

Guns in Townships

OHIO TOWNSHIP ASSOCIATION
WINTER CONFERENCE
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Peter N. Griggs
Brosius, Johnson & Griggs LLC
1600 Dublin Road, Suite 100
(614) 464-3563
pgriggs@BJGlaw.net

Chief Terry Grice
Montville Township Police
6665 Wadsworth Road
Medina, Oh 44256
tgrice@montvilletwp.org

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I. General Township Authority for Regulating Firearms

- a. Townships have only those powers expressly conferred upon them or those necessarily implied therefrom. *Trustees of New London Township v. Minor* (1875) 26 Ohio St. 452.
 - i. Under the Ohio Revised Code, there is no expressly permitted or inherently implied, authority for a township to regulate the discharge of a firearm.
 - ii. A township that has enacted limited home rule cannot get around this. Ohio Revised Code Section 504.04(B) sets forth several limitations to limited home rule. One of those sections prohibits a limited home rule township from adopting of a resolution that establishes “regulations affecting hunting, trapping, fishing, or the possession, use, or sale of firearms.”

II. Regulation of Shooting Ranges

- a. Shooting Range Definition: “a facility operated for the purpose of shooting with firearms or archery equipment, whether publically or privately owned and whether or not operated for profit, including, but not limited to, commercial bird shooting preserves and wild animal hunting preserves established pursuant to this chapter. “Shooting Range” does not include a facility owned or operated by a municipal corporation, county, township police district, or joint police district.” O.R.C. 1533.83
- b. Townships may explicitly allow for a shooting range as a conditional use under the zoning resolution. The township cannot impose more stringent on a shooting range’s conditional use permit than the restrictions set forth by the National Rifle Association. Additionally, in *Nelson Twp. Trustees v. Soinski*, the Court of Appeals agreed with both the magistrate and trial court’s decisions in finding that a property owner who was granted a conditional use for the purpose of a “game preserve; wildlife refuge and hunting club” on his property that was zoned open-conservation land did not violate his conditional use permit by building a shooting range on the property. 2003 WL 22844258.
 - i. Conditional Use Overview:
 - 1. Conditional uses are not “permitted” uses. Rather, conditional uses are uses which may be permitted, subject to the issuance of a special permit. A use is typically categorized as a conditional use in recognition of the impact such use may have upon the surrounding area.
 - 2. A township board of zoning appeals’ power to grant conditional zoning

certificates is no greater than that vested in it by the township's zoning resolution. Stated differently, if a zoning resolution does not provide for conditional uses, then a board of zoning appeals is without authority to grant them.

3. The decision whether or not to grant an application for conditional use permit is administrative in nature. Consequently, such a decision is made in an adjudicatory, as opposed to legislative setting.
4. Unless the zoning resolution provides otherwise, if an applicant's request for a conditional use permit meets all technical requirements of the zoning resolution, the application may still be denied. See *Laurie Sue Groff-Knight, et al. v Board of Zoning Appeals of Liberty Township* (2004) Delaware County App. No 3 CAH 08-042 (unreported).

c. Ohio Revised Code Section 505.172 – Noise control

- i. A township board of trustees may adopt regulations and orders necessary to control noise generated at any location where a D permit has been issued by the division of liquor control, or generated within any area zoned for residential use.

d. Ohio Revised Code Section 1533.85- Immunities regarding noise at shooting ranges

- i. An owner/operator/user of a shooting range will not be liable for harm caused by the noise caused/created by a shooting range so long as the owner/operator/user substantially complies with the noise rules set forth in O.A.C.1501:31-29-03.
- ii. A party will not be granted injunctive relief against a shooting range under a Township's anti-nuisance zoning resolution unless the party is able to prove that the shooting range did not substantially comply with the chief noise or safety rules adopted by the Chief of the Division of Wildlife. If a township has more restrictive noise/nuisance zoning resolution than the standards set forth in O.A.C. 1501:31-29-03, they cannot preempt the standards set forth in O.A.C. 1501:31-29-03. (*State ex rel. Fischer v. Hall*, 2004 WL 1765478)

e. Ohio Revised Code Section 1533.84- Rules for establishing standards for shooting ranges

- i. Allows for the chief of the division of wildlife to adopt rules establishing generally accepted standards for shooting ranges, no more stringent than the National Rifle Association standards. These standards can include the limitation and suppression of noise, standards for hours of operation, and standards for public safety. These rules may also include standards for reconstruction, repair, enlargement, remodeling, or repair of a structure

that is part of a shooting range, so long as any local laws that creating standards for the reconstruction, repair, enlargement, remodeling, or repair of a structure apply generally to all structures and not exclusively to shooting ranges.

- ii. However, this in no way limits the authority of a township board of zoning appeals to issue or deny a conditional zoning certificate or non-conforming use for the “reconstruction, enlargement, remodeling, or repair of an existing shooting range...at the time of its establishment, a shooting range shall comply with all existing local ordinances, regulations, or laws.”

Stated plainly, if a township’s zoning resolution has standards relating to the general “reconstruction, enlargement, remodeling, or repair” of existing structures, an existing shooting range is required to adhere to these standards before the shooting range begins reconstruction. Additionally, a new shooting range must comply with applicable zoning restrictions.

- iii. **Ohio Administrative Code 1501:31-29-03** sets forth the shooting range standards referenced in O.R.C. 1533.84. “Private or public shooting ranges in Ohio should substantially comply with these standards to receive the civil and criminal immunities granted under Ohio Revised Code 1533.85.”

- 1. Noise/Sound levels: Cannot exceed 90 decibels for one out of twenty-four hours OR eighty-five decibels for eight out of twenty-four hours. (In order to determine whether a shooting range is in violation of this standard, a sound measuring receiver must be located at the boundary of the range property)
- 2. Operating Hours: 7 AM to 10 PM daily
- 3. Substantial compliance with NRA safety guidelines and implementation of a safety plan. This safety plan should include, but is not limited to, the following:
 - a. A description of the range that stipulates how, when, why and by whom the facility will be used.
 - b. The safety plan should be prominently posted, and all range users should be made aware of the safety plan before firing on the range.
 - c. The safety plan should divide rules and regulation in to the categories of gun handling rules, general range rules, specific range rules, and administrative rules and regulations. Each category should substantially contain, but not be limited to, the following items:

i. Gun handling rules:

- 1.** Always keep the firearm pointed in a safe direction.
- 2.** Always keep your finger off the trigger until ready to shoot.
- 3.** Always keep the action open and firearm unloaded until ready to use.
- 4.** Known your target and what is beyond the target area.
- 5.** Be sure the gun is safe to operate.
- 6.** Know how to use your gun safely.
- 7.** Wear ear and eye protection.
- 8.** Never use alcohol or drugs before or while shooting.
- 9.** Store guns so that they are not accessible to unauthorized persons or children.

ii. General range rules:

- 1.** Know and obey the common range commands.
- 2.** Know where others are at all times.
- 3.** Shoot only at proper and authorized targets.
- 4.** When two or more shooters are present, shooters should consult each other before moving down range from the firing line.
- 5.** Unload, open the action, ground or bench all firearms during the cease-fire or when someone moves down range to the target area.
- 6.** Make sure bystanders and observers that are close to the range are wearing ear protection.

iii. Specific range rules:

- 1.** Hours of operation for shooting activities.
- 2.** Type of firearms allowed or restricted.

3. Caliber or shotgun gauges allowed or restricted.
 4. Bullet or shot types allowed or restricted.
 5. Target placement, types of targets, and target holders allowed or restricted.
 6. Type of shooting activities allowed or prohibited.
- iv. Administrative rules and regulations:
1. Rules and regulations that govern the normal operation of the range and facilities such as parking, maintenance, schedules, guest policies, fees, security, supervision, sign-in procedures, and etc.
 2. Procedure to spot-check range users for compliance to range rules.
 3. Penalties, sanctions, or consequences for violations of the range rules and regulations.

III. Miscellaneous Sections of the Ohio Revised Code Addressing Firearms

- a. Ohio Revised Code Section 2923.16 – Improperly handling firearms in motor vehicles**
- i. Prohibition on discharging a firearm while in or on a motor vehicle.
 - ii. Prohibits knowingly transporting or having a loaded firearm in a motor vehicle so that the firearm is accessible without leaving the motor vehicle.
 - iii. Prohibits knowingly transporting or having an unloaded firearm in a motor vehicle unless possession of the firearm is lawful AND
 1. In a closed box, package or case; or
 2. In a compartment that can be reached only by exiting the vehicle; or
 3. In plain sight and secured in a rack or holder; or
 4. In plain sight with the action open or the weapon stripped (but only if the firearm is 24 inches or longer and the barrel is 18 inches or longer).

b. Ohio Revised Code Section 2923.161- Improperly discharging firearm at or into habitation or school safety zone

i. Prohibits the discharging of a firearm:

- 1.** At, in, or into a school safety zone;
- 2.** At or into an occupied permanent or temporary habitation;
- 3.** Within 1,000 feet of any school building, or school boundaries *intending* to do one of the following:
 - a.** Cause physical harm to someone in the school, school building, or at a school function;
 - b.** Cause panic or fear of physical harm to someone who is in the school, school building, or school function;
 - c.** Cause the evacuation of the school, school building, or school function.

ii. Whoever violates this section is guilty of improperly discharging a firearm at or into a habitation, in a school safety zone, or with the intent to cause harm or panic to persons in a school, in a school building, or at a school function or the evacuation of a school function, **a felony of the second degree.**

2923.162 Discharge of firearm on or near prohibited premises.

(A) No person shall do any of the following:

(1) Without permission from the proper officials and subject to division (B)(1) of this section, discharge a firearm upon or over a cemetery or within one hundred yards of a cemetery;

(2) Subject to division (B)(2) of this section, discharge a firearm on a lawn, park, pleasure ground, orchard, or other ground appurtenant to a schoolhouse, church, or inhabited dwelling, the property of another, or a charitable institution;

(3) Discharge a firearm upon or over a public road or highway.

(C) Whoever violates this section is guilty of discharge of a firearm on or near prohibited premises. A violation of division (A)(1) or (2) of this section is a **misdemeanor of the fourth degree.** A violation of division (A)(3) of this section shall be punished as follows:

(1) Except as otherwise provided in division (C)(2), (3), or (4) of this section, a violation of division (A)(3) of this section is a **misdemeanor of the first degree.**

(2) Except as otherwise provided in division (C)(3) or (4) of this section, if the violation created a substantial risk of physical harm to any person or caused serious physical harm to property, a violation of division (A)(3) of this section is a **felony of the third degree**.

(3) Except as otherwise provided in division (C)(4) of this section, if the violation caused physical harm to any person, a violation of division (A)(3) of this section is a **felony of the second degree**.

(4) If the violation caused serious physical harm to any person, a violation of division (A)(3) of this section is a **felony of the first degree**.

Ohio Revised Code Section 3773.06- Prohibits a person from hunting, shooting, or killing game within 1/2 mile of a township park. However, the board of township park commissioners may grant permission to kill overpopulated/undesirable game. Whoever violates this Section is guilty of a **fourth degree misdemeanor**. O.R.C. 3773.99(A).