

NOVEMBER 2, 2016
WAYNESBORO, PA 17268
PUBLIC HEARING RE: CURATIVE
AMENDMENT (D. B. HOLDINGS, LLC)

Council President C. Harold Mumma called the public hearing of the Waynesboro Borough Council to order at 7:15 p.m. with the following in attendance:

Council Members – Delmos Oldham, Patrick Fleagle, Niccole Rolls, C. Harold Mumma, Chad Rooney and Michael Cermak

Mayor Richard Starliper

Borough Staff – Jason Stains, Borough Manager
Dan Sheffler, Zoning-Code Enforcement Officer
Denny Benshoff, Maintenance Superintendent
Kevin Grubbs, Head of Engineering Services
Sam Wisner, Borough Solicitor (Salzmann Hughes, PC)

Mr. Mumma noted the purpose of the hearing was to receive comment on the proposed Curative Amendment submitted by D. B. Holdings, LLC. The proposed Curative Amendment would include, as a use by right, shooting ranges and indoor shooting training facilities in the General Commercial District. Those in attendance will be given the opportunity to present testimony and evidence at this hearing. He then administered the oath to those in attendance wishing to testify.

As a procedural matter, Solicitor Wisner noted that a curative amendment request was received from D. B. Holdings, LLC on September 9, 2016. He highlighted items in the curative amendment application – the primary contention is that the Zoning Ordinance is defective by reason of its failure to make provisions for a shooting range in any zoning district, and is invalid for that reason. The applicant has also requested site-specific relief that would allow them to operate a shooting range at the subject property (located at 410 N. Grant Street, Waynesboro, PA). The applicant included with the application a sketch plan of how the basement of that property is laid out. This hearing has been duly advertised in accordance with the requirements of the Pennsylvania Municipalities Planning Code. He offered a copy of the advertisement as “Exhibit A” and a copy of the application made for the curative amendment as “Exhibit B”.

Kevin Grubbs, Head of Engineering Services, testified as to the responses received from the Waynesboro Planning Commission and the Franklin County Planning Commission, which is a requirement under the Pennsylvania Municipalities Planning Code, as follows:

- The proposed curative amendment was delivered to the Franklin County Planning Commission on October 7, 2016.

- Written review comments were received from the Franklin County Planning Commission – they stated they were in favor of shooting ranges in the GC district and went on to explain, in detail, other responses to the curative amendment (all of which were favorable).
- As a result of that review, the Waynesboro Planning Commission advertised a special meeting to be held on October 31, 2016 at 6:00 p.m. They reviewed the proposed curative amendment, made several revisions, and are recommending to Borough Council that indoor shooting ranges and indoor firearm live-fire training facilities be allowed within the GC and Industrial zones, as a conditional use. Every conditional use application for a shooting range shall be accompanied by a site plan. Indoor shooting range operations, indoor shooting range design and other considerations were also outlined.

Solicitor Wisner noted that Council must decide: (1) if the Zoning Ordinance is invalid due to some exclusionary provisions; and if so, (2) what will be done to remedy the invalidity. The applicant has presented an amendment to the ordinance, and the Waynesboro Planning Commission has proposed an amendment as well. If Council renders the Zoning Ordinance invalid, they may adopt either amendment or some other amendment deemed appropriate to rectify the issue. He advised Council on requirements outlined in the Municipalities Planning Code, specifically that a decision must be made within 45 days of the public hearing (when concluded). Additionally, where a Zoning Ordinance excludes a legitimate business from the entire municipality, then the municipality has the burden of producing evidence sufficient to support the exclusion, unless the excluded use is generally known to give off noxious odors, disturb the tranquility of an area by making loud noises, or has the obvious potential of poisoning the air or water in the area. He also pointed out that the amendment offered by the applicant addresses shooting ranges in general and doesn't limit them to indoor shooting ranges.

Patrick Brezler, Waynesboro – Mr. Brezler began by thanking Council members for their service to the community. Upon reading information in the newspaper regarding this hearing, however, he was “shocked” that Council has the authority to shut down this shooting range. He doesn't know Mr. Benedict nor has he been inside the armory building, but he feels it is unfair that the shooting range has been deemed illegal. The shooting range itself has been there for years ... and this is a needed service in our community. People are purchasing firearms because they no longer feel safe, and this facility would provide a place for practice/training in the use of firearms.

Amanda Batz (Caldwell & Kearns, PC, Harrisburg, PA) – Ms. Batz spoke on behalf of D. B. Holdings, LLC. With regard to the curative amendment proposed, she explained that they are mostly concerned with this indoor shooting range. They filed the request because, as Council knows, the Zoning Ordinance makes no mention of a shooting range within the Borough limits. A shooting range is a fairly viable business which would bring in financial support to the community and would provide an area to train and learn safety for gun use. They are asking that Council consider a permitted use for the GC zone be a shooting range of any kind (however they are mostly concerned with an indoor range).

Darwyn Benedict, 410 N. Grant Street (on behalf of D. B. Holdings, LLC) – Mr. Benedict noted that the Planning Commission’s meeting held on 10/31 was productive, and he feels their recommendations were favorable. He reiterated that their proposal included shooting ranges as a “Use by right” for the GC district, along with “commercial recreation, including miniature golf, swimming pools, tennis barns and indoor theaters”, as well as with “schools”.

Mr. Benedict noted that, when he began the business in October of 2015, it was his understanding that approval must be granted by the Police Chief to discharge a firearm in the Borough. He discussed the matter with the Chief, who had no objections to the business. In addition, the Zoning Ordinance defines “Accessory uses” in the GC zone as “any use which is entirely incidental and subordinate to the above permitted uses and is located on the same lot or parcel”. He didn’t think he was doing anything wrong until he received a notice indicate he was. Additionally, he thought that he would be “grandfathered”, as the shooting range had been in place at this location for many years.

In accordance with the Second Amendment, Mr. Benedict feels that citizens have the right to bear arms ... and this facility would provide a place for them to train to use them properly. He went on to explain that his building was originally built by the Department of Defense, and it has been renovated to provide a top-notch facility. Kevlar belts have been installed to catch the bullets fired; HEPA filters are utilized for air quality, which is replenished/recirculated every four (4) minutes. The range is located in the basement (which has very thick walls), and the sound is inaudible from the street and/or from other nearby buildings. In fact, his office is located directly above the shooting range and he described the muffled noise that he can hear when the range is in use.

Solicitor Wiser noted Mr. Benedict has addressed his particular property and has requested site-specific relief, but the proposed amendment is applicable to all properties in the GC district; and the Zoning Ordinance that the Planning Commission has proposed as a curative amendment is applicable to properties in the GC and Industrial zones. He asked that Zoning-Code Enforcement Officer Dan Sheffler point out on a map where the applicant’s property is located, and where the GC and Industrial zones are located (which would be where this would be permitted in the Planning Commission’s proposed ordinance).

Solicitor Wiser asked Mr. Sheffler if this proposed amendment will result in the amendment/modification of other ordinances to permit the use outside of zoning. Mr. Sheffler responded that Ordinance No. 444 deals with the discharge of flobert rifles in the Borough, Ordinance No. 682 deals with the discharge of guns in the Borough, and Ordinance No. 1031 deals with noise (specifically radios and amplified music). Mr. Wiser noted these are mentioned because the ordinance amendment, as proposed, would deal with any potential range use in the Borough (indoor or outdoor).

Nathan Green, 600 Park Street – Mr. Green noted that Ordinance No. 682 deals with firearms, but he feels that would also include a bow, crossbow or any weapon that discharges a bullet or arrow. He has no problem with indoor ranges, but feels this

should not be permitted outdoors within the Borough. Mention was made to the areas pointed out by Mr. Sheffler, which Mr. Wisner clarified would be the GC areas that the applicant's amendment would pertain to (for indoor or outdoor ranges) and the Industrial areas that the Planning Commission had included for indoor ranges.

Mr. Green noted that he was before Council in July, requesting that they protect the "landlocked" property owners in the Borough from any objects being propelled outdoors. He again asked Council to find a means to protect citizens in the Borough from such hazards.

Solicitor Wisner noted that Kevin Grubbs testified to the Franklin County Planning Commission's comments, which should be marked as "Exhibit C", and the Waynesboro Planning Commission's comments, which should be marked as "Exhibit D"; both of which will be entered into the record.

Darwyn Benedict – Mr. Benedict noted that in Exhibit B (his application), "indoor theaters and shooting ranges" are proposed as "uses by right". He clarified that he is only interested in indoor ranges and has no interest in outdoor ranges.

Accordingly, Solicitor Wisner asked if Mr. Benedict is amending his application to address only indoor shooting ranges. Mr. Benedict replied in the affirmative; and Mr. Wisner noted that his proposal would be amended as "... indoor theaters and indoor shooting ranges." Mr. Benedict agreed. No objections were noted by Council regarding this amendment to the application.

In closing, Mr. Wisner reiterated that Council has 45 days to make a written decision. They have heard the application and from the applicant regarding his basis for the request; they have heard the nature of the site-specific relief to be considered; and they have received comments from the Franklin County Planning Commission and the Waynesboro Planning Commission as well. He recommended that Council meet in executive session as part of the quasi-judicial deliberations to determine whether or not they will grant the relief that has been requested: (1) determining whether or not the ordinance is invalid as to the indoor shooting ranges, as the application has been amended this evening, and (2) if the ordinance is invalid by precluding indoor shooting ranges, what is the appropriate method to cure that? President Mumma noted that an executive session will be held by Council to discuss this matter further at the end of Council's regular meeting to follow this hearing.

The hearing adjourned at 8:06 p.m.

Respectfully Submitted,

Melinda S. Knott
Borough Secretary