

Conditional Use Permit

Title of Document

Document Number

CITY OF DELAFIELD

ORDER GRANTING CONDITIONAL USE

HARTLAND SPORTSMEN'S CLUB, INC.

WHEREAS, Hartland Sportsmen's Club, Inc., a Wisconsin corporation (hereinafter referred to as the "HSC") is owner of the property located at 730 Maple Avenue, Delafield, Wisconsin, hereinafter referred to as the "Property" and described more particularly as follows:

PT NE1/4 NW1/4 & PT NE1/4 SEC 27 T7N R18E 29.32 AC VOL 686/85 DEEDS ALSO 2 AC VOL 1110/102 DEEDS ALSO 5 AC R28/996.

Tax Key No. DELC 0825994

Recording Area

Name and Return Address

Michelle Luedtke, Clerk
City of Delafield
500 Genesee Street
Delafield, WI 53018

DELC 0825994

Parcel Identification Number (PIN)

WHEREAS, HSC operated a sport shooting range on the Property which was subject to a Conditional Use Permit issued by the Town of Delafield authorizing club activities to be conducted fourteen hours per week in accordance with a schedule included in the Conditional Use Permit (herein "CUP"); and,

WHEREAS, following litigation with adjoining property owners and the Town of Delafield (*State ex rel. Brooks v. Hartland Sportsmen's Club, Inc.*, 192 Wis.2d 606, 531 N.W.2d 445 (Ct. App. 1995)) the Property was annexed to the City of Delafield (herein "City") in accordance with a petition for annexation filed with HSC; and,

WHEREAS, in 1997, following annexation of the Property, pursuant to Sec. 17.46(4) of the City Zoning Code, the City issued a CUP authorizing HSC to operate a sport shooting range at the site, which CUP limited the days and hours of operation and required HSC to implement improvements, including a sound abatement system; and,

WHEREAS, the 1997 CUP included Findings of Fact wherein the City determined that the proposed CUP was not "totally compatible with existing residential uses in the immediate area...", but that operation of the sport shooting range, if conducted in accordance with the terms of the CUP, would allow the sport shooting activities to "become more compatible,"; and,

WHEREAS, on June 10, 2010, the City, following public hearings and a referral from the Plan Commission, revoked the 1997 CUP because of the failure of HSC to comply with the terms and conditions of the CUP; and,

WHEREAS, on July 8, 2011, HSC applied for a Conditional Use Permit in accordance with the provisions of Sec. 17.46(4) and Sec. 17.85 of the City Zoning Code, which application was amended by submittal of a revised application on July 3, 2012; and,

Commented [AK1]: This CU is issued as a part of a Planned Development approval authorized by Sec. 17.85 of the Zoning Code.

WHEREAS, on December 12, 2013, the City, following a public hearing denied the CUP application; and,

WHEREAS, on January 15, 2014, HSC filed a *Certiorari* proceeding in the Circuit Court of Waukesha County (2014-CV-095), which decision was subject to appellate review (*Hartland Sportsmen's Club, Inc. v. City of Delafield*, 2017 WI App 84, 378 Wis.2d 219, 904 N.W.2d 143, review denied 2018 WI 20 (unpublished)) and which decisions are herein collectively referred to as "HSC I"; and,

WHEREAS, the determination of the City to deny the CUP was reversed as a result of the HSC I litigation; and,

WHEREAS, following remittitur of the HSC I record, the City again reviewed the Conditional Use Permit application, and on December 12, 2013, adopted a Resolution denying the CUP application for the following reasons:

First, issuance of a CUP in accordance with the provisions of Section 17.46(4) of the Zoning Code is "subject to" a number of conditions, including a condition that no building be closer than seventy-five (75') feet to the lot line of an adjoining lot in a residential district.

Second, issuance of a CUP would violate the provisions of Sec. 9.02 of the Municipal Code which, except for limited circumstances which do not apply to the requested CUP, prohibits the discharge of firearms within the City limits of the City of Delafield.

Third, the proposed CUP is not compatible with the residential, commercial, and business properties that are either adjacent to or within reasonable proximity of the site.

Fourth, noise generated by and resulting from use of the Club facility which interferes with the use and enjoyment of adjacent residential and business property.

Fifth, adversely impacted upon the fair market value of the surrounding properties which would likely result if the CUP were granted.

Sixth, safety concerns, as evidenced by stray bullets having left the site, and which stray bullets struck and damaged adjoining property, as evidenced by police reports detailing specific incidents which occurred on February 25, 2000, June 27, 2003, and October 21, 2003. These incidents were in addition to the April 29, 2010 incident involving a pregnant woman being struck by a stray bullet while sitting on the patio of the Brewhaus Restaurant located adjacent to the Club facility.

WHEREAS, HSC then filed a second Certiorari and Mandamus proceeding (Case No. 2018-CV-813) (herein "HSC II");

WHEREAS, notwithstanding the determination of the City that issuance of a CUP should be denied in accordance with the determination made on December 2, 2013, the Circuit Court of Waukesha County has issued a Mandamus Order in the HSC II proceeding on April 10, 2019, which Mandamus Order requires the City to issue a CUP "...including firearm ranges, pursuant to applicable statutes, ordinances and law, including the ..." HSC I Decisions; and,

WHEREAS, the Mandamus Order issued in HSC II is the subject of a pending appeal (2019-AP-740), but issuance of the CUP as required by the Mandamus Order has not been stayed pending appeal;

WHEREAS, issuance of a Conditional Use Permit requires the City to balance the interest and rights of the property owner, with the interest and the rights of other property owners, including those property owners whose property are adjacent to or adjoining the property which is the subject of the Conditional Use Permit, as well as the rights of the general public; and,

NOW THEREFORE, in accordance with and as required by the Mandamus Order issued in HSC II, the City of Delafield Finds and Determines as follows:

ISSUANCE OF CONDITIONAL USE PERMIT

Commencing upon issuance of written notice to HSC by the City Administrator, or the City Administrators designee, that all conditions and contingencies established by the City under the terms of this Conditional Use Permit have been satisfied, then this Conditional Use Permit shall become effective.

Use of the Property described in this Conditional Use Permit for the purpose of conducting the activities authorized by this Conditional Use Permit are subject to initial and continued compliance with terms, conditions, contingencies, limitations, and restrictions set for below.

1. DEFINITIONS.

As used herein, the following terms shall have the following definition.

A. "Application" shall mean the July 8, 2011 Conditional Use Permit Application.

B. "Authorized Activity" or "Authorized Activities" shall mean those Shooting Activities and Non-Shooting Activities which can be conducted on the Property under the terms of this Conditional Use Permit.

Commented [AK2]: This definition has been modified to reflect authorized activities including Shooting Activities and Non-Shooting Activities.

C. "Club Member" shall mean those individuals identified on the Club Membership Roster.

D. "CUP" shall mean Conditional Use Permit.

E. "Educational Activities" shall mean educational or instructional classes conducted by the Club, including hunters education classes, conceal carry classes and range officer training.

Commented [AK3]: This definition has been added.

F. "Effective Date" shall mean the date on which the City confirms that all terms and conditions set forth herein, and all changes, additions, modifications and alterations to the condition of the Property have been met and implemented.

G. "Firearms" shall mean a weapon that acts by force of gunpowder and shall include; shotguns of all permitted gauges, handguns of all permitted calibers, rifles of all permitted calibers, this includes permitted rimfire calibers.

H. "Guest Roster" shall mean the roster of guests participating in Authorized Shooting Activities as permitted by this CUP.

Commented [AK4]: This definition has been modified to reflect that the Guest Roster applies to only quests involved in Shooting Activities.

I. "Handgun" shall mean any weapon designed or redesigned, made or remade, and intended to be fired while held in one hand of all permitted calibers. This shall include revolvers and semi-automatic pistols.

J. "HSC" and/or "Club" shall mean the Hartland Sportsmen's Club.

K. "Issuance of CUP" shall refer to the date this CUP is approved by the City.

L. "Membership Roster" shall mean the roster of all Club Members, identifying all Club Members.

M. "Non-Shooting Activities" shall mean Archery Activities, Educational Activities and Social Activities.

Commented [AK5]: This definition has been added.

N. "NRA" shall mean National Rifle Association.

O. "Pistol" shall mean a weapon originally designed, made, and intended to fire a projectile (bullet) from one or more barrels when held in one hand and having:

- a. a chamber(s) as an integral part(s), or permanently aligned with, the bore(s);
- b. and a short shock designed to be gripped by one hand at an angle to and extending below the line of the bore(s).

P. "Range" shall mean the Rimfire Range, the Fifty (50) Yard Range, the One Hundred/Two Hundred (100/200) Yard Range and the West Bay Range.

Q. "Rifle" shall mean any weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger of all permitted calibers.

R. "Rimfire" shall mean cartridges that are limited to low pressures because they require a thin case so that the firing pin can crush the rim and ignite the primer. This shall be of a .22 caliber or less. Rimfire rifles are only permitted on approved ranges. Rimfire handguns are only permitted on approved ranges..

S. "Shotgun" shall mean a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder, and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger of all permitted gauges.

T. "Site Plan" shall mean the Site Plan made a part of the July 8, 2011 CUP application.

U. "Social Activities" shall mean use of the Property by members of HSC for social events, including picnics and parties

Commented [AK6]: This definition has been added.

2. ZONING CODE.

All Authorized Activities governed by this CUP shall be subject to the terms and conditions of the City of Delafield Zoning Code (herein the "Zoning Code").

3. This CUP shall authorize HSC to conduct those Authorized Activities, and only those Authorized Activities that are described in and authorized by this CUP. Any use not described as an Authorized Activity by this CUP, is prohibited.

4. NONCOMMERCIAL STATUS.

Section 17.46(4) of the Zoning Code authorizes issuance of a CUP to non-commercial clubs and outdoor recreational facilities. This CUP shall authorize and permit members of HSC to participate in Authorized Activities pursuant to this CUP. HSC shall maintain a Membership Roster of all Club Members by name and address. The Membership Roster shall be open and available for inspection by City Officials, upon request.

Club Members whose names are included in the Membership Roster may invite one or more guests to participate in Shooting Activities; provided however, that no member may invite the same guest to participate in Shooting Activities on more than four (4) days during any calendar year. This limitation is intended to preserve the membership and non-commercial status of the Club. HSC shall maintain a Guest Roster identifying all guests of Club Members, by name and address, and the date the guest participates in Shooting Activities. The Guest Roster shall be open and available for inspection by City Officials, upon request.

5. USE AND REMOVAL OF BUILDINGS AND STRUCTURES.

Section 17.46(b) of the Zoning Code prohibits any building or other structure, except those buildings or structures used as a residence, from being located closer than seventy-five (75) feet to the lot line of any adjoining lot in a residential district. Several buildings or structures, depicted on the Site Plan submitted to the City as a part of the July 8, 2011 application, depict buildings or structures, not used as a residence, which are located closer than seventy-five (75) feet to the property line of an adjoining residential district. Those buildings or structures are depicted more particularly on the following aerial photograph:

Commented [AK7]: This section has been modified to allow members to invite more than one quest per day, but no guest may be invited to participate in Shooting Activities on more than four (4) days during any calendar year.



The buildings or structures located closer than seventy-five (75) feet to the property line of the adjoining residential property may remain but may be used only for storage purposes and other Non-Shooting Activities.

Commented [AK8]: This section has been modified to allow the Club to retain use of the two buildings within seventy-five (75) feet of the lot line but those uses cannot involve Shooting Activities.

6. LEAD REMEDIATION.

Section 17.40 of the Zoning Code, authorizes the City to issue Conditional Use Permits in accordance with the provisions of the Zoning Code, provided that such conditional uses and structures are in accordance with the purpose and intent of this chapter and are found to be not hazardous, harmful, offensive or otherwise adverse to the environment or the value of the neighborhood or the community.

Residential and business properties located adjacent to or in the near vicinity of the property obtain water from private wells. The Authorized Activities by this CUP, as well as the prior use of the Property as a sport shooting range have and will result in lead contamination. Public Records on file with the City establish that in April of 2011, HSC requested the City Assessor to reduce the real property tax assessment due to lead contamination resulting from years of lead shot and projectiles being deposited on the Property. Remediation of the Property to remove lead from the Property, following termination of the CUP, is necessary and required in order to safe guard the health and wellbeing of residents of the City and Town of Delafield. The danger of such lead exposure caused by activities conducted on sport shooting ranges is well documented. (<https://mt2.com/blog/251-cleaning-up-shooting-ranges-environmental-lead-contamination/>).

Prior to the effective date of this CUP, HSC shall submit to the Plan Commission not less than two (2) proposals for remediating the Property, from OSHA/EPA certified Lead Remediation Companies, for the purpose of removing lead and lead contamination caused by Authorized Activities conducted on the Property, both during and prior to the issuance of this CUP. The proposals shall describe, in sufficient detail for Plan Commission review, the remediation process being proposed and the estimated cost that would be incurred in order to remediate the site for the purpose of removing lead and lead contaminants. HSC, by acceptance of this CUP, shall be required to remediate the Property within six (6) months following termination of the CUP, such remediation being for the purpose of removing lead and lead contaminants from the Property. Based upon the proposals submitted by HSC to the Plan Commission, the Plan Commission shall determine the estimated cost of future remediation activities required by HSC. HSC shall file with the City, a letter of credit, performance bond or similar financial guarantee acceptable to the City, which letter of credit, performance bond or other guarantee shall be in an amount sufficient to satisfy all future financial obligations which HSC will incur in order to remediate the Property in accordance with the proposals submitted to the City. Upon termination of this CUP, in the event HSC fails to timely comply with the obligations to remediate the Property as set forth in this CUP, then they City shall be authorized and permitted to apply to the Circuit Court of Waukesha County for an order requiring HSC to comply with the requirements of this Section, or for such other and further relief as the Court deems appropriate in order to secure compliance with the provisions of this Section, and the cost thereof, including the cost and expenses incurred by the City shall be reimbursed the City in accordance with the provisions of the reimbursable fee agreement appended to the July 8, 2011, application for issuance of the CUP.

7. FENCING AND SIGNAGE.

The Property is surrounded by residential properties and businesses. Current uses and future development within the immediate vicinity of the Property, including both residential and business uses, will be impacted by the Authorized Activities conducted on the Property under the terms of this CUP. The danger to residents, as well as customers and invitees of the adjoining businesses, which would result from entering the Property while activities authorized by this CUP are being conducted on the Property is a legitimate concern that was expressed and made known during the public hearing and comment portion of the CUP proceedings. Section 17.43(2) of the Zoning Code, requires the City to take into consideration, when granting a Conditional Use Permit, the potential danger caused by the Authorized Activities and, in order to reduce or eliminate that potential danger, authorizes the City to require fencing of the Property which is the subject to the CUP.

In order to safe guard the general public from these dangers, the perimeter of the property must be secured by a fence. The contract or proposal shall identify the type and height, as well as the time and date of installation. The Plan Commission shall review and approve the proposal if the Plan Commission determines that the type and height of the fence is sufficient to protect the health and safety of the general public. If the Plan Commission determines that the contract or proposal does not meet these requirements, HSC shall then submit an alternate proposal within a reasonable time thereafter as determined by the Plan Commission. Upon submittal of the alternate proposal, the Plan Commission shall again review the proposal in accordance with the requirements of this provision of the CUP. The fence may be installed within ten (10) feet of the Property boundary and meander as required within this ten (10) foot zone in order to avoid conflicts with existing quality trees. The fence, when constructed, shall include directional and instructional signage notifying the general public that sport shooting range activities are being conducted on the Property. The size, location and content of the notice shall be reviewed and approved by the Plan Commission.

Commented [AK9]: This section has been modified to allow the fence to be installed within ten (10) feet of the Property line, rather than on the Property line.

8. AUTHORIZED NON-SHOOTING ACTIVITIES.

The following Non-Shooting Activities are authorized on the Property, subject to the conditions, contingencies, limitations and restrictions set forth in this CUP:

Commented [AK10]: The former Section 8 referenced only "Authorized Activities." This section now identifies Non-Shooting Activities, and Shooting Activities are described in the following Section 9.

A. ARCHERY. HSC may conduct Archery Activities on the Property subject to the following restrictions:

- (a) Throwing, shooting or hunting with bow and arrow or crossbow on the Property shall be permitted if the arrow or bolt from the respective weapon when discharged is not likely or reasonably likely to travel beyond the

boundary of the Property on which the weapon was discharged.

- (b) In the event archery activities authorized by this CUP are conducted within one hundred (100) yards of a building located on any adjoining or adjacent property, written permission of the property owner must be obtained, as required by Sec. 9.02(7)(b)2 of the Municipal Code. Such written permission shall be filed with the City Clerk, and shall be deemed to remain in effect until revoked by the land owner, or unless and until the property of the land owner is sold or otherwise conveyed to a third-party.

B. Education Activities as that term is defined in this CUP.

C. Social Activities as that term is defined in this CUP.

9. AUTHORIZED SHOOTING ACTIVITIES.

The following Shooting Activities are authorized on the Property, subject to the conditions, contingencies, limitations and restrictions set forth in this CUP:

A. HANDGUNS, FIREARMS, & RIMFIRE RIFLES. Shooting Activities involving the discharge of Firearms, including Handguns and Rimfire Rifles are authorized at the following ranges as depicted on the attached aerial photograph:

- (a) The Fifty (50) Yard Range;
- (b) The One Hundred/Two Hundred (100/200) Yard Range;
- (c) The West Bay Range; and,
- (d) The Rimfire Range.



B. **TRAP SHOOTING.** Shooting Activities involving the discharge of shotguns for the purpose of participating in Trap Shooting Activities are authorized on the Property in those areas of the Property depicted for that use on the above aerial photograph.

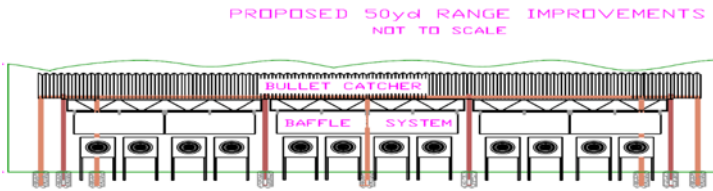
Commented [AK11]: This section has been added to reflect that Trap Shooting Activities are included within the authorized Shooting Activities.

10. IMPROVEMENTS AND MODIFICATIONS.

A. **GENERAL CONDITIONS AND IMPROVEMENTS.** Prior to the effective date of this CUP, certain improvements and modifications to the ranges must be completed in accordance with the terms of this CUP. Completion of those improvements and modifications must be approved by the Plan Commission. The required modifications and improvements include the following:

- (a) Sound Abatement System.

In order to reduce interference with the use and enjoyment of adjacent residential and business properties that will result from activities authorized to be conducted on the Property all Firearm Ranges and Rimfire Ranges must include a sound abatement firing line cover which shall be constructed and maintained in substantial conformance with the following diagram:

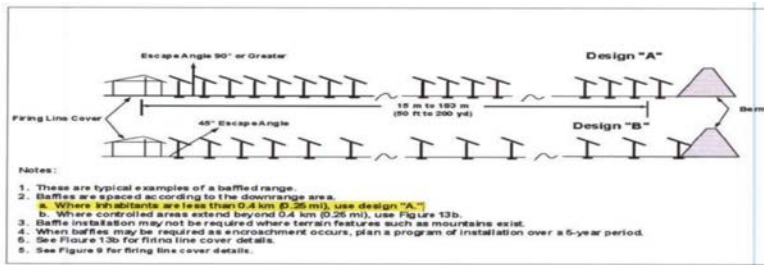


SOURCE: NRA Range Source Handbook.

Within ninety (90) days from the approval of this CUP, HSC shall submit to the City a diagram and construction documents that will be utilized to construct the sound abatement system or systems. The Plan Commission shall review and approve the sound abatement system or systems, provided that the Plan Commission determines that the sound abatement system or systems will reduce and minimize interference with the use and enjoyment of adjoining residential and business properties as a result of the activities conducted on the Property under the terms of this CUP. HSC shall maintain the sound abatement system(s) in a good state of repair so long as this CUP remains in effect.

(b) Baffle System.

For the purpose of ensuring that rounds and projectiles discharged as a result of the Authorized Activities conducted on the Ranges do not leave the Property, a baffle system shall be installed in accordance with Design A on the following drawing which incorporates NRA design standards for a properly baffled range:



SOURCE: NRA Range Source Handbook.

Within ninety (90) days following approval of this CUP, HSC shall submit to the City a diagram and construction documents that will be followed when constructing the baffle system for each Range authorized by this CUP. The baffle system proposed by HSC shall be approved by the Plan

Commission, provided that the Plan Commission determine that the baffle design will significantly reduce the chance of rounds leaving the Property, thus helping to protect the person and property of the residences and businesses adjoining or adjacent to the Property, as well as the general public. HSC shall maintain the baffle system(s) in a good state of repair so long as this CUP remains in effect.

B. SPECIFIC FIREARM RANGE IMPROVEMENTS. In addition to the general conditions and improvements, the following Ranges shall be subject to the following specific conditions and improvements as it relates to each identified Range:

(a) Rimfire Range.

1. The rimfire firing positions on the south of the top slope shall be lowered by six (6) feet.
2. The backstop system of the Rimfire Range shall be modified by relocating the back-impact area further to the north utilizing a bowl-shaped design in order to be smoothly connected to the existing east side berm. Existing trees on the back of the impact area shall be removed.
3. The intermediate target baffles which are to be installed on the range shall be higher than the current baffles and shall connect the east berm of the backstop, completing the bowl-shaped range enclosure.
4. All tires and rocks covering the backstop system shall be removed.

(b) 50 Yard Range.

1. Trees on the impact area shall be removed.
2. The existing backstop system including baffles, must be removed. The impact hill area will be enhanced with fill and a bowl-shaped berm. New bullet traps will be installed in accordance with NRA standards.

(c) West Bay Range.

1. Woody vegetation and rocks within the range must be removed.

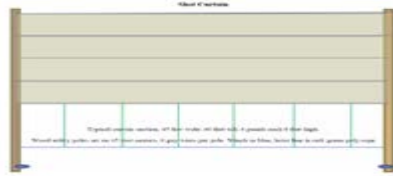
2. The impact hill will be enhanced by modifying the natural elevation rise on each side (northeast and southwest) and beyond the target area (northwest) into bowl-shaped berms.
3. The existing bullet trap will be removed and installed with a design in accordance with NRA standards.

C. TRAP SHOOTING RANGES. Trap shooting shall be permitted, with the number of traps limited to three (3) as depicted on the aerial photograph identifying the Trap Ranges. Use of the Trap Ranges shall be subject to the following conditions:

- (a) Access shall be restricted within the shot fall area.
- (b) ~~Only 7.5 shot or smaller shall be allowed.~~
- (c) The three (3) backstop mounds will be upgraded to eliminate exposed hard materials.
- (d) The impact area will be filled thereby stabilizing the area from erosion, and the impact area will be modified with a bowl-shaped design in order to be smoothly connected with the existing westside berm.
- (e) To preclude shot from leaving the range, shooter curtains must be installed at the top of the Property hill on the southern border, which is located a distance of approximately 192 yards from the adjoining residential property line. The shooter curtains, as depicted below, are necessary to protect adjoining business properties.



Commented [AK12]: This section formerly required that trees located in the Shot Fall Area be removed. That section has been eliminated and the language limiting the size of the shot has replaced the prior restriction.



SOURCE: NRA Range Source Handbook.

11. PROHIBITED ACTIVITIES.

A. Any use not permitted by the underlying B-6 Zoning Classification as set forth in the Zoning Code.

B. Any Non-Shooting Activity or Shooting Activity not specifically authorized by this CUP.

Commented [AK13]: The language in this section is modified for clarification.

C. Use of sporting clays shall not be permitted.

D. Use of open sky "deer running targets" shall not be permitted.

12. HOURS OF OPERATION.

A balancing of the interest of HSC with the interest of adjacent and adjoining property owners, both residential and business, as well as future residential and business development which will occur within the immediate vicinity of the Property, compels the City to balance those interests and concerns when establishing hours of operation for the activities authorized by this CUP. In addition, Sec. 17.33(5) of the Municipal Code, which governs the review and approval of plans of operation relating to issuance of permits, and Sec. 17.85(8) which established a criteria for approving a CUP for a Planned Development, both require that proximity to residential neighborhoods and the potential for disturbing and disrupting residential uses, and diminishing property values, be taken into consideration when determining reasonable hours of operation and the activities permitted during those house of operation.

Commented [AK14]: This section has been modified for clarification.

The HSC Membership Application, submitted with the CUP application advises perspective members that shooting hours are approximately thirty (30) hours per week, which is consistent with the hours that similar activities are permitted at similar sites throughout Waukesha County.

Balancing the foregoing, the activities authorized by this CUP may be conducted on the following days during the following times:

A. Non-shooting activities, including Archery Activities.

Monday – Friday 10 a.m. to 7 p.m.
Saturday 9 a.m. to 4 p.m.

B. Authorized Shooting Activities involving the discharge of hand guns and firearms at all ranges.

Monday 10 a.m. to 4 p.m.
Tuesday 11 a.m. to 7 p.m.
Wednesday 10 a.m. to 4 p.m.
Thursday 11 a.m. to 7 p.m.
Saturday 9 a.m. to 12 p.m. (Noon) (1st and 3rd Saturday of each month)

C. The property may be used by HSC for Deer Rifle Sight-In during the hours authorized by subparagraph B., and in addition to those times, on the first three Saturdays in November between 9 a.m. and 3:00 p.m.

Commented [AK15]: This section adds additional hours for Deer Rifle Sit-In as requested by the Club.

The Property may not be used for any Authorized Activities, whether a Shooting Activity or a Non-Shooting Activity, except as provided by the hours of operation. No Authorized Activities shall be permitted on Christmas Eve Day, Christmas Day, New Year's Eve Day, New Year's Day, Easter, Memorial, July 4th, Labor Day, and Thanksgiving Day.

13. RANGE SAFETY OFFICER REQUIREMENTS.

No Shooting Activity may be conducted on the premises unless a Range Officer is present during all activities being conducted at any Range on the Property under the terms of this CUP. HSC shall file

with the City a Range Safety Officer Roster identifying all Range Safety Officers by name, address and date of certification as described below, with the first filing being submitted at least thirty (30) days prior to the effective date of this CUP. Thereafter, the Range Safety Officer Roster shall be supplemented for the adding or deleting, as the case may be, the name and address of any Range Safety Officer, provided however, that the supplementation of the Range Safety Officer Roster which adds Range Safety Officers to that Roster shall be filed with the City before the Range Safety Officer supervises any activity on the Property.

Range Safety Officers must be certified by attending and successfully completing an NRA sponsored Range Officer Safety Program, a Civilian Marksman's Program, a USPSA National Range Officers Institute Certification, or other industry recognized program approved by the City. No activity may take place on the Property unless a Certified Range Officer is present at the location the activity is being conducted, and supervises and monitors the activity during the period of time that the activity is being conducted.

HSC shall maintain a record identifying the Range Safety Officer, the activity being supervised or being conducted, the date and time the activity occurs, and the signature of the Range Safety Officer which shall certify that the Range Safety Officer was present and supervised or monitored the activity described. During the first twelve (12) months following the effective date of this CUP, beginning on the first day of the month next following the effective date of this CUP, HSC shall file the completed schedule with the City Clerk. Thereafter, the record maintained by HSC under the terms of this provision shall be available for inspection by representatives of the City, and, at the request of the City, shall be filed with the City Clerk.

No Range Safety Officer may supervise or monitor his or her own shooting activities.

14. EVENTS RESULTING IN TERMINATION OF CONDITIONAL USE PERMIT.

This Conditional Use Permit shall terminate upon the occurrence of any of the following:

- A. Entry of a final order or judgment reversing or setting aside the Mandamus Order entered in the HSC II litigation which required issuance of this Conditional Use Permit.

- D. The failure of HSC to comply with any time limitation established in this Conditional Use Permit, or established by the City Plan Commission or Common Council as permitted under the terms of this Conditional Use Permit.

- E. The abandonment in any manner, or the discontinuance in use of the property for the activities authorized by this Conditional Use Permit, or the abandonment and/or discontinuance of use continues for a period of six (6) consecutive months.

- F. Any change, addition, modification, and/or alteration of any use or activity authorized under the terms of this Conditional Use Permit which change, addition, modification and/or alteration has not been approved by the City as required by the Zoning Code.

G. The failure of the Club, within eighteen (18) months following issuance of this Conditional Use Permit:

- (a) To meet and comply with all terms and conditions of this CUP for which Compliance is required prior to the Effective Date of this CUP; or,
- (b) The failure to complete and implement all changes, additions, modifications or alterations of the Property required under the terms of this CUP.

H. Upon occurrence of an event which results in the termination of this Conditional Use Permit, written notice of that event and the effective date of the termination shall be provided to HSC.

15. ADDITIONAL CONDITIONS AND REQUIREMENTS.

The effective date of this Conditional Use Permit requires various changes, additions, modifications, and alterations to the condition of the Property. Where those changes, additions, modification, or alterations require the submittal of plans, proposals, contracts or other documents, review and approval shall be made by the Plan Commission.

A. PLAN COMMISSION REVIEW AND APPROVAL. As of the issuance of this CUP, improvements required under the terms of the CUP involve designs which have not been completed and contracts and proposals which have not yet been secured, all of which are required to be submitted to the City Plan Commission for review and approval. In order to ensure compliance with the CUP, the City may, at its option, retain the services of a consultant or other person or entity having expertise in these matters for the purpose of determining whether the designs, contracts or proposals reasonably meet the requirements of this CUP. All costs and expenses related to any such review and approval, including costs and expenses related to professional services provided the Plan Commission by any consultant or other person having expertise in the matters that are subject to review and approval. Such expenses shall be deemed a reimbursable expense under the terms of this Reimbursable Fee Agreement which is on file and was submitted with the CUP application.

B. CHANGE IN CHARACTER OF SURROUNDING AREA. This Conditional Use Permit may be terminated, in accordance with the provisions of Sec. 17.44(1) of the Zoning Code, where a change in characteristic of the surrounding area or the use and activities authorized by this Conditional Use Permit caused those uses and activities to be no longer compatible with the surrounding area, or, for similar cause based upon considerations of public health, safety or welfare, provided however, that such termination shall not occur until the proposed termination has been referred to the Plan Commission for review and recommendation, a public hearing has been conducted, and the termination is approved by Resolution enacted by the Common Council.

C. NOTICES. Any written notice required or permitted under the terms of this CUP shall be forwarded to the following:

If to the City:

With a copy going to:

City of Delafield
Attn: City Manger
City Hall
500 Genesee St.
Delafield, WI 53018

Cramer, Multhauf & Hammes, LLP
Attn: James W. Hammes, Esq.
1601 E. Racine Ave.
P.O. Box 558
Waukesha, WI 53187

If to HSC:

With a copy going to:

Hartland Sportsmen's Club
730 Maple Avenue
Hartland, WI 53029

Halling & Cayo, S.C.
Attn: Stacie H. Rosemweig, Esq.
320 E. Buffalo St. Ste. 700
Milwaukee, WI 53202

D. MISCELLANEOUS PROVISIONS. The CUP shall be binding upon and inure to the benefit of both the City and HSC, and may be amended or modified only as expressly provided under the provisions of the Zoning Code of the City of Delafield, as the same currently exists or as the same be modified during the term of this CUP.

- (a) EXHIBITS AND RECITALS. The various exhibits referenced or depicted in this CUP, and the opening recitals herein, are incorporated herein for all purposes of this CUP.
- (b) LAW AND VENUE. All matters relating to the making, enforcement and performance of this CUP shall be governed by the laws of the State of Wisconsin, and both parties hereby irrevocably submit to the jurisdiction of the Waukesha County Circuit Court in connection with any proceedings arising out of or relating to this CUP.
- (c) ASSIGNMENT. Neither this CUP nor any rights accruing to HSC under the terms of this CUP may be assigned, transferred or conveyed.

This Conditional Use Permit issued this ____ day of _____, 2020.

CITY OF DELAFIELD

Kent Attwell, Mayor

Michelle Luedtke, Clerk

STATE OF WISCONSIN)
) ss.
COUNTY OF WAUKESHA)

Personally, came before me this ____ day of _____, 2020, the above-named Kent Attwell and Michelle Luedtke, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

Notary Public, Waukesha County, WI
Commission expires:_____

The terms and conditions of this CUP have been reviewed and are accepted by Hartland Sportsmen's Club, Inc.:

By: Authorized Representative of
Hartland Sportsmen's Club, Inc.

ATTEST:

Hartland Sportsmen's Club
Authorized Representative

STATE OF WISCONSIN)

) ss.

COUNTY OF WAUKESHA)

Personally, came before me this ____ day of _____, 2020, the above-named _____ and _____, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

Notary Public, Waukesha County, WI
Commission expires:_____

This Conditional Use Permit is effective as of this ____ day of _____, 2020.

CITY OF DELAFIELD

By: _____

Plan Commission Meeting 1-29-2020
Kent Attwell, Mayor

By: _____
Michelle Luedtke, Clerk

STATE OF WISCONSIN)
) ss.
COUNTY OF WAUKESHA)

Personally, came before me this ____ day of _____, 2020, the above-named Kent Attwell and Michelle Luedtke, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

Notary Public, Waukesha County, WI
Commission expires:_____