

August 14, 2014

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*Via e-mail to jfountain@pickaway.org
and regular U.S. mail*

Jayne Hartley Fountain, Esq.
Assistant Prosecuting Attorney
Pickaway County
203 South Scioto Street
P.O. Box 910
Circleville, OH 43113

RE: Agricultural Exemption from township zoning
104± acres, 0 Miller Road, Ashville, Ohio
Auditors Parcel No. D1200020015800

Dear Ms. Fountain:

This letter follows up my conversations with you regarding the exemption of horse boarding and training facilities from township zoning as a use for agricultural purposes pursuant to R.C. 519.21(A). My client LW Associates, Inc. contacted me regarding Harrison Township's attempts to regulate the development of a horse training and boarding facility on 104± acres located at 0 Miller Road in Ashville, Ohio. That property is also identified as Auditors Parcel No. D1200020015800. LW Associates, Inc. is the construction manager for Winning Edge Training Center LLC, the developer of a training facility for horses on the property. I understand the township has requested that the property receive a conditional use permit and possibly be rezoned to a commercial use in order to be 'developed' in the township for equine boarding and training. The proposed use and facilities are exempt from township zoning and cannot be regulated by Harrison Township or Pickaway County.

There are plans for the 104± acre property to be used for boarding and training standardbred horses primarily used as racehorses. A state of the art equine training facility is planned on the property for 300± horses. It is anticipated that the facility will include 3 barns, paddocks, 2 oval tracks, a covered horse "equicizer," an administration building (including parking, offices, restrooms, track observation platform and overnight sleeping quarters for the track administrator), a farrier building, an observation shelter near a track finish line, accessory buildings for machinery storage and hay/feed storage, and parking areas for horse trailers, owners, and staff. The property will also include pastures and possibly crop production. It appears that Harrison Township is attempting to regulate this proposed use under the provisions of the Harrison Township Zoning Resolution as a for conditional use either in the Farm Residential District (FR) or the General Business District (GB) based upon the nature scope of the intended use of the property.

As you know, townships only have the zoning authority that has been expressly delegated to them by the General Assembly by statute. *Yorkavitz v. Bd. of Twp. Trustees*, 166 Ohio St. 349, 351 (1957). The General Assembly has explicitly prohibited townships (and counties) from regulating agricultural uses except in very narrow circumstances (platted subdivisions) which do not apply here. Specifically, townships have no power “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...” R.C. 519.21(A). Agricultural purposes are defined by R.C. 519.01 and include “animal husbandry, including but not limited to, the care and raising of livestock, equine...” Horse training centers constitute animal husbandry and any structures located on the premises of a horse training center related to that agricultural use are also exempt from all township zoning regulations.

To understand the breadth of the agricultural use exemption for equine husbandry from zoning regulation, a review of select case law and an attorney general opinion is helpful. Ohio courts have long held that animal husbandry includes the boarding, training and care of horses, irrespective of the purposes for which the horses are kept. In 1958, the Supreme Court expressly held that a township zoning resolution may not prohibit the use of any land for agricultural purposes, including animal husbandry, which includes the keeping of horses. *See Mentor Lagoons, Inc. v. Zoning Board of Appeals of Mentor Township*, 168 Ohio St. 113 (1958) at syllabus ¶2. In the *Mentor Lagoons* case, the Supreme Court of Ohio held that the township could not prohibit the boarding and care of horses that would be used in polo matches in any zoning classification in the township. The court found that the General Assembly’s identification of ‘animal husbandry’ as an agricultural use that is exempt from township zoning to be an ‘insurmountable legislative obstacle’ limiting the authority of a township to provide in any zoning resolution a limitation against the use of premises for the keeping of horses. The purpose for which the horses were kept was not relevant to the exempt use. *See Mentor Lagoons* at 119.

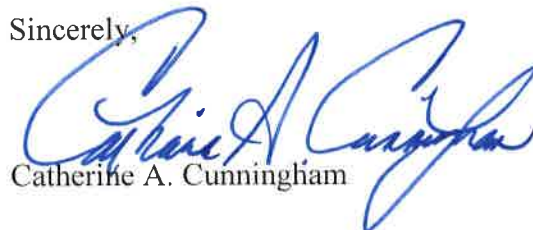
Since *Mentor Lagoons*, Ohio courts and the Ohio attorney general have consistently held that townships cannot regulate or restrict uses or structures for the keeping and care of horses. Ohio courts have held that structures and recreational facilities to operate riding stables, horse related events and a rodeo are the use of land for agricultural purposes and sufficiently related to ‘animal husbandry and the keeping of horses’ to be exempt from township zoning. *See Griebeling v. Troy Township*, 1991 WL 87144. Ohio courts have also held that a township has no authority to demand a zoning certificate or require or regulate the location of structures relating to exempt agricultural uses. *See Township Trustees of Clearcreek Township and Clearcreek Township Zoning Commission v. Robert A. Davis*, 1981 WL 5236. This exemption from any township regulation was applied to structures used in the boarding and training of horses including the construction of a lake and track on a farm where horses were bred, raised and trained. *See Atwater Township Trustees v. Demczyk*, 72 Ohio App.3d 763 (1991).

The Ohio Attorney General has also recognized the breadth of the agricultural use exemption as it applies to animal husbandry relating to horses. In 1989, in an opinion with facts almost identical to this case, the Ohio Attorney General determined that “property used for the keeping of horses at a horse training center, is used for agricultural purposes within the meaning of R.C. 519.21(A), and, as such, is not subject to township regulations.” 1989 Ohio Op. Atty. Gen. No. 89-067, 1989 WL 455407 at syllabus ¶1. That case involved a horse training center that would have several buildings and/or structures located on the property for the purpose of training horses. The buildings included a ¼ mile exercise track, four horse barns with 200 stalls for horses in each, a dormitory to house the grooms, a utility building for equipment and feeding, a building for an indoor pool, and an equicizer for the horses. In addition, there would be a building for the security guard and a veterinarian. In that case, the attorney general determined “the term animal husbandry encompasses the keeping of horses at a horse training center, and that such use of the property, therefore constitutes use for agricultural purposes within the meaning of R.C. 519.21” and are thus exempt from township zoning regulation. The attorney general went further to opine that the township may not require a zoning certificate for the construction of any buildings or structures to be used on the property that are incident to the land used for agricultural purposes, including animal husbandry. The attorney general opined “structures located on the premises of a horse training center are primarily and directly related to the property’s use for agricultural purposes, that is the keeping of horses, and that R.C. 519.21(A), therefore, exempts such structures from zoning certificate requirements in R.C. 519.17.” All of the structures identified above were determined to be exempt.

As you can see from the statutes and case law in Ohio, the use of the 104± acre property in Harrison Township for a horse boarding and training facility and all buildings and structures thereon has repeatedly been held to be exempt from township zoning and regulation. At the request of the township, LW Associates, Inc. initially submitted an application for a conditional use permit for horse boarding and training to Harrison Township along with a \$250 filing fee. LW Associates has since withdrawn the application and intends to proceed with the development of an equine training facility on the 104± acre property as permitted by law. By this letter, I am requesting that Harrison Township refund the \$250 filing fee directly to LW Associates, Inc.

If you believe the township has the authority to regulate the horse training center or have any additional questions about the intended use of the property or structures located thereon, please contact me at your earliest convenience. I appreciate your time and attention to this matter.

Sincerely,



Catherine A. Cunningham

CAC/kla

cc: Judy C. Wolford, Prosecuting Attorney