

**REGULAR SESSION, FEBRUARY 1, 2017**

Chairman Bolduc opened the meeting at 11:01 a.m. Commissioner Chandler, Commissioner Edwards, Prosecutor Matt Pember, Planning & Zoning Administrator Ami Bennett and the Clerk, Denise Gill was present. Commissioner Bolduc recessed the meeting to move to the courtroom.

**RESOLUTION 2017-02-01**  
**IC§55-2601 SPORT SHOOTING RANGES**

**SHAW SHOOTING RANGE APPLICATION**

Parties in attendance, including legal counsel, listed on sign-in sheet.

Chairman Bolduc reopened the meeting and asked if any of the Commissioners has a conflict of interest to disclose. Neither Commissioner Chandler nor Commissioner Edwards disclosed a conflict of interest. Chairman Bolduc explained that he has an interest professionally and financially with the parties involved. His partnership with the Hagerman Valley Inn provides revenue from the participants at the Shaw Shooting Range. His ownership of 1000 Springs Realty also places him in the midst of the issues raised by appellants.

Chairman Bolduc asked if legal counsel would like him to step down from making any determinations in this matter.

Gary Slette, representing Shaw Shooting, stated his client had no objections to Chairman Bolduc making any decisions in this matter.

Melissa Kippes, representing Citizens4Hagerman, waived any conflict that Chairman Bolduc disclosed, stating her clients were not opposed to him making decisions in this matter.

Prosecutor Pember explained the interpretation of Idaho Code §§ 55-2601 through 55-2606, the Sport Shooting Range Act, which is not merely a noise level and nuisance regulation, but, in fact, includes language preempting local authority. A pre-existing range can do the actions listed within I.C. § 55-2604 without being in violation of county ordinance. Local authority is authorized under the act to regulate noise produced as a result of a substantial change of use of the range. A substantial change of use would be one in which the range changed to something other than a shooting range. The Sport Shooting Range Act allows the county to enforce where a new shooting range would be built, as well as how it is built. It is the interpretation of Gooding County that the activities proposed by Shaw in the application for special use permit and substantiated by the record, including the October 27, 2016 Site Visit, are consistent with the actions listed in I.C. § 55-2604 including:

55-2604(5)(a) Expanding or increasing membership or opportunities for public or law enforcement participation related to the primary activity as a shooting range;

(b) Making repairs or improvements to enhance safety or noise abatement;

(c) Increasing events and activities related to the primary activity as a shooting range;

(d) Acquiring additional lands to be used for buffer zones or noise mitigation efforts;

(e) Establishing or expanding range use hours between 7:00 a.m. and 10:00 p.m.

(f) Establishing or expanding law enforcement agency arrange use hours between 10:00 p.m. and 7:00 a.m.

Although there may be different ways to construe this statute, the County does not have the benefit of any case law on the matter. When the statute was brought to his attention, he immediately put it on the Board's agenda for Monday, when it was first discussed and the meeting recessed until today when the parties could be included.

Melissa Kippes stated that her clients, Citizens4Hagerman, feel they are not being heard on the objections they have raised. She found out about this statute on Monday, although she was aware of it previously, and contends that it is about noise. She stated further that the Prosecutor is interpreting the statute too broadly. A factual determination as to the actions taken by Shaw Shooting has yet to be considered. She questions what has been disregarded as substantial changes on the current range. For her clients, safety and location are the bigger issues. The modifications and additions to the shooting range are a factual determination that needs to be evaluated and considered. The things done by Shaw in the bulldozing and berm-building on his property are not on the list of activities exempted from local zoning regulation. The Board has jurisdiction over land use issues. She would like the opportunity to present her client's arguments on February 13, 2017, as scheduled. Her clients are merely looking for process.

Gary Slette acknowledged that the statutes currently in question have raised issues. In the context of its breadth, the statute is shocking in the scope it covers and the entire preemption of local government from regulating existing shooting ranges. New ranges can be regulated by local government. It is clear that it does not apply to noise issues only. If no substantial change is made, which would be defined by the shooting range closing its operations and becoming an entirely different land use, then the local authority is preempted from enacting any violation provision. In the case of the Shaw application, one of the primary activities was to expand opportunities for law enforcement, which is listed within I.C. § 55-2604(5)(a).

Commissioner Chandler expressed his intent to keep an open mind on this issue and understand where each of the parties was coming from. He expressed his shock upon reading the memo referencing the statute, but at the end of the day his priority is to uphold the law.

Commissioner Edwards asked Mr. Slette, based on his previous comments, to clarify Shaw's intention to withdraw the application and therefore not ask for an expansion of the current special use permit.

Mr. Slette explained that expansions in this case do not constitute a substantial change of use and therefore the county can take no action deeming it a violation of the zoning ordinance.

Ms. Kippes expressed her disagreement with the way Shaw's activities have been categorized as not being a substantial change of use.

Chairman Bolduc discussed the detrimental way this issue has divided the entire Hagerman Valley. He asked legal counsel whether there would be a downside to tabling the proposed resolution and proceeding with the appeal hearing, as scheduled, in order to give all participants an opportunity to be heard.

Prosecutor Pember responded that the downfall of that alternative would be in the county not strictly adhering to the law.

Whatever outcome from the appeal hearing would be considered null and void, as the county lacks jurisdiction in the matter.

Mr. Slette spoke about the next step in the legal process and Ms. Kippes' role in filing a declaratory judgement.

Discussion about the validity of the appeal hearing and whether or not that would change the county's interpretation of the statute ensued.

Commissioner Edwards made a motion to adopt Resolution 2017-02-01 to Acknowledge State Pre-emption of Local Government and Nullifying the Decision of the Planning & Zoning Committee Regarding Shaw Shooting's 2016 SUP Application. Commissioner Chandler seconded the motion. Roll call vote: Commissioner Chandler, aye; Commissioner Edwards, aye; Commissioner Bolduc, aye. February 13, 2017 appeal hearing cancelled.

Resolution to Acknowledge State )  
Pre-emption of Local Government )  
Regulation Regarding Shooting Ranges )  
and Nullifying the Decision of the )  
Planning & Zoning Committee )  
Regarding Shaw Shooting's 2016 SUP )  
Application )

WHEREAS, It has been brought to the attention of the County that the County, as a local unit of government as defined by Idaho Code §55-2604(1), is preempted by state law from action regarding the Shaw Shooting Range. I direct attention to Idaho Code Sections 55-2601, et. seq. "Sport Shooting Ranges" AND

WHEREAS, I.C. § 55-2605 specifically preempts local government to establish noise standards for outdoor sport shooting ranges and continues to say "nor shall local government have the authority to make any action described in section 55-2604(5), Idaho Code, a violation of a local zoning ordinance, nor shall the undertaking of any such action cause an outdoor sport shooting range to be in violation of any zoning ordinance", AND

WHEREAS, I.C. § 55-2604(5) describes actions that existing outdoor shooting ranges may do without local government action, including, but not limited to, expanding related to the primary activity as a shooting range, increasing membership or opportunities for public or law enforcement participation in shooting, making repairs or improvements for safety or noise abatement, increase events and activities relative to shooting, acquiring additional lands to use as buffer zones or for sound mitigation, expanding range hours from 7 a.m. to 10 p.m. for the public and from 10 p.m. and 7 a.m. for law enforcement as such activities do not constitute a "substantial change of use" according to statute and thus, assumes a pre-existing range, AND

WHEREAS, even if these did constitute a substantial change of use under the law, the legislature under I.C. §55-2603 has only allowed local units of government to "regulate noise produced as a result of a substantial change of use" and nothing else AND

WHEREAS, the intent of the legislature was to place outdoor shooting ranges under complete control and exclusive jurisdiction of the state in a way preempts counties and cities from regulating the of outdoor shooting ranges AND

WHEREAS, I.C. §55-2603 does allow a local unit of government to regulate the location and construction of a sport shooting range, which this County properly did when it allowed the 2014 SUP for Shaw Shooting to establish its original range under County Code AND

WHEREAS, as of the time of its application, Shaw Shooting would be considered a pre-existing range and State law does not allow local units of government to control expansion of Outdoor Shooting Ranges, as stated above, AND

WHEREAS, the current 2016 Shaw Shooting Application asks to do only things specifically listed as "not substantial change of use" that Gooding County would be prevented by legislative action from regulating AND

WHEREAS, even if Gooding County could regulate an Outdoor Shooting Range, the legislature has only given the County jurisdiction over noise and only then if there has been a substantial change of use AND

WHEREAS, the legislature has stated that only using the range for an activity is has not previously engaged in as a substantial change, AND

WHEREAS, That Idaho Code sections 55-2601 et. seq. specifically preempts Gooding County from regulating the use of Outdoor Shooting Ranges and places nearly exclusive jurisdiction in the hands of the legislature.

THEREFORE, BE IT RESOLVED AS FOLLOWS:

That the Gooding County Board of Commissioners find that jurisdiction for regulation pre-existing outdoor shooting ranges is pre-empted by and belongs nearly exclusively to the state, for right or wrong. The Board also specifically finds that Shaw Shooting, as a pre-existing range under a legal and proper Special Use Permit (SUP) granted in 2014, need not have applied for a second SUP to make the changes it proposes.

FURTHER, the Board finds that all action, past, present and future, taken by the County is void due to nearly exclusive jurisdiction of the State and is therefore invalid. The Board also finds that the actions that have been taken on the part of the Gooding County Planning and Zoning Committee and Administrator, although erroneous, were made in good faith, under the belief that a new SUP would serve the best interests and safety of the citizens of Gooding County. All further actions regarding this SUP are hereby cancelled and the SUP is to be withdrawn, as the subject matter is completely in state jurisdiction.

FURTHER, the Board finds that this resolution applies only to pre-existing Outdoor Shooting Ranges. New Outdoor Shooting Ranges will continue to require an SUP, as the legislature has allowed some amount of regulation by local government units in this area.

Adopted this 1st day of February, 2017.

GOODING COUNTY BOARD OF COMMISSIONERS

/s/Mark Bolduc  
Mark Bulduc, Chairperson

/s/Helen P. Edwards  
Helen P. Edwards, Commissioner

/s/Wayne Chandler  
Wayne Chandler, Commissioner

Attest: /s/Denise Gill  
Denise Gill, County Clerk

Commissioner Bolduc recessed regular session of the Board of County Commissioners to move back to the Boards meeting room.

Chairman Bolduc opened the recessed session.

**4-H LEADERS COUNCIL**

Jim Brockman joined the meeting to introduce himself as the liaison for the Gooding County 4-H Leaders Council. Mr. Brockman had a list questions. The Board listened to his questions and took them under advisement. They explained that they would answer his questions at another meeting.

**ELECTED OFFICIALS & DEPARTMENT HEADS**

The Elected Officials and Department Heads joined the meeting at the request of the Board. The Board explained that they had a request to allow employees to contribute their PTO to a "bank" that would assist employees that had no PTO or other accrued time to be off for medical reasons. The Board asked that the Elected Officials & Department Heads to get together and work out a plan to implement the "bank".

**MINUTES**

Commissioner Chandler moved to approve the minutes of the January 23, 2017 and January 30, 2017. Commissioner Edwards seconded the motion. Motion carried.

Chairman Bolduc adjourned the meeting at 12:45 p.m.

/s/ Helen P. Edwards  
Helen P. Edwards, Commissioner

/s/F. Wayne Chandler  
F. Wayne Chandler, Commissioner

/s/Mark Bolduc  
Mark Bolduc, Chairman

Attest:/s/Denise M. Gill  
Denise M. Gill, Clerk