

September 15, 2016

Proposed Meeting Notes

Has not been approved by the Committee
Orange County Firearms Safety Committee
Tuesday, August 23, 2016

John M. Link, Jr. Government Services Center, downstairs meeting room
200 South Cameron Street, Hillsborough

Attendees

- Committee members appointed by the Board of Commissioners: Jon Arvik, Roxanne Barksdale, Sara Conti, Jack Hunnell, Keith Kirkland, Vince Tesoro, and Greg Tilley. [Keith Webster, absent].
- Liaisons to the Board of Commissioner: Commissioners Earl McKee and Barry Jacobs
- Resource persons designated by the Board of Commissioners: Travis Myren, Deputy County Manager; Forrest Orr, Wildlife Officer, NC Wildlife Resources Commission; John L. Roberts, Orange County Attorney; Jamie Sykes, Chief Deputy, Orange County Sheriff's Office.
- Facilitator: Andy Sachs, Dispute Settlement Center.
- There were 4 observers.

Convene

After introductions and adoption of the proposed desired outcomes and agenda for the meeting, the Committee accepted the proposed notes from the August 1 meeting.

Draft Firearms Safety Ordinance

The group reviewed the first draft of an ordinance developed by County Attorney John Roberts based on earlier Committee discussions. Mr. Tilley thanked Mr. Roberts for preparing the draft, saying that the draft is helpful, thoughtful, well put together, and close to what he thinks is needed. Ms. Barksdale also expressed her appreciation to Mr. Roberts.

Paragraphs (c) and (d)

Mr. Kirkland said he did not know how the Committee could be any clearer about the need for an effective backstop without going into specific, numerical details. The draft is simple and easy to understand, he said.

Mr. Hunnell said that he is opposed to the requirement that all backstops be “designed and constructed.” A hunter lines up a deer with a natural back drop that will catch the projectile if the shooter misses, he said. In addition, if I am shooting clay pigeons then the shot is only going to travel about a hundred yards. Mr. Roberts suggested that an allowance for an effective natural barrier be added (but not something like shooting into a tree, he said) and Mr. Hunnell agreed.

Officer Orr said that paragraph (g) (1) exempts certain kinds of hunting from the backstop requirement

Mr. Tesoro said that a constructed backstop is not needed for shooting at clay pigeons because the targets are up in the air. Mr. Tilley suggested that the first sentence be removed from paragraph (c), so that the requirement simply would be that shooters not “discharge a firearm carelessly or heedlessly in wanton disregard for the safety of others.” Mr. Tesoro agreed, and asked if the terms -- careless, heedless and in wanton disregard -- could be enforced. Mr. Roberts said that it would be up to the responding officer to determine whether a shooter is acting in those ways, whether someone’s life, health, or safety are put in danger by the actions of the shooter. Chief Deputy Sykes agreed.

Ms. Conti said that if the Committee were interested in an enforceable standard for a constructed backstop then it might consider the language from Section 7 (c) of the Mecklenberg County Firearms Ordinance which says that backstops should be “substantially in accordance with specifications promulgated by the National Rifle Association or any equivalent nationally recognized firearms safety organization for the type and caliber of firearms being fired...”. People have taken issue with the County putting excessive particulars into ordinance, she said, but if we simply reference the NRA’s specifications then we would have an authoritative standard. Mr. Hunnell said that the NRA’s guidelines are for ranges. He offered to share those guidelines. Ms. Conti said that she did not need to see the guidelines.

In reply to a question from Mr. Hunnell, Officer Orr suggested that paragraph (g) (1) be revised so that there would be no backstop requirement for hunting at all. We already have prohibitions on negligent discharge for hunters in state statute, he said.

Mr. Hunnell recalled that Ms. Conti had suggested in an earlier meeting that the state hunting laws be used as a reference for the County’s firearms safety ordinance. Ms. Conti said she was interested specifically in the state hunting law’s Sunday limitation. State hunting law prohibits hunting with a firearm between 9:30 am and 12:30 pm on Sundays, she explained, and prohibits hunting all day on Sunday with a firearm within 500 yards of certain structures. If that makes sense for hunting with a firearm on Sunday, then maybe that makes sense for using a firearm for any purpose on Sunday.

Mr. Tesoro asked the group to consider the language in Section 10 (H) of the Harnett County Firearms Discharge Ordinance, which says that it is unlawful for any person to discharge a firearm “Without a backstop or other method of containment that will adequately contain the projectile to the property upon which it was discharged.” A person shooting at clay pigeons with a shotgun or BB’s well within, say, a 30-acre parcel would be in compliance because those projectiles would fall within those 30-acres. Ms. Conti said that the distance travelled by a

projectile depends on the caliber of the projectile. Mr. Hunnell said that beyond caliber the potential for a projectile to cross a property boundary also depends upon the direction the firearm is pointed. A hunter in a tree stand is pointing down and so even a high caliber bullet is unlikely to go very far, he said. Ms. Conti said that a property must be big enough to contain the projectile for the caliber that is being used.

Mr. Tilley said that he agreed with Ms. Conti's point regarding the need to contain the projectile on the property for whatever caliber is being used. My house sits on 12-acres, he said, and I can shoot any caliber from my front porch straight out towards Highway 54 without that bullet leaving my property because the land slopes upward and will capture the projectile before it gets to the boundary. We would not need a constructed backstop to keep the projectile on my property because of the topography, he said.

Chief Deputy Sykes said that it is problematic for law enforcement to evaluate a berm or backstop. He said that the revision proposed earlier in the meeting to delete the first sentence from paragraph (c) sufficiently assigns responsibility for keeping a projectile on a shooter's property.

Mr. Hunnell asked that a provision be added allowing a projectile to cross a property line when a shooter has permission from the adjacent property owner.

Ms. Barksdale proposed that language in paragraph (c) reflect the language in paragraph (d) so that it simply would say, "It is unlawful for any person to discharge a firearm carelessly or heedlessly in wanton disregard for the safety of others." Mr. Tilley, Mr. Tesoro, and Mr. Hunnell said that they liked that.

In reply to a question from Commissioner Jacobs, Mr. Roberts explained that "wanton disregard" means a reckless or careless manner. Commissioner Jacobs asked if under the draft language a shooter can discharge a firearm in disregard for the safety of others as long as they do not do so wantonly. Mr. Roberts said that "wonton" can be removed if the Committee gives that direction.

Ms. Conti said the draft language is so vague as to be unconstitutional. What is careless, heedless, and wanton disregard, she asked? What's needed is a standard for making that determination, she said, such as "in the discretion of a law enforcement officer." Mr. Roberts said that there is plenty of case law to support the constitutionality of the wording in the first draft. Motor vehicle statutes use careless and reckless and those laws are enforced successfully and upheld by courts every week all across the state thousands of times, he said. The analogy from motor vehicles to firearms is valid in that we can discern what the careless and reckless use is of any tool. I don't have any position on whether the Committee changes this language, he

added, but I am comfortable with it as it is. The phrase “careless and reckless” is already defined in North Carolina law.

Chief Deputy Sykes said the officer on the scene will use the facts they encounter to inform their discretion. If a person is shooting toward Highway 54 but into a bank of land that’s capturing the bullet, then the officer can conclude that the shooting is safe under an ordinance that allows for an effective, natural backstop. If it were flat land in a direct line of sight toward the highway, then that would be in violation of that type of ordinance. The existence of the ordinance gives us the authority to act if we see a violation, and we would not need “in the discretion of law enforcement” to do so. Dr. Arvik said that he has had the experience of seeing law enforcement officers unable to act when a neighbor was shooting unsafely. I need assurance that the Sheriff’s deputies are going to get the proper training about what is safe and clear authority that they can make that decision in the moment. Right now I do not believe they can make that determination. Mr. Tilley said that right now – and back when Dr. Arvik witnessed the unsafe shooter – there is no County ordinance the Sheriff’s Office can use to exert such authority. Passage of an ordinance as the group has been discussing will give the Sheriff authority, he said. Dr. Arvik said that law enforcement has the authority and the responsibility to stop dangerous behavior, whether we have an ordinance or not. In reply to a question from Deputy Chief Sykes, Dr. Arvik said that he did not know if the law enforcement officers who did not stop the unsafe shooter were State Troopers or Orange County deputies. Mr. Roberts said that he is not aware of any existing ordinance that gives law enforcement authority to stop the discharge of firearms in unincorporated Orange County other than for discharges into an occupied dwelling or at a person.

Mr. Tesoro said that it is too difficult for law enforcement to ascertain compliance with specific standards for a backstop; that is why none of the ordinances we have reviewed from all the other counties in North Carolina have avoided such standards. The Harnett County ordinance does a good job at saying what we want: that you have to stop the bullet however it is that you do it. Ms. Conti said that Mecklenberg County cites specifications promulgated by the NRA; it is a legitimate authority in this context and it gives law enforcement something tangible to work with, she said. Mr. Hunnell said that it is too expensive for ordinary people to construct backstops according to the NRA specifications; those specifications are for shooting ranges, he said. Ms. Conti said no, that the Mecklenberg County ordinance uses the NRA specifications for “a person target shooting on his own property.” Mr. Tilley said that the NRA specifications do not sound like a practical solution. Ms. Conti said that she would want to see the specifications for herself, and highlighted the Mecklenberg County language associating a backstop with “the type and caliber of firearms being fired.” Mr. Hunnell agreed that the backstop should be appropriate for the type and caliber of firearms being fired. Mr. Kirkland proposed that paragraph (c) read, “It is unlawful for any person to discharge a firearm except into a natural or

constructed backstop sufficient to stop the projectile.” The allowance would be for natural or constructed backstops, he said.

In reply to a question from Mr. Tesoro, Mr. Kirland said that “distance” would be the natural container for shotgun use. In reply to a question from Mr. Tesoro regarding skeet and trap – in which shooters aim into the air, making natural or constructed backstops impractical -- Mr. Roberts said that a sentence could be added to exempt skeet or trap from paragraph (c). Ms. Barksdale asked what protections would exist for the neighbors of shooters on small lots. The shot will leave the property, she said. Mr. Tilley said that if shot lands on an adjoining property, paragraph (d) of the draft ordinance would be violated and so law enforcement would have the authority to intervene. That makes me feel better, said Ms. Barksdale. Mr. Tilley, Mr. Tesoro, and Mr. Hunnell said that they liked Mr. Kirkland’s proposal. Ms. Conti said that she could accept it. Hearing no objections to Mr. Kirland proposal, Mr. Roberts agreed to incorporate that suggestion into the next draft ordinance.

Mr. Roberts asked if the Committee wanted to remove “wanton” from the draft ordinance, and there appeared to be consensus to do so.

Regarding paragraph (d), Mr. Hunnell reiterated his proposed that a provision be added allowing a projectile to cross a property line when a shooter has permission from the adjacent property owner. Mr. Kirkland said it would be problematic to require permission from a neighbor to shoot on one’s own property, especially owners of large tracts whose neighbors are, for example, a half mile away.

Paragraph (b)

Dr. Arvik proposed that “pressurized gas” be added to the types of propellants (currently, ignition of gunpowder or by other explosive reaction) under the definition of firearm. There are some pellet guns that are at least as powerful as a .22 rifle, he said. In reply to Mr. Hunnell’s observation that cross-bows are equally dangerous, Dr. Arvik said that he is not proposing that cross-bows be added to the definition of firearms.

Dr. Arvik said that some pellet guns can expel at 1400 feet per second, which is analogous to the power of a rifle.

Mr. Hunnell said that the propellant in a firearm always is a gas. Dr. Arvik said that the draft ordinance says “explosive” gas and that he is proposing that “pressurized gas” be included; if we delete “explosive” then that would be OK with me, he said.

Mr. Tilley, Mr. Tesoro, and Mr. Kirkland said that they do not consider a pellet gun to be a firearm. You can shoot a pellet gun within any of the municipal limits said Mr. Tilley. The range

of a .22 caliber pellet gun is short: 45-50 yards maximum, he added. Although Mr. Tesoro said that a pellet gun is like a BB gun, Dr. Arvik said that a pellet gun is not the same as a BB gun. Mr. Tesoro (reading from something online) said that under Section 921 (a) (3) of the federal Gun Control Act, air guns are excluded from the definition of firearms -- unless they are manufactured with the frames or receivers of an actual firearm -- because they use compressed air and not an explosive to propel a projectile.

In reply to a question, Mr. Roberts said that the draft ordinance would not prohibit a projectile from a pellet gun from crossing a property line, for example under paragraph (d), because the definition of a firearm under the draft does not include pellet guns. Mr. Tilley said that he would expect there to be other ordinances under which a shooter of a pellet gun who causes property damage would be held responsible. Deputy Chief Sykes said that there were.

Commissioner McKee said that Dr. Arvik's point is a good one about the velocity of a projectile that is propelled by a pressured gas. My expectation for this Committee is that we would work with the general understanding of the problems and possibilities. I don't think the general public would consider a pellet gun or a BB gun to be a firearm. I was worried a few minutes ago that the conversation was searching for the perfect solution at the expense of what's possible, he said. Cross-bows have range and power and can project bullets, but we don't want to go there. Nor do we want to go to arrows. I would think that we might want to stay within the general understanding of what firearms are: pistols, rifles, and shotguns.

Commissioner Jacobs read from something online: "North Carolina prohibits any person from causing, encouraging, or aiding a minor who is less than 18 years old to possess or carry, whether openly or concealed any BB gun, stun gun, air rifle, or air pistol. North Carolina has no other law regarding non-powder guns." The federal law does not include pressured gas guns in its definition of firearms, he said, and North Carolina only restricts minors from using these guns. If we defined firearms in the way Dr. Arvik is proposing, he said, we would be going beyond what's generally contemplated in the law right now.

Dr. Arvik agreed that as the current definition stands a pellet gun is not a firearm. I want us to rethink that, he said, given the risk posed by the more powerful types of pellet guns. Imagine a 13-year kid gets a pellet gun for Christmas, he said. He gets no training, and walks down the street shooting at anything he feels like shooting. I call the Sheriff's Office. What can they do? Chief Deputy Sykes said that if property were damaged then a deputy could take out a juvenile petition for damage to property. If he were hunting then he would be in violation of the state hunting laws. A referral could be made to social services if we thought the child's parenting were at fault. Ms. Barksdale said the adult who aided the young person to obtain the gun would be in violation of the state law that Commissioner Jacobs had just cited. Dr. Arvik said that this sort of thing happens repeatedly, and if there is no law or ordinance against it then there should be. Do

we have to wait until someone is shot before we do something? Given the damage that pellet guns can do, we have the authority and the responsibility as a Committee to recommend to the Board of County Commissioners that they include projectiles shot from gas pressurized guns into the restrictions we've been talking about.

Noting that few members of the Committee were in support of his proposal, Dr. Arvik said he wanted to raise the issue at least so that people would come to understand that pellet guns could have the equal power of a rifle. I know I'm not persuading the group, he said, but I want the minutes to reflect that there is a viable and existing danger from these types of weapons. Including pellet guns in our firearms safety ordinance would be a quick, easy way to make things safer that is not going to harm anyone except those that use pellet guns irresponsibly, he said. Mr. Hunnell said that the concern is legitimate – analogous to requiring carbon monoxide monitors in homes as a public safety matter – but it is beyond the scope of this Committee. Ms. Barksdale said that there are people who die from pellet guns, but that statistically it is minimal compared to those who die from firearms. It is a gun, and it is a projectile, and it is dangerous, she said.

The Committee then took a break. When it returned, the Committee continued discussing the first draft of a Firearms Safety Ordinance.

Paragraph (h)

Ms. Conti endorsed the suggestion made by the observer Mr. Larry Roberts during the August 1 meeting's public comment period, that the property owner be held liable for errant projectiles rather than the shooter. Mr. Kirkland took issue with the suggestion. When you own a hundred acres, you don't always know if someone is shooting without permission somewhere on your power line easement, he said. You might hear the shots, but by the time you or law enforcement is able to investigate the shooter might be gone. It might be more acceptable a provision if the property owner were allowing the errant shooting to occur, he said. Mr. Tesoro asked if provisions regarding written permission to shoot on or onto another's property were related to this issue. Mr. Tilley said that since the shooter is the person who committed the act then the shooter should be the one held responsible. Mr. Hunnell said that, by analogy, a driver who causes damage is responsible for that damage, not the car owner. Mr. Kirkland said that the shooter is responsible for any round that comes from the weapon he or she fires.

Ms. Conti said that she understands these other perspectives, but wondered if a provision that holds the property owner responsible would increase the vigilance of property owners over what happens on their land. Mr. Hunnell said that while it is valid for each member of the Committee to represent their own personal perspective, the Sheriff should have no responsibility for enforcing against the persistent shooting in Ms. Conti's neighborhood because the gun range in question is grandfathered under the NC Sport Shooting Range Protection statute. Ms. Conti said

that she is not talking about her neighborhood, and that the suggestion to hold property owners liable came not from her but from the observer Mr. Larry Roberts at the previous Committee meeting. We are here because the citizens of Orange County perceive a firearm safety problem, she said. We are not here because of the problem in my neighborhood. She asked Mr. Hunnell to stop saying that her interest in serving on the Committee, and that the reason for the Committee itself, is based on that neighborhood problem because, she said, it is not true. I am not talking about another problem other than the one I'm raising now, which is in the interest of all the citizens of Orange County. If Larry Roberts were here now then he could explain why he too thinks his idea is spectacular. I only said that I think it is a fine idea. But everyone else has said no, so let's move on, she said. Mr. Hunnell replied that he had invited Larry Roberts to attend again tonight, but only ten minutes in advance of leaving and he was unavailable. Ms. Conti said that she had found Larry Roberts to be articulate and appreciated his comments.

In reply to a question from Commissioner Jacobs, the County Attorney Mr. John Roberts said that the draft ordinance as written now does not imply that the Board could impose a fine under \$500. The authorizing State statute says that a fine for a Class III misdemeanor is \$50 unless a Board sets a higher level up to \$500. Commissioner Jacobs suggested that the ordinance set the penalty at "up to" \$500 to give the Board discretion. The Board is not going to be inclined to fine someone \$500 right off the bat, especially if the violator says that the fine would be a financial hardship, and/or that the violation was unintentional, or if the damages or actual threat were minimal, he said. In reply to a question from Mr. Tesoro, Mr. Roberts said that violators could be fined \$500 for each paragraph that they contravene, for example as much as \$2,000 for violating (c), (d), (e), and (f). Dr. Arvik said that the Committee's intention at the previous meeting was to impose a strong financial disincentive to violating the ordinance. Commissioner McKee said that the Board has been reluctant in other circumstances to impose heavy fines and generally is adamant against imposing jail time for Class III misdemeanors. Mr. Tilley said that the Committee could recommend the penalty as it is written in the first draft, and the Board can choose different language in the ordinance it adopts. The Committee took a straw poll in which five of the members present were in favor of changing the language to "up to \$500" to give the Board flexibility, and two were in favor of setting the penalty at \$500.

Paragraphs (e) and (f)

Mr. Tilley suggested removing paragraph (f). If under paragraph (e) a deputy is able to ascertain consumption of an impairing substance in any way – seeing it, smelling it -- then why do we need to specify the use of a breathalyzer in (f), he asked? Chief Deputy Sykes said in reply to another question from Mr. Tilley that a deputy cannot order a person to take a breathalyzer test unless the person is driving a vehicle. Mr. Roberts explained that he had consulted with Chief Deputy Sykes in preparing these paragraphs. The two paragraphs are intended to address two different kinds of situations, he said. One is a zero tolerance situation, while the other is evidence of impairment through a breath-measuring device. Maybe he cannot force someone to blow into

a device or maybe he can – I do not know, said Mr. Roberts -- but he certainly can imply that he can require it in order to convince someone to do it. Chief Deputy Sykes said that a deputy can ask a person to take a breathalyzer test but cannot force the person to do so. We can prove that a person was drinking using the facts we are faced with: what's visible, what's apparent, the condition of the shooter, everything that can be articulated. Ms. Barksdale added that a deputy can go by the behavior of the person. Mr. Hunnell reiterated his support for a zero tolerance against impaired shooting, but asked how a deputy would determine that shooter enjoying a beer *after* completing a shooting session was *not* in violation. Chief Deputy Sykes said that the shooter's explanation would be part of the facts used by the deputy. If you say you're done shooting and that you were not drinking before you finished, and we have no reason to think otherwise, then we will take you at your word.

Noise: Time and/or Distance Restrictions

Mr. Tilley expressed support for adding a time restriction such as is found in the state hunting law. Mr. Kirkland said that he would be in favor of that as well. Sunday traditionally has been a day of peace and rest and football, he said, no matter what one's religion. If we mirrored the hunting rules then we could give some solace to people to enjoy their Sunday morning without hearing shooting. Ms. Conti said that it does not seem unreasonable, if we already cannot hunt on Sunday mornings nor in proximity to a residence or house of worship during the rest of the day, to extend that restriction to non-hunting discharges of firearms. Mr. Tilley said that he would be in favor of extending the Sunday prohibition to 6 am – 1 pm in order to create a quiet time, and between 11pm and 6am for all seven days of the week. A lot of people are concerned about the noise, he said, and most hunters are not going to be shooting between 11pm and 6am. Mr. Tesoro agreed with having a time limit, but suggested language from other counties' ordinances prohibiting shooting an hour or two before sun up and one or two hours after dark. He went on to share a perspective he was hearing from friends, not necessarily one he agrees with, that all mornings all week should be quiet. And what about all our neighbors who go to church on Wednesday nights? Can we respect the quiet for those times too? Mr. Kirkland said that we can accommodate a few but not all of our neighbors who would like a little more quiet. Ms. Barksdale said that she agreed with having some time limits. Sunday morning is arbitrary and traditional, she said. There are plenty of religions that worship at times other than Sunday mornings, and I feel comfortable choosing Sunday mornings for this ordinance because that is when a majority of our community would most appreciate the quiet time. Dr. Arvik said he agreed with both the sunrise/sunset-based restrictions and the Sunday morning restriction. Mr. Hunnell said that he would prefer quiet zones – reasonable distances, perhaps 500 yards, around buildings of interest such as houses of worship, schools, day care centers, etc. in which shooting would be prohibited so that the noise does not bother them. At the same time, I would not like to restrict a person who works six days a week from shooting a .22 in his backyard with his kids on a Sunday morning when that might be the only day he's free to do that. A distance restriction is more easily enforced than a time restriction, he added. Ms. Conti said that the distance or time

restriction might have its traditional origins in religion, but that today the community's interest is in the right to have some peaceful time. The hunting regulations gave us the idea to do this, and so I would keep the restrictions tied to that context rather than replace the Sunday time and distance restrictions with distance restrictions only. She reiterated that the hunting restrictions are on Sundays only, between 9:30 am and 12 Noon, and in proximity to a residence or house of worship.

However, she added, I also would be in favor of distance restrictions such as in the Lenoir County ordinance, to avoid noise impacts on residential neighbors. She proposed adding "residence" to the list of places from which a discharge of a firearm is prohibited within 500 feet under the Lenoir County ordinance: school, church, daycare, playground, park, recreation area, or other type of public gathering place. Commissioner Jacobs echoed Mr. Hunnell's preference for the term "house of worship" to replace "church."

In reply to questions from Mr. Tesoro, Chief Deputy Sykes said that time restrictions are enforceable. However, he said, when we get the call at 2:00 am about sustained shooting then it is not likely we are going to find anyone when we show up and try to locate the shooter. If we get a call at 12:59 pm on a Sunday afternoon where an ordinance prohibits shooting between 6 am and 1pm, then we'll respond and deal with the situation intelligently without being so precise about whose watch says exactly what time, he said.

Mr. Hunnell posited the situations of a surgeon or airline pilot who have non-traditional work schedules. They might need to sleep in on Tuesday mornings instead of Sundays. I have a neighbor who works for IBM and does installations at work in the middle of the night. This is not North Carolina 1929, it is 2016. Our communities are more dynamic and diverse. Distances from residences or schools, etc. provides for the peaceful home life we're all trying to get to, for everyone. Mr. Tilley asked if the distance would be for all week long. Mr. Hunnell said that it would. Mr. Tilley asked if 500 yards were a realistic enough distance from one's neighbors to allow most people to shoot on their own property. If that is important, said Mr. Hunnell, then we would need to come up with a shorter distance, say, 250 yards.

Mr. Tesoro said that he had seen somewhere a provision for a minimum lot size requirement, maybe 10,000 square feet, or maybe it is distance from the point of discharge to a property line, below which a shooter would need to get permission from their neighbors to shoot. Ms. Conti said that that provision is in the Harnett County ordinance.

In reply to a question from Commissioner Jacobs, Mr. Roberts said that Orange County prohibits hunting within 150 yards of any local, state or federal government structure. Commissioner Jacobs suggested that the group look at that as an existing standard for Orange County which might be extended to non-hunting shooting and other types of land uses (residences, etc.).

In reply to a question from Dr. Arvik, Mr. Roberts reiterated from the previous meeting his expectation that the Board of County Commissioners will have a work session before the end of the year to review the County noise ordinance. Dr. Arvik suggested that this Committee recommend to the Board that firearms noise be considered when the Board takes up that review. But 150 yards is not enough distance to protect against firearms noise, he said. What is enough would depend upon the caliber and the direction one is shooting.

Mr. Kirkland said that removal of the firearms exemption from the noise ordinance could effectively shut down all shooting in Orange County. If we also add restrictions on distance and/or time and day to a firearms safety ordinance, then we would be putting shooters in double jeopardy. Either the firearms exemption needs to stay in the noise ordinance while we put other restrictions in place to get the noise under control, or we need to know now that we are going to recommend removal of the firearms exemption from the noise ordinance. Mr. Roberts said that if the firearms exemption were removed from the noise ordinance then most shooting in Orange County would indeed be affected, but it would not apply to existing gun ranges because of the preemptions in the NC Sport Shooting Range Protection Act. Ms. Conti said that distance restrictions would address both noise and safety concerns. Mr. Hunnell said that there is a relation across distance, caliber, and direction. As a courtesy to my neighbor, he said, when I shoot on some mornings I'll run my tractor to muffle the noise from my shooting. Mr. Kirkland acknowledged that Mr. Hunnell is a responsible neighbor, but expressed concerns about shooters who are not so courteous. The reality is that a shooter can be a half mile away from a neighborhood, and somebody is going to hear that noise, he said. If the firearms exemption is taken out of the noise ordinance, then that leaves the shooter wide open for prosecution. Mr. Hunnell said that he can hear people shooting repetitively on Sunday mornings who are located more than a mile away. Firearms noise is unique, said Mr. Kirkland, so we need something unique pertaining to firearms. A generalized approach that depends on meters, for example, is not going to work for firearms. Why not include an approach to noise in the firearms ordinance, and leave the firearms exemption in the noise ordinance? Ms. Conti agreed: the noise ordinance is very specific and talks about noise control in terms of decibels, making it difficult or impossible to apply to firearms noise. I don't think it would help simply to lift the firearms exemption from the noise ordinance, she said. Dr. Arvik said that the two ordinances – firearms safety and the general noise ordinance – should not be at cross purposes regarding firearms noise. Mr. Tilley said that firearms noise could be addressed in the firearms safety ordinance through distance or time, while the exemption from the decibel approach remains in the noise ordinance. They would not be at cross purposes, he said, but I don't want to spend time developing the distance and time restrictions here if later on the Board of Commissioners is going to remove the firearms exemption from the noise ordinance. Mr. Roberts said that distance restrictions could be put into a firearms safety ordinance while maintaining the firearms exemption from the decibel restrictions in the noise ordinance.

In reply to a question from Mr. Tilley, Commissioner McKee said that he did not envision the Board of Commissioners removing the firearms exemption from the noise ordinance. I don't think we have defined how the noise ordinance is going to come back to us for review, he said. Mr. Roberts said that one Commissioner has asked that the noise ordinance come back for a work session review, but there has been no determination as to how or when that would happen. Commissioner Jacobs said that it has been an ongoing discussion with Michael Harvey over the years. The only place it might relate to firearms is to consider the part of the Buncombe County ordinance that talks about "unreasonably loud, disturbing, and unnecessary noise," and the associated definitions of those terms. For some people, that would related to *ad hoc* firing ranges where shooting is taking place for sustained periods of time and is intrusive to neighbors because of the noise. That is the only thing I can think of that has come up in this context, he said. I am impressed that the Buncombe ordinance has tried to address this, because that is one of the main concerns we have ever heard in the last ten years, other than hunting deer with dogs across other people's property. So that is the only issue relating to firearms that might conceivably come up if the Board has a noise ordinance work session, but even if that happens it is also likely to generate discussion about whether the language in the Buncombe ordinance is too vague or too broad and whether the firearms noise issue already has been addressed by this group. I guess we will find out when we get there.

Ms. Conti said that if lifting the exemption from the noise ordinance would make it difficult or impossible for any shooting to take place in Orange County then instead maybe some of the language from the Buncombe County ordinance could be incorporated into the firearms safety ordinance. She asked Mr. Roberts to consider incorporating some of the Buncombe language into his second draft. Mr. Kirkland agreed.

Mr. Tesoro asked if the firearms safety ordinance could state that the firearms exemption will remain in the general noise ordinance even if the safety ordinance has distance and/or time restrictions to address noise. The existing noise ordinance does not apply to guns, said Mr. Roberts, and it will not be affected by what we do here on the safety ordinance. In reply to a follow-up question from Mr. Tesoro, Mr. Roberts said that if the firearms exemption were lifted from the existing noise ordinance and, for example, the Buncombe County language were incorporated into the firearms safety ordinance, then an enforcement officer would have two avenues to approach a firearms noise complaint. Mr. Tilley called that "double jeopardy." The facilitator asked if the Committee could recommend that the firearms exemption not be removed from the County noise ordinance while also recommending distance and/or Buncombe County-like language dealing with firearms noise for the firearms safety ordinance. Mr. Tesoro, Mr. Kirkland, and Ms. Conti said that they liked that option.

Mr. Tilley referenced the definition of “unreasonably loud” from the Chatham County noise ordinance: “Noise which is substantially incompatible with the time and location where created to the extent that it interferes with peace or good order.” I also think we should add the *prima facie* part, he said: “...a duly-authorized law enforcement officer shall be prima facie evidence that the sound is unreasonably loud and disturbing. Sound emission decibel measurements shall not be required for establishment of a prima facie case.” This covers everything we need to cover, he said, and you don’t need a time limit or a distance limit. Ms. Conti agreed: it is like Deputy Chief Sykes going out to determine what is wanton and reckless, she said. If he has the discretion to determine what is wanton and reckless, which we have decided he does, then he can certainly determine this. It makes perfect sense. Mr. Tilley added: if your neighbors are OK with you shooting then you won’t have a problem. Nobody is going to complain.

Ms. Barksdale asked for Chief Deputy Sykes’ opinion about the use of an officer’s discretion to enforce against firearms noise using language such as is in the Buncombe or Chatham ordinances. He said that evidence of sustained shooting will be evidence of a violation. If you have one neighbor calling about somebody they are not getting along with, then we are going to weigh that. If you have every neighbor surrounding that shooter calling then that also is weighed. Mr. Tilley noted that the Chatham County ordinance allows for “The complaints of two or more persons who have heard the noise, at least one of whom resides in a different home from the other complaining person or persons...” as prima facie evidence that the sound is unreasonably loud and disturbing.

Mr. Hunnell said that the parameters of the noise problem appear to be *repetitive* noise, but we also need to consider the type of weapon, the direction that the weapon is discharged, and the distance from the complaining neighbor. It is complex and difficult for a deputy to make a determination without some really tight standards. Mr. Kirkland said that in complex and difficult situations he would be comfortable relying on the professional discretion of a law enforcement officer. It is not practical for us to make rules for noise covering all the different types of weapons, he said. Ultimately it will fall to the law enforcement officer on the scene to make that judgment call. Mr. Hunnell recalled that the observer at the previous meeting, Mr. Larry Roberts, had described a situation where a neighbor complained that Mr. Roberts was shooting in an unsafe manner. A deputy came out, and it was determined that he was not shooting in an unsafe manner. Still, the neighbor perceived that the situation was unsafe. Mr. Tilley recalled that Larry Roberts had then talked with his neighbors and resolved their concerns.

Mr. Tilley said that the Chatham County noise ordinance provides some protection against the kind of neighbor who complains about everything, by requiring at least two people for a prima facie case; we can say at least three in Orange County if we want to. Mr. Hunnell said it would be helpful to see excerpts from the ordinances that were referenced in tonight’s meeting.

Commissioner Jacobs noted that some are concerned that the Board of County Commissioners would attempt to use the noise ordinance to prohibit the use of firearms. I do not think that will happen, he said, but I would suggest that if the Committee recommended a revision of the County noise ordinance along the lines of the Buncombe or Chatham ordinances that it also recommend explicitly that no other revisions to the noise ordinance be made that would restrict the use of firearms. The recommendation would not bind the Commissioners, but it will show this group's intent to preserve the firearms exemption from the decibel provisions while also addressing firearms noise.

Paragraph (g)

Mr. Hunnell asked that a fourth provision be added to paragraph (g): that nothing in the firearms safety ordinance be construed to prohibit the discharge of a firearm "When used pursuant to the State of North Carolina definition of a gun shooting range." Mr. Roberts said he understood the proposal and would look into it.

In reply to a question from Dr. Arvik, Mr. Roberts said "in defense of person" under (g) 2 comes from North Carolina law. To me, that says defending yourself or someone else in your household or someone else that you are related to; but I can't give you a specific definition, he said. Dr. Arvik asked if a specific definition could be provided, because some individuals with concealed carry permits are interested in being able to protect other people beyond the three categories suggested by Mr. Roberts. Mr. Roberts said that he was not sure he could do that. Dr. Arvik asked if Mr. Roberts could provide follow-up information related only to using a firearm to defend other persons.

Mr. Tilley asked if the Committee had agreed earlier to revising (g) 1. The facilitator recalled that Mr. Roberts agreed to provide language in a second draft to accommodate Officer Orr's suggestion that the ordinance have a more expansive hunting exemption.

Discussion Wrap Up

The facilitator reminded the group that its next meeting will be on Monday, October 17. Prior to the meeting Mr. Roberts will distribute a second draft ordinance. At the meeting, the Committee will evaluate the second draft as the Committee did tonight with the first draft. We might be able to wrap up our work by October 25, the meeting we have scheduled for after the 17th, he said. The facilitator noted that the Committee also should allow itself some time to discuss guidelines and training for law enforcement, and any other non-ordinance recommendations the Committee might want to make.

Comments from Observers

Riley Rusky – Has read all of the meeting minutes and sees that the Committee has done a lot of work. Believes in “keeping it simple.” The proposed ordinance really only has two categories. The effort to expand it to four is an effort to vindictively increase the fines and penalties for people who violate the ordinance. Paragraphs (c) and (d) in the first draft are the same thing as each other, and (e) and (f) are the same as each other. It would be more straight-forward to combine these pairs each into one category. Second, one of the Committee members used the phrase “statistically minimal” when talking about air gun risks. Realistically, looking at the Sheriff’s data, this whole firearms safety issue is statistically minimal. It does not deserve all the time and work you have put into it, and it does not deserve a new ordinance. The best recommendation you can make to the Board of County Commissioners is that there is no need for a firearms safety ordinance.

Chip Jonathan – Thanked the Committee for giving its time and putting in a lot of work. Impressed with what the group is doing and confident that the Committee will come up with an ordinance that makes sense to everyone. The Committee is being somewhat disingenuous when it dismisses the risks from pellet guns, because you are using a 1929 description of what a firearm is instead of definition appropriate to 2016. But that’s neither here nor there, because at the end of the day you are going to put in an ordinance that makes sense. I’m surprised there isn’t an ordinance of this type already on the books.

Ashley DeSilva – Asked how paragraph (f), which provides for the use of a conforming alcohol screening device to measure blood alcohol, meshes with Chief Deputy Sykes’s statement during the meeting that a deputy will ask individuals to take the breathalyzer test. It sounds like individuals have to consent to a deputy’s request, but I’m not sure. While I do not think it is unwise to have some kind of measure to allow an investigating officer to assess impairment, I would not want anyone to read this ordinance and think that they have to consent to a breathalyzer test unless it is required by law. [Chief Deputy Sykes responded that it is not required by law]. She also said it is good if the Committee actually has moved away from Sunday restrictions as it appears from discussions toward the end of the meeting. She is reminded of a regulatory tactic called “bootleggers and Baptists:” Baptists are happy when alcohol sales are banned on Sundays, and the bootleggers also are happy because they get to sell it on the black market. The people who are against shooting get to impose a restriction, while the people who aren’t opposed to shooting are conceding ground to them. North Carolina has a lot of Blue Laws that restrict activity on Sundays. I would personally like to see us move away from that. Would the same people who are against shooting on Sunday be against early voting on Sunday, for example? So I think there’s maybe some partisanship, she said. I encourage everyone to keep the restrictions as reasonable as possible.

The meeting was adjourned at approximately 9:30 PM