

County/Township Zoning and Agriculture

Amy Milam
Director of Legal Education
Ohio Farm Bureau Federation

Disclaimer

- This presentation is for educational purposes only and should not be construed as legal advice.
- Questions will be answered based on presenter's best knowledge but are not legal advice or opinions.
- Please consult with your county prosecutor or other legal counsel for assistance with specific legal questions.

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- The background of the slide features architectural drawings of a building. At the top, there is a 'SOUTH ELEVATION' showing a building facade with windows and doors. Below it is a floor plan with various rooms and dimensions. At the bottom, there is a 'NORTH ELEVATION' showing another side of the building. The drawings are in blue ink on a light-colored paper.
- **Zoning = division of land into districts or zones according to land uses.**
 - **Zoning can designate which uses are permitted and which must be conditionally approved.**

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- **County and Township zoning powers come from the state through the Ohio Revised Code.**

ORC provisions limit zoning authorities of these entities.

“Agricultural Exemption”

ORC 303.21 and 519.21

- County/Township zoning authority can not
 - Prohibit the use of land for agricultural purposes; or
 - Prohibit construction or use of buildings incident to the use for ag purposes on which such buildings are located.
 - No zoning certificate shall be required for any such building or structure



Exceptions to the Ag Limitation

Platted subdivision or 15+ contiguous lots,
can regulate:

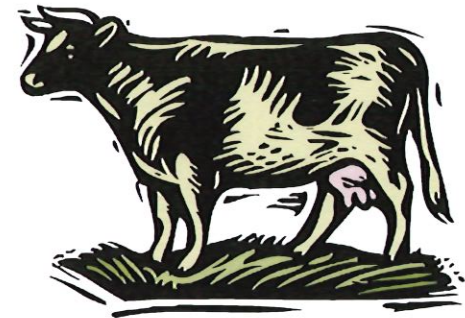
<1
acre



1-5
Acres



1-5
acres
35%



On lots that are less than 5 acres and located either in 1) a **platted subdivision**, or 2) non-platted area consisting of **at least 15 contiguous lots**, a county/township *may* regulate:

- Any agricultural activities on lots that are 1 acre or less
- Agricultural building height, size, and set-backs on lots less than 5 acres but more than 1 acre;
- Animal or poultry husbandry or dairying on lots less than 5 acres but more than 1 acre when those lots are in a subdivision which has at least 35% of the total lots developed.
 - Once 35% of the lots are developed, any existing dairying or animal/poultry husbandry will be considered a nonconforming use.

- Farming, ranching, aquaculture
- Apiculture, horticulture, viticulture
- Animal husbandry, care/raising of livestock, equine, fur-bearing animals
- Poultry husbandry, production of poultry/poultry products,
- Dairy production
- Production of field crops, tobacco, fruits, vegetables
- Nursery stock, ornamental shrubs, ornamental trees, flowers, sod
- Mushrooms, timber, pasturage, any combo of the foregoing
- Processing, drying, storage, and marketing of ag products when those activities are conducted in conjunction with but secondary to, such husbandry or production.

Agriculture





But what do those words mean??

- **If not defined in code:**
 - **Case law may interpret**
 - **“Generally accepted” and common meaning**

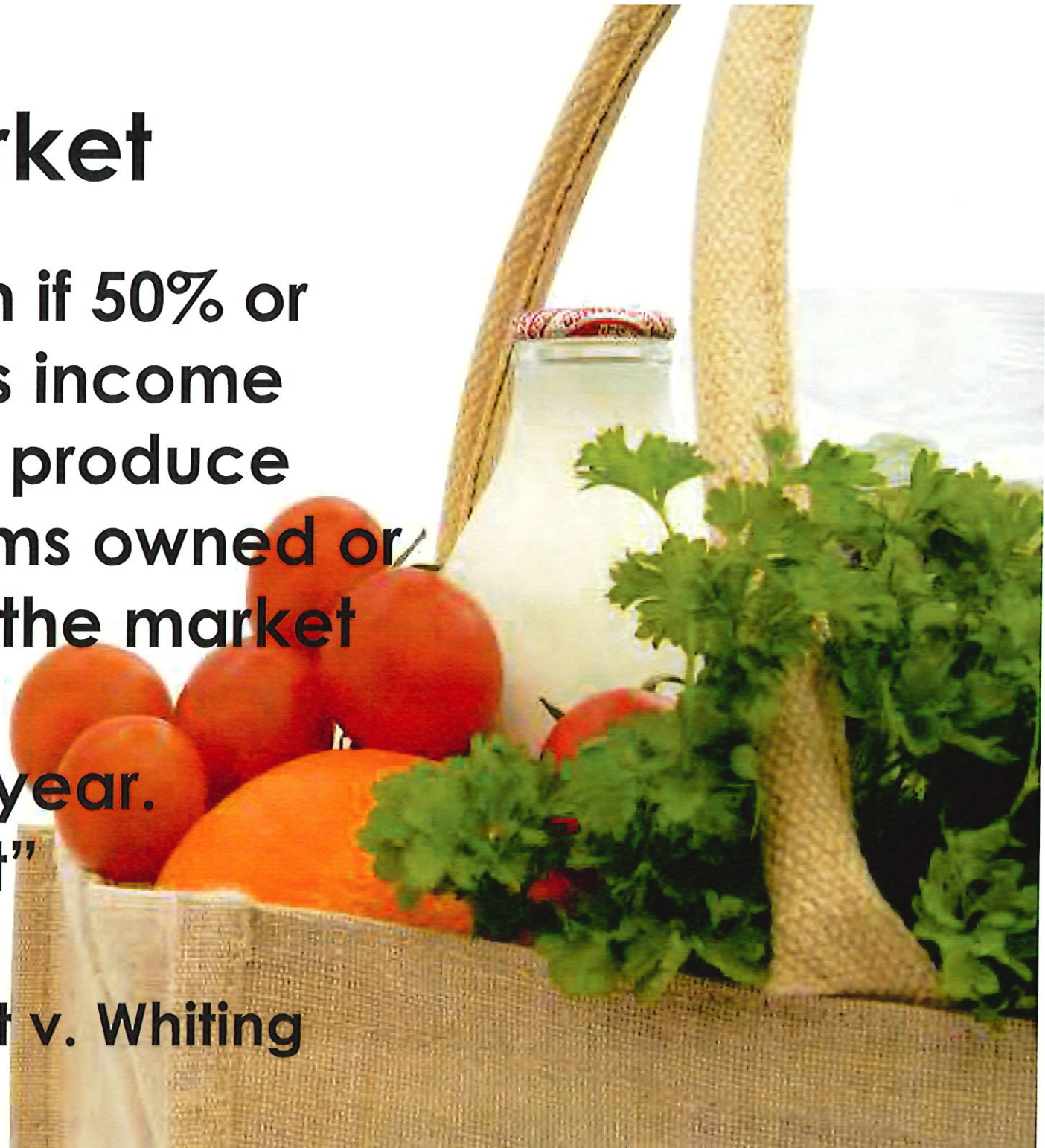
Special Circumstances and Agriculture



Farm Market

No regulation if 50% or more of gross income derived from produce raised on farms owned or operated by the market operator in a normal crop year.
“The 50% Test”

See *Hambrecht v. Whiting*
(1983)



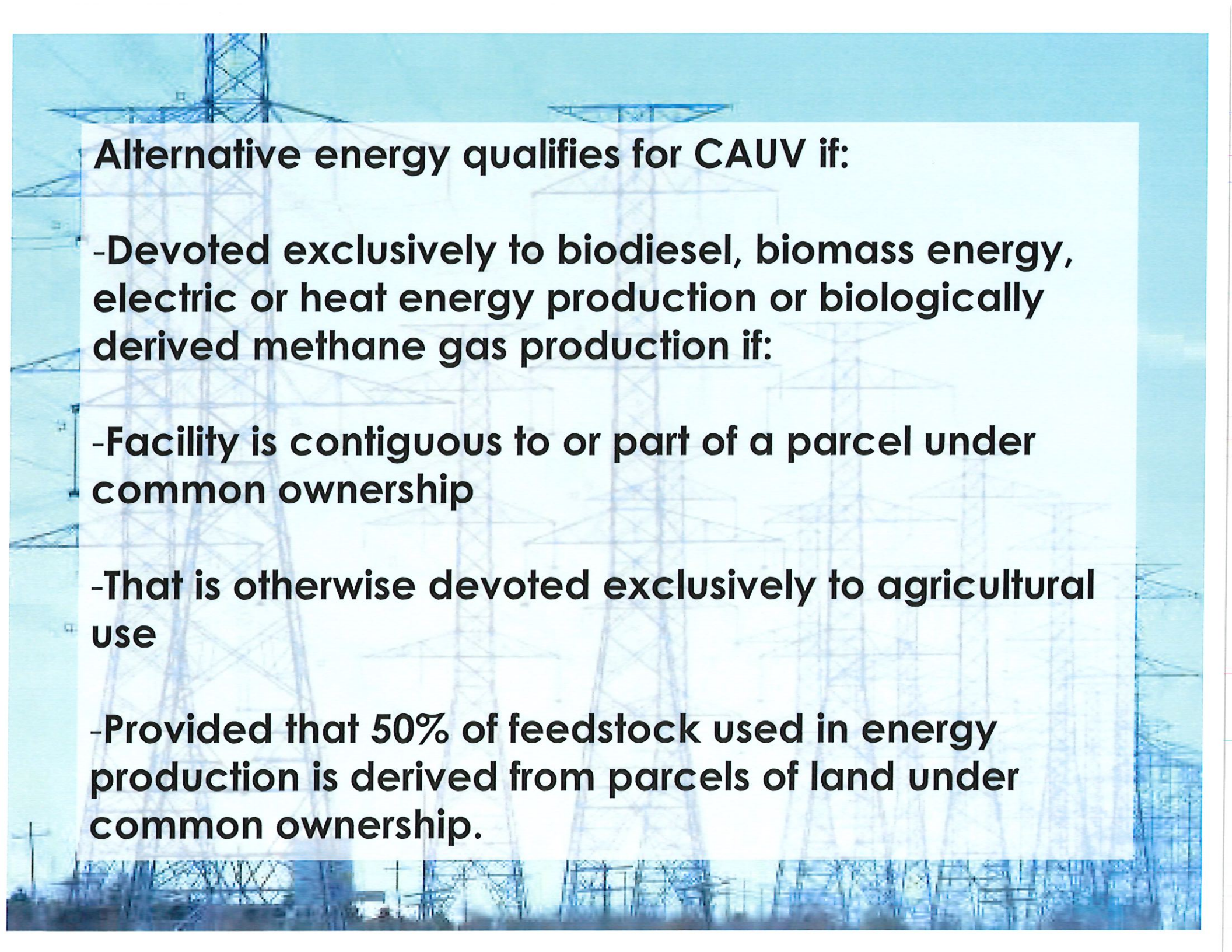
Exceptions with Farm Markets

Where necessary to protect public health, can regulate:

- Size of structure
- Parking areas
- Set back building lines
- Egress/Ingress

Alternative Energy

- Biodiesel/Biomass, electric or heat energy production
- Biologically derived methane gas production not producing more than 17, 060, 710 BTU or 5 MW or both
- No power to prohibit the use of land for these purposes if, in either case, land on which the production facility is located qualifies for CAUV.



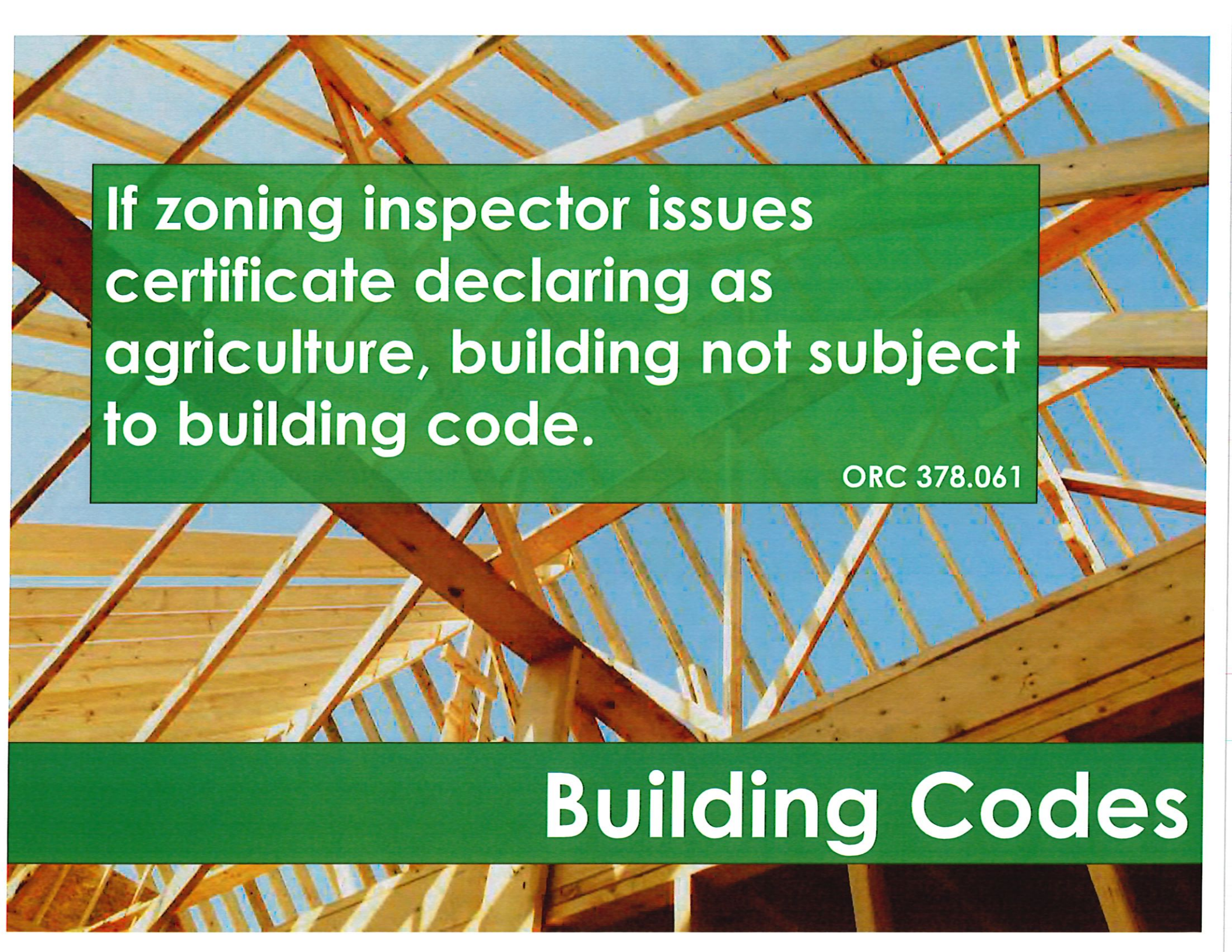
Alternative energy qualifies for CAUV if:

-Devoted exclusively to biodiesel, biomass energy, electric or heat energy production or biologically derived methane gas production if:

-Facility is contiguous to or part of a parcel under common ownership

-That is otherwise devoted exclusively to agricultural use

-Provided that 50% of feedstock used in energy production is derived from parcels of land under common ownership.

A photograph of a wooden roof truss structure under construction, with a clear blue sky in the background. The trusses are made of light-colored wood and are arranged in a complex, triangular pattern.

If zoning inspector issues
certificate declaring as
agriculture, building not subject
to building code.

ORC 378.061

Building Codes

ORC 303.21 and 519.21

- County/Township zoning authority can not
 - Prohibit the use of land for agricultural purposes; or
 - Prohibit construction or use of buildings incident to the use for ag purposes on which such buildings are located.
 - No zoning certificate shall be required for any such building or structure



Winery & Viticulture

Townships = No power....to prohibit
“Including buildings or
structures that are used
primarily for vinting and
selling wine and that are
located on land any part
of which is used for
viticulture””

ORC 519.21(A)

See Terry v. Sperry (2011)

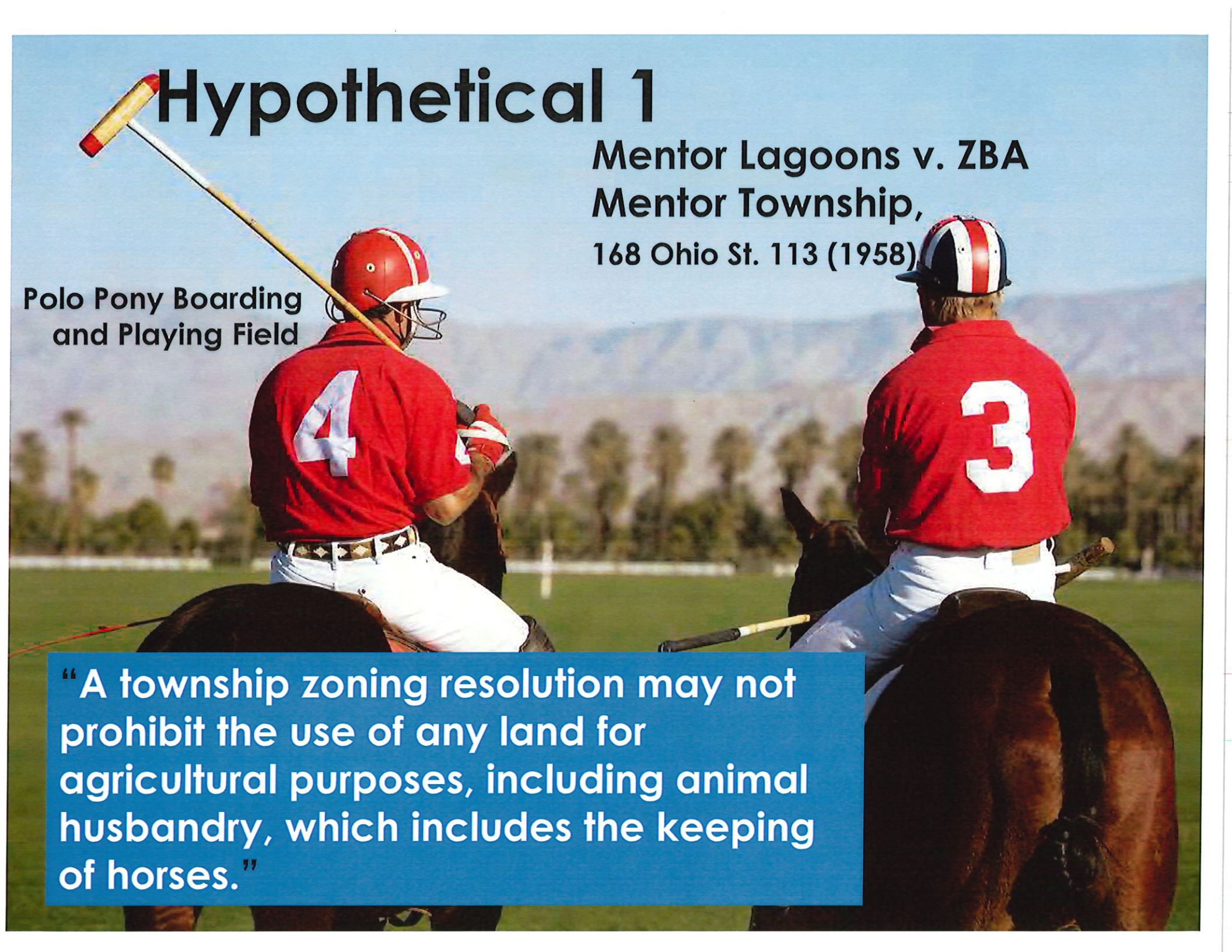





Hypothetical 1

Mentor Lagoons v. ZBA
Mentor Township,
168 Ohio St. 113 (1958)

Polo Pony Boarding
and Playing Field



“A township zoning resolution may not prohibit the use of any land for agricultural purposes, including animal husbandry, which includes the keeping of horses.”



**Dog Breeding,
Boarding Kennel**

ORC 955.03

**Any dog. . .shall. . . have all the
rights and privileges and be
subject to like restraints as other
livestock.**

Hypothetical 2

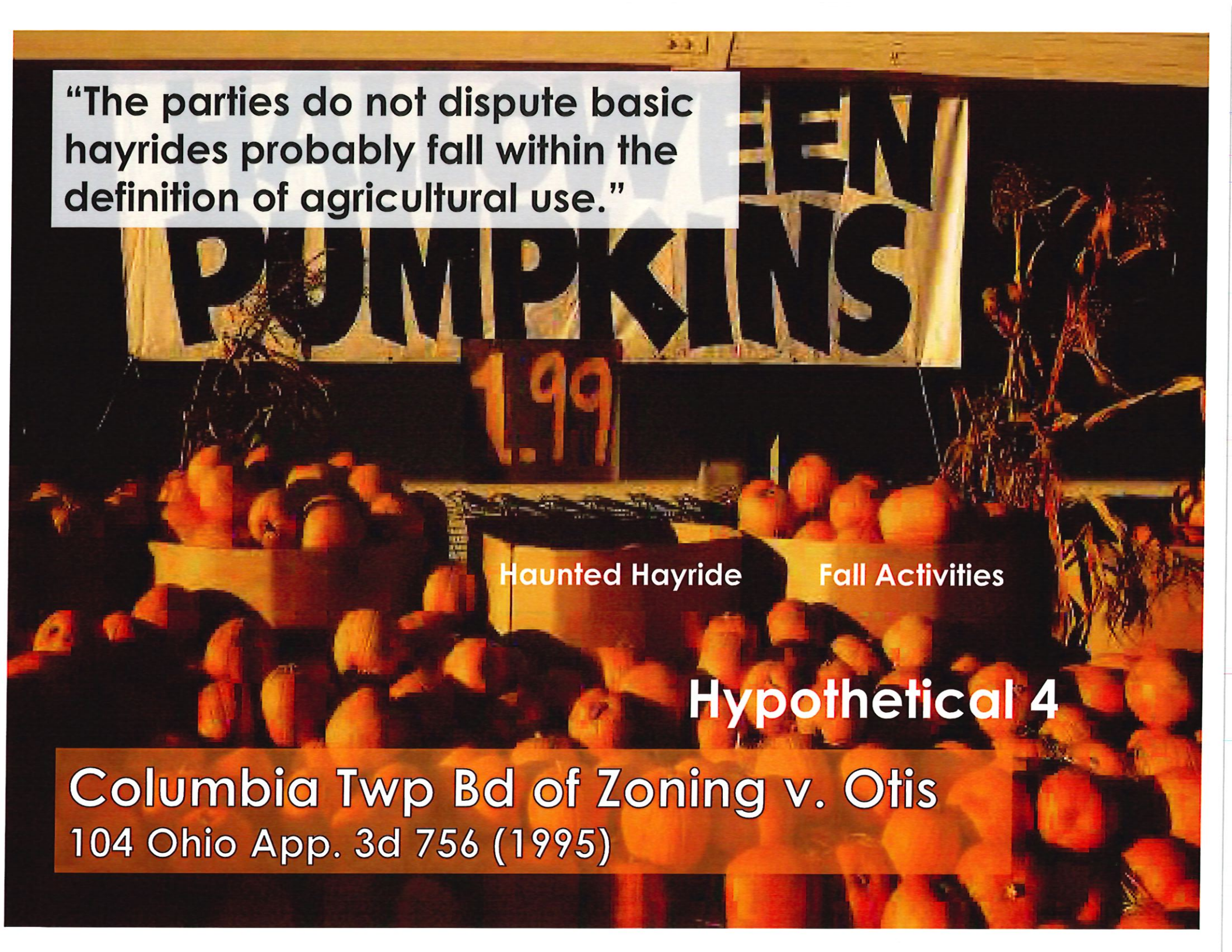
44 Ohio St.2d 144 (1975)

Harris v. Rootstown Twp ZBA

Hypothetical 3



“The holding of banquet, reception . . . constitutes ‘marketing of ag products’ for purposes of . . . R.C. 519.01 when event is held to promote or merchandise the sale of [ag products] and even occurs together with and is of lesser importance or value than, production of [ag products].”



“The parties do not dispute basic hayrides probably fall within the definition of agricultural use.”

Haunted Hayride

Fall Activities

Hypothetical 4

Columbia Twp Bd of Zoning v. Otis
104 Ohio App. 3d 756 (1995)

Hypothetical 5



Garden Center, Landscape Services,
435 acres of Nursery Crops

Siebenthaler Co. v. Beaver creek
Twp BZA, 2009-Ohio-6595 (2nd Dist)

“the primary function of the
Garden Center is to serve as an
outlet for agricultural products
grown on the property.”

But see: State ex rel Fox v. Orwig, (1995
11th Dist) – holding area for plants to be
used in landscaping not ag use

“... [I]n conjunction with but secondary to...”

- Processing,
 - Drying,
 - Storage, and
 - Marketing
-
- Processing, drying, storage, and marketing of ag products when those activities are conducted in conjunction with but secondary to, such husbandry or production.
ORC 303.01, 519.01



Summary Points

- **Always refer to code (statutes and zoning code)**
 - ORC 303.01/519.01: definition of agriculture
 - ORC 303.21/519.21: Limitation on zoning powers for agriculture
- **Look to other cases to help interpret the individual “types” of agriculture**
- **Consider special treatment of markets, alt. energy, and wineries (township only)**
- **Make sure you understand the nature of the activities**
- **With processing, storage, drying, marketing, consider whether the MAIN activity is production or something else.**

