

STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE
TOWNSHIP OF ADDISON,

Plaintiff/Apellee,

V

JERRY CLINE BARNHART,

Defendant/Appellant,

Supreme Court
Docket No. 145144

Court of Appeals
Docket No. 301294 and 272942

Oakland County Circuit Court
Case No. 2009-DA8918-AV
Hon. Leo Bowman

52-3 Judicial District Court
Case No. 05-010900-OM
Hon. Julie A. Nicholson

**THE NATIONAL RIFLE ASSOCIATION OF AMERICA'S
MOTION TO FILE AMICUS CURIAE BRIEF
IN SUPPORT OF JERRY CLINE BARNHART'S
APPLICATION FOR LEAVE TO APPEAL**

145144 (49)
9/18
45592

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FILED

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COBBIN R. DAVIS
CLERK
MICHIGAN SUPREME COURT

The National Rifle Association of America ("NRA") by and through its counsel Michael T. Jean (P76010), respectfully moves this honorable court to file the attached *amicus curiae* brief. The NRA is a nonprofit corporation, incorporated in the State of New York in 1871, with its principal place of business in Fairfax, Virginia. The founders of the NRA desired to create an organization dedicated to marksmanship, or in the parlance of the time, to promote and encourage rifle shooting on a scientific basis. Today the NRA has approximately four million individual members, many in the state of Michigan, who remain dedicated marksmanship. In addition, the NRA also trains over 750,000 gun owners a year regarding various aspects of firearms use and maintenance. These members will be negatively impacted if the Court of Appeals decision that the Sports Shooting Range Act ("SSRA") does not protect ranges operating for commercial purposes is allowed to stand. Without the SSRA's protections, many Michigan ranges would be forced to cease operations, leaving the NRA members without a place to safely improve their marksmanship.

WHEREFORE, the NRA respectfully requests leave to file the attached *amicus curiae* brief in support of Defendant/Appellant's Application for Leave to Appeal.



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CERTIFICATE OF SERVICE

I Michael T. Jean, hereby certify that on August 31, 2012, I filed this Motion for Leave to file the Attached Amicus Curiae Brief in Support of Defendant/Appellant's Application for Leave to Appeal, and its appendix, with seven copies, and the filing fee, by first class mail, with copies sent to the parties at the addresses listed in the pleadings in the above captioned matter.



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Table of Contents

Table of Authorities.....II

I Interest of Amicus Curiae.....1

II Questions Presented.....2

III Statement of Facts.....2

IV Arguments.....2

 A. The Court of Appeals decision is clearly erroneous and conflicts its other
 decisions.....3

 B. This is a case of significant public interest that warrants review by this court.....9

V Relief Requested.....12

Table of Authorities

CASES

<i>Benedict v Department of Treasury</i> , 236 MichApp 559, 565; 601 NW2d 151(1999).....	7
<i>District of Columbia v Heller</i> , 554 US 570, 617-618; 128 SCt 2783 (2008).....	10, 11
<i>Drouillard v Stroh Brewery Co.</i> , 449 Mich 293, 303; 536 NW2d 530 (1995).....	4
<i>Ezell v City of Chicago</i> , 651 F3d 684, 704 (7 th Cir 2011).....	9, 10, 11
<i>In re Complaint of Rovas Against SBC Michigan</i> , 482 Mich 90, 103; 754 NW2d 259 (2008).....	8
<i>LeGalley v Bronson Community Schools</i> , 127 MichApp 482, 485-486; 339 NW2d 223 (1983).....	4
<i>McDonald v City of Chicago, Ill.</i> , --US--; 130 SCt 3020, 3050 (2010).....	9
<i>Michigan State AFL-CIO v Michigan Civil Service Com'n</i> , 455 Mich 720; 566 NW2d 258 (1997).....	3
<i>People v Althoff</i> , 477 Mich 961; 724 NW2d 283, 284 (2006).....	6
<i>People of the Township of Addison v Barnhart</i> , (“Barnhart I”) Unpublished Opinion Per Curium of the Court of Appeals, decided [March 13, 2008] (Docket No. 272942).....	3, 6
<i>People of the Township of Addison v Barnhart</i> , (“Barnhart II”) Unpublished Opinion Per Curium of the Court of Appeals, decided [April 10, 2012] (Docket No. 301294).....	3
<i>People v Flick</i> , 487 Mich 1; 790 NW2d 295 (2010).....	3, 4, 5
<i>People v Smith</i> , 478 Mich 292, 298-299; 733 NW2d 351 (2007).....	10

People v Szalma,
487 Mich 708, 716-717; 790 NW2d 662 (2010).....10

Sands Appliance Services, Inc. v Wilson,
463 Mich 231, 241; 615 NW2d 241 (2000).....6

Smolarz v. Colon Tp.,
Unpublished Opinion Per Curium of the Court Of Appeals, decided [April 21, 2005]
(Docket No. 251155, 25286); 2005 WL 927144.....5

Sun Valley Foods Co. v Ward,
460 Mich 230, 237; 596 NW2d 119 (1999).....4, 7

Union Tp., Isabella County v City of Mt. Pleasant,
381 Mich 82, 85; 158 NW2d 905 (1968).....9

STATUTES

Const 1963, art 1, § 6.....11

MCL 28.425b.....11

MCL 28.425j.....11

MCL 324.40111.....11

MCL 691.1541 *et seq*.....passim

COURT RULES

MCR 7.302(B).....passim

MCR 7.302(C).....3

I. INTEREST OF AMICUS CURIAE

The National Rifle Association of America (“NRA”) is a not-for-profit membership corporation that was incorporated in the State of New York in 1871, with its principal place of business in Fairfax, Virginia. The founders of the NRA desired to create an organization dedicated to marksmanship, or in the parlance of the time, to promote and encourage rifle shooting on a scientific basis. Today the NRA has approximately four million individual members who remain interested and dedication to marksmanship.

The NRA promotes recreational and competitive shooting programs across the country for civilians and law enforcement; the NRA's Competitive Shooting Division offers a wide range of activities in all types of shooting, for everyone from the novice to the world-class competitor.¹ In addition, the NRA is responsible for the annual National Matches, an event considered to be the benchmark for excellence in marksmanship, known informally as the World Series of Shooting Sports.

The NRA, either on its own or working with organizations like 4-H and Boys Scouts of America, facilitates marksmanship-related events (both competitive and informational) and programs for over a million American youths. Furthermore, the NRA recognizes that maintaining access to safe, quality shooting ranges is part and parcel of promoting marksmanship, and thus provides various services and information regarding range operations to thousands of clubs and associations across the country. To further accomplish this goal, over 55,000 NRA-certified instructors train about 750,000 gun owners a year in various aspects of firearms use and maintenance.

¹ NRA Bylaws, Article II, paragraph 4: “To foster and promote the shooting sports, including the advancement of amateur competitions in marksmanship at the local, state, regional, national, and international levels;”

In addition to being dedicated to marksmanship, the NRA is also dedicated to protecting the constitutional rights of firearm ownership and use.² To accomplish this, the NRA has been a party to or supported, either financially or in the way of legal counsel, a multitude of lawsuits throughout the nation in support of peoples' individual right to keep and bear firearms for hunting, sport shooting, and self-defense.

II. QUESTION PRESENTED

A Should this court grant Defendant Jerry Cline Barnhart's Application for Leave to Appeal where the Court of Appeals erred by disregarding its prior decisions, as well as the statutory definition of a term of art, and applying a dictionary definition changing the statute's meaning and thereby causing a material injustice to Defendant Jerry Cline Barnhart?

B Should this court grant Defendant Jerry Cline Barnhart's Application for Leave to Appeal where there is an important right protected by the U.S. Constitution, the Michigan Constitution, and state statute, while local governments all across the state are disregarding these protections by threatening prosecution and issuing citations to range owners who are protected by the act?

III. STATEMENT OF FACTS

Amicus curiae adopts and incorporates the statement of material facts contained in Defendant/appellant's application for leave to appeal submitted by and through his counsel, K. Scott Hamilton.

IV. ARGUMENT

² NRA Bylaws, Article II, paragraph 1: "To protect and defend the Constitution of the United states, especially with reference to the inalienable right of the individual American guaranteed by such Constitution to acquire, possess, collect, exhibit, transport, carry, transfer ownership of, and enjoy the right to use arms..."

This honorable Court should grant Defendant/Appellant's leave to appeal because this case involves a "clearly erroneous" decision by the Court of Appeals that conflicts with another Court of Appeals decision and results in a "material injustice," as well as being of a "significant public interest." MCR 7.302(B)(2)&(5).

A. The Court of Appeals decision is clearly erroneous and conflicts with its other decisions

This Court may grant leave where a Court of Appeals "decision is clearly erroneous and will cause material injustice or the decision conflicts with...another decision of the Court of Appeals." 7.302(B)(5). Additionally, this Court has jurisdiction to hear all issues that were argued before the Court of Appeals in *People of the Township of Addison v Barnhart*, Unpublished Opinion Per Curium of the Court of Appeals, decided [March 13, 2008] (Docket No. 272942) ("*Barnhart I*") Ex. A., and *People of the Township of Addison v Barnhart*, Unpublished Opinion Per Curium of the Court of Appeals, decided [April 10, 2012] (Docket No. 301294) ("*Barnhart II*") pursuant to MCR 7.302(C)(4)(c). Parties have "the option, after a Court of Appeals judgment ordering remand, of seeking immediate appeal or of waiting until proceedings following remand are completed, before seeking plenary appeal." *Michigan State AFL-CIO v Michigan Civil Service Com'n*, 455 Mich 720, 731 566 NW2d 258 (1997) (holding that this Court retained jurisdiction over both appellate cases, not just the second case) (citing MCR 7.302(C)(4)).

Standard of Review

Questions of statutory interpretation are reviewed de novo. *People v Flick*, 487 Mich 1, 9; 790 NW2d 295 (2010). "The overriding goal of statutory interpretation is to ascertain and give effect to the Legislature's intent." *Id.* at 10 (citing *People v Lowe*, 484 Mich 718, 721; 773 NW2d 1 (2009)). "The touchstone of legislative intent is the statute's language." *Id.* (citing

People v Gardner, 482 Mich 41, 50; 753 NW2d 78 (2008)). The words of a statute provide the most reliable indicator of the Legislature's intent and should be interpreted on the basis of their ordinary meaning and the overall context in which they are used. *Id.* at 10-11 (citing *Lowe, supra*, at 721–722). An undefined statutory word or phrase must be accorded its plain and ordinary meaning, unless the undefined word or phrase is a “term of art” with a unique legal meaning. *Id.* at 11 (citing *People v Thompson*, 477 Mich 146, 151–152; 730 NW2d 708 (2007)). Furthermore, the Court must also consider the critical phrase’s “placement and purpose in the statutory scheme.” *Sun Valley Foods Co. v Ward*, 460 Mich 230, 237; 596 NW2d 119 (1999) (quoting *Bailey v United States*, 516 US 137, 145; 116 SCt 501, (1995)). Finally, “effect must be given, if possible, to every word, sentence and section and, to that end, the entire act must be read to be an harmonious and consistent enactment as a whole.” *Drouillard v Stroh Brewery Co.*, 449 Mich 293, 303; 536 NW2d 530 (1995) (citing *Dussia v Monroe Co. Employees Retirement System*, 386 Mich 244, 248; 191 NW2d 307 (1971)).

The Court of Appeals in *Barnhart I* clearly erred in applying the dictionary definition of the term “sport” in the Sport Shooting Range Act (“SSRA”). MCL 691.1541 *et seq.* A “statutory definition supersedes a commonly-accepted dictionary or judicial definition; where a statute contains a definition of a term, that definition is binding on the courts.” *LeGalley v Bronson Community Schools*, 127 MichApp 482, 485-486; 339 NW2d 223 (1983) (holding that the term “constructive demotion” must be interpreted as defined in MCL § 38.74 to determine if an elementary school principal was constructively demoted by the school board) (citing *Erlandson v Genesee County Employees' Retirement Comm.*, 337 Mich195, 204; 59 NW2d 389 (1953). The SSRA defines a “sport shooting range” as “an area designed and operated for the use of archery, rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, or any other

similar sport shooting,” MCL 691.1541(d). Therefore, not only is the term clearly defined within the SSRA, but that definition is controlling and must supersede all other definitions, including dictionary definitions.

Under the controlling definition, if Barnhart’s range was “designed and operated for the use of” any of the enumerated activities then it must be a “sports shooting range.” To apply the statute any other way would fail to “give effect to the Legislature’s intent.” *Flick, supra*. That is the precise approach the Court of Appeals has taken in at least one other case. “Under the statute [SSRA], a sport shooting range merely needs to be ‘designed or operated for the use of *sport shooting*.’” *Smolarz v. Colon Tp.*, Unpublished Opinion Per Curium of the Court Of Appeals, decided [April 21, 2005] (Docket No. 251155, 25286); 2005 WL 927144, at 5 (emphasis in original) (rejecting plaintiff’s argument that the range was not a sport shooting range until “law enforcement personnel began using the property for firearms training activities, [because the argument] ignores the statutory definition”) (citing MCL 691.1541(d)) Ex. B.³ The Court of Appeals decision in *Barnhart I* clearly contradicts the Court of Appeals decision in *Smolarz*, and this Court should grant leave to appeal to clarify the two decisions under the authority of MCR 7.302(B)(5).

Next, even if consultation of a dictionary was necessary to interpret the SSRA, the Court of Appeals could not have come up with that result when all the other canons of statutory

³ The NRA does however take another issue with the Court of Appeals ruling in *Smolarz*. The court held that law enforcement training did not constitute “Sport Shooting,” and is therefore not protected under the SSRA. Law enforcement training little more than target shooting, and shooting silhouettes is protected by the SSRA. MCL 691.1541(d). Additionally, there are several competitive law enforcement shooting competitions held annually throughout the country, and therefore law enforcement training can be a type of “sport shooting.” Furthermore, as explained in detail below, the Second Amendment necessarily encompasses the right to maintain proficiency with a firearm for self defense. Therefore, ranges must be allowed to operate for self defense purposes in addition to “sport shooting,” which includes law enforcement.

interpretation are considered. The Court of Appeals in *Barnhart I* did not specify whether it used the dictionary definition of “sport” to interpret the term “sport shooting range,” or the clause “any other similar sport shooting” in the controlling definition. *Barnhart I, supra* at 4. However, a careful reading of the opinion would suggest the court applied the definition to the term “sport shooting range,” rather than the statutory definition.

MCL 691.1541(d) defines ‘Sport shooting range’ as ‘an area designed and operated for the use of archery, rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, or any other similar sport shooting.’ A definition of the term ‘sport’ is not contained within the statute. However, the term ‘sport’ has been defined as an ‘athletic activity’ or a ‘diversion or recreation.’ Thus, the statute appears to apply to a *recreational shooting range* to the exclusion of all other types of shooting ranges.

Id. at 4 (emphasis added, internal citation omitted). The Court of Appeals gives no analysis to the controlling definition, but rather replaces “sport” with “recreational” in the phrase “sports shooting range,” making it apparent that the Court of Appeals was applying the dictionary definition to replace a term of art. In this case, the statutory definition is the controlling definition, and the Court of Appeals should have never replaced the dictionary definition of “sport” with “sports shooting range.” This is a clear error of statutory interpretation.

In the alternative, to the extent the Court of Appeals applied the dictionary definition to the clause “any other similar sport shooting” in the controlling definition, it also did so erroneously. In the controlling definition the legislature specifically enumerated “archery, rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, or any other similar sport shooting.” MCL 691.1541(d). The only reference to the term sport is done as a “catch-all.” See *Sands Appliance Services, Inc. v Wilson*, 463 Mich 231, 241; 615 NW2d 241 (2000) (the phrase “other remuneration or consideration” in AACCS, R 408.9011 is a “catch-all”); see also *People v Althoff*, 477 Mich 961; 724 NW2d 283, 284 (2006) CORRIGAN, J., dissenting (MCL 28.723’s provision

stating that “[a]ny other violation of a law of this state or a local ordinance...” is a “catch-all”). Catch-all provisions require a different type of statutory analysis because they are intended to broaden the scope of a provision, not restrict it. “The scope of the category established [by a catch-all] is only as broad as necessary to encompass the area embraced by the specifically enumerated subjects.” *Benedict v Department of Treasury*, 236 MichApp 559, 565; 601 NW2d 151 (1999) (holding that the catch-all in MCL 205.131(1)(b) (Repealed), “and other obligations for the payment of money” was limited to the similar commercial transactions listed prior to the catch-all, and therefore interest earned on a judgment did not fall within the catch-all) (citing *People v Smith*, 393 Mich 432, 436; 225 NW2d 165 (1975)). Therefore, the term “similar sport shooting” cannot be interpreted to limit any other portion of the definition.

Since the term “sport” in the controlling definition cannot be read to modify any of the other enumerated subjects, it can only be read to modify the term “shooting.” Thus, the act of shooting, and that act alone, must be done for sport, not the act of operating the range. This interpretation is consistent with the rule that a court must consider the term’s “placement and purpose in the statutory scheme.” *Sun Valley Foods Co, supra*. Furthermore, this interpretation would still give meaning to every word in the statute including “sport.” It would allow for any other recreational type shooting not specifically enumerated, such as air rifles or crossbows, but would not apply to criminal or tortuous shootings, or hunting. Thus, this interpretation does not render the term “sport” nugatory as the Plaintiff claims. Plaintiff’s Br. at 27. There can be no other way to interpret the statute using all the canons of statutory interpretation.

Next, the Department of Natural Resources (“DNR”) appears to hold a belief contrary to the Court of Appeals’ interpretation, and the DNR’s interpretation must be considered when interpreting a statute. “[T]he construction given to a statute by those charged with the duty of

executing it is always entitled to the most respectful consideration and ought not to be overruled without cogent reasons.” *In re Complaint of Rovas Against SBC Michigan*, 482 Mich 90, 103; 754 NW2d 259 (2008) (reversing the Court of Appeals holding that a “plausible” interpretation was enough to satisfy this standard) (citing *Boyer-Campbell v Fry*, 271 Mich 282, 296-297; 260 NW 165 (1935)). The court went on to say that the agency’s interpretation cannot conflict with the intent of the legislature as evidenced by the language of the statute. *Id.* The SSRA charges the DNR with adopting the “generally accepted operation practices.” MCL 691.1541(a). Accordingly, the DNR executes the SSRA. Furthermore, the legislative history cited by the Michigan United Conservation Club (“MUCC”) makes it clear that the SSRA was intended to protect the DNR from defending against nuisance and noise related lawsuits against the ranges operated by the DNR. MUCC Br. Ex. A & B.

The DNR presently charges a range fee at its Ortonville Shooting Range and Pontiac Lake Shooting Range. Ex. C. The fact that the SSRA was written to protect the DNR from litigation involving its ranges and that the DNR charges a range fee for these ranges suggests that the DNR believes it can charge a fee and still receive the SSRA’s protections. This interpretation is consistent with the only possible reading of the statute using multiple canons of statutory interpretation as evidenced in this brief. This court should therefore give these facts and interpretation the “respectful consideration” they deserve in deciding whether the Court of Appeals erred.

Finally, many other jurisdictions have similar statutes that protect “sport shooting ranges” that apply virtually identical definitions.⁴ The NRA is not aware of any courts in those jurisdictions interpreting their respective “sport shooting range” statutes to be limited to ranges

⁴ California, Georgia, North Carolina, North Dakota, Tennessee, Texas, Vermont, and Wisconsin all have similar statutes. Ex. D.

that do not operate for business or commercial purposes. If left untouched, the Court of Appeals' erroneous decisions in *Barnhart I* and *II* could be used as persuasive precedent in those jurisdictions and limit the protections those legislatures sought to provide.

For all these reasons, the Court of Appeals decision is clearly erroneous and cannot be left untouched.

B. This is a case of significant public interest and warrants review by this Court.

In addition to being a clearly erroneous decision, this court may also grant leave to appeal upon a showing that “the issue has significant public interest and the case is one by or against the state or one of its agencies or subdivisions...” MCR 7.302(B)(2). This Court has previously looked to (i) the finality of the actions taken by the lower courts; and (ii) the importance of the rights asserted by the appellant as factors to consider granting leave. *Union Tp., Isabella County v City of Mt. Pleasant*, 381 Mich 82, 85; 158 NW2d 905 (1968) (granting leave to hear whether a county has authority to grant a city a right of way to install pipelines along a road that ran through another township without that township’s permission pursuant to Const 1963, art 7, §29. The court ultimately held that the township had authority over its roads and reinstated the injunction stopping construction of the pipeline).

Like *Union Tp., Isabella County*, this case also involves an important right; “the right of the people to keep and bear arms” as it applies to the states through the fourteenth amendment. *McDonald v City of Chicago, Ill.*, --US--; 130 SCt 3020, 3050 (2010). The United States Court of Appeals for the Seventh Circuit has recently ruled that the second amendment right to keep and bear arms necessarily “implies a corresponding right to acquire and maintain proficiency in their use.” *Ezell v City of Chicago*, 651 F3d 684, 704 (7th Cir 2011) (overturning the trial court’s denial of a preliminary injunction to prevent enforcement of a city ordinance banning shooting

ranges); See also *District of Columbia v Heller*, 554 US 570, 617-618; 128 SCt 2783 (2008) (“to bear arms implies something more than the mere keeping; it implies the learning to handle and use them in a way that makes those who keep them ready for their efficient use; in other words, it implies the right to meet for voluntary discipline in arms, observing in doing so the laws of public order.”) (citing Thomas M. Cooley’s 1868 Treatise on Constitutional Limitations, at 271).

While this Court is not bound by *Ezell*, the decision is highly persuasive for two reasons. First, the *Ezell* court referred to Thomas M. Cooley’s 1868 Treatise on Constitutional Limitations to determine that the second amendment allowed for people to maintain proficiency in shooting at ranges; the same treatise the U.S. Supreme Court looked to when deciding the scope of the second amendment in *Heller*. Similarly, this Court has often referred to Cooley’s many treatises for guidance to resolve constitutional issues. For example, this Court cited Cooley’s treatise when determining if a prosecutor’s failure to obtain a conviction under an erroneous legal theory precludes the prosecution from seeking another conviction under double jeopardy. *People v Szalma*, 487 Mich 708, 716-717; 790 NW2d 662 (2010); See also *People v Smith*, 478 Mich 292, 298-299; 733 NW2d 351 (2007) (“For as the Constitution does not derive its force from the convention which framed, but from the people who ratified it, the intent to be arrived at is that of the people...” (citing Thomas M. Cooley’s 1868 Treatise on Constitutional Limitations)). Thus, this court has found Cooley’s treatises to be very helpful over the years, and the Seventh Circuit’s reliance on the treatises should make its ruling that much more persuasive.

Next, the *Ezell* court gave significant weight to the fact that the city requires firearms training as a prerequisite for lawful gun ownership.

Indeed, the City considers live firing-range training so critical to responsible firearm ownership that it mandates this training as a condition of lawful firearm possession. At the same time, however, the City insists in this litigation that

range training is categorically outside the scope of the Second Amendment and may be completely prohibited...

Ezell, supra at 705. Just as the City of Chicago requires shooting range training to lawfully own a firearm, the State of Michigan mandates training as a condition to obtain a concealed carry permit. MCL 28.425b(7)(c). Specifically, the training requires “at least 3 hours of instruction on a firing range and requires firing at least 30 rounds of ammunition.” MCL 28.425j(1)(b). Thus, the Michigan Legislature sees range training as a necessary prerequisite to certain gun rights and privileges; a direct parallel to *Ezell*.

Additionally, the second amendment is analogous to the protections afforded by the Michigan Constitution. *Heller* held that the Second Amendment guarantees an individual right to keep and bear arms, of which the core component is the possession of operable handguns for self defense within the home. *Heller, supra* at 592–95, 599, 628–29; 128 SCt 2783. Similarly, the Michigan constitution provides that “[e]very person has a right to keep and bear arms for the defense of himself and the state.” Const 1963, art 1, § 6. Since self defense is at the core of the State Constitutional right, it must also necessarily incorporate the right to maintain proficiency with a firearm. To hold otherwise would simply promote the possession of firearms by untrained individuals.

Finally, this is not an isolated incident. Local governments across this state have failed to acknowledge and respect the protections afforded by the SSRA. This past June, Joshua LaPointe of White Lake Michigan was charged with disturbing the peace in connection with noise complaints for shooting on his private property. Ex. E. Additionally, in June, Cheboygan Sportsman’s Club in Cheboygan Michigan was forced to shut down part of its operations in response to the county prosecutor’s threat of prosecution for violation of MCL 324.40111(5), which requires hunting be done 150 yards from an occupied building. Ex. F. Thus, from

southeast Michigan to the Straits of Mackinac, individuals are being charged and local businesses are being forced to shut their doors for exercising their constitutionally protected right. This is precisely what the SSRA was designed to prevent and demonstrates both the importance of this issue and why it is critical that this Court grant the leave to appeal.

V. RELIEF REQUESTED

Wherefore the NRA requests this Court to grant Defendant/Appellant's Application for Leave to Appeal the above captioned matter where the Court of Appeals decision is clearly erroneous, and strips away the statutory protections the legislature sought to provide in addition to the constitutions of both this state and the United States.

Respectfully Submitted



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**APPENDIX TO
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Appendix Table of Contents

Exhibit A

People of the Township of Addison v Barnhart, ("Barnhart I")
Unpublished Opinion Per Curium of the Court of Appeals, decided [March 13, 2008] (Docket No. 272942)

Exhibit B

Smolarz v. Colon Tp.,
Unpublished Opinion Per Curium of the Court Of Appeals, decided [April 21, 2005] (Docket No. 251155, 25286); 2005 WL 927144

Exhibit C

Michigan Department of Natural Resources
Ortonville and Pontiac Lake range fees

Exhibit D

Foreign Jurisdiction Sport Shooting Range Statutes
California, Georgia, North Carolina, North Dakota, Tennessee, Texas, Vermont,
and Wisconsin

Exhibit E

White Lake Township Police Department
Police Report regarding Joshua LaPointe's shooting on his private property

Exhibit F

Cheboygan County, Office of the Prosecuting Attorney
Letter ordering the Cheboygan Sportsman's Club to stop shooting or face
prosecution

Exhibit

A

Not Reported in N.W.2d, 2008 WL 681489 (Mich.App.)
(Cite as: 2008 WL 681489 (Mich.App.))

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT
RULES BEFORE CITING.

UNPUBLISHED

Court of Appeals of Michigan.
PEOPLE of the Township of Addison, Plain-
tiff-Appellant,
v.
Jerry Klein BARNHART, Defendant-Appellee.

Docket No. 272942.
March 13, 2008.

West KeySummary Zoning and Planning 414
1766

414 Zoning and Planning
414XI Enforcement of Regulations
414k1766 k. Power and duty to enforce. Most
Cited Cases
(Formerly 414k763)

The defendant was not entitled to dismissal of his citation for operating a shooting range without a zoning compliance permit. The trial court did not determine whether the range was operating in compliance with generally accepted operating practice before dismissing the citation. The defendant began the shooting range for private, personal use but soon it became a commercial venture. MCL 691.1542a.

Oakland Circuit Court; LC No. 06-008457-AZ.

Before: WILDER, P.J., and CAVANAGH and FORT HOOD, JJ.

PER CURIAM.

*1 Plaintiff, People of the Township of Addison, appeal by leave granted from the circuit court's affirmation of the district court's dismissal of a citation issued to defendant, Jerry Klein Barnhart. We reverse and remand for proceedings consistent with this opinion.

On November 1, 1993, a township meeting was held. During the public forum, an apparent attendee questioned construction that was occurring on Noble Road. The township supervisor stated that a "private target range" was being constructed on the property and the homeowner, defendant, and his wife were the only individuals who would be permitted to use the range. On November 22, 2005, a warrant was issued for defendant for violating plaintiff's zoning ordinance no. 300, by operating a shooting range without a zoning compliance permit.^{FNI} The parties appeared for trial. At that time, defendant asserted that the citation should be dismissed because of lack of notice of the violation at issue, and that, by statute, his use of the property superseded any local zoning ordinance. The trial court noted that a motion to dismiss had not been filed, and that the case was scheduled for trial.

^{FNI}. Although the record from the circuit court appeal was transmitted to this Court, the district court record on appeal was not submitted. Consequently, we do not have the benefit of the citation, and this statement of fact was taken from the district court opinion addressing plaintiff's motion for reconsideration. The district court record would have aided our appellate review. For example, defendant repeatedly asserted that he had no idea what violation he had committed. To counter that assertion, plaintiff noted that ordinance 300 consisted of "hundreds of pages," but listed specific subsections of ordinance 300 that were violated, in particular section 27.05. The ordinance was submitted to the district court, but was not preserved in the record for our review.

Plaintiff presented the testimony of Andrew Koski, the township supervisor charged with ordinance enforcement. Koski testified that defendant came to plaintiff in 1993, with a request for permission to construct a range on his property. According to Koski, defendant represented that he tested different rifles and other firearms for various companies and he would like to use the range for himself and his family. There was no indication that any firearm range constructed on the property would be used by any other individuals or for any other purpose. In 2004, plaintiff

Not Reported in N.W.2d, 2008 WL 681489 (Mich.App.)
(Cite as: 2008 WL 681489 (Mich.App.))

began to receive complaints about defendant's property. Koski was shown different advertisements by township residents indicating that the property was being used contrary to the use approved by the township board. Specifically, advertisements indicated that individuals could come to the property and "be educated in combat arms." Koski opined that conducting firearms classes at the range was a violation of zoning ordinances. Specifically, firearms classes held on the property would make it a commercial or public use to which plaintiff had not agreed. Moreover, the zoning category of agricultural did not permit a shooting range.^{FN2}

^{FN2.} On cross-examination, Koski acknowledged that he could not provide the specific ordinance number that defendant was charged with violating. However, Koski testified that the prosecuting attorney for plaintiff could provide the number. Indeed, at the conclusion of this testimony, plaintiff's attorney stated that ordinance 300 was at issue, specifically section 27.05. The ordinance was submitted to the district court for review. Thus, defendant's contention that he was unaware of the violation at issue is without merit.

Sergeant Peter Burkett of the Oakland County Sheriff's Department testified that he had been to defendant's property approximately fourteen times. He estimated that the majority of his visits to the property had been to use the shooting range. Specifically, as a member of the special response team, Sergeant Burkett utilized the firing range on defendant's property for training. His use of the range occurred in groups consisting of two to six individuals. Sergeant Burkett never paid defendant or his wife to use the firing range. He had no personal knowledge of whether defendant was using the firing range as a commercial venture or business. On the day that Sergeant Burkett issued the citation to defendant, defendant and some "military friends" were training in the small arms range. It was unknown if the "military friends" were charged for their use of the range or if they were considered "guests."

*2 Robert Keller testified that he lived south of defendant's shooting range. He moved into his property in 1990, before the shooting range was constructed. Keller testified that the activity occurring on

defendant's property was "extremely disturbing." He was not allowed to use his own property without being interrupted by the firing range. For example, defendant would utilize a loudspeaker to give instructions to groups of people. He would tell the group to "fire," and Keller would hear a "large barrage of gunfire." Keller testified that he was unsure of the exact number of individuals present at the shooting range, but it sounded as if twelve to twenty guns were being fired. Keller rejected the assertion that one automatic weapon was being fired, stating that he could detect multiple weapons being fired at once. Moreover, he was unaware of any gun that could account for "1,000 or more explosions going off in a minute." Keller also testified that he was able to locate defendant's website wherein classes were offered on the property in exchange for compensation. Specifically, he saw that some classes were offered at a rate of \$750 per person. The website advertised classes, provided prices, contained a class schedule, and had photographs of the range. Keller stated that the shooting would begin as early as 8:00 a.m. on Saturday mornings and 9:00 a.m. on Sunday mornings and lasted until "almost dark." The shooting on the range also occurred during the week.

At the conclusion of plaintiff's proofs, defendant renewed his legal argument that the range was in existence in 1993, and therefore, he was entitled to expand the use of the range. After the submission of briefs, the district court agreed with defendant, concluding that the range could expand or increase opportunities for public participation. The circuit court affirmed the district court's ruling. We granted plaintiff's application for leave to appeal.

The Sport Shooting Ranges Act (SSRA), MCL 691.1541 et seq., was originally enacted in 1989. The SSRA was "passed in response to problems that arose as urban sprawl brought new development into rural areas, creating conflicts between shooting ranges and their new neighbors." Ray Twp. v. B & BS Gun Club, 226 Mich.App. 724, 727, 575 N.W.2d 63 (1997). The SSRA does "not free sport shooting range operators from local zoning controls regarding construction of new facilities." Fraser Twp. v. Limwood-Bay Sportsman's Club, 270 Mich.App. 289, 297, 715 N.W.2d 89 (2006). Instead, the Act provides that ranges may allow more use of existing facilities to support more membership, participation, events, or activities. *Id.* Thus, the SSRA does not expressly preempt all local

Not Reported in N.W.2d, 2008 WL 681489 (Mich.App.)
(Cite as: 2008 WL 681489 (Mich.App.))

regulation, and a township may seek injunctive relief to enforce its ordinances. *Id.* at 297-300, 715 N.W.2d 89.

The issue in the present case involves the application of MCL 691.1452a, an amendment to the SSRA that became effective July 5, 1994. Issues of statutory construction present questions of law that are reviewed de novo. *Cruz v. State Farm Mut. Auto. Ins. Co.*, 466 Mich. 588, 594, 648 N.W.2d 591 (2002). The goal of statutory construction is to discern and give effect to the intent of the Legislature by examining the most reliable evidence of its intent—the words of the statute. *Neal v. Wilkes*, 470 Mich. 661, 665, 685 N.W.2d 648 (2004). If the statutory language is unambiguous, appellate courts presume that the Legislature intended the plainly expressed meaning, and further judicial construction is neither permitted nor required. *DiBenedetto v. West Shore Hospital*, 461 Mich. 394, 402, 605 N.W.2d 300 (2000). Terms used in a statute must be given their plain and ordinary meaning, and it is appropriate to consult a dictionary for definitions. *Halloran v. Bhan*, 470 Mich. 572, 578, 683 N.W.2d 129 (2004).

*3 MCL 691.1542a is entitled “Continuation of preexisting sport shooting ranges” and provides:

(1) A sport shooting range that is operated and is not in violation of existing law at the time of the enactment of an ordinance shall be permitted to continue in operation even if the operation of the sport shooting range at a later date does not conform to the new ordinance or an amendment to an existing ordinance.

(2) A sport shooting range that is in existence as of the effective date of this section and operates in compliance with generally accepted operation practices, even if not in compliance with an ordinance of a local unit of government, shall be permitted to do all of the following within its preexisting geographic boundaries if in compliance with generally accepted operation practices:

(a) Repair, remodel, or reinforce any conforming or nonconforming building or structure as may be necessary in the interest of public safety or to secure the continued use of the building or structure.

(b) Reconstruct, repair, restore, or resume the use of

a nonconforming building damaged by fire, collapse, explosion, act of god, or act of war occurring after the effective date of this section. The reconstruction, repair, or restoration shall be completed within 1 year following the date of the damage or settlement of any property damage claim. If reconstruction, repair, or restoration is not completed within 1 year, continuation of the nonconforming use may be terminated in the discretion of the local unit of government.

(c) Do anything authorized under generally accepted operation practices, including, but not limited to:

(i) Expand or increase its membership or opportunities for public participation.

(ii) Expand or increase events and activities.

The district court dismissed the violation against defendant, concluding that the sport shooting range was in existence at the time of the enactment of MCL 691.1542a, and consequently, was entitled to expand its operation. However, the district court failed to conduct an analysis of the underlying provisions of the statute and failed to make factual findings regarding the application of the SSRA to the facts in the present case.

Although MCL 691.1542a(2)(c) addresses the intensity with which existing facilities are used, not the construction or reconstruction, *Fraser Twp, supra*, the statute is applicable to sport shooting ranges. To invoke the provision of MCL 691.1542a(2)(c), two requirements must be satisfied. That is, defendant must have been operating a sport shooting range and must be in compliance with generally accepted operation practices. MCL 691.1542a(2). With regard to the first requirement, MCL 691.1541(d) defines “Sport shooting range” as “an area designed and operated for the use of archery, rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, or any other similar sport shooting.” A definition of the term “sport” is not contained within the statute. However, the term “sport” has been defined as an “athletic activity” or a “diversion [or] recreation.” *Random House Webster's College Dictionary* (1997). Thus, the statute appears to apply to a recreational shooting range, to the exclusion of all other types of shooting ranges. See *Pittsfield Charter Twp. v. Washtenaw Co.*, 468 Mich.

Not Reported in N.W.2d, 2008 WL 681489 (Mich.App.)
(Cite as: 2008 WL 681489 (Mich.App.))

702, 712, 664 N.W.2d 193 (2003) (“the expression of one thing suggests the exclusion of all others”). Thus, to the extent that there was testimony to suggest that defendant’s operation of a shooting range was for business or commercial purposes, MCL 691.1542a(2)(c) does not provide freedom from compliance with local zoning controls. See *Fraser Twp, supra* at 297, 715 N.W.2d 89.

*4 With regard to the second requirement, MCL 691.1541(a) defines “generally accepted operation practices” as “those practices adopted by the commission of natural resources that are established by a nationally recognized nonprofit membership organization that provides voluntary firearm safety programs that include training individuals in the safe handling and use of firearms, which practices are developed with consideration of all information reasonably available regarding the operation of shooting ranges.” Once adopted, the generally accepted operation practices are subject to review every five years and are revised as necessary. MCL 691.1541(a).

In the present case, the district court failed to address whether the proofs established that defendant was operating a sport shooting range in compliance with generally accepted operation practices. At the time the district court dismissed the citation or essentially directed a verdict in favor of defendant, the proofs did not support the application of MCL 691.1542a(2)(c). Specifically, the testimony and the board meeting minutes indicated that defendant was setting up a shooting range for private use, albeit arguably for business purposes.^{FN3} That is, he utilized the range to test firearms for various companies. Moreover, there was no testimony indicating that generally accepted operation practices were satisfied. On the record, counsel for defendant blanketly asserted that the requirements were established.^{FN4} Consequently, it is unclear if generally accepted operation practices require barriers to prohibit errant firing onto neighboring properties and the height requirement of any such barriers or if distance requirements from neighboring occupied properties are imposed.^{FN5}

^{FN3} Defendant did not testify at trial. Defense counsel asserted in argument to the court that he disputed the representations that defendant made to the supervisor and township board. The case was dismissed before

defendant presented any proofs.

^{FN4} As previously stated, we do not have the district court record. Consequently, we do not have the trial briefs to determine if the parties addressed these issues. However, the district court opinion and the circuit court opinion do not address the underlying statutory provisions.

^{FN5} Although Sergeant Burkett opined that defendant’s range was safer than a police range, he did not testify regarding knowledge of generally accepted operation practices and whether the practices were fulfilled.

The district court’s ruling also failed to consider the import of MCL 691.1543, which provides: “Except as otherwise provided in this act, this act does not prohibit a local unit of government from regulating the location, use, operation, safety, and construction of a sport shooting range.” In the present case, plaintiff asserted that township ordinances were violated because the location of defendant’s shooting range was not zoned for a sport shooting range. In light of the fact that the SSRA does not preempt all local regulation, the trial court failed to consider whether other township zoning ordinances were violated.

The district court concluded that, because the shooting range was in existence before 1994, it could expand or increase public participation. MCL 691.1452a(2)(c). However, in addition to failing to examine whether the underlying requirements were established, the trial court did not review MCL 691.1452a(2)(c) in light of MCL 691.1453. See *Farlington v. Total Petroleum, Inc.*, 442 Mich. 201, 209, 501 N.W.2d 76 (1993) (“It is a well-established rule of statutory construction that provisions of a statute must be construed in light of the other provisions of the statute to carry out the apparent purpose of the Legislature.”) Specifically, the township supervisor testified that defendant was given permission to vary the zoning for the limited purpose of private activity. However, it was asserted that defendant subsequently changed the nature of the activity to a private commercial enterprise that expanded in scope far beyond what is contemplated by the zoning at issue.^{FN6}

^{FN6} MCL 691.1542a(2) provides that it applies to “A sport shooting range that is in

Not Reported in N.W.2d, 2008 WL 681489 (Mich.App.)
(Cite as: 2008 WL 681489 (Mich.App.))

existence as of the effective date of this section and operates in compliance with generally accepted operation practices, even if not in compliance with an ordinance of a local unit of government ..." The trial court effectively held that this applies to any ordinance of government. However, in light of MCL 691.1453, the trial court should consider whether MCL 691.1542a(2) applies to local ordinances attempting to regulate shooting ranges, not all ordinances, including zoning ordinances. See *Fraser Twp, supra*.

*5 Accordingly, we reverse the dismissal of the citation and remand for the trial court to address whether the criteria for MCL 691.1542a were established and to examine the provisions of the SSRA as a whole.^{FN7}

FN7. We acknowledge that the record is inadequate to address these issues, and the trial court may be required to conduct an evidentiary hearing to resolve the underlying factual questions surrounding the application of the SSRA.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

Mich.App.,2008.
People v. Barnhart
Not Reported in N.W.2d, 2008 WL 681489
(Mich.App.)

END OF DOCUMENT

Exhibit

B

Not Reported in N.W.2d, 2005 WL 927144 (Mich.App.)
(Cite as: 2005 WL 927144 (Mich.App.))

C

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT
RULES BEFORE CITING.

Court of Appeals of Michigan.
Joseph SMOLARZ, Plain-
tiff/Counterdefendant-Appellant,
v.

COLON TOWNSHIP, Defend-
ant/Counterplaintiff-Appellee,
and

Larry MOYER, Defendant/Counterplaintiff,
and

Jerry ALBRIGHT, Linda Albright, Ramon Crespo,
Dollene Crespo, Mitchell Addis, Connie Addis, Rob-
ert Robbins, Judith Robbins, Charles Benton, Judy
Benton, Richard Noirot, Clara Noirot, Lester Tefft,
William Sampson, and Doris Sampson, Intervening
Counterplaintiffs-Appellees.

Joseph SMOLARZ, Plain-
tiff/Counterdefendant-Appellee,
v.

Larry MOYER and Colon Township, Defend-
ants/Counterplaintiffs,
and

Jerry ALBRIGHT, Linda Albright, Ramon Crespo,
Dollene Crespo, Mitchell Addis, Connie Addis, Rob-
ert Robbins, Judith Robbins, Charles Benton, Judy
Benton, Richard Noirot, Clara Noirot, Lester Tefft,
William Sampson, and Doris Sampson, Intervening
Counterplaintiffs-Appellants.

No. 251155, 255286.
April 21, 2005.

Before: Judges NEFF, P.J., and WHITE and
TALBOT, JJ.

[UNPUBLISHED]

PER CURIAM.

*1 This action involves plaintiff's right to engage in various shooting activities on his land, to which his neighbors object, and the township's right to regulate that use. In these consolidated appeals, plaintiff appeals by leave granted in Docket No. 251155 from the

trial court's September 8, 2003, order granting defendant Colon Township's motion for summary disposition and permanently enjoining plaintiff from using his property as a hunt club, gun club, or firing range until plaintiff applies for and defendant issues a special use permit allowing these activities. In Docket No. 255286, intervening counterplaintiffs, neighbors of plaintiff, appeal as of right from the trial court's April 12, 2004, order granting plaintiff's motion for summary disposition and dismissing intervening counterplaintiffs' action for nuisance. We affirm the trial court's grant of summary disposition in both Docket No. 251155 and Docket No. 255286.

I. Standard of Review

Both appeals stem from the trial court's decision on motions for summary disposition pursuant to MCR 2.116(C)(10). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint and is reviewed de novo. Corley v. Detroit Bd of Ed, 470 Mich. 274, 278; 681 NW2d 342 (2004). The court must consider the entire record, including any documentary evidence submitted by the parties, in a light most favorable to the non-moving party to determine whether there is a genuine issue of material fact and whether the moving party is entitled to judgment as a matter of law. *Id.*

II. Docket No. 251155

A. The Township Rural Zoning Act

Plaintiff argues that defendant Colon Township ("defendant") lacked the general authority under the Township Rural Zoning Act ("TRZA"), MCL 125.271 et seq., to enact the 2000 amendment to its zoning ordinance. We disagree. Issues of statutory construction, including zoning ordinances, are also reviewed de novo. Soupal v. Shady View, Inc, 469 Mich. 458, 462; 672 NW2d 171 (2003).

Townships only have those powers provided by statute or our state's constitution. Const 1963, art VII, §§ 22 and 34. MCL 41.181 provides that a township may adopt an ordinance regulating the public health, safety, and welfare of persons and property and provides a *non-inclusive* list of subjects. More specifically, MCL 125.271 pertains to a township's authority to enact zoning ordinances and states, in part:

Not Reported in N.W.2d, 2005 WL 927144 (Mich.App.)
(Cite as: 2005 WL 927144 (Mich.App.))

(1) The township board of an organized township ^{FN1} in this state may provide by zoning ordinance for the regulation of land development and the establishment of districts in the portions of the township outside the limits of cities and villages which regulate the use of land and structures; to meet the needs of the state's citizens for food, fiber, energy, and other natural resources, places of residence, recreation, industry, trade, service, and other uses of land; to insure that use of the land shall be situated in appropriate locations and relationships; to limit the inappropriate overcrowding of land and congestion of population, transportation systems, and other public facilities; to facilitate adequate and efficient provision for transportation systems, sewage disposal, water, energy, education, recreation, and other public service and facility requirements; and to promote public health, safety, and welfare. For these purposes, the township board may divide the township into districts of such number, shape, and area as it considers best suited to carry out this act. [Footnote added.]

FN1. The fact that Colon Township is an unchartered township is of no import to the resolution of this issue because "the [TRZA] applies to charter townships as well as general law townships." Huxtable v Bd of Trustees of Charter Twp of Meridian, 102 Mich.App 690, 694; 302 NW2d 282 (1981).

*2 Additionally, "[a] township may provide in a zoning ordinance for special land uses which shall be permitted in a zoning district only after review and approval by either the zoning board, an official charged with administering the ordinance, or the township board, as specified in the ordinance." MCL 125.286b(1).

Here, the township's amendment at issue, § 14.3, states, in pertinent part:

SPECIAL LAND USES

The following land uses are allowed in the district if location standards and conditions can be met to assure compatibility of such uses with permitted uses in the district and in compliance with Article XVI. Uses similar to (but not listed) as special land uses may be considered by the Planning Commission as provided in Section 16 of this Zoning Ordinance.

6. Hunt clubs, gun clubs or firing ranges.

MCL 125.271(1) provides a township with the authority to enact zoning ordinances to "regulate the use of land ... to insure that use of the land shall be situated in appropriate locations and relationships." Additionally, MCL 125.286b(1) allows a township to require that a landowner obtain a special land use permit for uses delineated in the zoning ordinance. Thus, we conclude that defendant had the authority to enact the 2000 amendment requiring a special land use permit for firing range use in an agricultural district.

The legal authorities cited by plaintiff in support of his position that defendant lacked the authority to enact an ordinance pertaining to the use or discharge of firearms are inapplicable. The statutes and case law on which plaintiff relies involve a township's or city's attempt to totally prohibit the discharge of firearms within its jurisdiction. Here, defendant's 2000 amendment to its zoning ordinance, and defendant's corresponding authority to enact the amendment, implicate defendant's power to regulate land use, i.e., the location of firing ranges in the township. The amendment does not attempt to prohibit all discharge of firearms anywhere in the township and the trial court's injunctive order specifically provided that plaintiff was entitled to continue using his firing range for personal use. The trial court properly found that defendant had the authority to enact the 2000 amendment.

B. The Sport Shooting Range Act

Plaintiff asserts that the Sport Shooting Range Act ("SSRA"), MCL 691.1541 et seq., bars defendant's claim of nuisance. First, plaintiff argues that the SSRA protects him from defendant's nuisance action under MCL 691.1542, which generally protects a landowner from civil liability due to noise emanating from a range if the range was in compliance with noise control laws or ordinances that applied to the range and its operation at the time of construction or initial operation of the range. However, MCL 691.1542 is inapplicable because defendant's claim of nuisance per se is based on plaintiff's alleged violation of its zoning ordinance, not a noise ordinance. Violations of a local zoning ordinance constitute a nuisance per se that a court must abate. MCL 125.294.

*3 Second, plaintiff argues that MCL 691.1542a(1) bars defendant's claim of nuisance per

Not Reported in N.W.2d, 2005 WL 927144 (Mich.App.)
(Cite as: 2005 WL 927144 (Mich.App.))

se because plaintiff was not in violation of any zoning ordinance before the 2000 amendment. MCL 691.1542a(1) states:

A sport shooting range that is operated and is not in violation of existing law at the time of the enactment of an ordinance shall be permitted to continue in operation even if the operation of the sport shooting range at a later date does not conform to the new ordinance or an amendment to an existing ordinance.

Plaintiff contends that because a special permit was not required for the operation of a firing range and such a use was not expressly prohibited before the 2000 amendment took effect, the use was permissible. Defendant responds that plaintiff's argument is flawed because zoning ordinances by their nature prohibit all uses except those that are provided for.

The critical question is whether plaintiff's use of his land as a shooting range without a special land use permit was lawful before 2000. Under defendant's 1980 zoning ordinance, rural residential and agricultural lands were combined in one district. Hunt clubs, gun clubs, and similar land uses were not permitted uses, although hunt and gun clubs were allowed to be operated in the agricultural and rural residential district after the landowner obtained a special land use permit. In March 1998, a new zoning ordinance was passed which reflected the separation of the rural residential and agricultural districts. Section 7.3 of the 1998 zoning ordinance, which pertained to the rural residential district, specifically stated that "[u]ses not listed as permitted or special land uses may only be allowed following a zoning ordinance text amendment as provided in Section 29.1." The sections pertaining to the agricultural district had similar provisions and provided that land in the agricultural district could only be used as a hunt or gun club after obtaining a special use permit. Such a special use was not allowed in the rural residential district.

When interpreting a zoning ordinance, the rules of statutory construction apply. Kalinoff v. Columbus Twp., 214 Mich.App 7, 10; 542 NW2d 276 (1995). Clear, unambiguous language must be enforced as written, *id.*, and provisions within an ordinance must be read as a whole, Macomb Co Prosecuting Attorney v. Murphy, 464 Mich. 149, 159; 627 NW2d 247 (2001). The language in the 1998 zoning ordinance is clear. If a use is not permitted or allowed by a special

land use permit, then it is prohibited. Although the 1980 zoning ordinance has no such language, plaintiff's interpretation contravenes the ordinance's overall purpose, which was to ensure that land uses were consistent with the township's comprehensive plan. Moreover, plaintiff's interpretation renders a non-conforming use irrelevant. Reading the 1980 zoning ordinance as a whole, we conclude that if a use was not delineated as permitted or allowed after obtaining a special land use permit, then that use was not allowed and was in violation of the zoning ordinance.

*4 Plaintiff cites Village of Mackinaw City v. Union Terminal Piers, Inc., 103 Mich.App 60; 302 NW2d 326 (1981), and Peacock Twp v. Panetta, 81 Mich.App 733; 265 NW2d 810 (1978), in support of his interpretation. Those cases are distinguishable, however, because they stand for the proposition that where a use is expressly prohibited in one district, an inference arises that the use is permitted in another district. Union Terminal Piers, *supra* at 64; Peacock Twp, *supra* at 737. This case does not involve the construction of provisions applicable to different districts. At all times, the issue has been the interpretation of the provisions applicable to a specified district.

Shooting ranges were never allowed even with a special permit under the 1980 zoning ordinance. And even if plaintiff's land use was categorized as a hunt or gun club, such a use was only allowed after obtaining a special use permit, which plaintiff never obtained. Thus, plaintiff's usage did not conform to the 1980 zoning ordinance and could not be considered a non-conforming use under the 1998 zoning ordinance. Because plaintiff's land usage as a range was never valid, MCL 691.1542a(1) provides plaintiff no protection.

Third, plaintiff argues that, regardless of any failure to comply with the zoning ordinance, he is permitted to continue to operate his sport shooting range pursuant to MCL 691.1542a(2). We agree.

MCL 691.1542a(2) provides that "[a] sport shooting range that is in existence as of [July 5, 1994,] and operates in compliance with generally accepted operation practices, even if not in compliance with an ordinance of a local unit of government," shall be permitted to continue, subject to certain limitations. MCL 691.1541(d) defines a "sport shooting range" as "an area designed or operated for the use of archery,

Not Reported in N.W.2d, 2005 WL 927144 (Mich.App.)
(Cite as: 2005 WL 927144 (Mich.App.))

rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, or any other similar *sport shooting*.” (Emphasis added.) “Generally accepted operation practices” are defined as:

“those practices adopted by the commission of natural resources that are established by a nationally recognized nonprofit membership organization that provides voluntary firearm safety programs that include training individuals in the safe handling and use of firearms, which practices are developed in consideration of all information reasonably available regarding the operation of shooting ranges.” [MCL 691.1541(a).]

In his affidavit submitted to the trial court, plaintiff avers that “an area on the property that he owns at 33377 Wattles Road, Colon, Michigan[,] has been used continuously from before July 5, 1994[,] to present, as a ‘sport shooting range’ as defined in MCL § 691.1541 ... in compliance with ‘generally accepted operation practices.’”

Defendant, in its brief supporting its motion for summary disposition, argued that plaintiff’s “range use was not in compliance with the Township’s Zoning Ordinance when commenced since a special use permit was required even in 1994.” Thus, it appears that defendant conceded that plaintiff was, in fact, using his property as a shooting range in 1994. Additionally, defendant never challenged plaintiff’s assertion that he operated his shooting range in compliance with “generally accepted operation practices.” Rather, defendant “question[ed] whether the use qualifies as a sport shooting range at all,” arguing that “the use was not in existence until 1998.” The 1998 use defendant refers to, however, was the “firearms training activities” of local law enforcement personnel.

*5 Defendant’s argument that plaintiff did not operate a sport shooting range until 1998, when law enforcement personnel began using the property for firearms training activities, ignores the statutory definition of a “sport shooting range.” Under the statute, a sport shooting range merely needs to be “designed or operated for the use of ... *sport shooting*.” MCL 691.1541(d) (emphasis added). Thus, defendant never challenged plaintiff’s affidavit that he operated a sport shooting range as defined in MCL 691.1541 in compliance with generally accepted operation practices as of July 5, 1994. Furthermore, the trial court’s order

granting defendant’s motion for summary disposition stated that plaintiff had used his property as a firing range since prior to July 5, 1994, and defendant has not challenged this finding on appeal. Viewing the entire record in a light most favorable to plaintiff, defendant has not created a genuine issue of material fact regarding whether plaintiff operated a sport shooting range in compliance with generally accepted operation practices as of July 5, 1994. Plaintiff is, therefore, permitted to continue to operate his sport shooting range, provided that he does so in compliance with generally accepted operation practices pursuant to MCL 691.1542a(2).

MCL 691.1542a(2), however, contains no language that would permit plaintiff to continue to use his property for the firearms training activities of law enforcement personnel in the face of local zoning ordinances to the contrary. A sport shooting range is defined by statute as an area designed or operated for *sport shooting*, MCL 691.1541(d), not law enforcement firearms training. MCL 691.1542a(2) permits a sport shooting range in existence as of July 5, 1994, to continue to operate as a sport shooting range and to maintain its facilities and activities consistent with its use as a sport shooting range, but it does not permit such a sport shooting range to be used for law enforcement training purposes. Law enforcement firearms training is not a protected use under the SSRA and, therefore, may be regulated through local zoning ordinances without affecting the property’s use as a sport shooting range.

III. Docket No. 255286

Intervening counterplaintiffs (“ICPs”) argue that the trial court erred in granting summary disposition in favor of plaintiff and dismissing their complaint. However, ICPs, in their intervening counter-complaint, requested only that the trial court declare plaintiff’s “use as a law enforcement training facility” a nuisance and to enjoin plaintiff from using the property in the “manner that maintains such a nuisance or creates a new one.” ICPs argued at the hearing on plaintiff’s motion for summary disposition that they never sought to enjoin plaintiff from using his property for recreational or sport shooting. In light of this Court’s resolution of Docket No. 251155, ICPs’ claim is moot,^{FN2} and we affirm the trial court’s dismissal of ICPs’ complaint.^{FN3}

^{FN2}. Eller v Metro Industrial Contracting.

Not Reported in N.W.2d, 2005 WL 927144 (Mich.App.)
(Cite as: 2005 WL 927144 (Mich.App.))

Inc., 261 Mich.App 569, 571; 683 NW2d 242 (2004) (“An issue is moot and should not be reached if a court can no longer fashion a remedy.”)

FN3. Additionally, because we found that the SSRA applies to protect plaintiff's shooting activities as long as they are limited to sport shooting and done in compliance with generally accepted operation practices, any claim ICPs could bring against plaintiff for nuisance based on his sport shooting activities would be barred by MCL 691.1542. We, therefore, need not address ICPs claim that the trial court erred in finding that ICPs failed to claim actual, physical discomfort.

IV. Conclusion .

*6 In Docket No. 251155, we affirm the trial court's grant of summary disposition in favor of defendant, but we remand to the trial court for the modification and entry of an injunctive order not inconsistent with this opinion. In Docket No. 255286, we affirm the trial court's dismissal of ICPs' complaint.

Affirmed and remanded for further proceedings not inconsistent with this opinion. We do not retain jurisdiction.

Mich.App.,2005.
Smolarz v. Colon Tp.
Not Reported in N.W.2d, 2005 WL 927144
(Mich.App.)

END OF DOCUMENT

Exhibit

C



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- Michigan.gov Home
- DNR Home
- Links
- Contact DNR
- DNR Mobile Apps
- Site Map
- Hunting & Trapping
 - Bear Management Plan
 - Deer Management Plan
 - Hunting Applications & Drawings
 - Hunter Education
 - Big Game
 - Mentored Youth Hunting Program
 - Pure Michigan Hunt
 - Wildlife Surveys and Reports
 - Upland Game Birds
 - Waterfowl
 - Trapping & Fur Harvesting
 - Small Game
 - Licenses & Seasons
 - Laws & Legislation
 - Where Can I Hunt?
 - Shooting Ranges
- About the DNR
- Camping & Recreation
- Commissions, Boards and Committees
- Doing Business
- Education & Outreach
- Fishing
- Forests, Land & Water
- Grants
- Press Releases, Maps & Publications
- Law Enforcement
- Licenses, Applications & Permits
- MackInac State Historic Parks
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Ortonville Shooting Range

Agency: Natural Resources

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Ortonville Shooting Range
(Lapeer County, west of Paderock Road)

Starting August 2, the Department of Natural Resources will temporarily close the Ortonville shooting range in Lapeer County for the installation of new accessible shooting stations and pathways at 10, 25, 50, 100, and 200 yards. Work is scheduled to be completed by Saturday, September 1. The project will be funded from a combination of sources including federal Pittman-Robertson and state restricted funds (shooting range program income).



[See more photos of the Ortonville Shooting Range.](#)

Welcome to the Department of Natural Resources-staffed Ortonville shooting range. You will notice continued improvements to our range. The renovations were funded by grants through the Federal Aid in Wildlife Restoration Act, the Michigan Natural Resources Trust Fund, the Land and Water Conservation Fund and the U.S. Fish and Wildlife Service.

Location
5380 Sawmill Lake Road
Ortonville, MI 48462
248-627-5569

Hours of Operation
November 16 through September 30: 5 Days Per Week, Thursday through Monday
10:00 a.m. - 5:00 p.m.
October 1 through October 31: 6 Days Per Week, Wednesday through Monday
10:00 a.m. - 5:00 p.m.
November 1 through November 15: 7 Days Per Week
10:00 a.m. - 5:00 p.m.

Offerings
Rifle/Pistol Range (rifles, muzzle loaders, handguns and shotguns with slugs only)
4 stations @ 100 yards
4 stations @ 50 yards
2 stations @ 25 yards
Note: Paper targets with a bulls-eye pattern or a depiction of legal game may be used. No human form silhouettes or metal targets. .50 Caliber BMG and larger center fire rifles are prohibited. Muzzleloaders larger than .80 caliber prohibited.

Hand Trap Range (shotguns/clay targets)
4 stations
Note: Target and low brass shells with light loads only, 7 1/2 - 9. Shooters are to bring a target thrower and clay targets. The first Saturday of each month (April through October) the hand trap range is reserved for a public clay target fun shoot sponsored by the North Oakland Sportsman Club. The fun shoot is a great opportunity to introduce your family to the shooting sports. Please contact the range for details and cancellations.

3-D Archery Range
8 stations
Targets include: elk, various deer, bear, turkey & coyote.
Yardage varies from 12 to 26 yards.

Range Fees
\$4.00 per shooter, age 16 and older, per day. Shooters under the age of 15 shoot free. Shooters under the age of 16 must be directly supervised by an adult.

A [Recreation Passport](#) is required for entry.

Programs and Classes
The range is available for youth groups and hunter education programs. Please contact the range at the telephone number listed above for information and scheduling.

Good to Know

Shooters are responsible for providing their own eye and ear protection, ammunition, and targets. The Ortonville Shooting Range has accessible shooting stations.

[Back to the Shooting Range Map.](#)

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- [DNR Home](#)
- [Links](#)
- [Contact DNR](#)
- [DNR Mobile Apps](#)
- [Site Map](#)
- [Printer Friendly](#)
- [Text Version](#)
- [Text Size](#)
- [Share](#)
- [Search](#)
- Hunting & Trapping**
 - [Bear Management Plan](#)
 - [Deer Management Plan](#)
 - [Hunting Applications & Drawings](#)
 - [Hunter Education](#)
 - [Big Game](#)
 - [Mentored Youth Hunting Program](#)
 - [Pure Michigan Hunt](#)
 - [Wildlife Surveys and Reports](#)
 - [Upland Game Birds](#)
 - [Waterfowl](#)
 - [Trapping & Fur Harvesting](#)
 - [Small Game](#)
 - [Licenses & Seasons](#)
 - [Laws & Legislation](#)
 - [Where Can I Hunt?](#)
 - [Shooting Ranges](#)
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- Camping & Recreation**
- Commissions, Boards and Committees**
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- Education & Outreach**
- Fishing**
- Forests, Land & Water**
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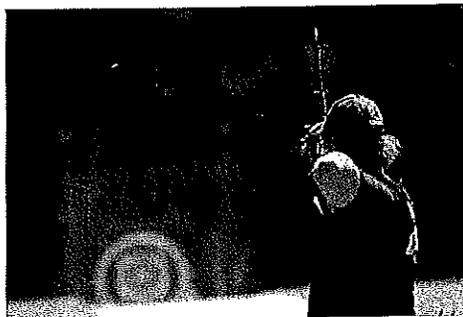
Pontiac Lake Shooting Range

Agency: Natural Resources

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Pontiac Lake Shooting Range
(Oakland County)

The Pontiac Lake shooting range has new handgun shooting opportunities! The range now has four stations where individuals can shoot their handguns at 10-yard targets. There is a 5-foot wide crushed limestone path to the target boards, which complies with the Americans with Disabilities Act.



[See more photos of the Pontiac Lake Shooting Range.](#)

Welcome to the Department of Natural Resources-staffed Pontiac Lake shooting range. You will notice continued improvements to our range. The renovations were funded by grants through the Federal Aid in Wildlife Restoration Act, the Michigan Natural Resources Trust Fund, the Land and Water Conservation Fund and the U.S. Fish and Wildlife Service.

Location: Williams Lake Road, North of M-59, then west on Gale
7800 Gale Road
Waterford, MI 48327
248-666-5406

Hours of Operation
November 16 through September 30: 5 Days Per Week, Thursday through Monday
10 a.m. - 5 p.m.
October 1 through October 31: 6 Days Per Week, Wednesday through Monday
10 a.m. - 5 p.m.
November 1 through November 15: 7 Days Per Week
10 a.m. - 5 p.m.

Offerings
Rifle/Pistol Range (rifles, muzzle loaders, handguns and shotguns with slugs only)
15 stations @ 100 yards
9 stations @ 50 yards
10 stations @ 25 yards

Note: Paper targets with a bulls-eye pattern or a depiction of legal game may be used. No human form silhouettes or metal targets. .50 Caliber BMG and larger center fire rifles and muzzle loaders larger than .80 caliber are prohibited.

Hand Trap Range (shotguns/clay targets)
10 stations

Note: Target and low brass shells with light loads only, 7 1/4 - 9. Shooters are to bring a target thrower and clay targets.

Archery Range
1 station @ 40 yards
1 station @ 30 yards
1 station @ 20 yards
1 station @ 15 yards
Note: Shooters may bring their own targets, which must be removed when finished, or use the targets provided. No broad head arrow shooting allowed. Crossbows are allowed.

Knife Range (knives & axes)
2 stations

Range Fees

\$4.00 per shooter, age 16 and older, per day. Shooters under the age of 16 shoot free. Shooters under the age of 16 must be directly supervised by an adult.

A [Recreation Passport](#) is required for entry.

Programs and Classes

The range is available for youth groups and hunter education programs. Please contact the range at the number listed above for information and scheduling.

Good to Know

Shooters are responsible for providing their own eye and ear protection, ammunition, and targets. The shooting range has accessible shooting stations.

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D

C

Effective:[See Text Amendments]

West's Annotated California Codes Currentness

Civil Code (Refs & Annos)

Division 4. General Provisions (Refs & Annos)

Part 3. Nuisance

Title 1. General Principles (Refs & Annos)

→ → § 3482.1. Operation or use of sport shooting ranges; civil liability or criminal prosecution; noise or noise pollution nuisance

(a) As used in this section:

- (1) "Person" means an individual, proprietorship, partnership, corporation, club, or other legal entity.
- (2) "Sport shooting range" or "range" means an area designed and operated for the use of rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, or any other similar sport or law enforcement training purpose.
- (3) "Indoor shooting range" means a totally enclosed facility designed to offer a totally controlled shooting environment that includes impenetrable walls, floor and ceiling, adequate ventilation and lighting systems, and acoustical treatment for sound attenuation suitable for the range's approved use.
- (4) "Nighttime" means between the hours of 10 p.m. and 7 a.m.

(b)(1) Except as provided in subdivision (f), a person who operates or uses a sport shooting range in this state shall not be subject to civil liability or criminal prosecution in any matter relating to noise or noise pollution resulting from the operation or use of the range if the range is in compliance with any noise control laws or ordinances that applied to the range and its operation at the time construction or operation of the range was approved by a local public entity having jurisdiction in the matter, or if there were no such laws or ordinances that applied to the range and its operation at that time.

(2) Except as provided in subdivision (f), a person who operates or uses a sport shooting range or law enforcement training range is not subject to an action for nuisance, and a court shall not enjoin the use or operation of a range, on the basis of noise or noise pollution if the range is in compliance with any noise control laws or ordinances that applied to the range and its operation at the time construction or operation of the range was approved by a local public entity having jurisdiction in the matter, or if there were no such laws or ordinances that applied to the range and its operation at that time.

(3) Rules or regulations adopted by any state department or agency for limiting levels of noise in terms of decibel level which may occur in the outdoor atmosphere shall not apply to a sport shooting range exempted from liability under this section.

(c) A person who acquires title to or who owns real property adversely affected by the use of property with a permanently located and improved sport shooting range may not maintain a nuisance action with respect to noise or noise

pollution against the person who owns the range to restrain, enjoin, or impede the use of the range where there has been no substantial change in the nature or use of the range. This section does not prohibit actions for negligence or recklessness in the operation of the range or by a person using the range.

(d) A sport shooting range that is in operation and not in violation of existing law at the time of the enactment of an ordinance described in subdivision (b) shall be permitted to continue in operation even if the operation of the sport shooting range at a later date does not conform to a new ordinance or an amendment to an existing ordinance if there has been no substantial change in the nature or use of the range. Nothing in this section shall be construed to limit the authority of a local agency to enforce any term of a conditional use permit.

(e) Except as otherwise provided in this section, this section does not prohibit a local public entity having jurisdiction in the matter from regulating the location and construction of a sport shooting range after the effective date of this section.

(f) This section does not prohibit a local public entity having jurisdiction in the matter from requiring that noise levels at the nearest residential property line to a range not exceed the level of normal city street noise which shall not be more than 60 decibels for nighttime shooting. The subdivision does not abrogate any existing local standards for nighttime shooting. The operator of a sport shooting range shall not unreasonably refuse to use trees, shrubs, or barriers, when appropriate, to mitigate the noise generated by nighttime shooting. For the purpose of this section, a reasonable effort to mitigate is an action that can be accomplished in a manner and at a cost that does not impose an unreasonable financial burden upon the operator of the range.

(g) This section does not apply to indoor shooting ranges.

(h) This section does not apply to a range in existence prior to January 1, 1998, that is operated for law enforcement training purposes by a county of the sixth class if the range is located without the boundaries of that county and within the boundaries of another county. This subdivision shall become operative on July 1, 1999.

CREDIT(S)

(Added by Stats.1997, c. 880 (S.B.517), § 1. Amended by Stats.1998, c. 141 (S.B.1620), § 1, eff. July 13, 1998.)

Current with urgency legislation through Ch. 171 of 2012 Reg.Sess. and all propositions on the 6/5/2012 ballot.

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Effective: [See Text Amendments]

West's Code of Georgia Annotated Currentness

Title 41. Nuisances

Chapter 1. General Provisions (Refs & Annos)

→→ § 41-1-9. Sport shooting ranges not deemed nuisances as result of changed circumstances

(a) As used in this Code section, the term:

(1) "Person" means an individual, proprietorship, partnership, corporation, or unincorporated association.

(2) "Sport shooting range" or "range" means an area designated and operated by a person for the sport shooting of firearms and not available for such use by the general public without payment of a fee, membership contribution, or dues or by invitation of an authorized person, or any area so designated and operated by a unit of government, regardless of the terms of admission thereto.

(3) "Unit of government" means any of the departments, agencies, authorities, or political subdivisions of the state, cities, municipal corporations, townships, or villages and any of their respective departments, agencies, or authorities.

(b) No sport shooting range shall be or shall become a nuisance, either public or private, solely as a result of changed conditions in or around the locality of such range if the range has been in operation for one year since the date on which it commenced operation as a sport shooting range. Subsequent physical expansion of the range or expansion of the types of firearms in use at the range shall not establish a new date of commencement of operations for purposes of this Code section.

(c) No sport shooting range or unit of government or person owning, operating, or using a sport shooting range for the sport shooting of firearms shall be subject to any action for civil or criminal liability, damages, abatement, or injunctive relief resulting from or relating to noise generated by the operation of the range if the range remains in compliance with noise control or nuisance abatement rules, regulations, statutes, or ordinances applicable to the range on the date on which it commenced operation.

(d) No rules, regulations, statutes, or ordinances relating to noise control, noise pollution, or noise abatement adopted or enacted by a unit of government shall be applied retroactively to prohibit conduct at a sport shooting range, which conduct was lawful and being engaged in prior to the adoption or enactment of such rules, regulations, statutes, or ordinances.

CREDIT(S)

Laws 1997, p. 796, § 1.

Current through the 2012 Regular Session

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West's North Carolina General Statutes Annotated Currentness

Chapter 14. Criminal Law

Subchapter XI. General Police Regulations

Article 53C. Sport Shooting Range Protection Act of 1997

→→ § 14-409.45. Definitions

The following definitions apply in this Article:

- (1) Person.--An individual, proprietorship, partnership, corporation, club, or other legal entity.
- (2) Sport shooting range or range.--An area designed and operated for the use of rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, or any other similar sport shooting.
- (3) Substantial change in use.--The current primary use of the range no longer represents the activity previously engaged in at the range.

CREDIT(S)

Added by S.L. 1997-465, § 1, eff. Sept. 1, 1997.

The statutes and Constitution are current through S.L. 2012-55 of the 2012 Regular Session of the General Assembly.

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West's North Carolina General Statutes Annotated Currentness
Chapter 14. Criminal Law
 Subchapter XI. General Police Regulations
 Article 53C. Sport Shooting Range Protection Act of 1997
 →→ § 14-409.46. Sport shooting range protection

(a) Notwithstanding any other provision of law, a person who owns, operates, or uses a sport shooting range in this State shall not be subject to civil liability or criminal prosecution in any matter relating to noise or noise pollution resulting from the operation or use of the range if the range was in existence at least three years prior to the effective date of this Article and the range was in compliance with any noise control laws or ordinances that applied to the range and its operation at the time the range began operation.

(b) A person who owns, operates, or uses a sport shooting range is not subject to an action for nuisance on the basis of noise or noise pollution, and a State court shall not enjoin the use or operation of a range on the basis of noise or noise pollution, if the range was in existence at least three years prior to the effective date of this Article and the range was in compliance with any noise control laws or ordinances that applied to the range and its operation at the time the range began operation.

(c) Rules adopted by any State department or agency for limiting levels of noise in terms of decibel level that may occur in the outdoor atmosphere shall not apply to a sport shooting range exempted from liability under this Article.

(d) A person who acquires title to real property adversely affected by the use of property with a permanently located and improved sport shooting range constructed and initially operated prior to the time the person acquires title shall not maintain a nuisance action on the basis of noise or noise pollution against the person who owns the range to restrain, enjoin, or impede the use of the range. If there is a substantial change in use of the range after the person acquires title, the person may maintain a nuisance action if the action is brought within one year of the date of a substantial change in use. This section does not prohibit actions for negligence or recklessness in the operation of the range or by a person using the range.

(e) A sport shooting range that is operated and is not in violation of existing law at the time of the enactment of an ordinance and was in existence at least three years prior to the effective date of this Article, shall be permitted to continue in operation even if the operation of the sport shooting range at a later date does not conform to the new ordinance or an amendment to an existing ordinance, provided there has been no substantial change in use.

CREDIT(S)

Added by S.L. 1997-465, § 1, eff. Sept. 1, 1997.

The statutes and Constitution are current through S.L. 2012-55 of the 2012 Regular Session of the General Assembly.

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West's North Dakota Century Code Annotated Currentness

Title 42. Nuisances

Chapter 42-01, General Provisions

→ → § 42-01-01.1. Sport shooting range deemed not a nuisance

If a sport shooting range has been in operation for one year since the date on which it began operation as a sport shooting range, it does not become a public or private nuisance as a result of changed conditions in or around the locality of the sport shooting range. If a sport shooting range remains in compliance with noise control or nuisance abatement rules or ordinances in effect on the date on which it commenced operation, it is not subject to a civil or criminal action resulting from or relating to noise generated by the operation of the sport shooting range. A person who acquires title to real property that is adversely affected by the operation of a permanently located and improved sport shooting range constructed and initially operated before that person acquired title to the property adversely affected may not maintain a civil action on the basis of noise or noise pollution against the person who owns or operates the sport shooting range. A rule, resolution, or ordinance relating to noise control, noise pollution, or noise abatement adopted by the state or a political subdivision may not be applied to prohibit the operation of a sport shooting range, provided the conduct was lawful and being conducted before the adoption of the rule, resolution, or ordinance. Except as otherwise provided in this section, a political subdivision may regulate the location and construction of a sport shooting range after August 1, 1999. Notwithstanding any other provision of law, a county or city enacting a home rule charter under chapter 11-09.1, 40-05.1, or 54-40.4 may not regulate a sport shooting range except as otherwise provided in this section. As used in this section, sport shooting range means an area designated and operated by a person for the sport shooting of firearms or any area so designated and operated by the state or a political subdivision, regardless of the terms for admission to the sport shooting range.

CREDIT(S)

S.L. 1999, ch. 371, § 1.

Current through the 2011 Regular and Special Session

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West's Tennessee Code Annotated Currentness

Title 13. Public Planning and Housing

Chapter 3. Regional Planning (Refs & Annos)

Part 4. Regional Planning Regulations

→→ § 13-3-412. Sport shooting ranges; notice; definitions; application

(a) For any new subdivision development that is located in whole or in part within one thousand feet (1,000') of any portion of the outside boundary of any land on which is contained a **sport shooting range** that was established, by clear and convincing evidence, constructed or operated prior to the development of the subdivision, the owner of the development shall provide on any plat filed with the appropriate municipal or county official, or both, the following notice:

Sport Shooting Range Area

This property is located in the vicinity of an established **sport shooting range**. It can be anticipated that customary uses and activities at this shooting range will be conducted now and in the future. The use and enjoyment of this property is expressly conditioned on acceptance of any annoyance or inconvenience that may result from these uses and activities.

(b) As used in this section, unless the context otherwise requires:

(1) "Established" means a **sport shooting range** that is known by custom, reputation or otherwise to exist within a community or area prior to the time of the proposed subdivision development. Indicia of a **sport shooting range** being "established" are:

(A) The range is listed in the area telephone book;

(B) The range is, from time to time, advertised in the yellow pages of a telephone book, newspapers, billboards or flyers;

(C) There are directional signs on public roads, streets or highways indicating the correct route to the shooting range;

(D) The range is indicated on a road or other map of the area that predates the proposed subdivision development;

(E) The shooting range is listed with the better business bureau or chamber of commerce of the area in which it is located; or

(F) The owner of the range has a business license on file with the appropriate clerk; and

(2) "**Sport shooting range**" or "range" means an area designed and operated for the use of rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, or any other similar sport shooting.

(c) This section shall only apply to counties that have a planning commission and subdivision regulations.

CREDIT(S)

2004 Pub.Acts, c. 494, § 1, eff. April 12, 2004.

Current with laws from the 2012 Second Reg. Sess., eff. through June 30, 2012

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Effective: September 1, 2011

Vernon's Texas Statutes and Codes Annotated Currentness

Local Government Code (Refs & Annos)

Title 7, Regulation of Land Use, Structures, Businesses, and Related Activities

Subtitle C, Regulatory Authority Applying to More Than One Type of Local Government

Chapter 250, Miscellaneous Regulatory Authority of Municipalities and Counties

→ → § 250.001, Restriction on Regulation of Sport Shooting Ranges

(a) In this section:

(1) "Association" or "private club" means an association or private club that operates a sport shooting range at which not fewer than 20 different individuals discharge firearms each calendar year.

(2) "Sport shooting range" means a business establishment, private club, or association that operates an area for the discharge or other use of firearms for silhouette, skeet, trap, black powder, target, self-defense, or similar recreational shooting.

(b) A governmental official may not seek a civil or criminal penalty against a sport shooting range or its owner or operator based on the violation of a municipal or county ordinance, order, or rule regulating noise:

(1) if the sport shooting range is in compliance with the applicable ordinance, order, or rule; or

(2) if no applicable noise ordinance, order, or rule exists.

(c) A person may not bring a nuisance or similar cause of action against a sport shooting range based on noise:

(1) if the sport shooting range is in compliance with all applicable municipal and county ordinances, orders, and rules regulating noise; or

(2) if no applicable noise ordinance, order, or rule exists.

CREDIT(S)

Added by Acts 1991, 72nd Leg., ch. 145, § 1, eff. Aug. 26, 1991. Amended by Acts 2001, 77th Leg., ch. 1050, § 1, eff. Sept. 1, 2001; Acts 2011, 82nd Leg., ch. 624 (S.B. 766), § 7, eff. Sept. 1, 2011.

Current through the end of the 2011 Regular Session and First Called Session of the 82nd Legislature

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West's Vermont Statutes Annotated Currentness

Title Ten. Conservation and Development

Part 4. Fish and Wildlife Conservation

Chapter 119. Private Preserves, Propagation Farms, Private Ponds, Refuges, and Shooting Grounds

→ § 5227. Sport shooting ranges; municipal and state authority

- (a) "Sport shooting range" or "range" means an area designed and operated for the use of archery, rifles, shotguns, pistols, skeet, trap, black powder, or any other similar sport shooting.
- (b) The owner or operator of a sport shooting range, and a person lawfully using the range, who is in substantial compliance with any noise use condition of any issued municipal or state land use permit otherwise required by law shall not be subject to any civil liability for damages or any injunctive relief resulting from noise or noise pollution, notwithstanding any provision of law to the contrary.
- (c) If no municipal or state land use permit is otherwise required by law, then the owner or operator of the range and any person lawfully using the range shall not be subject to any civil liability for damages or any injunctive relief relating to noise or noise pollution.
- (d) Nothing in this section shall prohibit or limit the authority of a municipality or the state to enforce any condition of a lawfully issued and otherwise required permit.
- (e)(1) In the event that the owner, operator, or user of a range is not afforded the protection set forth in subsection (b) or (c) of this section, this subsection shall apply. A nuisance claim against a range may only be brought by an owner of property abutting the range. The range shall have a rebuttable presumption that the range does not constitute any form of nuisance if the range meets the following conditions:
- (A) the range was established prior to the acquisition of the property owned by the person bringing the nuisance claim; and
 - (B) the frequency of the shooting or other alleged nuisance activity at the range has not significantly increased since acquisition of the property owned by the person bringing the nuisance claim.
- (2) The presumption that the range does not constitute a nuisance may be rebutted only by an abutting property owner showing that the activity has a noxious and significant interference with the use and enjoyment of the abutting property.
- (f) Prior to use of a sport shooting range after dark for purposes of training conducted by a federal, state, county, or municipal law enforcement agency, the sport shooting range shall notify those homeowners and businesses with property abutting the range that have requested such notice from the range.
- (g) If any subsection of this section is held invalid, the invalidity does not affect the other subsections of this section that can be given effect without the invalid subsection, and for this purpose, the subsections of this section are severable.

CREDIT(S)

1991, No. 20; 2001, No. 61, § 71; 2005, Adj. Sess., No. 173, § 1.

The statutes are current through laws effective through June 30, 2012 and 68, 73, 75, 83, 89, 90, 92, 96-100, 103, 107, 108, 115, 117-120, 122-124, 126, 127, 129, 130, 131, 133, 134, 138, 141, 145-150, 153, 154, 157-159, 162-164, and 166-168 effective July 1, 2012 of the Adjourned Session of the 2011-2012 Vermont General Assembly (2012).

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West's Wisconsin Statutes Annotated Currentness
Municipalities (Ch. 59 to 68)
Chapter 66. General Municipality Law (Refs & Annos)
Subchapter IV. Regulation
→ → 66.0409. Local regulation of firearms

(1) In this section:

(a) "Firearm" has the meaning given in s. 167.31(1)(c).

(b) "Political subdivision" means a city, village, town or county.

(c) "Sport shooting range" means an area designed and operated for the practice of weapons used in hunting, skeet shooting and similar sport shooting.

(2) Except as provided in subs. (3) and (4), no political subdivision may enact an ordinance or adopt a resolution that regulates the sale, purchase, purchase delay, transfer, ownership, use, keeping, possession, bearing, transportation, licensing, permitting, registration or taxation of any firearm or part of a firearm, including ammunition and reloader components, unless the ordinance or resolution is the same as or similar to, and no more stringent than, a state statute.

(3)(a) Nothing in this section prohibits a county from imposing a sales tax or use tax under subch. V of ch. 77 on any firearm or part of a firearm, including ammunition and reloader components, sold in the county.

(b) Nothing in this section prohibits a city, village or town that is authorized to exercise village powers under s. 60.22(3) from enacting an ordinance or adopting a resolution that restricts the discharge of a firearm. Any ordinance or resolution that restricts the discharge of a firearm does not apply and may not be enforced if the actor's conduct is justified or, had it been subject to a criminal penalty, would have been subject to a defense described in s. 939.45.

(4)(a) Nothing in this section prohibits a political subdivision from continuing to enforce an ordinance or resolution that is in effect on November 18, 1995, and that regulates the sale, purchase, transfer, ownership, use, keeping, possession, bearing, transportation, licensing, permitting, registration or taxation of any firearm or part of a firearm, including ammunition and reloader components, if the ordinance or resolution is the same as or similar to, and no more stringent than, a state statute.

(am) Nothing in this section prohibits a political subdivision from continuing to enforce until November 30, 1998, an ordinance or resolution that is in effect on November 18, 1995, and that requires a waiting period of not more than 7 days for the purchase of a handgun.

(b) If a political subdivision has in effect on November 17, 1995, an ordinance or resolution that regulates the sale, purchase, transfer, ownership, use, keeping, possession, bearing, transportation, licensing, permitting, registration or taxation of any firearm or part of a firearm, including ammunition and reloader components, and the ordinance or resolution is not the same as or similar to a state statute, the ordinance or resolution shall have no legal effect and the political subdivision may not enforce the ordinance or resolution on or after November 18, 1995.

(c) Nothing in this section prohibits a political subdivision from enacting and enforcing a zoning ordinance that regulates the new construction of a sport shooting range or when the expansion of an existing sport shooting range would impact public health and safety.

(5) A county ordinance that is enacted or a county resolution that is adopted by a county under sub. (2) or a county ordinance or resolution that remains in effect under sub. (4)(a) or (am) applies only in those towns in the county that have not enacted an ordinance or adopted a resolution under sub. (2) or that continue to enforce an ordinance or resolution under sub. (4)(a) or (am), except that this subsection does not apply to a sales or use tax that is imposed under subch. V of ch. 77.

(6) Unless other facts and circumstances that indicate a criminal or malicious intent on the part of the person apply, no person may be in violation of, or be charged with a violation of, an ordinance of a political subdivision relating to disorderly conduct or other inappropriate behavior for loading, carrying, or going armed with a firearm, without regard to whether the firearm is loaded or is concealed or openly carried. Any ordinance in violation of this subsection does not apply and may not be enforced.

<<For credits, see Historical Note field.>>

Current through 2011 Act 286, published April 26, 2012

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END OF DOCUMENT

Exhibit

E



WHITE LAKE TWP PD
 7525 HIGHLAND RD.
 WHITE LAKE MI 48383
 248-698-4400



CFS Report

Administrative Details

CFS No 120005608	Subject C3399 OTHER MISC COM
Report Date/Time 04/29/2012 14:08	Occurrence Date/Time 04/29/2012 14:08
Location 2050 FORD RD	Call Source TELEPHONE
Reported Offense C3399 OTHER MISC COM	Verified Offense C3399 - Miscellaneous All Other
OIC ** ** (-)	OIC Contact Number
County 63 - Oakland	City 23 - White Lake Twp
Division Patrol	

Others

LAPOINTE, JACQUELINE FAYE (O-OTHER) (I-PERSON INTERVIEW) [WTBRUSSEAU (00127)]

PE:	W.Type:	Last Name LAPOINTE	First Name JACQUELINE	Middle Name FAYE	Suffix	Mr/Mrs/Ms
DOB (Age) 07/14/1986 (25)	Sex Female	Race WHITE	Ethnicity	Birth State	Birth Country	Country of Citizenship
Street Address 2050 FORD RD White Lake Twp MI 48383	County	Country of Residence	Home Phone	Work Phone		
City White Lake Twp	State MI	Zip 48383	Cell Phone 2489412540	Email		

PLOWMAN, MORRIS (O-OTHER) (I-PERSON INTERVIEW) [WTBELANGERJ (00336)]

PE:	W.Type:	Last Name Plowman	First Name Morris	Middle Name	Suffix	Mr/Mrs/Ms
DOB (Age) 12/16/1943 (68)	Sex Male	Race WHITE	Ethnicity	Birth State	Birth Country	Country of Citizenship
Street Address 3876 Teeple Lake Rd White Lake Twp MI 48383	County Oakland	Country of Residence USA	Home Phone	Work Phone		
City White Lake Twp	State MI	Zip 48383	Cell Phone 2484963654	Email		

LAPOINTE, JOSHUA KENNETH (O-OTHER) (I-PERSON INTERVIEW) [WTBELANGERJ (00336)]

PE:	W.Type:	Last Name Lapointe	First Name Joshua	Middle Name Kenneth	Suffix	Mr/Mrs/Ms
DOB (Age) 02/15/1981 (31)	Sex Male	Race WHITE	Ethnicity	Birth State	Birth Country	Country of Citizenship



Street Address 2050 Ford Rd White Lake Twp MI 48383		County Oakland	Country of Residence USA	Home Phone	Work Phone
City White Lake Twp	State MI	Zip 48383	Cell Phone 7348456620	Email	

MARINESCU, JOCELYN M.N. (O-OTHER) (C-COMPLAINANT) [WTBELANGERJ (00336)]										
PE:	W.Type:	Last Name Marinescu			First Name Jocelyn		Middle Name M.N.		Suffix	Mr/Mrs/Ms
DOB (Age)		Sex	Race	Ethnicity	Birth State	Birth Country		Country of Citizenship		
Street Address		County			Country of Residence		Home Phone		Work Phone	
City		State			Zip 48383		Cell Phone 2486611981		Email	

BURBY, JOHN (O-OTHER) (C-COMPLAINANT) [WTBELANGERJ (00336)]										
PE:	W.Type:	Last Name Burby			First Name John		Middle Name		Suffix	Mr/Mrs/Ms
DOB (Age)		Sex	Race	Ethnicity	Birth State	Birth Country		Country of Citizenship		
Street Address		County			Country of Residence		Home Phone		Work Phone	
City		State			Zip		Cell Phone		Email	



Narrative

CFS Narrative By: WTBELANGERJ (00336)

Jocelyn Marinescu contacted the WLTPD due to her neighbors shooting guns in a field. Marinescu advised Dispatcher Engle that the responsible address is 2050 Ford Rd.

I responded to 2050 Ford Rd. I spoke to Joshua Kenneth Lapointe on scene. I observed several shotguns pointed in a safe manner on scene. I also noticed that there were no houses close by where Lapointe shoots. I advised Lapointe of the complaint. Lapointe states that he does shoot on his property on Sundays. Lapointe states that he is shooting shotguns today, but will occasionally bring out pistols and rifles. Lapointe states that he has a safe backdrop, and are always aware of where people may be in the field. Lapointe states that he usually stops around 1800 hours. Lapointe then showed me the back drop. I observed this to be made up of several layers of woods in front of several barrels.

I then responded to [redacted] where I spoke to Marinescu. Marinescu states that she is concerned for the safety of her neighbors. I advised Marinescu that Lapointe did not appear to be reckless, and that he is shooting safe distance away from other houses. Marinescu disagreed with my assessment. I advised Marinescu that Lapointe has the right to shoot on his property, and that I believed that he was being safe. [redacted] I advised Marinescu that I would.

I responded to [redacted] where I spoke to Plowman. Plowman states that he is not concerned for his safety. Plowman did state that he gets tired of hearing the guns. Plowman [redacted] Plowman states [redacted] Plowman states [redacted]

I responded to [redacted] where I spoke to Burby. Burby also advised that he is not too concerned for his safety. Burby states that he does not have any problems with Lapointe shooting shotguns. Burby states [redacted] I advised Burby that I believed that Lapointe was shooting safely, however I will ask him to be extra careful with the rifle. Burby [redacted] Burby [redacted]

I responded back to [redacted] where I again spoke to Lapointe. I advised Lapointe of the concern for him shooting the rifles. Lapointe states that he will keep the rifle shooting to a minimum. I also observed the farmers that [redacted] and found them to be well out in the fields, a safe distance away. Lapointe also stated that if the farmers come close, then he stops shooting. JAB128



CFS Narrative By: WTBRUSSEAUM (00127)

On 4/29/2012 at approximately 2100 hrs, I responded to 2050 Ford Rd for a follow up report. I arrived and spoke with Josh and Jackie Lapointe. Josh states at approximately 1900 hrs, two unknown white males approached him while he was skeet shooting on his property. Josh states the subjects never entered his property. Josh states one subject complained about his shooting guns after 6pm. Josh states he informed the subject he did not have to stop shooting at 6pm. Josh states the subject was on the phone with dispatch, while he was speaking with him. Josh states dispatch informed the subject there is no time for a noise ordinance. Jackie states she was also present during the argument. Jackie states as the two subjects were turning around to leave the area, the second subject made a comment of "this will stop one way or another, good or bad." Jackie states she fears for her safety, because she did not like that comment. Jackie states she would just feel better if the incident was documented. I informed Josh and Jackie that I would be adding this information to Ofc. Belanger's original report. They were satisfied.

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WHITE LAKE TWP PD

7525 HIGHLAND RD.
 WHITE LAKE MI 48383
 248-698-4400



Case Report

Administrative Details:

CR No 120007764	Subject 5312 - Disturbing the Peace [53001]
Report Date/Time 06/10/2012 16:16	Occurrence Date/Time 06/10/2012 16:16
Location 2560 FORD RD	Call Source TELEPHONE
Dispatched Offense 5393 NOISE COMPLAINT	Verified Offense 5312 Disturbing the Peace
County 63 - Oakland	City/Twp/Village 23 - White Lake Twp
Division Patrol	

Action Requested:

- | | |
|--|--------------------------------------|
| <input type="checkbox"/> Arrest warrant | <input type="checkbox"/> Review only |
| <input type="checkbox"/> Search warrant | <input type="checkbox"/> Forfeiture |
| <input type="checkbox"/> Juvenile petition | <input type="checkbox"/> Other |



Offenses:		
5312 - Disturbing the Peace [WTBRUSSEUM (00127)]		
IBR Code / IBR Group	Offense File Class	
90C - Disorderly Conduct / B	53001 - DISORDERLY CONDUCT	
Crime Against	Location Type	Offense Completed
SO	20 - Residence/Home	Completed
Domestic Violence	Hate/Bias	
No	00 - None (No Bias)	
Using		
A-Alcohol: No C-Computer Equipment: No D-Drugs/Narcotics: No		

People:									
LAPOINTE, JOSHUA KENNETH (A-ARRESTEE) [WTBRUSSEUM (00127)]									
Last Name		First Name		Middle Name		Suffix	Mr/Mrs/Ms		
LAPOINTE		JOSHUA		KENNETH					
Aliases			Driver License#		DL State	DL Country	Personal ID#		
			L153440465121		MI				
DOB (Age)	Sex	Race	Ethnicity	Birth City & State	Birth Country		Country of Citizenship		
02/15/1982 (30)	M	WHITE							
Held For	Finger Prints	Photos	Miranda Read	Miranda Waived	Number of Warrants		FBI#		
	No	No	No	No					
Street Address		Apt #	County	Country		Home Phone		Work Phone	
2050 FORD RD									
City		State	Zip	Cell Phone		Email			
WHITE LAKE		MI	48383-3116	7348456620					

Arrest Information		
Offenses	Details	
5312 - Disturbing the Peace	Arrest Date/Time: 08/10/2012 16:46 Location: 2050 FORD RD Arrest#: 2012-658 Arrest Type: Summoned/Cited OWI Arrest/BAC: Offense Type: Misd. Count: Arresting Officer 1: WTBRUSSEUM (BRUSSEAU, MICHAEL 00127) Arresting Officer 2: WTBELANGERJ (Belanger, Joel 00336)	
MultiClearance	MultiClearance Offense	Armed With
N - Not Applicable		11 - Firearm (Type Not Stated)

ENGLISH, RICHARD FRANK (O-OTHER) (C-COMPLAINANT) [WTBRUSSEUM (00127)]									
PE:	W.Type:	Last Name		First Name		Middle Name		Suffix	Mr/Mrs/Ms
		ENGLISH		RICHARD		FRANK			
Aliases			Driver License#		DL State	DL Country	Personal ID#		
DOB (Age)	Sex	Race	Ethnicity	Birth City & State	Birth Country		Country of Citizenship		
Street Address		Apt #	County	Country		Home Phone		Work Phone	
						2484174291			
City		State	Zip	Cell Phone		Email			

FINKENAUER, HORST JOACHIM (O-OTHER) (C-COMPLAINANT) [WTBRUSSEUM (00127)]									
PE:	W.Type:	Last Name		First Name		Middle Name		Suffix	Mr/Mrs/Ms
		FINKENAUER		HORST		JOACHIM			
Aliases			Driver License#		DL State	DL Country	Personal ID#		
DOB (Age)	Sex	Race	Ethnicity	Birth City & State	Birth Country		Country of Citizenship		



Street Address		Apt #	County	Country	Home Phone	Work Phone
City		State	Zip	Cell Phone	Email	

Narrative

CR No: 120007764-001 Written By: WTBRUSSEAUM (00127) Date: 06/10/2012 05:20 PM

DISPATCHED:

To 2050 Ford Rd for a disturbing the peace complaint. I arrived at approximately 1630 hrs.

INCIDENT:

On 6/10/2012 at approximately 1600 hrs, Joshua Lapointe was firing numerous guns off while at his residence of 2050 Ford Rd. The gun shots disturbed neighbors, Horst Finkenauer and Richard English, who informed dispatch they would like the responsible issued a citation.

On 6//10/2012 at approximately 1630 hrs, I arrived on scene. I spoke with Horst Finkenauer, Joshua Lapointe and Richard English at their residences.

PERSON:

-Horst Finkenauer-

I first spoke with one of the r/p's, Finkenauer, Finkenauer states Finkenauer states Finkenauer states Finkenauer

-Joshua Lapointe-

As Ofc. Belanger and I were leaving Finkenauer's residence, I heard approximately 8-10 gun shots come from 2050 Ford Rd. I arrived at 2050 Ford and spoke with Lapointe. I asked Lapointe if he knew why we were at his residence. Lapointe states because of the guns. I informed Lapointe he needed to stop shooting the guns at this time. Lapointe states he is not willing to stop shooting until 1800 hrs. I informed Lapointe I would issuing him a citation for disturbing the peace. Lapointe states ok then. I issued Lapointe citation #12WT01113 for disturbing the peace. I informed Lapointe the shooting needed to stop. As Ofc. Belanger and I were leaving Lapointe's residence, I heard another 5 gun shots. I responded back to Lapointe's residence and again informed him the shooting needed to stop. Lapointe states the last gun shots were just to tell the neighbors he is not happy.



ARREST:

I issued Lapointe citation #12WT01113 for disturbing the peace, on scene. I did not book or process Lapointe.

VEHICLE:

None

FOLLOW-UP:

-Richard English-

After speaking with Lapointe, [REDACTED] spoke with another r/p, English. English states [REDACTED]

[REDACTED] English states [REDACTED]

[REDACTED] English states [REDACTED]

I attached the citation to the report.

DISPOSITION:

Closed via citation.

I released Finkenauer, Lapointe and English from the scene.

OTHER:

None

Exhibit

F



**DARYL P. VIZINA
COUNTY OF CHEBOYGAN
OFFICE OF THE PROSECUTING ATTORNEY**



870 S. Main Street, P.O. Box 70, Cheboygan, MI 49721
Phone: (231) 627-8450 • Fax: (231) 627-8405

ANTHONY M. DAMIANO
Chief Assistant Prosecuting Attorney

AARON J. GAUTHIER
Assistant Prosecuting Attorney

**MEMORANDUM
LEGAL OPINION**

To: Sheriff Dale Clarmont
Date: June 25, 2012
RE: Cheboygan Sportsman's Club

Date:

I have reviewed/researched the issue involving the shooting range at the Cheboygan Sportsman's Club. It is my conclusion that all individuals are prohibited from discharging any firearm within 150 yards (1450 feet) of any occupied building, dwelling, house, residence, cabin, barn, or building used in connection with a farm operation unless the shooter obtains the written permission of the owner, renter, or occupant of the property - pursuant to MCL 324.401(1). A violation of this statute is defined as a misdemeanor (Punishable by 90 days incarceration).

Additionally, the reckless, heedless, willful, or wanton use or discharge of a firearm without due caution and circumspection for the rights, safety, or property of others is a misdemeanor (Punishable by 90 days incarceration) - pursuant to MCL 752.863A. In light of the fact that the Sportsman's Club has been put on notice that stray bullets have ended up at a nearby residence, the further discharge of firearms at the range as currently setup would potentially be viewed as reckless without due caution for the safety or property of others.

In closing, it is my opinion that we strictly enforce these statutes in light of the dangers to nearby residents. Therefore, any individual discharging a firearm within 150 yards of a residence should face criminal prosecution for violating MCL 324.401(1). Likewise, any individual discharging a firearm on the shooting range as current setup should face criminal prosecution for reckless discharge of a firearm in violation of MCL 752.863A.


Daryl Vizina
Cheboygan County Prosecuting Attorney