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September 30, 2024

Clearcreek Township Board of Zoning Appeals
c/o Jeff Palmer, Director of Planning & Zoning
7593 Bunnell Hill Road
Springboro, Ohio 45066

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CLEARCREEK TOWNSHIP
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VIA E-MAIL (jpalmer@clearcreektownship.com)

**RE: Application for Agritourism Site Plan Approval – Hidden Valley Orchards
(Board of Zoning Appeals Case No. 24-BZA-006)**

Board of Zoning Appeals Members,

I represent Endurance Farm Partners (“EFP”) with respect to its application for site plan approval to continue the longstanding agritourism use of the Hidden Valley Orchards property (“HVO”). EFP worked extensively with Clearcreek Township staff, other regulatory agencies, and agritourism experts and consultants to prepare a site plan that meets and exceeds all Township requirements, and reflects EFP’s commitment to maintaining and enhancing HVO’s substantial community benefits. The Township’s review of the site plan here is limited to only certain physical aspects of the HVO property. However, the staff report and other case materials before the BZA discuss at length EFP’s intended use of the property. This letter serves to reorient the BZA’s site plan analysis by briefly summarizing EFP’s plans to continue the agricultural and agritourism use of HVO, the Township’s clearly defined and very limited regulatory authority over the property under Ohio law, and why the BZA must approve EFP’s submitted site plan.

HVO’s Rich History and Future as a Family-Friendly Agritourism Destination

HVO has been a 65-acre working farm in Clearcreek Township for more than six decades and traces its history back to as early as the early 1800’s. A significant portion of the property’s acreage is dedicated to apple orchards and other rotational seasonal crops, as well as the keeping of barnyard animals. There are a number of buildings and other structures on-site serving the farm’s operations—including numerous barns used for farm equipment and produce storage, and a farm market and restaurant service building. In addition to its agricultural production and processing features, HVO has offered the Clearcreek community a myriad of agriculturally-related recreational and entertainment activities for many years—including a play yard for children; annual and weekly events such as festivals, live music, bingo and trivia nights; farm-to-



table food and beverage service; retail sales; and “u-pick” seasonal crops. Certain areas and buildings also double as space where public and private events can be hosted on the farm.

Simply put, there is no other agritourism property in the area quite like HVO.¹ The farm has an extensive history as a place where family and friends can gather to learn about and engage in agricultural processing and production activities, purchase food and other products, and enjoy the scenic landscape and a variety of activities. Whether you’re hand-picking fruit from HVO crops, buying goods at the farm market, enjoying a meal prepared on site, or watching your children play in decommissioned farm vehicles and silos in the play yard—you are immersed in working farm operations from the moment you step foot on the property until you depart.

EFP appreciates and values that HVO is a unique, family-friendly gem of the community, and intends to continue the farm’s traditions and current operations for years to come. The trigger for EFP’s present site plan application is EFP’s proposed construction of the new farm kitchen building and shade pavilion on the property. EFP investing in the property will not result in any change of HVO’s use, but will only serve to enhance (rather than alter) HVO’s current agritourism offerings. If anything, EFP’s planned activities and additional structures on the site will bring visitors closer to HVO’s roots as a long-standing Ohio farm.

HVO’s Exemption from Township Zoning Regulations Under Ohio Law and the BZA’s Restricted Review of the HVO Site Plan

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Ohio law recognizes the benefit that agritourism offers a community and, in turn, generally exempts agricultural properties like HVO from township zoning regulations to allow these developments to flourish. Pursuant to Ohio Revised Code 519.21, townships cannot prohibit the use of land for agricultural purposes (including agritourism), or the construction or use of buildings or other structures incident to such purposes. The Ohio Supreme Court interprets the statute as prohibiting township regulation of property in two distinct circumstances: (1) the overall parcel is used for agricultural purposes and exempt; or (2) a particular structure is exempt because its use is incident to an agricultural use of land.² The exemption extends to commercial/retail and special event buildings and activities where the primary purpose of the parcel on which the buildings and activities are located is agricultural in nature.³

HVO’s operations fall squarely within Ohio’s agricultural exemption from township zoning regulations. The property is solely used for agricultural and agritourism purposes. Every activity

¹ Ohio law defines “agritourism” as any “agriculturally related educational, entertainment, historical, cultural, or recreational activity, including you-pick operations or farm markets, 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).

² *Terry v. Sperry*, 2011-Ohio-3364.

³ See *Litchfield Twp. Bd. of Trustees v. Forever Blueberry Barn LLC*, 2020-Ohio-1508; see also *Siebenthaler Co. v. Beavercreek Twp. Bd. of Zoning Appeals*, 2009-Ohio-6595; *Dixon v. Caesars Creek Twp. Bd. of Zoning Appeals*, Greene C.P. No. 2017 CV 0464 (Aug. 17, 2017).



and structure at HVO (both existing and proposed in EFP’s site plan) directly relates to working farm operations, and provides guests with agriculturally related educational, entertainment, historical, cultural or recreational opportunities. The Clearcreek Township Zoning Resolution’s distinction between “agritourism” and “farm based tourism” activities is legally questionable under Ohio’s agritourism statutes, and is certainly inapplicable to HVO and EFP’s continued use of the property. The HVO experience is so agriculturally immersive that no single element of the site can be untethered from the property’s primary agricultural purpose and deemed anything but agritourism.

The Township staff report’s categorization of certain HVO activities as agritourism versus farm based tourism is in error as a matter of law as well as relevance to this site plan review. EFP voluntarily shared its plans to continue HVO’s agritourism activities in an effort to be completely transparent in interactions with the Township and its residents, but was not required to do so by any applicable law. Clearcreek Township does not possess any regulatory authority over agritourism uses, and none of the historical or proposed land uses on the HVO site are relevant to this case or may be considered by the BZA in reviewing EFP’s site plan. The BZA’s site plan review relates to a narrow exception to the agricultural zoning exemption which permits a township to regulate specific physical features of an agricultural property: the “size of a structure used primarily for agritourism, 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.”⁴ These discrete physical elements of EFP’s site plan are the only items which the BZA may review in this case.

The Submitted HVO Site Plan Must Be Approved

Clearcreek Township Zoning Resolution 21.01(G) lays out four standards to guide the BZA’s review of an agritourism site plan:

- (1) The proposed use shall be physically suitable for the parcel on which it is proposed;
- (2) The proposed use shall locate structures in an area that limits the impact to adjoining properties;
- (3) The proposed use shall provide for access by public emergency equipment; and
- (4) The proposed use shall provide for adequate pedestrian circulation, vehicular traffic movement and off-street parking.

Clearcreek Township staff have thoroughly reviewed and vetted EFP’s agritourism site plan, and determined that EFP’s submitted site plan satisfies each of the above standards. This is not surprising, since HVO has been used for many years without issue for the same agritourism purposes EFP proposes and the site is clearly suitable for such uses. EFP does not intend to move the current footprint of any existing permanent structures on the property and, as reflected in

⁴ R.C. 519.21.

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the site plan, any new structures EFP may build will be very insulated from, and unlikely to impact, neighboring properties. To EFP's knowledge, HVO's current configuration has never presented any problems for the provision of emergency services on-site. And EFP will continue to work closely with Clearcreek Township Fire Department officials to ensure the property meets all applicable Ohio Fire Code requirements.

HVO's current traffic circulation patterns and off-street parking have historically been sufficient to accommodate its agritourism operations. That said, EFP is aware of some community member traffic concerns related to the farm. Traffic along State Route 48 (where the farm's primary entrance and exit are located) is under the exclusive jurisdiction of the Ohio Department of Transportation ("ODOT"). Both EFP and Clearcreek Township must defer to ODOT's regulations and requirements with respect to any traffic-related issues and elements of the site plan. EFP is prepared to implement all necessary traffic and safety measures ODOT may require.

Based on this information, the Clearcreek Township Director of Planning & Zoning concludes in his staff report to the BZA that EFP's agritourism site plan meets all applicable zoning standards. He has recommended that the BZA approve the site plan as submitted. EFP similarly asserts that there is no lawful reason for the BZA to deny the agritourism site plan, and asks that the plan be approved.

Conclusion

EFP thanks Clearcreek Township for the opportunity to present its agritourism site plan and engage with the community about its plans for HVO. EFP is excited to assume HVO's agricultural operations, and continue offering this amazing benefit for families in the Clearcreek Township community and beyond.

Best regards,

Benjamin J. Yoder

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cc: Billy Rueter, EFP Partner
Chris Fuller, EFP Partner