STATE OF MINNESOTA

STATE BUILDING CODE APPEALS BOARD

In the Matter of the Appeal of Leon and
Cinthia Ohman, Goose Lake Farm Winery

FINAL DECISION
Dated: June 9, 2014

Appeal No. 14-02

This matter came on for hearing before the State Building Code Appeals Board ("Board") on May 22, 2014. The record closed at the conclusion of the hearing.

Gary Leistico, Esq., Rinke Noonan, appeared on behalf of Appellants Leon Ohman, Cinthia Ohman, and Goose Lake Farm Winery. Robert Ruppe, Esq., and Andy Schreder, Nowthen Building Official, appeared on behalf of Respondent City of Nowthen.

The issue in this appeal was whether Respondent's Building Official correctly determined that a building on Appellants' property ("Winery Building") is not an "agricultural building" under Minn. R. 1300.0120, subp. 4(A)(13) (2013) ("Agricultural Exemption").

For purposes of the Agricultural Exemption to the State Building Code, an "agricultural building" is a structure that is:

(1) on agricultural land as determined by the governing assessor for the municipality or county under section 273.13, subdivision 23;
(2) designed, constructed, and used to house farm implements, livestock, or agricultural products under section 273.13, subdivision 23; and
(3) used by the owner, lessee, and sub lessee of the building and members of their immediate families, their employees, and persons engaged in the pickup or delivery of agricultural products.

Minn. Stat. § 326B.103, subd. 3 (2012). A building must satisfy all three elements of this definition to qualify for the Agricultural Exemption.

Based upon the entire record, including all documents, testimony, and arguments submitted to the Board, the Board has determined that the Winery Building, as it is currently used, is not an "agricultural building" under the Agricultural Exemption to the State Building Code. The Board's decision is supported by a variety of facts and information discussed during the hearing.

First, although the Winery Building and several additions were apparently constructed without a permit based upon a prior building official's determination that it was then an "agricultural building" under the Agricultural Exemption,[1] the City of Nowthen's current

[1] The parties agree that no building permit has previously issued for the construction or modification of the Winery Building. Appellants allege that a prior local building official determined that no building permit was required at the time the Winery Building was constructed because it was, at that time, an "agricultural building" under the Agricultural Exemption. The

Building Official was authorized to reconsider the determination based upon information regarding the Winery Building's current use that came to light during Appellants' and Respondent's discussion of Appellants' conditional use permit, as well as the recent reclassification for tax purposes of some of Appellants' property from "agricultural" to "commercial."

Second, Appellants conceded that the county assessor has reclassified some portion of their land from "agricultural" to "commercial." Appellants further indicated that they are not aware of any part of the property other than the Winery Building that might be classified as a commercial use. The Agricultural Exemption applies only to buildings on agricultural land as determined by the county assessor. Minn. Stat. § 326B.103, subd. 3(1).

Finally, Respondents submitted materials obtained from Appellants' website. Included in these materials are an advertisement for buy-one-get-one-free glasses of wine and half-priced pitchers of sangria, an advertisement for performances at the winery, and several photographs of people gathering to attend functions, consume alcohol, and socialize. The Agricultural Exemption applies only to buildings "used by the owner, lessee, and sub lessee of the building and members of their immediate families, their employees, and persons engaged in the pickup or delivery of agricultural products." Minn. Stat. § 326B.103, subd. 3(3).

RIGHTS OF APPEAL

This is the final decision of the State Building Code Appeals Board in this matter. A person aggrieved by this decision may, within 180 days of its date, appeal to the Commissioner of Labor and Industry as set forth in Minn. Stat. § 326B.139 (2012).

Board assumed without deciding that the Winery Building, as it was initially constructed and used, may have qualified as an "agricultural building." The Board's decision is based on the Winery Building's current use.