

IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA

CIVIL DIVISION

ROBINSON TOWNSHIP,

Plaintiff,

vs.

GREATER PITTSBURGH TRAP
AND SKEET CLUB,

Defendant.

No. 93-4400

Ally
PROthonary
WASHINGTON COUNTY

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ORDER

AND NOW, this 9 day of May, 1997, upon consideration of the testimony taken and after review of the pleadings and briefs filed by counsel, we adopt the Findings of Fact and Conclusions of Law submitted by Defendant, Greater Pittsburgh Trap and Skeet Club, Inc. in the above-captioned action. We find that the activities of the Defendant do not constitute a nuisance. Consequently, we dismiss the action filed on behalf of Plaintiff Robinson Township against Defendant Greater Pittsburgh Trap and Skeet Club, Inc.

BY THE COURT:

Thomas D. Gladden

THOMAS D. GLADDEN, P.J.

IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY,
PENNSYLVANIA

ROBINSON TOWNSHIP

Plaintiff

v.

GREATER PITTSBURGH TRAP
AND SKEET CLUB, INC.,
a Corporation

Defendant

CIVIL DIVISION

No. 93-4400

TYPE OF PLEADING:

DEFENDANT'S SUGGESTED
FINDINGS OF FACT AND
CONCLUSIONS OF LAW

Filed on Behalf of:

Greater Pittsburgh Trap and
Skeet Club, Inc. a Corporation,
Defendant

COUNSEL OF RECORD FOR THIS
PARTY:

JAMES H. McCUNE, ESQUIRE
PA. I. D. No. 19852

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**P.R. MATHENY
PROTHONOTARY**

COURT OF COMMON PLEAS OF WASHINGTON COUNTY,
PENNSYLVANIA

ROBINSON TOWNSHIP)	CIVIL DIVISION
)	
Plaintiff)	No. 93-4400
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v.)	
)	
GREATER PITTSBURGH TRAP)	
AND SKEET CLUB, INC.)	
a Corporation)	
)	
Defendant.)	

**DEFENDANT’S SUGGESTED FINDINGS
OF FACT AND CONCLUSIONS OF LAW**

AND NOW comes, **GREATER PITTSBURGH TRAP AND SKEET CLUB, INC.**, (GUN CLUB) Defendant, through counsel undersigned, **McCUNE & VREELAND**, by **JAMES H. MCCUNE, ESQUIRE**, who files this its Suggested Findings of Fact and Conclusions of Law as follows:

I. SUGGESTED FINDINGS OF FACT

1. The Robinson Township zoning ordinance was not placed into evidence by either party, and has no provisions relevant to these proceedings.
2. The Greater Pittsburgh Trap and Skeet Club, Inc., is a for profit business corporation which is owned by members of the Freund family.
3. The Gun Club consists of approximately 265 acres in Robinson

Township, Washington County, Pennsylvania, which is zoned A-1. The area is substantially rural in nature.

4. The Gun Club has been in operation since 1967.
5. The Gun Club presently has between 700 and 800 paid members.
6. The Club allows shooting at the club facilities by members of the public who pay a fee.
7. The Club consists of the following facilities:
 - a. A clubhouse and restaurant, which includes the retail sale of ammunition and firearms, as well as the living quarters of the manager, J. Donald Freund and his family;
 - b. Four trap ranges;
 - c. Three skeet ranges;
 - d. A twenty-five (25) yard pistol range;
 - e. A one hundred (100) yard rifle-sighting range;
 - f. A four hundred-(400) yard rifle range.
8. The Club does not have a liquor license, and does not sell intoxicating beverages on the premises.
9. The Club offers safety courses three times per year, which are taught by a NRA certified safety instructor. Approximately 600 persons have

received safety instruction at Greater Pittsburgh Trap and Skeet, in recent years.

10. No testimony was presented that any person had ever received any type of injury while using the facilities of the Gun Club.

11. No testimony was presented that any violation of the law has ever occurred at the Gun Club.

12. The Gun Club is managed by officers and a board of directors. J. Donald Freund (Tex) is the manager and lives on the premises with his family.

13. The aerial map placed into evidence shows old strip mines in the area, most of which are not on Gun Club property. It is undisputed that persons shoot firearms in the area of the strip mines.

14. The Gun Club had, in the past, allowed full automatic weapons firing pursuant to contracts which the Gun Club had with certain military units, specifically the 911th Infantry and the National Guard from Oakdale, Pennsylvania.

15. These contracts were terminated by the Gun Club in 1994, and no full automatic weapons fire has taken place on Gun Club premises since 1994. No evidence was presented to the contrary.

16. J. Donald Freund testified concerning the loss of income that the Club has experienced since the contracts with the military units were terminated.

17. In 1980, the Gun Club made a zoning application to Robinson

Township to accommodate pistol and rifle ranges on the property. A hearing was held, and findings were made on October 21, 1980. No evidence was presented by the Township that the written findings entered into evidence were ever sent to any representative of the Gun Club. Representatives of the Gun Club denied receiving the findings back in 1980 but learned of the findings only in recent years when the litigation was filed.

18. Following the hearing before the Robinson Township Zoning Hearing Board in 1980, members of the Freund family extended the rifle range to four hundred (400) yards.

19. The Freund family believed that they had permission to make such an extension, and at all times acted in good faith and without bad motive.

20. The Freund family spent money and made valuable improvements to their property in reliance upon representations made by Township officials to the effect that nothing else was required of them.

21. No representative of Robinson Township later contacted the family from 1980 until suit was filed in 1993 for the purpose of discussing the rifle range and what would be necessary to operate the rifle range. This is true even though the parties discussed noise related issues in 1989.

22. At no time from 1980 to the present has the Township issued any cease and desist order, and at no time from 1980 to the present has the Township ever issued any citation against the Club to the effect that the Club has

violated any provision of any zoning ordinance.

23. The improvements made by the Club were at all times, during construction and afterward, open and visible and known to the Township officials. The Township officials did nothing to advise the Freund family that they were in violation of any zoning ordinance and are, therefore, estopped from attempting to enforce any provision of the Robinson Township zoning ordinance.

24. The shooting of rifles and other weapons was heard by Township officials and known to Township officials, and said Township officials did nothing to advise Club officials that any zoning ordinance was in any way being violated. The Township is estopped from attempting to enforce any zoning ordinance.

25. On July 28, 1993, Robinson Township filed suit against the Gun Club.

26. The Township filed an Amended Complaint on October 1, 1993.

27. Both the Complaint and the Amended Complaint state at Paragraph 3 that the defendant Gun Club operates “a trap and skeet club with related shooting ranges and facilities . . . pursuant to various zoning permits and/or authorizations that were issued by the Township pursuant to its zoning ordinance.” The Township has admitted in its pleadings that the defendant is lawfully operating its business under the Robinson Township zoning ordinance.

28.. In both the Complaint and the Amended Complaint, the Township complains of three things:

- a. the discharge of automatic weapons;
- b. extended hours of operation; and
- c. projectiles leaving the premises and striking properties in the vicinity.

29. On or about July 5, 1996, the Township filed a Petition for Special Relief alleging certain nuisance activity on the part of the defendant.

30. The Gun Club has responded, maintaining that neither the Township nor the Court of Common Pleas possess the power to regulate certain aspects of the defendant's business pursuant to the Second Amendment of the United States Constitution.

31. A hearing was held before the Court of Common Pleas of Washington County on February 4 and February 5, 1997.

32. The plaintiff, Robinson Township, introduced thirty-four (34) exhibits, including several reports from the local police departments.

33. Robinson Township does not have its own police department, but contracts for police protection with surrounding municipalities. From July 1, 1995 until the present day, Robinson Township has contracted for police protection with McDonald Borough. Prior to July 1, 1995, Robinson Township contracted for police protection with North Fayette Township, Allegheny County,

Pennsylvania.

34. All police reports are summarized chronologically and attached to defendant's Exhibit A.

35. There exist fourteen (14) reports in all, some of which are not complaints but mere informational reports by the Gun Club or persons acting through the Gun Club. The reports can be summarized as follows:

- a. In 1991, two reports were made, one for automatic weapon fire, one for property damage.
- b. No reports were made in 1992.
- c. In 1993, six reports were received, five by members of the Kramer family, and one informational report by the Club manager.
- d. In 1994, two reports were received for the same incident of alleged automatic weapon fire, and one was an informational report by Sergeant Beck.
- e. In 1995, one report was received from Mark Kramer regarding automatic weapon fire.
- f. In 1996, one report was received regarding a bullet strike at the Speer residence. The police report makes no mention in any manner of the Pittsburgh Gun Club.
- g. In 1997, no reports were made.

36. Of the fourteen (14) police reports, two (2) were made by the Club or Club users for informational purposes; one was made anonymously in 1991; and of the remaining eleven reports, seven were made by Mark Kramer or members of his family.

37. At hearing, the Court received no testimony from any former zoning officer of Robinson Township.

38. At hearing, the Court received no testimony whatsoever from any past or present Township Supervisor. The only Township representative who testified was the present zoning officer, Mark Kramer.

39. The testimony showed that in July of 1993, at the request of Robinson Township, the NRA had a representative, Michael Banosky, a retired civil engineer, inspect an alleged bullet strike. Mr. Banosky advised the Township that he could not conclude that the bullet had come from the Gun Club.

40. Michael Banosky, an NRA expert, testified at hearing and testified, along with J. Donald Freund, that other shooting ranges are in the immediate area of the Greater Pittsburgh Trap and Skeet Club, Inc., specifically, a gun smith, Steve Kobalsick, and other persons named Timco, Gregg, and Teraba. The testimony was also undisputed that persons shoot weapons of all types, including automatic weapons, into strip-mines surrounding the area.

41. At the request of the Gun Club, Michael Banosky studied the bullet strike at the Speer residence, and issued a written report regarding same.

Mr. Banosky testified that the study of the physical characteristics of the bullet strike, including point of impact, angle of penetration and other physical characteristics indicated that the bullet that struck the Speer residence could not have come from the Gun Club.

42. It is critical to note that the Township presented no expert testimony of any type.

43. Mr. Banosky, at the request of the Gun Club, performed a site assessment and safety inspection of the Gun Club and, specifically, the rifle range. Mr. Banosky made certain recommendations for the Club, but stated unequivocally that the Club, as presently constituted, is safe.

44. The Gun Club has alleged that the zoning officer, Mark Kramer, has a personal animus toward J. Donald Freund, manager of the Gun Club, which stems from an incident that occurred in June of 1993 at the Gun Club.

45. In June of 1993, patrons of the Club were shooting trap at approximately 10:00 p.m. when Mark Kramer arrived at the Club and confronted the guests at the Club.

46. Dr. David Maracini, a chiropractor with offices in the Pittsburgh area, was present at the aforesaid evening, and witnessed the exchange between Mr. Kramer and Mr. Freund. He testified that Mr. Kramer acted like a “wild man,” that he threatened to shut the Club down, that Mr. Freund was

courteous and non-threatening, and asked Mr. Kramer to leave the premises.

47. Dr. Maracini testified unequivocally that Mr. Freund at no time threatened or pointed any type of weapon at Mr. Kramer, and, in fact, at no time had any weapon in his possession.

48. It is undisputed that Mr. Kramer testified that he has told residents of the township, with complaints about the Gun Club, to call the police and to ask the police to make a record of the call in order to make a proper record of complaints concerning the Gun Club. The testimony showed as follows:

- a. No complaints occurred in 1997, despite the Township's request for an injunction and for emergency relief; this notwithstanding the fact that the suit was filed back in 1993.
- b. One complaint was made in 1996 by Mr. Speer. The complaint to the police at no time and in no way mentioned the Gun Club. Mr. Banosky made it clear that the projectile could not have come from the Gun Club, and the Township offered no expert testimony to refute this testimony.
- c. One complaint was made in 1995 by Mr. Kramer regarding automatic weapon fire. The Court finds that this automatic weapon fire most likely came from the

strip mines in the area, and the Court further finds that no automatic weapon fire has taken place at the Gun Club since 1994.

- d. One actual complaint was made in 1994 regarding an incident of April 24, 1994 concerning automatic weapon fire.
- e. Six actual complaints were received by the police in 1993, five of which were made by Mr. Kramer or his family.
- f. No complaints were made in 1992.
- g. Two complaints were made in 1991, one of which was anonymous.
- h. Of actual complaints to the police where the caller was identified, Mr. Kramer or members of his family made seven of eleven complaints.

49. The Township called no expert on its behalf to testify as to the issue of safety. Mr. Banosky's testimony that the Club is not unsafe, stands un rebutted.

50. The Court resolves issues of credibility in favor of the Gun Club and against the Township and, specifically, Mr. Mark Kramer, for the following reasons:

- a. Mr. Kramer and members of his family complain far more often than other persons living in the area who might have been similarly affected.
- b. Mr. Kramer, by reason of his run-in with Mr. Freund in June of 1993, holds an animus toward Mr. Freund; and, therefore, has a motive to testify falsely against Mr. Freund.
- c. Very importantly, Mr. Kramer testified, at hearing in Court, that Mr. Freund, during the June 1993 incident, pointed a gun at him and ordered him off the property. The police report made by Mr. Kramer to the North Fayette Township police (plaintiff Exhibit 12) which relates to this incident, makes no mention of the pointing of a weapon which Mr. Kramer surely would have reported. Furthermore, Mr. Kramer admitted that during his deposition, taken by defendant's counsel, he made no mention of any such weapon pointing. The Court finds such testimony to be not credible and to be fabricated.
- d. Also of critical importance is Mr. Kramer's testimony that he had taken Boy Scouts camping at the Glasser

farm, in the immediate area of the Gun Club, two times per year up until 1995, at which time he stopped. This testimony is quite contradictory to Mr. Kramer's other testimony that he felt that his safety was threatened as far back as 1987. Mr. Kramer testified graphically as to incidents in 1987 and 1989 when bullets were "whizzing" through the trees.

51. Representatives of the Gun Club consistently invited Township representatives to visit and inspect the Club, and also to have the Club inspected by experts of the Township's choice. At all times, the Township refused such invitation. Accordingly, the testimony of Mr. Banosky to the effect that the Club is safe must stand.

II. SUGGESTED CONCLUSIONS OF LAW

1. There exists no zoning violation of the Robinson Township zoning ordinance by Greater Pittsburgh Trap and Skeet Club, Inc. by virtue of variance by estoppel, or vested rights, pursuant to Appeal of Crawford, 531 A.2d 865 (Pa. Commonwealth 1987), for the following reasons:

- a. Robinson Township took no steps to enforce its zoning ordinance from 1980 until 1993, when the Township knew or should have known of the alleged violation;

- b. The landowners, the Freund family, at all times acted in good faith and relied innocently upon the validity of the use at all times.
- c. The Freund family made substantial expenditures in improving the premises in reliance upon their belief that their use was a permitted one.
- d. To conclude otherwise would impose an unnecessary and unfair hardship upon the Freund family and the Gun Club.

2. Based on all of the evidence, the Court concludes that the activities of the Greater Pittsburgh Trap and Skeet Club, Inc. do not constitute a nuisance, particularly under 35 P.S. 4501 et seq. which specifically exempts rifle and pistol ranges from any civil action or criminal prosecution in any matter relating to noise or noise pollution.

3. The Court finds that Robinson Township has not established the existence of a nuisance by the fair weight of the evidence in that the testimony of Mark Kramer is not found to be credible; the Township chose not to utilize expert witnesses to rebut the expert witness of the Gun Club; and the Township has failed to prove its case generally.

4. Pursuant to the Second Amendment to the United States Constitution, this Court is without power to regulate or restrict the activities of

Greater Pittsburgh Trap and Skeet Club, Inc.

5. As stated in *Lehman v. Windler Rifle and Pistol Club*, 44 D.& C. 3rd, 243 (Somerset Co. 1986): "The case law in Pennsylvania is quite clear that shooting and holding shooting matches are not a nuisance per se. " See also *Gundel v. Kemmick*, 60 Lanc. L.Rev. 116 (1966); *Brenner v. Melrose Gardens, Inc.* 63 Daup. Co. 33 (1952); *Schneider v. Waters*, 52 Lanc. L. Rev. 113 (1950); and *Roberts v. Clothier*, 37 Montg. Co. L. Rev. 165 (1920).

6. In *Lehman, supra*, a nuisance was held not to have existed where the plaintiffs offered testimony that bullets were found embedded in their barn and that plaintiffs and family members had heard bullets whizzing by them. The defendant countered this evidence by expert testimony.

7. In *Lehma, supra*, the court stated that:

It is not a strictly residential area; it is rather, undeveloped, open agricultural country, expressly zoned agricultural and expressly permitting its use for gun clubs. Moreover, hunting in season is allowed and has been allowed for many years in the area. The construction and location of the range, the character of the area, the type of membership, the fact that no accidents occurred at defendant's [former] site, in all the years that it was in operation - all indicate that the chances of an accidental shooting are remote, largely speculative and conjectural, and completely insufficient to establish a nuisance in fact.

8. The court further stated:

Nor is the fear expressed by plaintiffs sufficient to constitute nuisance. Plaintiffs' evidence did not

establish any credible link between defendant's range and actual physical danger to life or property. "One thing is certain, equity will not infer unless its right to do so is free from doubt. The wrong or injury resulting from the pursuits of a trade or business must be plainly manifest or certain to a trade or business...if the injury be doubtful, eventual, or contingent, equity will not grant relief...the fact that it might possibly work injury is not sufficient".



James H. McCune
Attorney for Defendant