STATE OF MICHIGAN

IN THE SUPREME COURT

PEOPLE OF THE TOWNSHIP OF ADDISON,

Plaintiff/Appellee,

vs.

JERRY KLEIN BARNHART,

Defendant/Appellant.

Supreme Court # **145144**
Court of Appeals # **301294**
Oakland County Circuit Court
Case No. 09-DA8918-AV
Hon. Leo Bowman

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

Robert Charles Davis (P40155)
Attorney for Plaintiff/Appellee,
Addison Township
10 S. Main St., Ste. 401
Mt. Clemens, MI 48043
(586) 469-4300

K. Scott Hamilton (P44095)
Dickinson Wright PLLC
Attorneys for Defendant/Appellant,
Jerry Klein Barnhart
500 Woodward Avenue, Suite 4000
Detroit, MI 48226
(313) 223-3500

John F. Muller, Jr. (P35413)
Attorney for Defendant/Appellant
33233 Woodward Avenue
Birmingham, MI 48009
(248) 645-2440

J. Kevin Winters (P59405)
Adam P Cooley (P74823)
Attorney for Defendant/Appellant
3515 Coolidge Rd., Ste.1
East Lansing, MI 48823
(517) 908-3370

145144

PLAINTIFF/APPELLEE PEOPLE OF THE TOWNSHIP OF ADDISON'S BRIEF IN OPPOSITION TO THE DEFENDANT/APPELLANT JERRY KLEIN BARNHART'S APPLICATION FOR LEAVE TO APPEAL PURSUANT TO MCR 7.302

PROOF OF SERVICE

FILED
JUN 12 2012
CORBIN R. DAVIS
CLERK
MICHIGAN SUPREME COURT

TABLE OF CONTENTS

Pages

INDEX OF AUTHORITIES vi

INDEX OF EXHIBITS viii

COUNTER STATEMENT IDENTIFYING THE OPINIONS WHICH THE DEFENDANT SEEKS LEAVE TO APPEAL TO THIS MICHIGAN SUPREME COURT ix

COUNTER-STATEMENT OF THE QUESTIONS PRESENTED x

COUNTER-STATEMENT OF THE BASIS OF JURISDICTION 1

I. BRIEF SUMMARY OF THE ARGUMENT 1

A. The SSRA. 2

II. COUNTER- STATEMENT OF THE RELEVANT AND CONTROLLING FACTS 4

A Relevant Foundational History of the Case. 4

B Barnhart I. 7

C. The District Court's Opinion on Remand. 7

D. The Circuit Court's Opinion on Remand. 8

E Barnhart II. 10

III. COUNTER-STATEMENT OF THE STANDARD OF REVIEW 12

IV. COUNTER-STATEMENT OF THE LACK OF GROUNDS FOR GRANTING THE DEFENDANT'S APPLICATION FOR LEAVE TO APPEAL 12

A. Grounds Do Not Exist for Granting the Plaintiff's Application for Leave to Appeal Pursuant to MCR 7.302(B)(1). 13

B. Grounds Do Not Exist for Granting the Plaintiff's Application for Leave to Appeal Pursuant to MCR 7.302(B)(2). 15

TABLE OF CONTENTS CONTINUED

Pages

C. Grounds Do Not Exist for Granting the Plaintiff's Application for Leave to Appeal Pursuant to MCR 7.302(B)(5). 17

1. Barnhart I and II Are Not Clearly Erroneous Because of the SSRA's Definition of the Term "Person".. 17

2. The Michigan Court of Appeals' Opinion Is Not Clearly Erroneous In Its Application of the Term "Sport". 19

3. There is No Conflict Between Barnhart I, II And The Michigan Court of Appeals' Opinion in Fraser. 20

V. LEGAL ARGUMENTS 22

A. Barnhart I Is Consistent With The SSRA. 22

1. The Term "Sport" Is Not Defined in the SSRA. 24

2. The Definition of the Term "Sport" is Equal to a Recreation or Diversion. 25

3. The Expression of the Term Sport Within the SSRA Is To The Exclusion Of All Other Uses. 25

4 The Defendants Reading of the SSRA Would Render the Use of the Term "Sport" Nugatory. 27

5 The Michigan Court of Appeals' Remand Does Not Demand that Evidence of A Receipt of a User Fee Removes the SSRA From Being a Sport Shooting Range. 28

6 The SSRA Reference to Operators in the SSRA Does Not Defeat the Remand in Barnhart I. 29

7. The SSRA's Use Of The Term Sport Shooting Range Does not Define the Term Sport. 32

TABLE OF CONTENTS CONTINUED

Pages

8. The NRA Range Book's Mention of a Budget for a Range Does Not Support The Defendant's Position.....32

B. The Defendant Is Not Entitled To Entry of Judgment In His Favor.....33

1. The Defendant Is Admittedly Not Operating the Range Pursuant To "Generally Accepted Operation Practices" as set forth in the Remand.....34

a. The Defendant Did Not Comply with Provisions of the NRA Source Book.....34

1. The Defendant Did Not Engage An Engineer To Build The Range As Required By The NRA Source Book.....35

2. The Defendant Did Not Engage A Consultant To Build The Range As Required By The NRA Source Book.....35

3. The Defendant Did Not Engage An Attorney To Advise Him On Ordinances As Required By The NRA Source Book.....35

4. The Defendant Did Not Prepare An Alternative Preliminary Site Plan As Required By The NRA Source Book.....35

5. The Defendant Did Not Submit A Site Plan To The Township As Required By The NRA Source Book.....36

6. The Defendant Does Not Have A Detailed Plan Showing All Dimensions And All Locations Of The Range As Required By The NRA Source Book.....36

7. The Defendant Did Not Prepare An Environmental Assessment As Required By The NRA Source Book.....36

8. The Defendant Does Not Have In Place A Projectile Containment Study And A Written Plan As Required By The NRA Source Book.....36

TABLE OF CONTENTS CONTINUED

Pages

9. The Defendant Does Not Have In Place A Sound Transmission Study And Sound Plan As Required By The NRA Source Book. 37

10. The Defendant Does Not Have A Written Plan For Addressing Sound For Residents Within Two Miles As Required By The NRA Source Book. 37

11. The Defendant Admits That His Facility Does Not Have Firing Line Cover As Required By The NRA Source Book. 37

12. The Defendant Does Not Have A Written Operational Maintenance Plan As Required By The NRA Source Book. 37

13. The Defendant Does Not Have A Written Sound Mitigation Plan As Required By The NRA Source Book. 38

14. The Defendant Does Not Have A Written Master Plan For The Range As Required By The NRA Source Book. 38

15. The Defendant Admits That He Does Not Do A Decibel Study Each Year For The Facility As Required By The NRA Source Book. 38

16. The Defendant Admits That The Facility Does Not Have Designated Parking Spaces. 39

17. The Defendant Has No Walkways At The Site. 39

18. The Defendant Does Not Have Handicap Access. 39

C. Barnhart II is Correct. 40

VI. CONCLUSIONS AND RELIEF REQUESTED 42

INDEX OF AUTHORITIES

Cases **Page**

Baker v. **General Motors Corp.**,
409 Mich. 639, 665; 297 N.W.2d 387, 398 (1980).....20, 27

Bradley v. **Saranac Community Schools Bd. of Educ.**
455 Mich. 285, 298-299; 565 N.W.2d 650, 656 (1997).....26

DiBenedetto v. **West Shore Hosp.**,
461 Mich. 394, 402; 605 N.W.2d 300, 304 (2000).....25

Fraser Twp. v. **Linwood-Bay Sportsman's Club**,
270 Mich. App. 289; 715 NW2d 89 (2006)..... 14, 20-24, 28

Halloran v. **Bhan**,
470 Mich. 572, 578; 683 N.W.2d 129, 132 (2004).....25

Hoste v. **Shanty Creek Management, Inc.**
459 Mich. 561, 572; 592 N.W.2d 360, 365 (1999).....26

Neal v. Wilkes,
470 Mich. 661, 665; 685 N.W.2d 648, 650 (2004).....25

People v **Barnhart**,
Unpublished Opinion Per Curiam of the Court of Appeals,
Decided [March 13, 2008] (Docket No. 272942)..... ix, 1, 7, 14, 22, 23, 24, 25, 28, 41

People of the Township of Addison v. Barnhart,
Unpublished Opinion Per Curiam of the Court of Appeals
decided [April 10, 2012] (Docket No. 301294)..... ix, 10, 11, 12, 16, 29, 41

Pittsfield Charter Tp. v. Washtenaw County,
468 Mich. 702, 712; 664 N.W.2d 193, 198 (2003).....23, 26

Statutes

MCL 691.1541.....1,18, 20, 22, 23, 29, 31, 32

MCL 691.1542.....18, 30

MCL 691.1542a.....x, 1-3, 5-11, 14, 22, 23, 24, 28, 40-42

MCL 691.1543.....7

INDEX OF AUTHORITIES CONTINUED

Page

Court Rules

MCR 7.215 .....14, 15

MCR 7.302 .....1, 12, 13, 15, 17

INDEX OF EXHIBITS

1 **People** v **Barnhart**,
Unpublished Opinion Per Curiam of the Court of Appeals,
Decided [March 13, 2008] (Docket No. 27294)

2 **People of the Township of Addison v. Barnhart**,
Unpublished Opinion Per Curiam of the Court of Appeals
decided [April 10, 2012] (Docket No. 301294)

3 52-3 District Court Opinion Dated April 14, 2010

4 Oakland County Circuit Court Opinion and Order Dated September 13, 2010

5 52-3 District Court Order Dated May 9, 2006

6 52-3 District Court Transcript Dated March 31, 2006

7 Oakland County Circuit Court Order Dated July 21, 2006

8 52-3 District Court Opinion and Order Dated December 22, 2008

9 Oakland County Circuit Court Opinion and Order Dated February 2, 2010

10 52-3 District Court Stipulated Order Dated August 4, 2008

11 Merriam Webster Dictionary Definition of Corporation

12 52-3 District Court Transcript Dated November 21, 2008 at pp. 58, 59, 62, 63, 64, 66, 67, 68, 71, 72, 77, 79, 80, 83, 84

13 52-3 District Court Transcript Dated October 9, 2008 at p. 4 – 6

COUNTER STATEMENT IDENTIFYING THE OPINIONS WHICH THE DEFENDANT SEEKS LEAVE TO APPEAL TO THIS MICHIGAN SUPREME COURT

The Defendant, Jerry Klein Barnhart ("Defendant"), seeks leave to appeal from an Opinion entered by the Michigan Court of Appeals on March 13, 2008 entitled -- **People of the Township of Addison** v. **Barnhart**, Unpublished Opinion Per Curiam of the Court of Appeals, decided [March 13, 2008] (Docket No. 272942) (**Barnhart I**) (**Exhibit 1**) and from an Opinion of the Michigan Court of Appeals entered on April 10, 2012, entitled **People of the Township of Addison v. Barnhart**, Unpublished Opinion Per Curiam of the Court of Appeals decided [April 10, 2012] (Docket No. 301294) (**Barnhart II**) (**Exhibit 2**). Both Opinions at issue are unpublished.

COUNTER-STATEMENT OF THE QUESTIONS PRESENTED

I. **DID THE MICHIGAN COURT OF APPEALS PROPERLY REVERSE THE CIRCUIT COURT AND REMAND IN BARNHART I WITH THE DIRECTION FOR THE DISTRICT COURT TO DETERMINE WHETHER THE DEFENDANT'S SHOOTING RANGE WAS A SPORT SHOOTING RANGE ENTITLED TO THE PROTECTION PROVIDED BY MCL 691.1542a?**

Plaintiff/Appellee says:	"Yes"
Defendant/Appellant says:	"No"
Michigan Court of Appeals says	"Yes"
Circuit Court says:	"No"

II. **DID THE MICHIGAN COURT OF APPEALS PROPERLY AFFIRM THE CIRCUIT COURT AND RULE IN BARNHART II THAT DEFENDANT'S SHOOTING RANGE IS NOT PROTECTED BY MCL 691.1542a AND IS, THEREFORE, SUBJECT TO LOCAL ZONING?**

Plaintiff/Appellee says:	"Yes"
Defendant/Appellant says:	"No"
Michigan Court of Appeals says	"Yes"
Circuit Court says:	"Yes"

COUNTER-STATEMENT OF THE BASIS OF JURISDICTION

This Michigan Supreme Court has jurisdiction to hear a timely filed application for leave to appeal Pursuant to MCR 7.302.

I. BRIEF SUMMARY OF THE ARGUMENT

The Defendant's appeal relates to a large-scale shooting range situated in a residential zoning district in Addison Township. In 1993, the Defendant approached Addison Township's Board at a public meeting and asked if the Defendant and only his wife could shoot their privately owned guns on their residential property. (**People** v **Barnhart**, Unpublished Opinion Per Curiam of the Court of Appeals, Decided [March 13, 2008] (Docket No. 272942).) (**Exhibit 1**) The Plaintiff/Appellee, People of Addison Township, ("Plaintiff") said "yes".

The evidence later showed that the Defendant -- then and now -- used his property for commercial shooting range purposes. The result evolved into a full blown shooting range in the middle of a residential zoning area where other citizens are now forced to endure the noise associated with military training, including long weekends of automatic weapons, SWAT training and other police/military activities.

In March 2008, the Michigan Court of Appeals reviewed the underlying law and facts and issued a very specific and narrowly tailored remand ("Remand") in Barnhart I. (**Exhibit 1**) According to the Michigan Court of Appeals, the sole issue on the Remand was the application of the Sport Shooting Ranges Act, MCL 691.1541 et seq. ("SSRA"), to the Defendant's shooting range ("Range") and, more specifically, the application of the 1994 amendment to the SSRA which added MCL 691.1542a.

A. The SSRA.

The SSRA, at MCL 691.1542a, states that a sport shooting range that is operated and not in violation of existing law at time of enactment of an ordinance shall be permitted to continue in operation even if the sport shooting range does not conform to the new ordinance.

> "Sec. 2a. (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." (M.C.L.A. 691.1542a).)

MCL 691.1542a further states that a sport shooting range in existence as of the effective date of MCL 691.1542a and operated in compliance with generally accepted operation practices shall be permitted to repair 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 and repair a nonconforming building damaged by fire, collapse, explosion, act of God.

> "(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." (M.C.L.A. 691.1542a).)

MCL 691.1542a further states that a sport shooting range in existence as of the effective date of MCL 691.1542a and operated in compliance with generally accepted operation practices shall be permitted to expand its membership, public participation, events and activities.

> "(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**." (M.C.L.A. 691.1542a).) (Emphasis Added)

The Remand states that, in order for the Defendant to be able to invoke the protection of MCL 691.1452a as it relates to expansion and increases, two (2) requirements must be satisfied. First, the Defendant must show that his Range was operating a "sport shooting range" at the relevant time. Second, the Defendant must show that he was operating the sport shooting range in compliance with "generally accepted operation practices" at the relevant time. If either Remand test fails, MCL 691.1542a does not protect the Defendant's Range against local zoning. This was the foundation of the Remand and it is consistent with the SSRA.

Applying MCL 691.1542a, the District Court acted on the Remand and found that the Range was a sport shooting range which was entitled to invoke the protection of MCL 691.1452a. (**Exhibit 3** -- District Court Opinion Dated April 14, 2010) On appeal to the Circuit Court, Judge Bowman reviewed and acted on the scope of the Remand and,

applying the uncontroverted facts by way of briefs and oral arguments on the record, ultimately reversed the District Court and ruled that the Defendant was not entitled to the protection provided by the SSRA. (**Exhibit 4** -- Circuit Court Opinion and Order Dated September 13, 2010 at p. 9) The Michigan Court of Appeals properly affirmed the Circuit Court and issued an opinion on April 10, 2012 in Barnhart II. On May 22, 2012, the Defendant filed its application for leave to appeal to this Michigan Supreme Court. This serves as the Plaintiff's Response in Opposition to the Defendant's Application for Leave to Appeal. The Defendant is not protected by the SSRA and local zoning applies. There is no basis to grant the Defendant's Application.

II. COUNTER-STATEMENT OF THE RELEVANT AND CONTROLLING FACTS

A. Relevant Foundational History Of The Case.

This case has a long history. In 1993, the Defendant constructed on his property a private range for him and his wife to use. The Defendant's use was presented to the Plaintiff at a public meeting.

> "A Mr. Barnhart did come to the Township and requested permission or informed that he was going to construct a range, and the Township had said that as long – he had presented a case that it would be for him. He's a professional shooter and that he would be testing rifles and other firearm for various different companies and that he would like to be able to use it for him and his family." (District Court Tr. Dated March 14, 2006 at p. 10.)

The Plaintiff started receiving complaints in approximately 2004 that the Range was no longer being used by the Defendant for his private use, but had been expanded to invite people to learn how to use combat arms, including automated weapons. (District Court Tr. Dated March 14, 2006 at p. 12.) In fact, the Oakland County Sheriff's Department started using the Range for target practice and other drills.

"Q Please state your name and occupation for the record.

A Sergeant Peter Burkett. . .. I'm a detective sergeant with the Oakland County Sheriff's Department. . .

Q you are familiar with the Barnhart property, correct?

A Yes sir.

Q In fact, have you been on that property before?

A Several times.

Q Could you estimate for me roughly how many times?

A Fourteen.

Q and what was your purpose in visiting that Barnhart property?

A Probably 12 of the 14 were to shoot at the range. . .

A Between the dates of – year of 1999 and 2002" (Trial Court Tr. Dated March 14, 2006 at p. 18)

The use of this **residential** property was no longer consistent with the presentation made to the Plaintiff at a public meeting. On November 22, 2005, Magistrate Johnson issued a Warrant because the Defendant was violating Plaintiff's Zoning Ordinance No. 300, by operating a full blown "**public**" shooting range without a zoning compliance permit and the establishment of use of the Range. (**Exhibit** 5 -- District Court Order Dated May 9, 2006) On January 31, 2006, the District Court arraigned the Defendant and held a pretrial. (**Exhibit 5** -- District Court Order Dated May 9, 2006) On March 14, 2006, the District Court held a Bench Trial. (**Exhibit 5** -- District Court Order Dated May 9, 2006) On March 31, 2006, the District Court issued a ruling on Defendant's Motion for a Directed Verdict. (**Exhibit 5** -- District Court Order Dated May 9, 2006) The District Court ruled that MCLA 691.1542a, subsection 2(c),

provides that a sports shooting range that is in existence as of the effective date of MCLA 691.1542a(2)(c) -- July 5, 1994 -- shall be permitted to expand its membership and opportunities for public participation. (**Exhibit 5** -- District Court Order Dated May 9, 2006) The District Court then found factually that the Range was constructed in **1993** and was, therefore, in existence prior to the effective date of the statute -- July 5, 1994. Based on this alone, the District Court granted the Defendant's Motion for Directed Verdict essentially saying that the Range is free to do as it pleases because the use pre-dates the statute. (**Exhibit 6** -- District Court Tr Dated March 31, 2006)

On April 12, 2006, the Plaintiff timely filed a Motion for Reconsideration to the District Court. On May 9, 2006, the District Court issued its Opinion and Order denying the Plaintiff's Motion for Reconsideration. (**Exhibit 5** -- District Court Order Dated May 9, 2006) On May 22, 2006, the Plaintiff appealed the District Court's Order of Dismissal entered on April 3, 2006 and the District Court's Opinion and Order dated May 9, 2006 denying the Plaintiff's Motion for Reconsideration.

On July 21, 2006, the Circuit Court rendered its Opinion and Order affirming the District Court. (**Exhibit 7** -- Circ. Ct. Opinion and Order Dated July 21, 2006) On August 10, 2006, the Plaintiff filed its Motion for Reconsideration. On August 21, 2006, the Circuit Court issued its Order denying the Plaintiff's Motion for Reconsideration. On September 11, 2006, the Plaintiff filed its delayed application for leave to appeal to the Michigan Court of Appeals. On March 28, 2007, the Michigan Court of Appeals issued an Order granting the Plaintiff's delayed application for leave to appeal limited to the issues presented in the Plaintiff's application. On March 13, 2008, the Michigan Court of Appeals issued its Opinion in Barnhart I. (**Exhibit 1**)

B. Barnhart I.

Barnhart I reversed and remanded this case for additional proceedings consistent with its opinion. (**People** v **Barnhart**, Unpublished Opinion Per Curiam of the Court of Appeals, Decided [March 13, 2008] (Docket No. 272942).) (**Exhibit 1**) The Michigan Court of Appeals set forth the following issues for the Remand:

> **(a) Whether Barnhart was operating a sport shooting range in accordance with MCL 691.1542a(2)(c);**
>
> **(b) Whether generally accepted operation practices for sport shooting ranges were followed by Barnhart in order to invoke the protection offered by MCL 691.1542a(2)(c)(i) – i.e. expansion of the shooting range to include public use; and**
>
> **(c) Whether other township zoning ordinances were violated. MCL 691.1543**

Barnhart I ruled that, under the SSRA, a "sport" shooting range is defined as a "recreational" shooting range and, that to the extent a shooting range is operated for business purposes, MCL 691.1542 a(2)(c) does not provide freedom from local zoning controls. (**People** v **Barnhart**, Unpublished Opinion Per Curiam of the Court of Appeals, Decided [March 13, 2008] (Docket No. 272942).) (**Exhibit 1**)

C. The District Court's Opinion On Remand.

On November 21, 2008, the District Court -- pursuant to the Remand -- conducted an Evidentiary Hearing. On December 22, 2008, the District Court issued an Opinion and Order which found that the Defendant was operating the Range in compliance with generally accepted operation practices and was, therefore, entitled to the protections afforded by MCL 691.1542(a). (**Exhibit 8** -- District Court Opinion and Order Dated December 22, 2008 at p.9)

D. The Circuit Court's Opinion On Remand.

On January 12, 2009, the Plaintiff filed its Claim of Appeal with the Oakland County Circuit Court ("Circuit Court"). On February 2, 2010, the Circuit Court issued an Order remanding the case back to the District Court "to examine the provisions of the SSRA as a whole and consider whether MCL 691.1542a(2) applies to local ordinances regulating shooting ranges, as directed by the Court of Appeals." (**Exhibit 9** -- Circuit Court Opinion and Order Dated February 2, 2010). On April 14, 2010, the District Court entered an opinion holding that "defendant is entitled to the protections of MCL 691.1542a(2)(C) as it relates to all ordinances, and is not subject to future zoning ordinances enacted by the Township of Addison." (**Exhibit 3** -- District Court Opinion Dated April 14, 2010).

On September 13, 2010, the Circuit Court issued its Opinion and reversed the District Court. The Circuit Court stated that the Michigan Court of Appeals remanded this case to the District Court to address whether the criteria for MCL 694.1542a were established and to examine the provisions of the SSRA as a whole. (**Exhibit 4** -- Circuit Court Opinion and Order Dated September 13, 2010 at p. 2)

The Circuit Court ruled that the Michigan Court of Appeals previously made it clear that, to invoke the provisions of MCL 691.1542a(2)(c), two (2) requirements must be satisfied. First, the Defendant must have been operating a sport shooting range and, second, the Defendant must be in compliance with generally accepted operation practices. (**Exhibit 4** -- Circuit Court Opinion and Order Dated September 13, 2010 at p. 6) In analyzing the record before the District Court, the Circuit Court ruled that the Defendant stipulated that the Defendant's property was used for both recreation and

business shooting range purposes and that both uses occurred before the SSRA was in effect.

> "On June 2, 2008, plaintiff/appellant filed a motion to enforce ordinance on remand with the district court. **The parties stipulated that defendant/appellee's property was used for both recreation and business shooting range purposes and that both uses occurred before the SSRA was in effect.**" (**Exhibit 4** -- Circuit Court Opinion and Order Dated September 13, 2010 at p. 3) (Emphasis Added)

The Circuit Court ruled that this stipulation is conclusive as to the question of business purpose.[1] (**Exhibit 4** -- Circuit Court Opinion and Order Dated September 13, 2010 at p. 9) The Circuit Court reversed the District Court finding that MCL 691.1542a(2)(c) does not provide protection from local zoning ordinances.

> "**The Court of Appeals unequivocally indicated that 'to the extent that there was testimony to suggest that defendant's operation of a shooting range was for business or commercial purposes, 691.1542a(2)(C) does not provide freedom from compliance with local zoning controls.**' *Barnhart Appeal Opinion* Therefore, because defendant/appellee uses his range for both business or commercial purposes, 'MCL 691.1542a(2)(c) does not provide freedom from compliance with local zoning controls.' Id. Therefore, this Court must reverse the district court's ruling that defendant/appellee operates a "sport shooting range" under the SSRA." (**Exhibit 4** -- Circuit Court Opinion and Order Dated September 13, 2010 at p. 9) (Emphasis Added)

The Circuit Court also ruled that, because MCL 691.1542a does not provide freedom from compliance with local zoning controls, the Defendant must comply with the Plaintiff's zoning ordinances.

> "As this Court noted earlier, defendant/appellee's range is not a "sport shooting range" within the meaning of the SSRA. . .. Therefore, defendant/appellee must comply with

[1] The Stipulated order is dated August 4, 2008 and states that the Defendant stipulates that the property was used for business shooting range purposes prior to the SSRA. (**Exhibit 10** – Stipulated Order Dated August 4, 2008)

> plaintiff/appellant's zoning ordinances. The zoning category applicable in this case – agricultural – does not permit defendant/appellee's shooting range. See Barnhart Appeal Opinion.
> Accordingly, the rulings of the district court are REVERSED." (**Exhibit 4** -- Circuit Court Opinion and Order Dated September 13, 2010 at p. 10) (Emphasis Added)

On November 24, 2010, the Defendant filed a Delayed Application for Leave to Appeal to the Michigan Court of Appeals. The Michigan Court of Appeals granted the Defendant's Delayed Application for Leave to Appeal. On April 10, 2012, the Michigan Court of Appeals issued its Opinion in Barnhart II.

E. Barnhart II.

Barnhart II noted that the case had returned after the remand. (**People of Tp. of Addison** v. **Barnhart**, Unpublished Opinion Per Curiam of the Court of Appeals, decided [April 10, 2012] (Docket No. 301294).) (**Exhibit 2**) According to the Michigan Court of Appeals, the Circuit Court properly found that the law of the case from Barnhart I was clear that, to the extent that there was testimony to suggest that the 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. (**People of Tp. of Addison** v. **Barnhart**, Unpublished Opinion Per Curiam of the Court of Appeals, decided [April 10, 2012] (Docket No. 301294).) (**Exhibit 2**)

Barnhart II noted that the Defendant had stipulated that, prior to the effective date of the pertinent part of the SSRA, the Range was used for recreational and **business purposes**. On the basis of this stipulation and other evidence, the Circuit Court concluded that the Range was not a sport shooting range and the SSRA did not protect the Range from enforcement of local zoning controls.

> **"The circuit court noted the parties' stipulation that prior to the effective date of the pertinent portion of the SSRA, defendant's range was used for recreational and business purposes.** On the basis of the **stipulation and other evidence**, the circuit court concluded that defendant's range was **not a sport shooting range within the meaning of the pertinent portion of the SSRA**. The circuit court decided that because the range was not a sport shooting range, the SSRA did not protect the range from enforcement of local zoning controls." (**People of Tp. of Addison** v. **Barnhart**, Unpublished Opinion Per Curiam of the Court of Appeals, decided [April 10, 2012] (Docket No. 301294).) (Emphasis Added) **(Exhibit 2)**

Barnhart II also ruled that the Circuit Court correctly found that, as of the effective date of MCL 691.1542a, the Defendant was operating the Range for a business purpose and, as a result, the Range was not a sport shooting range within the meaning of the SSRA.[2]

> "**The circuit court correctly recognized the undisputed facts** that established defendant was operating the range for both **recreational and business purposes** as of the effective date of MCL 691.1542a. On the basis of the undisputed facts, **the circuit court correctly concluded that defendant's range was not a sport shooting range** within the meaning of the SSRA." (**People of Tp. of Addison** v. **Barnhart**, Unpublished Opinion Per Curiam of the Court of Appeals, decided [April 10, 2012] (Docket No. 301294).) (Emphasis Added) **(Exhibit 2)**

---

[2] Barnhart II, also noted that, even before the Defendant constructed the Range, he indicated his intent to use it to test firearms for various companies. This complied with the Defendant's acknowledgment that there were commercial purposes for the range.

> "... the record before us establishes that even before defendant constructed the range, he indicated his intent to use it to test firearms for various companies. In addition, defendant acknowledged that prior to the effective date of the statute, he received payment for instructing a student on the range. Given that defendant acknowledged these business or commercial purposes for the range, the law of the case required the conclusion that defendant's range was not a sport shooting range within the meaning of the SSRA." (**Addison** v. **Barnhart**, Unpublished Opinion Per Curiam of the Court of Appeals, decided [April 10, 2012] (Docket No. 301294).)

After coming to this conclusion, Barnhart II affirmed the Circuit Court.

III. COUNTER-STATEMENT OF THE STANDARD OF REVIEW

As correctly noted in Barnhart II, the application of a statutory definition to undisputed facts is a legal issue which requires de novo review.

> "**Defendant's challenge on appeal is to the circuit court's application of the statutory definition to the undisputed facts, not to any specific factual resolution by the district court**. Accordingly, the issue of whether defendant's range was a sport shooting range within the meaning of the SSRA, ***is a legal issue, which the circuit court could properly review de novo***. We find no error in the circuit court's review." (**People of Tp. of Addison** v. **Barnhart**, Unpublished Opinion Per Curiam of the Court of Appeals, decided [April 10, 2012] (Docket No. 301294).) (Emphasis Added) (**Exhibit 2**)

The facts are not in dispute. In fact, the Defendant stipulated to the commercial purpose. So the issue on appeal is actually the application of given facts to the language of a statute.

IV. STATEMENT OF THE LACK OF GROUNDS FOR GRANTING THE DEFENDANT'S APPLICATION FOR LEAVE TO APPEAL

Pursuant to MCR 7.302(B), an application for leave to appeal to this Michigan Supreme Court must state the grounds upon which this Michigan Supreme Court should grant leave to appeal. Specifically, MCR 7.302(B) sets forth 6 enumerated examples of when such grounds will be considered by this Michigan Supreme Court:

> "**(B) Grounds.** The application must show that
>
> (1) the issue involves a substantial question as to the validity of a legislative act;
>
> (2) the issue has significant public interest and the case is one by or against the state or one of its agencies or subdivisions or by or against an officer of the state or one of its agencies or subdivisions in the officer's official capacity;

(3) the issue involves legal principles of major significance to the state's jurisprudence;

(4) in an appeal before decision by the Court of Appeals,

(a) delay in final adjudication is likely to cause substantial harm, or

(b) the appeal is from a ruling that a provision of the Michigan Constitution, a Michigan statute, a rule or regulation included in the Michigan Administrative Code, or any other action of the legislative or executive branch of state government is invalid;

(5) in an appeal from a decision of the Court of Appeals, the decision is clearly erroneous and will cause material injustice or the decision conflicts with a Supreme Court decision or another decision of the Court of Appeals; or

(6) in an appeal from the Attorney Discipline Board, the decision is erroneous and will cause material injustice." (MCR 7.302)

Here, the Defendant argues that grounds exist for granting their Application under MCR 7.302(B)(1), (2) and (5). The Defendant is wrong. Grounds do not exist under MCR 7.302(B)(1), (2) and (5) to grant the Defendant's Application.

A. Grounds Do Not Exist For Granting The Plaintiff's Application For Leave To Appeal Pursuant To MCR 7.302(B)(1).

The Defendant asserts that grounds exist for granting their Application under MCR 7.302(B)(1). As set forth above, MCR 7.302(B)(1) states that grounds can exist to grant an application when the issue involves a substantial question as to the validity of a legislative act.

"**(B) Grounds.** The application must show that

(1) the issue involves a substantial question as to the validity of a legislative act;" (MCR 7.302(B)(1).)

Here, the Defendant argues that the Michigan Court of Appeals Opinion -- ostensibly in Barnhart I -- somehow invalidates the SSRA by allegedly making it inapplicable to

almost all sport shooting ranges in Michigan. This argument is not true. Barnhart I did not invalidate the SSRA. Barnhart I is an unpublished opinion and, as such, does not represent binding precedent. (See: MCR 7.215)

Second, the Defendant's interpretation of Barnhart I is wrong. The Defendant argues that, pursuant to the Remand in Barnhart I, any evidence suggesting that a range receives any money takes the shooting range out of the definition of a sport shooting range. This is a blatant misrepresentation.

> "The Court of Appeals' decision makes the SSRA inapplicable to any range that charges a user fee, provides firearm training or lessons, or does anything that involves the exchange of money or "suggests" that it is operating for a business or commercial purpose." **(Defendant's Application at p. 5)**

The Remand in Barnhart I did not direct that the District Court conduct a hearing to determine whether the Defendant received any money. Instead, the Remand directed the District Court to conduct a hearing and determine whether there is evidence of a "business or commercial purpose" for the Range.

> "**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." **(People v Barnhart,** Unpublished Opinion Per Curiam of the Court of Appeals, Decided [March 13, 2008] (Docket No. 272942) at p. 4.) **(Emphasis Added.) (Exhibit 1)**

On Remand, the Defendant stipulated that there was a business or commercial purpose. The Remand is completely consistent with the SSRA plain language and does not invalidate the SSRA. The Remand supports and buttresses the plain language of the SSRA and its application to sport shooting ranges. Barnhart I does not render the SSRA inapplicable to any range that charges a user fee. Grounds do not exist for granting the

Defendant's Application pursuant to MCR 7.302(B)(1) as rulings in Barnhart I do not invalidate the SSRA.

B. <u>Grounds Do Not Exist for Granting The Plaintiff's Application For Leave To Appeal Pursuant To MCR 7.302(B)(2).</u>

The Defendant asserts that grounds exist for granting their Application under MCR 7.302(B)(2). As stated above, MCR 7.302(B)(2) states that grounds can exist to grant an application for leave to appeal where the issue has significant public interest and the case is one by or against the state or one of its agencies or subdivisions.

> "**(B) Grounds.** The application must show that . . .
>
> (2) the issue has significant public interest and the case is one by or against the state or one of its agencies or subdivisions or by or against an officer of the state or one of its agencies or subdivisions in the officer's official capacity;

Barnhart I and Barnhart II are both unpublished. This fact is significant because MCR 7.215(C)(1) states that an unpublished opinion is not precedentially binding under the rule of stare decisis. This applies here. The Defendant never sought to have the opinions published.

> **"(C) Precedent of Opinions.**
> (1) An unpublished opinion is not precedentially binding under the rule of stare decisis. A party who cites an unpublished opinion must provide a copy of the opinion to the court and to opposing parties with the brief or other paper in which the citation appears." (MCR 7.215)

As a result, Barnhart I and Barnhart II are not binding on other shooting ranges throughout the state of Michigan.

The fact pattern presented in the Defendant's Application is very unique and not likely to be repeated. As stated in the Record, even before the Defendant constructed the Range, he had an intent to use it to <u>test firearms</u> for <u>various companies</u>. In addition, the

Defendant acknowledged that, prior to the effective date of the amendment to the SSRA, he received payment for instructing a student on the Range.

> "Moreover, the record before us establishes that **even before defendant constructed the range, he indicated his intent to use it to test firearms for various companies**. In addition, defendant acknowledged that prior to the **effective date of the statute, he received payment for instructing a student on the range**. Given that defendant acknowledged these business or commercial purposes for the range, the law of the case required the conclusion that defendant's range was not a sport shooting range within the meaning of the SSRA." ." (**People of Tp. of Addison** v. **Barnhart**, Unpublished Opinion Per Curiam of the Court of Appeals, decided [April 10, 2012] (Docket No. 301294).) (Emphasis Added) **(Exhibit 2)**

After the enactment of the amendment to the SSRA, the Range was used by law enforcement agencies for training including automatic weapon fire. In fact, the Record is clear that the Oakland County Sheriff's Department used the Range for target practice and other drills. Oakland County Sheriff Sergeant Peter Burkett testified that he was out shooting at the Range on 14 different occasions. (District Court Tr. Dated March 14, 2006 at p. 18)

As a result, the facts presented in the instant case are very unique and do not impact the State as a whole. In order to trigger any analysis of this Case and its rulings, another case would have to present facts where:

- A shooting range was in existence prior to the enactment of the amendments to the SSRA;
- Prior to the enactment of the amendments to the SSRA, the range was used by the operator to test firearms for various companies that manufacture those firearms;
- Prior to the enactment of the amendments to the SSRA, the range was used for teaching shooters;

- The operator of the range stipulates that, prior to the enactment of the amendments to the SSRA, the range was used for a business/commercial purpose;

- After the enactment of the SSRA, the range was used by law enforcement agencies for training and for automatic weapons fire; and

- After the enactment of the SSRA, the range was used to offer classes in shooting.

The chances of another range having the same set of facts which surround the instant case are remote. As a result, the impact of the Barnhart I and Barnhart II Opinions on this State is minimal at best and does not merit the granting of the Defendant's Application.

C Grounds Do Not Exist For Granting The Plaintiff's Application For Leave To Appeal Pursuant To MCR 7.302(B)(5).

The Defendant asserts that grounds exist for granting their Application under MCR 7.302(B)(5). As set forth above, MCR 7.302(B)(5) states that grounds can exist to grant an application when the decision of the Michigan Court of Appeals is clearly erroneous and will cause material injustice or where the decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

1. Barnhart I and II Are Not Clearly Erroneous Because of the SSRA's Definition of the Term "Person".

The Defendant argues that Barnhart I and II are clearly erroneous because the SSRA defines a "Person" who owns operates or uses a sport shooting range to mean an individual, proprietorship, a partnership, corporation, club, governmental entity or other legal entity.

> "The Court of Appeals decisions are clearly erroneous. The SSRA expressly defines a "person" who "owns or operates or uses a sport shooting range" to mean "an individual, proprietorship, partnership, corporation, club, governmental entity, or other legal

> entity" MCL 691.1541(c) (emphasis added)." (Defendant's Application at p. 6)

The Defendant then makes the leap that, because the SSRA defines an operator of a sport shooting range to include a partnership or a corporation, a sport shooting range can be operated for a commercial purpose.

> "The Court of Appeals holding that a shooting range is not within the SSRA's protection if any aspect of its operation is "commercial" or "business" is contrary to the SSRA's express recognition that sport shooting ranges can be owned and operated as proprietorships, partnerships, and corporations." (Defendant's Application at p. 6)

This argument has no logic. The SSRA states that, a person who owns or operates or uses a sport shooting range that conforms to generally accepted operation practices in this state, is not subject to civil liability or criminal prosecution in any matter relating to noise or noise pollution arising out of the operation of the range if the range is in compliance with any noise control laws or ordinances that applied to the range at the time of construction. (See: MCL 691.1542) The SSRA further states that, a person who owns, operates, or uses a sport shooting range that conforms to generally accepted operation practices, is not subject to an action for nuisance. (See: MCL 691.1542) The SSRA defines a "Person" as an individual, proprietorship, partnership, corporation, club, governmental entity or other legal entity. (See: MCL 691.1541)

As a result, an individual, proprietorship, partnership, corporation, club, governmental entity or other legal entity that owns or operates or uses a sport shooting range that conforms to generally accepted operation practices in this state may not be subject to civil liability or criminal prosecution in any matter relating to noise or noise pollution arising out of the operation of the range. Merely because a sport shooting

range might be operated by a partnership corporation does not mean that the range can not be recreational. A partnership could just as easily operate a recreational shooting range as an individual could operate it. In fact, given the nature of a shooting range and the risk of injuries caused by the use of such firearms, a cautious individual may wish to set up a corporation to operate the range in order to avoid potential civil liability for injuries at the range.

2. The Michigan Court Of Appeals' Opinion Is Not Clearly Erroneous In Its Application Of The Term "Sport".

Next, the Defendant argues that Barnhart I is clearly erroneous because the SSRA does not distinguish between sport and commercial. The Defendant is flatly wrong. As correctly noted by the Michigan Court of Appeals, the SSRA does not define the term "Sport". As an undefined term, the Michigan Court of Appeals properly looked to the dictionary for a definition of the term "Sport". The Michigan Court of Appeals recognized that the Random House dictionary defines the term "Sport" as a recreation or diversion. The expression of the term "Sport" within the SSRA is to the exclusion of all other uses. Under the well-established doctrine of expressio unius est exclusio alterius, the expression of one thing suggests the exclusion of all others. As a result, the express mention of the term "Sport" in the SSRA is to the exclusion of all other types of shooting ranges. The antithesis of sport is business or commercial. Therefore, as properly noted by the Michigan Court of Appeals, to the extent that there is testimony to suggest that the Defendant's Operation of the Range was for a business or commercial purpose the Range the SSRA does not apply.

In reality, the Defendant's argument that "Sport" can apply to business or commercial purposes, destroys the meaning of the term "Sport" and renders its use in the

SSRA meaningless. Essentially, what the Defendant proffers is that the SSRA applies to all shooting ranges, including commercial shooting ranges. This interpretation of the SSRA renders the use of the term "Sport" in the SSRA without meaning. As this Michigan Supreme Court has ruled, every word of a statute should be given meaning and no word should be treated as surplusage or rendered nugatory. (See: **Baker** v. **General Motors Corp.**, 409 Mich. 639, 665, 297 N.W.2d 387, 398 (1980).) Here, the Defendant's proffered interpretation of the SSRA renders the term "Sport" meaningless and, as a result, the proposed interpretation must be rejected.

In addition, the Defendant argues that the SSRA has a definition for a sport shooting range or "range". **(Defendant's Application at p. 19)** The SSRA defines a range to mean an area designed and operated for the use of archery rifles, shotguns, pistols, silhouettes, skeet, trap, black powder or any other similar **sport shooting**. (See: MCL 691.1541) However, noticeably absent from this description, is any reference to commercial shooting such as the testing of weapons for weapons manufacturers. The SSRA does not state that a sport shooting range means "an area designed and operated for the commercial testing of firearms for weapons manufacturers". Such commercial shooting would never fit within the definition of sport shooting.

3. There Is No Conflict Between Barnhart I, II And The Michigan Court of Appeals' Opinion In Fraser.

The Defendant argues that Barnhart I and II are in conflict with the Michigan Court of Appeals' Opinion in **Fraser Twp.** v. **Linwood-Bay Sportsman's Club**, 270 Mich. App. 289; 715 NW2d 89 (2006). The Defendant is wrong. There is no conflict between Barnhart I, II and **Fraser**. In **Fraser**, the plaintiff filed suit seeking an injunction to prevent the defendant from operating an outdoor pistol or rifle range. The

Fraser plaintiff argued that the defendant was proceeding with plans to construct the outdoor range. (**Fraser Twp**. v. **Linwood-Bay Sportsman's Club,** 270 Mich.App. 289, 290-291, 715 N.W.2d 89, 90 (2006).) The Michigan Court of Appeals, in **Fraser**, noted that the issue was whether the SSRA preempted all township regulation of sport shooting ranges. (**Fraser Twp**. v. **Linwood-Bay Sportsman's Club,** 270 Mich.App. 289, 292-293, 715 N.W.2d 89, 91 (2006).)

The Michigan Court of Appeals, in **Fraser,** ruled that the SSRA does not free sport shooting range operators from local zoning controls regarding the construction of new facilities. Instead, the SSRA allows for more use of existing facilities to support more membership, participation events and activities. (**Fraser Twp**. v. **Linwood-Bay Sportsman's Club,** 270 Mich. App. 289, 297, 715 N.W.2d 89, 94 (2006).)

The Michigan Court of Appeals found, in **Fraser,** that the trial court did not clearly err in finding that the range was a new facility and subject to the injunction.

> "On the basis of Herman's testimony, we conclude that the trial court did not clearly err in finding that the range subject to the injunction was a new facility that was not in existence when the Act was passed. And, as discussed above, the trial court did not err in concluding that the Act "does NOT mean that a sport shooting range may build an *entirely new* structure, building and/or facility on its property," even if defendant claimed that it needed the new range to "expand and/or increase membership" or "events and activities." (**Fraser Twp**. v. **Linwood-Bay Sportsman's Club**, 270 Mich.App. 289, 300; 715 N.W.2d 89, 96 (2006).)

While the Michigan Court of Appeals' Opinion in **Fraser** is interesting, there is no finding in **Fraser** that where a range has a commercial purpose that the SSRA still applies. There is no finding in **Fraser** that, prior to the enactment of the amendment to the SSRA, that the defendant in **Fraser** tested weapons at the range for various weapons manufacturers. In **Fraser**, the Michigan Court of Appeals did not rule that the definition

of SSRA included a range operated with a commercial purpose such as the testing of firearms. There is no conflict between the Michigan Court of Appeals' opinions in Barnhart I, II and **Fraser** and the Defendant's arguments to the contrary are disingenuous.

V. LEGAL ARGUMENTS

A. Barnhart I Is Consistent With The SSRA.

Barnhart I notes that the SSRA was originally enacted in response to problems that arose as urban sprawl brought new development into rural areas creating conflicts between existing shooting ranges and their new neighbors.

> "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)." (**People of the Township of Addison** v. **Barnhart**, Unpublished Opinion Per Curiam of the Court of Appeals, decided [March 13, 2008] (Docket No. 272942).) (**Exhibit 1**) (Emphasis Added)

Barnhart I found that the SSRA does not free sport shooting range operators from local zoning controls regarding the construction of new facilities. Barnhart I further found that the SSRA provides that ranges may allow more use of existing facilities to support more membership, participation, events and activities.

Barnhart I then ruled that, to invoke the provisions of the SSRA at MCL 691.1542a(2)(c), two requirements must be satisfied. First, the Defendant must have been operating a sport shooting range and, second, the range must be in compliance with generally accepted operation practices.

> "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).**" (**People of the Township of Addison** v. **Barnhart**, Unpublished Opinion Per Curiam of the Court of Appeals, decided [March 13, 2008] (Docket No. 272942).) (Emphasis Added) (**Exhibit 1**)

With regard to the first requirement, Barnhart I recognized that MCL 691.1541(d) defines a Sport Shooting Range as an area designed and operated for the use of archery rifles shotguns pistols silhouettes skeet or any other similar sport shooting. (**Exhibit 1**) Barnhart I further noted that there is no definition for the term sport. However, Barnhart I properly noted that, the term sport, has been defined as an athletic activity or a diversion or recreation.

> "**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)." (**People of the Township of Addison** v. **Barnhart**, Unpublished Opinion Per Curiam of the Court of Appeals, decided [March 13, 2008] (Docket No. 272942).) (Emphasis Added) (**Exhibit 1**)

As a result, Barnhart I ruled that the SSRA applies to a "recreational shooting range" to the exclusion of all other types of shooting ranges.

> "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. 702, 712, 664 N.W.2d 193 (2003) ("the expression of one thing suggests the exclusion of all others")." (**People of the Township of Addison** v. **Barnhart**, Unpublished Opinion Per Curiam of the Court of Appeals, decided [March 13, 2008] (Docket No. 272942).) (Emphasis Added) (**Exhibit 1**)

Barnhart I then ruled that, to the extent that there was testimony to suggest that defendant's operation of a shooting range was for business or commercial purpose, MCL 691.1542a(2)(C) does not provide freedom from zoning compliance.

> "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." (**People of the Township of Addison** v. **Barnhart**, Unpublished Opinion Per Curiam of the Court of Appeals, decided [March 13, 2008] (Docket No. 272942).) (Emphasis Added) **(Exhibit 1)**

The Defendant challenges the Remand in Barnhart I and argues that the SSRA does not differentiate between sport and commercial purpose. (Defendant's Application at p. 4) The Defendant is wrong. The SSRA's use of the term "Sport" requires an examination into whether a range has a commercial purpose.

1. The Term "Sport" Is Not Defined In The SSRA.

As this Michigan Supreme Court knows, 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.

> "**[O]ur primary task in construing a statute, is to discern and give effect to the intent of the Legislature.**" *Sun Valley Foods Co. v. Ward,* 460 Mich. 230, 236, 596 N.W.2d 119 (1999). "**The words of a statute provide 'the most reliable evidence of its intent** ....' " *Id.,* quoting *United States v. Turkette,* 452 U.S. 576, 593, 101 S.Ct. 2524, 69 L.Ed.2d 246 (1981)." (**Neal v. Wilkes**, 470 Mich. 661, 665, 685 N.W.2d 648, 650 (2004).) (Emphasis Added)

According to this Michigan Supreme Court, if the language contained in a statute is unambiguous, appellate courts presume that the Legislature intended the plainly expressed meaning, and further judicial construction is neither permitted nor required.

> "**We begin by examining the plain language of the statute. Where that language is unambiguous, we presume that the Legislature intended the meaning clearly expressed-no further judicial construction is required** or permitted, and the statute must be enforced as written." (**DiBenedetto** v. **West Shore Hosp.**, 461 Mich. 394, 402, 605 N.W.2d 300, 304 (2000).) (Emphasis Added)

This Michigan Supreme Court has further ruled that the terms used in a statute must be given their plain and ordinary meaning. Moreover, it is proper to consult a dictionary for the definitions of undefined terms.

> "**Undefined statutory terms must be given their plain and ordinary meanings, and it is proper to consult a dictionary for definitions.**" (**Halloran** v. **Bhan**, 470 Mich. 572, 578, 683 N.W.2d 129, 132 (2004).) (Emphasis Added)

2. **The Definition Of The Term "Sport" Is Equal To A Recreation Or Diversion.**

As correctly noted in Barnhart I, the SSRA does not define the term "Sport". As an undefined term, Barnhart I properly looked to the dictionary for a definition of the term "Sport". Barnhart I recognized that the Random House dictionary defines the term "Sport" as a recreation or diversion.

> "**However, the term "sport" has been defined as an "athletic activity" or a "diversion [or] recreation." Random House Webster's College Dictionary** (1997)." (**People of the Township of Addison** v. **Barnhart**, Unpublished Opinion Per Curiam of the Court of Appeals, decided [March 13, 2008] (Docket No. 272942).) (Emphasis Added) (**Exhibit 1**)

3. **The Expression Of The Term Sport Within the SSRA Is To The Exclusion Of All Other Uses.**

The expression of the term "Sport" within the SSRA is to the exclusion of all other uses. This Michigan Supreme Court has often recognized the doctrine of expressio

unius est exclusio alterius. Underneath the well-established doctrine of expressio unius est exclusio alterius, the expression of one thing suggests the exclusion of all others.

> **"In response to this argument, which is properly characterized as applying the doctrine of expressio unius est exclusio alterius, the expression of one thing suggests the exclusion of all others"** (**Pittsfield Charter Tp. v. Washtenaw County,** 468 Mich. 702, 712, 664 N.W.2d 193, 198 (2003).) (Emphasis Added)

According to this Michigan Supreme Court, the express mention in a statute of one thing implies the exclusion of all other similar things.

> "The conclusion that the subsection supersedes the common law is based on the doctrine of ***expressio unius est exclusio alterius*** ("**express mention in a statute of one thing implies the exclusion of other similar things.**" *Stowers v. Wolodzko,* 386 Mich. 119, 133, 191 N.W.2d 355 [1971]). In this case, the express mention of some of the factors of the economic realities test in § 161(1)(d) implies the exclusion of the factors not mentioned." (**Hoste** v. **Shanty Creek Management, Inc**. 459 Mich. 561, 572, 592 N.W.2d 360, 365 (1999).)
>
> * * *
>
> "This Court recognizes the maxim ***expressio unius est exclusio alterius;*** that the **express mention in a statute of one thing implies the exclusion of other similar things.**[FN28] Because the Legislature realized that the **FOIA could require the disclosure of the personnel records of law enforcement personnel**, the conclusion that the Legislature rejected *299 the opportunity to extend this exemption to other public employees is inescapable. Additionally, accepting the appellants' interpretation of the FOIA would render the law **enforcement exemption redundant, thus violating another rule of statutory construction: namely, that no part of a statute should be treated as mere surplusage or rendered nugatory.**" (**Bradley** v. **Saranac Community Schools Bd. of Educ**. 455 Mich. 285, 298-299, 565 N.W.2d 650, 656 (1997).)

As a result, under the doctrine of expressio unius est exclusio alterius, the express mention of the term "Sport" in the SSRA is to the exclusion of all other types of shooting ranges. The antithesis of sport is business or commercial. Therefore, as properly noted

by Barnhart I, to the extent that there is testimony to suggest that the Defendant's Operation of the Range was for a business or commercial purpose the Range the SSRA does not apply.

4 The Defendant's Reading Of The SSRA Would Render the Use Of The Term "Sport" Nugatory.

The Defendant argues that the SSRA can apply to commercial or business purposes. However, the Defendant's argument that "Sport" can apply to business or commercial purposes destroys the meaning of the term "Sport" and renders its use in the SSRA meaningless. Essentially, what the Defendant proffers is that the SSRA applies to all shooting ranges including commercial shooting ranges. It is hard to imagine a shooting range which would not be covered by the SSRA under the Defendant's proffered interpretation. As a result, the Defendant's interpretation of the SSRA renders the term "Sport" nugatory. As this Michigan Supreme Court has ruled, every word of a statute should be given meaning and no word should be treated as surplusage or rendered nugatory.

> "**Every word of a statute should be given meaning and no word should be treated as surplusage or rendered nugatory if at all possible.**" (**Baker** v. **General Motors Corp.**, 409 Mich. 639, 665, 297 N.W.2d 387, 398 (1980).) (Emphasis Added)

Here, the Defendant's proffered interpretation of the SSRA renders the term "Sport" meaningless and, as a result, the proposed interpretation must be rejected.

5. **The Michigan Court Of Appeals' Remand Does Not Demand That Evidence Of A Receipt Of A User Fee Removes The SSRA From Being A Sport Shooting Range**.

The Defendant argues that, under the Remand in Barnhart I, any evidence suggesting that a range receives a single dollar takes the shooting range out of the definition of a sport shooting range.

> "The Court of Appeals' decision makes the SSRA inapplicable to any range that charges a user fee, provides firearm training or lessons, or does anything that involves the exchange of money or "suggests" that it is operating for a business or commercial purpose." (Defendant's Application at p. 5)

However, a careful reading of the Remand in Barnhart I reveals that Barnhart I did not direct that the receipt of a dollar represents evidence of a business or commercial purpose. This is an important distinction. The Remand in Barnhart I directed the District Court to conduct a hearing and determine whether there is evidence of a business or commercial purpose for the Range. There was no direction to look for a money exchange.

> "**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." (**People v Barnhart,** Unpublished Opinion Per Curiam of the Court of Appeals, Decided [March 13, 2008] (Docket No. 272942) at p. 4.) **(Emphasis Added.) (Exhibit 1)**

Barnhart I did not further rule that this evidence of a business or commercial purpose will be demonstrated if there is testimony suggesting that anyone paid any money to use the Range.[3] Instead, the Remand in Barnhart I was to determine if there

[3] The Defendant's attempt to graft this additional language into the Remand in Barnhart I even though the language does not appear anywhere within the Remand. The Defendant

was testimony to suggest that the Defendant's operation of the Range was for a business or commercial purpose. On Remand, the Defendant stipulated that there was a recreational and a business purpose to the Range. Moreover, the Defendant admitted that it was his intent to test firearms at the range for various companies. This is not recreational shooting.

> "Moreover, the record before us establishes that even before defendant constructed the range, he indicated his intent to use it to test firearms for various companies. In addition, defendant acknowledged that prior to the effective date of the statute, he received payment for instructing a student on the range." (**People of Tp. of Addison** v. **Barnhart**, Unpublished Opinion Per Curiam of the Court of Appeals, decided [April 10, 2012] (Docket No. 301294).) (**Exhibit 2**)

The Remand in Barnhart I is consistent with the SSRA.

6 The SSRA Reference To Operators In The SSRA Does Not Defeat The Remand in Barnhart I.

The Defendant argues that Barnhart I is clearly erroneous because the SSRA defines a "Person" as an individual, a partnership, or a corporation.

> "The Court of Appeals decisions are clearly erroneous. **The SSRA expressly defines a "person" who "owns or operates or uses a sport shooting range" to mean** "an individual, proprietorship, partnership, **corporation**, club, governmental entity, or other legal entity" MCL 691.1541(c) (emphasis added)." (Defendant's Application at p. 6) (Emphasis Added)

The Defendant then makes the unexpected leap that, because the SSRA defines an operator of a sport shooting range to include a partnership or a corporation, that a sport shooting range can be run for a commercial purpose.

---

seeks to add this language in order to artificially bolster its position that the Remand in Barnhart I was somehow inconsistent with the SSRA.

> "The Court of Appeals holding that a shooting range is not within the SSRA's protection if any aspect of its operation is "commercial" or "business" is contrary to the SSRA's express recognition that sport shooting ranges can be owned and operated as proprietorships, partnerships, and corporations." **(Defendant's Application at p. 6)**

This argument is wrong. The SSRA states that, a person who owns or operates or uses a sport shooting range that conforms to generally accepted operation practices in this state, is not subject to civil liability or criminal prosecution in any matter relating to noise or noise pollution arising out of the operation of the range if the range is in compliance with any noise control laws or ordinances that applied to the range at the time of construction.

> "Sec. 2. (1) Notwithstanding any other provision of law, and in addition to other protections provided in this act, **a person who owns or operates or uses a sport shooting range that conforms to generally accepted operation practices in this state is not 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 of construction or initial operation of the range." (MCL 691.1542) (Emphasis Added)

The SSRA further states that, a person who owns, operates, or uses a sport shooting range that conforms to generally accepted operation practices, is not subject to an action for nuisance.

> "(2) In **addition to other protections provided in this act, a person who owns, operates, or uses a sport shooting range that conforms to generally accepted operation practices is not subject to an action for nuisance**, and a court of the state shall not enjoin or restrain 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 of construction or initial operation of the range." (MCL 691.1542) (Emphasis Added)

The SSRA does define a "Person" to include a corporation, partnership, or other legal entity.

> "(c) "Person" means an individual, proprietorship, partnership, corporation, club, governmental entity, or other legal entity." (MCL 691.1541)

As a result, an individual, proprietorship, partnership, corporation, club, governmental entity or other legal entity that owns or operates or uses a sport shooting range that conforms to generally accepted operation practices in this state may not be subject to civil liability or criminal prosecution in any matter relating to noise or noise pollution arising out of the operation of the range. Merely because a sport shooting range might be operated by a corporation does not mean that the range can not be recreational. In fact, the Merriam Webster Dictionary defines the term "corporation" to mean a body formed to act as a single person and legally endowed with various right and duties.

> "DEFINITION OF CORPORATION . . .
>
> A body formed and authorized by law to act as a single person although constituted by one or more persons and legally endowed with various rights and duties including the capacity of succession." (**Exhibit** 11 -- Merriam Webster Dictionary)

A corporation could be formed to operate a shooting range as a recreational shooting range. There is nothing within the definition of a "corporation" demanding that a corporation only operate a shooting range for a commercial purpose. The Defendant's argument in this regard is hollow.

7. **The SSRA's Use Of The Term Sport Shooting Range Does Not Define The Term Sport.**

The Defendant also argues that the SSRA has a definition for a sport shooting range or "range".

> "The SSRA has its own express statutory definition of "sport shooting range" which is not limited to "non-business" or "non-commercial" shooting ranges. . . .
> The statutory definition focuses exclusively on how the area is designed, operated and used, not whether it is run as a business or not, and it is devoid of any language suggesting that a range is only a sport shooting range if it is not in any way operated for business or commercial purposes." **(Defendant's Application at p. 19)**

The SSRA defines a range to mean an area designed and operated for the use of archery rifles, shotguns, pistols, silhouettes, skeet, trap, black powder or any other similar **sport shooting**.

> "(d) "Sport shooting range" or "range" means 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)

However, noticeably absent from this description is any reference to commercial shooting such as the testing of weapons for weapons manufacturers. The SSRA does not state that a sport shooting range means "an area designed and operated for the commercial testing of firearms for weapons manufacturers". Such commercial shooting would never fit within the definition of sport shooting.

8. **The NRA Range Book's Mention of a Budget for a Range Does Not Support The Defendant's Position.**

The Defendant argues that, under the Remand in Barnhart I, the District Court was required to examine the generally accepted operation practices for the operation of a range. (Defendant's Application at p. 22) The Defendant states that the NRA Range

Manual demonstrates the accepted operation practice for a range. The Defendant argues that the NRA Range Manual mentions a budget for the operation of a range. The Defendant then argues that this reference to a budget within the NRA Range Manual somehow demonstrates that a sport shooting range can receive a user fee and, as a result, the Remand in Barnhart I is defective. However, as stated above, a careful reading of the Remand in Barnhart I shows that Barnhart I did not direct that the receipt of a user fee represents evidence of a business or commercial purpose. Instead, the Remand in Barnhart I directed the District Court to conduct a hearing and determine whether there is evidence of a business or commercial purpose for the Range. **(Exhibit 1)** Barnhart I did not further rule that this evidence of a business or commercial purpose will be demonstrated if there is testimony suggesting that anyone paid any money to use the Range. As a result, any reference in the NRA Range Manual to a budget for a range does not affect the Remand in Barnhart I.

B. The Defendant Is Not Entitled To Entry of Judgment In His Favor.

At the end of his Application, the Defendant argues that, if the SSRA is interpreted in the manner that the Defendant proposes, he is entitled to judgment in his favor because the evidence shows that he was operating his Range in compliance with the generally accepted operation practices. (See: Defendant's Application at p. 25) The Defendant is flatly wrong in this regard. In fact, the Record is clear that the Defendant is admittedly **not** operating the Range pursuant to the generally accepted operation practices.

1. The Defendant Is Admittedly Not Operating the Range Pursuant To "Generally Accepted Operation Practices" as set forth in the Remand.

The Remand in Barnhart I is clear that, in addition to proving that the Range is recreational only, the Defendant must also establish he is operating the Range in compliance with "generally accepted operation practices". On November 21, 2008, the Defendant testified at an evidentiary hearing that the National Rifle Association ("NRA") Range Source Book represents what constitutes the "generally accepted practices" for the Defendant's Range.

> Q **Mr. Barnhart, you were introduced with Exhibit 3, which is certain sections from the NRA source book**, correct?
>
> A That's correct.
>
> Q Is it your testimony that material now contained in Exhibit 3 represents all of the standards which form the generally accepted practices for your facility?
>
> A It would be site specific, but, yes, for site specific it does, yes.
>
> Q **I want the Court and I to be clear on this. Exhibit 3 in your testimony represents the body of the materials that forms the basis of generally accepted practices for your facility**.
>
> A **Yes" (Exhibit** 12 -- District Court Tr. Dated 11-21-08 at p. 58, 59) (Emphasis Added)

No other standard was put forth or introduced by the Defendant.

a. The Defendant Did Not Comply with Provisions of the NRA Source Book.

After the Defendant testified for the Record that the NRA Range Source Book ("NRA Source Book") established the "generally accepted practices" for the Range, the Defendant testified that he did not comply with almost all of its key provisions. The Defendant, the Judge and the Defendant's attorney, were provided with the NRA Source

Book, and the Judge and the Defendant's attorney were provided a pre-drafted written listing of the cross-examination questions which tracked through the key provisions of the NRA Source Book to determine compliance. The results are clearly set forth in the Record.

1. **The Defendant Did Not Engage An Engineer To Build The Range As Required By The NRA Source Book.**

"Q Under thee point oh four point two – see how the sections are marked?. . .Did you engage an engineer when you built your range?

A No." **(Exhibit 12** -- District Court Tr. Dated 11-21-08 at p. 62)

2. **The Defendant Did Not Engage A Consultant To Build The Range As Required By The NRA Source Book.**

"Q Did you engage a consultant to build your range.

A No." **(Exhibit 12** -- District Court Tr. Dated 11-21-08 at p. 62)

3. **The Defendant Did Not Engage An Attorney To Advise Him On Ordinances As Required By The NRA Source Book.**

"Q Did you engage an attorney to advise you on local ordinances when you built the range? . . .

A No." **(Exhibit 12** -- District Court Tr. Dated 11-21-08 at p. 63)

4. **The Defendant Did Not Prepare An Alternative Preliminary Site Plan As Required By The NRA Source Book.**

"Q Under two point oh five -- . . .
Q Did you prepare an alternative preliminary site plan?
A No." **(Exhibit 12** -- District Court Tr. Dated 11-21-08 at p. 63)

5. **The Defendant Did Not Submit A Site Plan To The Township As Required By The NRA Source Book.**

"Q Did you submit a site plan for approval?

A If it's yes or no, it's no." **(Exhibit 12** -- District Court Tr. Dated 11-21-08 at p. 64)

6. **The Defendant Does Not Have A Detailed Plan Showing All Dimensions And All Locations Of The Range As Required By The NRA Source Book**.

"Q Sir, under **two point oh six, do you have a written detailed plan showing all dimensions and all locations of the range when you built it**?

A **No.**" **(Exhibit 12** -- District Court Tr. Dated 11-21-08 at p. 66) (Emphasis Added)

7. **The Defendant Did Not Prepare An Environmental Assessment As Required By The NRA Source Book.**

"Q -- did you conduct a document called an environmental assessment before you built the range? . . .

THE WITNESS: No." (Exhibit 12 -- District Court Tr. Dated 11-21-08 at p. 67)

8. **The Defendant Does Not Have In Place A Projectile Containment Study And A Written Plan As Required By The NRA Source Book.**

"Q Under three point oh two point one, **do you have in place a projectile containment study and a written plan**?

A **No.**" **(Exhibit 12** -- District Court Tr. Dated 11-21-08 at p. 67) (Emphasis Added)

9. **The Defendant Does Not Have In Place A Sound Transmission Study And Sound Plan As Required By The NRA Source Book.**

"Q Sir, I want to know about you. Do you have in place a sound transmission plan or study? Do you have one?

A NO" **(Exhibit 12** -- District Court Tr. Dated 11-21-08 at p. 68)

10. **The Defendant Does Not Have A Written Plan For Addressing Sound For Residents Within Two Miles As Required By The NRA Source Book.**

"Q Do you remember the question? Under that section, three point oh two point two point one, **do you have a written plan under that section to address sound for residents within two miles**?

A **No written plan." (Exhibit 12** -- District Court Tr. Dated 11-21-08 at p. 71) (Emphasis Added)

11. **The Defendant Admits That His Facility Does Not Have Firing Line Cover As Required By The NRA Source Book.**

"Q **Under three point oh four point four point two, do you have firing line cover? . . .**

A **No." (Exhibit 12** -- District Court Tr. Dated 11-21-08 at p. 72) (Emphasis Added)

12. **The Defendant Does Not Have A Written Operational Maintenance Plan As Required By The NRA Source Book.**

"Q **At one point oh one, are you able to show us a written O and M plan**? . . .

A **No." (Exhibit 12** -- District Court Tr. Dated 11-21-08 at p. 77) (Emphasis Added)

13. **The Defendant Does Not Have A Written Sound Mitigation Plan As Required By The NRA Source Book.**

"Q **Look at three point zero one point one point four, three point zero one point one point four.**

A **Okay. I'm there.**

Q **Do you have and can you produce a written sound mitigation program in place?**

A **There's no written sound mitigation plan." (Exhibit 12** -- District Court Tr. Dated 11-21-08 at p. 79) (Emphasis Added)

14. **The Defendant Does Not Have A Written Master Plan For The Range As Required By The NRA Source Book.**

"Q Under three point oh two point one point one –

A Yes. . .

Q Do you have a written master plan you can produce?

A No," (Exhibit 12 -- District Court Tr. Dated 11-21-08 at p. 79) (Emphasis Added)

15. **The Defendant Admits That He Does Not Do A Decibel Study Each Year For The Facility As Required By The NRA Source Book.**

"Q Do you, under three point oh three point three point one, have you, Mr. Barnhart – are you there?

A Yeah, future conditions. Yes, I see it.

Q. Right. Have you , Mr. Barnhart, conducted and produced a study each year that shows that the range complies with those decibel limits?

A It's been only once.

Q My question is have you done it each year to show that the range complies with those limits?

A No, not each year." **(Exhibit 12** -- District Court Tr. Dated 11-21-08 at p. 80)

16. **The Defendant Admits That The Facility Does Not Have Designated Parking Spaces.**

"Q Do you have designated parking? Do you have places for people to park that are designated one point five times the firing points –

A. No." (Exhibit 12 -- District Court Tr. Dated 11-21-08 at p. 83)

17. **The Defendant Has No Walkways At The Site.**

"Q Do you have walkways at the site where people walk?

A NO." **(Exhibit 12** -- District Court Tr. Dated 11-21-08 at p. 84)

18. **The Defendant Does Not Have Handicap Access.**

"Q Are you – did you build this facility for handicap access?

A No." **(Exhibit 12** -- District Court Tr. Dated 11-21-08 at p. 84)

On November 21, 2008, the Defendant testified definitively that the NRA Source Book represents what constitutes the "generally accepted practices" for the Range. Thus, the only material forming the basis of "generally accepted practices" was introduced by the Defendant and his counsel. Immediately after proclaiming the NRA Source Book as the book which set forth the sole and relevant guidelines, the Defendant testified that he did not comply with many of the key requirements. The Record is admitted and clear

that the Defendant did not operate the facility pursuant to "generally accepted practices".[4] Based on the Record, no other result is supported. Even if the Defendant's interpretation of the SSRA was accepted, the Defendant is not entitled to judgment in his favor because his operation of the Range is not in compliance with generally accepted operation practices. The Defendant's arguments to the contrary are hollow at best.

C. Barnhart II is Correct.

Although the Defendant's Application appeals Barnhart II, the Defendant spends very little, if any, time discussing Barnhart II. Perhaps this is because, given the Remand in Barnhart I, Barnhart II is correct in all of its rulings. As set forth in Barnhart II, the Circuit Court properly found that the law of the case from Barnhart I was clear that, to the extent that there was testimony to suggest that the 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. (**Exhibit 2**)

Barnhart II noted that the Defendant had stipulated that, prior to the effective date of the pertinent part of the SSRA, the Range was used for recreational and **business purposes**. On the basis of this stipulation and other evidence, the Circuit Court concluded that the Range was not a sport shooting range and the SSRA did not protect the Range from enforcement of local zoning controls. Barnhart II then went on to rule that the Circuit Court correctly found that, as of the effective date of MCL 691.1542a, the Defendant was operating the Range for a business purpose and as a result the Range was

[4]As a result, the District Court erred when it ruled that the Defendant was complying with "generally accepted practices" and was entitled to the protection offered by MCL 691.1542a.

not a sport shooting range within the meaning of the SSRA.[5] **(Exhibit 2)** After coming to this conclusion, Barnhart II affirmed the Circuit Court.

The Remand in Barnhart I to the District Court is clear. The issue on Remand in Barnhart I is the application of the SSRA at MCL 691.1542a.

> "The issue in the **present case involves the application of MCL 691 .1452a**, an amendment to the SSRA that became effective July 5, 1994." **(People v Barnhart,** Unpublished Opinion Per Curiam of the Court of Appeals, Decided [March 13, 2008] (Docket No. 272942) at p. 3.) **(Emphasis Added.) (Exhibit 1)**

The Remand in Barnhart I states that, in order for the Defendant to be able to invoke the protection of MCL 691.1452a, **two (2)** requirements **must** be satisfied. **First**, the Defendant must show that he was operating a **"sport shooting range"**. **Second**, the Defendant **must** show that he was operating the sport shooting range in compliance with "generally accepted operation practices". If either Remand test fails, the statue does not protect against local zoning. There is no dispute the parties stipulated to this business purpose and the stipulation is definitive. In fact, the Defendant's attorney -- on the record -- acknowledged the stipulation that the Defendant's property was used for both recreation and business shooting range purposes and that both uses occurred before and after the SSRA was in effect. The Defendant's attorney said the following:

> **"We stipulated to an order putting an end to that issue. We agreed that there was both use prior and after the statute that we're all arguing over here today in the range protection act. . . . We stipulated there was both recreational and commercial shooting."** (**Exhibit 13** -- District Court Transcript Dated October 9, 2008 at p. 4 – 6.) (Emphasis Added)

---

[5] Barnhart II also noted that, even before the Defendant constructed the Range, he indicated his intent to use it to test firearms for various companies. This complied with the Defendant's acknowledgment that there were business or commercial purposes for the range. (**People of Tp. of Addison** v. **Barnhart**, Unpublished Opinion Per Curiam of the Court of Appeals, decided [April 10, 2012] (Docket No. 301294).) **(Exhibit 2)**

The Remand in Barnhart I was unequivocal that, to the extent there is testimony suggesting that the Defendant's **operation was for a business purpose**, MCL 691.1542a(2)(c) does not provide protection from local zoning ordinances. The Michigan Court of Appeals, in Barnhart II, came to the right conclusion.

VI. CONCLUSIONS AND RELIEF REQUESTED

The Plaintiff respectfully requests that this Honorable Michigan Supreme Court:

(I) Enter an Order denying the Defendant's Application for Leave to Appeal to this Michigan Supreme Court; and

(II) Enter an Order granting such other relief in favor of the Plaintiff as this Michigan Supreme Court deems just, equitable and appropriate under the circumstances presented.

By:

ROBERT CHARLES DAVIS (P40155)
Attorney for Plaintiff/Appellee
Addison Township
10 S. Main St., Ste. 401
Mt. Clemens, MI 48043
(586) 469-4300

Dated: June 11, 2012