very limited power to townships to use zoning authority for “agritourism.”¹ Ohio defines “agritourism” as “an agriculturally related educational, entertainment, historical, cultural, or recreational activity...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). In the context of agritourism, a “farm” includes land “totaling less than ten acres devoted to agricultural production if the land produces an average yearly gross income of at least twenty-five hundred dollars from agricultural production.”² R.C. 901.80(A)(4).

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¹ Based on the clear and unambiguous language in R.C. 519.21(C)(4), “agritourism” may constitute the _primary_ use of a property as long as the property owner meets the agritourism statute’s definitions of “agritourism,” “farm” and “agricultural production” in R.C. 901.80(A).

² While the definition of “farm” does not explicitly refer to Ohio’s “current agricultural-use values,” the reference to land producing “an average yearly gross income of at least twenty-five hundred dollars from agricultural production” is also applied by the Ohio Department of Tax in administering Ohio’s CAUV statute. R.C. 5715.01(A); see Ohio Department of Tax General Information on Current Agricultural Use Value available at
To enjoy immunity from civil liability for an agritourism participant’s personal injury, an agritourism provider must, among other things, post a sign warning participants about the risk of injury posted in a “clearly visible location at or near the each entrance to the agritourism location.” R.C. 901.80(D). An “agritourism provider” is “immune from liability for any harm a participant sustains during an agritourism activity if the participant is harmed as a result of a risk inherent in an agritourism activity.” R.C. 901.80(B).

In addition to civil liability immunity for agritourism, Townships have “no power…to prohibit in a district zoned for agricultural, industrial, residential, or commercial uses, the use of land…for agritourism” with the exception of the “size of structures used primarily for agritourism, the size of parking areas that may be required, setback building lines for structures used primarily for agritourism, and egress or ingress where such regulation is necessary to protect public health and safety.” R.C. 519.21(C)(4).

In determining ambiguity in zoning restrictions, the law is “construed in favor of the property owner” and “the scope of the restrictions cannot be extended to include limitations not clearly prescribed.” Dinardo v. Chester Twp. Bd. of Zoning Appeals, 186 Ohio App.3d 111, 118, 2010-Ohio-40, 926 N.E.2d 675 (11th Dist.) citing Saunders v. Zoning Dept. (1981), 66 Ohio St.2d 259, 261, 421 N.E.2d 152. Thus, restrictions on agritourism activities such as: the duration of agritourism events or activities; what type or the scope of agricultural education or recreation;

https://www.tax.ohio.gov/real_property/CAUV.aspx (stating that “[t]o qualify for the CAUV, land must meet one of the following requirements during the three years preceding an application for the CAUV:...if under ten acres are devoted exclusively to commercial agricultural use, the farm must produce an average yearly gross income of at least $2,500.”). Notably, the mention of the $2,500 farm production gross income amount being met in the prior three years does not appear in the agritourism definition of “farm.” R.C. 901.80(A)(4).
the fact that a fee is charged or how much is charged; or how those activities may be conducted, that are not clearly present in Ohio’s agritourism statute may not be used to deprive Ms. Clark and Mr. Rowe of their property rights.

III. ARGUMENT

A. The primary uses of the land and buildings at Chagrin Valley School are agricultural as well as educational and recreational agritourism.

The primary use of the Kelly’s Working Well Farm property is agricultural and the primary uses of the buildings are either agricultural or agriculturally-related as buildings that allow educational and recreational agritourism. Kelly’s Working Well Farm has used the land at 16519 S. Franklin Street for farming and agricultural education since 2012. BZA12-19-2019 Record, p. 17. On January 2, 2013, Ms. Clark filed Domestic Nonprofit Articles of Incorporation with the state formalizing the purposes of the farm as the following: “to create a small scale diversified educational farm based on principals that would serve as a model of sustainable community based agriculture while teaching about providing food and other products to the community.” Id. The original mission of the farm remains unchanged and has been met by community workshops, camps for children, and formalizing the educational programming at the farm in 2016. Id. at p. 17-18. By 2018, the nonprofit farm filed for a trade name of “Chagrin Valley School” with the Ohio Secretary of State as a way to market its educational programming on the farm. Id. at p. 18-20. A full description of the farm’s development is included as an exhibit to this Closing Argument at Exhibit CL-3.

The design of the farm relies on the principles of “permaculture,” which “uses nature as a model” to bring together many elements of the plants, animals and community members
involved with the day-to-day activities of the farm to create an ecosystem. *Id.* at p. 19. The very principles of permaculture include immersive community contributions to the growth and development of the farm, which Kelly’s Working Well Farm has incorporated into its work in the form of immersion of homeschool children in the day-to-day life of the Farm. *Id.* at p. 19-25. The activities at the farm that community members, staff and the property owners regularly carry out include: farming; ranching; apiculture; horticulture; viticulture; animal husbandry; poultry husbandry; dairy production; the production of field crops, fruits, vegetables, nursery stock, ornamental shrubs, ornamental trees, flowers, and mushrooms; timber; pasturage; 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. *Id.* at p. 24-25.\(^3\) In conducting almost all the activities provided in the Revised Code’s definition of “agriculture,” the primary use of the land at 16519 S. Franklin Street is agricultural and the Township has limited zoning powers pursuant to R.C. 519.01 and the Bainbridge Township 1987 Zoning Resolution (“Resolution”) § 105.02 – Definitions, adopted 12/12/2016. See also Appellant’s Exhibit CL-3.

Several buildings on the farm are used strictly for agricultural purposes, including:

- the “pavilion,” which Ms. Clark testified is used for food processing such as dehydrating foods, making jam and processing other farm products. BZA12-19-2019 Record, p. 27;

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\(^3\) The BZA transcript on page 24 appears to read that Ms. Collins asked if there’s anything listed in the definition of “agriculture” that Ms. Clark’s farm *does* do when the question, instead, was whether there’s anything listed in the definition that Ms. Clark’s farm *does not* do.
• the “tool shed,” which is used as a wood shop. *Id.* at p. 28;

• the “animal feed shelter,” which holds feed, halters and brushes for the animals on the property. *Id*;

• the “farm store,” which is intended to host a roadside farm stand in the spring of 2020. *Id*.

Chagrin Valley School is engaged in agricultural production and provides agricultural immersion for educational and recreational purposes as an agritourism provider. Ms. Clark testified to the Board that the education that occurs on the farm is “agriculturally related” because the purpose and very business model of the permaculture farm is to involve community participants, including children and adults, in the everyday activities of the farm and make decisions about how to care for and tend to the needs of the farm and its operations through each of its seasons. *Id.* at 25. As in *Terry v. Sperry*, since there is agricultural use of the property, the Township may not regulate the zoning of buildings that are used primarily for agritourism. *Terry v. Sperry*, 130 Ohio St.3d 125, 131, 2011-Ohio-3364, 956 N.E.2d 276. In the same way that weddings and other agritourism events are not necessarily strictly agricultural in nature, but are held at farms for the context, Chagrin Valley School is both held at a permaculture farm for the context and because the permaculture farm relies on the community for production of farm products and for decisionmaking about the design of the farm as well as its care and maintenance.

Ms. Clark testified that families who homeschool their children seek out the educational programming at Chagrin Valley School “because it is a farm-based program...[or that they] are looking for an opportunity for their children to spend a significant amount of time outdoors.”
Id. at 22. Several families have pulled their children out of the farm immersion educational programming while the zoning appeal is being considered “because the farm is so important to them.” Id. at 23. Ms. Clark testified that what makes Chagrin Valley School’s educational programming meaningful is that it is farm-based and allows kids to be part of everyday activities on the farm:

what we are creating with the farm is a context environment which means work is happening so staff, members, volunteers, and other people who come in are doing stuff on the farm, they are working with the animals, they are planting crops, harvesting crops, making crafts out of farm products, do food preservation, all of these things are happening on a farm and the program participants are there to participate in those activities to the extent of their interests so...it is sort of a mini society where the kids are there and observing these authentic activities and participating in that to the extent that they are willing....

Id. at 22. The educational activities on the farm are dependent upon the farm context and cannot effectively exist independent of each other. The educational activities on the farm are immersion-based and, therefore, agriculturally-related and allow members of the general public to observe, participate in and enjoy farming activities. As such, those educational activities constitute agritourism and are instrumental in the business model of the Farm. R.C. § 901.80(A)(2); Appellant’s Exhibit CL-3.

The farm has a yearly gross income of more than $2,500 from agricultural production in 2019 and that income is projected to more than double in 2020. Appellant’s Closing Argument Exhibit CL-1. Ms. Clark testified that as part of the development of the permaculture farm, she has not yet been able to develop perennials and other farm products that would bring in revenue to qualify for the CAUV until the next year. BZA12-19-2019 Record, p. 45. Therefore, Kelly’s Working Well Farm constitutes a “farm” as defined in Ohio’s agritourism statute. R.C.
901.80(A)(4). Ms. Clark's decision not to apply for the CAUV has no bearing on the Farm's status as a farm for the purposes of agritourism. While the Township appears to be arguing that Chagrin Valley School's finances indicate that more money was made by fees for agricultural education than on-farm production, no such requirement exists in the law, and the primary purpose of the farm has remained the same: agriculture and education. In fact, the operations of Kelly's Working Well Farm have not changed since the Zoning Inspector's last visit to the Farm in 2016. BZA12-19-2019 Record, p. 59.

In reference to the protection offered to agritourism operations from civil liability by R.C. 901.80(B), Ms. Clark has posted warning sign required by R.C. 901.80(D). BZA12-19-2019 Record, p. 59. An exhibit of the signage is attached to this closing argument as requested by the Board as Exhibit CL-2.

The following buildings on the farm are used for educational and recreational agritourism purposes incident to the primary use of the property as a permaculture farm:

- the "tree barn" is used for agricultural education, recreation and a gathering place on the farm and provides an example for the community of permaculture because of its construction from locally-sourced materials and with volunteer labor. BZA12-19-2019 Record, p. 26;

- the "red cottage," which is used for crafting on the farm. Id. at 27;

- the "library," is for keeping books and for small group meetings. Id.;

- the "pavilion," which is used for both food processing of agricultural products and cooking and gathering space. Id.
As places where members of the community, including children, may participate in and enjoy educational and recreational activities on a permaculture farm, these buildings are only subject to the Township’s limited zoning authority to regulate the “size of structures used primarily for agritourism, the size of parking areas that may be required, setback building lines for structures used primarily for agritourism, and egress or ingress where such regulation is necessary to protect public health and safety.” R.C. 519.21(C)(4). Since each of the buildings listed above are used primarily for agritourism (and incident to the permaculture farming on the property), Bainbridge Township does not have the authority to either issue or revoke Zoning Certificates for those buildings or structures. R.C. 519.21(C)(4).

B. Chagrin Valley School does not meet the Township’s definition of “school” or “private school” in its Zoning Resolution.

While leaving out mandatory language regarding agritourism, the Bainbridge Township Resolution does define both “school” and “private schools” and the term “private school” appears to be a subcategory of the term “school.” The Resolution also defines “recreational facilities,” “indoor recreation/fitness” and “outdoor recreation/fitness.” Notably, both education and recreation are activities on farms are protected by Ohio’s Agritourism Law.

Bainbridge Township’s definition of “school” is “any public school chartered by the Ohio Board of Regents or conforming to minimum standards prescribed by the State Board of Education and any private or parochial school certified by Ohio which offers State approved courses of instruction.” Resolution § 105.02. By “private school,” Bainbridge Township means “an educational institution which provides fee-based instruction.” Id.
Chagrin Valley School does not meet Bainbridge Township’s definition of “school” because it is not certified by Ohio and, as a farm-immersion education program, does not seek certification by the State to provide state-approved courses of instruction. BZA12-19-2019 Record, p. 19-21. The Township’s definition of “school, private,” which defines the term as a subset of the Resolution’s larger definition of “school” and, therefore, incorporates the definition of “school” into the definition of “school, private,” not only requires that the business offer state-approved courses of instruction, but also constitute “an educational institution which provides fee-based instruction.”

Chagrin Valley School does not offer state-approved courses of instruction and is known by the Ohio Department of Education as a “homeschool co-op.” Id. The school consists of the problem-based learning and experiential learning that comes from the context of being on a permaculture farm. Id. at 22-23. In addition, CVS does not provide fee-based instruction as it has no curriculum at all and does not constitute an “educational institution.” Id. at 19-22. The Resolution does not define “educational institution,” which presumably refers back to the term “school,” but Chagrin Valley School operates as a farm that regularly engages in agritourism by charging a fee for its educational and recreational activities to participants. Id. at 19-23. The only evidence in the record of the nature of the educational programming at Chagrin Valley School is that it is entirely “agriculturally-related” and the agricultural use and agricultural

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5 The participant enrollment and fee agreement was referred to as Exhibit 3 in the December 19, 2019 hearing.
business of the property is largely dependent on the level of community involvement provided
by its educational programming.

While the Township is focused on the idea that Chagrin Valley School charges a fee to its
agritourism participants and that this fee has been called “tuition” in marketing materials, if the
Board finds that charging a fee for any farm-based educational programming in its jurisdiction
deems the farm a “private school,” then it has rendered the farm-related educational and
recreational activities that are exempt from the Township’s zoning authority as completely
inaccessible and meaningless. See Township’s tuition argument at 56. A ruling that a farm is a
private school because it charges tuition for agriculturally-related education is contrary to
Ohio’s agritourism statute, creates an absurd result, and fails to construe zoning restrictions in a
light most favorable to the property owner. R.C. 519.21(C)(4), 901.80; Dinardo v. Chester Twp. Bd.
of Zoning Appeals, 186 Ohio App.3d 111, 118, 2010-Ohio-40, 926 N.E.2d 675 (11th Dist.).

Ohio’s agritourism statute is clearly encourages fee-based activities on farms as a
business model to sustain a farm without fear of zoning interference. R.C. 519.21(C)(4), 901.80.
Ohio exempt from township zoning authority and, therefore, encouraged the same type of
agricultural business model in the context of viticulture. See Terry v. Sperry, 130 Ohio St.3d 125,
2011-Ohio-3364, 956 N.E.2d 276 (finding that the definition of “agriculture” in R.C. 519.01 does
not require a minimum number of grape vines cultivated but that the uses of buildings to vint
and sell the wine must be secondary to the production of agricultural products). Ohio’s
agritourism statute does not give the Township authority to prohibit agriculturally-related
education, recreation, entertainment, historic or cultural activities on a farm “whether or not for
a fee.” R.C. 519.21(C)(4), 901.80(A)(2) & (3). The Township’s focus on Ms. Clark and Mr. Rowe’s
business model for farming is entirely misplaced and irrelevant to the Board’s determination on whether the uses of the property are agricultural and agritourism.

In addition, the Township appears to be arguing that the primary purpose of Kelly’s Working Well Farm has changed to that of a private school, but the Zoning Inspector has known about the agricultural education work being done at the Farm for many years. BZA12-19-2019 Record, p. 59. Even if the Board accepts the Township’s nonsensical position that the primary purpose of the Farm has changed over time, the Board is then met with the problem that the activities at the Farm do not even fall within the Resolution’s definition of “school.” Thus, the primary purpose of the Farm is agricultural and the incidental uses are educational and recreational agritourism.

Finally, Chagrin Valley School does not constitute a “child day care center” as defined in the Bainbridge Township Zoning Resolution because CVS does not “[administer] to the needs of infants, toddlers, preschool-age children, and school-age children outside of school hours.” R.C. 5104.01(K); Resolution § 105.01. Ms. Clark’s staff has confirmed this status with the Ohio Department of Job and Family Services. BZA12-19-2019 Record, p. 33-34.

Therefore, the farm and educational agritourism operations at Chagrin Valley School do not constitute a “school” or a “child day care center” under the Resolution. Instead, the primary use of the property is agricultural and the Township’s authority over the agritourism uses of the property that are incident to its primary use are limited by statute to the “size of structures used primarily for agritourism, the size of parking areas that may be required, setback building lines for structures used primarily for agritourism, and egress or ingress where such regulation is necessary to protect public health and safety.” R.C. 519.21(C)(4).
C. The Township does not have authority to exercise its zoning power over agricultural and agritourism even though such uses exist in a district zoned residential.

The Ohio Revised Code does not mince words when speaking to a township’s authority to utilize its zoning power over agricultural and agritourism uses. Ohio townships have “no power...to regulate agriculture, buildings or structures, and dairying and animal and poultry husbandry on lots of greater than five acres.” R.C. 519.21(B); see also Terry v. Sperry, 130 Ohio St.3d 125. The Ohio General Assembly states that a board of zoning appeals has “no power...to prohibit in a district zoned for agricultural, industrial, residential, or commercial uses, the use of any land for...agritourism.” R.C. 519.21(C) (emphasis added). Since agritourism is largely a statutory “incident to” agriculture use, cases that have applied the buildings “incident to” agriculture test to properties in a residential district may be informative to the Board’s consideration of whether agritourism occurring in a residential district is required to obtain a conditional use certificate. See Terry v. Sperry, 130 Ohio St.3d 125, 2011-Ohio-3364, 956 N.E.2d 276 (holding that “under R.C. 519.21(A), a township may not prohibit the use of buildings for the vinting and selling of wine on a property as long as the property also cultivates grapes for wine making”); Dinardo v. Chester Twp. Bd. of Zoning Appeals, 186 Ohio App.3d 111, 118, 2010-Ohio-40, 926 N.E.2d 675 (11th Dist.) citing Saunders v. Zoning Dept., 66 Ohio St.2d 259, 261, 421 N.E.2d 152 (1981); Bd. of Brimfield Twp Trs. v. Bush, 11th Dist. Portage No. 2005-P-0022, 2007-Ohio-4960 (dog rescue operation found as use incident to agricultural purposes of land); Siebenthaler Co. v. Beavercreek Twp., 2nd Dist. Greene No. 06-CV-0911, 2009-Ohio-6595 (garden center, landscaping products, and signage and marketing held to be uses incident to
agriculture). Thus, the fact that the Farm exists in a residential district does not alter the Township’s authority to exercise its zoning power over agriculture or agritourism.\(^6\)

**IV. CONCLUSION**

As Chagrin Valley School’s nonprofit farming operations, including educational, recreational and cultural agritourism, are exempt from Township zoning authority with very limited exceptions, and fall far outside the Township’s definition of “school,” including a “private school,” the Zoning Inspector’s Revocation Order is null and void and her interpretation of Chagrin Valley School’s duty to apply for a condition use zoning certificate, as stated in the Zoning Inspector’s October 25, 2019, letter is incorrect, invalid and illegal.

Respectfully submitted,

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DATE: February 7, 2020

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\(^6\) Also, the Appellant has attached as Appellant’s Exhibit CL-4 the requested OEPA testing and certificate of its water well, but does not believe that the exhibit has any bearing on the outcome of this proceeding.
CERTIFICATE OF SERVICE

I hereby certify that on February 7, 2020, a true and correct copy of the foregoing Closing Brief of Appellant has been served upon the following persons, in the manner indicated:

Michael Lamanna, Chair
Bainbridge Township Board of Zoning Appeals
17826 Chillicothe Road
Chagrin Falls, OH 44023
via in-person filing

Karen Endres
Bainbridge Township Zoning Inspector
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via in-person filing

Linda M. Applebaum
Assistant Prosecuting Attorney
Geauga County Prosecutor’s Office
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via U.S. Postal Service mail and courtesy copy via electronic mail

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