

IN THE COUNTY COURT OF THE SIXTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA,
IN AND FOR PASCO COUNTY, FLORIDA

PASCO COUNTY, a Political
Subdivision of the State of Florida,

Plaintiff,

v.

Case No.

SERVE & EDUCATE, LLC,

Defendants.

**COMPLAINT FOR DECLARATORY JUDGMENT and
SUPPLEMENTAL INJUNCTIVE RELIEF**

Plaintiff, PASCO COUNTY, FLORIDA, a political subdivision of the State of Florida, by and through its undersigned attorney, and requests a declaration of the County's rights and powers under the Pasco County Land Development Code and Florida Statutes relating to certain use of property by SERVE & EDUCATE, LLC. This complaint is an attempt to clarify doubts as to the County's legal authority, and supplemental injunctive relief is requested only if the Court first declares that the Defendant's property to be violation of the County's code, and that the County is not preempted from application of its Code. This complaint is not intended to be an action to enforce the County's Code unless and until Pasco County is declared by the Court to have that power and is not preempted from its exercise. Pasco County states as follows:

GENERAL ALLEGATIONS

1. This is an action for declaratory judgment and for injunctive relief relating in connection with use of an outdoor gun range on property located in the unincorporated area of Pasco County.
2. This Court has subject matter jurisdiction pursuant to F.S. §§ 34.01(1)(b), 34.01(4) and 86.011.

3. Plaintiff, Pasco County, is a political subdivision of the State of Florida, has an interest in the health, safety and welfare of the public, is empowered to adopt ordinances necessary for the exercise of its powers, and is responsible for administering and enforcing its zoning regulations.
4. Defendant SERVE & EDUCATE, LLC is an entity whose mailing address is 5326 Van Dyke Rd., Lutz, Florida 33558-4829. The Manager and Registered Agent of SERVE & EDUCATE, LLC is Skip Drish.
5. Defendant SERVE & EDUCATE, LLC owns approximately 136 acres of real property located on the north side of S.R. 52, approximately ½ mile east of U.S. 41, assigned Parcel I.D. No. 10-25-18-0000-00300-0020 by the Pasco County Property Appraiser (hereafter referred to as “the Property”).
6. Pasco County has adopted zoning regulations prescribing permitted uses of land. The Property is presently zoned A-R (Agricultural-Residential).
7. The county’s zoning regulations in the Pasco County Land Development Code (LDC) provide that a conditional use is required in an A-R zoning for “Gun clubs and indoor or outdoor firing and archery ranges, subject to a minimum site area of ten (10) acres.” LDC Section 505.3. This zoning regulation pre-dates by decades the Defendant’s acquisition of, and the contested use of, the Property.
8. Permitted uses of land located in A-R zoning districts do not include using the Property for an outdoor firing range; therefore, conditional use permit is required.
9. Neither “gun club” or “outdoor firing range” are terms defined in the LDC. Terms not specifically defined “shall be ascribed a meaning which they have in common usage and which gives this Code its most reasonable application.” (See Appendix A, Definitions, LDC).
10. An application for a conditional use permit was filed with Pasco County in 2012 to use the Property for an outdoor firing range (application number CU12-21). At the time of

the application, Skip Drish served as the agent of record for the owner of the Property, which was subsequently purchased by Defendant SERVE & EDUCATE, LLC. Skip Drish described the business operation for the proposed conditional use as follows: “The property is going to be used as a training and instruction facility for firearms. The intent is to train Law Enforcement Officers, Security Personnel, Investigators and the general public on the safe handling of handguns, rifles and shotgun use. The hours of operation will be Sunday through Saturday, the hours will be from 8:00 a.m. – 10:00 p.m.” The conditional use application was met with opposition by neighboring residents, and ultimately withdrawn.

11. The Property is currently the subject of a pending rezoning application. Combined with two adjacent parcels, Defendant is seeking to rezone the Property to a MPUD Master Planned Unit Development. The project name for the proposed project is “Public Safety Campus of Pasco MPUD.” Subject to any limits imposed by state law (for example: preemption by the state), Pasco County may prohibit and/or condition use of an outdoor firing range on property within a MPUD if the property is in fact rezoned.
12. The Property contains a dirt berm that, in combination with the land on which the berm is sited, is used as a firing range. The berm was constructed after withdrawal of the Conditional Use application CU12-21. The berm was first constructed as L-shaped dirt berm, approximately 20ft high x 120ft long running east and west in the back north east corner of the Property, with a perpendicular arm approximately 50ft long x 20ft high. Since initial construction, the berm has been extended and a second “arm” added, creating a U-shaped range. When initially constructed, the berm allowed for an approximate firing distance of 25 yards; since expansion, the berm is now constructed in such a manner to allow persons to fire at targets in front of the berm at 50- to 100-yard firing distances. Photographs of the berm

and firing area show targets in use in front of the berm, and other equipment (such as a table) to aid shooter(s) firing at the berm from a distance. New fill and grass plantings have been added since initial construction. The berm is approximately 20 feet wide, and possibly contains a steel inner core. The conditions described in this paragraph hereafter will be described as “the Berm Area.”

13. Firearms are routinely shot at the Berm Area.
14. Skip Drish holds various licenses relating to security and firearms training from the State of Florida Department of Agriculture and Consumer Services: Private Investigator (license # C2900135); Security Officer School Instructor (#DI2900100); Firearms Instructor (# K2900040); and Manager Investigative and Security Agency (# M1100056). He operates a business called “Investigations & Security Training Academy.”
15. Copies of “Certificate of Firearms Proficiency For Statewide Firearm License” signed by Skip Drish show students completed their firearms proficiency qualification at a range located at the Property. Certificates list the location of the range as: “19765 S.R. 52, Land O’Lakes, Florida” [this is the address for the Property]; “SR 52, Land O’Lakes, FL;” “Land O’Lakes FL 34637;” etc. The name of the range on the certificates is listed as either “Range 52” or “Investigations and Security Training Academy.” On February 24, 2015, an inspection by the state for Skip Drish’s “K” firearms instructor license shows the address of the Property for “Location of Range Used.”
16. Skip Drish also uses the Berm Area for sport shooting. He has stated to Pasco County staff that he is “allowed to have the gun range for me and my friends and I am going to continue to use it.” He has invited county staff—whom he has declared to be his “friends”—to the Berm Area to engage in recreational sport shooting.

17. Defendant SERVE & EDUCATE, LLC has allowed and continues to allow the Property to be used for an outdoor firing range without an approved conditional use permit.

18. State law preempts local regulation of firearms as follows:

790.33 Field of regulation of firearms and ammunition preempted.—

(1) PREEMPTION.—Except as expressly provided by the State Constitution or general law, the Legislature hereby declares that it is occupying the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, storage, and transportation thereof, to the exclusion of all existing and future county, city, town, or municipal ordinances or any administrative regulations or rules adopted by local or state government relating thereto. Any such existing ordinances, rules, or regulations are hereby declared null and void.

(2) POLICY AND INTENT.—

(a) It is the intent of this section to provide uniform firearms laws in the state; to declare all ordinances and regulations null and void which have been enacted by any jurisdictions other than state and federal, which regulate firearms, ammunition, or components thereof; to prohibit the enactment of any future ordinances or regulations relating to firearms, ammunition, or components thereof unless specifically authorized by this section or general law; and to require local jurisdictions to enforce state firearms laws.

(b) It is further the intent of this section to deter and prevent the violation of this section and the violation of rights protected under the constitution and laws of this state related to firearms, ammunition, or components thereof, by the abuse of official authority that occurs when enactments are passed in violation of state law or under color of local or state authority.

...

(4) EXCEPTIONS.—This section does not prohibit:

(a) Zoning ordinances that encompass firearms businesses along with other businesses, except that zoning ordinances that are designed for the purpose of restricting or prohibiting the sale, purchase, transfer, or manufacture of firearms or ammunition as a method of regulating firearms or ammunition are in conflict with this subsection and are prohibited;

...

Sec. 790.33, Fla. Stat. (2014) (emphasis added). This statute was effective in 1987, and was expanded and clarified in 2011.

19. A separate state statute expressly gives local governments authority to regulate the location of a “sport shooting range” when the range was in violation of the law when it was constructed:

823.16 Sport shooting ranges; definitions; exemption from liability; exemption from specified rules; exemption from nuisance actions; continued operation.—

(1) Definitions.—As used in this act, the following terms shall have the following meanings:

...

(c) “Sport shooting range” or “range” means an area designed and operated for the use of rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, or any other similar type of sport shooting.

...

(6) A sport shooting range that is not in violation of existing law at the time of the enactment of an ordinance applicable to the sport shooting range shall be permitted to continue in operation even if the operation of the sport shooting range does not conform to the new ordinance or an amendment to an existing ordinance, provided the range was not in violation of any law when the range was constructed and provided that the range continues to conform to current National Rifle Association gun safety and shooting range standards.

(7) Except as otherwise provided in this act, this act shall not prohibit a local government from regulating the location and construction of a sport shooting range after the effective date of this act.

Sec. 823.16, Fla. Stat. (2014). The statute became effective in 1999.

COUNT I – DECLARATORY JUDGMENT

20. This is an action for a declaratory judgment, as Pasco County is in doubt as to the existence or nonexistence of zoning authority as applied to conditions and use of the Property. Pasco County is in doubt as to whether the Berm Area constitutes an outdoor firing range. Pasco County is in doubt as to whether it has the power and right to apply its zoning regulations to prohibit or condition use of the Berm Area in connection with firearms businesses, or whether state law preempts Pasco County from exercise of this authority. Pasco County is in doubt as to whether the Berm Area constitutes a sport shooting range. Pasco County is in doubt as to whether it has the power and right to apply its zoning regulations to prohibit or condition use of the Berm Area in connection

with sport shooting, or whether state law preempts Pasco County from exercise of this authority.

21. After declaration by the Court as to Pasco County's rights, powers, and authority, Pasco County seeks supplemental injunctive relief only if appropriate based on the Court's declarations.
22. Plaintiff realleges and incorporates herein all of the allegations of paragraphs 1-19, as if fully set forth herein.
23. Pasco County requests the Court to declare that the Berm Area located on the Property constitutes an "outdoor firing range" under the county's LDC, and to declare Pasco County is not preempted by Sec. 790.33, Fla. Stat., from applying its zoning regulations to prohibit and/or condition use of the Berm Area when the use is connected to a firearms business, including Skip Drish's security training business, firearms instruction, and proposed public safety academy. Further, Pasco County requests the Court to declare that the zoning ordinance it seeks to apply was not designed for the purpose of restricting or prohibiting the sale, purchase, transfer, or manufacture of firearms or ammunition as a method of regulating firearms or ammunition.
24. Pasco County requests to Court to declare that the Berm Area located on the Property is a "sport shooting range" within the meaning of Sec. 823.16(1)(c), Fla. Stat., and to declare that the County has the right to regulate the placement of the range pursuant to FS § 823.16(7). Specifically, Pasco County requests the Court to declare that Sec. 823.16(7) is a general law that removes use of this outdoor firing range from the preemption provisions outlined in Sec. 790.33, Fla. Stat, and to declare that the County may apply its zoning authority to prohibit and/or condition the siting and use of the Berm Area on the Property for sport shooting, and that Pasco County's zoning ordinance was not designed for the purpose of restricting or prohibiting the sale, purchase, transfer, or

manufacture of firearms or ammunition as a method of regulating firearms or ammunition.

25. Pasco County requests the Court to declare that because no conditional use permit has been obtained allowing an outdoor firing range on the Property, the existence and use of the Berm Area on the Property –whether in connection with a firearms business or for sport shooting -- constitutes a zoning violation.

WHEREFORE Plaintiff requests the Court to declare the rights of the parties to regulate use of the Berm Area, and grant supplementary injunctive relief if appropriate based on the Court's declarations:

- a) Accept jurisdiction over the parties to this action and the dispute described herein.
- b) Declare that the Berm Area located on the Property constitutes an outdoor firing range as defined by the LDC.
- c) Declare that Pasco County has the right to require a conditional use for use of the Berm Area in connection with firearms businesses, pursuant to the preemption exception listed in FS § 790.33(4)(a).
- d) Declare that the Berm Area located on the Property constitutes a “sport shooting range” as defined by FS § 823.16(1)(c).
- e) Declare that Pasco County has the right to regulate the location of the Berm Area, including prohibiting the Berm Area on the Property, pursuant to FS § 823.16(7).
- f) Declare that FS § 823.16(7) is a general law that provides an exception to the State’s preemption of the field of firearms regulation. See FS § 790.33(1) (“Except as expressly provided by the State Constitution or general law, the Legislature hereby declares that it is occupying the whole field of regulation of firearms...”)(emphasis added).

- g) Declare that the zoning ordinance Pasco County seeks to apply to the Property was not designed for the purpose of restricting or prohibiting the sale, purchase, transfer, or manufacture of firearms or ammunition as a method of regulating firearms or ammunition.
- h) Declare that because no conditional use permit has been obtained allowing an outdoor firing range on the Property, the existence and use of the Berm Area – whether in connection with a firearms business or, if the Court declares, for sport-constitutes a zoning violation.
- i) Award Pasco County its costs in this action.
- j) Grant Pasco County such further or supplemental relief as is necessary or proper pursuant to FS § 86.061.

COUNT II--PERMANENT INJUNCTIVE RELIEF

- 26. Plaintiff realleges and incorporates herein all of the allegations of paragraphs 1-22, as if fully set forth herein.
- 27. This is an action for permanent injunctive relief, which is supplemental to--and dependent on--the Court's declarations in response to Pasco County's request for declaratory relief, above.
- 28. Subject to the Court so declaring: Defendants are engaged in, or allowing other persons or entities to make use of, the Property for an outdoor firing range. Because no conditional use exists allowing this activity on the Property, such activity constitutes a zoning violation. Defendants' continued practice of engaging in these activities constitute open, public, repeated, continuous, persistent, and intentional violations of the Pasco County Land Development Code.
- 29. Violations of Plaintiff's Land Development Code may be enforced by a civil action for injunctive relief. Section 108.1, LDC.

30. Subject to the Court first issuing appropriate declarations authorizing this relief (i.e., the Berm Area constitutes an outdoor firing range, a sport shooting range, and the county is not preempted from applying its zoning authority to these matters):

A permanent injunction is sought to require Defendant to cease and desist from the following actions on the Property until such time a conditional use is obtained to permit such activities:

- a. Use of the Berm Area on the Property as an outdoor firing range for the use of rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, or any other similar type of shooting in connection with a firearms business.
- b. Use of the berm on the Property as an outdoor firing range for the use of rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, or any other similar type of shooting for sport.

WHEREFORE Plaintiff requests declaratory and injunctive relief as described above.

Respectfully submitted,

/s/ KRISTI SIMS, ESQUIRE

Kristi Sims

Sr. Assistant County Attorney

West Pasco Government Center

8731 Citizens Dr, Suite 340

New Port Richey, FL 34654

ksims@pascocountyfl.net

Tel.: 727-847-8120

Fax.: 727-847-8021

FBN: 0565091