

October 18, 2016

**Draft Meeting Notes**

*Has not been reviewed or approved by the Committee*

Orange County Firearms Safety Committee

Monday, October 17, 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, Greg Tilley, and Keith Webster.
- Liaisons to the Board of Commissioners: Commissioners Earl McKee and Barry Jacobs.
- Resource persons designated by the Board of Commissioners: Travis Myren, Deputy County Manager; John L. Roberts, Orange County Attorney; and Jamie Sykes, Chief Deputy, Orange County Sheriff's Office.
- Facilitator: Andy Sachs, Dispute Settlement Center
- There were about 8 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 23 meeting.

Ms. Conti then asked to address the group. She apologized to Mr. Hunnell for “snapping” at him during the August 23 Committee meeting. He has been suggesting from the beginning that the reason I was appointed to this Committee was because of a problem that my neighborhood had with a nearby shooting range, and I had had enough of hearing that. It was unnecessary for me to do that.

I think that others on the Committee and members of the community have had the same belief, she said. And as it turns out, it might be true. I might have been appointed to the Committee because of my experience with this shooting range. Each of us was appointed for some reason. Some of you might be here not so much because of firearms safety but because you want to protect the right to shoot. I don't have a problem with that. I would not question why you are here. I would not challenge your position on the Committee. I would not suggest that there is any sort of conflict of interest.

I would like to set the record straight, she said, because I hear back chat and what has been related to me as “rumors” in the community that I have a conflict of interest. Of all the people on this Committee I have the least to gain personally from the business of this Committee because

after we made the shooting range complaint to the Board of County Commissioners an ordinance was passed by the Board that addresses shooting ranges. So it is a non-issue at this point.

Unfortunately shooting ranges that were in existence at the time of the ordinance's passage are exempt from the ordinance. I'm not even covered by that ordinance. I'm not exactly sure why it is not important to have existing shooting ranges subject to safety regulations or whether there was any opportunity to have input into that ordinance, but if there was I did not hear anything about it.

More disturbing to me than Jack's continuing to suggest that I have a conflict of interest is the subtext. What it says is that if my homeowner's association hadn't complained to the Board of County Commissioners then there would not be this Committee, because there is no problem with firearms safety in Orange County. I don't think the Board of County Commissioners believes that. I believe they created this Committee to address the issue of firearms safety and noise. These issues have been raised in countless other counties throughout the state, and have been brought to my attention through numerous individuals complaining of stray bullets and repetitive shooting. I believe we all are here for the same reason. We might have other reasons why we are here, but the shared reason is firearms safety and noise.

About an hour into the first meeting I thought about resigning from this Committee. If I were somebody else I might have quit a long time before now. But I'm not somebody else. And even if I were to walk out the door right now, this Committee would still have the problem that has been raised by the citizens of Orange County. I would like to see the focus of the Committee shift from shooting ranges, which is a non-issue, to the issues of safety and noise.

Dr. Arvik asked the Committee if anyone thinks that its business is a threat to the Second Amendment in any way. No one said that they did. The impression I got from the newspaper report [*Chapel Hill News*, September 14, 2016; "Orange Co. draft firearms rules raise concerns"], he said, is that someone here is planning to limit our liberty, to take away our Second Amendment rights. I look around the room and recall what all of us have said, and I don't get that. My conclusion is that the article was just "today's news." I'm not against the Second Amendment. I'm a very strong supporter of it. Look in my closet and my gun safe and you'll see my NRA sticker. You can't have my guns until you pry them from my cold, dead hands.

Mr. Hunnell replied to Ms. Conti that no apology is necessary. I don't find anything you did to be offensive, he said. I think you are representing your opinion. And as you saw in that newspaper article, I think the Board of Commissioners did an excellent job at picking a balance from all different perspectives. Ms. Conti said that she saw those remarks in the article and appreciated it. Mr. Hunnell continued: And what we have found out from our resource persons is that there really isn't a problem. There have been very few instances of problems other than

criminal activity, he said. I think we have addressed the safety issues through common sense, like “don’t shoot projectiles if you don’t know where they are going.” I think the Committee has done a great job at addressing that. It seems like the noise is the big remaining issue. I think that is where we start to infringe on Second Amendment rights.

Dr. Arvik said that a right to keep and bear arms exists, but not necessarily a right to use them as they have been used. I disagree with two things, he said. First, the report that there has only been five gun related safety violations in the county. The first time we met I told you about one that was flagrant, wanton, and reckless. We’ve addressed all that. But I want to make sure we don’t leave this thing without giving law enforcement the ability to evaluate from their training and take action to stop those kinds of activities. There has been egregious use of firearms. We are blessed that nobody has been hurt. But that does not mean if we don’t act properly that it won’t happen. That’s why we are here. We are not here to stop you from shooting on your own property. We are here to keep people safe. And I think we are well on our way toward doing that.

Mr. Hunnell said that the Committee already has addressed safety. Noise is the only point of contention at this point, he said. Dr. Arvik replied that law enforcement needs the training and the tools to address safety issues. Mr. Hunnell agreed.

Ms. Barksdale said that there have been a lot more than five firearms safety incidents. In my office I have heard and continue to hear many more issues than that. They are just not within the parameters of this Committee to address. There is a whole lot more gun violence that happens. The things I deal with in my counseling practice have to be dealt with through the State and federal government.

### **Evaluation of Second Draft Firearms Safety Ordinance (I)**

The group reviewed the 9/29/2016 version of a draft of an ordinance developed by John Roberts from earlier Committee discussions.

Mr. Hunnell suggested that paragraphs (f) and (g) be consolidated. Someone made that suggestion at our last meeting, he said. The two paragraphs say the same thing, he said, that you cannot drink and shoot. It would be simpler to combine them, he said, rather than to have a lot of different stipulations in the ordinance. Mr. Roberts said that paragraph (f) is a zero tolerance provision while (g) is a measurement provision. They can be combined into a single paragraph, he said, but I don’t know that it would make it easier for anyone to interpret or enforce. The facilitator asked if anyone would object to combining the paragraphs, there was no opposition to Mr. Hunnell’s proposal, and so the group agreed to make that revision.

Referencing paragraphs (h) and (i), Mr. Tesoro said he did not understand how “nothing in this Section shall be construed as prohibiting the discharge of a firearm” while at the same time under

the ordinance he could be prohibited from making noise with a firearm. It is subjective in (h) as to what is noise, and how loud that noise is, and how unreasonable or disturbing it is. For some people, that could be as much as one round being fired. Mr. Roberts reminded the Committee that it had requested that paragraph (h) be included in a draft after reviewing a Chatham County ordinance at its August 23 meeting.

In reply to a question from Mr. Hunnell, Chief Deputy Sykes said that he is not aware of any complaints from places of worship regarding shooting nearby. I would be remiss if I did not mention one thing that has not yet come up in discussion, he added, and that is the use of exploding targets. Tannerite is legal and sold in gun stores, but a lot of our loud noise complaints are about it. It would be up to the Committee to determine whether that is relevant to its business, he said. In reply to a question from Mr. Hunnell, Commissioner McKee said that the Board of County Commissioners did not have intent for the Committee specifically with regard to exploding targets nor desire to limit what the Committee looks at within the broad parameters of firearms safety and noise.

Mr. Roberts said that two or three years ago a school just across the county line in Durham had called 911 with a complaint about loud, close shooting. The school was put on lock down. The shooting was about 100 or 150 yards away on the Orange County side of the border. The Orange County Sheriff's Office made an arrest in that incident, for resisting an officer. Although the charge was not gun related, the complaint was about close, loud shooting near the school.

Mr. Hunnell said that some states have regulations prohibiting shooting within so many yards of a school. It would be acceptable to me to have a reasonable distance like that in our ordinance, but it would be impractical for law enforcement to be measuring decibels in this context. Dr. Arvik pointed out that under (h) decibel measurement "shall not be required" to enforce against loud shooting.

Mr. Tesoro said that in the absence of a measurement, it is subjective to have, say, two neighbors who do not want an existing shooting range, to get together to complain about the noise from the shooting. The Sheriff in responding to that complaint would have the same subjective determination. Our deputies are all great, but there are good days and bad days. Some things might come across as being bad one day and be OK the next day. The determination of what is disturbing noise is too subjective.

Mr. Roberts said that while he agrees that the determination would be subjective, paragraph (h) would not apply to existing shooting ranges because the NC Sport Shooting Protection Act exempts shooting ranges from enforcement of local nuisance ordinances that are passed or amended after the shooting range has opened. In reply to a question from Mr. Tesoro, Mr. Roberts said that the state law has not been challenged in court, so we don't really know what a

sport shooting range is, but that he believes the act covers both private ranges in a person's backyard as well as commercial ranges open to the public. In reply to a question from Commissioner McKee, Mr. Roberts said that Orange County did not have other regulations that allow a complaint by two persons to establish a *prima facie* case.

Mr. Kirkland agreed with Mr. Tesoro that (h) was subjective. He suggested that instead of a complaint by a law enforcement officer "or" two or more persons, to establish *prima facie* evidence that a firearm use is loud or disturbing, that the complaint should be by a law enforcement officer "and" two or more persons. The officer should always be included, and there would need to be three people making that complaint. Without the officer's complaint, there is a greater likelihood of firearms noise complaints by neighbors who simply are not getting along with each other. It sets a higher standard before a complaint can go forward.

Dr. Arvik said that he liked Mr. Kirkland's suggestion. He then asked why the Committee was going back over the noise provision after having discussed it at length on August 23. A majority of us agreed on this approach, he said. Mr. Tesoro said that after seeing it written in legal terminology he finds it to be too subjective; how can I shoot a gun and its noise be "unnecessary," he asked? Mr. Tilley suggested that the only person needed for a *prima facie* case is the law enforcement officer; then you would not have to worry about neighbors against neighbors. Ms. Conti said she would support that.

Mr. Hunnell said that the County's fireworks ordinance is analogous to the Committee's discussion. There too, the issues are safety and noise. The Board of County Commissioners use distance to address safety with regard to fireworks, and a requirement that neighbors be notified in advance. You are still allowed to discharge fireworks if you follow the requirements. It should be the same thing for discharging firearms, because while loud noise that might disturb others is a possible consequence of the activity, the activity is a legitimate one in a rural community. My concern is with places and worship and schools; I think the firearms ordinance ought to be restricted to that. People living in a rural community who are disturbed by firearms noise on a Saturday morning should not be allowed to stop me from shooting on my property as long as I'm doing it in a safe manner.

Dr. Arvik said that the noise one makes on the Fourth of July with fireworks is different from the noise one makes with fireworks at other times. We can make time and place distinctions in order to make the subjective determination as to what is unreasonably loud and disturbing. Fireworks on the Fourth of July is only for a short period of time, and so we agree to accept the noise then. But if a guy's always shooting in his backyard, then even in a rural community it is not unreasonable that his noise may be loud and disturbing to his neighbors.

In reply to questions from Dr. Arvik, Chief Deputy Sykes said that if paragraph (h) were in effect and a complaint were made about sustained shooting, then the Sheriff's Office would be able – does have the training -- to assess the situation to determine if the noise were unreasonably loud and disturbing. Let's say someone calls to complain that a neighbor has been shooting for 45 minutes, he said. If the caller knows the address from which the shooting noise is coming, then we will go there. If the caller does not know the address then we will go to the area and listen in order to determine where the noise is coming from, and go there. Ninety nine percent of our encounters are positive when we introduce ourselves at the scene: the shooter explains something reasonable to explain the sustained shooting, like he has a new rifle and is having trouble sighting it in, or he is with his grandson and they're shooting safely. It is not unusual for a shooter to say that if he is disturbing a neighbor then he'll finish soon or immediately. Throughout the year we will encounter one or two individuals who tell us to leave their property, who assert their legal right to shoot, who insist that we not interfere with their shooting. They know that since there is no applicable nuisance ordinance that they are not breaking the law. Every officer that responds to these calls uses every tool in their bag to come to a positive outcome. Good common sense on everyone's part, and good relations with your neighbors, goes far in these situations. It depends on how valuable people consider those relationships with their neighbors to be. Repeated calls to the police can undermine that. So most of what we do now in the absence of an ordinance is to gain cooperation among all the neighbors. We can work it out most of the time.

Paragraph (h) would be helpful to us, he said, especially if we adopted Mr. Kirkland's suggestion to allow for two complainants "and" the law enforcement officer to make the *prima facie case*. You factor that in to a common sense response by the officer, and you can figure out very quickly if either of the parties are acting maliciously, to antagonize their neighbors, and the feud has been going on for weeks and weeks and weeks; that will be evident. But our observations alone would be difficult to prosecute. Without having the civilian complainants we would not have a victim's flag to wave in the courtroom. It might be construed that the officer has singled out the defendant to make his life hard. If we had complainants to stand with us then it would make it easier in the courtroom.

The Committee took a straw poll to evaluate the options for (h). No one voted to keep (h) as it appeared in the current draft. Six (all but Mr. Hunnell and Mr. Tesoro) were in favor of changing the "or" to "and." Nobody voted to remove the civilian complainants from the paragraph. One person (Mr. Hunnell) voted to incorporate a rule regarding distance from schools or houses of worship. Mr. Hunnell declined the facilitator's invitation to make further argument, perhaps to sway his seven colleagues to support a distance rule.

Mr. Tesoro reiterated that his struggle was with the subjective determination of firearms noise being "unreasonably loud, disturbing, and unnecessary." He asked anyone to explain how a

person could discharge a firearm under such a prohibition. Mr. Roberts said that Mr. Tesoro had a point with regard to “unnecessary.” I really don’t know what that means, he said. However, while unreasonably loud and disturbing is subjective, he added, reasonable people can make that determination. The “reasonable person standard” is a legitimate legal standard, he said.

Mr. Hunnell said that speed limits are enforceable because they are based on numbers. Although I am not a lawyer, he said, a subjective standard based only what your neighbors say would not stand up in court. It would depend on how much money you have to fight it and how many citizens would get behind it. Chief Deputy Sykes said that Mr. Hunnell “hit the nail on the head.” The officer’s involvement has to be the deciding factor, he said, so that the subjective standard is not left up only to what the neighbor say. The officer has to go to court to testify as to the existence of the factors that led him to determine that the noise was unreasonably loud and disturbing. But that is the last resort. We are going to try to work it out without having to go to court. I expect that we’re going to enforce paragraph (h) only where there is long, drawn out antagonism between neighbors; it’s not going to be a person sighting his rifle or shooting with his grandson. We are not going to pull this out on the first 911 call we get about a person shooting. Mr. Tesoro said that he trusted the people in this room to be reasonable, but was concerned about the use of paragraph (h) beyond that.

In reply to a question from the facilitator, Mr. Tesoro said that removal of “unnecessary” from paragraph (h), consistent with Mr. Robert’s earlier statement about that word, would be a change in the right direction. No Committee member objected to that change, and so it was agreed.

Mr. Tesoro asked Committee members to define “unreasonably loud.” Members pointed him to (h) (1) in the draft, which defines that phrase. Mr. Kirkland said that a law enforcement officer always should be involved in making the determination of what is “unreasonably loud.” He also said that in these times when more people are unfamiliar with firearms, it is more likely that a neighbor will hear gun fire and be disturbed by it. Mr. Tesoro said that firearms have been excluded from the County’s noise ordinance because it is so difficult to arrive at a fair and reasonable solution to such noise complaints. Dr. Arvik said that the definitions under (h) offer a fair and reasonable solution, and Mr. Tesoro said he disagreed. Mr. Webster said that an unreasonable noise, to him, is exemplified by some YouTube videos showing guys trying to find the point at which their firearms will melt down. They lay out 15 or 20 magazines and fire them in rapid succession. It’s not unloading two 15-round magazines, because for what I do for a living we have quick magazine changes. If I roll up on a scene and I hear 100 or 200 rounds back to back to back, then to me that might be unreasonable. Mr. Tesoro said that a guy with four sons taking turns, each of whom has a 9mm with two clips, would be shooting 90 rounds. But, said Mr. Webster, you would be done in about 5 minutes. Even if they were not shooting fast, he said, and it took more time for the five people to empty their two clips, it would not be unreasonable if those were the facts. I don’t think all the deputies and all the neighbors would say that, said Mr.

Tesoro; that's my problem with (h). Mr. Kirkland said he would see a problem if it were only the neighbors whose perceptions factored into whether the noise was unreasonably loud or disturbing, but if the deputy's expertise also were factored in then he could accept (h).

Mr. Roberts explained the "reasonable person" standard: A judge tries, and a jury is instructed, to view situations as if they were a reasonable person in the community, to put themselves into the position of such a person when making a decision.

Mr. Hunnell, noting that Mr. Roberts had said at an earlier meeting that the Board of Commissioners would be considering amendments to the County noise ordinance in the near future, proposed that the Committee put paragraph (h) in abeyance until that time. Some of the proponents of noise control for firearms should be selected for that committee, he said. It is a concern and has been debated in this Committee extensively, he added. The County should accelerate its review of the noise ordinance in order to take a look at firearms noise. Commissioner McKee said that he would be OK with that, but could not provide a timeframe for when the Board would be reconsidering the County noise ordinance; it could be at our next meeting or it could be next year, he said.

Dr. Arvik said the only issues related to firearms noise are where it occurs and when. That's exactly how the draft under consideration tonight approaches the problem. Mr. Hunnell said that he agrees "where" and "when" should be the foci of the noise discussion. Dr. Arvik then cited (h) (1) to demonstrate that the draft *does* focus on "where" and "when." He read, "...find substantially incompatible with the time and location where created..." Mr. Hunnell then suggested that the Committee set a limit on "where" and "when." Dr. Arvik, reading again from (h) (1) said that the limit would be noise "which a reasonably prudent person would consider or find substantially incompatible" with the time or location.

Mr. Tilley posited a situation where one neighbor approaches another who shoots and informs him of times when the shooting would be disturbing. A reasonable shooter is not going to shoot when he knows that his neighbor is trying to sleep. I would pick another time, he said. Mr. Hunnell said that the problem is with the neighbor who doesn't want to hear shooting at any time. Dr. Arvik said that in the first case the neighbors are "reasonably prudent" persons and in the second case they are not.

The facilitator – noting explicitly that the group was not generating unanimity after an extensive discussion and that Mr. Tesoro would be leaving imminently -- called for a vote at this time on revising paragraph (h) to read, "...unreasonably loud and disturbing" (deleting "and unnecessary") in two places, and on changing "or" to "and" in the *prima facie* clause. Mr. Hunnell asked if under the proposal he would be able to stop his neighbor from shooting a .30-06 because it is considerably louder than the .22 he shoots, "even if I am shooting off 10,000

rounds?” The facilitator said that under the proposal two complainants would be needed to enforce paragraph (h) against the neighbor AND the complaint of a law enforcement officer. The vote was 7-1 in favor of the proposed revision, with Mr. Hunnell voting no.

Ms. Conti proposed that “of such character, intensity, and duration” from (h) (3) be brought into the definition of “disturbing” at (h) (2). Firearms noise that is sustained is an important aspect of whether it is disturbing, and so something along the lines of this phrase is needed to represent that in the definition, she said. Mr. Kirkland said that Ms. Conti’s proposal would help to better define “disturbing.” It would add substance in this context, he said. Dr. Arvik suggested that since the definition of “Unnecessary” is no longer needed, because it was removed from paragraph (h), then (h) (3) could be merged into (h) (2). Mr. Tilley said there might be some redundancies in doing that. Mr. Roberts said that the definition of “Unnecessary” simply could be used to define “Disturbing.”

Mr. Hunnell said that he did not want to contradict the County’s existing fireworks ordinance. Dr. Arvik, reading from the draft, said that the paragraphs being worked on now would apply only to “noise related to the discharging a firearm.” It has nothing to do with fireworks, he said. Commissioner McKee said that fireworks and firearms are two different subjects, and do not necessarily need the same wording. In reply to a question from Mr. Hunnell, Commissioner McKee said that in both cases the ordinances are dealing with noise, but in each case the respective ordinances are addressing specific and different activities.

Dr. Arvik suggested that the first sentence of (h) (2) be retained so that the perception of “a person of ordinary sensibilities’ would continue to be included in the standard for determining what is disturbing. Ms. Barksdale and Mr. Kirkland agreed. Mr. Roberts offered to revise the draft this evening while the group discusses its plan for completing the Committee’s work.

Mr. Webster said that the definition of “disturbing” that is emerging from the conversation would cover churches and schools. If we’re saying that the normal peace and calm of the area is not to be interrupted, then the areas around those kinds of buildings would be protected from excessive firearms noise.

Mr. Hunnell said that the phrase “without unduly restricting his conduct” makes the definition frivolous. If you impose this definition then you are unduly restricting the conduct of the shooter, he said. Dr. Arvik said that if the shooter were able to change his behavior in order to comply with the ordinance, so as not to be disturbing, then the ordinance would not unduly restrict the shooter’s conduct; he could do it somewhere else or at another time.

Mr. Tesoro said that paragraph (i) voids everything in the ordinance that comes before it. He read the lead sentence, “Nothing in this Section shall be construed as prohibiting the discharge of a

firearm.” Mr. Roberts called Mr. Tesoro’s attention to the colon at the end of that phrase, which is followed by the only four specific situations where the ordinance would not prohibit the discharge of a firearm. The first three situations are exempted from local authority under state law. The fourth was included at the direction of this Committee while recognizing that state law also exempts existing shooting ranges from new nuisance ordinances.

In reply to a question from Mr. Tilley, Mr. Roberts said that “shooting range” under (i) (4) would apply to private, personal, public, or commercial ranges. It would not apply to just any backyard in which someone sets up a target, however, because the area must be for the controlled practice of safely discharging firearms. State statute says that a sports shooting range is an area created, maintained, and operated for target practice; that’s not throwing a target up on a tree. This ordinance would apply to something like that.

Mr. Roberts said that he consulted with Officer Orr (who not present this evening) on the sports shooting range exemption and both agreed that while existing ranges would be exempt from paragraph (h) under state statute, no such exemption existed under state law for the other provisions in the draft ordinance. Although the Committee said last time that it wanted to exempt shooting ranges, we wondered why anyone would want to have impaired shooters on shooting ranges. That is why I added the caveat that (i) (4) shall only apply to subsection (h).

Mr. Webster said that firearms and impairing substances do not mix. If (i)(4) allows people at shooting ranges to use impairing substances then it should be removed. I feel pretty strongly about this, he said. Mr. Hunnell said that the caveat suggested by Mr. Roberts would enable the County to enforce against impaired shooters on shooting ranges. Dr. Arvik said it would be more straightforward to eliminate (i)(4) completely. Ms. Barksdale agreed. Mr. Kirkland said the paragraph is irrelevant, and so should be eliminated. The Committee voted 6-1 (Mr. Hunnell opposed; Mr. Tesoro temporarily had left the meeting) to remove (i)(4).

Ms. Conti suggested that the written permission under paragraph (e) be notarized, to prevent shooters from misrepresenting their permission. Mr. Tilley said that the law enforcement officer simply can ask the landowner if the written permission is valid. Mr. Hunnell said that the state already has a written permission rule in existence, and it does not require notarization. I use an email from my neighbor, which would stand up in court, to prove that I have permission to hunt on his land, he said. Mr. Webster said that written permission could be verified with a phone call to the landowner. Mr. Tilley said that a notarization requirement would make it much more difficult for a shooter to gain permission. Ms. Conti said that she did not think she was gaining sufficient support for her proposal, and so withdrew it.

### **Plan for Completing the Committee's Work**

The facilitator suggested to the group that any one or two members on the minority side of any Committee vote be encouraged to submit to the Board of County Commissioners a written explanation of their position, a "minority report," so that the Board will have access to the minority perspective along with the full group's recommendations.

The facilitator asked if there were any issues that any members of the Committee wanted the group to consider for development of non-ordinance recommendations.

Ms. Barksdale said that she had sent an email to Deputy Chief Sykes and to John Roberts asking for input on ways to address firearms safety *within* a property. We have addressed projectiles crossing property boundaries and safety between neighbors, she said, but we have not addressed safety risks associated with firearms within a property, such as within day care centers and homes. Mr. Roberts has told me that this issue is dealt with through state and federal legislation but I'm still puzzled about it, she said. As a family therapist, I'm also concerned about people who have guns in dangerous domestic situations, she said. I'm concerned about how that risk is being handled. I don't know that there is anything that we can do about it, but I wanted to bring it to this Committee's attention.

Mr. Hunnell asked if Ms. Barksdale was talking about unlocked guns in the home. Yes, she said, unlocked guns in homes with children and in child day care centers. Deputy Chief Sykes said that laws are already in place to address this. Mr. Roberts told me that, she said; he also suggested that this Committee ask the Department of Social Services or the Health Department to develop and distribute educational materials regarding how to handle guns if you have children in the home. I'm concerned that we have in-home day cares in Orange County where unsecured guns may be present, she said.

Ms. Barksdale continued: Not long ago some local kids were going to a soccer game in Wake County and stayed overnight at a hotel. The guy in the hotel room next door shot through the wall and killed one of the children in the bed. I don't know that's anything we can deal with. Mr. Hunnell said that the draft ordinance under the Committee's consideration deals with that, by prohibiting firearm discharges without an appropriate backstop and prohibiting discharging carelessly or heedlessly in disregard for the safety of others. If the Commissioners pass this then it would apply, he said. Mr. Roberts said that paragraph (d) would apply in a situation like the one Ms. Barksdale described, but that the draft ordinance only provides for Class III misdemeanor charges; there are state laws that would allow for more serious charges to be applied. Mr. Kirkland recalled that the person in the situation Ms. Barksdale described was a convicted felon in illegal possession of a firearm.

Mr. Kirkland suggested that the Committee follow-up on the earlier suggestion to recommend educational efforts around firearms safety. It would be wonderful to have DSS and/or the Health Department make efforts at educating the community on firearms safety, he said. We might also want to encourage the County and NC Wildlife to pursue ongoing firearms safety classes together. If we educated people then maybe there would be a lot fewer accidents, he said. Ms. Barksdale said that she would like to see educational efforts around firearms safety available for people who have home day care for children. I'm not sure they know to avoid having unsecured guns on their premises, she said. She also suggested educational efforts around gun storage in homes with children.

Chief Deputy Sykes said that when people apply for a license to operate a home day care center they are informed about the existing rules regarding gun storage. But additional education might be needed, said Ms. Barksdale. One child dies by gunfire every day in North Carolina. She told about a friend of hers who is quadriplegic living in Prospect Hill. He is the father of three year olds. He has a fingerprint-locked safe for his guns, and that makes total sense to me, she said. He has a fully handicapped-equipped home that he needs to protect and it needs to be only him who can go into that gun safe. People need the education to raise their awareness and to know that this option is available.

Mr. Kirkland said that storage technology exists that provides for both safety and quick access; people who might be interested should know about this. The Boy Scouts and some of the schools already do firearms safety training, he said. Migrating or merging all these efforts and concerns might be a good thing, he said. But we're not talking about requiring that guns be locked up. This should be an educational effort through a voluntary grassroots effort, through a school program or the Scouts, for example. Mr. Hunnell noted that we already have mandatory hunter safety programs.

Dr. Arvik said that the educational efforts should be focused on the parents and the grandparents, because it is they who allow access by the kids to the guns. We need to identify organizations that would connect us with the adults: a church organization, the PTA, for example. If you tell a 6<sup>th</sup> grader not to go near a gun, then he'll go toward it. He'll hunt the house to find it.

Commissioner McKee said that a few years ago the Board of Commissioners dealt with deer dog hunting, which is allowed in Orange County north of US-70 only. The issue was that the dogs were invading other people's properties and running up and down the roads. We put out pamphlets and brochures in stores, churches, and civic organizations explaining the hunters' rights and the property owners' rights. I can't say for sure how much of a benefit it was, but the rhetoric toned down for some reason after we put out the information. I think the idea of education is critical; it might even help us in explaining any new ordinance we might pass and contribute to its acceptance. I just asked Mr. Roberts if anyone within the County would be in the

available. For example, you can't get a concealed carry permit or a hunting license without taking a class; there are shooting teams at the high school of which educational classes are part. We would need to make the firearms safety educational information available without implying that the next step is making it mandatory. The Board would wrestle with this, and our default position would be to direct staff to do something similar to what we did with the deer dog hunting. Another analogy would be the educational efforts made by the Health Department after the Board of Commissioners prohibited smoking in public places in Orange County. I don't know what department would lead on this; surely Social Services and the Health Department might each have a component of this, but maybe they would be two arms of a multi-pronged approach.

Chief Deputy Sykes said that anyone who is issued a pistol purchase permit or conceal carry permit by the Orange County Sheriff's Office is given a brochure created by the Office that contains the Ten Commandments of Gun Safety, the rules and regulations, General Statutes that are concerned with responsible gun ownership, etc. That brochure will be tailored to incorporate any firearms safety ordinance that might be adopted by the Commissioners. It's all voluntary information. In addition, we have given out gun locks for years free of charge. We get them from the KidSafe Foundation. People can request them from us, or we will present them to people in situations where we think it might be needed. When someone comes into our office involved in a domestic violence situation, or if we are assisting someone in an involuntary commitment proceeding through the court, then we do a threat assessment. Gun safety is one of the things we'll investigate, as much as we can reasonably. We can provide our brochure to these other organizations, and they can tailor it and make it their own. And we would be glad to help them.

Dr. Arvik suggested that a volunteer, non-governmental organization be the one that takes the firearms safety message to the churches and schools, etc. This would underscore our intention that the firearms safety message is not in the service of anyone trying to undermine anyone's Second Amendment rights. Perhaps the organization can receive funding assistance from the County. You need a voice delivering the message that is credible and wants to do the right thing. I think I can find a lot of those kinds of people, he said. Bass Pro Shops and anyone else trying to sell guns might be interested in helping us, because they are at great financial risk if firearms are increasingly associated with misuse. I'm sure they would be in support of providing safety trainers. Perhaps the County would have a role in referring interested local civic groups to the trainers. I imagine a twenty-minute presentation to interested audiences about actual risks and how to handle guns safely in order to avoid the risks; they then could hand out brochures. Commissioner McKee said that the non-governmental organization could be one similar to Mothers Against Drunk Driving (MADD). Yes, said Dr. Arvik, "Gun Safety in Orange County." Ms. Barksdale said that North Carolinians Against Gun Violence might be interested in playing a role; I'm the Orange County Chair, she said. Dr. Arvik said that he and she could probably identify a dozen organizations who would be happy to have someone speak to their members

about firearms safety. Mr. McKee added that the County could provide help through coordinating across the different actors, getting information about the gun locks from the Sheriff's Office, having the brochures in County offices, etc.

Mr. Hunnell said that he agreed with Dr. Arvik's ideas. There are many different organizations, some competing and conflicting, that could come together under this kind of educational initiative. We're not lacking the people, he said, or the interested organizations. We're lacking a facility. It's not very expensive to put in a shooting range for .22's. If the Commissioners indicated some interest in this then I'm sure some of us would be happy to put together a program.

### **Generation of a Third Draft Firearms Safety Ordinance**

At this point, Mr. Roberts returned to the room and distributed a third draft of an ordinance, based on the Committee's discussion from the first part of the meeting.

Three words ("for such activity") were relocated within section (e) to make it more grammatical.

Subsection (f) was combined with subsection (g). Mr. Tilley said that the change was exactly what the Committee had asked for. In reply to the question from the facilitator, there were no objections raised to the changes to (f) and (g).

In old (h)/new (g), "unnecessary" was deleted and some "ands" were added to make the section grammatical. Mr. Kirkland noted that the "or" in the *prima facie* clause had not been changed to "and," as the Committee had asked for. Mr. Roberts accepted that correction. There were no objections raised to new (g).

The definition for "unnecessary" was deleted and the text from that definition was integrated into a new definition of "disturbing."

In new (h)/old (i), item #4, regarding shooting ranges, was deleted as requested by the Committee.

In new (i)/old (j), Mr. Roberts wanted it to be clear that each violation would be a separate violation for criminal as well as civil penalties under the ordinance, and so he deleted the phrase, "For purposes of the civil penalty."

The facilitator asked how many Committee members were in favor of forwarding the draft ordinance to the Board of County of Commissioners. All raised their hands except Mr. Hunnell and Mr. Tesoro. Mr. Hunnell said that he needed more time to read and think about the draft. Mr. Tesoro said that too much of the draft ordinance is too subjective, but it is better than nothing.

The facilitator suggested that the Committee reconvene as scheduled on Tuesday, October 25 for a final meeting, and that during the coming week Committee members think about the draft, talk to each other, and talk with their neighbors. We will try to reach closure when we reconvene, he said. Mr. Roberts offered to send a clean, final draft via email to the Committee members.

### **Comments from Observers**

John Landreth – One detail that appears to have been left out of the draft ordinance is a time limit by which people would need to make their complaints about loud and disturbing shooting under (h).

John Moses – Thanked the Committee for its efforts. Is a pediatrician at Duke who has cared for a number of children injured by firearms, some of whom have died from such injuries. For about seven years in our three primary care clinics we have tried to include discussions about gun safety. I'm not opposed to gun ownership, and want guns to be secured appropriately in homes where kids live. Is a member of board of directors of the North Carolinians Against Gun Violence. Encouraged the Committee to think broadly about the effects from so many guns in our community. Has been disturbed by guns being fired by neighbors at late hours, raising concerns for the safety of his family and his children. Is not sure what the rules are about the times of day when it is permissible for people to shoot.

Ashley DeSenna – Found out recently that there will be changes to the State's hunting regulations in 2017 which will give more control to local governments over hunting, and suggested that people pay attention to this. Thinks it is perfectly reasonable to teach gun safety in schools, but sees that as a much bigger goal than this Committee is assigned to do. Is dissatisfied about Ms. Conti not disclosing on her Committee application her involvement in a Board of Adjustment proceeding regarding a neighbor's shooting range. Does not think Ms. Conti made that involvement clear at any of the Committee's meetings. I'm disappointed that when I ask her about it face to face Ms. Conti said she did not know anything about it, she said, and Ms. Conti also did not comment on the matter when she was asked about it by a Chapel Hill News reporter. Maybe there is a legal reason for this; I honestly do not know. I do not understand the lack of transparency. I do not know what would be hurt by her being forthright about this. Ms. DeSenna referenced two statements, one in an article in the Chapel Hill News that the result of the Committee's work "will not be an increase in freedom" and the other Dr. Arvik's statement during tonight's meeting that the Committee's work will not infringe on anyone's Second Amendment rights. She said that the first statement was made not in the context of what the Supreme Court would find to be an infringement on Second Amendment activity, but was meant in the context of absolute freedom -- anytime a government restricts, for example, the distance from structures that one can shoot or the time of day one can shoot then one's freedom is being

limited. Ms. Conti asked to respond to Ms. DeSenna. The facilitator said that she may do so after the meeting is adjourned.

Rachel Heller – Works as a nurse in the Division of Plastic Surgery at UNC Hospitals. We take care of a lot of patients who have been hit with gun fire. It's devastating. Many of them are uninsured and so cared for by North Carolina taxpayers and by those of us who are insured. Said that she does not know if the draft ordinance addresses the hours at which one may shoot. We have neighbors who shoot at night. It seems to be unsafe as far as being able to see any target. It is frightening to hear people shooting guns at night, and wondering how they know they are not shooting at someone walking passed. Also does not know if the draft ordinance addresses how far from structures a shooter should be in order to ensure safety. I think the draft ordinance should have such provisions. Also do not know if the ordinance defines "sustained shooting." There was a lot of discussion tonight about what a reasonable person might find acceptable; there is a big difference between a situation in which you know your neighbors are shooting for a brief period of time and neighbors shooting for hour. Some of our neighbors shoot for hours. Also does not know if the draft contains any definition of what is considered a safe berm for target practice, and whether it has to be any number of feet away from structures. It is good to know that the Sheriff's Department will entertain complaints about shooting. We did not even know we could call and say, "Is everything OK at that house?" Sometimes we are concerned that what we are hearing is not recreational shooting. I don't know how from a distance one can discern whether there is a violent incident taking place in a home vs. just shooting, or what a reasonable period is for shooting to be sustained. Thank you for doing this.

Kevin Brown – Referenced the decision made tonight in section (h) that for a *prima facie* case to be made complaints must be made by two persons and a law enforcement officer. Is concerned that a person shooting in an unreasonably loud and disturbing manner would see the law enforcement officer coming, stop the shooting, and so not provide the officer with sufficient cause; said that he hopes when he complains about his neighbor he can suggest that the officer not drive down the road, but stop somewhere out of the shooter's sight to listen. Also referenced Dr. Arvik's statement during the meeting that the Second Amendment allows you to bear arms. Said that the right exists to bear arms but not to discharge them any way you want to; there should be restrictions on the times and places. This gets overlooked as much as the "well-regulated militia" gets overlooked. Thank you for your work; this is excellent.

Michael Jorling – Said that he is related to Committee member Sara Conti. Thanked the Committee for all its work. Said that sometimes we have to give us some freedom or space that we would rather not. I own guns and grew up around them, he said. Sometimes for the greater good we need to consider everyone, what works and what does not. It's not so much about giving up freedom as it is about learning to live together. We're all in this together. Sometimes we – myself included -- get honed in on not wanting anyone to step our toes or to come onto our

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property. I don't like it when some hunter is chasing a deer and has to come onto my property. But I also know I sometimes have to make some sacrifices if I think it is the right thing to do for the community. I think that's what we are talking about here, trying to do the right thing for the community. I don't think it is about taking away anybody's freedoms. It about what we do to accommodate each other.

**The meeting was adjourned at approximately 9:30 PM**

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