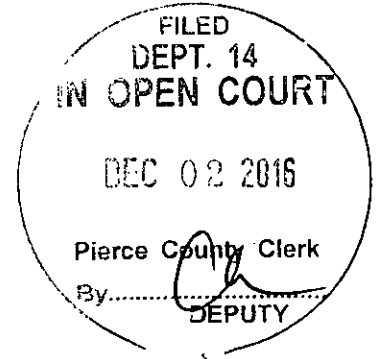


10-2-12913-3 48020869 ORG 12-05-16



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PIERCE COUNTY

KITSAP COUNTY, a political subdivision of the
State of Washington

Plaintiff,

v.

KITSAP RIFLE AND REVOLVER CLUB, a not-
for-profit corporation registered in the State of
Washington, and JOHN DOES and JANE ROES
I-XX, inclusive

Defendants

and

IN THE MATTER OF NUISANCE AND
UNPERMITTED CONDITIONS LOCATED AT
One 72-acre parcel identified by Kitsap County
Tax Parcel ID No. 362501-4-002-1006 with street
address 4900 Seabeck Highway NW, Bremerton
Washington

NO. 10-2-12913-3

[PROPOSED] ORDER GRANTING
KITSAP COUNTY'S MOTION FOR
CONTEMPT WITH FINDINGS
OF FACT AND CONCLUSIONS
OF LAW

This matter came on regularly for hearing before the undersigned Judge of the above-entitled
Court on Plaintiff Kitsap County's Motion for Contempt. Plaintiff appeared through counsel of

[PROPOSED] ORDER GRANTING KITSAP COUNTY'S
MOTION FOR CONTEMPT WITH FINDINGS OF FACT
AND CONCLUSIONS OF LAW -- 1

TINA R. ROBINSON
Kitsap County Prosecuting Attorney
614 Division Street, MS-35A
Port Orchard, WA 98366-4676
(360) 337-4992 Fax (360) 337-7083

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1 record, Christine M. Palmer and Laura F. Zippel, Deputy Prosecuting Attorneys. Defendant Kitsap
2 Rifle and Revolver Club ("KRRC") appeared through counsel of record, Brian Chenoweth and
3 Brooks Foster. The Court heard oral argument and considered the following:

- 4 1. Plaintiff Kitsap County's Motion for Contempt, the Declaration of Christine M.
5 Palmer, with exhibits, the Declaration of Laura F. Zippel, and the Declaration of
6 Jeffrey Rowe, filed in support thereof;
- 7 2. Defendant KRRC's Response and materials filed in support thereof, if any;
- 8 3. Plaintiff Kitsap County's Reply and materials filed in support thereof, if any;
- 9 4. The Findings of Fact, Conclusions of Law and Orders ("Judgment") entered February
10 9, 2012;
- 11 5. The October 28, 2014 ruling of the Court of Appeals in *Kitsap County v. Kitsap Rifle
12 & Revolver Club*, 184 Wn. App. 252, 337 P.3d 328 (2014), *review denied*, 183
13 Wn.2d 1008 (2015);
- 14 6. The Order Supplementing Judgment ("Supplemental Judgment") entered February 5,
15 2016; and
- 16 7. The records and files herein.

17 The Court hereby makes the following findings of fact, conclusions of law and orders, which
18 shall remain in effect until further order of this Court:

I. FINDINGS OF FACT

19 1. The Supplemental Judgment requires KRRC to submit to Kitsap County an
20 application for a ^{permitting} ~~site development operating permit (SDAP)~~ within 180 days of the entry of that
21 order. 180 days have passed since the entry of the Supplemental Judgment.

22 2. KRRC, having appeared through counsel at the February 5, 2016 hearing when the
23 Supplemental Judgment was entered, was aware of the Supplemental Judgment and the requirement

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1 to apply for ~~an SDAP~~ ^{permitting} within 180 days. Although KRRC ~~appealed certain portions of the~~
2 ~~Supplemental Judgment, it did not appeal the requirement to apply for an SDAP within 180 days.~~

3 3. KRRC failed to submit an application for an SDAP within 180 days of the entry of
4 the Supplemental Judgment and has failed to submit ~~any such~~ ^{a complete} application as of the date of the entry
5 of this order.

6 4. KRRC's failure to comply with the Supplemental Judgment's mandatory injunction to
7 ~~submit an SDAP~~ ^{a permitting application} to Kitsap County within 180 days was intentional.

8 ~~5. KRRC is in contempt of court.~~

9 5. ~~6.~~ The remedial sanction of prohibiting KRRC's use of its property as a shooting range
10 until it ~~submit~~ ^{obtains} an application ~~for a site development activity permit~~ ^{permitting} will be more effective in
11 ensuring compliance with the Supplemental Judgment than the remedial sanctions of imprisonment
12 or forfeiture of funds.

13 6. ~~7.~~ KCC 19.100.165(F) specifically provides for injunctive relief to address violations of
14 Title 19. KRRC's failure to submit an application for ~~an SDAP~~ ^{permitting} as required by the Supplemental
15 Judgment, therefore, constitutes an actual and substantial injury to Kitsap County and the
16 community.

17 ~~8. Kitsap County's counsel has expended over 7.8 attorney hours in preparation of~~
18 ~~Kitsap County's Motion for Contempt. The rate of \$250.00 per hour for the services of deputy~~
19 ~~prosecuting attorneys is a reasonable hourly rate for attorney time.~~

20
21 **II. CONCLUSIONS OF LAW**

22 1. An injunction prohibiting KRRC from operating a shooting facility until it ~~submit~~ ^{obtains} an
23 application for ~~an SDAP~~ ^{permitting} is an appropriate remedial sanction for KRRC's contempt of court. Such an

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1 injunction is designed to ensure compliance with the Supplemental Judgment pursuant to RCW
2 7.21.030(2)(c) and will be more effective in ensuring compliance than a remedial sanction of
3 imprisonment or forfeiture of funds.

4 2. Kitsap County has a clear and equitable right to seek enforcement of the
5 Supplemental Judgment which sets forth the cure for KRRC's violations of Kitsap County Code
6 Titles 12 and 19.

7 3. KRRC's failure to submit an application for ~~an SDAP~~ ^{permitting} as required by the
8 Supplemental Judgment invades Kitsap County's right to compliance with Titles 12 and 19 and
9 Kitsap County's right to compliance with the Supplemental Judgment. .

10 4. KRRC's failure to submit an application for ~~an SDAP~~ ^{permitting} as required by the
11 Supplemental Judgment constitutes an actual and substantial injury to Kitsap County and the
12 community pursuant to KCC 19.100.165(F) and *King County ex rel. Sowers v. Chisman*, 33 Wn.

13 App. 809, 818-19, 658 P.2d 1256 (1983). 5. KRRC is in contempt of court.

14 Based upon the foregoing findings of fact and conclusions of law, effective immediately, the
15 Court hereby orders as follows:

16 **III. ORDER**

17 1. Plaintiff Kitsap County's Motion for Contempt is GRANTED;
18 2. Defendant KRRC is enjoined from operating a shooting facility until such time that
19 KRRC ~~submits a complete application to Kitsap County for a site development activity permit~~ ^{obtains permitting}
20 (~~SDAP~~) in compliance with KCC Titles 12 and 19;

21 3. Plaintiff is authorized to enforce the cessation of shooting operations at Defendant's
22 shooting facility;
23

make all reasonable efforts to

4. KRRC shall prevent any and all persons and entities from discharging a firearm upon the Property or at the shooting facility thereupon; including posting this order at the property and making it available on its website.

5. The injunction will not be lifted until this Court so orders. When Defendant believes has obtained ~~SDAP~~ permitting it has submitted a complete application in good faith, Defendant shall move for an order lifting the injunction. Defendant bears the burden of establishing that it has, in good faith, submitted a complete application.

6. After Defendant files a motion to lift the injunction, Kitsap County shall then have an opportunity to respond to Defendant's motion to present evidence and argument before the Court as to whether the injunction should be lifted, shall continue, or shall be modified based upon the extent of Defendant's good faith efforts.

7. The lifting of this injunction will not affect any other injunctions, limitations, orders, or regulations that may be in place and which govern KRRC's use of its property or the operation of a shooting facility by KRRC.

8. To enforce compliance with this Order and based upon any reported violations of the same, the Department of Community Development ("DCD") may contact KRRC to request access to the Property in order to inspect condition or activities reported to be in violation of this Order. Upon such request, KRRC shall allow DCD to have reasonable and timely access to the Property for purposes of such inspections.

9. Defendant shall provide Kitsap County and the Court the names and 24-hour contact information for two KRRC officers who shall be points of contact for any request to access the Property to verify compliance with this Order.

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10. If Defendant fails to comply with these orders, Plaintiff may obtain further relief upon further motion to this Court.

11. This Court retains jurisdiction to enforce this order by all lawful means including imposition of contempt sanctions ~~and fines or the issuance of a warrant of abatement.~~

~~12. Plaintiff shall pay Kitsap County \$1,950 in attorney fees by September 30, 2016.~~

DONE IN OPEN COURT this 2 day of December, 2016.

Susan K. Serko
HON. SUSAN K. SERKO, JUDGE
PIERCE COUNTY SUPERIOR COURT

JMS

Presented by:

Christine M. Palmer
CHRISTINE M. PALMER, WSBA No. 42560
LAURA F. ZIPPEL, WSBA No. 47978
Deputy Prosecuting Attorneys
Kitsap County Prosecutor's Office
Attorneys for Plaintiff Kitsap County

FILED
DEPT. 14
IN OPEN COURT
DEC 02 2016
Pierce County Clerk
By: *[Signature]*
DEPUTY

APPROVED FOR ENTRY: *AS TO FORM :*

B
BRIAN D. CHENOWETH, WSBA No. 25877
BROOKS FOSTER, Appearing *pro hac vice*
Attorneys for Defendant Kitsap Rifle and
Revolver Club

12. Notwithstanding any other provision of this order, it does not prohibit the Club from engaging in or allowing, at its property, lawful activities other than the discharge of any firearm.

JMS