FILED
Court of Appeals
Division II
State of Washington
5/26/2020 4:34 PM

No. 53245-0-II

Court of Appeals, Division II
of the State of Washington

Fort Discovery Corp., a Washington corporation;
Stephen Anderson; **Steven Gilstrom**; and **Jay Towne**,

Appellants,

v.

Jefferson County, a Washington municipality,

Respondent.

On appeal from the Superior Court of Washington

for Clallam County

Cause No. 18-2-01023-06

Appellants' Response to Court's Order Requesting Supplemental Briefing

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On May 13, 2020, this Court issued an Order Requesting Supplemental Briefing ("Order") asking the parties to address:

> [W]hat impact, if any, the changes made to Title 8, ch. 8.50 [Jefferson County Code], have on this appeal, following the repeal and replacement of Ordinance No. 12-1102-18 with Ordinance No. 04-0224-20, enacted on February 24, 2020.

Fort Discovery Corp., Stephen Anderson, Steven Gilstrom, and Jay Towne, ("Appellants") file this response in compliance with the Court's Order.

The short answer is that the impact of the 2020 ordinance makes this case moot. The changes between the 2018 Ordinance and 2020 Ordinance (described below) are significant, have not been briefed, are not contained in the record, were never considered by the state trial court in 2018, were not part of the Notice of Appeal in this case, and are currently being litigated in federal court.

Appellants appreciate that Respondent Jefferson County ("Respondent") alerted the Court that the ordinance at issue in this case, Jefferson County Ordinance 12-1102-18 ("2018 Ordinance) has been repealed and replaced with Jefferson County Ordinance 04-0224-20 ("2018 Ordinance"). Appellant has carefully considered this new development and concludes that this appeal is now moot.

The tremendous difference between the 2018 Ordinance and 2020 Ordinance is that the 2018 Ordinance allowed outdoor ranges, which are vastly more economically viable. The 2020 Ordinance, however, prohibits all outdoor ranges. *Compare* CP 606 - 646 (2018 Ordinance) *with* Jefferson County Code § 8.50.240(2)(q) (2020 Ordinance) (available at http://test.co.jefferson.wa.us/ WeblinkExternal/0/doc/2329307/ Page1.aspx (accessed last on May 18, 2020)) (applicant for a commercial shooting facility must submit a plan with "A requirement for an indoor shooting facility that no shooting take place outdoors.") (copy of pertinent page attached hereto as Appendix A). The ban on outdoor ranges in the 2020 Ordinance makes it far more restrictive (and correspondingly more unconstitutional in Appellants' view). In addition, the 2020 Ordinance and its prohibition on outdoor ranges is currently subject to challenge in federal court. *See D'Amico v. Jefferson County*, No. 3:20-cv-05253-RJB (W.D. Wash. filed March 16, 2020).

For all the reasons provided in Appellant's Motion to Dismiss Appeal for Mootness (filed separately on the same day as this Response to Respondent's Supplemental Authority) this appeal is moot and should be dismissed.

RESPECTFULLY SUBMITTED this 26th day of May 2020.

By: *<u>/s/ Greg Overstreet</u>*
Greg Overstreet, WSBA No. 26682

Attorney for Appellants

[Appendix A]

(l) A means for participants and spectators to readily contact emergency services such as fire or emergency medical services;~~ and,~~

(m)Provision for emergency services access by vehicle or air transport~~.~~;

(n) A requirement prohibiting the use of alcohol, Cannabis or other drugs at the commercial shooting facility when it is open to the public or shooting is occurring~~.~~;

(o) A requirement that drones may not be flown by anyone on the commercial shooting facility when open to the public or while shooting is being conducted~~.~~; and,

(p) A requirement that no shooting take place after dark at an outdoor shooting facility, except for law enforcement officers or members of the armed forces provided such shooting after dark for law enforcement officers or members of the armed forces does not occur after 10 p.m., shooting does not exceed four hours, and the maximum days shooting after dark is allowed does not exceed one day per week.

(q) A requirement for an indoor shooting facility that no shooting take place outdoors.

(3) Operations Component~~Plan~~. The Operations Component~~Plan~~ shall contain at least the following elements:

(a) The days of the week and the hours of operations;

(b) Whether the commercial shooting facility will be open to the public, open only to private membership, open to training for groups or organizations, or any combination of these;

(c) A description of any activities that would not be overseen by the owner or operator and how the owner or operator will obtain compliance with the operating permit for these activities.

(d) The types and largest caliber of firearms and ammunition to be allowed on each shooting range;

(e) Type of shooting proposed on each shooting range;

(f) Whether exploding targets are to be used. If so, a plan for mitigation of noise impacts on neighbors;

(g) A requirement that the owner or operator maintain comprehensive general liability insurance coverage, with a minimum coverage amount of one million dollars for each occurrence and combined single limit and two million in the aggregate during operation of the commercial shooting facility;

(h) A requirement that certificates of insurance for all policies that provide insurance coverage for the commercial shooting facility be provided to the department evidencing continuous insurance coverage required by the Operations Plan within fifteen (15) days of approval of the Operations Permit that include:

i. The limits of coverage;

CERTIFICATE OF SERVICE

I, Greg Overstreet, certify that on May 26, 2019, I emailed a copy of:

- Appellants' Response Court's Order Requesting Supplemental Briefing

to:

Philip Hunsucker
Counsel for Respondent
via email to phunsucker@co.jefferson.wa.us

and to:

Jeffrey Even
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via email to jeff.even@atg.wa.gov

By: *<u>/s/ Greg Overstreet</u>*
Greg Overstreet, WSBA No. 26682

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Transmittal Information

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