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Christian R. Miller, Direct E-mail:
cmiller@mpl-law.com

September 26, 2022

Ronald A. and Kathleen D. Flowers
920 Rosstown Road
Lewisberry, PA 17339

VIA REGULAR MAIL

RE: Fairview Twp. Zoning Hearing Board – No. 2022-06

To Whom It May Concern:

Enclosed please find the fully executed decision of the Fairview Twp. Zoning Hearing Board for Docket No. 2022-06 related to Ronald A. and Kathleen D. Flowers' zoning hearing board application, heard and decided by the Zoning Hearing Board on September 15, 2022.

Thank you.

Very truly yours,

MPL LAW FIRM

A handwritten signature in blue ink that reads 'Christian R. Miller'.

Christian R. Miller, Esquire

Enclosure

Cc: Fairview Township Zoning Hearing Board (c/o Stephen Waller, Zoning Officer)
Atty. Richard J. Seneca (via email)
Charles W. Rubendall, II (via regular mail)

**BEFORE THE FAIRVIEW TOWNSHIP
ZONING HEARING BOARD**

DECISION

**IN RE: APPLICATION OF RONALD A. & KATHLEEN D. FLOWERS
APPLICATION NO. 2022-06**

APPLICANT(S): Ronald A. and Kathleen D. Flowers, husband and wife
HEARING DATE: September 15, 2022
DECISION DATE: September 15, 2022
APPEARANCES: Ronald A. Flowers – Applicant
 Richard Seneca, Esq. (Attorney for Applicant)
 Charles Rubendal (in opposition to the Application)
 Steven A. Stine (Attorney for Mr. Rubendal)
 Stephen Waller, Township Zoning Officer
EXHIBITS: Exhibit 1 – Application (including all submittals)
 Exhibit 2 – Flower’s Resume (marked as Applicant’s Exhibit A-1)
 Exhibit 3 – Photos (marked as Applicant’s Exhibit A-2)
 Exhibit 4 – Excerpts of NRA Range Sourcebook (marked as
 Applicant’s Exhibit A-3)
LETTER SUBMITTAL: Singer Correspondence (see below)
SUBJECT PROPERTY: 920 Rosstown Road, Lewisberry, Pennsylvania, 17339

BACKGROUND

This decision of the Fairview Township Zoning Hearing Board (the “**Board**”) is from an application filed by Ronald A. and Kathleen D. Flowers (the “**Applicant(s)**”) with Fairview Township (the “**Township**”) (the “**Application**”), seeking zoning relief under the Township’s Zoning Ordinance (the “**Ordinance**”) for (i) a special exception under Section 300-15 – Permitted Uses and Section 300-71.Q – Additional Supplemental Standards and Requirements for Specific Principal Nonresidential Commercial Uses – Outdoor Shooting Range, and (ii) a variance from Section 300-46.B(2) – Performance Standards – Noise (cross-referencing Chapt. 187-9 related to permitted noise levels). The zoning relief is for the operation of a “not open to the public” outdoor shooting range, used for training purposes, at their property located at 920 Rosstown Road, Lewisberry, Pennsylvania, 17339 (the “**Property**”), which is located Township’s Rural Living (RL) Zoning District.

A hearing was held on the Application on Thursday, September 15, 2022 at 6:30 p.m. at the Fairview Township Building. The Zoning Hearing Board was represented by Mark Perry (Acting Chairman), Keith Bashore, and Daniel Alderman (as the acting alternate member). All published, mailed, and posted notices were duly given, with no objection thereto being made in writing or orally at the time of the hearing. Questioning/testimony in opposition to the Application was offered by the Township resident, and his counsel, as noted above. After hearing the testimony and viewing the evidence in this matter, the Board makes the following determinations:

FINDINGS OF FACT

1. Applicants are the current owners of the Property, purchased in January of 2021, which is located Township's Rural Living (RL) Zoning District (the "***RL Zone***") and consists of roughly 49.5 acres.

2. The Property is improved with a residential dwelling, a few out-buildings/barns, limited fenced in pasture, and otherwise open field (with few wooded areas), and it is adjoined to the south by a cemetery, to the west by a tree-line, to the north by residential uses and to the east by S.R. 177.

3. The Property is currently used as Applicants' residential dwelling, with both Applicants operating home occupations from the Property (both being permitted and licensed by the Township).

4. The Property is farmed by cutting and bailing hay grown in the open fields, and the Applicants also keep limited livestock in the fenced pastures.

5. The Application proposes a "non-public" outdoor shooting range (the "***Proposed Use***") on the Property, which is a permitted use in the RL Zone by special exception pursuant to the regulations of §300-71 of the Ordinance.

6. The Proposed Use would solely be instructional in nature, limited to tactical shooting classes taught by Applicant or a highly qualified individual known to Applicant (which would only be individuals that have personally trained Applicant).

7. The Proposed Use would not include any shooting stalls, and it would not be open to the public to come and go as individuals please to shoot at targets, as is customary in traditional outdoor shooting ranges.

8. Applicant (being Ronald A. Flowers) has extensive knowledge, education, experience, and training related to firearms use, tactical firearms use, and general police and military firearms use, which was clearly established by testimony and Exhibit 2.

9. Applicant (being Ronald A. Flowers) currently operates a tactical/firearm training and education business throughout the country, for which he travels to various locations to provide training on a number of tactical disciplines, many times working for or with government agencies (the "***Training Business***").

10. The Training Business is currently operated and maintained from the Property as a home occupation permitted/licensed by the Township (as stated in Section 3 above).

11. The classes of the Proposed Use would be targeted to individuals, mainly police and military individuals, seeking additional tactical training, and would supplant the Training Business by permitting Applicant to provide some training at the Property rather than require additional travel and/or booking for such training.

12. The classes would be held on clear, fair weather days in the open field of the Property, and Applicant would have two (2) general shooting lanes established.

13. One shooting lane would be a long range target, which would have a natural slope of the Property as a back stop.

14. The other shooting lane would be a short range target, and would have a grove of trees and a to-be constructed earthen berm as a back stop.

15. All shooting lanes and targets would be pursuant to the NRA Range Source Book (see Exhibit 4) standards and requirements, including the barriers behind all shooting lanes.

16. The placement of all shooting lanes, as well as access and parking would be pursuant to Township rules and regulations.

17. The classes would range in size and frequency, with some classes being only 1-2 individuals and others being up to 14 individuals, with the larger classes comprised of individuals familiar with firearms due to their profession (such as police officers).

18. The proposed classes would be limited to 9 am to 4:30 pm on every day of the week, however Applicant would not have classes on Sunday, although some of Applicant's third party instructors may have classes on Sundays.

19. Applicant would also hold one "low-light" class on an annual basis, which would operate until roughly 10 pm in the evening to take advantage of the low light at dusk.

20. The firearms used would be limited to law enforcement issued hand-guns and rifles, with no semi-automatic or automatic firearms being used for the Proposed Use.

21. Applicant would attend and supervise all training classes, including those classes which a third party instructed.

22. Applicant testified that all shooting lanes would be placed so they would not be within 250 ft. of any adjoining residential use property line, and that adequate warning signs would be posted around the Property.

23. The Proposed Used would have a minimal decibel level of 65 dbA according to a sound study commissioned by Applicant and included in the Application (see Exhibit 1).

24. Charles Rubendall, a neighbor to the north of the Property, testified that he has resided at his neighboring property for 39 years, and that the nature and character of the neighborhood is quiet, and that permitting this shooting would be detrimental to such nature and character.

25. Stephen Waller, Township Zoning Officer, testified on behalf of the Township. Mr. Waller confirmed the notice requirements for the Application have been met.

CONCLUSIONS OF LAW

1. The Applicant has failed to establish the elements required for a variance from § 300-46(B)(2) of the Ordinance (related to performance standards which cross-references Chapt. 187 – Noise) to permit the Proposed Use in despite failure to meet the noise standards provided in Chapt. 187-9 of the Township Code. Such elements not met specifically include:

a. Applicant has not established that unique physical conditions exist on the Property which create an unnecessary hardship.

b. Applicant has not established that due to such unique physical conditions, the Property cannot be used or developed in strict conformity with the Ordinance (specifically within the RL Zone, since Applicants currently use the Property within the parameters of the Ordinance as a residential dwelling with two (2) approved home occupations).

c. Applicant has not established that the alleged unnecessary hardship is not self-created (to the contrary, the variance request is solely due to the sound level of the Proposed Use).

d. Applicant has not established that the variance, if granted, would not alter the essential character of the neighborhood in which the Property is located.

2. The Applicant has established the elements required by Section 300-71 of the Ordinance to permit an outdoor shooting range by special exception, however Applicant has not established the elements required by Section 300-99(E)(3)(b) of the Ordinance regarding the general criteria for a special exception. Such elements not met specifically include:

a. Applicant has not established that the Proposed Use will not detract from the use and enjoyment of the adjacent or nearby properties, specifically due to the noise issues created by the Proposed Use.

b. Applicant has not established that the Proposed Use will not substantially change the character of the neighborhood surrounding the Property, specifically due to the noise issues created by the Proposed Use.

DECISION

Mr. Alderman moved to (i) deny the variance request from § 300-46(B)(2) of the Ordinance (related to performance standards which cross-references Chapt. 187 – Noise) to permit noise levels in excess of the standards set forth at Chapt. 187-9 of the Township Code for the RL Zone because the Applicants failed to meet the requirements for the grant of a variance as set forth in § 300-99(E)(4) of the Ordinance based on the evidence presented at the hearing; and (ii) (i) deny the

special exception request under § 300-71 of the Ordinance to permit an outdoor shooting range in the RL Zone because the Applicants failed to meet the general criteria requirements for the grant of a special exception as set forth in § 300-99(E)(3)(b) of the Ordinance based on the evidence presented at the hearing. Mr. Bashore seconded the motion. Upon a vote, the Fairview Township Zoning Hearing Board unanimously approved the motion to deny the relief requested in the Application.

APPLICANT SHALL ABIDE BY ALL FEDERAL, STATE AND LOCAL LAWS, REGULATIONS AND ORDINANCES PERTAINING TO PERMISSIONS GRANTED BY THIS DECISION.

APPLICANT SHALL PROCEED PURSUANT TO THIS DECISION IN ACCORDANCE WITH THE TESTIMONY AND EXHIBITS PRESENTED AT THE HEARING.

Date: 9-23-2022

Mark Perry
Mark Perry, Acting Chairmen

ANY PERSON AGGRIEVED BY THIS DECISION OF THE FAIRVIEW TOWNSHIP ZONING HEARING BOARD MAY APPEAL TO THE COURT OF COMMON PLEAS OF YORK COUNTY, PENNSYLVANIA. THE APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS FROM THE MAILING OF THESE FINDINGS OF FACT, CONCLUSIONS OF LAW AND THE ABOVE DECISION.

MAIL DATE: 9-26-22



Richard C. Seneca, Esq.
rseneca@senecalaw.com

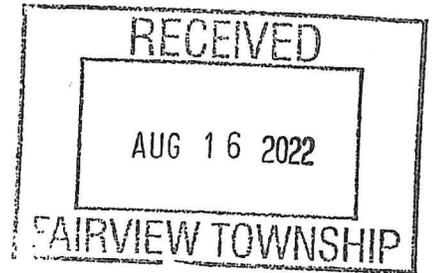
Richard J. Seneca, Esq.
rjseneca@senecalaw.com

Oliver C. Seneca, Legal Assistant
ocseneca@senecalaw.com

16 August 2022

By hand delivery.

Zoning Hearing Board
Fairview Township
599 Lewisberry Road
New Cumberland, PA 17070



Re: Ronald A. and Kathleen D. Flowers
920 Rosstown Road

Dear Sir or Madam:

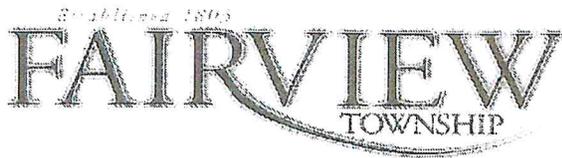
Please enter my appearance on behalf of the above-captioned two applicants for the Zoning Hearing Board application filed today in connection with 920 Rosstown Road.

Thank you.

Sincerely,


Richard J. Seneca, Esq.

Enclosure



ZONING HEARING BOARD APPLICATION
YORK COUNTY, PENNSYLVANIA

❖ Part 1:

APPLICANT(S)/EQUITABLE OWNER

Name: Ronald A. & Kathleen D. Flowers
Address: 920 Rosstown Road
Lewisberry, PA 17339
Phone: 610-597-3717

EXISTING OWNER OF PROPERTY:

Name: Same as applicant.
Address: Same as applicant.

PROPERTY LOCATION:

Address: 920 Rosstown Road
Lewisberry, PA 17339
Lot Size: 49.5 acres
Date Purchased: Jan. 4, 2021

PRESENT USE OF PROPERTY:

Single family dwelling.
Limited agricultural land.

Location: Situate at corner of
Rosstown & Old Rossville Rd. near
Newberry Twp. Line.

EXISTING ZONE: Rural Living

❖ Part 2:

ZONING REQUEST (Identification of the applicable request(s)):

- () SUBSTANTIVE CHALLENGE
(X) SPECIAL EXCEPTION
(X) VARIANCE
() APPEAL OF THE ZONING OFFICERS DECISION

SECTION(S) OF ZONING ORDINANCE WHICH APPLY TO THIS REQUEST - Please identify the specific section(s) of the Zoning Ordinance involved in the request):

Special Exception: Chap. 300, Sect. 300-15 and 300-71
Variance: Chap. 187, Sect. 187-9

❖ Part 3:

DESCRIPTION OF REQUEST:

See attached.
[Multiple blank lines for description]

❖ Part 4

LIST ALL INDIVIDUAL PROPERTY OWNERS WITHIN 200 FEET OF THE PERIMETER OF THE ENTIRE PROPERTY.

ADDRESS	NAME	USE TYPE
910 Emanuel Road Lewisberry, PA 17339	Michael K. Markovic	Single Family Dwelling
940 Emanuel Road Lewisberry, PA 17339	David E. & Lisa J. Steffen	Single Family Dwelling
1168 Pinetown Road Lewisberry, PA 17339	Kim J. Trout & Bobbi L. Sweeney	Single Family Dwelling
940 Parks Road Lewisberry, PA 17339	SBA Towers, II LLC	Utility – Cell Tower
Rosstown Road Lewisberry, PA 17339	Gilbert W. Rhoads	Vacant Land
600 Rosstown Road Lewisberry, PA 17339	Charles A. & Lois A. Brenizer	Single Family Dwelling
590 Rosstown Road Lewisberry, PA 17339	Michael L. Samples	Single Family Dwelling
475 Rosstown Road Lewisberry, PA 17339	Donald Reeser, Sr. & Donald Reeser, Jr.	Commercial
901 Old Rossville Road Lewisberry, PA 17339	Sunday Mill Co. LLC, ATTN: Sally Mentzer	Commercial
903 Rossville Road Lewisberry, PA 17339	John Leroy & Ashley Christina Singer	Single Family Dwelling
801 Old Rossville Road Lewisberry, PA 17339	Charles W. II & Lynn A. Rubendall	Agricultural
1293 Lewisberry Road Lewisberry, PA 17339	Daniel R. Bair, Jr.	Agricultural
842 Silver Lake Road, Lewisberry, PA 17339	Neil Allen Orner & Katherine Smith Huntington	Single Family Dwelling
846 Silver Lake Road, Lewisberry, PA 17339	James R. & Maureen L. Forry	Single Family Dwelling
890 Emanuel Road, Lewisberry, PA 17339	Susan A. Lindsey	Agricultural
Rossville Road Lewisberry, PA 17339	Emanuel Cemetery c/o Lloyd Fetrow	Cemetery

Special Exception

Applicants seek to operate an outdoor shooting range at their property. This will not be an "open to the public" shooting range. Applicants are both trained in firearm safety and training, with significant law enforcement and military contracting background. The shooting range will be used for training sessions conducted by applicants. **There will be no public or unsupervised, non-training use.**

Applicants seek a special exception to operate the outdoor shooting range pursuant to Sects. 300-15 and 300-71 of the Zoning Code which requires a special exception to operate the same in Rural Living Zoning Districts.

Applicants will satisfy the special exception requirements set forth in the Township's Zoning Code as follows:

1. There will be an appropriate barrier behind the target areas;
2. The range will be in accordance with NRA guidelines; and
3. The range will not be located within 250 feet of the property types set forth at Sect. 300-71, Q.(3);
 - a. No clay pigeon shooting will occur on the property;
4. Appropriate warning signs will be placed at 100 foot intervals along exterior lot lines.

Variance

Applicants have commissioned a sound study, a copy of which is attached, which reveals that the shooting range will create sounds in excess of the 55 dB(A) limit set forth at Sect. 187-9 of the Township Code. Applicants therefore seek a Variance from this section of the Code.

Portions of their property are subject to unique hardship based on those portions not being ideal for agricultural use, however, which is ideal for natural physical and sound barriers as well as distance areas to be utilized in the shooting range application. As such, the property cannot be developed in strict conformity with the Zoning Code which permits a shooting range by special exception.

Applicants did not create the aforementioned hardship.

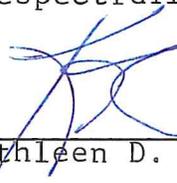
There will be no adverse effect on public health or alteration of the essential character of Applicants' "neighborhood," as detailed by the sound study but also because there is hunting in the area with firearms that exceed the sound of the applicants' proposed shooting range as well as other nearby shooting ranges. The range will not create a constant sound and will not operate during sleeping hours.

Finally, the requested variance is the minimum necessary to operate the shooting range. There is no lesser variance the applicants can seek to be able to operate the range and the range will be positioned on the property so as to minimize the sound as best as possible based on the sound study. In addition, the design of the range itself will be in a manner that will reduce sound.

Respectfully submitted,



Ronald A. Flowers



Kathleen D. Flowers

FLOWERS FIREARMS TRAINING FACILITY
COMMUNITY SOUND STUDY

June 27, 2021

Prepared for:

Ronald Flowers
920 Rosstown Road
Lewisberry, Pa 17339

Submitted by:

Thornton Acoustics
521 Clay Run Rd.
Mill Run, PA 15464

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1 INTRODUCTION

Thornton Acoustics & Vibrations (TAV) performed a community sound study to measure and evaluate the sound emission levels that will be generated by small-scale firearms training on the Flowers property (located at 920 Rosstown Road, Lewisberry, Pa 17339). TAV performed controlled sound testing on the property on May 26, 2021.

2 METHODOLOGY

TAV performed controlled firearms sound testing on the Flowers property by firing multiple types/caliber weapons (representing a cross section of the potential firearms that will be used for training) at all potential firing line locations/areas and measuring the resulting sound levels at the property boundaries.

TAV installed a series of sound level monitors at the Northern, Western and Southern property boundaries at locations shown in Figure 1 (indicated by red numbered circles). The monitors were Bruel & Kjaer Type 2250/2270 Precision Sound Level Meters (IEEE Type I). The meters were used with Bruel & Kjaer Type 4189 microphones. The systems were traceably calibrated in December 2020 and were field calibration checked at the start and completion of this testing. All measurement methodologies were performed in accordance with accepted industry best practices.

During testing, Ron Flowers performed controlled firing of individual firearms, including a 308 rifle , a 5.56mm carbine and a .45ACP pistol at all potential firing line locations/areas (indicated in Figure 1 with green circles).

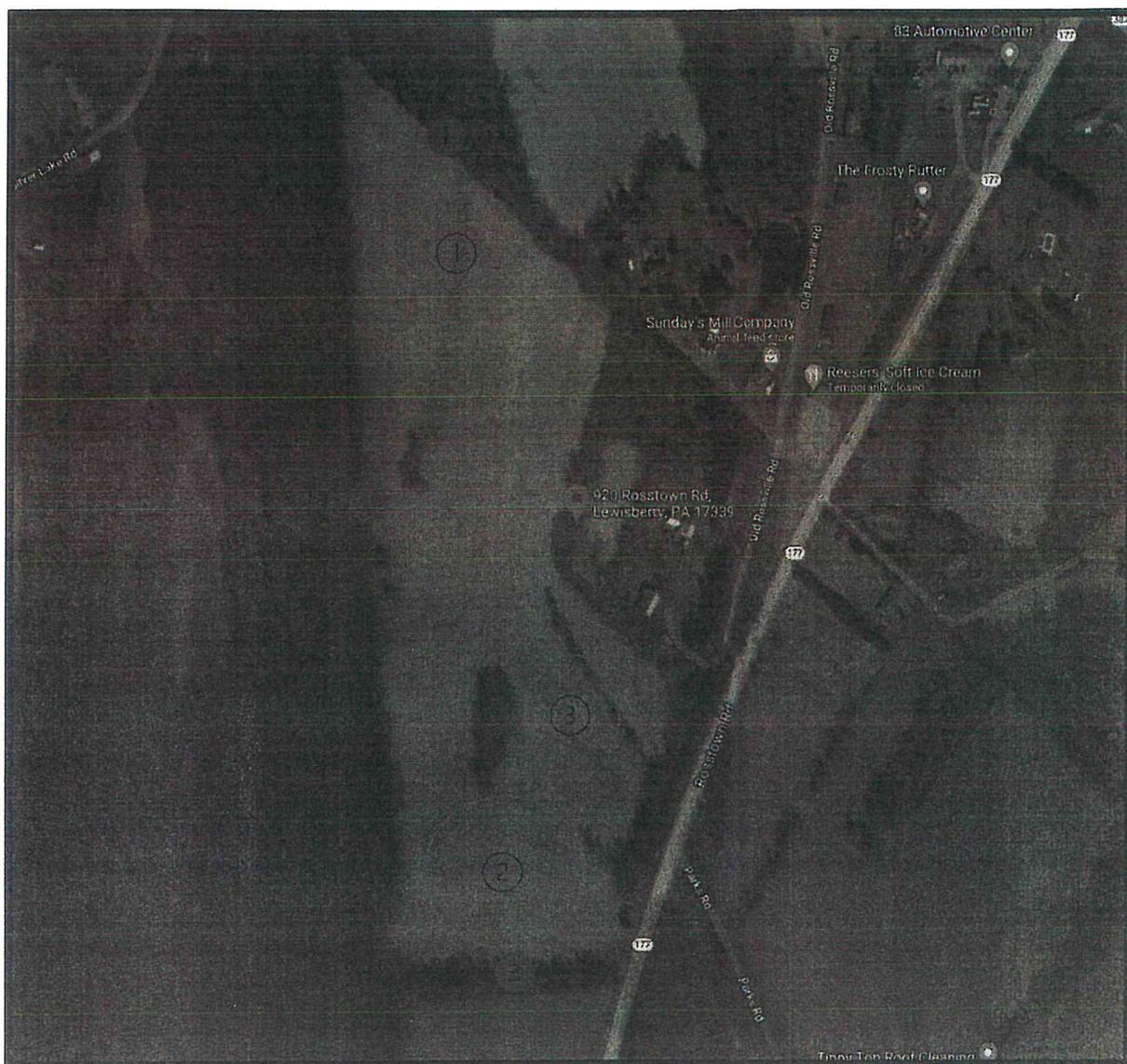


Figure 1 Sound monitoring locations, indicated by red numbered circles, and firing line areas, indicated by green numbered circles.

The sound levels emitted by the firearms during testing were compared to the permitted levels as enumerated in the *Township of Fairview PA Code Section 187-9 Noise Limitations-Use of Property* (excerpt shown in Figure 2).

§ 187-9 Use of property. ⁽¹⁾

It shall be unlawful for persons to operate or permit to be operated a sound level which exceeds the dBA levels set for the receiving land use category in Table I below; provided, that the performance standard shall in every case be applied at the boundaries of the lot in which any such activities take place except in such case where the maximum permitted sound levels may be exceeded at a more distant point. The limits set forth below shall also apply to vehicles operated on property other than public roads.

Table I

Receiving Land Use Category By Zoning District	Maximum Sound Level
RL Rural Living	
RS Single-Family Residential	55 dB(A)
VR Village Residential	
RMU Residential Mixed Use	
AB Airport Business	
IB Industrial Business	62 dB(A)
CB Commercial Business	
VB Village Business	

⁽¹⁾ *Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)*

3 RESULTS

The measured maximum sound levels at each monitoring location are listed in table 1.

Table 1 maximum A-weighted sound pressure levels (LASmax) emitted by firearms in each of three shooting areas as measured at each monitoring location. Note that the sound level range is due to the various weapons being used.

Monitoring location	Shooting Area 1	Shooting Area 2	Shooting Area 3
1	75-78 dBA	68-69 dBA	65-68 dBA
2	79-80 dBA	80-83 dBA	79-80 dBA
3	68-70 dBA	86-87 dBA	65-68 dBA

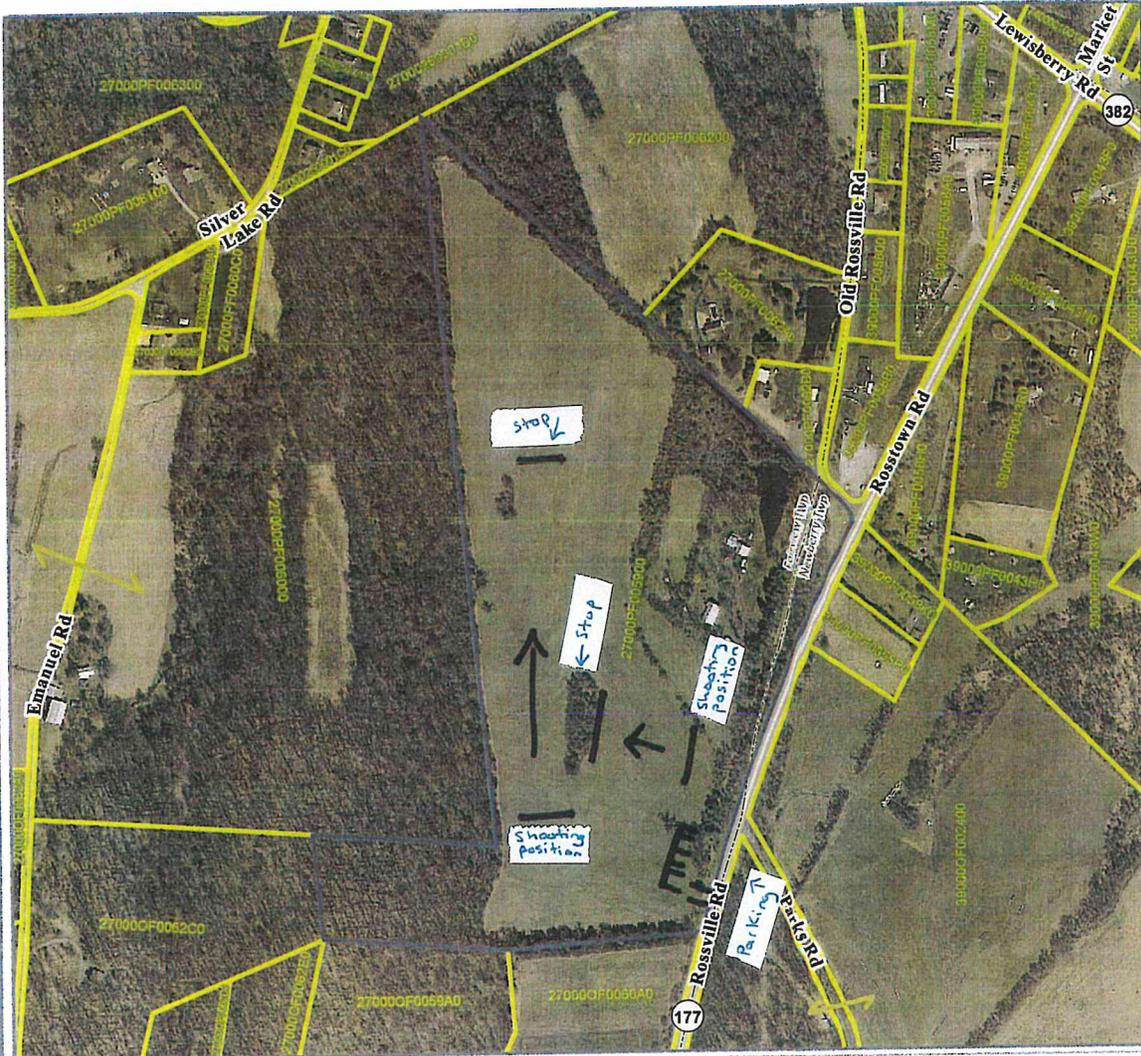
4 CONCLUSIONS

The sound levels emitted by all of the weapons used for testing produce levels that vary between 65 to 87 dBA depending on shooting location and receiver location. The maximum permitted sound level set by the Township Code is 55 dBA.

Best Regards,

William Thornton

Parcel - 27000PF00590000000



Owner - FLOWERS KATHLEEN D & RONALD A
Address - 920 ROSSTOWN RD
Tax Municipality - Fairview Twp
School District - West Shore School District
Class - Farm
Land Use - F - Crops & General Farming
Acres - 49.5
Assessed Land Value - 25730
Assessed Building Value - 178920
Assessed Total Value - 204650
Sale Date - 04-JAN-2021
Sale Price - 830000
Deed Book - 2621
Deed Page - 2316

Legend

- Selected Parcel
- Parcels
- US Route
- Interstate
- PA Turnpike
- State Road

Mapping Provided by



Last Updated 12/28/2021
 Layers should not be used at scales larger than 1:2400
 (Note: Pixelation will occur at scales 1" = below 200 Ft.)
 Aerial Photography - 2018

Disclaimer

The York County Planning Commission provides the Geographic Information System map and/or data (collectively the "Data") as a public information service. The Data is not a legally recorded plan, survey, official tax map, or engineering schematic and should be used for only general information. Reasonable effort has been made to ensure that the Data is correct, however the Commission does not guarantee its accuracy, completeness, or timeliness. The Commission shall not be liable for any damages that may arise from the use of the Data.

