

**WARREN COUNTY RURAL ZONING
BOARD OF ZONING APPEALS**

**406 Justice Drive – Lebanon, OH 45036
PHONE: 513-695-1294 FAX: 513-695-2657**

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

February 10, 2015

David & Stephanie Brausch
1715 Gum Grove Road
Clarksville, Ohio 45113

Re: Applicants: David & Stephanie Brausch
Administrative Appeal # 2014-110
Description of Appeal: appeal that use on the subject property is
agricultural and exempt from the Warren County Rural Zoning Code
Subject Property: 1715 Gum Grove Road
Parcel No. 14-16-300-020-0

Dear Mr. & Mrs. Brausch:

As Chairman of the Warren County Board of Zoning Appeals (“BZA”), I am writing to notify you of the BZA’s decision in the above referenced matter. In accordance with Ohio Revised Code Section 303.15, the BZA decision is as follows.

A. CONCLUSIONS OF FACT.

An administrative hearing was held before the BZA on December 17, 2014, and after the Applicants had no further evidence to present, the BZA voted to close the public hearing and adjourned to deliberate. The BZA announced at that time when it would reconvene to render its decision. On January 13, 2015, the BZA reconvened to render its decision.

The December 17, 2014 administrative hearing had been called to order after the date, time and purpose of the hearing had been properly advertised in the newspaper at least ten (10) days prior to the date of the hearing, as well as written notice of the hearing being served on the Applicants. The administrative hearing was called to order by the BZA Chairperson. The Zoning Inspector provided the BZA with all filings with the Zoning Office relating to the Appeal, and further testified under oath as to his interpretation of the applicable Zoning Code provisions, that he had consulted with the Prosecutor’s Office in interpreting the applicable Zoning Code provisions, and that he issued a Notice of Zoning Violation letter to the Applicants dated October 21, 2014 allowed a composting operation at the Site for agricultural uses, except three express items that the Zoning Inspector determined not to constitute an agricultural use.

The administrative hearing was recorded by a tape recording device and all witnesses swore an oath prior to testifying. During the hearing the Applicants were represented by an attorney. The Applicants, through their attorney, were given a reasonable opportunity to present their case. Applicant, David Brausch testified. The BZA allowed any proponents to testify whereupon one proponent testified in support of the Appeal. Although the BZA allowed any opponents to testify, no opponents testified in opposition to the appeal. The BZA did not refuse to accept any evidence or testimony. Specifically, the BZA considered the Application, a copy of the deed, a letter from Mr. Brausch's attorney, Andrew George, the testimony of the aforementioned two witnesses, and admitted into evidence Applicants' Exhibits 1-23.

B. APPLICABLE LAW.

Pursuant to Ohio Revised Code Section 303.14 (A) and Article I, Sec. 1.310.5, the burden of proof is on the Applicant seeking the appeal to prove the Zoning Inspector's order, requirement, decision, or determination appealed from was, either:

- i) Based upon an erroneous or improper interpretation of the Zoning Resolution; or,
- ii) Based on an erroneous finding of material fact; or,
- iii) Unfounded, indefensible, or inappropriate use of discretion; or,
- iv) Arbitrary or capricious and made without necessary basis on the Zoning Resolution.

C. DECISION.

After applying the applicable law to the evidence presented during the administrative hearing, the BZA voted unanimously that the Zoning Inspectors' October 21, 2014 notice of violation letter erroneously interpreted the Zoning Resolution, specifically the definition of agricultural, and that based on the facts as represented during the hearing the three (3) items expressly prohibited in the October 21, 2014 letter as violations are exempt agricultural uses in accordance with Section 303.21 of the Ohio Revised Code, and Article 1, Sec. 1.103.7 [Limitation and Exceptions] and Article IV, Sec. 4.103 [Agriculture defined] of the Zoning Code.

Please be advised that this is a final decision, therefore, any appeal must be filed within thirty (30) days of this decision in the Warren County Court of Common Pleas in accordance with Chapters 2505 and 2506, Ohio Revised Code.

Sincerely,

Chris Koch,

cc: Zoning Inspector
County Prosecutor