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MAR 24 2017

DAVID W. PETERSON

IN THE SUPERIOR COURT OF WASHINGTON  
FOR KITSAP 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,

Defendant,

and

IN THE MATTER OF THE UNPERMITTED  
SHOOTING FACILITY located at the 72-acre  
parcel at 4900 Seabeck Highway NW,  
Bremerton, Washington, viz Kitsap County Tax  
Parcel ID No. 362501-4-002-1006.

NO. 15-2-00626-8

ORDER TO SHOW CAUSE

**\*\*CLERK'S ACTION REQUIRED\*\***

THIS MATTER comes before the Court on Kitsap County's Petition for Further Relief pursuant to RCW 7.24.080 ("Petition"). The Petition asks the Court to enter a permanent injunction enjoining Kitsap Rifle and Revolver Club ("KRRC") from using the property as a shooting range until it obtains an operating permit pursuant to KCC 10.25.090. Also before the Court is Kitsap County's Motion for Clarification of Order on KRRC's Request for a Permit Extension/Evidentiary Hearing.

COURT'S RULING-- 1

**JUDGE JAY B. ROOF**  
Kitsap County Superior Court  
614 Division Street, MS-24  
Port Orchard, WA 98366  
(360) 337-7140

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PROCEDURAL HISTORY

Because the Court's Order is different from that requested by either of the parties from the most recent motion, the Court finds it necessary to set forth a brief synopsis of the history of this case.

On March 31, 2015, Kitsap County filed a Complaint for Declaratory Judgment and Injunction. Among the relief sought was a "preliminary and permanent, mandatory, and prohibitive injunction pursuant to Chapter 7.40 RCW, (1) enjoining Defendant from operating a shooting facility until such time that Defendant submits a complete application to Kitsap County for an Operating Permit in compliance with KCC Chapter 10.25...." The County then filed a Motion for Preliminary Injunction on April 2, 2015, which was granted by an Order entered April 24, 2015. The April 24<sup>th</sup> Order stated that "[w]hen the Defendant believes it has submitted a complete application in good faith pursuant to KCC 10.25.090(5), Defendant shall move for an order lifting the injunction."

On March 17, 2016, KRRC filed a Motion to Dissolve Preliminary Injunction, arguing that it had "submitted a complete application for an operating permit, which application is made 'under protest,' preserving the Club's rights to continue to contest the requirement of an operating permit for its activities." The County opposed the motion, arguing that the application was not "complete." A hearing was held March 24, 2016, at which it was determined that a fact finding hearing was necessary to determine whether a "complete" application had been submitted, and a hearing was scheduled for April 7, 2016. At the April 7<sup>th</sup> hearing, the County no

1 longer opposed the motion to dissolve, and the Court entered an order dissolving the preliminary  
2 injunction on April 7, 2016.<sup>1</sup>

3 On May 31, 2016, the Court entered declaratory judgment in favor of Kitsap County,  
4 ruling that KRRC's operation of a shooting range without an operating permit violated  
5 KCC 10.25. On September 22, 2016, the County filed and noted the current Petition for Further  
6 Relief, seeking a permanent injunction, for hearing on September 29, 2016. Pursuant to  
7 RCW 7.24.080, if and when the court deems the County's petition to be sufficient, the court shall  
8 require KRRC to show cause why the permanent injunction should not be entered.  
9

10 KRRC submitted a new application for an operating permit just prior to the September  
11 29<sup>th</sup> hearing and argued that an injunction would be improper while an application was pending.  
12 At the hearing, the County noted concerns that KRRC could keep filing new applications each  
13 time the previous application was denied to prevent the entry of an injunction, without ever  
14 obtaining the required operating permit. Those concerns notwithstanding, the Court found that  
15 KRRC's new application prevented the Court from moving forward with the County's Petition at  
16 that time.<sup>2</sup> The hearing on the County's Petition was continued to February 2, 2017.<sup>3</sup>  
17

18 When the hearing resumed on February 2<sup>nd</sup>, KRRC's new application had again lapsed  
19 and the Department of Community Development had denied KRRC's request for an extension.  
20 The County argued that, again, KRRC had not obtained a permit and did not have a current  
21 application filed with the County and that the Petition for a permanent injunction should be  
22 granted. The County alleged that KRRC's actions during the permitting process had been  
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25  
26 <sup>1</sup> The County asked that a one-year deadline be placed in the order for KRRC to complete the permitting application  
27 process, however this deadline was not included in the April 7<sup>th</sup> Order.

28 <sup>2</sup> The Court noted on the record that an element of good faith would be required for further applications or requests  
for extensions to be considered sufficient to prevent an injunction from being entered.

<sup>3</sup> It was believed that by this time, the new application would either have been accepted, denied, or have expired.

1 unreasonable and that KRRC had not been acting in good faith during the permitting process.  
2 KRRC disputed the County's depiction of KRRC's actions during the permitting process and  
3 asked that the Court order the County to issue an extension on KRRC's application, or in the  
4 alternative, hold an evidentiary hearing on whether the County denied the extension arbitrarily  
5 and capriciously. On February 10, 2017, this Court entered an Order denying KRRC's request  
6 for an extension or evidentiary hearing, stating that it did not have the authority to order an  
7 extension absent KRRC exhausting its administrative remedies.  
8

9 On February 27, 2017, Kitsap County filed a Motion for Clarification of Order on  
10 KRRC's Request for a Permit Extension/Evidentiary Hearing. The motion requested clarification  
11 regarding the status of its Petition, as a ruling on the County's Petition is still pending. The  
12 County's Petition seeks injunctive relief pursuant to RCW 7.24.080, which states:  
13

14 Further relief based on a declaratory judgment or decree may be granted  
15 whenever necessary or proper. The application therefor shall be by petition to a  
16 court having jurisdiction to grant the relief. When the application is deemed  
17 sufficient, the court shall, on reasonable notice, require any adverse party whose  
18 rights have been adjudicated by the declaratory judgment or decree, to show cause  
19 why further relief should not be granted forthwith.

20 The County's Petition also argues that the Court has the authority, independent from  
21 RCW 7.24.080, to issue injunctive relief pursuant to its "broad equitable powers." However, in  
22 an abundance of caution not to overlook any potential procedural challenges, the Court finds that  
23 the most appropriate means of addressing the County's Petition is to proceed pursuant to RCW  
24 7.24.080. Further, it appears to the Court that a show cause hearing is required under the statute  
25 before the relief requested in the Petition can be granted.<sup>4</sup> Although two hearings have been held  
26 on the Petition, neither hearing was a court ordered show cause hearing. Therefore, the Court

27  
28 <sup>4</sup> "[T]he court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by the declaratory judgment or decree, to show cause why further relief should not be granted forthwith." RCW 7.24.080 (emphasis added).

1 will hold a show cause hearing as required by RCW 7.24.080 before making its ruling on the  
2 Petition. As KRRC no longer has a pending permit application and because the Court denied the  
3 request to order an extension, the Court finds that the County's Petition is now sufficient and a  
4 show cause hearing must be held.  
5

6 The Court has received and reviewed all materials submitted to date concerning the  
7 County's Petition and will entertain only new materials not previously submitted. No oral  
8 argument will be permitted at the Show Cause Hearing.  
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10 Based upon the foregoing, it is hereby

11 **ORDERED** that KRRC shall appear at Kitsap County Superior Court on **March 31,**  
12 **2017, at 11:00AM** before Judge Roof, and show cause, if any, why the County's Petition should  
13 not be granted and a permanent injunction should not be entered. It is further  
14

15 **ORDERED** that KRRC may file a Response to the County's Petition, consisting only of  
16 new material, by March 29, 2017, at 12:00 noon. If KRRC files a Response, the County may file  
17 a Strict Reply no later than 12:00 noon on March 30, 2017. It is further  
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19 **ORDERED** that Kitsap County's Motion for Clarification of Order on KRRC's Request  
20 for a Permit Extension/Evidentiary Hearing is **DENIED** as moot.  
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22 Dated: This 27<sup>th</sup> day of March, 2017.  
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27 JUDGE JAY B. ROOF  
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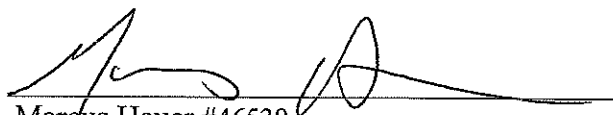
CERTIFICATE OF SERVICE

I, Marcus Hauer, certify under penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above entitled action, and competent to be a witness herein.

Today, I caused a copy of the foregoing document to be served in the manner noted on the following:

Christine Palmer & Laura Zippel Kitsap County Prosecutors Office 614 Division St, MS-35A Port Orchard, WA 98366-4614	<input checked="" type="checkbox"/> Via Interdepartmental Mail <input checked="" type="checkbox"/> Via Email: cmpalmer@co.kitsap.wa.us; lzippel@co.kitsap.wa.us
Bruce Danielson Danielson Law Office PS 1001 4th Ave Ste 3200 Seattle, WA 98154-1003	<input checked="" type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via Email: bruce@brucedanielsonlaw.com
Dennis D. Reynolds Dennis D. Reynolds Law Office 200 Winslow Way W Unit 380 Bainbridge Island, WA 98110-4932	<input checked="" type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via Email: dennis@ddrlaw.com

DATED this 24 day of March 2017, at Port Orchard, Washington.

  
Marcus Hauer #46539  
Staff Attorney