

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WILLIAM DRUMMOND, GPGC LLC, and  
SECOND AMENDMENT FOUNDATION,  
INC.,

Plaintiffs,

v.

ROBINSON TOWNSHIP and MARK  
DORSEY, Robinson Township Zoning  
Officer, in his official and individual  
capacities,

Defendants.

Civil Action No. 18-1127

**PLAINTIFFS' SUGGESTED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

AND NOW come the Plaintiffs, by and through their attorneys, Alan Gura, James H. McCune, and K. Bradley Mellor who submit this their Suggested Findings of Fact and Conclusions of Law:

**SUGGESTED FINDINGS OF FACT**

1. The subject property ("Property"), known largely as the "Greater Pittsburgh Gun Club" ("GPGC"), has lawfully been operated as a commercial Gun Club with certain gaps in operation of short duration, since the mid 1960's. The Property consists of approximately 265 acres situate in Robinson Township, Washington County.

2. GPGC operated as much as any ordinary commercial gun club and shooting range. It consisted of a clubhouse and restaurant, as well as the living quarters of its manager and the manager's family, four trap ranges, three skeet ranges, a 25-yard pistol range, a 100-yard rifle-sighting range, and a 400-yard rifle range. It sold memberships, range time, firearms, ammunition, targets, food and beverage, and other ordinary goods that might be found at any gun range, as well as shooting training and safety courses, to the public. The Club had as many as 800 members at any one time, but did not require membership to shoot on its property. Patrons who did not own their own guns, or who wished to try out different guns, could also rent guns from the range. In addition to such ordinary civilian use, the range was also used by police and military personnel for training. GPGC had always allowed the use of ordinary firearms of the kind in common use for traditional lawful purposes, including pistols, shotguns, and center-fire rifles up to .50 caliber, though in 1994, it ceased allowing the use of machine guns by local military units.

3. In 1993, the Defendant, Robinson Township, filed an action against the then operator of the Property in the Washington County Court of Common Pleas at Docket No. 93-4400 in order to have the Gun Club declared to be nuisance, and alleged that projectiles were leaving the club property and striking homes in the vicinity. After a full trial on the merits in 1997, the Court of Common Pleas dismissed the Complaint, found the club not to be a nuisance, found that projectiles did not come from the gun club but more likely came from strip mines in the area. Significantly, the trial judge made factual findings that the lawsuit filed by the township was motivated by a personal animus held by the then zoning officer, Mark Kramer, toward the then club owner. The judge also specifically found Mr. Kramer not to be credible.

4. The Property was leased in 2016 to Iron City Gun Club to be operated as a Gun Club. Within 3 months of the Gun Club opening, spurred on by Mark Kramer and members of his family, the Robinson Township supervisors attempted to revoke Iron City's license to operate for various reasons. The township's effort to close the Gun Club was again unsuccessful following litigation in the Washington County Court of Common Pleas found at docket numbers 2016-5682 and 2016-7073. It is noted that the trial judge observed that the township conceded that the Gun Club was a permitted use under the township's zoning ordinance.

5. The Property was leased by the Plaintiff, William Drummond, on December 15, 2017, who formed GPGC LLC for the purpose of operating of operating GPGC as it has historically operated. Mr. Drummond is a professional shooter and firearms instructor. He competes nationally in shooting competitions; he is a NRA certified shooting instructor; and he teaches competitive shooting and firearm safety. He is a member of the Second Amendment Foundation, one of the Plaintiffs. Mr. Drummond was born in the Pittsburgh area but is a resident of Boone, North Carolina. Drummond and GPGC LLC would operate the club for the benefit and enjoyment of Drummond and members of the general public, including SAF members.

6. Mr. Drummond contacted the Robinson Township Zoning Officer, Mark Dorsey, on January 19, 2018 and explained who he was and what he wanted to do regarding operating the Gun Club. He asked what was required of him and what he needed to do with respect to any Township ordinance. Mr. Dorsey asked Mr. Drummond to give him a letter outlining what he wanted to do. Mr. Dorsey did not advise Mr. Drummond that he needed to file an application for a permit. In response to Mr. Dorsey's request, on January 20, 2018, Mr. Drummond sent a detailed explanation of his plans. Mr. Drummond, and the limited liability company GPGC, LLC

of which he is the sole member, intend to operate a full-service Gun Club, including memberships, allowing members of the public to shoot after paying a fee, the rental of firearms, the sale of firearms and ammunition, and the conduct of firearm training courses and safety courses.

7. At a Robinson Township supervisors' meeting held February 12, 2018, the subject of the Property and Gun Club was discussed. Judy Kramer, wife of Gun Club opponent Mark Kramer, called for restrictive zoning to prevent the Gun Club from operating.

8. In response to repeated inquiries by Mr. Drummond to Mr. Dorsey regarding what was necessary to operate the Gun Club, Mr. Dorsey, four days after the February 12, 2018 supervisors' meeting, which Mr. Dorsey attended, asked Mr. Drummond for more information, but dissuaded him from filing the necessary zoning application, and ignored Drummond's question as to which form was required.

9. Again without notice to Drummond, the Robinson Township Supervisors met on February 19 (Presidents' Day) to discuss restrictive zoning of the Gun Club at the Kramer's behest. The purpose of this meeting was to discuss restrictive zoning to prevent Mr. Drummond from operating the Gun Club. At no time did any township official advise Mr. Drummond of this meeting.

10. On that same day as the meeting, February 19, 2018, Mr. Drummond offered to meet Mr. Dorsey at the township office on February 22, 2018 to submit any required paperwork

to the zoning officer. Mr. Drummond received no response from Mr. Dorsey. Mr. Dorsey attended the February 19, 2018 supervisors' meeting.

11. On March 1, 2018, Dorsey agreed to meet Drummond and accept his paperwork at a March 15, 2018, meeting. He requested more information, which Drummond provided March 7.

12. On March 15, 2018, Mr. Drummond met at the township office with Mr. Dorsey and Crystal Brown, the Robinson Township manager. At that time, Mr. Dorsey accepted Mr. Drummond's zoning application, marking it "received" on March 15, 2018. Neither Mr. Dorsey, nor Ms. Brown advised Mr. Drummond that an amendment to the township zoning ordinance, which would bar Mr. Drummond's application, was placed on the agenda for a special Board of Supervisors' Meeting to be held on March 22, 2018, only one week into the future. At the March 15, 2018 meeting with Mr. Dorsey and Ms. Brown, Mr. Drummond advised them that he would be returning to North Carolina Sunday night. The Property was posted by the township with notice of the March 22, 2018 supervisors' meeting on Monday, March 19, 2018. The notice advised that the supervisors would consider an amendment to the zoning ordinance related to Gun Clubs.

13. Mr. Drummond learned of the posting of the Property when he received a text message from a neighbor. Mr. Drummond returned to Pennsylvania and attended the March 22, 2018 special meeting of the supervisors. He was limited to three minutes to speak to the supervisors. The matter was not voted upon but was tabled.

14. Mr. Drummond believed the matter was successfully resolved and then attempted to reconcile with Mr. Kramer. As late as April 6, 2018, Mr. Drummond asked Mr. Dorsey about

his zoning application. He received no response. Mr. Drummond was told by no one that the matter was back on the agenda for the April 9, 2018 supervisors' meeting. At that meeting, the new zoning Ordinance ("Ordinance"), amending the Township's Zoning Ordinance, was adopted by the township supervisors.

15. The Property had for decades been used as a Gun Club as a use by right. The Ordinance, for the first time, restricted Gun Clubs (defined as a "Sportsman's Club") to a "non-profit entity formed for conservation of wildlife or game, and to provide members with opportunities for hunting, fishing or shooting" (emphasis supplied).

16. The Ordinance also barred all center fire rifle fire, limiting rifle fire to "rim" fire only; basically limiting rifle fire to .22 caliber only.

17. The Ordinance also transferred the classification of a Sportsman's Club from a permitted use to a conditional use.

18. The practical effect of the Ordinance was to bar the use of the Property as a gun club or shooting range, and make it impossible for Mr. Drummond to open and operate a Gun Club.

19. Mr. Dorsey then denied Mr. Drummond's zoning application on April 13, 2018, on the grounds that it did not comply with an ordinance pending "at the time of application."

20. There is no relationship between public safety and the operation of a shooting range or gun club as a for-profit rather than non-profit entity.

**PLAINTIFFS' SUGGESTED CONCLUSIONS OF LAW**

1. Regarding Plaintiffs' Motion for a Preliminary Injunction, this Court concludes, as a matter of law, that: a) there is a reasonable probability of the Plaintiffs' eventual success in this litigation; b) the Plaintiffs, and the general public, will be irreparably injured if Ordinance 1-2018 (the "Ordinance") is not declared to be void; c) possible harm to other interested persons is likely if the enforcement of the Ordinance is not enjoined by this Court; and, d) the public interest is, in fact, advanced by enjoining the enforcement of the Ordinance.

2. The Ordinance (Ordinance 1-2018) clearly violates the Plaintiffs' Second Amendment rights. The Courts have provided strong precedent in cases involving attempts to regulate shooting ranges. The right "...to bear arms implies something more than mere keeping; it implies the learning to handle and use them; ... it implies the right to meet for voluntary discipline in arms..." *District of Columbia v. Heller*, 554 U.S. 570, 617-18 (2008). In *Ezell v. City of Chicago* (Ezell 1), 651 F.3d 684, 704 (7th Cir. 2011), the Seventh Circuit struck down an attempt to ban shooting ranges and stated: "The right to possess firearms for protection implies a corresponding right to acquire and maintain proficiency in their use; the core right wouldn't mean much without the training and practice that makes it effective." Other basic gun club activities such as: renting; buying and selling firearms; and, commerce generally in ammunition, targets and other shooting accessories, are thus likewise protected as inherent to gun clubs, though to be sure, they are also independently protected apart from such establishments. The fact that the Plaintiff, Drummond, proposes to operate a commercial Gun Club does not cause

this matter to fall outside the protections of the Second Amendment. See *U.S. v. Marzzarella*, 614 F.3d 85, 92 (3d Cir. 2010).

3. The Court notes that the operation of shooting ranges long pre-dates the advent of zoning ordinances, which regulate the use of land. Shooting has always been the subject of safety concerns. Here, however, the township cannot ban shooting where shooting has been safely carried out for half a century, and this is especially true following a judicial determination in Washington County Common Pleas Court that this location is in fact safe.

4. Second Amendment cases can trigger more than one level of scrutiny depending on the nature of the law challenged and the type of Second Amendment rights at issue. In the instant case, the amendment to the zoning ordinance effectively makes it impossible for the Plaintiff, Drummond, to operate a Gun Club. In light of this burden, the standard of scrutiny to be applied is strict scrutiny. Because the Gun Club has been found to be safe, and because the township's actions are a part of a decades long campaign to target this particular Gun Club, which is motivated in large part by animus, the Ordinance serves no public interest. The government bears the burden of justifying its prohibitions; this Robinson Township has utterly failed to do under any level of scrutiny. There is no fit between any legitimate regulatory interest, and the requirement that a gun club operating on the subject property be operated as a non-profit, broadly prohibit center-fire rifle fire, or be allowed only as a conditional use. The Township may regulate the operation of Gun Clubs in the interest of public safety, but it must do so in a manner that is calculated to advance public safety while respecting constitutional rights.

5. The requirement in the Ordinance that all Sportsman's Clubs (and therefore all Gun Clubs in IBD Districts) be non-profit organizations violates the Plaintiffs' right to equal

protection. Requiring non-profit status for a Gun Club, while not requiring non-profit status for other land uses, serves no legitimate governmental purpose. It does not advance any governmental interest; it does not increase safety. Here, it is clear that the township and certain others have pursued a vendetta against anyone wanting to operate a Gun Club on this property.

6. This Court finds, as set forth under the Court's Findings of Fact, that the Defendants engaged in deliberate acts to frustrate Mr. Drummond's efforts to operate the Gun Club, a protected Second Amendment activity. The Court concludes that the actions of the Defendants constitute a violation of Mr. Drummond's substantive due process rights in his property.

7. The Court finds that the Defendants deliberate actions to prevent Mr. Drummond's efforts to operate the Gun Club violate Mr. Drummond's Fourteenth Amendment right to livelihood, as there is no rational basis for depriving Drummond of his livelihood interest in the Gun Club.

8. The Court finds that the action of the Defendants in passing the Ordinance irreparably harms the rights of the Plaintiffs and of the general public.

9. After careful consideration of the matter, the Court concludes that injunctive relief should be granted.

10. The Court has concluded that the Plaintiffs do not need to post bond. The Defendants cannot be financially harmed by the granting of injunctive relief.

Dated: September 21, 2018

Respectfully submitted,

/s/ Alan Gura

Alan Gura, Esquire  
Admitted Pro Hac Vice  
Gura PLLC  
916 Prince Street, Suite 107  
Alexandria, VA 22314  
Telephone: (703) 835-9085  
Facsimile: (703) 997-7665

/s/James H. McCune

James H. McCune, Esquire  
PA ID No. 19852

/s/ K. Bradley Mellor

K. Bradley Mellor  
PA ID No.: 61363

BOWLES RICE, LLP  
1800 Main Street, Suite 200  
Canonsburg, PA 15317  
Telephone: (724) 514-8915  
Facsimile: (724) 514-8954

CERTIFICATE OF SERVICE

I hereby certify that on this 21<sup>st</sup> day of September, 2018 a copy of the foregoing Plaintiffs' Suggested Findings Of Fact And Conclusions Of Law was electronically served upon all parties by filing the same with the Clerk of Court using the CM/ECF system and forwarding to all counsel of record.

/s/ Alan Gura  
Alan Gura