

A Resolution of the Haines Borough Assembly adopting written findings of the September 23, 2014 appeal hearing of the Keller shooting range Cease and Desist order.

WHEREAS, on August 14, 2014, the borough issued a Cease and Desist order to Gary Keller regarding a shooting range on his property located at 649 South Beach Road in the Chilkoot Inlet Subdivision within the Townsite Service Area; and

WHEREAS, as was his right under HBC 8.12.130, Mr. Keller submitted a timely appeal of that order; and

WHEREAS, per HBC 8.12.130(F), enforcement of the Cease and Desist order was stayed pending final disposition of the appeal; and

WHEREAS, on September 9, 2014, the borough clerk gave the appeal to the assembly and with the assembly's direction the clerk scheduled September 23, 2014 for the appeal hearing; and

WHEREAS, the mayor acted as presiding officer and chose not to administer oaths or compel the attendance of witnesses; and

WHEREAS, Mr. Keller appeared in person on his own behalf and made the following ARGUMENTS as part of his presentation or in answer to assembly questions:

- *HBC 18.60.020 addresses a change in an existing nonconforming use to a new use that is also nonconforming; he has never sought to change his "grandfathered" firing range to a new use;*
- *His use of his gun range was properly accepted as a nonconforming use when annexation occurred in 1999; it was legal when he started it and he believes it is still legal;*
- *He questions whether military specifications for a gun range are the only standard for determining if a gun range is safe for its intended use;*
- *He has safely used his range for 28 years without injury or incident and has limited its use to family and individuals whom he knows to practice the highest safety practices; there are no automatic weapons allowed on his range; it is basically used for target practice;*
- *He limits shooting between 8:00 a.m. and 8:00 p.m.; the noise is not much different than a chainsaw or log splitter, and the range is well-covered with vegetation;*
- *To his knowledge, there has been only one complaint since the property was annexed, and that is the complaint that precipitated this Cease and Desist order; one complaint in 28 years does not rise to the level of nuisance cited in the borough code;*
- *He does understand the safety concerns and is willing to make modifications to ease them but believes changes are not necessary from a legal standpoint to continue use of his range; he gave his word that he will make safety-related changes, but he doesn't want to have the modifications approved or formalized; and*

WHEREAS, Borough Manager David Sosa summarized the borough's enforcement order:

- *In response to a neighbor complaint, he conducted a site inspection with the chief of police on August 13, 2014; there are other dwellings on the adjacent properties within 200 meters to the left and right of the firing point;*
- *"Firing range" is prohibited in the townsite service area, per HBC 18.70.040, and HBC 9.24.010 addresses the discharge of a firearm of pistol within the townsite service area: "A. It is unlawful for any person to fire or discharge, within the limits of the townsite service area, any pistol,*

gun, rifle, air rifle, or other firearm, other than a police officer in the lawful performance of the officer's duty. B. Notwithstanding subsection (A) of this section, it is not unlawful to discharge a firearm at a rifle range, target shooting range, trap shooting range, or other area that is posted for such purpose; providing, that the chief of police has approved the area as being safe for such purpose; and providing, that such shooting is adequately supervised and safely conducted;"

- HBC 18.60.020(M) addresses non-conforming uses, buildings and lots; the purpose of this section is to control, reduce or eliminate conflicts from the presence of buildings and uses not conforming to zoning regulations; this section of code states: "11. nonconforming use may be changed to an allowed use or another nonconforming use with approval of the manager. The manager must find the new use is more consistent with the uses allowed in the zone, or is less of a fire or safety hazard;"
- This is a nonconforming use issue, not a conditional use issue; if the property were to change ownership, the nonconforming use would no longer be allowed;
- Considering the increased residential use of the area that has developed in the period since Mr. Keller was originally issued the nonconforming use permit, he determined the firing range to be inconsistent with the uses allowed in this zone and the Borough Planning & Zoning Technician concurred with that opinion;
- Mr. Sosa has been certified multiple times as a Range Safety Officer and has overseen fire training at multiple facilities; his responsibilities included ensuring appropriate range design and adherence to appropriate safety standards; there are best practices for ranges everywhere, and the same standards should be maintained for both large and small ranges;
- His main concerns are containment and malfunction; there could be ricocheting projectiles under different conditions that pose a risk to the shooters or to individuals off the property; if that risk is mitigated, he would likely have no objection;
- He would like to have an approval process to make sure there is a safe environment, and the chief of police shares that position;
- He believes the shooting range poses a danger to residents and visitors and, in accordance with HBC 8.12.020 (Certain conditions declared nuisances) "8- To annoy, injure or endanger the safety, health, comfort, or repose of the public," he issued a Cease and Desist Order; and

WHEREAS, eight neighbors provided either written or oral statements in support of the shooting range; and

WHEREAS, four neighbors submitted written statements supporting the borough's Cease and Desist order; and

WHEREAS, the borough assembly asked questions of Mr. Keller and Manager Sosa, and considered all written and oral statements before reaching the following CONCLUSIONS:

1. The manager and chief were correct in responding to the complaint;
2. The shooting range is a nonconforming use continually in existence for 28 years;
3. Section 19.07 of the Charter preserves existing rights; Mr. Keller had the right to shoot on his property when he first bought it; he got a letter after annexation that confirmed he could keep his range; the town has built up around it;
4. Keller is only shooting there with private people, and no automatic weapons are allowed;
5. Conditions acceptable back in 2001 may be questionable now because of neighborhood growth, but Keller is being safe and gave his word he will take steps to provide even more safety assurance; he has operated the shooting range without incident or accident; and

WHEREAS, as a result of these conclusions, and as allowed by HBC 8.12.130(H), the assembly took action to rescind the Cease and Desist order; and

WHEREAS, Keller will voluntarily write a letter of assurance regarding safety modifications; and

WHEREAS, HBC 8.12.130(H) requires the assembly to adopt its findings by resolution following the public hearing,


NOW, THEREFORE, BE IT RESOLVED that the Haines Borough Assembly adopts the above-listed findings of the September 23, 2014 appeal hearing of the Keller Cease and Desist order.

Adopted by a duly-constituted quorum of the Haines Borough Assembly on this 14th day of October, 2014.

Attest:


Julie Cozzi, MMC, Borough Clerk




Stephanie Scott, Mayor