

**BEFORE THE COMMON PLEAS COURT OF GEAUGA COUNTY**

KELLY'S WORKING WELL FARM	)
D.B.A. CHAGRIN VALLEY	)
SCHOOL	)
16519 S. FRANKLIN ST.	)
CHAGRIN FALLS, OHIO 44023	)
	)
AND	)
	)
WILLIAM A. ROWE AND KELLY	)
A. CLARK	)
16519 S. FRANKLIN ST.	)
CHAGRIN FALLS, OHIO 44023	)
	)
AND	)
	)
WILLIAM A. ROWE AND KELLY	)
A. CLARK	)
16495 S. FRANKLIN ST.	)
CHAGRIN FALLS, OHIO 44023,	)
	)
APPELLANT	)
	)
V.	)
	)
WILLIAM J. LOVELL, ASST. FIRE	)
CHIEF	)
BAINBRIDGE TOWNSHIP FIRE	)
DEPARTMENT	)
17822 CHILLICOTHE RD	)
CHAGRIN FALLS, OHIO 44023,	)
	)
APPELLEE	)

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NOTICE OF APPEAL OF THE BOARD OF BUILDING APPEALS ORDER REGARDING  
BAINBRIDGE TOWNSHIP FIRE DEPARTMENT, GEAUGA COUNTY, OHIO, CITATION  
AND ORDER #19-11-07, NOTICE OF PROPOSED PENALTY

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NOW, Kelly's Working Well Farm d/b/a Chagrin Valley School *et. al* ("Chagrin Valley School," "CVS" or "Nonprofit"), by and through its counsel, files this Notice of Appeal of the Board of Building Appeals Order in Case No. 19-0150 regarding Bainbridge Township Fire Department, Geauga County, Ohio, Citation and Order #19-11-07, Notice of Proposed Penalty. In support, Chagrin Valley School states as follows:

### **PARTIES**

1. Kelly's Working Well Farm was incorporated as an Ohio nonprofit corporation on December 26, 2012, with the following purpose: "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." It has operated according to that purpose since 2012 and continues to do so. Kelly's Working Well Farm has a principal place of business at 16519 South Franklin Street, Chagrin Falls, Ohio 44023 and a mailing address of 16495 South Franklin Street, Chagrin Falls, Ohio 44023. Kelly's Working Well Farm is located within Bainbridge Township.

2. In 2018, Kelly's Working Well Farm registered a trade name of Chagrin Valley School. The nature of the business, remaining unchanged for its trade name registration from the Initial Articles of Incorporation, are stated as "agriculture and education." Kelly Clark owns and operates Chagrin Valley School. Ms. Clark and Mr. William Rowe own the land where Kelly's Working Well Farm operates.

3. Bainbridge Township is an Ohio Township within Geauga County, Ohio with offices located in the Bainbridge Town Hall, 17826 Chillicothe Road, Chagrin Falls, Ohio 44023. The Township has both Fire and Zoning Departments.

### **JURISDICTION**

4. Pursuant to R.C. 3781.19 and OAC 4101:13-1-04, the Board of Building Appeals has jurisdiction over appeals “of any citation issued pursuant to section 3737.41 or 3737.42 of the Revised Code” filed by any aggrieved person.

5. Chagrin Valley School is an aggrieved person because Citation and Order #19-11-07 was issued on November 9, 2019 by the Bainbridge Township Fire Department to Kelly’s Working Well Farm pursuant to section 3737.42, 3737.43 and 3737.51.

6. An aggrieved party to the underlying adjudication of the Board of Building Appeals may appeal an order to the “court of common pleas of the county in which the building of the aggrieved person is located....” R.C. 119.12(B).

7. Chagrin Valley School is an aggrieved party pursuant to R.C. 119.12(B) because the Board of Building Appeals upheld the Citation and Order in Case No. 19-0150.

### **FACTUAL BACKGROUND**

8. 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.

9. 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.” 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.*

10. 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.” 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. 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.

11. The Chagrin Valley School operates as a farm that regularly engages in agritourism by charging a fee for its educational activities to participants. The Chagrin Valley School’s agritourism educational activities are largely governed by the principles of permaculture farming and democratic decisionmaking.

12. 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. Instead, the Ohio Department of Education considers the type of education provided at Chagrin Valley School as that provided to a “home school group.”

13. CVS also provides the farm environment as a recreational environment for yoga instruction for a fee as part of its agritourism operations.

14. 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. The nonprofit has several staff members who are paid through these revenues.

15. After approximately seven (7) years of operation on September 24, 2019, Assistant Fire Chief William J. Lovell stopped by Kelly's Farm because, as he indicated to Ms. Clark, he had not seen the place before and happened to stop by. Mr. Lovell asked numerous questions about whether the nonprofit was a school or a daycare center.

16. Later the same day as Mr. Lovell's impromptu visit, the State Fire Marshall, Fire Inspector and Bainbridge Township Zoning Inspector visited the farm and asked for a "tour." The Fire Marshall and Zoning Inspector stated some concerns about fire and electrical safety and licensing, but did not issue a report or take any further action. The only guidance provided by the local officials to Ms. Clark after the tour was that she needed a "license."

17. In about a week after the local officials toured the Farm, Ms. Clark contacted an electrician who came out and reviewed the needs to upgrade the Farm. Subsequently, the electrician attempted to obtain authorization from the Township to conduct necessary electrical upgrades to the farm, but was unable to receive necessary permits because of the status of Chagrin Valley School as a farm, which does not have associated building standards that the Township could apply.

18. Ms. Clark called Mr. Lovell on several occasions to attempt to determine what she needed to do to acquire a “license” in accordance with the Township officials’ concerns.

19. On October 17, 2019, without any warning, the Ohio Department of Job and Family Services stopped by the Farm and looked around.

20. On October 18, 2019, Ms. Clark called Mr. Lovell to update him on the ODJFS site visit. He did not answer, but stopped by the Farm later that day. Mr. Lovell indicated that he had talked to the Ohio Department of Education to try to help Ms. Clark determine what licensing might be required for Chagrin Valley School. He also indicated that Ms. Clark should have an electrician come out and that he would help her get the permit for electrical work at the farm.

21. On the same day, October 18, 2019, Mr. Lovell asked Ms. Clark to contact the “Educational Resources Center” to determine if that is the entity that should license Chagrin Valley School to operate.

22. Throughout the series of conversations with Mr. Lovell, Ms. Clark understood that the reason Mr. Lovell was seeking the proper entity to license the Farm’s operations was for the purpose of determining what building, fire and other locally-enforced standards to apply to the Nonprofit’s operations. On several occasions, Mr. Lovell indicated that there might be something agricultural in the law that may help Ms. Clark.

23. On October 23, 2019, Ms. Clark called Mr. Lovell to tell him what she found out from ODJFS and see what he had found out about licensing issues. In that call, it became clear to Ms. Clark from the tone and demeanor of Mr. Lovell that he was no longer willing to help.

During the call, Mr. Lovell told Ms. Clark to contact the zoning office immediately because they were waiting for her.

24. Later that same day, Ms. Clark called the Township Zoning Inspector to determine what she needed to do to satisfy the local officials. The Zoning Inspector stated that she could not meet on Thursday, October 24, because she would be alone at the office and asked Ms. Clark to come in to the Township office on Friday, October 25, to meet.

25. On October 25, 2019, upon Ms. Clark's arrival to the Township Offices, the Zoning Inspector was in her office with Mr. Lovell. Ms. Clark was asked to join them in another large room and was handed a letter. Without looking at the letter, Ms. Clark asked the Zoning Inspector many questions about the necessary process for licensure and answered the Zoning Inspector and Mr. Lovell's questions about CVS' operations for approximately an hour. The local officials pushed Ms. Clark to state that her nonprofit was a school, but Ms. Clark explained that the educational programming at the Farm has no set curriculum and that the operation is not really a school.

26. During the conversation at the Township office, Mr. Lovell stated that he was planning to attend an agritourism conference in a week and that there may be something helpful that he learns at that conference that he could share with Ms. Clark.

27. After an hour, the Zoning Inspector showed Ms. Clark the letter 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. Stunned, Ms. Clark asked when she had to cease operations. The Zoning Inspector responded that operations had to cease immediately.

28. Mr. Lovell closed the October 25, 2019, meeting by stating that he plans to come out to the farm again next Thursday and will make a list of all the things Ms. Clark needs to do.

29. Ms. Clark informed the current participants in the Chagrin Valley School program that the Township would not allow continued operations at the Farm until a conditional use permit was secured. As an alternative from operating at the Farm, Ms. Clark and the staff of the nonprofit continued their immersive educational programming in other off-site natural areas.

30. On October 31, 2019, Mr. Lovell called Ms. Clark around noon to state that he was at the Farm with other people who could answer her questions. Ms. Clark arrived about a half an hour later to find personnel from the police, fire, public health, zoning and building departments at her property. Overwhelmed, Ms. Clark, who was alone, stated that she did not feel comfortable with their presence and would like to reschedule for a time when she could be accompanied.

31. On November 1, 2019, counsel for Kelly's Farm hand-delivered a letter to both the Township Zoning Inspector's office and the County Prosecuting Attorney stating that the Zoning Inspector's October 25, 2019, request that the farm "[p]lease cease operation...until such time that all the appropriate permitting and licensing have been obtained" far exceeds the limited authority granted to Townships and Counties by the State of Ohio and that the Farm was restarting its operations upon delivery of the letter. The letter also requested that the County Prosecuting Attorney instruct her clients to direct their communications to Chagrin Valley School's legal counsel instead of directly contacting Ms. Clark.



32. On November 6, 2019, at approximately 3:00 pm, Mr. Lovell directly called Ms. Clark's cell phone. Ms. Clark handed the cell phone to her legal counsel.

33. Mr. Lovell stated that he was calling to reschedule his site visit and didn't know anything about a letter from Chagrin Valley School's legal counsel.

34. CVS' counsel responded to Mr. Lovell that she would like to attend the next site visit and was unavailable on the proposed date of November 7, 2019. Mr. Lovell responded that he would contact his counsel to see what he needed to do and would need to reschedule with the State Fire Marshall.

35. Without any further communication, on November 7, 2019, Mr. Lovell, the Township Zoning Inspector, the State Fire Marshall, and personnel from Geauga Public Health appeared at Chagrin Valley School with an Administrative Warrant issued at 12:07 pm on November 6, 2019, several hours prior to Mr. Lovell's direct call to Ms. Clark.

36. An Affidavit providing sworn testimony of Mr. Lovell is attached to the Warrant that states the following information, the first of which had not been previously known to Ms. Clark and the second of which she never stated to Mr. Lovell:

- a. "On September 23, 2019, the Fire Department received a complaint of potentially significant fire safety concerns at a school operating on the premises known as Kelly's Working Well Farm, d/b/a Chagrin Valley Schools...."
- b. During his September 24, 2019, site visit, "Ms. Clark indicated that...she runs a private school...."

37. During the inspection on November 7, 2019, the local officials mandated that children present at Kelly's Farm stay in ambulances called by the local officials. The children were held by the officials for over three (3) hours.

38. 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.'"

39. On November 8, 2019, Mr. Lovell scheduled another meeting with Ms. Clark. During the meeting, the State Fire Marshall delivered a Serious Hazard Order requiring compliance with "portions of the OAC (1301:7-7-01 through 1301:7-7-80), including, as required by the Fire Code Official, not occupying and/or allowing occupancy of [Kelly's Working Well Farm], until the SERIOUS HAZARD is abated by taking the following actions: Do not occupy or allow occupancy of any structure until removal and/or successful mitigation the all *[sic]* hazardous conditions have been completed and are in compliance with the Ohio Fire Code." The order was taped to each structure at Kelly's Farm. A formal Citation was issued by Mr. Lovell on November 9, 2019.

40. On November 10, the County Prosecuting Attorney sent an electronic version of the citation and a "Warning" from Geauga Public Health related to their observations of the facilities kitchen.

41. During the November 8, 2019, delivery of the Serious Hazard Order, when asked if the order required that the owners of the farm refrain from occupying the buildings, the State Fire Marshall responded that there was no problem with the owners and their guests occupying the buildings. Mr. Lovell and the State Fire Marshall stated that the fire officials had no problem with the farm activities at Kelly's Farm.

### **PROCEDURAL BACKGROUND**

42. On November 14, 2019, Chagrin Valley School filed a Notice of 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 with the Bainbridge Township Board of Zoning Appeals asserting that the Zoning Inspector's interpretation of the Bainbridge Township Zoning Resolution and associated revocation of Chagrin Valley School's agricultural zoning certificate was improper, illegal and without authority because the activities at the Farm are agricultural and educational and recreational agritourism.

43. The County Prosecutor filed a civil action seeking injunctive relief for both fire citations and zoning violations with this court on November 22, 2019, that was docketed at Case No. 19 M000939. On December 17, 2019, the parties agreed to an Agreed Judgment Entry in that matter pending resolution of the underlying administrative appeals.

44. On December 9, 2019, Chagrin Valley School appealed the Fire Citation to the state Board of Building Appeals.

45. The Board of Zoning Appeals held a hearing on December 19, 2019 on the matter. The Board intends to continue the second hearing on the matter to March 19, 2020.

46. On January 16, 2020, the Board of Building Appeals held a hearing on the Fire Citation and mailed an Order upholding the citation on January 17, 2020. The Final Order states as follows: "Based upon the evidence submitted and testimony, the Board upholds the citation and (*sic*) assess a one-time civil penalty of \$15,000 to be held in abeyance for a period of 180 days from the date of this order, to allow the Appellant time to apply for and obtain any necessary permits from the Geauga County Building Department. If all violations are not abated within one year, from the date of this order, an additional \$7,500 per month shall be assessed." The Fire Citation and Order and the Board of Building Appeals Final Order are attached as Exhibit 1 and 2, respectively.

#### LEGAL ARGUMENT

47. The standard of review for appeals of fire citation orders from the Board of Building Appeals is that the Court "...may affirm...if it finds upon consideration of the record and any evidence the court has admitted, that the order is supported by reliable, probative, and substantial evidence and is in accordance with law." R.C. 119.12(M). The Court "...may reverse, vacate, or modify the order or make such other ruling as is support by reliable, probative, and substantial evidence and is in accordance with law." *Id.*

48. As discussed more fully below, this court should reverse, vacate parts and modify parts of the order based on the evidence in the record.

49. By its terms the Fire Citation and Order excludes *everyone* from every structure on the property without evidence of Fire Code violations supporting such a broadly applicable prohibition. Citation and Order #19-11-07, 1-3 (ordering abatement of violations and corrective measures within one day that includes "DO NOT OCCUPY the structures at the site until all

building alterations, conditions, repairs and/or reconstruction, including fire protection, electrical and heating systems and egress features, have been approved by the building code official in accordance with the plan review process specified in the building code an in accordance with the Ohio Fire Code.”). Such an overbroad use of police power to exclude all persons in R.C. 3737.42 is an abuse of power and an unconstitutional taking of private property requiring just compensation. Ohio Constitution Article I, Section 19. The effect of such an overbroad order is to prohibit the Appellant from conducting farm operations on the property.

50. The Citation and Order fails to “fix a reasonable time for abatement” as required by R.C. 3737.42 by dictating the impossible: compliance within one day. In addition to unreasonably requiring compliance within one day, the Citation and Order imposes penalties on *anyone* entering buildings on the property for any use, including agricultural uses and uses for the abatement of alleged hazards. The record contains no evidence to support the absurd timeframe for compliance or the outright ban on anyone entering buildings on the property for any purpose. Mr. Lovell admitted on cross-examination that steps to abate the purported violations could not have been completed in a single day. The Board of Building Appeals Final Order holds a civil penalty of \$15,000 to be held in abeyance for 180 days, but still does not fix a reasonable time for abatement.

51. The Citation and Order does not state what constitutes a “distinct hazard” and a “serious hazard” with particularity. Based on the Citation and Order itself and the evidence in the record, it is entirely unclear what condition(s) or locations constitute distinct or serious hazards. *Griffith v. Rielage*, 127 Ohio Misc.2d 122, 131, 806 N.E.2d 621, Franklin C.P. No. 03CVF11-12552 (March 9, 2004) (stating that a fire citation must include distinct, articulable and

unreasonable hazards impacting members of the public). The “do not occupy” order and related violations are not specifically tailored to the use of each structure and does not state what the distinct hazards and serious hazards are at each structure for the purpose of abatement and compliance. The record contains no support for what the distinct and serious hazards are at each structure. If the distinct and serious hazards vaguely referred to in violations 1-3 are simply referring to the conditions described in violations 4-25, then the violations listed in paragraphs 1-3 of the Citation and Order are duplicative and should be vacated.

52. Even after the Board of Building Appeals Order holding penalties in abeyance and the Agreed Judgment Entry in the case docketed at Case No. 19 M000939 in this Court, the Township refuses to issue Chagrin Valley School a permit to conduct necessary electrical work to abate electrical hazards. While ordering the Farm to comply and imposing daily penalties for noncompliance, Chagrin Valley School cannot comply with the Citation and Order without Township authorization to conduct the necessary electrical abatement. Thus, the penalties for such work should be vacated.

53. The Citation and Order claims an illegal change in use of the property from agricultural use to private school, but the Zoning Inspector has admitted that she witnessed the use of the property in 2016 and that the only change has been in the Zoning Inspector’s understanding of whether homeschooled children’s parents remained on-site with their children. BZA12-19-2019 Record, p. 59. In addition, the only change described in the Board of Building Appeals record relates to the Assistant Fire Chief’s understanding of his own police

power. Thus, the record does not support the Citation and Order allegations of a change in use and those alleged violations should be vacated.

54. The issue of whether the use of the structures constitute “educational agritourism” or that of a “private school” is being litigated in the Board of Zoning Appeals appeal and has not yet been decided. The Citation and Order relies on the Township’s allegation in the zoning matter that the use of every building on the property is that of a private school. The Appellant vehemently disagrees with that allegation and has attached her Closing Brief to the Board of Zoning Appeals as Exhibit 3 to this Notice of Appeal for the purpose of incorporating the arguments in that Closing by reference that relate to the primary use of the property being agriculture and the incidental uses of each building being either agricultural or agritourism.

55. The Citation and Order fails to state with particularity which occupancy use status, such as a place of assembly or educational group, is being applied to the Farm’s structures. OAC 4101:1-3-01. Notably, while the Citation and Order alleges that the change of use violations relate to suddenly creating a “private school,” it is unclear whether the “Educational Group E occupancy” is being applied to Appellant’s operations. While some buildings may constitute places of assembly as defined by the Building Code, the application of the Building Code to agricultural buildings and buildings used for agritourism is limited. *See Griffith v. Rielage*, 127 Ohio Misc.2d 122, 133-134, 806 N.E.2d 621, Franklin C.P. No. 03CVF11-12552 (March 9, 2004); *see also* Ohio Department of Commerce Technical Bulletin 19-005 (August 2019) “Fire Safety at Agritourism Facilities” attached as Exhibit 4. Therefore, Violations 1-3 in the Citation and Order, which conflate applicability of the Ohio Building Code and Ohio Fire

Code, cite to construction, occupancy and change of use violations that are derived from the Building Code and should be vacated. The Fire Code violations should be restricted to those that apply to agritourism facilities as determined by Technical Bulletin 19-005.

56. Finally, the record includes evidence that the majority of violations in the citation have been resolved and Chagrin Valley School has exercised good faith in working toward compliance, demonstrated both by the Board of Building Appeals record and the Agreed Judgment Entry in Case No. 19 M000939 in this Court, even in the face of litigating whether the Township's authority extends to its operations. In addition, the Township has stated on the record below that it does not intend to pursue the penalties lodged in the Citation and Order. Based on Chagrin Valley School's good faith in working to abate hazards referred to in the Citation and Order, and the Township's statements on the record, this Court should vacate the proposed penalties and allow Chagrin Valley School to pursue further abatement of hazards without fear of the Township collecting the proposed penalties for any of the violations that have already been resolved.

#### **REQUEST FOR RELIEF**

57. As the Citation and Order overreaches the authority of the Bainbridge Township Fire Department and the violations listed in the Citation and Order are largely unsupported by reliable, probative, and substantial evidence, this Court should reverse the Board of Building Appeals Order affirming the Township's Citation and Order and vacate or modify the Citation and Order as described above.



Respectfully submitted,



Emily A. Collins, Esq.

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*Counsel for Chagrin Valley School*

DATE: February 18, 2020

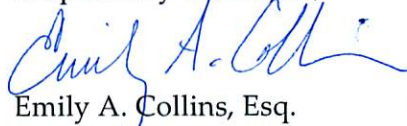
CERTIFICATE OF SERVICE

I hereby certify that on February 18, 2020, a true and correct copy of the foregoing Appeal has been filed via the Geauga County Court of Common Pleas electronic filing system and has been served upon the following persons, in the manner indicated:

Linda M. Applebaum  
Assistant Prosecuting Attorney  
Gauga County Prosecutor's Office  
231 Main Street, 3<sup>rd</sup> Floor  
Chardon, OH 44024  
*via electronic mail*

Board of Building Appeals  
6606 Tussing Road  
Reynoldsburg, OH 43068  
*via BBA electronic filing system*

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Emily A. Collins".

Emily A. Collins, Esq.  
Ohio Bar No. 93202

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