No. 43076-2

Court of Appeals, Division II
of the State of Washington

KITSAP COUNTY, a political subdivision of the State of Washington,
Respondent,
v.
KITSAP RIFLE AND REVOLVER CLUB, a not-for-profit corporation registered in the State of Washington, and John DOES and JANE ROES I-XX, inclusive,
Appellants.

Appeal from the Superior Court of Pierce County
The Honorable Susan K. Serko

BRIEF OF AMICUS CURIAE, NATIONAL RIFLE ASSOCIATION, INC.

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TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

PAGE(S)

STATE CASES

TABLE OF AUTHORITIES

PAGE(S)

FEDERAL CASES

STATUTES & RULES

I. INTRODUCTION

Kitsap County sued to shut down the Kitsap Rifle and Revolver Club ("the Club"), an outdoor shooting range that has operated safely and lawfully for 88 years.[1] Closing the Club will force shooters to practice at informal shooting areas, impairing safety and damaging the environment, or it will force shooters to travel to distant ranges to practice.

Shooting ranges are under attack across the country under the theories used in this case. Often, a decades-old outdoor shooting range will operate in a remote area without problem or controversy. Aware of the existence of the range, people begin to build houses nearby. And when a critical mass of new neighbors develops, they complain about the noise, even though the range is largely exempt from noise regulations.[2]

Individuals have the Second Amendment right to bear arms for self-defense.[3] The trial court interfered with the Second Amendment rights of the Club and its members when it interpreted a Kitsap County ordinance to terminate the Club's nonconforming use right. In analogous cases regarding interference with the right of religious freedom, the Washington Supreme Court holds that local laws may not unduly burden

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[1] It is legal to shoot unsupervised on parcels of land five acres or larger near the Club. Kitsap County Code (KCC or "the Code") § 10.24.090.

[2] "[S]ounds created by the discharge of firearms on authorized shooting ranges" are exempt from noise regulations between 7:00 am and 10:00 pm. WAC 173-60-050.

[3] *District of Columbia v. Heller*, 554 U.S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008); Wash. Const. art. I, § 24.

churches and other places where First Amendment activity takes place. By analogy, local ordinances may not unduly burden shooting ranges and other places where citizens exercise their Second Amendment rights.

Shooting ranges are essential to the right to bear arms; to obtain and maintain proficiency in using their firearms, shooters must practice. The safest and most environmentally responsible place to practice is at a range like the Club. In applying local code to terminate the Club's nonconforming use right and enjoin its operation, the trial court considered only the County's purported interests, ignoring the shooters' Second Amendment rights. This was in error. State law required it to interpret local code to avoid Second Amendment issues, not raise them. Under the correct interpretation of the Code, the Club's nonconforming use right should not have been terminated and the Club should not have been shut down. This Court should reverse the trial court's decision.

II. ARGUMENT

When a property owner lawfully uses its land for a certain purpose, but the use becomes incompatible with later-adopted zoning regulations, the pre-existing use becomes "nonconforming," and it is grandfathered in as a vested right by the doctrine of nonconforming use. [4] The Club has used its property as a shooting range and gun club for 88 years—long

[4] *Rhod-A-Zalea & 35th, Inc. v. Snohomish Cnty.*, 136 Wash.2d 1, 6, 959 P.2d 1024 (1998).

before it was zoned. The trial court summarily terminated the Club's nonconforming use right to continue using its property for that purpose.

In doing so, the trial court erred in two important ways. First, it interpreted and applied the Code to terminate the Club's nonconforming use right without considering the civil rights of the Club's members. Second, it misconstrued the Kitsap County nonconforming use ordinance that served as the legal basis for the closure, mistakenly holding that the ordinance authorized that action. Amici do not take issue with the facts on which the trial court relied, but the conclusions of law it reached. Its decision should be review de novo.

A. Termination of the Club's Nonconforming Use Violates the Second Amendment.

The Second Amendment protects the right of individuals to keep and bear arms for lawful purposes, including self-defense.[5] The U.S. Supreme Court, while rejecting rational basis review and interest-balancing tests,[6] has not yet had occasion to settle which, if any, of the levels of scrutiny should apply to Second Amendment challenges. And while the Washington Supreme Court recently adopted a framework for addressing laws that directly burden Second Amendment conduct,[7] there is no case law addressing the indirect burden imposed when localities

[5] *Heller*, 554 U.S. at 595.
[6] *Id.* at 628 n.27, 635.
[7] *State v. Jorgenson*, 312 P.3d 960, 967 (Wash. 2013).

regulate the use of property necessary to the exercise of the right to keep and bear arms. But First Amendment jurisprudence often provides helpful guidance when analyzing Second Amendment challenges. Specifically, where the court is faced with government action that effectively shutters shooting ranges, establishments necessary to the exercise of the Second Amendment, it is fair to analogize to First Amendment protections of those spaces necessary to the exercise of religion and free speech.[8]

Various Washington Supreme Court cases establish that local land use ordinances affecting the First Amendment's free exercise of religion and freedom of speech must be strictly construed against the government because they burden fundamental, constitutional rights. The Court should require the same strong showing in the Second Amendment context.

In *Sumner v. First Baptist Church of Sumner*,[9] a church operated a school in its basement. The basement failed to meet the requirements of the building code; the City sued, and the trial court enjoined the use of the

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[8] In *Ezell v. City of Chicago*, 651 F.3d 684, 699 (7th Cir. 2011), the Seventh Circuit relied on First Amendment comparisons in striking Chicago's ban on shooting ranges. The court reasoned that the law's "very existence stands as a fixed harm to every Chicagoan's Second Amendment right to maintain proficiency in firearm use by training at a range." *Id.* And it rejected the city's argument that the ordinance only caused minimal harm because plaintiffs could shoot at a range outside the city. It held that, just as First Amendment rights may not be abridged in appropriate places on the grounds that they could be exercised in some other place, Second Amendment rights could not be abridged on that ground. *Id.* at 697.

[9] 97 Wash.2d 1, 639 P.2d 1358 (1982).

building for school purposes until it was brought into compliance.[10] The Washington Supreme Court reversed and remanded. After acknowledging that the city was applying a regulation concerning a valid governmental interest in an evenhanded way, it held that "[a] regulation neutral on its face may, in its application, nonetheless offend the constitutional requirement for governmental neutrality if it unduly burdens the free exercise of religion."[11]

The *Sumner* court reasoned that the trial court erred by not considering *both* the church's First Amendment interest and the city's interest in enforcing the building code:

> [S]uch regulations will be enforced against religious schools when the state proves that the specific concerns addressed by the regulations are of sufficient magnitude to outweigh the free exercise claim, that the nonapplication of the regulations will threaten the public's health or other vital interests, and that the *state's interest could not otherwise be satisfied* in a way which would not infringe on religious liberty.[12]

This decision requires that a local agency, when confronted with First Amendment rights, should "not be uncompromising and rigid. Rather, it should approach the problem with flexibility. There should be some play in the joints of both the zoning ordinance and the building code."[13]

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[10] *Id.* at 4.
[11] *Id.* at 6 (quoting *Wisconsin v. Yoder*, 406 U.S. 205, 220, 92 S. Ct. 1526, 32 L. Ed. 2d 15 (1972)).
[12] *Id.* at 9 (citation omitted) (emphasis added).
[13] *Id.*

Sumner was remanded with instructions to balance the interests of the parties and require the government to prove the remedy it sought was the "least restrictive available to achieve the ends sought."[14]

This is where Kitsap County and the trial court erred. The record demonstrates that neither the County nor the trial court made any attempt to accommodate the rights of the Club and its members or impose the least restrictive means available. They did quite the opposite. Interpreting the Code to terminate the Club's nonconforming use right and requiring it to shut down until it obtains a conditional-use permit (CUP), which the County may never grant, meaningfully infringes on the rights of the Club's members "to maintain proficiency in firearm use."[15] And the trial court approved such action without first finding that the County's interests could not be served without infringing on Second Amendment liberties.

A related case, *Open Door Baptist Church v. Clark County*,[16] is distinguishable but still instructive. There, the county required the church to apply for a CUP because it had been established in a zone where churches were not allowed by right and it had no basis to claim a vested nonconforming use right.[17] Unlike the Club, the church possessed no vested right because the property had been used as an art school for 12

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[14] *Id.* at 8.
[15] *See Ezell*, 651 F.3d at 699.
[16] *Open Door Baptist Church v. Clark County*, 140 Wash.2d 143, 995 P.2d 33 (2000).
[17] *Id.* at 145-46.

years before the church was established.[18] The Court held the county could require the CUP on the condition that: (1) the church would be allowed to operate during the pendency of its CUP application; and (2) the county would be required to waive or reduce the cost of the CUP if the church could show inability to pay.[19] Further, if the conditions of the CUP burdened the practice of religion, strict scrutiny would apply, and the county would have to prove the conditions were "the least restrictive means" necessary to achieve the government's interest.[20]

Here, the trial court terminated the Club's nonconforming use right and enjoined its operation while requiring it to obtain a CUP at its own expense. These remedies impose significant burdens on the exercise of the Second Amendment, contrary to both *Sumner* and *Open Door Baptist Church*. It would be less restrictive to allow the Club to continue as a nonconforming use while addressing any proven harm or violation with the least restrictive remedy available. The trial court erred by failing to interpret and apply local code to achieve that result.

World Wide Video, Inc. v. City of Tukwila[21] further reveals the

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[18] *Id.*
[19] *Id.* at 155.
[20] *Id.* at 154 (quoting *Sumner*, 97 Wash.2d at 8) (emphasis added). In a related case, *First Covenant Church of Seattle v. City of Seattle*, the court held that a city's interest in historic preservation was insufficient to outweigh a church's interests in free speech and religion and declared the city's Landmarks Preservation Ordinance unconstitutional as applied to the church. 120 Wash.2d 203, 227-28, 840 P.2d 174 (1992).
[21] *World Wide Video, Inc. v. City of Tukwila*, 117 Wash.2d 382, 816 P.2d 18 (1991).

extent of First Amendment protection against unduly burdensome land use restrictions. There, an adult bookstore challenged as unduly restricting free speech a city zoning ordinance permitting adult uses only within a specified zone.[22] The Court invalidated the law under strict scrutiny as a content-based speech restriction that was not "narrowly tailored" to meet its objective of combatting any "harmful secondary effects."[23] The court held that even if the city had produced evidence the bookstore was causing harm, the law was not sufficiently tailored to the government's interest.[24]

As in these First Amendment cases, strict scrutiny is the test for analyzing a Second Amendment challenge to government action responsible for the closing of a shooting range. The termination of the Club's nonconforming use right burdens Club members' and the public's exercise of their fundamental Second Amendment rights. And those rights should not be restricted absent a showing that the government has employed the least restrictive means necessary to achieve a compelling interest. The trial court's reasons for terminating the Club's vested nonconforming use property right—expansion or change of use, site development without a permit, installation of culverts, illegal earth-moving activities, unpermitted construction of berms, and unpermitted

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[22] *Id.* at 384-85.
[23] *Id.* at 389.
[24] *Id.* at 389-90.

cutting into hillsides[25]—do not constitute a compelling government interest. Indeed, like the city in *Tukwila*, the County seems more interested in legislating the Club off its property than in resolving any concerns it may have.

And like the governments in *Sumner* and *Tukwila*, Kitsap County has used a hammer where a lighter tool would have been appropriate. The County's termination of the Club's nonconforming use is a broad, overreaching remedy that is not the "least restrictive means" necessary to achieve the County's stated goals. The County could have issued citations and enforced specific environmental and development codes. It could have sought abatement orders or injunctions and levied civil penalties. Instead, without any finding that the alleged violations could not be remedied by other means, the County and trial court interpreted local code to support the drastic remedies of permanent termination of property rights and immediate closure of the Club. The trial court issued these unnecessarily burdensome remedies without regard for their interference with Second Amendment rights. Such action cannot stand. This Court should reverse the trial court's termination of the Club's nonconforming use right and injunction prohibiting its operation.

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[25] Trial court decision ("Trial Decision"), entitled Findings of Fact ("FOF"), Conclusions of Law ("COL'), and Orders ¶¶ 26-31.

B. The Trial Court Misconstrued Kitsap County Code in Terminating the Club's Nonconforming Use.

Local ordinances provide the lion's share of the law concerning nonconforming use, since local agencies control land use and zoning.[26] "[T]he state Legislature has deferred to local governments to seek solutions to the nonconforming-use problem according to local circumstances."[27] But local land-use ordinances must be strictly construed in favor of the landowner.[28]

Here, the trial court misconstrued the County's nonconforming-use ordinance, and used its erroneous interpretation as the primary basis for its termination of the Club's nonconforming use. Construing the Code on its face, let alone strictly against the government, the trial court should not have terminated the Club's nonconforming use under the largely undisputed facts of this case. Because of these errors, this Court should reverse the trial court's determination that the Club's nonconforming was terminated by operation of Kitsap County Code Section 17.460.10.

1. The County's Policy Encourages the Continuation of Nonconforming Uses, Contrary to the Trial Court's Conclusion.

As a preliminary matter, the trial court misinterpreted the County's

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[26] *Rhod-A-Zalea*, 136 Wash.2d at 7.
[27] *Id.*
[28] *Sleasman v. City of Lacey*, 159 Wash.2d 639 (2007) (citing *Morin v. Johnson*, 49 Wash.2d 275, 279, 300 P.2d 569 (1956)).

nonconforming-use policy. The Code, in a section titled "Purpose," states "this chapter [i.e. the County's nonconforming-use ordinance] is intended to permit these nonconformities to continue until they are removed or discontinued."[29] The Decision cited a case stating that nonconforming uses are detrimental to important public interests.[30] But, as discussed above, nonconforming-use policy is primarily a local matter, and local agencies are free to set their own policies in this area, within certain limitations imposed by state enabling statutes and the U.S. and Washington Constitutions. "In Washington, local governments are free to preserve, limit or terminate nonconforming uses subject only to the broad limits of applicable enabling acts and the constitution."[31]

Here, the County has adopted policies allowing nonconforming uses to continue.[32] The County Code contains no contrary policy giving nonconforming uses second-class status or encouraging their discontinuance. It is unclear from the trial court's decision how much its misinterpretation of the applicable nonconforming-use policy influenced its conclusion that nonconforming uses are disfavored as a matter of policy,[33] but that conclusion is erroneous as a matter of law. Because land-

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[29] KCC § 17.460.010.
[30] COL ¶ 5.
[31] *Rhod-A-Zalea*, 136 Wash.2d at 7.
[32] KCC §§ 17.460.010, 17.455.060(A).
[33] COL ¶ 5.

use is a local matter, local policy trumps generalized state land-use policies. And the applicable local policy in this case, as set forth in the Code, is to encourage the continuation of nonconforming uses.

2. The Trial Court Misinterpreted the Kitsap County Code When it Held that the Club Expanded Its Use

In COL ¶¶ 8-9, the trial court concluded the following Club actions constituted an "expansion," and not "intensification," of the Club's use of the Property:

1. Expanded hours;
2. Commercial, for-profit use (including military training);
3. Increasing the noise levels by allowing explosive devises [sic], higher caliber weaponry greater than 30 caliber and practical shooting.

The trial court also held the following were "expansions":

1. Use other than as private recreational facility;[34]
2. Unpermitted site development at the 300-meter range;[35]
3. Unpermitted construction of earthen berms between Bay 4 and the wetland;[36]
4. The Club's expansion of days and hours for shooting.[37]

These portions of the Trial Decision misinterpret the Code, which states, in pertinent part:

> If an existing nonconforming use or portion thereof, not housed or enclosed within a structure, occupies a portion of a lot or parcel of land on the effective date hereof, the *area of*

[34] COL ¶ 26.
[35] COL ¶ 27.
[36] COL ¶ 30.
[37] COL ¶ 32.

> *such use* may not be expanded, nor shall the use of any part thereof, be moved to any other portion of the property not historically used or occupied for such use....[38]

This text is the only prohibition of expansion of a nonconforming use in the Code.[39] This text prohibits only the expansion of "the area of [the nonconforming] use," and therefore does not apply to other types of purported expansions such as expanded hours of operation, commercial use, or increased noise. Washington common law allows free use of property, so zoning ordinances should "not be extended by implication to cases not clearly within the scope of the purpose and intent manifest in their language."[40] The Club has not increased the geographic area where people shoot beyond its "traditional eight acres," so the non-conforming use has not expanded.

The Trial Decision cites *Keller v. City of Bellingham*[41] to distinguish between expansion and intensification of use.[42] The unstated premise is that, under Washington common law, intensification of nonconforming use is permitted, but expansion of nonconforming use is not. But that distinction only matters if there is an expansion in violation

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[38] KCC § 17.460.020(C) (emphasis added).
[39] KCC § 17.455.060, which was subsequently repealed, also prohibited "alteration" of nonconforming uses. Since that code section is no longer in effect and neither the trial-court opinion nor the County's brief mentioned the prohibition of alteration, or construed it or attempted to apply it to this case, that provision should be ignored by this Court.
[40] *State ex rel. Standard Mining & Development Corp. v. City of Auburn*, 82 Wash.2d 321, 326, 510 P.2d 647 (1973).
[41] 92 Wash.2d 726, 731, 600 P.2d 1276 (1979).
[42] COL ¶ 10.

of a local ordinance. As stated above, the law of nonconforming use is largely local, determined by city and county ordinances, though there are broad state- and federal-law frameworks constraining it. The City of Bellingham's zoning ordinance in *Keller* prohibited "enlargement" without limiting that term to the geographic area of the use.[43] It had a broader meaning than "expansion" in the Code so the court had to determine how much intensification was permitted before it became a prohibited enlargement.[44] There is no reason to apply *Keller* here because the Code contains no general prohibition on enlargement or over-intensification and only prohibits expansion of the geographic "area" of a nonconforming use.

In short, state law allows local agencies considerable latitude in the terms of their nonconforming-use ordinances. The Code does not prohibit expansion or enlargement generally, but only expansion of "the area of" the use. It is immaterial whether the other changes found by the trial court would have constituted a prohibited enlargement under *Keller* because that case involved a broader ordinance. The trial court misinterpreted the Code by concluding, in COL ¶ 9, that the actions listed in COL ¶ 8 constituted an "expansion" of use, as that term is used in the Code. And the trial court

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[43] The ordinance stated: "A nonconforming use shall not be enlarged, relocated or rearranged after the effective date of the ordinance which made the use nonconforming." *Keller*, *supra*, 92 Wash. 2d at 728.

[44] *Id.* at 731.

erred in holding such an expansion terminated the Club's nonconforming use because the Club's shooting activities have not expanded beyond the "historical eight acres" where it has operated for decades.[45]

3. The Trial Court Erred in Holding that a Nonconforming Use Can Be Terminated by Any Violation of the Law.

Ordinance 470, adopted on May 23, 2011, during the pendency of this case, changed the definition of "nonconforming use" to the following:

> Where a lawful use of land exists that is not allowed under current regulations, but was allowed when the use was initially established, that use may be continued *so long as it remains otherwise lawful*, and shall be deemed a nonconforming use. [46]

COL ¶¶ 27-31 hold that the Club's unpermitted development activities are not lawful, and COL ¶ 32 holds that the Club's noise and safety nuisances are not lawful. In those paragraphs the trial court holds those purported violations of law terminate the Club's nonconforming use, based on Code Section 17.460.020.

The interpretive question this Court must answer is whether the provision that the use "may be continued so long as it remains otherwise lawful" means that the types of violations cited in COL ¶¶ 27-32 permanently terminate a vested nonconforming use right. The answer should be, "No." Under Section 17.460.020, it is the "use" that must

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[45] FOF §§ 6-8.
[46] KCC § 17.460.020 (emphasis added)

remain otherwise legal, and this ordinance must be construed consistently with other provisions of the Code under standard methods of statutory construction.[47] "Use" is defined in the Code to mean "the nature of occupancy, type of activity, or character and form of improvements to which land is devoted."[48] None of the unpermitted site development activities or nuisance conditions cited by the trial court constitutes an illegal "use" within the code definition of that term.

In addition, Section 17.460.020 must be interpreted consistent with Section 17.110.510, which defines "nonconforming use" as:

> [A] use of land, ... which was lawfully established ... and which has been lawfully continued but which does not conform to the [zoning code.]

Again, in the Code, the word "use" refers to the general nature of occupancy or type of activity to which a property is devoted. The trial court's interpretation of the type of "use" that can be unlawful and can thus terminate the Club's nonconforming use, e.g. construction of earthen berms, is inconsistent with the meaning of "use" in Section 17.110.510. The Club's use is *gun club* or *shooting range*. Such uses remain "otherwise lawful" in Kitsap County because other shooting ranges and gun clubs exist and such uses are not outlawed by the Code. Even if the Club should have obtained a permit for an earthen berm, its failure to do

[47] *City of Seattle v. Buchanan*, 90 Wash.2d 584, 584 P.2d 918 (1978).
[48] KCC § 17.110.730.

so would not render its entire use unlawful. Without an unlawful use, there is no basis to terminate the Club's nonconforming use right even if Section 17.460.020 could be interpreted to permit that remedy.

Thus, the meaning of the phrase "[the] use may be continued so long as it remains otherwise lawful" in Section 17.460.020 is that the type of use may continue unless it has been prohibited by a police-power statute or regulation outside the zoning code. If houses of prostitution were lawful when the zoning ordinance was enacted, a house of prostitution existing at the time could continue as a nonconforming use even if disallowed by the zoning. Later passage of a general ordinance prohibiting houses of prostitution throughout the county would require the use to shut down, regardless of the nonconforming use right. The use would not be "otherwise lawful," but not because it was disallowed by the zoning. Unlike the trial court and County's interpretation of Section 17.460.020, this explanation is consistent with the Code's definition of "use."

Here, the trial court held that certain of the Club's activities, such as construction of earthen berms, installation of culverts, and grading, are illegal because they were done without the proper site development permits.[49] But these activities are not "uses" of the property under the correct meaning of the term in the Kitsap Zoning Code. That is, they are

[49] COL ¶¶ 27-31.

not "the nature of occupancy, type of activity, or character and form of improvements" to which the Club's property is "devoted." These activities cannot terminate the Club's nonconforming use under the Code. The trial court misconstrued the applicable law and should be reversed.

4. The Trial Court Erred in Holding that Certain Club Activities Would Be Barred at a "Private Recreational Facility" and Are Expansions or Changes of Use.

In COL ¶ 25, the trial court purports to show that the Club's commercial operations do not comport with the "private recreational facility" use allowed by the zoning where the Club operates. This analysis is irrelevant. The Club has an established nonconforming use, which allows it to continue its historical use of the property as a gun club or shooting range, and which exempts it from operation of the zoning laws.

The Trial Decision goes on to conclude, with no real analysis, that a "private recreational facility does not include uses by a shooting range to host official training of law enforcement officers or military personnel ... and does not encompass the use of automatic weapons, use of rifles of calibers greater than hunting rifles, or of professional-level competitions."[50] Even if the Club were properly characterized as a "private recreational facility," the trial court's conclusions would be in error. It is not uncommon for law-enforcement or military-training

[50] COL ¶ 25.

activities to occur at private shooting ranges, and the occurrence of some professional activities does not make an otherwise recreational facility non-recreational. This is particularly true here, where there is no evidence that professional activities ever became the Club's primary activity.

The Decision goes on to conclude, again with no analysis or apparent reason, that the activities the court deems to be outside the scope of a "private recreational facility" are expansions or changes to the Club's nonconforming use.[51] As discussed above, the only expansion prohibited by the Code is an expansion of the geographic area of the use. The training of professionals or the use of types of firearms the trial court deems incompatible with recreational purposes are not geographical expansions, and are therefore not prohibited by the expansion ordinance.

Finally, even if the activities cited by the trial court exceeded the scope of activity allowed at a private recreational facility, the proper remedy for the court would be to enjoin the excess activities, not to terminate the nonconforming use. The County has cited no authority allowing it to terminate a nonconforming use under these circumstances.

III. CONCLUSION

The Trial Decision terminated the Club's nonconforming use, a vested property right necessary for the Club's continued existence, on the

[51] COL ¶ 26.

basis of unpermitted grading and construction activities, an increase in the intensity of use, and increased noise levels. The court never considered that shooting ranges are essential to the exercise of the right to keep and bear arms---a right analogous to religious liberty and free speech. The trial court thus erred by terminating the Club's vested nonconforming use right without any showing of a compelling state interest or that termination is the least restrictive means to achieve the ends sought.

The trial court also misinterpreted Kitsap County's nonconforming use ordinance by concluding that various Club's activities were "expansions" of the Club's use, and the Club's unpermitted construction was an illegal "use." The termination of the Club's nonconforming use was based solely on the Court's misinterpretation of that ordinance.

For these reasons, the Court should reverse the trial court's decision terminating the Club's nonconforming use.

Dated: May 20, 2014

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CERTIFICATE OF FILING AND SERVICE

I Anne R. Lott, declare under penalty of perjury under the laws of the State of Washington, that I am now and at all times herein mentioned have been a resident of the State of Oregon, over the age of eighteen years, not a party to or interested in this cause of action, and competent to be a witness herein.

On the date stated below, copies of **BRIEF OF AMICUS CURIAE, NATIONAL RIFLE ASSOCIATION, INC.,** were electronically filed with Division II of the Washington Court of Appeals and served upon the following individuals by e-mail and U.S. Mail, postage prepaid, at Tacoma, Washington:

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