

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JOHN H. LEGG

(Case No. 12532)

A hearing was held after due notice on April 19, 2021. The Board members present were: Dr. Kevin Carson, Mr. John T. Hastings, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a special use exception to operate a rifle or pistol range.

Findings of Fact

The Board found that the Applicant is requesting a special use exception for a period of five years to operate a rifle / pistol range. This application pertains to certain real property located on the northeast corner of Gravel Hill Road (Route 30) at the intersection of Bennum Switch Road and Gravel Hill Road (911 Address: 20093 Gravel Hill Road, Georgetown) said property being identified as Sussex County Tax Map Parcel Number 1-35-11.00-82.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a letter from Ron Hagan, information regarding best management practices for outdoor shooting ranges, correspondence in opposition to the Application, a site plan of the Property dated June 19, 1967, literature on the fundamentals of noise and sound, a petition of persons opposed to the Application, photographs, a portion of the tax map of the area, and an aerial photograph of the Property.
2. The Board found that the Office of Planning & Zoning received no correspondence in support of the Application and 12 letters and a petition with 91 signatures in opposition to the Application.
3. The Board found that Ron Hagan and John Legg were sworn in to testify about the Application. Harold Dukes, Esquire, presented the Application on behalf of the Applicant.
4. The Board found that Mr. Dukes stated that the County records show that the Property is zoned Agricultural Residential (AR-1) but, when the Applicant purchased the Property, it was zoned Light Industrial (LI-1). He was unclear how this could have changed. Planning & Zoning staff member Jennifer Norwood stated, however, that the property has always been AR-1 zoning and that the rifle/pistol range would still require a special use exception regardless of the zoning. The Board notes that a rifle / pistol range is not a permitted use or allowed under a special use exception in the LI-1 zoning district but the use may be permitted on a property zoned AR-1 as a special use exception. The Board also found that Mr. Dukes acknowledged that his client is not appealing the determination by the Planning & Zoning Department that the Property is zoned AR-1. Furthermore, Mr. Dukes acknowledged that the request before the Board is not for a determination of use under Sussex County Code §115-202. At issue before the Board is the sole question of whether the proposed use meets the standards for granting a special use exception.
5. The Board found that Mr. Legg testified that he acquired the Property approximately 12 years ago and there was a range on the Property at that time which was used by the prior owners from time-to-time.
6. The Board found that Mr. Legg testified that there was a construction company leasing the Property and that there was a gun range on the Property which was not used often.

7. The Board found that Mr. Legg testified that the berm for the gun range was built up for personal use.
8. The Board found that Mr. Legg testified that the range is currently used by Mr. Hagan for his business but there is no rent charged. According to Mr. Legg, the range is used for pistols and rifles.
9. The Board found that Mr. Hagan testified that he is a retired Delaware State Police captain and that his business partner, Hank Rickards, is a retired Marine Corps. Veteran. They, along with their wives, are the owners of American Responder Services (“ARS”) which is a business that uses the Property to conduct live fire training for classes.
10. The Board found that Mr. Hagan testified that ARS began as a training consulting business in January 2018 and grew into a firearms training and retail business with a focus on home and self-protection. ARS offers private training and classes with and without live ammunition fire.
11. The Board found that Mr. Hagan testified that ARS holds a Federal Fire Arms license, a Delaware Deadly Weapons Dealer license, and Delaware Retailer license.
12. The Board found that Mr. Hagan testified that the business began with two trainers and has grown to nine instructors who all have been certified by the United States Concealed Carry Association, some of whom were also law-enforcement firearms instructors, NRA firearms instructors, and Range Safety Officers.
13. The Board found that Mr. Hagan testified that, before live fire training, there is live firearm safety training including what to do in case of a medical emergency.
14. The Board found that Mr. Hagan testified that, when on the range, there is no less than a 3-1 ratio of students to instructor and this ratio is used to provide the best instruction while insuring that safety rules are followed.
15. The Board found that Mr. Hagan testified that there are no classes held after dark and only a few times after sunset to simulate low light conditions or to finish a late running class.
16. The Board found that Mr. Hagan testified that training has increased over the past three years during Covid-19, civil unrest, and the threat to restrict the purchase of certain firearms.
17. The Board found that Mr. Hagan testified that, since January 2021, ARS has conducted 13 live fire classes and 10 one-on-one lessons with a total of 51 hours of range times. He noted that all classes were conducted on Tuesdays, Thursdays, and Saturdays.
18. The Board found that Mr. Hagan testified that sound level decibel (dB) testing was performed from several locations and is available on video. He noted that the ambient noise level ran at about 49 – 50 dBs and that he measured the following readings at different locations from the range:
 - a. From 10 feet behind the firing line, there were two readings, one at 93 dBs and the other at 85 dBs;
 - b. From 100 feet directly behind the firing line, there was a high reading of 81.5 dBs;
 - c. From 200 feet away there was a reading of 81.3 dBs;
 - d. From two separate areas between the range and the pond on the Property, and from one those locations the high readings were 80.9 dBs and 74.8 dBs and the other the high readings were 76 dBs and 68.3 dBs;
 - e. A reading was taken at 80 yards from a bungalow on an adjacent property and the high reading 69.4 dBs; and
 - f. Readings were taken on Route 9 with the general traffic noise giving a high reading of 79.8 dBs, 81.7 dBs, 84 dBs, and 85 dBs.
19. The Board found that Mr. Hagan testified that all of the readings taken near Route 9 were just as high or higher than when taking the reading from 10 feet behind the line of fire.

20. The Board found that Mr. Hagan testified that ambient noise is louder than the range.
21. The Board found that Mr. Hagan testified that several enhancements have been made to the range by making it higher and angling the ends to further enhance the safety and reduce the noise.
22. The Board found that Mr. Hagan testified that, prior to this hearing, they had received approval from Mr. Legg to line both sides and rear with waste concrete to help reduce the noise level and that this improvement will not be completed until after the outcome of this hearing.
23. The Board found that Mr. Hagan testified that ARS has purchased a live fire simulator to use at their shop on Hebron Road in Rehoboth Beach to reduce the amount of live fire classes on the range.
24. The Board found that Mr. Hagan testified that live fire of 100 rounds is required for Delaware residents to obtain their concealed carry permit.
25. The Board found that Mr. Hagan testified that, if the special use exception is not granted, it would eliminate the ability to provide firearms training to retired officers and the citizens of the community and that it would hinder the ability for citizens to enjoy their Second Amendment right to obtain a concealed carry permit.
26. The Board found that Mr. Hagan testified that the State is now looking at legislation to require further firearms training to purchase a firearm.
27. The Board found that Mr. Hagan testified that safety rules are followed by employees of ARS when instructing on the range.
28. The Board found that Mr. Hagan testified that the legal distance of fire from a residence is 300 feet and this range and that the nearest residence to the range is almost double that.
29. The Board found that Mr. Hagan testified that there is a monetary charge for classes as it is a business.
30. The Board found that Mr. Hagan testified that there is a maximum of 12 students for each live fire class and that it is rare to have more than 1 class on the site per day.
31. The Board found that Mr. Hagan testified that there is no State Police training at this site and no contracts with law enforcement agencies with ARS but that some current and retired law enforcement officers take private classes to enhance their skills.
32. The Board found that Mr. Hagan testified that woods surround the range and the range is on the east side of the Property approximately 20 yards from a tax ditch. He noted that the range runs parallel to Bennum Switch Road and the range is located in the open area shown on the aerial photograph.
33. The Board found that Mr. Hagan testified that there are wetlands to the north side of the Property.
34. The Board found that Mr. Hagan testified that the range is mostly used for handguns but there is occasional assault rifle shooting and that, during hunting season, they sight shotguns and rifles for customers.
35. The Board found that Mr. Hagan testified that the dirt berm is approximately 10 feet tall and angled on each side. He noted that the berm is about 35 feet wide and the angled sides approximately 12 – 15 feet which decrease in height.
36. The Board found that Mr. Hagan testified that all the brass is picked up at the range but lead remediation has not been performed at this time. According to Mr. Hagan, lead remediation would require a company to come to the site and dig lead out of the berm.
37. The Board found that Mr. Hagan testified that the area in front of the berm has been graded to make it safer and stone has been put down
38. The Board found that Mr. Legg testified that Schell Brothers rent a portion of the Property for some landscaping needs and a shop for powder coating, which is all indoors, is also located on the site. He believes that the range does not interfere with the businesses on the site.

39. The Board found that Mr. Legg testified that the hours of operation for the range would be from 10:00 am through 7:00 pm every day but Mr. Hagan testified that the hours of operation would be Tuesday, Thursday, and Saturday from 10:00 am through 7:00 pm and that he has no plans to expand the business.
40. The Board found that Mr. Hagan testified that ARS primarily uses paper targets so there is no danger of shrapnel ricocheting as the bullet will go through the paper and into the berm. He noted that ricochets can happen when using metal targets and that the picture from the ARS Facebook page showing a man with shrapnel in his face is used for training purposes and that has never occurred at this site.
41. The Board found that Mr. Hagan testified that the properties across the road on the south side of Bennum Switch Road are residential, that the property to the east is farmland and woodlands, that the properties across the road on the west side of Gravel Hill Road are residential and a DelDOT yard, and that the properties adjacent to the north are residential properties.
42. The Board found that Mr. Hagan testified that he started his business on the site in February 2018 and that, prior to 2018, Richard Catts of Delaware Firearms used the property for training.
43. The Board found that Mr. Hagan testified that the range was used in the 1960s for Boy Scouts to earn merit badges.
44. The Board found that Ray Donohoe and David Buchanan were sworn in to give testimony in support of the Application.
45. The Board found that Mr. Donohoe testified that this is one of the safest groups he has worked with and he has 55 years' experience.
46. The Board found that Mr. Buchanan testified that he is a retired law enforcement officer who has been employed for ARS for three years. He noted that he has been a firearms instructor since 1980 and that there is a difference between law enforcement officers and civilians on the range. He is impressed with Mr. Hagan's safety record; particularly since there is a class for beginners.
47. The Board found that Mr. Hagan testified that there is no way for shrapnel to hit a house unless someone was aiming at it.
48. The Board found that William Schab, Esq., Pete Lorah, Grace McDonald, Janet Mitchell, Joe Loeffler, James Mitchell, Tracy Jewell, Victor Joseph, Danielle Lorah, and Jessica Mills were sworn in to give testimony in opposition to the Application.
49. The Board found that Mr. Schab testified that he has owned Parcel 79 adjacent to the Property for 38 years and that he leases his land and also uses it for storage for his office files. He testified that he is at this location regularly.
50. The Board found that Mr. Schab testified that the Application substantially adversely affects neighboring and adjacent properties and the life of surrounding property owner. He also believes that this location is inappropriate and unsafe for shooting firearms.
51. The Board found that Mr. Schab testified that, in close proximity to the site, are Gravel Hill Road and Route 9 which are both heavily traveled and that the bike path will go down Bennum Switch Road as well.
52. The Board found that Mr. Schab testified that, in the past, he never heard gunfire but now it sounds like a war zone and is deafening. He noted that his tenants never previously heard gunfire either.
53. The Board found that Mr. Schab testified that the property value of his commercially zoned property will be negatively affect by being adjacent to a pistol range.
54. The Board found that Mr. Schab testified that, if the use is residential, the homeowner has to list adverse uses which can affect sales prices.
55. The Board found that Mr. Schab testified that a property owner has a right to quiet enjoyment and that the use of the range has intensified.
56. The Board found that Mr. Lorah, who is the owner of Parcel 77.01, testified that the range is approximately 100 yards from his back yard.

57. The Board found that Mr. Lorah testified that, as recently as 14 months ago, the range used shorter berms of logs and, according to best management practices, moved berm and dirt should be tested for hazardous materials.
58. The Board found that Mr. Lorah testified that the new dirt berm has eroded and does not have the best management practices for lead removal as suggested by the Application.
59. The Board found that Mr. Lorah testified that the berm is not a U-shape but in one line and is not a constant height.
60. The Board found that Mr. Lorah testified that the berm is approximately 10 yards from the tax ditch and not 20 yards as stated by the Applicant.
61. The Board found that Mr. Lorah testified that the Applicant's Facebook page shows posts from his family members showing that they realize they are causing a disturbance to neighbors.
62. The Board found that Mr. Lorah testified that another site had a ricochet so ARS is aware that ricochets can occur.
63. The Board found that Mr. Lorah testified that the site is also used for family and friends for recreation in addition to the ARS classes.
64. The Board found that Mr. Lorah testified that the bike path will be in close proximity to this site and that people ride ATVs and horses nearby.
65. The Board found that Mr. Lorah testified that there is a manufactured home community and the Hawthorne community close by.
66. The Board found that Mr. Lorah testified that the gunfire measured from his porch was 85 dBs when there were only 3 shooters on the range and it was not a full class. He testified that the sound is worse when there is a full class and it can go on for 4-5 hours.
67. The Board found that Mr. Lorah testified that a measurement taken in his front yard with traffic on Route 9 and a lawnmower being operated has an average of 72 - 73 dBs.
68. The Board found that Mr. Lorah testified that, when the lawnmower gets close to the reader, it measures 82 dBs which is still not as loud as the gunfire.
69. The Board found that Mr. Lorah testified that Title 7 Chapter 71 – The General Assembly finds and determines that the people of this State are entitled to and should be ensured an environment free from noise which unnecessarily degrades the quality of their life.
70. The Board found that Mr. Lorah testified that a noise disturbance means any sound which endangers or injures the safety or health of humans or animals, annoys or disturbs a reasonable person of normal sensitivities, or jeopardizes the value of property.
71. The Board found that Mr. Lorah testified that no person shall, without first having obtained a variance or a temporary emergency variance from the Department of Natural Resources and Environmental Control, undertake any activity which in any way may cause or contribute to the creation of noise or a noise disturbance.
72. The Board found that Mr. Lorah testified that Title 28 Section 903 states that "No person shall keep a gallery or booth or other convenience for the purpose of target shooting or other trials of skill by the use of firearms within the borders of any town or city, or within 300 yards of any road or public passway, within this State, or at any place of public resort, unless the gallery or booth or other convenience is enclosed with walls not less than 10 feet in height and not less than 4 inches in thickness sufficient to prevent ball or shot from the firearms from escaping from or passing through the gallery or booth."
73. The Board found that Mr. Lorah testified that this is not a Second Amendment issue but a quality of life issue.
74. The Board found that Mr. Lorah testified that his home is 400 feet from the range.

75. The Board found that Mr. Lorah testified that he has children and likes to use his back yard but, when the range is in session, his dogs bark and it is tough to read, focus, or watch television.
76. The Board found that Mr. Lorah testified that the range sessions typically last 4-6 hours.
77. The Board found that Mr. Lorah testified that the Applicant should construct a proper noise abatement berm on the property to protect the quality of life.
78. The Board found that Mr. Lorah testified that he has lived in the area for 40 years and has no memory of a shooting range on the Property from his childhood. He noted that he used to play on the Applicant's property as a child and there was no range at that time.
79. The Board found that Mr. Lorah testified that the noise from the range intensified after complaints were levied and that he has received threats from his neighbor.
80. The Board found that Mr. Lorah testified that this is a residential area.
81. The Board found that Ms. McDonald testified that she supports the Hawthorne petition in opposition to the Application.
82. The Board found that Ms. McDonald testified that she retired to Southern Delaware for peace and quiet but she can hear the shots from the range.
83. The Board found that Ms. McDonald testified that she fears that, if this is approved, the business will expand and create more noise and that there is no guarantee that it will not become a 7-day business.
84. The Board found that Ms. McDonald testified that she has safety concerns for bicyclists in the area.
85. The Board found that Ms. McDonald testified that the supporters of the Application do not live in the neighborhood.
86. The Board found that Ms. Mitchell, who owns Parcel 77, testified that she has lived at her home for 63 years and that there was no shooting range on the Property.
87. The Board found that Ms. Mitchell testified that she would ride horses on the Property in the 1960s and used to ride horses until 2005.
88. The Board found that Ms. Mitchell testified that the sound magnifies over the water.
89. The Board found that Ms. Mitchell testified that initially the shooting was occasional but it has increased in recent years.
90. The Board found that Ms. Mitchell testified that, when complaints were made, the shooting would ease up but then go right back to it.
91. The Board found that Ms. Mitchell testified that she cannot enjoy the outdoors on her own property. She noted that she could not have a barbeque last year due to the shooting.
92. The Board found that Ms. Mitchell testified that she used to spend time in her gazebo but she cannot hold conversations when the range is in session.
93. The Board found that Ms. Mitchell testified that she has safety concerns about walking on Bennum Switch Road and she has concerns about the effect of the range on the bicycle trail.
94. The Board found that Ms. Mitchell testified that the range users are beginners and that the guns used on the range are high caliber weapons.
95. The Board found that Ms. Mitchell testified that she cannot go outside or live in her home when the range is in session.
96. The Board found that Ms. Mitchell testified that the gunfire affects her dog and she has to take the dog away from her home when the range is in session.
97. The Board found that Mr. Loeffler, who owns Parcel 76, testified that he has owned his property for approximately 1.5 months and that his property is adjacent to the Property.
98. The Board found that Mr. Loeffler testified that he works close to three gun ranges and he does not have the same issues as he does with this gun range but, when he is home, he cannot enjoy his home.

99. The Board found that Mr. Loeffler testified that he is a gunowner and would not wish to take gun rights away from anyone but this is a sound problem, a property value issue, and a quality-of-life issue.
100. The Board found that Mr. Loeffler testified that the sound echoes and carries greatly.
101. The Board found that Mr. Mitchell, who owns Parcel 77, testified that he has resided in this area for 40 years and he has seen a lot of growth in the Gravel Hill area. He believes that residents of Sussex County have a reasonable expectation to enjoy a quality of life and should have the freedom to enjoy their homes and outdoor spaces with a reasonable expectation of comfort, safety and a healthy lifestyle. He believes that the noise level has exceeded safe and healthy environment range.
102. The Board found that Mr. Mitchell testified that this is not safe for walking and/or biking and that it is not safe that his family has to sit indoors with the TV turned up loud to drown out the impulse noises from firearms.
103. The Board found that Ms. Jewell testified that she lives on Bennum Switch Road and that she has lived in the area for 45 years.
104. The Board found that Ms. Jewell testified that she fears for the safety of her grandchildren.
105. The Board found that Ms. Jewell testified that the gunfire is ongoing 7 days a week for 3 – 4 years and the range sounds like a warzone.
106. The Board found that Ms. Jewell testified that she cannot hold a conversation while the range is in session.
107. The Board found that Ms. Jewell testified that she has concerns about lead leaking into the tax ditches and affecting groundwater as she has a well on her property.
108. The Board found that Ms. Lorah, who lives on Parcel 77.01, testified that she is a parent of a special needs child with an anxiety disorder and the gunfire triggers panic attacks in her child.
109. The Board found that Ms. Lorah testified that they have their child in therapy.
110. The Board found that Ms. Lorah testified that the walls rattle when the range is used.
111. The Board found that Ms. Lorah testified that they cannot move as they have family support in the area and it would mean moving three family units
112. The Board found that Mr. Joseph, who lives on Parcel 74, testified that, when the gun range is active, it sounds like sonic booms and he can feel it in his chest.
113. The Board found that Mr. Joseph testified that he has concerns about lead contamination.
114. The Board found that Mr. Joseph testified that the range was not there previously.
115. The Board found that Mr. Joseph testified that the neighbors are long-time residents and not new to the neighborhood.
116. The Board found that Mr. Joseph testified that the noise is constant.
117. The Board found that Ms. Mills, who lives on Gravel Hill Road, testified that the gun range is not just used by Mr. Hagan on Tuesday, Thursday, and Sunday but also by Mr. Legg and his associates.
118. The Board found that Ms. Mills testified that they began shooting as early as 6:30 am and have gone until the late hours of the evening.
119. The Board found that Mr. Hagan testified that 95% of the guns used on the site are handguns but Mr. Legg allows his friends to use the range for recreation. He noted that, occasionally, rifles and shotguns are used on the site as well.
120. The Board found that Mr. Hagan testified that he did not dispute the pictures submitted by the opposition.
121. The Board found that Mr. Hagan testified that the original berm was not moved. Rather, dirt was added to it.
122. The Board found that Mr. Hagan testified that, if this Application is approved, ARS intends to use cinder blocks used in landscaping and build them up approximately 9 feet high in a U-Shape.

123. The Board found that Mr. Hagan testified that the dirt would be up against the block and they would look into the lead mitigation.
124. The Board found that Mr. Hagan testified that he is not aware that he needs any permits from DNREC.
125. The Board found that Mr. Hagan testified that the rails to trails path will be on the north side Bennum Switch Road approximately 120 yards from the range and they would not be crossing the backstop of the range.
126. The Board found that there were 8 people present in support of and 14 people appeared in opposition to the Application.
127. The Board voted to leave the record open to allow the Applicant to submit videos showing the decibel readings that Mr. Hagan referenced in his testimony and for the Applicant to appear at the Board's hearing on May 3, 2021, to answer any questions the Board may have about the video. On May 3, 2021, the Board viewed the videos provided by the Applicant. At that meeting, Mr. Hagan was sworn in to testify and he described the location of where the videos were taken and that 9mm and 40 mm handguns were primarily shot the day the videos were taken.
128. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, the Board determined that the application failed to meet the standards for granting a special use exception because the shooting range will substantially affect adversely the uses of neighboring and adjacent properties. The findings below further support the Board's decision to approve the Application.
 - a. The Applicant proposes to use a portion of the Property for an outdoor shooting / target range on a site which is also used for certain businesses.
 - b. The Board has reviewed and weighed the testimony and evidence presented by both the Applicant and the opposition.
 - c. The record is quite clear that the area near the shooting range is an area of residential uses. Many neighbors appeared in opposition or submitted written objections to the request. Notably, several neighbors who have lived in the area for many years and, in some cases, decades, appeared in opposition to the request. Those neighbors testified credibly to the significant intensification of use of the range over the past three years and how the range has impacted their quality-of-life. These neighbors have demonstrated that the shooting range has been an unnecessary intrusion into the area and has substantially affected the uses of their properties.
 - d. The largest concern raised by the opposition relates to the noise generated from the range. The range will be located outdoors where the sounds of repeated shots fired clearly reverberate throughout the area. Video of the decibel readings from the opposition demonstrate that the sound is loud and can be heard from neighboring properties. While the Applicant's property is wooded, a pond is also located on the site and the noise from the range clearly travels a great distance. The Board finds that additional noise from the outdoor shooting range has increased the noise pollution in this neighborhood and unnecessarily disturbs neighbors. The Board heard credible testimony from neighbors that they have difficulty carrying on conversations on their property due to noise from the range and that they have to raise the volume of televisions in their homes due to the noise as well. Neighbors also testified that the noise has frightened pets and has affected a neighboring special needs child who is in therapy. The noise has also caused some neighbors to limit their outdoor activities such as barbequing and enjoying a gazebo. As such, the Board finds that, even if the hours of the range are limited, the noise from the range will have a substantial adverse effect on the nearby properties.

- e. Neighbors also expressed concerns about the safety effect of the range on the neighborhood. The Applicant did not adequately convince the Board that its range would not pose a potential safety threat the area due to stray bullets or ricochets. The Applicant and its supporters noted that the range has a strong safety record but the Applicant also testified that the range is used for concealed carry classes and that there are classes for beginners. The Applicant's employee even noted the difference between range users who are beginners as compared to law enforcement officers using the range. While there was no evidence that there have not been safety instances at this range, the Board finds that an outdoor shooting range on property adjacent to residential lands and within 120 yards of a proposed bike path poses an increased safety risk and that the neighbors' concerns about the effect of stray bullets and ricochets are reasonable.
- f. The Board has concerns about the chilling effect the range has on neighbors who wish to use their outdoor space or walk or bike the neighborhood. Neighbors testified that they avoid being outside or walking the public areas near the Property due to concerns about ricochets or safety from the range. The range has clearly deterred those neighbors from engaging in activities that they otherwise would have engaged in if not for the range. This deterrence has substantially affected adversely the uses of neighboring and adjacent properties.
- g. The undisputed evidence also demonstrates that a bike trail is planned adjacent to the site and bikes will traverse a path between the site and Bennum Switch Road. The range is located close to the proposed bike trail and the Board has great concern that shots fired from the range would have a significant safety impact on bikers along that trail; particularly those who are not aware that a shooting range is located in such close proximity to the trail.
- h. The testimony of a neighbor who has a special needs child proved compelling as the neighbor testified that her child suffers panic attacks at times when the range is in session and the child is in therapy. The neighbor uses her property as a residence and the range clearly has substantially affected adversely the uses of neighboring and adjacent properties.
- i. The Board notes that the anecdotal evidence presented by neighbors who are close, if not adjacent, to the Property demonstrate that the range has significantly disturbed the neighborhood and has substantially adversely affected the uses of those properties. The Board notes that one neighbor has to take her dog off the property when the range is in session due to the impact the noise from the range has on her dog. The range has substantially affected adversely the use of that neighbor's property.
- j. The Applicant also failed to demonstrate how the range will not lead to a substantial adverse effect on the environment of neighboring and adjacent properties. It is undisputed that bullets will be fired at the site and the opposition has expressed concern about the effect of the emissions from fired rounds into the ground and nearby waterways. The testimony indicates that the Property is adjacent to a nearby tax ditch thereby potentially exposing the ditch to pollution. Likewise, the Property has a pond and wetlands that could also be exposed to pollution. The Applicant testified that it would maintain the Property but did not present a convincing plan as to how it will limit the exposure of neighboring and adjacent properties (particularly the waterways) to pollution due to emissions from fired rounds at the range.
- k. The Board also finds that the shooting range may substantially affect adversely the property values of neighboring and adjacent properties.

Attorney William Schab testified that sellers of residential real estate must disclose to potential buyers conditions which may be deemed as negative and he testified that the range was not on the Property previously but, if he were to sell his lands, he would have to disclose the existence of the range. Mr. Schab expressed reasonable concern that such a disclosure could impact the sales price of his property.

- l. The proposed use is out of character for the neighborhood as there are residential properties nearby.
- m. The proposed shooting range will substantially affect adversely the uses of neighboring and adjacent properties.

The Board denied the special use exception application finding that it failed to meet the standards for granting a special use exception.

Decision of the Board

Upon motion duly made and seconded, the special use exception application was denied. The Board Members in favor of the Motion to deny were Dr. Kevin Carson, Mr. Travis Hastings, Mr. John Williamson, and Mr. Brent Workman. No Board Member voted against the Motion to deny the special use exception application. Mr. Jeffrey Chorman did not participate in the discussion or vote on this application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



John Williamson
Chair

If the use is not established within two (2) years from the date below the application becomes void.

Date July 12, 2021