STATE OF WISCONSIN CIRCUIT COURT BRANCH 7 WAUKESHA COUNTY

HARTLAND SPORTSMAN CLUB, INC.,

Plaintiff,

v. Case No. 2014-CV-0095

CITY OF DELAFIELD; CITY OF DELAFIELD COMMON COUNCIL; and CITY OF DELAFIELD PLAN COMMISSION,

Defendants.

DECISION AND ORDER

> This may be considered as the true palladium of liberty. . . . The right to self defence [sic] is the first law of nature.

District of Columbia v. Heller, 554 U.S. 570, 606 (2008) (quoting 2 Tucker's Blackstone 143, Note D, "*View of the Constitution of the United States*" with respect to the Second Amendment).

> . . . to bear arms implies something more than the mere keeping; it implies the learning to handle and use them in a way that makes those who keep them ready for their efficient use; in other words, it implies the right to meet for voluntary discipline in arms, observing in doing so the laws of public order.

Id., at 617-18 (quoting Thomas Cooley, General Principles of Constitutional Law, 1880, at 270, "*The Right in General*" with respect to the Second Amendment).

> Some general knowledge of firearms is important to the public welfare; . . . No doubt, a citizen who keeps a gun or pistol under judicious precautions, practices in safe places the use of it, and in due time teaches his sons to do the same, exercises his individual right.

Id., at 619 (quoting B. Abbott, Judge and Jury: A Popular Explanation of the Leading Topics in the Law of the Land 333 (1880)).

> The [United States Supreme] Court emphasized in [*Heller* and *McDonald v. Chicago*, 561 U.S. 742 (2010)] that the "central component" of the *Second Amendment* is the right to keep and bear arms for defense of self, family and home. The right to possess firearms for protection implies a corresponding right to acquire and maintain proficiency in their use; the core right wouldn't mean much without the training and practice that make it effective.

Ezell v. Chicago, 651 F.3d 684, 704 (7th Cir. 2011) (citations omitted).

The case at hand concerns whether and how much protection is to be afforded to a sport shooting range in Delafield, Wisconsin—Plaintiff Hartland Sportsmen's Club, Inc. (the "Sportsmen's Club")—founded in 1948. It concerns whether the Wisconsin Legislature, when it revised an existing Range Protection Act to increase the number of covered sport shooting ranges, intended to create a convenient, 16-day window of time in which *all* protections for previously-covered sport shooting ranges were extinguished, only to have that protection reappear on the 17th day. And it concerns whether the Defendants City of Delafield, City of Delafield Common Council and City of Delafield Plan Commission (hereinafter "Delafield" or the "City," "Common Council," and "Plan Commission," respectively), delayed their decision on a conditional use permit application for two years so as to treat the Sportsmen's Club as if it had never existed prior to the date of decision.

This Court finds that, because the Wisconsin Legislature did not intend—nor did it create—a window of time in which protections for pre-existing sport shooting ranges were extinguished, the Defendants' "revocation" of the Sportsmen's Club's pre-existing conditional use permit in June, 2010, is void. Moreover, even assuming that the Defendants were within their prerogative to rule on the Sportsmen's Club's 2011 conditional use permit application, their decision in December, 2013, was not supported by the record, was arbitrary, and lacks any explanation as to its findings and conclusions. Either way, the 1997 conditional use permit for the Sportsmen's Club is still legally valid. Based upon these determinations, it is not necessary for the Court to determine whether the actions of the Defendants violated Plaintiff's Second Amendment right to keep and bear arms which also includes the corollary right to maintain proficiency in their use. *See Ezell*, 651 F.3d at 708.

Accordingly, Plaintiff's writ and motion for *certiorari* and declaratory relief is granted. As to whether the Sportsmen's Club may immediately resume activities at its firing ranges without implementing the proposed safety precautions it presented in its amended 2011 permit application and proposed improved Range Officer Program is not within this Court's province. The Court, however, does encourage the promotion of safety precautions and other actions consistent with those of a good business neighbor and corporate citizen and notes that the Sportsmen's Club's pleadings themselves seek the ability to "implement[] its proposal and resum[e] operation of its ranges."

BACKGROUND

The Sportsmen's Club was founded in 1948 on approximately 35 acres in Wisconsin's Kettle Moraine area[1] and has operated, since its founding, as a membership-based shooting club and range facility devoted to education and promotion of outdoor skills, appreciation and conservation of natural resources, the improvement of marksmanship skills protected under the Second Amendment, and safety practices. Range facilities were constructed in the 1950's and the Clubhouse was built in the early 1960's. Since at least 1955, the Sportsmen's Club has operated continuously in the same location.

For the majority of the Sportsmen's Club's existence, it was surrounded by vacant, rural land and forest as well as the now-closed Nickel Landfill (that operated to the West of the property). Between 1968 and 1993, the Town of Delafield issued various permits and approvals to the Sportsmen's Club for its operations and land use.

The Sportsmen's Club hosts competitive events and a summer picnic, conducts trap shooting leagues, runs hunter education and other firearm safety classes, fields rifle teams for the Southeastern Wisconsin Rifle Association, and hosts national championship practice matches as well as conducts activities for the Boy Scouts. The property[2] contains several firing ranges (an Archery Group and Rimfire Range, a Trap Range, a 100/200 Yard Range, a 50 Yard Range, a West Bay Range and a 50 Foot Range), archery walk-through areas, a heated clubhouse and nature walks to be used only when no firing activities occur.

In the 1970's, a developer sold residential properties adjacent to the Sportsmen's Club in the "Cherokee Woods Subdivision" with advertisements extolling a "club view." Commercial property, consisting of an industrial park to the North and commercial establishments further North along Interstate 94, also began surrounding the Sportsmen's Club. In all cases, the owners of property developing around the Sportsmen's Club were aware—or should have been aware—of its existence and its use.

After the property was annexed by the City of Delafield in December, 1996, the City granted the Sportsmen's Club a Conditional Use Permit on September 4, 1997, for its operations and land use (the "1997 Permit"). The hours of operation under the 1997 Permit were expanded in 2009-10. Other changes to the 1997 Permit also took place over the years.

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[1]The property now bears the address of 730 or 734 Maple Avenue, Hartland, Wisconsin. The Sportsmen's Club was originally part of the Town of Delafield, but was annexed into the City of Delafield in 1996.

[2]*See* Exhibit C to R.1., attached to this Decision.

On April 29, 2010, a pregnant woman at a restaurant a quarter mile north of the Sportsmen's Club, was struck by a stray round. She was treated for a small contusion and released with, thankfully, no significant injury to herself or her unborn child. The round was discharged by a member's guest at the Sportsmen's Club. Despite the existence of the Range Protection Act, Defendant Delafield "revoked" the Sportsmen's Club's 1997 Permit on June 10, 2010, albeit with a statement that the Sportsmen's Club "would come back with a plan that could be acceptable." Plaintiff Sportsmen's Club asserts that the "revocation" was invalid and void pursuant to the protections afforded to it under the Range Protection Act. *See* Wis. Stat. § 895.527.

While still asserting its rights and not waiving its argument that the 1997 Permit was inappropriately—or never truly—revoked, the Sportsmen's Club opted to work with Delafield and update and redesign its ranges and operations to ensure both the safety of the surrounding property owners and users as well as to maintain its ranges for its members. On July 7, 2011, the Sportsmen's Club, therefore, filed a permit application to resume the operation—which it contends never ceased—of the ranges with enhanced safety precautions and redesigned ranges.

On August 31, 2011, the Plan Commission reviewed the Sportsmen's Club's preliminary plan. A Plan Commission Staff Report, dated August 26, 2011, notes that the documents submitted by the Sportsmen's Club were the same documents reviewed and approved by the Plan Commission in 2005. The Plan Commission was advised that it could "consider these elements as existing conditions in conformance with the code requirements . . . ." There were also public comments for and against the Club included in the materials for the Plan Commission.[3]

At the Plan Commission meeting on August 31, 2011, the Sportsmen's Club indicated that it intended to spend in excess of $200,000 to improve the ranges and the club. In addition, the Club proposed creating an improved Range Officer Program to add a supervisory level to be certain all members (and guests) were using the property appropriately and safely. Following the presentation (and the filing of the extensive application), the City Planner demanded engineering drawings and then set forth the criteria to be met for the permit. The City Planner

[3]Some of the comments received by the Plan Commission evidence an intent to do precisely what the Legislature has banned under the Range Protection Act: attempt to close a gun range because residential and commercial development have grown up around its borders. For instance, one individual emailed that "[t]he fact is that the community has outgrown the ability to safely allow an outdoor gun club to exist in its midst." (Email dated August 8, 2011 at R. 5). Another writes that "Delafield's zoning code and Smart Growth Plan has developed the land surrounding the club in such a close proximity with homes and businesses to the point that the further existence of a gun club is incompatible." (Letter dated August 21, 2011 at R. 5).

followed that up with a letter dated September 23, 2011, setting out a "comprehensive list" of requests—some not attributable to the initial enhanced safety concerns; they involved compatibility, engineering and operations. Included in the requests was a demand for "No Blue Sky" technology.[4] This list was so comprehensive that the Sportsmen's Club requested additional time to prepare the necessary papers, drawings and obtain the needed engineers and experts to satisfy the City. This was done at considerable expense to the Sportsmen's Club.

An amended permit application was filed on July 3, 2013, after the Sportsmen's Club met with the City Planner to confirm it had satisfied all of his requirements. This amended application reaffirmed that the Club—a pre-existing entity—had never ceased operations—only activity on the gun ranges had been temporarily stopped. There are several references to "existing firing range facilities and configurations." It also noted that the neighboring residential property values were not negatively impacted due to their closeness to the Club, but rather, had significantly increased in relation to other—further afield—properties. When discussing the modifications to the existing ranges, the Sportsmen's Club's amended permit application noted that they were designed to maximize the "No Blue Sky" concept recommended by the City Planner.

The City Planner prepared a Staff Report for the July 31, 2013, presentation and advised that the Plan Commission "may wish to require all ranges to be designed with the 'No blue sky' principles before considering the operation." At the July 31, 2013, presentation, the Sportsmen's Club explained its revised proposal. It presented testimony from engineers and a National Rifle Association ("NRA") expert (who was serving as a consultant with respect to an NRA Range Sourcebook). The Sportsmen's Club reiterated that the range has operated on the site for decades and was covered under the Range Protection Act.

A public hearing was held on September 23, 2013. The Sportsmen's Club gave another presentation explaining that all safety concerns had been addressed. The Club explained it intended to adopt more "No Blue Sky" as requested by the Plan Commission (through its City Planner) and that it had applied NRA guidelines to prevent range impact beyond the property lines. Another part of the presentation focused upon Wisconsin's hunting and shooting heritage—as the background for the enactment of the Range Protection Act—and explained the benefits of a location for gun safety training. Public comments—for and against—were then taken.

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[4]"No Blue Sky" is a gun range design principle in which steel or an otherwise deflective material is used to restrict the visual range of someone in a shooting position to down-range. In other words, they cannot see blue sky.

Following this public hearing, the City Planner prepared yet another Staff Report on October 25, 2013. In this report, however, despite having suggested and then advocated for the "No Blue Sky" technology, the Planner now complained:

> [p]aramount to the Plan Commission's consideration of this proposal is the preservation of public safety. To that end, the City must ensure that the engineering and design of the ranges employ the most effective safety mechanisms. In the preliminary presentation the petitioner [the Sportsmen's Club] explained that a "No Blue Sky" design philosophy was the guiding principle in preparing the engineered solutions on site. However, "No Blue Sky" design principle is not fully sufficient to ensure public safety. A more extensive system of projectile containment is warranted.

Staff Report, dated October 25, 2013.

This demand was never previously raised. In addition, the City Planner cited to additional material—material never provided to the Sportsmen's Club, nor did the Club have an opportunity to rebut the inaccuracies of these materials in writing. For instance, the City Planner now required compliance with NRA Range Sourcebook designs. There are no designs in the Sourcebook, however, because it is a safety guideline document. In fact, that Sourcebook promotes the hiring of a design consultant on an individual basis—precisely what the Sportsmen's Club had done for its ranges. The City Planner also urged compliance with the U.S. Department of Energy Office of Health, Safety, and Security Range Design Criteria without taking into account that those range designs were put into place for security force training and military training for Department of Energy ("DOE") facilities. In other words, the Criteria were for military grade weapons (*e.g.*, machine guns, bazookas, etc.), not target range weapons. The City Planner now requested the Sportsmen's Club comply with both the NRA and DOE design manuals.

The City Planner issued a revised Recommendation to the Plan Commission, effectively foreclosing any additional response by the Sportsmen's Club:

> **Recommendation (Revised November 15, 2013):**
> The Hartland Sportsmen's Club has been afforded ample time to prepare a response to the Staff recommendation of October 25. The apparent lack of progress on the part of the petitioner leaves the Plan Commission with the unfortunate duty of making a determination without the typical two-way dialog. Additionally, if new information is presented at the Plan Commission meeting the City staff will have not been afforded an opportunity to review it and provide the Plan Commission with direction.
>
> The Plan Commission should deny the Conditional Use application by the Hartland Sportsmen's Club and provide a written recommendation to the Common Council accordingly. The recommendation should cite the lack of proposed safety mechanisms

> necessary to protect the health, safety and welfare of the community as a basis for denial.

On November 20, 2013, the Sportsmen's Club, again, presented its witnesses and experts to the Plan Commission. It, again, explained that it had been in existence for over 50 years. It noted that there were no complaints as to trap shooting or trap shots ever leaving the property. It explained the safety proposals. It explained that its NRA expert relied upon the NRA Sourcebook in addition to reviewing other gun clubs across the country. Range Officer Trainers explained the improved Range Officer Program. And, the Sportsmen's Club explained why complete fencing around its borders (a new demand raised at that meeting, ostensibly to prevent citizens and children from trespassing) was not possible due to State of Wisconsin laws, but that fencing would be installed where possible.

The Sportsmen's Club, again, explained that this was not a new application, but rather a request for continuation of the use, post-shutdown, of the ranges in 2011. The Range Protection Act was again explained—in principle and in practice. But, nothing said was sufficient. The Sportsmen's Club was offered a continuance to address these new concerns and agreed to update their proposal. The Plan Commission voted to moot that offered continuance, immediately after it was accepted, and then voted to deny the amended application as it stood.

On December 2, 2013, the Common Council took up the matter and, after deciding it did not want to see the presentation by the Sportsmen's Club, but allowing argument by its counsel, voted unanimously to deny the amended application based upon safety concerns. One Council member noted the inconsistency with the compatibility issues, asking how it could be compatible for all these years and then suddenly be incompatible. There was also confusion by the City Council as to how to treat the application. Despite the manner in which the application was presented and the terms under which the City was to consider the pre-existing gun range, the Common Council received contradictory advice because the Plan Commission had taken more than two years to bring this matter to a vote, as noted by yet another Council member:

> I guess what I have to say is that maybe decades ago, having a gun club there, it was very rural, there were not a lot of neighbors or businesses, it was a logical [sic] spot. Um, and so I'm just wondering if, yeah, the City has changed . . . . Um, it might be that this is no longer a viable spot.

This contradiction was further evidenced by another Council member who stated that he "was sympathetic to your cause back then, but now that we're being told to treat you as if you hadn't existed . . . ." Another Council member indicated he had

difficulty voting against the Plan Commission's recommendation. All signs that did not bode well for the Sportsmen's Club.

Despite the Sportsmen's Club adopting almost every suggestion and addressing each and every *new* concern whenever raised, the City delayed making a decision until more than two years had passed. Then, on December 2, 2013, the Common Council—without explanation—denied the application. There are no written findings of fact or conclusions of law. There were no explanatory notes, minutes, or transcript. Just a negative vote.

This lawsuit followed.

PROCEDURAL HISTORY

On January 15, 2014, Plaintiff filed its Complaint seeking a writ of *certiorari* and a declaratory judgment that under Wis. Stat. § 895.527, Defendants had improperly closed the Sportsmen's Club. Defendants filed a Motion to Dismiss on June 30, 2014, and at a hearing on September 10, 2014, the Court[5] denied the Motion to Dismiss and declared that Plaintiff was seeking common law *certiorari* review.

An Amended Complaint was filed on September 30, 2014. The record was filed with the Court. On May 7, 2015, the Court[6] denied Plaintiff's Motion for More Complete Record and held that the record was complete. While the Court further noted that if any other materials were needed by the Court, it could request their production, no further materials were requested. A briefing schedule was set on Plaintiff's Motion for *Certiorari* and Declaratory Relief.

Oral argument was held before this Court on October 29, 2015.[7]

THE LAW

In 1997, the Wisconsin Legislature enacted the "Range Protection Act," codified at Wis. Stat. § 895.527. The relevant sections in that 1997 statute provided:

> **Wis. Stat. § 895.527 Sport shooting range activities; limitations on liability and restrictions on operation.**
>
> (4) Any sport shooting range that exists on **June 18, 1998**, may continue to operate as a sport shooting range at that location notwithstanding any zoning

[5]The Honorable James R. Kieffer.

[6]The Honorable James R. Kieffer.

[7]Following the oral argument, this Court received two *ex parte* letters from citizens interested in the matter. Copies of both letters were filed and provided to all counsel of record. These letters were not relied upon in the Court's deliberations.

> ordinance enacted under s. 59.69, 60.61, 60.62, 61.35 or 62.23 (7), if the sport shooting range is a lawful use or a legal nonconforming use under any zoning ordinance enacted under s. 59.69, 60.61, 60.62, 61.35 or 62.23 (7) that is in effect on **June 18, 1998.**
>
> (5) Any sport shooting range that exists on **June 18, 1998,** may continue to operate as a sport shooting range at that location notwithstanding all of the following: (a) Section 167.30, 941.20 (1) (d) or 948.605 or any rule promulgated under those sections regulating or prohibiting the discharge of firearms. (b) Section 66.092 (3) (b) or any ordinance or resolution. (c) Any zoning ordinance that is enacted, or resolution that is adopted, under s. 59.69, 60.61, 60.62, 61,35 or 62.23 (7) that is related to noise.

Wis. Stats. §§ 895.527(4) & (5) 1997-98. (emphasis added).

In 2009, the Legislature amended the Range Protection Act to protect sport shooting ranges in existence on June 18, 2010. 2009 Wisconsin Act 371 provides, in relevant part:

> SECTION 1. 895.527 (4) of the statutes is amended to read:
>
> **895.527 (4)** Any sport shooting range that exists on June 18, ~~1998~~ 2010, may continue to operate as a sport shooting range at that location notwithstanding any zoning ordinance enacted under s. 59.69, 60.61, 60.62, 61.35 or 62.23 (7), if the sport shooting range is a lawful use or a legal nonconforming use under any zoning ordinance enacted under s. 59.69, 60.61, 60.62, 61.35 or 62.23 (7) that is in effect on June 18, ~~1998~~ 2010. The operation of the sport shooting range continues to be a lawful use or legal nonconforming use notwithstanding any expansion of, or enhancement or improvement to, the sport shooting range.

(Alterations in original).

Even though Wis. Stat. § 895.527(4) was amended in 2009-10, the date of June 18, 1998 was left in Wis. Stat. § 895.527(5). Of critical import to this case is the fact that when the Legislature amended the statute to include sport shooting ranges in existence on June 18, 2010, the effective date for 2009 Wisconsin Act 371 was June 2, 2010. Thus, arguably, the Legislature created a 16-day gap in protection for sport shooting ranges.

It is here where the controversy in this case begins.[8]

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[8]Conveniently, Defendants acted to "revoke" the Sportsmen's Club's 1997 Permit during that alleged 16-day window. Statements were made during oral argument asserting that there were materials in the unaccepted record supplementation show that Defendants knowingly took advantage of the "window of opportunity." Those materials are not before the Court; however, the Court notes that it looks askance at "coincidences" and that there are two major coincidences in this case.

STANDARD OF REVIEW

Certiorari relief is not common-place. There is an initial "presumption of validity" for the City's (or its Boards' or Commission's) decisions. *Edward Kraemer & Sons v. Sauk Ctny. Bd. of Adjustment*, 183 Wis. 2d 1, 8, 515 N.W.2d 256 (1994). When undertaking *certiorari* review, the "inquiry is limited to: '(1) whether the municipality kept within its jurisdiction; (2) whether it proceeded on a correct theory of law; (3) whether its action was arbitrary, oppressive, or unreasonable and represented its will and not its judgment; and (4) whether the evidence was such that it might reasonably make the order or determination in question.'" *Oneida Seven Generations Corp. v. City of Green Bay*, 2015 WI 50, ¶ 41, 362 Wis. 2d 290, 865 N.W.2d 162 (quoting *Ottman v. Town of Primrose*, 2011 WI 18, ¶ 35, 332 Wis. 2d 3, 796 N.W.2d 411 (internal citations omitted)).

If a municipality's decision complies with the laws, it must be upheld "if there is any evidence to support it." *State ex rel. Geipel v. City of Milwaukee*, 68 Wis. 2d 726, 732, 229 N.W.2d 585 (1975). The decision "must be upheld if there is credible evidence before the board which in any reasonable view supports" the decision. *Whitecaps Homes, Inc. v. Kenosha Ctny. Bd. of Review*, 212 Wis. 2d 714, 720, 569 N.W.2d 714 (Ct. App. 1997). This Court may not assess the weight and credibility of the evidence. *State ex rel. Harris v. Annuity & Pension Bd.*, 87 Wis. 2d 646, 652, 275 N.W.2d 668 (1979). Moreover, there is a presumption that the Defendants—as public officials and commission and council members—discharged their duties and performed acts required by, or in accordance with, the law and that they acted fairly, impartially, and in good faith. *Bohn v. Sauk Ctny.*, 268 Wis. 213, 219, 67 N.W.2d 288 (1954); *State ex rel. Wasilewski v. Bd. of Sch. Dir.'s of City of Milwaukee*, 14 Wis. 2d 243, 266, 111 N.W.2d 198 (1961).

The Court[9] has already ruled that this case involves a claim for common-law *certiorari*. Accordingly, under that body of law, the Court may rule on irregularities of municipal process or arbitrariness, or claims that a municipality acted on a matter where there was "an absolute want of power" to so act. *Hermann v. Town of Delavan*, 215 Wis.2d 370, 390, 572 N.W.2d 855 (1998).

The State Supreme Court in *Olson v. Town of Cottage Grove*, 2008 WI 51, ¶ 29, 309 Wis. 2d 365, 749 N.W.2d 211, has held that declaratory judgment, pursuant to Wis. Stat. § 806.04, is appropriate when a controversy is justiciable or when the following four factors are present:

1. There is a controversy in which a claim of right is asserted against one who has an interest in contesting it.

[9]The Honorable James R. Kieffer.

2. The controversy is between persons whose interests are adverse.
3. The party seeking the declaratory relief must have a legal interest in the controversy – that is to say, a legally protectable interest.
4. The issue in controversy must be ripe for judicial determination.

Had this not been a common-law *certiorari* matter, the factors for a declaratory judgment action are present; this Court can proceed under either framework, or both. The standards identified above were applied in this Decision.

DISCUSSION

I. The Wisconsin Range Protection Act.

In considering the pending motion, it is the Range Protection Act and the Legislature's intent in its enactment and amendments that are paramount. In order to assess whether there was a 16-day window of extinguished protections, the laws, the legislative history and common sense must be taken into account. It is undisputed that the Range Protection Act was initially enacted to protect Wisconsin's citizens' extensive legacy of hunting and shooting first established when our State was in its infancy. The United States Supreme Court has concluded that the Second Amendment right to keep and bear arms is "fundamental to *our* scheme of ordered liberty," and is "deeply rooted in this Nation's history and tradition." *McDonald*, 561 U.S. at 767 (quoting *Duncan v. Louisiana*, 391 U.S. 145, 149 (1968), *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) and relying upon *Heller*, 554 U.S. at 599). Indeed, this right to keep and bear arms was considered "one of the fundamental rights of Englishmen," *McDonald*, 561 U.S. at 768 (quoting a reference to Blackstone from *Heller*, 554 U.S. at 594). This right was so important that, even though the framers of our Nation's constitution believed it was irrefutable and could not be infringed, they nevertheless incorporated it into the Bill of Rights to assuage the concerns of several anti-Federalists who were balking at ratifying the Constitution without this express safeguard. *McDonald*, 561 U.S. at 768-69.

The Seventh Circuit in *Ezell* built on the decisions in *Heller* and *McDonald* and in particular upon the conclusions that "the *Second Amendment* secures a pre-existing natural right to keep and bear arms; that the right is personal and not limited to militia service; and that the 'central component of the right' is the right of armed self-defense, most notably in the home." *Ezell*, 651 F.3d at 700-01. Without conclusively stating that the right to maintain sport shooting ranges in order to permit training and encourage proficiency in the use of firearms is, in and of itself, a protected Second Amendment right, the Seventh Circuit in *Ezell* did find that the City of Chicago's attempt to ban all firing ranges inside the city limits was a "serious encroachment on the right to maintain proficiency in firearm use, *an*

important corollary to the meaningful exercise of the core right to possess fire-arms for self-defense." *Ezell*, 651 F.3d at 708 (emphasis added).

It was with this understanding that the right to maintain proficiency in the use of fire-arms for self-defense, as an admitted corollary to the Second Amendment right to keep and bear arms, taken together with an understanding that the establishment and maintenance of sport shooting ranges are an important part of this State's history, that the Wisconsin Legislature first passed the Range Protection Act in 1997. This Act was modeled after similar protective laws in other states, including Georgia, Kansas, and Montana. *See* drafting files for 2009 Wis. Act 371 (seeking to add more statutory protections to the Wisconsin Range Protection Act). Range Protection Acts, in some form, have been passed in at least 47 states. J. Remakel, *A Minnesota Armistice? The Enactment and Implementation of the Minnesota Shooting Range Protection Act*, 31 Hamline L. Rev. 197, 200 (Winter, 2008). "Modeled in part after the Right-to-Farm Acts of the 1980s, shooting range protection statutes establish standards whereby ranges may safely exist within communities while protecting ranges against unnecessary nuisance lawsuits and hostile local ordinances." *Id.*

It is undisputed that in 1997, the Wisconsin Legislature—mindful of the fact that sport shooting ranges bore the real risk of being locally legislated out of existence as "non-conforming uses" or "incompatible uses" when urban sprawl and commercial and residential properties began surrounding them—enacted this law to protect all ranges existing in Wisconsin as of June 18, 1998. Wis. Stat. § 895.527. The question in this case, however, lies with whether—when the Wisconsin Legislature decided to amend the Range Protection Act to cover more sport shooting ranges (those created between June 19, 1998, and June 18, 2010), it intended to leave a gap in protection for the pre-existing, as of June 18, 1998, ranges for 16 days.

In order to determine what was contemplated in 2009 Wis. Act 371, and whether the Legislature intended to extinguish rights for pre-existing sport shooting ranges for 16 days, the statutes must be analyzed.

A. The rules of statutory interpretation with respect to retroactive legislation.

"The canon of interpretation against retroactive legislation is a maxim based on characteristics of legislation and concepts of justice." *Employers Ins. of Wausau v. Smith*, 154 Wis. 2d 199, 223, 453 N.W. 2d 856 (1990). The primary function of the Legislature is to create laws that regulate future behavior. *Id.* The Legislature can pass a statute that has a retroactive effect so long as it does not violate the federal or state constitution. *Id.* at 224. The Legislature must, however, either expressly state its intent to enact a law with retroactive application or do so by necessary implications. *Id.* But, when an amending enactment is silent regarding

retroactivity, "the statute should be construed in the light of the situation which it obviously was passed to remedy." *Id.* (citing *Town of Bell v. Bayfield Cnty.*, 206 Wis. 297, 301, 293 N.W. 503 (1931)). "Canons of interpretation are useful aids to determine legislative intent only when the underlying reasons for the rule are served by the rule's application in the case." *Smith*, 154 Wis. 2d at 225. (citing *Town of Ringle v. Cnty. of Marathon*, 104 Wis. 2d 297, 303-04, 311 N.W.2d 595 (1981)). To determine legislative intent, the Court must first "examine the language of the statute itself and if that plainly expresses the legislative intent," that language must be applied to the facts at hand. *Town of Avon v. Oliver*, 2002 WI App 97, ¶ 7, 253 Wis. 2d 647, 644 N.W.2d 260.

"[S]tatutory interpretation does not end with an examination of the statute's text." *Anderson v. Aul*, 2015 WI 19, ¶ 57, 361 Wis. 2d 63, 862 N.W.2d 304. While "the literal reading of a statute is important, a court is not bound by that reading when other factors contradict it." *Id.* A statute may contain latent ambiguities, and this Court "may turn to various interpretative aids for guidance in resolving them." *Id.* The language of the statute may be examined as well as "the scope, history, content, subject matter, and purpose of the statute." *Smith*, 154 Wis. 2d at 226. Additionally, fiscal estimates submitted contemporaneously to the Legislature when considering a bill may be used to determine legislative intent. *Id.*

Moreover, the Court is "obligated to construe statutes in a manner that avoids absurd or unreasonable results." *Oliver*, 2002 WI App 97, ¶ 7. (citing *Reyes v. Greatway Ins. Co.*, 227 Wis. 2d 357, 376, 597 N.W.2d 687 (1999)). We do "not consider disputed language in a statute in isolation, but in the context of the entire statute." *Oliver*, 2002 WI App 97, ¶ 7 (citing *Alberte v. Anew Health Care Servs., Inc.*, 2000 WI 7, ¶ 10, 232 Wis. 2d 587, 605 N.W.2d 515). Last, a statute is to be construed, when possible, so that no part of it is rendered superfluous. *Oliver*, 2002 WI App 97, ¶ 11 (citing *Kelley Co., Inc. v. Marquardt*, 172 Wis. 2d 234, 250, 493 N.W.2d 68 (1992)).

B. The Legislature's intent in both enacting the Range Protection Act and in amending it in 2010.

As discussed above, the intent of the Wisconsin Legislature in enacting the Range Protection Act is clear: it was to protect existing sport shooting ranges from being zoned out of existence. It was to provide the sport shooting range owners additional due process rights so that a city or municipality could not arbitrarily determine that the range no longer was compatible with the land uses that, inevitably, have grown up around it. It was to protect Wisconsin's citizens' rights under the Second Amendment. This much is clear.

It is the intent of the Wisconsin Legislature, when it decided to amend the Range Protection Act in 2010 and add more sport shooting ranges than those only in existence in 1998, that must be considered. This entire matter would have never arisen had the legislative drafters taken more care when determining both the effective date of 2009 Wis. Act 371 as well as the statutory date for inclusion. The question is whether that lack of care was intentionally done to create this gap in protection or was merely a scrivener's error.

Inexplicably, the drafters of 2009 Wis. Act 371 make June 2, 2010, the effective date for the additions to Wis. Stat. § 895.527(4), even though the "trigger date" for the protection in the statutes is June 18, 2010—thus potentially leaving a 16-day gap. But, regardless of the effective date for the additions, the Legislature intentionally left June 18, 1998 as the "trigger date" in Wis. Stat. § 895.527(5)—a section providing protection to sport shooting ranges from regulations prohibiting the discharge of firearms. Moreover, the legislative additions to Wis. Stat. § 895.527(4) also provide that expansions, enhancements, and improvements of existing sport shooting ranges are now to be covered by the Range Protection Act. Every action taken by the Legislature in 2009 Wis. Act 371 is, thus, to *add to*, or increase the protections afforded to existing sport shooting ranges. There is no apparent evidence of an intent to curtail the rights and protections already afforded to sport shooting ranges that existed as of June 10, 1998.

Because the Legislature was not expressly clear as to whether it wanted to create a protection gap, legislative history surrounding 2009 Wis. Act 371 must be reviewed. In the initial stages of the enactment of 2009 Wis. Act 371, legislative drafters in emails and other documentation, consistently reference "Proposed Additions to Wisconsin Range Protection Act."[10] There is no mention of decreasing the protections already afforded to "existing" sport shooting ranges, in fact, a 2009-2010 Drafting Insert Analysis, from the Legislative Reference Bureau, clearly defines an "existing range" as one that lawfully existed on June 18, 1998. The remainder of the Insert Analysis appears to explain how the bill (eventually known as 2009 Wis. Act 371) will increase rights—not take them away.

Other drafters' notes[11] from the Legislative Reference Bureau make reference to the "grandfather date" already in the Range Protection Act. That evidences an

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[10]See September 2 and 15, 2009 emails to and from the Office of State Senator Pat Kreitlow.

[11]In a note dated as far back as October 12, 2009, there is a handwritten comment that "draft should just apply to grandfathered shooting ranges." And, in a drafter's note from the Legislative Reference Bureau, dated January 12, 2010, the following question was asked by Legislative Attorney Kite: "please review this amendment very closely to ensure that it meets your intent. Please note that this amendment does not change the 'grandfather' date in s. 895.527(5). Is this consistent with your intent?"

intent to include—not exclude—the grandfathered pre-June 18, 1998, sport shooting ranges.

Legislative memorandum are also instructive. In that regard, an Amendment Memorandum by the Wisconsin Legislative Council published January 15, 2010, provides insight into the Legislature's intent. It states:

> . . . a sport shooting range in existence on June 18, 1998[,] may continue its operation notwithstanding zoning ordinances if, at that time, the operation is a lawful use or a legal nonconforming use. A range also may continue to operate as a sport shooting range notwithstanding various statutes, ordinances, or resolutions relating to firearms or noise [...]
>
> Senate Substitute Amendment 1 amends the law to provide that the operation of a sport shooting range in existence on June 18, 2010[,] may continue to operate as a sport shooting range at that location notwithstanding a zoning ordinance, if the sport shooting range is a lawful use or nonconforming use under the zoning ordinance then in effect. The operation of the sport shooting range continues to be a lawful use or legal nonconforming use notwithstanding any expansion of, or enhancement or improvement to, the sport shooting range.

(Underlining added).

A Wisconsin Legislative Council Act Memo, dated June 9, 2010, regarding 2009 Wis. Act 371 – Sport Shooting Ranges, is also instructive. It provides:

> *2009 Wisconsin Act 371* amends the law relating to the regulation of certain sport shooting ranges.
>
> Prior to Act 371, Wisconsin law generally protected the owner or operator of a sport shooting range from noise-related civil actions and zoning ordinances. Also, a sport shooting range in existence on June 18, 1998, was allowed to continue its operation notwithstanding zoning ordinances if, at that time, the operation was a lawful use or a legal nonconforming use. Such a range could also continue to operate as a sport shooting range notwithstanding various statutes, ordinances, or resolutions relating to firearms or noise.
>
> Act 371 amends the prior law to provide that the operation of a sport shooting range in existence on June 18, 2010, may continue to operate as a sport shooting range at that location notwithstanding a zoning ordinance, if the sport shooting range is a lawful use or nonconforming use under the zoning ordinance then in effect. The operation of the sport shooting range continues to be a lawful use or legal nonconforming use notwithstanding any expansion of, or enhancement or improvement to, the sport shooting range.

(Underling added).

To find legislative intent, Courts may also look at the fiscal estimates. *Smith*, 154 Wis. 2d at 226. The fiscal estimate for 2009 Wisconsin Act 371, Senate Bill 424, CTS 1/12/2010, identifies the assumptions made by the Legislature:

> The bill allows sport shooting range owners or operators to repair, remodel or make other changes to existing facilities. In addition, the bill creates procedures and conditions that must be met before a state agency, political subdivision or court may require the closure of a sport shooting range *that exists on June 18, 1998.*
>
> If one of these entities seeks to close a facility, the bill requires the circuit court to conduct an evidentiary hearing on whether the sport shooting range "presents a public hazard to the surrounding community."

(Emphasis added).

While this is not dispositive proof that the Legislature did *not* intent to create a 16-day gap in coverage, it is insightful. All indications are that the Legislature was trying to *add* protections and to extend the number of sport shooting ranges that would be covered by the Range Protection Act. There is nothing in the legislative history to establish any intent to decrease coverage or to—illogically—create a 16-day window of *no protections* whatsoever. That flies in the face of the perceived intent of the Legislature to afford existing sport shooting ranges with protection while increasing the number of ranges to be protected.

As further evidence, albeit after the relevant dates in this case, the Legislature, in 2013 Wisconsin Act 202, again amended Wis. Stat. § 895.527(4) to extend the protections to newer sport shooting ranges. In a Wisconsin Legislative Council Act Memo dated April 9, 2014, Principal Attorney Sappenfield provided, in pertinent part:

> The Act further provides that, if a shooting range, on the date it was established, was a lawful or legal nonconforming use under any state law or local ordinance related to its use that was in effect on that date, the sport shooting range continues to be subject to the state laws and local ordinances related to its use that were in effect on the date it was established. Under the Act, no court may enjoin or restrain the operation or use of a shooting range on the basis of noncompliance with a state law or local ordinance related to its operation or use that was enacted after the date that the shooting range was established if the shooting range, on the date it was established, was a lawful or legal nonconforming operation or use under any state law or local ordinance related to its operation or use that was in effect on that date.

Taken as whole, the legislative history evidences an intent to *expand* the coverage protection of the Range Protection Act. There is nothing in the record to indicate that, while in the process of affording protection to newly-established sport shooting ranges, the Legislature intended to create an inexplicable 16-day window when all protections for previously covered sport shooting ranges were suspended. Logic, too, supports this finding.

Accordingly, the Court finds that there was no 16-day gap in coverage for sport shooting ranges that existed as of June 18, 1998, and that 2009 Wis. Act 371

maintained protection for those ranges and, then, on June 18, 2010, it also provided coverage for any sport shooting range that was established between June 19, 1998, and June 18, 2010.

II. Defendants violated the Range Protection Act in June, 2010.

In the statutory scheme under which our democracy works, it is undisputed that local units of government, such as the Defendants here, "have only such powers as are expressly conferred upon them by the legislature or are necessarily implied from the powers conferred." *Darboy Joint Sanitary Dist. No. 1 v. City of Kaukauna*, 2013 WI App 113, ¶ 25, 350 Wis. 2d 103, *rev. denied*, 2014 WI 14, ¶ 25, 843 N.W.2d 707 (quoting *Willow Creek Ranch v. Town of Shelby*, 2000 WI 56, ¶ 17, 235 Wis. 2d 409, 611 N.W.2d 693). Where a local unit of government exceeds its legal authority, those actions are void. *See Town of Clayton v. Cardinal Constr., Co.*, 2009 WI App 54, 317 Wis. 2d 424, 767 N.W.2d 605.

In this case, the Defendants were required to abide by the due process and other protections afforded sport shooting ranges as articulated in Wis. Stat. § 895.527. To do otherwise would be to exceed their legal authority. Having determined that their June, 2010, action was void effectively eviscerates and eliminates the Defendants' argument that this lawsuit is barred by a statute of limitations. *Family Hosp. Nursing Home, Inc. v. City of Milwaukee.* 78 Wis. 2d 312, 325, 254 N.W.2d 268 (1977). An act that is void *ab initio* "does not become valid through the passage of time." *Ginkowski v. Ginkowski*, 28 Wis. 2d 530, 533, 137 N.W.2d 403 (1965).

This Court having already determined that the protections for the Sportsmen's Club under Wis. Stat. § 895.527 were still in full force and effect on June 10, 2010, the Defendants were required to follow the procedures prior to unilaterally revoking the 1997 conditional use permit of the Sportsmen's Club. Having not done so, the Defendants' purported revocation on June 10, 2010, is a violation of the Range Protection Act and, is thus, invalid and void.

* * *

Based upon the determination that there was no gap in the protection afforded to the Sportsmen's Club in June, 2010, that Defendants violated the Range Protection Act by failing to follow the statutory due process procedures therein, and that the June, 2010 revocation of the Sportsmen's Club's 1997 permit is void, the Court need not necessarily delve into the other issues at hand. Given the contentious nature of this matter, however, and the reality that in all likelihood this decision will be the subject of appeal, the Court will address a few other matters.

III. The decision by the Common Council in December, 2013 was void.

Assuming, *arguendo*, that the June, 2010, revocation of the Sportsmen's Club's 1997 permit was valid, there would still be the question as to whether the Defendants acted legally and within their authority when they denied the 2011 amended permit application on December 2, 2013. The Sportsmen's Club asserts that the Defendants acted arbitrarily and beyond their authority when they changed the "compatibility" analysis at the last few meetings and that, correspondingly, the final decision was based upon a factually false premise, to wit, the presumption that the Sportsmen's Club had never existed. The Sportsmen's Club further asserts that the Defendants acted arbitrarily in changing standards and reinventing the analysis with respect to safety. It further asserts that the proceedings were fatally defective in their failure to include findings of fact or other explanatory rationales and that that is further support for the assertion that Defendants acted by imposing their will not exercising their judgment.

Defendants, understandably, disagree with each and every one of these assertions.

A. The Defendants did not proceed on a correct theory of law.

Defendants took two years to process the Sportsmen's Club's amended permit application, and at the conclusion of that time, its City Planner reversed course as to whether the Club was an existing sport shooting range. Defendants make much of the fact that they revoked the 1997 permit on June 10, 2010, but, as noted above, that revocation is void. Even if it were not, the definitions of "existing" and "operating" are relevant in this context.

The Sportsmen's Club—through all the various configurations of its 2011 permit application and all of its arguments to the Plan Commission and the Common Council—have never waivered from their assertion that the Club still exists and is still operating as a sport shooting range. In the beginning, the City Planner agreed and even noted, in a Plan Commission Staff Report, dated August 26, 2011, that the documents submitted by the Sportsmen's Club were the same documents reviewed and approved by the Plan Commission in 2005 and that the Plan Commission could "consider these elements as existing conditions in conformance with the code requirements . . . ."

This viewpoint, however, changed as soon as two years for deliberation passed. Then, the City Planner advised the Plan Commission and the Common Council that they were to treat the Sportsmen's Club as if it was a *new* entity and was applying for the first time to place a sport shooting range within very congested city limits.

Several members of the Common Council were confused by this apparent switch and some were apparently persuaded to switch their votes on that basis alone.[12]

Defendants assert that the statute requires that the sport shooting ranges be in active operation, however, that is contradicted by the additions to Wis. Stat. § 895.527(4) included in 2009 Wis. Act 371 that provide that the "operation of the sport shooting range continues to be a lawful use or legal nonconforming use notwithstanding any expansion of, or enhancement or improvement to, the sport shooting range." If Defendants' interpretation was used, municipalities and sport shooting range owners would continually be tramping to court to determine how much shooting must occur, what happens if there are gaps in the range's activities and how long is long enough before a municipality can declare the range no longer "exists."

Moreover, the Sportsmen's Club has maintained its existence by holding meetings, providing educational programing honing marksmanship and safety skills in addition to spending time and money to enhance its safety precautions. Had there been a legitimate question as to whether the Club was in existence, no doubt it would have continued the shooting activities until the Defendants obtained an Order requiring their cessation, thus, potentially necessitating a declaratory judgment action. But, even that Order would not automatically cause the Sportsmen's Club's sport shooting ranges not to exist.

By proceeding under this misapprehension of the law, the Defendants' December 2, 2013, decision is suspect and fails to comport with the necessary factors to sustain that decision.

B. The decision was not supported by the records and there are no findings of fact or other rationales for the Court to consider.

Also in the course of the their deliberations, the Defendants acted arbitrarily in changing their analysis and standards. At the start of the process, it was acknowledged that the Sportsmen's Club "would come back with a plan that could be acceptable." It was also acknowledged that compatibility was to be "grandfathered" in—because the Club was in existence. But, as the City Planner worked on the permit application, he began to create new requirements, to ask for compliance with unreasonable and inapplicable standards, and to assert that

[12]The Court notes, for the record, certain statements by Defendants' counsel that further evidence the use of an improper standard. For instance, at page 12 of their Response Brief, counsel notes "[t]here is no safe location within the City for this type of use and no room for error." Also on that page, counsel notes that Defendants relied upon a member of the public who opined "[o]utdoor shooting truly does not belong in a developed residential and commercial neighborhood."

compatibility would actually be reviewed as if the Sportsmen's Club had never existed at all.

These changes were set before the Sportsmen's Club as *fait accompli* in November, 2013. The Sportsmen's Club was offered a continuance to respond and explain why the new standards were inapplicable, but that offer of continuance was whisked away minutes after it was made when the Plan Commission voted it moot. Moreover, and as the second major coincidence in this case, the Defendants took advantage of the fact that more than two years had passed since the permit application was submitted in order to allow it to proceed as if the application was for an entirely new entity. So, relying upon the false assumption that the Sportsmen's Club had never existed and that it was entitled to no "grandfather" effect as to compatibility, the Defendants made a decision (apparently—since there were no findings of fact or conclusions of law) that the sport shooting range, was "just no longer [in] a viable spot."

Of note is the fact that it was the City of Delafield and its boards that had continually and often approved the residential and commercial growth that now encircles the Sportsmen's Club. Since there are no findings, this Court can only surmise that the Defendants ignored the fact that real estate around the Sportsmen's Club had increased in value—significantly—when compared to other properties in the City. As well as other unrefuted facts presented by the Sportsmen's Club.

Finally, the insistence on DOE standards for military shooting ranges (to maintain securities in this new age of danger) as well as the misinterpretation of the NRA's Sourcebook is additional cause for concern and further supports the conclusion that the Defendants were acting arbitrarily and in capricious disregard of the facts. At every stage of the permit application process, the Sportsmen's Club responded pro-actively to every request for additional safety precautions; it even agreed to erect fencing (where permitted by other Wisconsin state laws) at a final meeting. The Sportsmen's Club presented NRA experts and other expert witnesses. It prepared engineering plans. It agreed to a "No Blue Sky" protocol—only to learn that that was no longer sufficient.[13] The Defendants have only pointed to the one stray bullet situation as a basis to ignore all of the additional, costly and all-inclusive safety proposals. Substantial evidence appears to be on the side of the Sportsmen's Club.

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[13]This Court is not prepared to agree that Defendants engaged in a classic "bait and switch" practice,, but it is concerned by the appearance that the Sportsmen's Club never had a chance to have its permit application given due consideration, but was rather embroiled from the beginning in an elaborate delaying game.

While this Court is not to substitute its judgment for that of the municipality—if it is backed up by substantial evidence—there is no means by which to determine precisely *what* findings the Defendants made in their December, 2013, decision.

In order to allow this Court, and any appellate court, the opportunity to appropriately assess the adequacy of the Defendants' December, 2013 decision there should have been a written decision—either expressly in a written decision, in a transcript or even set forth in minutes—explaining the Defendants' rationale. The Court in *Hartung v. Hartung*, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981) explains why there must be *some* findings to support a deliberative body's discretionary decision-making:

> A discretionary determination, to be sustained, must demonstrably be made and based upon the facts appearing in the record and in reliance on the appropriate and applicable law. Additionally, and most importantly, a discretionary determination must be the product of a rational mental process by which the facts of record and law relied upon are stated and are considered together for the purpose of achieving a reasoned and reasonable determination.

It is true that "[m]unicipal administrative decisions need not be in writing." *Oneida*, 2015 WI 50, at ¶ 48. But, there must be some explanation, perhaps in the transcript of the proceedings or the minutes, to establish the reasoning of the Defendants. *Id. See also Lamar Cent. Outdoor, Inc. v. Bd. of Zoning Appeals*, 2005 WI 117, ¶ 31, 284 Wis. 2d 1, 700 N.W.2d 87 ("a written decision is not required as long as [the City's] reasoning is clear from the transcript of the proceedings.") Moreover, "a detailed or explicit explanation of the City's reasoning is not necessary." *Oneida*, 2015 WI 50, at ¶ 49. The decision need only contain enough information for the reviewing court to discern the basis of the City's decision. *Harris*, 87 Wis. 2d at 661.

There is nothing here to be reviewed. This is yet another basis upon which this Court finds the December 2, 2013, decision by Defendants to be invalid.

C. The decision represented the Defendants' will not its judgment.

There being nothing in the record—other than the materials leading up to the December 2, 2013, decision—there is nothing to rebut the inference (based upon all of those materials and changes of position by the Defendants) that the ultimate decision represented the will of the Defendants and not their reasoned judgment. Defendants dispute this and assert that safety concerns lead them to the inevitable conclusion that the 2011 conditional use permit application must be denied. But, a review of the record leaves a much murkier impression. There is no evidence—at least not before this Court—as to whether the Defendants knowingly utilized what

seemed to them to be a bonanza 16-day window of opportunity and then, just as coincidentally, were able to extend deliberations past an artificial two-year deadline to lend credence to their assertion that the Sportsmen's Club was not entitled to the deference of its fifty years of existence.

It is not necessary, given the other flaws in the Defendants' December 2, 2013, decision, to expressly rule on this point—or to declare whether all the actions of the Defendants were an attempt to evade the statutory protections of the Range Protection Act, so this Court will go no further.

IV. Violation of the Second Amendment.

As an additional argument, Plaintiff Sportsmen's Club asserts that prohibiting the operation of its sport shooting ranges is a violation of the Second Amendments of both the United States Constitution and Wisconsin's Constitution. In support of that contention, the Sportsmen's Club relies upon *Ezell*, *Heller* and *McDonald*. Courts are continually urged to resolve matters on the narrowest grounds and to avoid, if unnecessary, resolution of constitutional issues. *See Miesen v. Dept. of Transp.*, 226 Wis. 2d 298, 309, 594 N.W.2d 821 (Ct. App. 1999). And, while that admonition is most often asserted with respect to appellate courts, its wisdom is persuasive to this Court.

Having already determined that that the Range Protection Act was violated in June, 2010, and additionally, that the December, 2013, decision by the Defendants on the 2011 permit application was likewise legally deficient, there is no need for this Court to explore the contours of the Second Amendment with respect to the operation and existence of sport shooting ranges. The Court declines the opportunity to do so here.

CONCLUSION

Based upon the foregoing, this Court declares that the Defendants' decision on June 10, 2010, was in direct violation of the effective Range Protection Act and is, thus, void. In addition, the Defendants' December 2, 2013, decision is likewise legally deficient because the Defendants failed to proceed on a correct theory of law, the decision was arbitrary and capricious, was not supported by the records, there is no explanation for the Defendants' decision, and the decision represented the will of the Defendants and not their judgment. Therefore, taken altogether, neither decision by the Defendants as to the Sportsmen's Club's 1997 conditional use permit or the 2011 permit application is valid.

Accordingly, Plaintiff Hartland Sportsmen's Club, Inc.'s Motion for *Certiorari* and Declaratory Relief is GRANTED.

Dated this 4th day of February, 2016.

BY THE COURT:

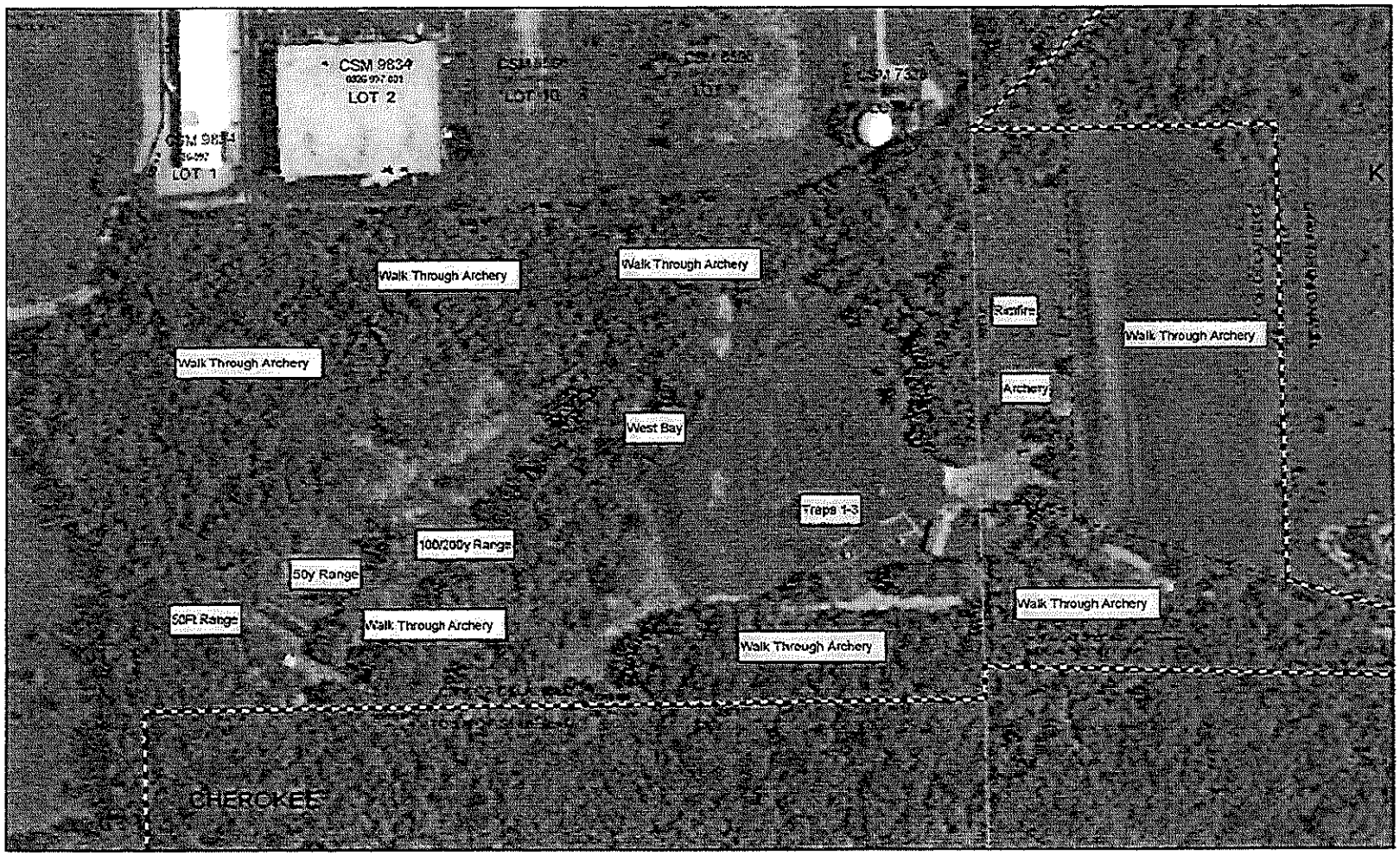
Maria S. Lazar
Circuit Court Judge

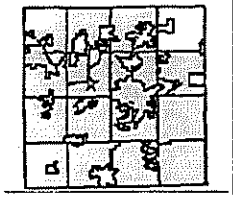
THIS IS A FINAL ORDER FOR PURPOSES OF APPEAL.

cc: Jeremy P. Levinson/Scott N. Burns
Ryan G. Braithwaite/Richard T. Orton

WAUKESHA COUNTY
Internet Mapping Site

Hartland Sportsmen's Club





Legend

Points of Interest

Cartographic Elements

Road Rights of Way

Railroad Rights of Way

EXHIBIT C