



WHERE THE FOREST MEETS THE PRAIRIE

Todd County

MINNESOTA • EST. 1855

PLANNING & ZONING

215 1st Avenue South, Suite 103

Long Prairie, MN 56347

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The following is the agenda for **Thursday, June 5, 2025 at 6:00pm**. The Todd County Planning Commission will hold a public hearing in the Commissioner's Boardroom, Historic Courthouse, 215 1st Ave South, Suite 301, Long Prairie.

NOTE: This meeting is being held in-person and the public is encouraged to attend. Those who do attend in person can find parking atop the hill on the west side of the Historic Courthouse and enter through the North Doors, near the American Flag and monument.

If you have any concerns or questions in regard to the upcoming meeting and the applications on the agenda, feel free to contact the Planning & Zoning Office at either (320) 732-4420 or toddplan.zone@co.todd.mn.us. All correspondence must include name & mailing address and be received 48 hours before the date and time of the hearing.

Agenda

- Call to Order
- Pledge of Allegiance
- Introduction of Planning Commission Members and process review.
- Approval of agenda
- Approval of the May 1st, 2025 Planning Commission meeting minutes
- The applicant is introduced
 - Staff report
 - Applicant confirms if staff report accurately represents the request
 - Correspondence
 - Site Visit Review
 - Public comment
 - Board review with applicant, staff, and public

1. Mark Johnson: Section 06, Round Prairie Township

Site Address: 23576 200th Street, Long Prairie, MN 56347

PID: 21-0007702

1. Request for CUP to berm and operate a functional shooting range in Commercial Zoning District.

2. William & Dawn Vowles: Section 20, Grey Eagle Township, Big Birch Lake

Site Address: 11734 Co. Rd. 47, Grey Eagle, MN 56336

PID: 11-0027400

1. Request for Seasonal Campground with hookups, 40' X 40' office Building and 17 sites in Recreational Development Shoreland Zoning District.

3. Angelo & Marjorie Smieja: Section 18 of Round Prairie Township

Site Addresses: 23465 Ellis Court and 23468 Ellis Court, Long Prairie, MN 56347

PID: 21-0018900, 21-0018909 and 21-0018908

1. Request Rezone from R-2 to AF-1 Zoning District for agricultural use.

4. Daniel Tomsche DVM: Section 23, Birchdale Township

Site Address: 27246 State 28, Grey Eagle, MN 56336

PID: 03-0018600 & 03-0018602

1. Request for CUP to construct a 276' X 128' total confinement barn for 350 head of dairy cows >1000 lbs. and add a 5.2M gallon, HDPE lined earthen basin for manure storage. Animal Units will increase from 960 AU to 992 AU in AF-1 and RT Zoning Districts

5. Emanuel J. Yoder: Section 11, Bartlett Township

Site Address: 49475 Thorn Apple Road, Aldrich, MN 56434

PID: 01-0011100

1. Request to Operate a Wood Working Business in AF-2 Zoning District.

6. Jodi Marohn: Section 25, Hartford Township

Site Address: 28333 284th St., Long Prairie, MN 56347

PID: 12-0030200

1. Request to open an indoor riding arena with up to four RV campsites in AF-1 Zoning District.

Adjournment –

Next meeting: July 3rd, 2025

Planning Commission Meeting Minutes

May 1, 2025

Completed by: Sue Bertrand, P&Z Staff

Site visits conducted by Adam Ossefoort and Ken Hovet on 4/24/2025.

Meeting attended by board members: Chair Jim Pratt, Vice Chair Ken Hovet, Roger Hendrickson and Andy Watland, Lloyd Graves and Commissioner Tim Denny.

Staff members: Adam Ossefoort and Sue Bertrand

Other members of the public: Sign-in Sheet is available for viewing upon request.

Jim called the meeting to order at 6:00 p.m. The Pledge of Allegiance was recited as a collective group.

Introduction of the staff and board members by Jim.

Ken motioned to have the March 6th, 2025 meeting minutes approved. Roger seconded the motion. Voice vote, no dissent heard. Motion carried.

Roger motioned to have the agenda approved as printed. Andy seconded the motion. Voice vote, no dissent heard. Motion carried.

AGENDA ITEM 1: Levi Leunart-Section 06, West Union Township,

Site Address: 14875 115th Ave., Osakis, MN 56360

PID: 27-0004801

1. Request for CUP for temporary family housing in AF-1 Zoning District.

Levi was present as the applicant.

Staff Findings: Adam read the staff report. The staff report is available for viewing upon request in the Planning & Zoning Office.

Recommendation:

A motion to recommend approval to the County Board of Commissioners with the following conditions:

Proposed Conditions:

1. Applicant shall abide by Section 9.17 of the Todd County Planning and Zoning Ordinance.

Correspondence received: None.

Public comment: None.

On Site Visit Report by Ken Hovet: This report may be viewed in full, upon request, at the Planning and Zoning office.

Board discussion:

Jim stated it is a pretty straight forward application.

Roger motioned to recommend approval with the one condition and Lloyd seconded.

1. Applicant shall abide by Section 9.17 of the Todd County Planning and Zoning Ordinance.

Roll call vote commenced as follows:

Board member	Vote (yes or no)
Andy Watland	Yes
Roger Hendrickson	Yes
Ken Hovet	Yes
Lloyd Graves	Yes
Jim Pratt	Yes

Motion carried. Jim noted the application will be presented to the County Board of Commissioners on May 20th, 2025.

AGENDA ITEM 2: Duane & Melissa Dirkes-Section 08, Kandota Township

Site Address: 13266 Co. Rd. 95, Sauk Centre, MN 56378

PID: 14-0007602 and 14-0007600

1. Request for CUP to construct a 300' x 70' total confinement barn with underfloor concrete liquid manure storage and expand animal units from 231.5 AU to 613 AU in AF2 Zoning.

Duane and was present as the applicant.

Staff Findings: Adam read the staff report. The staff report is available for viewing upon request in the Planning & Zoning Office.

Recommendation:

A motion to recommend approval to the County Board of Commissioners with the following conditions:

Proposed Conditions:

1. Air quality exemption notices shall be provided to Todd County prior to all future manure application events.
2. Liquid manure storage structure shall have capacity for no less than 12 months storage. All manure storage shall be constructed prior to stocking of additional animal units.
3. In the event of a manure spill or other discharge, applicant must notify the County and the Minnesota Duty Officer immediately upon discovery of said discharge.
4. Construction Short-Form Permitting shall be completed and submitted to Planning and Zoning prior to issuance of land use permits.
5. Applicant must abide by all other applicable federal, state, and local standards.

Correspondence received: None.

Public comment: None.

Board discussion:

On Site Visit Report by Ken Hovet: This report may be viewed in full, upon request, at the Planning and Zoning office.

Roger asked if the pollution control regulate to make sure there is enough land for manure application?

Adam stated this is not an NPDES site, so it is a County CUP, but also the County Feedlot Program issues the permit and that is what Deja just brought in, as she issued the permit today. Condition #4 is irrelevant at this point because the permit has been issued, and at the time he made the staff report, it had not been issued. In order to get the permit, you must submit a manure management plan that accounts for every gallon of manure they anticipate. Producing in that manure management plan, they identify setbacks to sensitive features and all of that, so before they issue the permit, they review all that stuff and make sure it is all in order and compliance with the feedlot rules.

Roger stated as far as odor they should be used to it as his dad and dad before have had pigs there.

Levi agreed, as long as he could remember.

Ken asked if they were going to include any kind of odor control in your building plans.

Stated no plans of yet, but certainly an option. Stated no odor complaints yet, from the existing pit or when he applies the manure.

Roger stated any complaints that come in would be from somebody new that comes in there as everyone else should be used to it.

Andy asked if those setbacks are in issue if those parcels are not combined?

Adam stated yes, because there is a 300' setback for liquid manure pits from the property line, where they want to place the barn, where they have that existing line, so they had to combine them to eliminate that, now the pit will meet the 300' setback. They have submitted the application to combine the property to meet the setbacks, and we have approved it already, it is just a matter of recording.

Levi confirmed it has been approved, but has not heard from the recorder that has been done.

Andy clarified they would not need a condition to combine as it is in the process with no foreseeable issues.

Adam confirmed the combined application has been submitted and approved by Planning and Zoning. Did not see any issues.

Ken motioned to recommend approval with the four conditions and Andy seconded.

1. Air quality exemption notices shall be provided to Todd County prior to all future manure application events.
2. Liquid manure storage structure shall have capacity for no less than 12 months storage. All manure storage shall be constructed prior to stocking of additional animal units.
3. In the event of a manure spill or other discharge, applicant must notify the County and the Minnesota Duty Officer immediately upon discovery of said discharge.
4. Applicant must abide by all other applicable federal, state, and local standards.

Roll call vote commenced as follows:

Board member	Vote (yes or no)
Andy Watland	Yes
Roger Hendrickson	Yes
Ken Hovet	Yes
Lloyd Graves	Yes
Jim Pratt	Yes

Motion carried. Jim noted the application will be presented to the County Board of Commissioners on May 20th, 2025.

AGENDA ITEM 3: Sara Housman-Section 20, Birchdale Township

Site Address: 11339 251st Ave. Sauk Centre, MN 56378

PID: 03-0087300

1. Request for CUP for operating a dog grooming business in NE Shoreland Zoning.

Sara was present as the applicant.

Staff Findings: Adam read the staff report. The staff report is available for viewing upon request in the Planning & Zoning Office.

Recommendation:

A motion to recommend approval to the County Board of Commissioners with the following conditions:

Proposed Conditions:

1. Operation shall not house any more than 3 adult dogs at any one time.
2. Off-street parking shall be provided for all business traffic.
3. Applicant shall abide by all other applicable Federal, State, and Local standards.

Correspondence received: None.

Public comment: None.

Board discussion:

On Site Visit Report by Ken Hovet: This report may be viewed in full, upon request, at the Planning and Zoning office.

Lloyd asked if they will do any boarding?

Sara stated possibly, she may do a weekend or holiday boarding situation when she is not grooming.

Roger motioned to recommend approval with the three conditions and Ken seconded.

1. Operation shall not house any more than 3 adult dogs at any one time.
2. Off-street parking shall be provided for all business traffic.
3. Applicant shall abide by all other applicable Federal, State, and Local standards.

Roll call vote commenced as follows:

Board member	Vote (yes or no)
Andy Watland	Yes
Roger Hendrickson	Yes
Ken Hovet	Yes
Lloyd Graves	Yes
Jim Pratt	Yes

Motion carried. Jim noted the application will be presented to the County Board of Commissioners on May 20th, 2025.

AGENDA ITEM 4: Johnhenry P. Raber-Section 24, Eagle Valley Township

Site Address: 21628 County 20, Clarissa, MN 56440

PID: 07-0028500

1. Request for CUP for a Commercial Repair Shop in AF1 Zoning.

Johnhenry was present as the applicant.

Staff Findings: Adam read the staff report. The staff report is available for viewing upon request in the Planning & Zoning Office.

Recommendation:

A motion to recommend approval to the County Board of Commissioners with the following conditions:

Proposed Conditions:

1. Outdoor storage of products shall be allowed but shall be conducted in compliance with Section 9.01B of the Todd County Planning and Zoning Ordinance.
2. There shall be no loading or unloading of materials within the road right of way.
3. Applicant shall abide by all other applicable federal, state, and local standards.

Correspondence received: Yes, from Loren Fellbaum from the County, has no concerns with the application and this letter may viewed in full at the Planning and Zoning office upon request.

Public comment: None.

Board discussion:

On Site Visit Report by Ken Hovet: This report may be viewed in full, upon request, at the Planning and Zoning office.

Roger and Jim, pretty straight forward.

Lloyd motioned to recommend approval with the three conditions and Roger seconded.

1. Outdoor storage of products shall be allowed but shall be conducted in compliance with Section 9.01B of the Todd County Planning and Zoning Ordinance.
2. There shall be no loading or unloading of materials within the road right of way.
3. Applicant shall abide by all other applicable federal, state, and local standards.

Roll call vote commenced as follows:

Board member	Vote (yes or no)
Andy Watland	Yes
Roger Hendrickson	Yes
Ken Hovet	Yes
Lloyd Graves	Yes
Jim Pratt	Yes

Motion carried. Jim noted the application will be presented to the County Board of Commissioners on May 20th, 2025.

AGENDA ITEM 5: Mark Johnson-Section 06, Round Prairie Township

Site Address: 23576 200th Street, Long Prairie, MN 56347

PID: 21-0007702

1. Request for CUP to berm and operate a functional shooting range in Commercial Zoning.

Mark Johnson and Josh Goertz were present as the applicants. Mark passed out additional information for the board members and staff, this information will be entered into the record at the Planning and Zoning office and may be viewed upon request.

Staff Findings: Adam read the staff report. The staff report is available for viewing upon request in the Planning & Zoning Office.

Recommendation:

A motion to recommend approval to the County Board of Commissioners with the following conditions:

Proposed Conditions:

1. Discharge of firearms on the site shall be limited to 8 am to sunset, Monday through Saturday.
2. Off-street parking shall be provided for all business traffic.
3. Upon closure of the operation, the site shall be closed in compliance with Minnesota Pollution Control Standards.
4. Construction Stormwater Permitting shall be obtained prior to the start of construction, if applicable.
5. Establishment of a 911 address number and placement of a physical sign for emergency services.
6. Shooting range shall be limited to 7 shooting lanes and one 30'x20' structure as identified in the application. Additional lanes and structures shall require the review of the Planning Commission.
7. Applicant shall obtain all additional permitting and/or licensing from additional government agencies including the Minnesota Department of Natural Resources and the Minnesota Pollution Control Agency.

Correspondence received: None.

Public comment:

Greg Hendrickson, gained Mike Chase's 3-minutes, his neighbor. Refers to overhead map, next to the gun range, pointed out the residential area, and stated his gun range is going right into the zoned residential area. Stated his property value is going to be depreciated, his taxes already went up by 48% is been argued in court and entered supporting paperwork to the board and staff as part of the record. This may be viewed at the Planning and Zoning office upon request. He asked is it going to be a hazard to the neighborhood? It will, it

has already been argued in court, he directed the boards attention to his handout exhibit that supports his claim and a good article to read. He continued they will be putting the residents in harms way. One thing he wanted to point out that was not in his hand out was the buffer zones around the shooting range. According to state law he is going to need a buffer zones 750 around the perimeter of his border line. That includes all of his neighbors including CHS, and they can speak for themselves, but Rosemary, all that is run as Commercial will be worthless. It is an eminent domain, is what you are giving him. The Hershberg property will not be able to build, and he himself may not be able to put up a deer stand on his own property. Mark Pachan might be in the same position with it. These buffer zones are eminent domain for these properties. So, it is dead property for everybody with property taxes going up. You can't build on them because it puts the gun range out of compliance. The home owners pay the taxes and he gets the benefit from it and we suffer for it, he stated. It's going to be damage because you are giving them full immunity on any liability. Gun ranges have full immunity against nuisance, damages, noise and everything. It has all been proven in court. They are being taxed, they are not going to get them if he has 100 bullets in his house, you can't contain them all, he is a veteran and he's been at gun ranges before, he knows how they work, there are always "rogues". There will be livestock dead in the neighborhood and people getting shot. It's happened. It's been proven in court, it does happen. He is recommending you don't do that as you are going to be putting a lot of people in harm's way here, and you are going to devalue peoples' property quite a bit. It is going to be a nuisance to the neighborhood. He built his house in 2008 and he likes his quiet. That is why he lives out in the country. He has an autistic grandchild and this goes into place, he will not be able to come to his house, doesn't work well for them with loud noises. Will he be harmed? Yes, his property taxes will be depleted, he will lose the value of his house, and will be very rare to find somebody to actually buy it. There is a Daycare down the road quarter mile away, can you imagine the parents concern dropping their kids off there? Listening to the noise and the guns, whether or not they are going to play outside? He would be very concerned as a parent. You will probably force them out of business. CHS can speak for themselves and they are probably wanting to do some future development on their property, but you are really tying their hands on it, by approving it with these buffer zones. He stated his exhibit is a 46-page document and realized they will not have time to read it tonight.

Adam stated for the record, it is called "Gun Range Immunity: An Argument against Legalized Nuisance and Non-Governmental Takings" and it must be reviewed before making any decisions.

Greg stated he doesn't know if they are granting them full immunity, but there is no recourse for the land for bullets, noise, if it goes beyond 63 decibels, we can't do anything about it. We just suck it up and take it is all they can do.

Martin Hagen works from CHS and his sole concern is the 750-foot buffer. The other part of it is the Statute and the understanding of it. He read part of it, and how it is laid out, he thinks it's based upon if their future building projects would affect them from meeting their six requirements and if they couldn't adhere to those. If it prevents them from doing any future building, it is a huge issue for them. As far as noise he can 100% understand the other neighbors that live there. As a location, it really doesn't matter to CHS, but it is mostly just the building. As they look to the future, the only place they can expand is to the south. So, if they purchased land and they can't build on it to the south, that is the main concern.

Board discussion:

On Site Visit Report by Ken Hovet: This report may be viewed in full, upon request, at the Planning and Zoning office.

Roger suggested tabling it for this month to read what was handed out by Greg so they have a chance to review it.

Adam added he highly recommends not making a decision tonight until you have had a chance to review the exhibit. He has reached out to the DNR, was given a contact person to find out more about the State Statute and has not heard back from the DNR. Really thinks it is important to hear comment from the DNR yet.

Ken, agrees and is assuming shooting lanes open for typical deer rifle sized guns?

Mark stated yes, the 8' berms for pistol ranges and the 20' berms on the back for siting in rifles.

Ken, shotguns out there too?

Mark, yes.

Ken, max caliber?

Mark, 300 Win-Mag, no 50 calibers or anything like that.

Ken, you want to offer shooting meet to the club members?

Mark, yes.

Ken, Contests?

Mark, yes.

Ken, so fair amount of traffic?

Mark, yes, during those events, yes.

Ken, just off a township road, how far off from 71 will your driveway be?

Josh, 15 to 20 yards. The old rail road bed approach.

Ken stated it is not a very big township road, and would suggest they get an agreement with the township on maintaining that little stretch of road. When you get a lot of traffic, those township roads can't take a lot.

Mark, yes.

Ken asked about the sound travel tested and found none of the neighbors will hear the land.

Mark stated Steven Goertz owns the land they are getting a section from, his house is 400 yards, give or take and when shooting hand guns, we couldn't hear the sounds from his house.

Ken, what direction are your shooting lanes going to go?

Mark, W-NW, trying to angle them toward that big hill, in the back.

Ken asked if they were familiar with the shooting range that Law Enforcement has up by Browerville?

Mark and Josh, yes.

Ken stated he lives three miles south of that, and he listens to those guys a weekend every month, all day long. It's not annoying to him, because he is used to guns, but some people would be. So, don't tell him you can't hear them 400 yards away, and these are just hand guns, if you are going to have deer rifles out there, they are going to hear them from a long ways away. So, noise is going to be an issue for you. Supports the suggestion to table this.

Jim asked if they are going to have an employee on site at all times?

Mark stated there will be an instructor or a rim-safety officer on site during the hours of operation.

Jim, okay, and confirmed it's not something that is open so someone can just drive out there.

Mark, safety is their main concern with this, and if there is going to be people there with firearms, there is going to be an instructor and a rim- safety officer on site.

Jim, gated or fence around the property?

Mark, they will have the driveway gated and as soon as possible, they will have it fenced off. Another reason he wants it fenced off is to create privacy for the people on 71 and create privacy for their guests.

Roger, W- NW shooting will be towards Greg's house and Mark Pachan is just off the road on top of the hill. A berm should stop it, but not everything gets stopped.

Lloyd asked what if somebody accidentally shoots over the berm?

Mark stated there is no accidental shooting over a twenty-foot berm.

Roger stated he is not worried about accidental, anybody who's trained in it knows that, and made the motion to recommend tabling to review the new information, and Ken seconded.

Roll call vote commenced as follows:

Board member	Vote (yes or no)
Andy Watland	Yes
Roger Hendrickson	Yes
Ken Hovet	Yes
Lloyd Graves	Yes
Jim Pratt	Yes

Motion carried. Jim noted the application has been tabled until next month.

Adam added that will be June 5th, and he will make copies of the exhibit and get them to the board members as soon as possible.

AGENDA ITEM 6: Glen K & Cinnamon S. Lancaster-Section 04, Leslie Township

Site Address: 13029 County 38 Eagle Bend, MN 56446

PID: 15-0004100 & 15-0004101

1. Request to Rezone from R-10 to AF-2 Zoning District for the establishment of a feedlot.

Logan was present to represent the applicants and signed the authorized agent form.

Staff Findings: Adam read the staff report. The staff report is available for viewing upon request in the Planning & Zoning Office.

Recommendation:

A motion to recommend approval to the County Board of Commissioners with the following conditions:

Proposed Conditions:

1. No conditions

Public comment: None.

Correspondence received: None.

Board discussion:

On Site Visit Report by Ken Hovet: This report may be viewed in full, upon request, at the Planning and Zoning office.

Roger asked how big of a feedlot are you considering, how many animal units.

Jim redirected and stated this is a rezone application.

Roger stated it is being rezoned for the purpose of a proposed feedlot.

Adam stated he did not have that on him, right now. Dylan has been working with them on their feedlot program, and in order to register this, they have to rezone to the proper zone that allows a feedlot. They are not big enough for a CUP, so it will be under 500 animal units.

Jim stated they are going through the County for that permit, and there is AF-2 on both sides of it.

Andy wanted to review the zoning map, doesn't look like spot zoning.

Adam, not spot zone and not sure why on each side going down County 38, it's AF-2 on that south side, but this one 80- acre chunk was rezoned to R-10 for some reason.

Andy, almost like *this area* was the spot zone.

Ken motioned to recommend approval with no conditions and Andy seconded.

1. No conditions

Roll call vote commenced as follows:

Board member	Vote (yes or no)
Andy Watland	Yes
Roger Hendrickson	Yes
Ken Hovet	Yes
Lloyd Graves	Yes
Jim Pratt	Yes

Motion carried. Jim noted the application will be presented to the County Board of Commissioners on May 20th, 2025.

Jim called for a five-minute break at 7:10 pm and resumed at 7:14 pm.

AGENDA ITEM 7: Kimberly Schoumaker et al: Section 32, Round Prairie Township

Site Address: 24164 Cedar Lake Road, Sauk Centre, MN 56378

PID: 21-0033902, 21-0033901, 21-0033900, 21-0034101, 21-0034100 & 21-0033800

1. Request to Rezone from AF-1 to AF-2 Zoning District to build a home.

Kimberly was present as the applicant.

Staff Findings: Adam read the staff report. The staff report is available for viewing upon request in the Planning & Zoning Office.

Recommendation:

A motion to recommend approval to the County Board of Commissioners with the following conditions:

Proposed Conditions:

1. No conditions

Correspondence received: None, however, Adam mentioned they did meet with the township and returned the signatures for the 14th of April.

Public comment: None.

Board discussion:

Roger, has a nice little spot to build a house, not going to build a big house and he had put up a big shed.

Jim, pretty straight forward, it's connecting to two other AF-2 zoned properties.

Roger motioned to recommend approval with the no conditions and Ken seconded.

Roll call vote commenced as follows:

Board member	Vote (yes or no)
Andy Watland	Yes
Roger Hendrickson	Yes
Ken Hovet	Yes
Lloyd Graves	Yes
Jim Pratt	Yes

Motion carried. Jim noted the application will be presented to the County Board of Commissioners on May 20th, 2025.

AGENDA ITEM 7: William & Dawn Vowles: Section 20, Grey Eagle Township

Site Address: 11734 Co Rd 47, Grey Eagle, MN 56336

PID: 11-0027400

1. Request for Seasonal Campground with hookups, 40' X 40' office Building and 17 sites in Recreational Development Shoreland Zoning District.

Dawn was present as the applicant.

Staff Findings: Adam read the staff report. The staff report is available for viewing upon request in the Planning & Zoning Office.

Recommendation:

A motion to recommend approval to the County Board of Commissioners with the following conditions:

Proposed Conditions:

1. All campsites shall be provided with connection to a compliant septic system.
2. Installation of an approved septic system prior to the start of operation.
3. Establishment of a 911 address number and placement of a physical sign for emergency services.
4. Applicant shall abide by all other applicable standards including but not limited to the Minnesota Department of Health.

Correspondence received: Yes

Mary Cubahar

Rosemary Phillips

James Wallace and Maryellen Lind and Kevin Lind

Beth Thieschafer Sieben

These letters may be viewed in full at the Planning and Zoning office upon request.

Public comment:

Aprile Barton, had her husband pass out a handout to the board and staff, and he gave up his 3-minutes to her. She then read it completely. This letter may be viewed at the Planning Zoning office, in full, upon request, signed by Aprile and David Barton and Orlin Lesetmoe. She also submitted photos of the current water flow across her property and two others before entering the lake.

Adam offered to make copies for the board members and enter it all for public record.

Susette Smith, 11729 County 47, Grey Eagle read her presentation letter.

Ben Hinnenkamp, his property is right to the North of proposed campground, and state law says you cannot discharge a firearm with 500 feet of a campground. All firearms have to be cased within 200 feet of a campground, and bows have to be unstrung. His family pheasant hunts, the switch grass along side of it and it's the only duck pond they have and it's a good duck pond. That is within the setbacks and he is not willing to give up ten to fifteen acres of his hunting land to a campground that is approaching his property. He has a copy of the state law with him. His grandkids like to play up there and he's concerned for their safety. They like to take the golf cart up to his shed and it will become very unsafe. The trespassing issue, he doesn't want any of the camp ground people on his property. There is nothing proposed so how are they going to keep trespassers off his property at all? To address his concerns, he would like a 200 ft. setback from his property for campgrounds, so he does not lose all his hunting rights, and also a security fence around the campground, with a six-foot chain-link fence with one gate out to the road for safety. Supposed to be a seasonal campground so, roughly six months, all of the campers should be gone. Shouldn't be campers sitting in this campground if they are seasonal. Would like to invite any of the board members out to his property to look back at the campground as it might look a little bit different from the top down than up at it.

Jeremy Freudenrich, stated he lives across the road from the campground. Heard a lot of negative, would like to talk about the positive. With it being seasonal, and seventeen spots, it's not like there is going to be, riff-raff in and out of it. He thinks what it is going to do is provide a spot for people who live around the lake and their families to have a nearby campground and a good opportunity for people on the lake. There are other campgrounds on the lake, but it is just weekend camping and you can't leave your camper there. As far as the road where it is, with only seventeen campers, nobody is going to go in and out, in and out with a camper, and maybe only seventeen extra vehicles on a County road, he didn't think it would make a difference.

Sherry Gangl, she and her daughter have the property south of the proposed campsite area. Her daughter did not get the notice, but she did and is here, and has many concerns. She stated they do not have a house on the property and her main concern is trespassing. They have a lot of wildlife that they enjoy and hunting and are concerned about that. Concerned about the blind spots. There are two ponds on this site, and wondered if they are going to stay there and is it going to affect the drainage of the sewer system? Nice quiet area and have our lake people who come in the summer and a lot of people don't go the speed they are supposed to. They will be on a really bad blind spot.

Collette Hendrickson, she and her husband live a little bit South from here. Has concerns for the road, very hard to get on and off the road with pontoons and stuff. When you are down by the Rock tavern, you have to really be careful of the traffic, people are constantly going across for parking, on weekends, motorcycles that go by on bar runs, their property is the last person where the water enters into the lake. That property has

always got water sitting after it rains hard. They just put new culverts in and water has backed up to the neighboring property before it continues into the lake, very concerned with anything that will keep that water from flowing or cause a faster flow of that water.

Roger Janak lives across the street from the proposed campground, and lives at the end of the drive where the water enters in, right next to Hendricksons, has the same concerns, but does want to ask about the tier two in the County and do we allow tier two?

Adam, yes, there is non-riparian development all over.

Roger continues, how can we approve some and some not? Look up at the "Hub". There is tier two that they do not allow back lots.

Adam stated he is not familiar with that area and does not know why they were not allowed to develop back there.

Roger, there is no lake access here, there's no access on the East side. There is a campground and an access on the West side that they could go. They say that the campers won't be in and out of there, what is the business model there? You are going to have seventeen people in there and they will stay the entire season? Or, are going to keep those campers there all year around? Or, for \$2,500.00 you can buy this spot and keep it there all year around. He stated he, as a resident over there, has to look at those campers from his property, if that's the case. Sounds like it is an in and out thing, and his concern is if this is going to be a year around thing and people will be leaving their equipment there. Does not think this has been addressed. He has the same concerns as everybody else, so he won't go into all of that again.

Julie Tschida, states she is not a speaker but wanted to put her name down and wants to say they are down the road, and have all the same concerns as everyone else in the room. Jeremy lives two miles down the road and does not have to see all of this.

Linda Westbrook, her cabin is half mile south and concerned about the traffic. The cabins along there are very close to the road. There are semis and motorcycles down that road, and nobody goes 45 mph and wanted to express that concern.

On Site Visit Report by Ken Hovet: This report may be viewed in full, upon request, at the Planning and Zoning office.

Roger stated he sees people by property and move to the country for quiet and don't want noise. When somebody moves in and makes noise they don't want all that noise out here. You want it quiet for yourself and don't want somebody in move in and make noise in your area. Has a question for Adam, is there a drain field or just holding tanks out there?

Adam, holding tank system plan now.

Roger stated so, there should be no sewage ever getting to the lake or doing harm. They will have electricity and water out there, so no problem with people running generators out there. State campgrounds have a rule at 10:00 pm people have to turn their generators off.

Ken stated it is a beautiful spot for a campground. They have more work to do leveling out the spots. You don't need lake access to have a camp ground. There are a lot of camp grounds that don't have a lake within ten miles of it. People come in and they enjoy it. Can't think of a good reason to deny this. Suggested to table it for a month to digest what people had presented, or not.

Lloyd asked if she will have showers and everything there?

Dawn, yes. She explained they live on the South end of Big Birch lake, and are members of Big Birch Lake Association and her husband is a member of the Lion's Club, and have friends all around the lake. Her husband's family has been around that lake since the thirties. They bought this property because it was a beautiful piece of property. Asked Adam to show the site photo. Not sure if the public understands the demographics of what is being proposed is literally families on the lake that have been taxed out, aged out and can't do the maintenance and want to come back and be in the area and near their families. They have relatives that come up every summer and stay with them, and it would be a blessing to her to be able to put them up all summer in that seasonal spot. First of all, they would have a ten-year rule she would approve for every camper in that spot. It would have to be really nice. They would have to have standards for age, appearance, the whole thing, they would be required to mow their own lawn and she would mow, as well. Looking at the creek on the East side, they are not touching any of that land, as they hunt back there, they have trails, it is all wooded. The front part by the road is where the campers are going to go, they are not going to go anywhere near the back. She did look up MN statutes for hunting and this is a seasonal camp site from May or June through the end of September, then every body is out. There doesn't seem to be anything accept 200 yard or foot unloaded cased. Considering where the cut off for the tiers are, she stated they hunt that land. They would be doing, as soon as possible fencing for privacy. Anything that wouldn't have shielding with trees would have fencing so there wouldn't be any question about property boundary. The demographic is going to be a much older demographic than what people think. She didn't think she would allow anyone under the age of fifty, and would think they would have to have some connection to the lake before she would allow them in there. Just wanted them all to know that. Talking about between ten and seven, talking about no children, talking about age limits, talking about hiring a property management company to do back ground checks on some of these people if they don't know them or their families on the lake. Considering the seventeen seasonal camp ground sites, which is the lowest she has ever heard of for camp sites in all her life, and she has stayed at sites when she was younger and has never seen any so low. The reason they went so low in number is they wanted to respect the community and the quiet of the community. The concern about trailers in and out is absolutely out of the question. Once they are in there, they are in there.

Jim had to remind the public the "public comment" is closed.

Typically, on a seasonal campground, people pull all their slides in and winterize their stuff and leave them there and like she said, they are willing to put a fence up. She wanted to share what her intension was, because this is not a money-making thing. Just not going to make a bunch of money on seventeen sites. Honestly knows of a lot of people on the lake who have asked, because she has a cabin rental on the lake and

several have asked to please rent the cabin for the season. She is not willing to do that as she uses VRBO and it is a week at a time. They had to sell their homes and just want to come back to the lake. They are down in Arizona or wherever for the winter and just want to come back for the summer to the lake and their families. Just want there to be clarity for the community as to what her intentions are. She let all of the bar owners and everyone out there know. She gave them her cards, she encouraged them to call if they had questions. Knew there would be some opposition, but really didn't expect this.

Andy asked about the site excavation and leveling, and if she has figured out what all that has to be?

Dawn, yes, she has figured and there will be site paths.

Andy, and you have figured for the drive, as well and probably have to bring in some fill for the drive.

Dawn, rock probably, just to make that driveway solid.

Andy, how drastic is that excavation and is it going to affect drainage and do you know how? Was it evaluated?

Dawn, yes, she considered all of that into it. It is very flat out there. A board member and Adam were at the site saw how flat. There will be very minimal impact, a lot of leveling for the site pads will be.

Andy, but you are not changing the overall topography?

Dawn, no, they are not changing the overall topography and where the building will go, some leveling, but other than that, very minimal. The well, the water source will be located in the zone where they can't do anything else, and that will be the best spot for water.

Andy, will there be any change to the outside of the snaked area around where the sites are going to be? Will it be mowed real close or will you maintain the native grasses, trees, brush?

Dawn stated there is a mix of native grasses, deep rooting grasses and there is going to be a lot of land scaping work.

Andy stated where he is going with this is there seems to be a lot of concerns about water and if you are maintaining the current vegetation and the current drainage pattern, there doesn't seem it is going to change from the current water problems now.

Dawn, it may improve and they are planning a lot of deep-rooted grasses and a lot of screening with grasses trees, native plants, flowers, a lot of landscape work, rock work things like that so we hold that topography together.

Roger, you put in a well, sewer and electric, it's going to be a long time before you see any profit after all of that.

Dawn, luckily her son runs heavy equipment and her brother has installed all of this before for campgrounds, so kind of has an in, and if they get approval. Stated she didn't think she was going to get rich off of this.

Jim stated he was concerned about what the gentleman brought up about the hunting, and if we could find out for sure what the law says on this.

Dawn stated she just looked it up.

Adam stated obviously he thinks this should be tabled here tonight. He can definitely look into that and he had been taking notes of comments made and think there are a couple of requests from the applicant you could see including site prep plans and the campground rules to review at the next meeting, but also environmental review requirements, we could talk to Loren Fellbaum on the County road and have that prepped for the next meeting, if that is the direction you want to go.

Ken motioned to table Roger seconded.

Roll call vote commenced as follows:

Board member	Vote (yes or no)
Andy Watland	Yes
Roger Hendrickson	Yes
Ken Hovet	Yes
Lloyd Graves	Yes
Jim Pratt	Yes

Motion carried. Jim noted the application will be table it until June 5, 2025 for more information, with public comment again.

AGENDA ITEM 9: Comprehensive Plan Discussion

Adam stated we have had three kick off meetings already. It will be June or July to meet with the actual committee and the plan is to bring a section at a time. We will not be able to approve them until after we have a 60-day comment period. We can review it a section at a time, 8 sections, provide comments as we are developing it and would like one board member to participate as a liaison and thinks Ken would be the perfect person. Ken offered to relay and communicate from the meetings, and doesn't prevent others from coming.

Ken, any chance of the first three weeks of June as he will not be available.

Roger offered to make sure he went as an alternate.

Jim agreed there should be one of our board members at those meetings.

Adam stated around 12 to 18 people at those meetings, same people attending a total of five meetings, every other month, and they will write planned sections in there and we will just review them as we go, as part of the board packet, and we will not be overwhelming you in the end. Should take about a year.

Roger motioned to adjourn and Lloyd seconded. Voice vote, no dissention heard. Motion carried and meeting adjourned at 8:23 PM.



WHERE THE FOREST MEETS THE PRAIRIE

Todd County

• MINNESOTA • EST. 1855 •

PLANNING & ZONING
215 1st Avenue South, Suite 103
Long Prairie, MN 56347
Phone: 320-732-4420 Fax: 320-732-4803
Email: ToddPlan.Zone@Co.Todd.MN.US

Received
APR 03 2025
JLL 4/9/25
Todd County Planning
& Zoning
Stewartville, MN 56438

CONDITIONAL USE PERMIT APPLICATION

Applicant Mark Johnson Mailing Address 441 8th Street West
Site Address 23576 200th Street, Long Prairie, MN 56347
Phone Number [REDACTED]

Property Owners Name & Address (if not applicant) Steven V Goertz Tammy L Goertz
23517 202nd St, Long Prairie, MN 56347

Parcel ID(s) 21-0007702 Township Round Prairie Lake/River Name _____
Zoning District (circle one): 21-0007703 AF-1; AF2; R-2; R-10; UG; RT; (Comm); L-M; or Shoreland.

Full and Current Legal Description(s) see attached
(attach if necessary)

Current tax statement or other proof of ownership attached () yes () no

Measurement of land involved: Width _____ Length _____ Acres 10.87/2.34

Septic System: Date installed NA Date of latest Compliance Inspection _____

Is an upgrade needed: () yes () no

Site accessed by: (x) public road () easement

If easement, is the easement legally recorded? () yes () no

Detailed Explanation of Request:

We plan to build and operate a functional shooting range.

Did you meet with the Township Board to present the Application for Conditional Use Permit?

Yes X No _____ Date of the meeting: 9/9/24

[Signature] Round Prairie
Optional Township Board Signature

[Signature]
Chairman
Board Position

Receipt #2025-0099

CUP # 2025-007

Will the request create an excessive burden on the existing roads or other utilities? **Explain**

no. Property will include parking area for customers and employees.

Is the requested use compatible with the surrounding properties? **Explain**

Yes. safety protocols will remain in place including high dirt berms, no explosive devices, noise ordinance, and training.

Could the use significantly depreciate near-by properties? **Explain**

no. The range will be a great asset to the community, but we will have a tree line and privacy to be unseen by neighboring properties and roadways.

Will the structure and the use have an appearance that will not have an adverse effect on near-by properties? **Explain**

Yes. with the tree line, berms, wooded area and the neighboring properties being far enough away, there will be no noise or safety issues. The building, ranges and berms will be hidden by the tree line.

Will the requested use create an adverse affect on near-by properties because of noise, odor, glare, hours of operation, or general unsightliness? **Explain**

no. we will have set hours of operation, and be effected by hours of daylight. The berms and tree line will be blocking the fire lines.

RETURN APPLICATION, SITE PLAN, SEWER INFORMATION AND ANY ADDITION INFORMATION, AND FEE TO:

Todd County Planning & Zoning Office
215 1st Ave South, Suite 103
Long Prairie, MN 56347

Fee: \$500.00 or After-the-Fact Fee: \$1,000.00 payable to "Todd County"

Only complete applications may be placed on an agenda

****A PARCEL IN JOINT OWNERSHIP MUST PROVIDE WRITTEN SIGNATURE OF ALL OWNERS****

Mark Johnson

Applicant Name Printed

[Signature]

Signature

03/30/25

Date

Tammy L Goertz
Steven V Goertz

Property Owner Name Printed

[Signature]

Signature (If different than applicant)

3-30-25

Date

A Conditional Use Permit expires and is considered invalid unless they are substantially completed within thirty-six months of the date the CUP is granted by the County Board (Section 5.05(N) of the County Zoning Ordinance).

AUTHORIZED AGENT FORM

I hereby authorize Joshua Goertz or Mark Johnson to act as my
authorized agent for all public hearing(s) and legal relations with this application on
property located at:

Site address 23576 200th street, Long Prairie, MN 56347

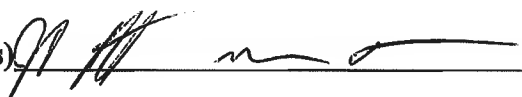
Section # 6 Township Name Round Prairie

Parcel Number(s) _____

Property Owner(s) Name(s) (print) Steven V Goertz Tammy L Goertz

Property Owner(s) Signature(s)  Date 3-30-25

Authorized Agent(s) name(s) (print) Joshua Goertz Mark Johnson

Authorized Agent(s) Signature(s)  Date 3-30-25

Authorized Agent Phone Number [REDACTED]

Authorized Agent Email [REDACTED]

Site Plan

Outline how the intended use will be situated on the property including buildings, parking areas, signage, material storage areas, etc.

*see attached

Property ID number: 21-0007702

Property Description:

SECT - 06 TWP - 128 RANG - 33

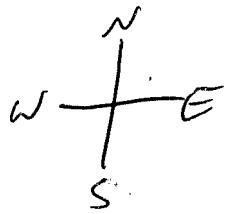
ALL THAT PORTION OF BURLINGTON NORTHERN RR

CO 100 FT ROW OVER AND ACROSS SW4 SE4 EXC

THE N 260 FT.

1 inch = 100 FT.

curb = 8' x 8' BIRM



N 88°36'57" E 556.36

N 04°52'18" E 342.67

S 86°24'36" E 140.36

TRACT "A"

0.87 ACRES +/-

300' x 200'
open space

150' x 30'
Archery Range

600' x 30'
Rifle Range

SW 1/4

150' x 30'
Elite Members Range

150' x 30'
Pistol/AR Range

100' x 100'
Police/Competition Range

75' x 30'
open Range

75' x 30'
classroom Range

Shaded seating areas (no loaded firearms)
Driveway

S 03°34'21" W 775.03
WESTERLY RIGHT-OF-WAY LINE
ABANDONED BURLINGTON NORTHERN RAILROAD

Parking

Toilets

Toilets

Toilets

S 1/4 CORNER
SECTION 6-T128N-R33W

SOUTH LINE
SW 1/4 SE 1/4

S 88°37'03" W 267.21

S 88°36'54" W 350.49

N 03°15'25" E 564.82



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Gun Range Immunity: An Argument against Legalized Nuisance and Non-Governmental Takings

Match Dawson

St. Mary's University School of Law, mdawson@stmarytx.edu

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GUN RANGE IMMUNITY: AN ARGUMENT AGAINST LEGALIZED NUISANCE AND NON-GOVERNMENTAL TAKINGS

Match Dawson*

ABSTRACT

People exhausted by the increasingly fast-paced life and loud noises of the big city will often seek refuge in the solitude of quiet country living. Perhaps naïve, the romantic thought of waking to the scenic views of an early morning sunrise burning an orange hue across the pasture or the sweet sounds of a Bachman's sparrow singing from the birdhouse placed neatly within view of the kitchen window is abruptly squashed when rural landowners fall victim to the excessively loud sport of outdoor firearm shooting.

Protecting rural landowners' rights to the quiet use and enjoyment of their property has been a bedrock of American jurisprudence for more than two hundred years. State legislatures, however, saw fit to erode this once revered protection by seemingly favoring the advancement of corporate enterprise and urban growth through the passage of immunity laws that provide gun range owners with legal protection against noise abatement claims, thereby leaving landowners desperate for relief from the unwavering sounds of war that such gun ranges produce. Viewed positively, immunity statutes make excessive noise from a gun range a legalized nuisance. Viewed critically, immunity statutes result in the state sponsoring of non-governmental actors freely wielding unconstitutional private takings against rural landowners.

This Article discusses issues faced by rural landowners, described herein as "disregarded victims," who were living in their homes or operating a business

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prior to a gun range establishing a nearby operation. This Article specifically argues for legislative reform to curtail the immunity so generously afforded to gun range operators and to provide a justiciable pathway for existing rural landowners to seek noise abatement relief through private claims.

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INTRODUCTION

For people living in urban environments, it is commonplace to hear a wide variety of city noises, ranging from loud construction sites and Saturday morning lawn mowers to emergency sirens. For many, these sounds are a comfort of home. But others exhausted by the increasingly fast-paced life and loud noises of the big city will often seek refuge in the solitude of quiet country living. Perhaps naïve, the romantic thought of waking to the scenic views of an early morning sunrise burning an orange hue across the pasture or the sweet sounds of a Bachman's sparrow singing from the birdhouse placed neatly within view of the kitchen window is abruptly squashed when a rural landowner realizes that this way of life is under attack by the excessively loud sport of outdoor firearm shooting.¹

Country living and recreational firearm use have a long and relatively positive relationship.² It is common for rural landowners to hear occasional gunfire in the distance that tends to increase during open hunting seasons. The pressing issue is not concerned with a solitary neighbor's occasional recreational use of firearms but rather the resulting harms incurred when a gun range moves to rural areas where landowners have been rightfully enjoying the peace and quiet that they so desperately sought.

For those unacquainted with outdoor sport shooting, it is a common misconception that a gun range merely consists of—as it did fifty years ago—a bare patch of rural land, a small ticket counter, and a single self-serviced range where gun enthusiasts go to fill the time and blow off steam. Today, the modern gun range has evolved to be a well-oiled and technological machine that provides options for every kind of shooter ranging from handgun users and long-distance marksmen to professional ballistics training.³ Some of these modern day ranges

1. See generally David G. Cotter, *Shooting Sports Versus Suburban Sprawl-Is Peaceful Coexistence Possible?*, 15 T.M. COOLEY L. REV. 21 (1998) [hereinafter Cotter, *Suburban Sprawl*] (discussing the tension between rural landowners, outdoor shooting ranges, and nuisance law, specifically exploring Michigan authorities).

2. See generally David G. Cotter, *Outdoor Sport Shooting Ranges: An Endangered Species Deserving of Protection*, 16 T.M. COOLEY L. REV. 163 (1999) [hereinafter Cotter, *Outdoor Sport Shooting*] (discussing various legal protections for outdoor sport shooting ranges).

3. See, e.g., THE RANGE AT AUSTIN, <https://therangeaustin.com> (last visited Oct. 25, 2023) (advertising a state-of-the-art gun range and shooting sports facility that provides users with options ranging from machine gun rentals to tactical urban combat training); SHOOTERS WORLD, <https://shootersworld.com> (last visited Oct. 25, 2023) (advertising a membership-based gun range facility that provides members with three world class locations and provides

even provide tactical training resources for local law enforcement.⁴ Gun range membership levels can be as small as just a handful of members⁵ while other clubs may have hundreds.⁶ Many gun ranges will regularly host national and international shooting competitions, such as skeet shooting, long-range rifle shooting, and assault rifle speed drills.⁷ One can imagine the volume of sound emanating from a gun range while local police engage in urban combat drills with fully automatic weapons. Some of these events record up to 125 firearms discharged every twelve minutes,⁸ culminating in thousands of rounds fired over the course of a multi-day competition.⁹

Since the turn of the century, outdoor gun range owners have faced increasing, and understandable, legal challenges due to environmental issues, safety concerns, and nuisance claims.¹⁰ Much of the opposition directly results from rural development¹¹ and the seemingly never-ending expansion of suburbs across the United States (U.S.).¹² Part I evaluates the most common causes of

services ranging from private firearm training to advanced ballistics); *see also* Aaron C. Dunlap, *Come on Feel the Noise: The Problem with Municipal Noise Regulation*, 15 U. MIA. BUS. L. REV. 47, 62 (2006) (discussing various sources, including shooting ranges, and challenges regarding local noise regulation in the United States).

4. *See* Kolstad v. Rankin, 534 N.E.2d 1373, 1375 (Ill. App. Ct. 1989); Woodsmall v. Lost Creek Twp. Conservation Club, Inc., 933 N.E.2d 899, 902 (Ind. Ct. App. 2010).

5. *See* Minn. Pub. Int. Rsch. Grp. v. White Bear Rod & Gun Club, 257 N.W.2d 762, 774 (Minn. 1977).

6. *See* Racine v. Glendale Shooting Club, Inc., 755 S.W.2d 369, 371 (Mo. Ct. App. 1988); Anne Arundel Cnty. Fish & Game Conservation Ass'n v. Carlucci, 573 A.2d 847, 848 (Md. Ct. Spec. App. 1990).

7. *See* Racine, 755 S.W.2d at 371–72; *see also* Dunlap, *Feel the Noise*, *supra* note 3, at 62.

8. *See* Davis v. Izaak Walton League of Am., 717 P.2d 984, 985 (Colo. App. 1985); Cotter, *Suburban Sprawl*, *supra* note 1, at 26.

9. *See, e.g.,* Smith v. W. Wayne Cnty. Conservation Ass'n 58 N.W.2d 463, 467 (Mich. 1968) (describing a big bore tournament in which eight-member teams would each discharge over three hundred rounds every hour); *see also* Cotter, *Suburban Sprawl*, *supra* note 1, at 28–34 (discussing Smith).

10. *See* Cotter, *Outdoor Sport Shooting*, *supra* note 2, at 163; *see also* Twp. of Ray v. B & BS Gun Club, 575 N.W.2d 63, 65–67 (Mich. Ct. App. 1997) (discussing both the historical development of Michigan's Sport Shooting Ranges Act that protects gun range immunity from certain nuisance actions, and the lack of relevancy of plaintiff's environmental allegations due to the repeal of the Environmental Protection Act of 1970).

11. *See* Cotter, *Suburban Sprawl*, *supra* note 1, at 21.

12. *See* Jed Kolko & Shawn Bucholtz, *America Really is a Nation of Suburbs*, BLOOMBERG (Nov. 14, 2018), <https://www.bloomberg.com/news/articles/2018-11-14/u-s-is-majority-suburban-but-doesn-t-define-suburb>. (presenting evidence that the United States is

action that landowners bring against gun range owners in their pursuit to find meaningful relief.

Although multi-generational American jurisprudence has long held that a landowner has an unalienated right to the enjoyment of their property that is free from defect and noise, numerous state legislatures seemingly favor the advancement of corporate enterprise and urban growth. Many states therefore maintain protective laws that insulate gun range owners from a wide range of criminal and civil actions and consequentially destroy the rights afforded to landowners for more than two hundred years.¹³ Although a significant number of gun ranges have been impacted by court injunctions due to violations of state or local ordinances,¹⁴ Part II examines broader immunity laws and how violations of state or local ordinances serve only as a temporary speed bump easily overcome once a gun range satisfies compliance requirements.

Setting aside the current political ideologies regarding firearms and the oft-argued constitutional rights afforded by the Second Amendment,¹⁵ the conflict between gun range owners and their adjacent landowners is an ever-present tug-of-war between two competing interests with each pursuing their rights to use their respective property as they best see fit.

In fairness, both sides appear to have legitimate arguments. From the gun range owner's standpoint, ranges provide a benefit to the community in the form of legal recreation and training facilities—for both public and private use—and have a long tradition in the fabric of American history. However, gun range owners, whether intentionally or not, subject neighboring landowners to negative external obsolescence that can result in noise pollution, annoyance, fear of potential bodily harm, damage to property, trespass, and interference with a landowner's quiet use and enjoyment of their property, which all lead to depressed property values.

now majority suburban); see also Kim Parker, Juliana Menasce Horowitz, Anna Brown, Richard Fry, D'Vera Cohn & Ruth Igielnik, *What Unites and Divides Urban, Suburban and Rural Communities*, PEW RSCH. CTR. (May 22, 2018), <https://www.pewresearch.org/social-trends/2018/05/22/demographic-and-economic-trends-in-urban-suburban-and-rural-communities> (finding that predominantly rural counties gained moderate to significant population growth since the 2000 U.S. census).

13. See *infra* Section II.A.

14. See, e.g., *Fraser Twp. v. Linwood-Bay Sportman's Club*, 715 N.W.2d 89, 96 (Mich. Ct. App. 2006) (issuing an injunction to enjoin the use of handguns and rifles at a gun range); see also Cotter, *Suburban Sprawl*, *supra* note 1, at 22 (stating “[n]oise nuisance [litigation] is by far the most common attack leveled at shooting ranges”).

15. U.S. CONST. amend. II (“A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”).

When viewed through the perspective of a neighboring business owner, loud sounds—such as those produced by a nearby gun range—can lead to increased employee stress, interference with productivity, reduced concentration, and an increase in workplace accidents.¹⁶ Take, for example, a child daycare operating for years before a new gun range opens on an adjoining lot. Not much mental wrangling is needed to imagine how a parent would be concerned about the health and safety of their child playing outside as the sound of constant gunfire echoes in the immediate distance and thus, to no fault of the daycare, decides to place their child with a competing daycare business. Part III addresses this dilemma further by discussing the problems associated with noise regulation and its failure to provide appropriate measures of relief for rural landowners negatively impacted by a nearby gun range's operation.

Throughout this Article, these rural landowners are referred to as “disregarded victims” to illuminate the arguably intentional act of state legislatures to expressly eliminate the legal rights of existing landowners to seek any meaningful redress through their passage of gun range immunity statutes. The negative consequences that landowners face due to the enactment of gun range immunity laws do not appear, on their face, to be a simple oversight by state legislators. While the imposition of these harsh new realities onto landowners may not be intentional, the resultant loss of serenity by so many living in rural areas is seemingly a casualty of directives that are instead focused on state legislatures' desires for business growth, corporate tax revenue, and urban expansion.¹⁷

Although the discussion of whether a gun range operation constitutes a private nuisance is not one of first impression, research seems to suggest that the issue has largely been confined to the challenges presented by urban sprawl¹⁸—that is, the issue of increasing urban expansion finding itself upon the doorstep of an *existing* rural gun range.¹⁹ In contrast, this Article discusses the frustrations

16. See *Occupational Noise Exposure*, OCCUPATIONAL SAFETY & HEALTH ADMIN., <https://www.osha.gov/noise/health-effects> (last visited Oct. 25, 2023).

17. See ROBERT W. WASSMER, INFLUENCES OF THE “FISCALIZATION OF LAND USE” AND URBAN-GROWTH BOUNDARIES, CAL. S. OFFICE OF RESEARCH 24 (Jan. 2002) (discussing how the fiscalization of urban land use drives legislative policymaking focused on increasing tax revenue).

18. See David Snyder, *Gun Ranges' Slow Retreat*, THE WASH. POST (Oct. 1, 2001), <https://www.washingtonpost.com/archive/local/2001/10/01/gun-ranges-slow-retreat-3487260a-1518-46b7-a4e6-55a7ced6b81f/>.

19. See *Urban Sprawl*, BRITANNICA, <https://www.britannica.com/topic/urban-sprawl> (last visited Oct. 25, 2023) (“[Urban sprawl is defined as] the rapid expansion of the geographic extent of cities and towns, often characterized by low-density residential housing,

and issues experienced by existing rural landowners who, without receiving prior notice or providing their informed consent, involuntarily became neighbors to a newly established gun range. Part IV reviews selected cases that illustrate common challenges rural landowners endure when a gun range moves in next door and *brings the nuisance* to them.

Adopting the perspective of a disregarded victim, Part V provides potential solutions by arguing the need for legislative reform that is aimed at avoiding the issues commonly associated with non-governmental actors exercising an unconstitutional takings power. Legislative reform would provide justiciable remedies to those already living on rural land who, without receiving just compensation for their injuries, had their quiet solitude violently interrupted by the unwavering sounds of war emanating from a newly established neighboring gun range. Such legislative reform would both functionally provide a pathway for disparaged landowners to seek redress under traditional causes of action to ensure their constitutional property rights are protected while also protecting gun range owners' abilities to continue operating their respective businesses.

I. EVALUATION OF CLAIMS

A. *Types of Claims*

Litigation against gun range owners is most commonly brought for violations of state or local zoning ordinances,²⁰ such as failure to install an appropriate backstop to prevent bullet trespass onto adjacent properties²¹ or breach of environmental laws related to lead use restriction.²² In some instances, the lawsuits result in the permanent closure of the gun range,²³ a win for the landowner. However, permanent closure seemingly stems more from the gun range owner not having an appetite for continued litigation as opposed to a violation that would actually result in a permanent bar against gun range

single-use zoning, and increased reliance on the private automobile for transportation. Urban sprawl is caused in part by the need to accommodate a rising urban population; however, in many metropolitan areas it results from a desire for increased living space and other residential amenities.”).

20. See *Kitsap Cnty. v. Kitsap Rifle & Revolver Club*, 337 P.3d 328, 340 (Wash. Ct. App. 2014).

21. See *Landolt v. Glendale Shooting Club, Inc.*, 18 S.W.3d 101, 106 (Mo. Ct. App. 2000); *Racine v. Glendale Shooting Club, Inc.*, 755 S.W.2d 369, 371 (Mo. Ct. App. 1988).

22. See *Citizens for a Safe Grant v. Lone Oak Sportsmen's Club, Inc.*, 624 N.W.2d 796, 806 (Minn. Ct. App. 2001).

23. See *Kolstad v. Rankin*, 534 N.E.2d 1373, 1374–75 (Ill. App. Ct. 1989).

activity.²⁴ For those living next to or near a gun range, private lawsuits, although commonly unsuccessful, generally assert claims for private nuisance,²⁵ trespass,²⁶ and private takings.²⁷ This Article examines and illuminates the deficiencies of each cause of action in terms of providing disregarded victims any form of meaningful relief.

1. Public v. Private Nuisance

Anyone who has experience in litigation knows that expenses can quickly spiral out of control, and for those who have not been party to lawsuits, this reality quickly becomes a hard-learned lesson. Many aggrieved landowners who wish to avoid drawn-out and expensive litigation will commonly seek refuge with their local governing officials first, demanding that the state and local noise ordinances be enforced.²⁸ Governmental agencies seeking to enforce such laws do so by criminal prosecution²⁹ or civil action³⁰ dependent on existing and relevant noise control laws. The most common statutes³¹ enjoyed by gun range

24. See Cotter, *Suburban Sprawl*, *supra* note 1, at 22.

25. See *infra* Section I.A.2.

26. See *infra* Section I.A.3.

27. See *infra* Section I.A.5.

28. See Cotter, *Outdoor Sport Shooting*, *supra* note 2, at 166. However, many states expressly prohibit local government from enacting noise ordinances related to gun ranges. See *infra* Part II (discussing state action that protects gun ranges from noise regulation and litigation).

29. See *State ex rel. Providence v. Auger*, 44 A.3d 1218, 1223 (R.I. 2012) (affirming lower court holding that defendant was guilty for violating city noise ordinance relating to radios, televisions, and similar devices); *N. Country Sportsman's Club v. Town of Williston*, 170 A.3d 639, 641 (Vt. 2017) (discussing township-issued citation to defendant gun range operator for violating local noise ordinance prohibiting "excessive or unreasonably loud noise that disturbs the peace of neighbors").

30. See *Barris v. Stroud Twp.*, 257 A.3d 209, 214–15 (Pa. Commw. Ct. 2021) (discussing landowner's appeal of lower court's dismissal of claims against township that determined landowner's use of their property as a gun range violated a local ordinance prohibiting the unauthorized discharge of a firearm).

31. See ALA. CODE § 6-5-341 (2023); ARK. CODE ANN. § 16-105-502 (2023); COLO. REV. STAT. § 25-12-109 (2022); GA. CODE ANN. § 41-1-9 (2022); IDAHO CODE § 55-2601 (2023); IND. CODE § 14-22-31.5-6 (2022); IOWA CODE § 657.9 (2023); LA. STAT. ANN. § 30:2055.1 (2023); ME. STAT. tit. 17, § 2806 (2023); MD. CODE ANN., CTS. & JUD. PROC. § 5-403.1 (West 2022); MONT. CODE ANN. § 76-9-101–105 (2021); NEV. REV. STAT. § 40.140 (2021); N.H. REV. STAT. ANN. § 159-B:2 (2023); N.J. STAT. § 13:1G-21.2 (2023); N.C. GEN. STAT. § 14-409.46 (2022); OKLA. STAT. tit. 63, § 709.2 (2022); OR. REV. STAT. § 467.131 (2022); 35 PA. STAT. § 4501 (2022); TENN. CODE ANN. § 39-17-316 (2022); TEX. LOC. GOV'T

owners provide for nearly complete immunity from criminal prosecution as well as civil liability based on noise levels or, more generally, noise pollution.³²

If the landowner cannot get adequate assistance from their local officials, they can bring a lawsuit against the gun range owner for noise abatement under theories of public and private nuisance.³³ Public nuisance claims assert a violation of state or local noise ordinance laws that “affect[] an entire neighborhood or community.”³⁴ “Private nuisance affects only a single person or a determinate number of people”³⁵ and is predicated upon noise produced by a gun range that impairs the landowner’s quiet use and enjoyment of their property.³⁶ As discussed further in Section II.A, the most common immunity statutes protect gun range owners against private lawsuits based on noise nuisance as well as legal action by local officials.

While the sonic boom of a .50 caliber rifle or the sound of a belt-fed .308 light machine gun might be sounds of comfort to those enjoying the sport of firearm shooting, these sounds are arguably tantamount to nails scraping down a chalkboard for rural landowners living adjacent to the outdoor gun range, serving as the catalyst for litigation against gun ranges.³⁷ But despite the constant annoyance that outdoor gun ranges produce, gun range owners easily shield themselves under the generosity of legislative immunity and escape liability for noise-based claims.³⁸

2. Private Nuisance

When a landowner “is menaced by noise, vibrations, or ambient dust, smoke, soot, or fumes, the possessory interest implicated is that of use and enjoyment, not exclusion, and the vehicle through which a plaintiff normally should seek a remedy is the doctrine of nuisance.”³⁹ The majority of private nuisance actions

CODE ANN. § 250.001 (West 2021); UTAH CODE ANN. § 47-3-202 (West 2022); W. VA. CODE § 61-6-23 (2023); WYO. STAT. ANN. § 16-11-102 (2023).

32. See Cotter, *Outdoor Sport Shooting*, *supra* note 2, at 166.

33. See *id.* at 167.

34. Wernke v. Halas, 600 N.E.2d 117, 120 (Ind. Ct. App. 1992).

35. *Id.*

36. *Id.*

37. See Cotter, *Suburban Sprawl*, *supra* note 1, at 21–22.

38. See *infra* Section II.

39. Adams v. Cleveland-Cliffs Iron Co., 602 N.W.2d 215, 222 (Mich. Ct. App. 1999).

The court’s recognition that a proper claim regarding the damage to a landowner’s use and enjoyment of their property rests in “the doctrine of nuisance” arguably serves to demonstrate the absurdity of states’ legislation barring landowners from bringing nuisance suits against gun range owner defendants. *Id.*

against gun ranges are based on noise and its negative effects on neighboring properties,⁴⁰ mainly asserting that gun range owners should be responsible for compensating the aggrieved landowner even when gun noise does not exceed legal limits.⁴¹ This argument is premised on the notion that gun noise interferes with a nearby landowner's right to peacefully enjoy their land,⁴² thereby creating an unreasonable interference with the private use of their affected property. For example, ranchers have complained of gun range noise causing stress and injury to their animals because gun shots can cause animals to panic and run into walls or fences.⁴³

In order for noise to be reduced to an actionable claim of nuisance, the party asserting nuisance must establish a "condition that substantially interferes with the use and enjoyment of land by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities attempting to use and enjoy it."⁴⁴ Courts will consider a number of factors when analyzing a nuisance claim, including the land usage involved in the interference, location, character of the affected neighborhood, and to what degree others are engaged in similar activity.⁴⁵ Additional factors include the extent, degree, frequency, and duration of the interference.⁴⁶ After considering these factors, courts will weigh them against the interests of the public and community at large.⁴⁷ The two main requirements of nuisance claims include (1) substantial interference and (2) an unreasonable discomfort or annoyance.⁴⁸

Requiring *substantial* interference arguably demonstrates legislators' attempts to make it clear that nuisance regulation is not intended to protect

40. See discussion *infra* Section V.

41. See discussion *infra* Section II.A (discussing how Oklahoma's statute may lead to permanent hearing loss).

42. See discussion *infra* Section V.

43. See *Little v. Winborn*, 518 N.W.2d 384, 385 (Iowa 1994); *In re Wade*, 566 S.W.3d 375, 378 (Tex. App. 2018) (regarding plaintiffs' allegations that discharge from a nearby gun range frightened their horses); Carlos Cristian Flores, *Oconee Co. Residents Raise Concerns of Local Gun Range Leaving Neighbors with Limited Options*, NBC WYFF4 (May 5, 2022), <https://www.wyff4.com/article/oconee-residents-concerns-gun-range-neighbors/39910156#> (discussing a landowner's concern that the noise produced by a nearby gun range will cause panicked horses to run through fences).

44. *Crosstex N. Tex. Pipeline, L.P. v. Gardiner*, 505 S.W.3d 580, 593 (Tex. 2016) (citing *Holubec v. Brandenberger*, 111 S.W.3d 32, 37 (Tex. 2003)); *Schneider Nat'l Carriers, Inc. v. Bates*, 147 S.W.3d 264, 269 (Tex. 2004) (citing *Holubec*, 111 S.W.3d at 37).

45. See *Crosstex*, 505 S.W.3d at 600.

46. *Id.*

47. *Id.*

48. *Id.*

landowners from everyday disturbances or minimal annoyances. However, even if a landowner can establish the nuisance rose to the level of a substantial interference, unreasonable discomfort or annoyance must also be found to successfully claim nuisance.⁴⁹ Landowners who carry this burden against gun range owners face a nearly insurmountable hurdle when states such as Oklahoma pass noise immunization laws at absurd decibel levels,⁵⁰ thus implying that decibel levels of firearm discharge recorded below the state's threshold do not rise to an *unreasonable* discomfort or annoyance.

Most importantly, a nuisance must be a "type of legal injury that can support a claim or cause of action seeking legal relief."⁵¹ Nuisance is defined as "a type of injury that the *law has recognized* can give rise to a cause of action because it is an invasion of a plaintiff's legal rights."⁵² For landowners residing in states with gun range immunity laws, this recognition requirement results in landowners' nuisance lawsuits being dead on arrival.⁵³ Because the respective states expressly provide by statute that harms resulting from the unreasonable noise produced by a gun range is not a cause of action capable of relief, such landowners do not have standing to assert claims against gun range owners. Said differently, the noise obsolescence suffered by a neighboring landowner is not recognized as a compensable injury, thus leaving the burdened landowner without a starting line to even bring a claim. It begs the question—if nuisance is recognized as the proper cause of action for noise complaints⁵⁴ but states with immunity laws expressly exempt gun ranges from private nuisance claims based on noise pollution, what then is the proper cause of action?

49. *Id.*

50. OKLA. STAT. tit. 63, § 709.2 (2023) (prohibiting governmental agencies and private individuals from bringing a lawsuit or seeking any claim for relief against a shooting range or its owner based upon noise emanating from the shooting range, provided that the noise does not exceed 150 decibels).

51. *Crosstex*, 505 S.W.3d at 594; *see also* *City of Tyler v. Likes*, 962 S.W.2d 489, 504 (Tex. 1997) (quoting William Prosser, *Nuisance Without Fault*, 20 TEX. L. REV. 399, 416 (1942)) (noting that private nuisance is "a kind of damage done, rather than any particular type of conduct"); WILLIAM L. PROSSER, *HANDBOOK OF THE LAW OF TORTS* 594, 594 (3d ed. 1964) (stating that private nuisance "has reference to the interests invaded, to the damage or harm inflicted, and not to any particular kind of act or omission which has led to the invasion").

52. *Crosstex*, 505 S.W.3d at 594 (emphasis added); *see also* *Atkins v. Crosland*, 417 S.W.2d 150, 153 (Tex. 1967) (quoting 54 C.J.S. *Limitations of Actions* § 168 (2005)) (stating that "the statute of limitations begins to run against an action sounding in tort" if "the act causing the damage . . . constitute[s] a legal injury").

53. *See* Cotter, *Outdoor Shooting Sport*, *supra* note 2, at 167.

54. *See* *Adams v. Cleveland-Cliffs Iron Co.*, 602 N.W.2d 215, 216 (Mich. Ct. App. 1999).

Further, many states preemptively restrict local municipalities from enacting noise ordinances that regulate gun ranges thus leaving the responsibility solely to the state legislature.⁵⁵ Although Texas permits municipalities to regulate the discharge of firearms within the limits of the municipality, the state has an explicit preemption statute that prohibits municipalities from adopting any regulation relating to the discharge of a firearm *at a gun range*.⁵⁶ In addition, “[a] governmental official may not seek a civil or criminal penalty against a sport shooting range or its owner or operator based on the violation of a municipal or county ordinance, order, or rule regulating noise if (1) the sport shooting range is in compliance with the applicable ordinance, order, or rule; or (2) no applicable noise ordinance, order, or rule exists.”⁵⁷

Texas also preempts a municipality’s ability to regulate the hours of a gun range’s operation beyond the restrictions of business operating hours that apply to non-firearm businesses within the municipality.⁵⁸ Thus, as long as the gun range is otherwise in compliance, it is permitted to operate eight hours a day, seven days a week, between the hours of 7:00 A.M. to 10:00 P.M. In other words, the gun range is lawfully permitted to subject its neighbors to the sounds of unwavering gunfire for 105 hours out of every 168-hour week or approximately 63% of every day. With such broad protection, there is no ample relief for those living or operating a business within close vicinity of an outdoor gun range.

On a private level, Texas law also prohibits a civil action against a gun range owner for recovery of private nuisance damages that result from the discharge of firearms⁵⁹ so long as the gun range is otherwise “in compliance with all applicable municipal and county ordinances, orders, and rules regulating noise [if any].”⁶⁰ Further, many states have failed to adopt any maximum decibel level

55. See, e.g., TEX. LOCAL GOV’T CODE ANN. § 229.001(a)(3) (West 2023) (“[A] municipality may not adopt regulations relating to: . . . (3) the discharge of a firearm or air gun at a sport shooting range.”).

56. *Id.*

57. TEX. LOC. GOV’T CODE ANN. § 225.001(b), (c) (West 2023) (prohibiting a governmental official or private person from bringing a nuisance or similar cause of action against a sporting range that “is in compliance with all applicable municipal and county ordinances,” or “if no applicable noise ordinance . . . exists”).

58. See TEX. LOC. GOV’T CODE § 229.001(b)(7) (West 2023).

59. TEX. CIV. PRAC. & REM. CODE § 128.052(a) (West 2011) (“[A] civil action may not be brought against a sport shooting range, the owner or operator of a sport shooting range, or the owner of the real property on which a sport shooting range is operated for recovery of damages resulting from, or injunctive relief or abatement of a nuisance relating to, the discharge of firearms.”).

60. TEX. LOC. GOV’T CODE ANN. § 250.001(c) (West 2023) (“A person may not bring a nuisance or similar cause of action against a sport shooting range based on noise: (1) if the

ordinances that would apply to gun ranges at all,⁶¹ or went so far as to expressly exempt gun ranges from any reasonable noise regulation.⁶² Thus, a landowner wishing to find relief under a private nuisance claim is quickly faced with closed doors and a wall of despair. Provided that the gun range is engaged in lawful operation, the owner-operator can be shielded from any and all private noise complaints.

For those landowners residing in states that regulate gun range noise production,⁶³ it remains inequitable for them to be involuntarily subjected to the constant noise of a gun range that is otherwise operating within the statutorily prescribed decibel level. If existing landowners have no power to stop a nearby gun range owner from operating its business at any hour every day of the week, the respective legislatures seemingly suggest that these disregarded victims must suffer from all noise levels—even those that are *legally acceptable but otherwise excessive*. Just as any reasonable person would not enjoy being subjected to loud rock music that otherwise adheres to the local noise ordinance yet emanates from their neighbor's garage ten hours a day, seven days a week, the same holds true for a neighboring landowner who is subjected to the constant sounds of gunfire at lawfully acceptable decibel levels.

Notably, private nuisance claims are not limited to noise pollution. Landowners have brought nuisance claims against gun range owners over other concerns such as stray bullets from a gun range leading to property damage or personal injury⁶⁴ or restricting the landowner's use of their property due to the fear that they, or a family member, will be harmed by a bullet. Although a hazard that causes a landowner to be in "constant fear for the safety of his life or property

sport shooting range is in compliance with all applicable municipal and county ordinances, orders, and rules regulating noise; or (2) if no applicable noise ordinance, order, or rule exists,").

61. Research for this Article demonstrated only a minority of states have adopted statutes that restrict the maximum decibel level a gun range may lawfully produce. *See, e.g.*, ARIZ. REV. STAT. ANN. § 17-602 (2011) (stating that noise produced by an outdoor gun range shall not exceed sixty-four decibels when such gun range is located near certain residential areas); CAL. CIV. CODE § 3482.1 (West 2023) (restricting nighttime shooting to sixty decibels or below); MINN. STAT. § 87A.05 (2023) (allowing noise levels for a gun range according to specific metrics to each noise area's classification); OKLA. STAT. tit. 63, § 709.2 (2023) (limiting civil and criminal nuisance claims as long as noise produced by a gun range does not exceed 150 decibels); N.Y. GEN. BUS. LAW § 150 (McKinney 2023) (implementing a weighted decibel system not to exceed ninety decibels).

62. *See* Cotter, *Outdoor Sport Shooting*, *supra* note 2, at 167, 172.

63. *See id.* at 168 (citing to state statutes that regulate the maximum decibel level of a gun range).

64. *See* Layton v. Ball, 396 S.W.3d 747, 750 (Tex. App. 2013).

is such a serious interference so as to constitute a private nuisance,”⁶⁵ to be reasonably justified, a plaintiff’s fear must be based upon more than speculation.⁶⁶ Determining what constitutes “more than speculation,” however, does not appear to be statutorily defined. Unfortunately, clearing the speculation hurdle may either require tragedy for a rural landowner or evidence that a gun range’s patron was, albeit unknowingly, dancing on the razor’s edge of inflicting such tragedy. Perhaps, for example, photographs of bullet holes through a dining room window, carcasses of livestock killed by errant rounds, or a stray bullet removed from the stud in a newborn’s nursery would suffice.

Safety-based private nuisance claims are more common where there is not a required buffer zone⁶⁷ between the gun range and neighboring landowners. In these cases, courts will consider whether the gun range is in compliance with local and state ordinances by being equipped with safety devices such as natural or manmade berms and backstops.⁶⁸ Other considerations may include the local topography, physical orientation of the gun range in relation to the neighboring landowner, construction guidelines from the National Rifle Association’s (NRA) *Range Source Book*,⁶⁹ or whether the gun range limits patrons to using handguns as opposed to permitting rifle use through which bullets travel a substantially farther distance.⁷⁰

However, should the gun range be found in violation of local or state ordinances, the neighboring landowner’s remedy is most often limited to a simple temporary injunction that at least provides the landowner with some relief

65. *Hays v. Hartfield L-P Gas*, 306 N.E.2d 373, 376 (Ind. Ct. App. 1974) (citing *Tyner v. People’s Gas Co.*, 31 N.E. 61, 62 (Ind. 1892)).

66. *Id.* at 376 (“[M]ere fear or apprehension of danger caused by the presence of fuel storage tanks, without more, is not a sufficient basis to establish a nuisance.”).

67. *See Pacurariu v. Commonwealth*, 744 A.2d 389, 394 (Pa. Commw. Ct. 2000) (defining a buffer or “safety zone” as the area within a 150-yard radius of a gun range); *see also* MINN. STAT. § 87A.03(6) (2023) (requiring gun range owners to acquire additional land to establish a sufficient buffer zone).

68. *See* John R. Remakel, *A Minnesota Armistice? The Enactment and Implementation of the Minnesota Shooting Range Protection Act*, 31 HAMLINE L. REV. 197, 203 (2008); *Haines v. Lapeer Cnty. Sportsmen’s Club*, No. 183269, 1996 WL 33360714, at *1 (Mich. Ct. App. Aug. 9, 1996) (discussing court’s consideration of the plaintiffs’ argument as to issue of whether the use of metal backstops was sufficient to reduce danger of bullet ricochet).

69. *See* NAT’L RIFLE ASS’N, *THE RANGE SOURCE BOOK: A GUIDE TO PLANNING & CONSTRUCTION* (1999) (providing generally accepted construction guidelines—such as the placement of backstops, the use of natural topography, and other safety protocols—to assist with adhering to state and local safety regulations).

70. *See* *Racine v. Glendale Shooting Club, Inc.*, 755 S.W.2d 369, 372 (Mo. Ct. App. 1988); *Kolstad v. Rankin*, 534 N.E.2d 1373, 1377; *see also*, Remakel, *supra* note 68, at 223.

from the offensive noise—albeit for a short period of time.⁷¹ Upon the gun range's satisfaction of the zoning requirements, users are once again permitted to discharge firearms and the landowner is left with little to no permanent relief. Unfortunately, for a landowner to obtain any form of meaningful relief under a private nuisance claim, the landowner must prove some harm other than the occurrence of noise pollution such as damage to property, injury,⁷² or trespass.⁷³ Seemingly, legislatures do not feel that excessive noise rises to a compensable harm even though, as discussed in Section II.A, continual exposure to unacceptable noise levels may result in health-related injuries.⁷⁴

3. Trespass

Trespass is another action landowners may assert. However, it provides only indirect relief from the main issue of noise pollution. Trespass is defined as "the unauthorized entry upon the land of another by a person or an object as a result of a person's actions, regardless of the amount of force used or the amount of damage done."⁷⁵ However, a landowner asserting trespass must prove more than an encroachment of noise.⁷⁶ Trespass is a proper action only when a gun range owner fails to prevent bullets from being retained on the gun range's property.⁷⁷ Absent a showing of actual injury to persons or property, trespass claims against gun range owners have proven particularly challenging for adjacent landowners. For example, even if a stray bullet ultimately lands on an adjacent property, it

71. See, e.g., *Sara Realty, LLC v. Country Pond Fish & Game Club, Inc.*, 972 A.2d 1038, 1041 (2009) (holding for a gun range owner on the grounds that the nuisance abatement action was barred pursuant to statutes prohibiting noise-related nuisance claims against shooting ranges); *Layton v. Ball*, 396 S.W.3d 747, 750 (Tex. App. 2013) (reviewing trial court's issuance of temporary injunction prohibiting gun range operation until such time the owner complied with safety regulations).

72. See *Citizens for a Safe Grant v. Lone Oak Sportsmen's Club, Inc.*, 624 N.W.2d 796, 804–05 (Minn. Ct. App. 2001).

73. Research for this Article did not result in the identification of a single case of noise pollution constituting trespass. See *infra* Section I.A.3 (discussing trespass as a potential claim, albeit only for temporary relief, for disregarded victims of a gun range's meandering bullets).

74. See discussion *infra* Section II.A (discussing the negative health effects of exposure to excessive noise).

75. *Goerlitz v. City of Maryville*, 333 S.W.3d 450, 455 n.2 (Mo. 2011) (quoting *Rychnovsky v. Cole*, 119 S.W.3d 204, 211 (Mo. Ct. App. 2003)).

76. *Id.* at 454.

77. *Id.*

would be extremely difficult to prove that the bullet causing harm did, in fact, originate from the gun range.⁷⁸

However, given the ultrahazardous nature of firearm shooting,⁷⁹ if it can be established that bullets originating from the gun range damaged an affected landowner's property, then courts will issue temporary injunctions until proper measures have been implemented to prevent stray bullets.⁸⁰ In some limited situations, courts will order permanent injunctions for continued violations.⁸¹ Out of an abundance of caution, injunctive relief, whether temporary or permanent, is almost certain when the landowner can establish that bullets originating from the gun range caused personal injury, harm to livestock,⁸² or property damage.⁸³ But, as noted above, in most instances landowners enjoy only limited relief until the gun range owner proves their compliance with state and local safety regulations, at which time the gun range may re-enter operation and resume creating noise pollution.

4. Private Takings—A Brief History

Although the U.S. Constitution does not expressly grant eminent domain power to the federal government, the Takings Clause of the Fifth Amendment expressly provides for the payment of "just compensation" when private land is subject to condemnation,⁸⁴ evidencing that a takings power was intended to be

78. See *Woodsmall v. Lost Creek Twp. Conservation Club, Inc.*, 933 N.E.2d 899, 904 (Ind. Ct. App. 2010).

79. See *Vermillion v. Pioneer Gun Club*, 918 S.W.2d 827, 832 (Mo. Ct. App. 1996) (citing *Lee v. Hartwig*, 848 S.W.2d 496, 500 (Mo. Ct. App. 1992)) (observing that, generally, defendants in negligence suits are held to lower an ordinary standard of care, whereas defendants in negligence suits dealing with firearms are held to a very high degree of care).

80. See *Fraser Twp. v. Linwood-Bay Sportsman's Club*, 715 N.W.2d 89, 91 (Mich. Ct. App. 2006).

81. See *Skyway Trap & Skeet Club, Inc. v. Sw. Fla. Water Mgmt. Dist.*, 854 So. 2d 676, 679 (Fla. Dist. Ct. App. 2003) (holding a gun range in contempt for continued trespass in violation of a court order that enjoined the discharge of firearms on wetlands).

82. See *Spirit Ridge Mineral Springs, LLC v. Franklin Cnty.*, 337 P.3d 583, 584 (Idaho 2014) (regarding a gun range that was temporarily closed by county mandate for a determination of whether stray bullets that killed plaintiff's horses had originated from the defendant's gun range).

83. See *Vermillion*, 918 S.W.2d at 830 (finding that stray bullets allegedly originating from defendant's gun range impacted plaintiff's house and surrounding trees).

84. U.S. CONST. amend. V; see also *First Eng. Evangelical Lutheran Church of Glendale v. Los Angeles County*, 482 U.S. 304, 322 (1987) (holding that the Fifth Amendment does not prohibit taking of private property for public use, but rather places conditions on such

within the scope of federal powers. Further, the Constitution does not restrict state condemnation,⁸⁵ having been adopted in state constitutions across the country.⁸⁶ Arkansas, for example, holds property rights “before and higher than any constitutional sanction” and provides that “private property shall not be taken, appropriated or damaged for public use, without just compensation therefor.”⁸⁷

Eminent domain—the power to seize property without requiring the owner’s consent—is often regarded as the most intrusive government power, only to be exercised by a sovereign body when necessary for the advancement of public needs.⁸⁸ Physical takings occur when a governmental body has taken actual possession of property without first acquiring title to it.⁸⁹ A regulatory taking occurs when the government’s conduct, or a statute, unreasonably interferes with a property owner’s use and enjoyment of their property.⁹⁰

taking); *Jacobs v. United States*, 290 U.S. 13, 16 (1933) (holding that Fifth Amendment creates duty to pay for property taken by the U.S. government); *Portsmouth Harbor Land & Hotel Co. v. United States*, 260 U.S. 327, 331–32 (1922) (holding that taking of private property by United States creates a contract between the U.S. government and the property owner that requires payment for property taken).

85. *Kelo v. City of New London*, 545 U.S. 469, 482–83 (2005); see Abraham Bell, *Private Takings*, 76 U. CHI. L. REV. 517, 525 (2009) (providing a historical analysis of eminent domain and private takings); see also *City of Houston v. Boyle*, 148 S.W.3d 171, 178 (Tex. App. 2004) (explaining that a governmental agency exercises its power of eminent domain through the process of condemnation); *Villarreal v. Harris Cnty.*, 226 S.W.3d 537, 542 (Tex. App. 2006) (defining condemnation as the procedure by which the state exercises its right to take property of a private owner for public use, without consent, upon the payment of just compensation).

86. See Harry N. Scheiber, *Property Law, Expropriation, and Resource Allocation by Government: The United States 1789–1910*, 33 J. ECON. HIST. 232, 235 (1973); see also Harry N. Scheiber, *The Jurisprudence—and Mythology—of Eminent Domain in American Legal History*, in LIBERTY, PROPERTY, AND GOVERNMENT: CONSTITUTIONAL INTERPRETATION BEFORE THE NEW DEAL 217, 222–223 (Ellen Frankel Paul & Howard Dickman, eds. 1989) (discussing the federal allowance for state level takings power); Bell, *supra* note 85, at 525 (discussing how the U.S. Constitution does not prohibit adoption of takings power into state constitutions).

87. ARK. CONST. art. II, § 22.

88. See generally RICHARD A. EPSTEIN, *TAKINGS: PRIVATE PROPERTY AND THE POWER OF EMINENT DOMAIN I* (Harv. Univ. Press 1985) (discussing permissible and impermissible private takings and the limits that Fifth Amendment places on the government to protect private property).

89. See *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063, 2071 (2021).

90. See *City of Lorena v. BMTP Holdings, L.P.*, 409 S.W. 3d 634, 644 (Tex. 2013); see also Emilio R. Longoria, *The Case for the Rodeo: An Analysis of the Houston Livestock Show and Rodeo’s Inverse Condemnation Case Against the City of Houston*, 52, ST. MARY

To properly plead a regulatory takings claim, the plaintiff must assert that (1) a government has acted intentionally, (2) the government's action resulted in the uncompensated taking of private property, and (3) the taking was for a public use.⁹¹ Although governmental takings have been generally accepted, albeit begrudgingly on behalf of those subjected to the taking, there are numerous cases that espouse the common but incorrect assumption that the U.S. legal system does not provide for "private" takings.⁹² This Article defines private takings as acts of eminent domain carried out by non-governmental agencies. Contrary to the long-held belief that only governmental agencies can exercise a takings power, private takings by non-governmental agencies have a long and storied history in the U.S. legal system.

In the late 1800s and early 1900s, as Americans ventured west to tame the wild frontiers and the Great Migration to the Pacific Coast began, railroads were granted state power to seize private land that encroached on the route intended for the construction of the rail line.⁹³ Under general Mills Act legislation already adopted by several states throughout the United States,⁹⁴ agricultural operators were authorized to take private land for the construction of new mills.⁹⁵ In an additional effort to advance the mill industry, the Mills Act state legislation also authorized riparian owners to dam waterways in order to power the newly

L.J., 125, 138–142 (2020) (arguing that the government-forced closure of an economically impactful livestock show in Texas to prevent the spread of the coronavirus disease was a permissible regulatory taking).

91. See *State v. Hale*, 146 S.W.2d 731, 736 (Tex. 1941) (observing whether acts by a government agency were intentional in regards to a taking of property); see also *Barto Watson, Inc. v. City of Houston*, 998 S.W.2d 637, 640 (Tex. App. 1999) ("To recover on an inverse condemnation claim, a property owner must establish that (1) the State . . . intentionally performed certain acts (2) that resulted in the taking . . . of owner's property (3) for public use.").

92. See, e.g., *Miller & Lux v. Enter. Canal & Land Co.*, 147 P. 567, 577 (Cal. 1915) (holding that a private corporation was entitled to the continued operation of a canal that impeded on the riparian rights of lower landowners); *Conaway v. Yolo Water & Power Co.*, 266 P. 944, 948 (Cal. 1928) (holding that a private corporation exercising eminent domain over a watershed must adequately compensate landowners subjected to the condemnation).

93. See, e.g., *Holbert v. St. L., K. C. & N. R. Co.*, 45 Iowa 23, 26 (1876) (holding that "the authority to take land for the right of way for railroads is conferred by" statute "and must be exercised" accordingly).

94. See *Head v. Amoskeag Mfg. Co.*, 113 U.S. 9, 16–19 (1885) (providing a list of the Mills Act legislation adopted by various states from the late 1700s through the date of the opinion).

95. See, e.g., *Scudder v. Trenton Delaware Falls Co.*, 1 N.J. Eq. 694, 708 (N.J. Ch. 1832) (holding that "[p]rivate property may be taken for a private corporation, when the object is for public use . . . [and if] a corporation is calculated, or intended, to produce public benefit, then it is public in its nature, and for public use").

constructed mills, resulting in the flooding of neighboring land.⁹⁶ In some instances, corporations deemed to provide a necessary “public good” maintained state-granted takings power in their corporate organizational charters.⁹⁷ By the early 1900s, every state in the country had delegated a takings power in some form,⁹⁸ subject to the due process and compensation requirements set forth in the Fourteenth Amendment,⁹⁹ to privately held companies. State-delegated takings powers authorized private companies to condemn privately owned land deemed necessary for a public good such as for the construction of bridges, canals, and related infrastructure.¹⁰⁰

By the turn of the twentieth century, the state delegation of takings power to non-governmental agencies became increasingly unpopular and many states began to narrow the circumstances under which landowners could be deprived of their property.¹⁰¹ Nonetheless, to this day, states continue to empower private companies to exercise condemnation power. For example, Alabama authorizes private electric companies to exercise eminent domain power for the construction, maintenance, and expansion of electrical utilities throughout the state.¹⁰² Alabama extends the same takings power to private satellite system

96. See, e.g., *id.* at 720 (observing that the “proceedings of the defendants are sought to be justified under the act of incorporation already mentioned, giving them authority to create a waterpower . . . [and providing] the mode to be pursued by the company in surveying, appropriating and acquiring title to such lands and property as may be necessary for the purposes of their grant”).

97. See, e.g., *Eppley v. Bryson City*, 73 S.E. 197, 197 (N.C. 1911) (providing that the state’s 1911 act granted eminent domain power to a corporation for the purposes of owning and operating an electrical plant).

98. See Bell, *supra* note 85, at 545.

99. See *Chicago, B. & Q. R. Co. v. City of Chicago*, 166 U.S. 226, 239 (1897) (holding that under the “[F]ourteenth [A]mendment, compensation for private property taken for public uses constitutes an essential element in ‘due process of law,’ and that without such compensation the appropriation of private property to public uses, no matter under what form of procedure it is taken, would violate the provisions of the [U.S. Constitution]”).

100. See *Head v. Amoskeag Mfg. Co.*, 113 U.S. 9, 16 (1885).

101. See, e.g., *In re Niagara Falls & W. Ry. Co.*, 15 N.E. 429, 432 (N.Y. 1888) (striking down utility provider’s takings power because of Court of Appeals of New York’s narrowing view of what constitutes public use); *Ryerson v. Brown*, 35 Mich. 333, 346 (1877) (holding that even though the water utility provided a public use, utility provider’s takings power was not necessary to further the public good and thus struck down); see also, Bell, *supra* note 85, at 545 (providing examples of states’ retraction on the delegation of private takings power).

102. ALA. CODE 1975 § 37-6-3 (2023) (“[Private electric companies are authorized to] exercise the power of eminent domain in the manner provided by the laws of this state for the exercise of that power by corporations constructing or operating electric generating, transmission, or distribution lines, or systems; and, in the construction and operation of water

operators as well as private operators of water containment and sanitation systems.¹⁰³

Similarly, Arkansas, Indiana, Oklahoma, and Texas adopted legislation that authorizes private actors to exercise eminent domain power.¹⁰⁴ Other states have expanded the power of private condemnation by allowing mining and logging operators to exercise their private takings power to condemn land to build roads and rail lines for the transportation of goods,¹⁰⁵ or even granting such power to private actors simply wanting to transport water for irrigation purposes.¹⁰⁶ In

systems and sanitary sewer systems and television reception systems through the use of television program decryption equipment and subscriber owned, leased or rented satellite dishes, to exercise the power of eminent domain in the manner provided in Title 18.”).

103. *Id.*

104. *See, e.g.,* Ark. Power & Light Co. v. Harper, 460 S.W.2d 75, 76 (Ark. 1970) (recognizing that company that exercised eminent domain power over twenty-six acres of privately owned land for the construction of electrical tower lines had power to take private property); Hagemeier v. Ind. & Mich. Elec. Co., 457 N.E.2d 590, 594 (Ind. Ct. App. 1983) (“Even if an electric utility can acquire an ingress-egress easement by necessity for a transmission line, statutory eminent domain requirements applicable to the actual easement must prevail in relation to utility’s right to clear condemnees’ land.”); McInturff v. Okla. Natural Gas Transmission Co., 475 P.2d 160, 161 (Okla. 1970) (holding that landowner was not entitled to any damages in “[c]ondemnation proceeding commenced by Oklahoma Natural Gas Transmission Company for the purpose of determining the amount of damages . . . as the result of the condemnor’s taking, under eminent domain, of a right-of-way, [sixty-six] feet in width and 3,383 feet in length, across a described governmental survey quarter-section of land in Okmulgee County for the construction, operation, and maintenance of a [twenty-two]-inch gas pipe line”); Aqua Aquila Sw. Pipeline Corp. v. Gupton, 886 S.W.2d 497, 499 (Tex. App. 1994) (recognizing appellant as a gas utility was “vested with the power of eminent domain to acquire easements and rights-of-way to construct, operate, and maintain natural gas pipelines”).

105. *See, e.g.,* OR. REV. STAT. § 772.410 (2023) (“Any corporation organized for the purpose of opening or operating any gold, silver, or copper vein or lode, or any coal or other mine, or any marble, stone or other quarry, or for cutting or transporting timber, lumber, or cordwood, or for the manufacture of lumber: . . . [m]ay condemn so much of said land as may be necessary for the purposes of this section, not exceeding 60 feet in width by a condemnation action as prescribed by ORS chapter 35.”).

106. *See, e.g.,* COL. REV. STAT. § 37-86-104(1) (2023) (“Upon the refusal of owners of tracts of land through which said right-of-way is proposed to run, to allow passage through their property, the person desiring such right-of-way may proceed to condemn and take”); UTAH CODE ANN. § 73-1-6 (West 2023) (“Any person shall have a right of way across and upon public, private and corporate lands, or other rights of way, for the construction, maintenance, repair and use of all necessary reservoirs, dams, water gates, canals, ditches, flumes, tunnels, pipelines and areas for setting up pumps and pumping machinery or other means of securing, storing, replacing and conveying water for domestic, culinary, industrial and irrigation purposes or for any necessary public use, or for drainage, upon payment of just compensation therefor”).

delegating these powers to private actors, states are essentially positioning these non-governmental agencies to be the sole arbiters as to what land should be subject to their private takings power. A discussion of the inherent conflict of interest that this scheme produces is outside the scope of this Article, but it is worth noting that such a conflict exists when states permit these private actors to be the beneficiaries of the very takings that they exercise.

At the very least, immunity laws that bar landowners from seeking any justiciable relief unquestionably rise to an unconstitutional regulatory taking. If viewed from the perspective of a rural landowner whose right to use their property free from defect and excessive noise has been condemned, the real-life consequences of legislative immunity arguably results in a physical taking. Thus, states that enact laws immunizing gun range owners from noise abatement claims are effectively granting gun range owners with a private takings power. When this power can be wielded without any concern for liability, including money damages for taken property, it becomes hard to conclude that this scheme is anything other than an unconstitutional state-sponsored private takings program.

5. Unconstitutional Private Takings

As previously discussed, there are two fundamental limitations on the exercise of condemnation powers. First, the takings power may only be exercised for the advancement of a “public use.”¹⁰⁷ Second, “just compensation” must be paid to the owner of the property.¹⁰⁸

a. The Public Use Requirement

Under federal law, a constitutional taking requires a public use before property may be taken from a private owner.¹⁰⁹ Absent a public use, a “taking cannot be constitutional even if compensated.”¹¹⁰ To establish that a taking has a legitimate public use, the government only needs to establish that the taking would be constitutionally permissible under the Public Use Clause of the

107. U.S. CONST. amend. V (“[O]r shall private property be taken for public use, without just compensation.”).

108. *Id.*

109. *See* *Berman v. Parker*, 348 U.S. 26, 31 (1954).

110. *Armendariz v. Penman*, 75 F.3d 1311, 1320 n.5 (9th Cir. 1996); *see also* *Williamson Cnty. Reg’l Planning Comm’n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 185-86 (1985), *overruled on other grounds by* *Knick v. Twp. of Scott, Pa.*, 139 S. Ct. 2162 (2019) (holding that damages award for temporary interference with developer’s property due to zoning ordinance and regulations was premature because final decision had not been reached as to application of regulations to property).

Constitution.¹¹¹ Unfortunately, the bar that determines “public use” is low since courts liberally find for public use, even if that public use requires the property to be transferred to a private beneficiary.¹¹² For example, the U.S. Supreme Court made abundantly clear that the government’s transfer of taken property to a private beneficiary is not unconstitutional under the Public Use Clause,¹¹³ leaving little uncertainty to the lack of weight the clause actually imposes. Thus, provided that “the exercise of the eminent domain power is rationally related to a conceivable public purpose,” courts will uphold the takings power regardless if it benefits, or was intended to benefit, a private actor.¹¹⁴

Courts will generally not undermine or question legislative judgment on what constitutes the best interests of the public or how to best serve public welfare unless the use is “palpably without reasonable foundation.”¹¹⁵ Because there are few, if any, constitutional restrictions on the takings power of private actors deemed to be effectuating a public good, such as gun range owners, the Public Use Clause¹¹⁶ places few restrictions on the actual exercise of this power, thus serving as a silver platter to effectuate legislators’ intent to protect the rights of gun range owners at the collective expense of rural landowners.¹¹⁷ Operating under the protection of a statutory get-out-of-jail-free card, gun range owners enjoy a state-sponsored private takings power, effectively insulating them from any nuisance liability.

Arguably, states that have adopted gun range immunity laws, and thereby granted a private takings power unto gun range owners, ironically feel the most appropriate party to solely bear the injuries resulting from the exercise of this power are the very people subjected to the injury. That is, rural landowners who are cast aside as the disregarded victims in a program created by the state for the advancement of a greater public use.

111. See *Haw. Hous. Auth. v. Midkiff*, 467 U.S. 229, 230–31 (1984).

112. See *Berman v. Parker*, 348 U.S. 26, 33–34 (1954) (noting “[t]he public end may be as well or better served through an agency of private enterprise than through a department of government”).

113. *Id.* at 35–36.

114. *Midkiff*, 467 U.S. at 241.

115. *United States v. Gettysburg Elec. Ry. Co.*, 160 U.S. 668, 680 (1896).

116. See 26 AM. JUR. 2D *Eminent Domain* § 52 (2023); see generally WILLIAM MEADE FLETCHER, FLETCHER CYCLOPEDIA OF THE LAW OF CORPORATIONS § 2914 (2022) (explaining generally the broad nature of what constitutes public use).

117. See *3 Rivers Logistics, Inc. v. Brown-Wright Post No. 158 of Am. Legion, Dep’t of Ark., Inc.*, 548 S.W.3d 137 (Ark. 2018) (stating that the statute immunizing a gun range owner from noise pollution claims did not constitute a taking of neighboring landowners’ properties, even though there were claims of reduced enjoyment, property use, and property value); see also FLETCHER, *supra* note 116, at § 2914.

Curiously, how does the government determine that the paid-for relocation of a gun range¹¹⁸ is a public good that prevails over two hundred years of a landowner's right to the quiet use of their property? When balanced against the rights of existing landowners, immunity statutes serve little to no advancement of public good, and the private takings exercised under these statutes are arguably unconstitutional. Even if it could be argued that these private takings satisfied the Public Use Doctrine, it appears that no state currently requires a gun range owner to compensate displaced rural landowners whose rights were substantially and materially impacted by the respective state's relocation program.¹¹⁹ The dominance that ensued the broad interpretation of the Public Use Clause is ever present today as it was fifty years ago, and it is difficult to imagine how its broad stroke will prove any challenge for private takings to be used offensively by gun range owners in the future.

However, even if a gun range owner proceeding under the authority of a delegated takings power could adequately prove that a newly operable shooting range satisfied the public use requirement, a constitutional taking still requires just compensation to be paid to the injured party.¹²⁰ The following Section discusses how the passage of immunity laws have seemingly left the rural landowner in an untenable position, solely bearing the injuries that result from being deprived of the quiet use and enjoyment of their property and suffering from the state's failure to justly compensate them for their loss.

b. Just Compensation

Determining what constitutes just compensation has served as the basis for extensive litigation and a wealth of scholarly literature that has sought to determine what amount of compensation is sufficient to balance the interests of those exercising a takings power and those on the receiving end of it.¹²¹ Particularly challenging are the difficulties in creating an appropriate valuation for partial takings; i.e., a private individual acting under a state's immunity

118. See, e.g., MONT. CODE ANN. § 76-9-105(2)(b) (2021) ("[T]he agency or unit of local government obtaining the closure pays the appraised cost of the land together with improvements to the operators of the shooting range. In return the shooting range operators shall relinquish their interest in the property to the agency or unit of local government obtaining the closure.").

119. See *infra* Section II.A.

120. See U.S. CONST. amend. V ("[N]or shall private property be taken for public use, without just compensation.").

121. See generally Katrina Miriam Wyman, *The Measure of Just Compensation*, 41 U.C. DAVIS L. REV. 239 (2007) (discussing post-*Kelo* just compensation reform attempts for government takings).

statute to strip a landowner not of the underlying property itself but of the landowner's right to the unencumbered use and quiet enjoyment of their property.

This Article focuses on the resulting loss of a property's fair market value as one determinable measure of the adequate compensable damages owed to the landowner. One may conclude that difficulties in valuations—especially valuations associated with partial private takings—may undercompensate landowners,¹²² which leaves little reason to believe that legislators have any incentive or desire to pass protective laws that ensure that valuations are objectively measurable and not an administrative farce to simply check off a box. Given that compensation itself acts a deterrent to the exercise of condemnation powers and that current compensation laws do not recognize private takings by non-governmental agencies, there are little to no barriers restricting gun range owners from exercising their unconstitutional takings power on a broader scale. As long as gun range owners are entitled to immunity and displaced landowners receive no just compensation, gun range owners enjoy their takings freedom that's akin to shooting fish in a barrel.

II. A CLOSER EXAMINATION OF IMMUNITY LAWS

A. *Immunity from Legal Action Based on Noise*

Legislatures enacting protective laws that immunize gun range owners seem more inclined to keep Second Amendment enthusiasts firing lead down range than they are on protecting the once revered interests of landowners.¹²³ With noise pollution being the primary complaint,¹²⁴ many jurisdictions provide outdoor gun range owners with umbrella protection under two primary types of statutory protection.

First, the less common form of protection exempts outdoor gun ranges from state and/or local noise ordinance statutes.¹²⁵ Arkansas,¹²⁶ Tennessee,¹²⁷ and Wyoming¹²⁸ have statutes that immunize outdoor gun range owners from state

122. See Thomas J. Miceli, *Compensation for the Taking of Land Under Eminent Domain*, 147 J. INST. & THEOR. ECON. 354, 361 (1991).

123. See Cotter, *Outdoor Sport Shooting*, *supra* note 2, at 170–71.

124. See Cotter, *Suburban Sprawl*, *supra* note 1, at 22.

125. See *supra* sources accompanying note 31.

126. See ARK. CODE ANN. § 16-105-502 (2023).

127. See TENN. CODE ANN. § 39-17-316 (2022).

128. See WYO. STAT. ANN. § 16-11-102 (2023).

department noise regulation. Maine¹²⁹ and Oklahoma¹³⁰ have statutes immunizing outdoor gun ranges from local noise ordinances, while Georgia,¹³¹ North Carolina,¹³² and Texas¹³³ statutes immunize outdoor gun ranges from both state department and local noise regulations. Fourteen states have fully exempted outdoor gun ranges from noise control laws, thus curbing private individuals from bringing claims against gun range owners.¹³⁴

Second, the most common form of protection immunizes gun range owners from criminal and civil actions based on noise pollution and, more concerning, from private nuisance lawsuits.¹³⁵ Twenty-three states have passed and formally adopted this type of statutory protection.¹³⁶ Notably, creative litigation illuminates the desperation faced by landowners in their attempts to find some form of meaningful relief.¹³⁷ In what appears to be a proactive response to a variety of untraditional claims that may be used by disparaged landowners clinging to any argument that could potentially provide relief,¹³⁸ additional statutory protections have been passed, such as immunizing outdoor gun range

129. See ME. STAT. tit. 30-A, § 3011 (2023).

130. See OKLA. STAT. tit. 63, § 709.2 (2022).

131. See GA. CODE ANN. § 41-1-9 (2022).

132. See N.C. GEN. STAT. § 14-409.46 (2022).

133. See TEX. LOC. GOV'T CODE ANN. § 229.001(a)(3) (West 2021); see also TEX. HEALTH & SAFETY CODE ANN. §§ 756.0411, .045 (West 2021) (requiring gun ranges operating in Texas population centers that exceed 150,000 persons to meet national design standards and to carry minimum levels of liability insurance).

134. See generally *Gun Range Protection Statutes*, NRA OFFICE OF THE GENERAL COUNSEL (2013), <https://rangeservices.nra.org/media/4075/gun-range-protection-statutes.pdf> (providing an overview of state-level gun range protection laws in the United States).

135. See *supra* sources accompanying note 31.

136. See *supra* sources accompanying note 31.

137. See, e.g., *Christensen v. Hilltop Sportsman Club*, 573 N.E.2d 1183, 1184 (Ohio Ct. App. 1990) (regarding property owner and occupants' complaint that shooting activities at nearby "sportsman" club "constituted both a public and a private nuisance").

138. See *Midshore Riverkeeper Conservancy, Inc. v. Franzoni*, 429 F. Supp. 3d 67, 71 (D. Md. 2019) (regarding plaintiff's suit against the neighboring gun range owners alleging that a lead shot entered waterways and crop land in violation of federal environmental law); *State v. Milwaukee Gun Club, Inc.*, 482 N.W.2d 670 (Wis. Ct. App. 1992) (unpublished table decision) (affirming trial court order finding gun club in violation of state littering statutes); *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2145, 2156 (2022) (holding that New York's proper cause requirement was unconstitutional and finding state's argument that restricting private carry of handguns was intended in part to protect the public against the incitement of terror as unpersuasive); see also Cotter, *Suburban Sprawl*, *supra* note 1, at 21–22 (discussing different types of lawsuits brought by rural property owners seeking relief from nearby shooting ranges).

owners from lawsuits for littering¹³⁹ and domestic terrorism¹⁴⁰ to exempting sport shooting from being classified as the unlawful discharge of a weapon.¹⁴¹

After repeated complaints from its residents, one township in Michigan passed complex licensing requirements to make compliance difficult for a gun range operating within the township boundaries.¹⁴² In response, Michigan lawmakers passed legislation fully exempting outdoor gun ranges from all local regulation.¹⁴³ Not all is lost, however, as landowners appear to have some minimal preemptive protection; in order to avail themselves of Michigan's immunity laws, gun range owners must first comply with both state level noise ordinances and operation practices established by the Natural Resources Commission (NRC).¹⁴⁴ Under the Michigan immunity statute, the NRC is authorized to determine acceptable operation practices, which are heavily based on the NRA's *Range Manual*.¹⁴⁵ Utah's statute is similar, in that it requires gun range owners to comply with national standards in order to not be classified as a public health nuisance.¹⁴⁶

In addition to state and national standards, some states appear to provide additional protection to existing landowners by imposing a "substantial change" test.¹⁴⁷ That is, an existing landowner would have standing to bring noise abatement claims if they can establish that shooting activities at the gun range

139. See, e.g., MONT. CODE ANN. § 76-9-102 (2021) (exempting shooting range operation from being restricted or prohibited by state agencies or local governments for exceeding pollution standards for lead, copper, or brass deposits resulting from shooting activities).

140. See, e.g., IDAHO CODE § 18-8104 (2023) (exempting public shooting from the Terrorist Control Act); N.M. STAT. ANN. § 30-20A-4 (2022) (exempting public shooting from the state's anti-terrorism act); 8 PA. CONS. STAT. § 5515 (2022) (exempting public shooting from the state's prohibition against paramilitary training).

141. See, e.g., ARIZ. REV. STAT. ANN. § 13-3107 (2022) (providing an exception from a charge of a class 2 misdemeanor for discharge of a firearm within the limits of any municipality if discharged on a properly supervised range).

142. See *Twp. of Ray v. B & BS Gun Club*, 575 N.W.2d 63, 64 (Mich. Ct. App. 1997).

143. MICH. COMP. LAWS § 691.1542 (2023); see Cotter, *Outdoor Sport Shooting*, *supra* note 2, at 173.

144. See MICH. COMP. LAWS § 691.1541 (2023); Memorandum from the State of Mich. Dep't of Nat. Res. to Daniel Eichinger, Dir. of the State of Mich. Dep't of Nat. Res. (Mar. 28, 2019) (on file with the State of Michigan), https://www.michigan.gov/-/media/Project/Websites/dnr/Documents/Ranges/GenerallyAccepted_Ops_Ranges_2019.pdf?rev=65c7587c022c426b89338546759a1304.

145. See *Twp. of Ray*, 575 N.W.2d at 67.

146. UTAH CODE ANN. § 47-3-202 (2023).

147. See, e.g., IDAHO CODE § 55-2602 (2023); IOWA CODE § 657.9 (2023); ME. STAT. tit. 17, § 2806 (2023); N.C. GEN. STAT. § 14-409.46 (2023); W. VA. CODE § 61-6-23 (2017).

rose to a “substantial change.” However, in failing to define what amounts to a substantial change,¹⁴⁸ these statutes serve only to cause more confusion than the relief they seemingly intend to provide. For example, would increasing the number of days the gun range is open to the public constitute a substantial change? If, in prior years, the gun range only permitted the use of small caliber rifles but expanded to loud .50 caliber heavy machine guns, would this rise to the level of a substantial change? What about allowing cannons, exploding targets, or low altitude mortar shells?

Such ambiguity takes the focus off the real issue—the landowner’s right to enjoy the quiet use and enjoyment of their property—and shifts it to forced litigation to determine solely whether any measurable change at a gun range is substantial.¹⁴⁹ Moreover, a violation of a substantial change would seemingly only serve as the basis for a temporary relief order.¹⁵⁰ Nothing in current state statutes appears to restrict a gun range from simply discontinuing the activities deemed to be a substantial change and continuing with all prior noisemaking activities. Further, these statutes are seemingly directed at those acquiring property adjacent to, or near, an existing gun range and not to those individuals already living on the land before a new gun range opens nearby. Notably, Utah promotes transparency by requiring purchasers of new subdivision developments to provide informed consent and accept any noise nuisance created by the common and customary usage of a gun range that is located within a close vicinity to the subdivision.¹⁵¹

Wholly missing from most of these statutes, however, is any protection afforded to those already enjoying quiet country living who, to no fault of their own, discover that the orange hue burning across the pasture was no longer that of the morning sun but rather the muzzle flashes of the local SWAT team engaged in close-quarter combat drills. With no requirement to receive prior consent from neighboring landowners, gun range owners are free to open shop anywhere they desire and engage in a legalized nuisance with complete impunity.

Undoubtedly, landowners faced with a gun range moving to them would deem its sudden existence as a substantial change to their standard of quiet country living. Curiously, while remedies generally exist when a nuisance moves

148. See IDAHO CODE § 55-2602 (2023); IOWA CODE § 657.9 (2023); ME. STAT. tit. 17, § 2806 (2023); N.C. GEN. STAT. § 14-409.46 (2023); W. VA. CODE § 61-6-23 (2017).

149. See, e.g., *Kitsap Cnty. v. Kitsap Rifle & Revolver Club*, No. 57628-7-II, 2023 WL 4105179, at *1–3 (Wash. Ct. App. 2023) (affirming trial court’s order that the gun range significantly changed its existing use, and that injunction was proper unless the gun range received a conditional use permit or reduced activity to pre-nonconforming use levels).

150. *Id.*

151. See UTAH CODE ANN. § 47-3-202 (4) (West 2022).

near an injured party, existing landowners are not protected when a gun range-caused nuisance moves to them. Outdoor gun ranges operating in safe harbor states enjoy complete immunity from the costs and hazards of litigation. The absurd reality of legal immunity begs the question as to whether the use of fully automatic weapons, high caliber rifles like .50 caliber heavy machine guns, exploding weapons, or cannons were contemplated by state legislators when passing such broad and sweeping immunity statutes.

It should be emphasized that the beforementioned protective statutes are not absolute but instead require gun range owners to be in compliance with all applicable state and local laws before availing themselves of the immunity afforded. For example, gun ranges must comply with the applicable noise ordinances when the range was first built or began its operations.¹⁵² Still, these compliance requirements serve as a veiled attempt to protect surrounding neighbors from obtrusive noise. Much akin to the used car dealership approving an application for a car loan at 28% interest, it is a solution that is not a viable one. For example, instead of requiring compliance with reasonable noise ordinances, Oklahoma provides carte blanche immunity as long as the noise emanating from a gun range does not exceed 150 decibels (dB).¹⁵³ To provide context, a subway train horn produces 110 dB.¹⁵⁴ When setting the decibel limit so high, Oklahoma arguably created the strongest immunity statute in the country.

Given that permanent hearing loss begins at extended exposure to 80 dB,¹⁵⁵ Oklahoma's statute is rather perplexing. A comparison of sounds is illuminating:

152. See, e.g., N.H. REV. STAT. ANN. § 159-B:2 (2023) ("The owners, operators, or users of shooting ranges shall not be subject to any action for nuisance and no court shall enjoin the use or operation of a range on the basis of noise or noise pollution, provided that the owners of the range are in compliance with any noise control ordinance that was in existence at the time the range was established, was constructed, or began operations.").

153. See OKLA. STAT. ANN. tit. 63, § 709.2 (2022).

154. See *Decibel Comparison Chart*, NAT'L HEARING CONSERVATION ASS'N, <https://www.hearingconservation.org/assets/Decibel.pdf> [hereinafter NAT'L HEARING CONSERVATION ASS'N].

155. See *Decibel Level Comparison Chart*, YALE ENV'T HEALTH & SAFETY, <https://ehs.yale.edu/sites/default/files/files/decibel-level-chart.pdf> [hereinafter YALE ENV'T HEALTH & SAFETY].

lawnmowers produce 94 dB,¹⁵⁶ circular saws generate up to 120 dB,¹⁵⁷ jet engines produce 140 dB during takeoff,¹⁵⁸ and gunfire also produces 140 dB.¹⁵⁹ Discomfort begins at 90 dB and physical pain begins at 125 dB.¹⁶⁰ Short-term exposure at sounds in excess of 140 dB can cause permanent hearing loss even with the use of hearing protection.¹⁶¹ In fact, the Occupational Safety and Health Administration (OSHA) requires that exposure to 115 dB or more be limited to fifteen minutes.¹⁶²

Perhaps the Oklahoma legislature reckoned that neighboring landowners involuntarily subjected to continued and excruciating gunfire at 150 dB would have their funds diverted away from nuisance litigation to, instead, pay for the resulting medical costs associated with permanent hearing loss and the rehabilitative care needed to learn how to communicate in sign language.¹⁶³

B. *Biased Promotional Laws*

Urban sprawl and the ensuing change in demographics have made the continued operation of some outdoor gun ranges impracticable due to increased concerns over the growing community's health and safety. It would arguably be irresponsible to allow a historically located rural gun range to continue its operations in an area that has experienced a significant increase in population

156. See *How Loud Is Too Loud*, HEARING CTR. FOR EXCELLENCE, <http://hearing.health.mil/Prevention/Preventing-Noise-Induced-Hearing-Loss/How-Loud-is-TooLoud#:~:text=Car%20horn%3A%20110%20decibels,Ambulance%20siren%3A%20112%20decibels> (last visited Oct. 25, 2023).

157. See *Noise Abatement for Circular Saws*, NAT'L INST. FOR OCCUPATIONAL SAFETY & HEALTH 4 (1999).

158. See *Decibel Levels*, HEARING HEALTH FOUNDATION, <https://hearinghealthfoundation.org/decibel-levels> (last visited Oct. 25, 2023).

159. See NAT'L HEARING CONSERVATION ASS'N, *supra* note 154.

160. See YALE ENV'T HEALTH & SAFETY, *supra* note 155.

161. See NAT'L HEARING CONSERVATION ASS'N, *supra* note 154.

162. *Id.*

163. See, e.g., Penny E. Mohr, Jacob J. Feldman, Jennifer L. Dunbar, Amy McConkey-Robbins, John K. Niparko, Robert K. Rittenhouse & Margaret W. Skinner, *The Societal Costs of Severe to Profound Hearing Loss in the United States*, 16 INT'L J. TECH. ASSESSMENT IN HEALTH CARE 1120, 1129 n.4 (2000) (determining that severe hearing loss is expected to result in productivity and resource losses of approximately \$300,000 per individual); *Patients with Untreated Hearing Loss Incur Higher Health Care Costs Over Time*, JOHNS HOPKINS BLOOMBERG SCH. OF PUB. HEALTH (Nov. 8, 2018), <https://publichealth.jhu.edu/2018/patients-with-untreated-hearing-loss-incur-higher-health-care-costs-over-time> (describing that older adults with untreated hearing loss incur 46% more in total healthcare costs over a ten-year period).

and the related development of nearby subdivisions, schools, hospitals, and other services common to a community transitioning from a rural to a predominantly urban environment.¹⁶⁴ However, some states have passed promotional laws to proactively encourage and advance participation in outdoor shooting sports.¹⁶⁵ From the perspective of the rural landowner, equity does not factor into legislative solutions that purportedly attempt to balance the concerns of the growing community with that of the gun range owner wishing to continue their business operations. This failure is demonstrated where, for example, informed consent is required for individuals who voluntarily choose to move to or near an existing gun range, but informed consent is not required from existing rural landowners when a gun range wishes to move to them.

Montana combated the issue of urban sprawl by siding with gun range owners and protecting their interests while neglecting the interests of the landowners. To ensure no confusion exists as to whom the Montana legislature chose to side with, the state passed legislation clearly defining the state's interests in protecting the locations where gun range may operate and the investments in those gun ranges.¹⁶⁶ To further protect gun range owners who may be ordered or threatened with closure due to urban sprawl and the enactment of a new restrictive local zoning ordinance, Montana also passed legislation requiring local governments to compensate the owner for the fair market value of the

164. *See, e.g.*, KY. REV. STAT. ANN. § 150.620 (West 2022) ("For the purpose of encouraging and developing public interest in wildlife and carrying out the policy of the Commonwealth of Kentucky under KRS Chapter 150, the Department of Fish and Wildlife Resources Commission, as a state agency, and based upon investigations and recommendations of the commission, is hereby authorized to acquire lands including any improvements thereon by purchase, condemnation or lease from the State Property and Buildings Commission or from others, and partly by any or all of such means, and to thereafter establish, improve, maintain, and operate public shooting."); N.M. STAT. ANN. § 17-7-2 (2023) ("There is created in the state treasury a special fund to be known as the 'shooting range fund'. All money appropriated to this fund or accruing to it as a result of gift, deposit or from other sources, except interest earned on the fund which shall be credited to the general fund, shall not be transferred to another fund or encumbered or disbursed in any manner except as provided in the Shooting Range Fund Act. Appropriated money in the fund shall not revert to the general fund. Money in the fund shall be used for construction or improvement of public shooting ranges.").

165. *See, e.g.*, MONT. CODE ANN. § 76-9-101 (2021) ("It is the policy of the state of Montana to provide for the health, safety, and welfare of the citizens of the state by promoting the safety and enjoyment of the shooting sports among the citizens of the state and by protecting the locations of and investment in shooting ranges for shotgun, archery, rifle, and pistol shooting.").

166. *Id.*

shooting range as well as any improvements made to the land.¹⁶⁷ In passing such legislation, Montana statutorily deemed restrictive ordinances to be a taking, thus entitling the gun range owner to fair compensation.¹⁶⁸ Yet, through the passage of immunity statutes, the state failed to deem noise pollution caused by a gun range as a taking against the landowner when that gun range owner relocates next door to them.

As an additional protection, the Montana legislature prohibited local governments from excluding gun ranges in local zoning ordinances.¹⁶⁹ In doing so, the Montana legislature enacted a state-sponsored relocation program that created a mechanism for the compensated closure of a gun range in a more populated area that merely results in the relocation of that affected gun range to an area not as likely to be immediately impacted by growth and development—in other words, surrounding areas already occupied by rural landowners.¹⁷⁰

Thus, in the state's attempt to immunize gun range owners, Montana addressed the takings issue by enacting biased and promotional laws that serve only to enable gun range owners to exercise state-granted private condemnation power with little to no consideration given to rural landowners. It must be asked, if Montana is willing to pass legislation that so thoroughly protects the interests of gun range owners, where is the legislation that protects the landowner who comes to find a gun range in their backyard? Just as the gun range owner is entitled to fair compensation, shouldn't the landowner be entitled to the same? Why is the landowner, who is deprived of the quiet use and enjoyment of their property, so purposefully disregarded?

167. See MONT. CODE ANN. § 76-9-105(2)(b) (2021) (“[T]he agency or unit of local government obtaining the closure pays the appraised cost of the land together with improvements to the operators of the shooting range. In return the shooting range operators shall relinquish their interest in the property to the agency or unit of local government obtaining the closure.”)

168. See *id.*

169. See MONT. CODE ANN. § 76-9-103 (2021) (“The laws of this state concerning planning or growth policies, as defined in 76-1-103, may not be construed to authorize an ordinance, resolution, or rule that would (1) prevent the operation of an existing shooting range as a nonconforming use (2) prohibit the establishment of new shooting ranges, but the ordinance, resolution, or rule may regulate the construction of shooting ranges to specified zones; or (3) prevent the erection or construction of safety improvements on existing shooting ranges.”); MONT. CODE ANN. § 76-9-104 (2021) (“A planning district growth policy, recommendation, resolution, rule, or zoning designation may not (1) prevent the operation of an existing shooting range as a nonconforming use (2) prohibit the establishment of new shooting ranges, but it may regulate the construction of shooting ranges to specified zones; or (3) prevent the erection or construction of safety improvements on existing shooting ranges.”).

170. See MONT. CODE ANN. § 76-9-105(2) (2021).

III. PROBLEMS WITH NOISE REGULATION AND ITS FAILURE TO PROVIDE APPROPRIATE MEASURES OF RELIEF

A. *What Does "Noise" Even Mean?*

"Noise" is a term that proves difficult to squarely define, largely due to different meanings depending on the environment it is being used to describe. There is a medical definition for noise,¹⁷¹ an acoustic definition,¹⁷² and a variety of statutory definitions.¹⁷³ From the standpoint of those involuntarily subjected to noise pollution, the better definition of noise is that of an unwanted sound.¹⁷⁴ Such definitions, however, do not adequately convey the frustrations experienced by landowners who are constantly bombarded with the sounds of war. For these disregarded victims, perhaps the best definition of noise would be waste created by various human activities or, more fitting, waste created by a gun range operation.

It is worth noting that the harms of noise pollution are not limited to the encroachment on one's quiet use and enjoyment of their property, but also include the physical and mental toll that noise can take on the human body.¹⁷⁵ Continued exposure to noise pollution can affect people's ability to concentrate; impair sleeping patterns; negatively impact blood pressure; increase risk profiles for the development of heart disease, ulcers, strokes, and digestive disorders; and

171. See Michael D. Seidman & Robert T. Strandring, *Noise and Quality of Life*, 7 INT'L J. ENV'T RSCH. PUB. HEALTH 1330 (2010) ("Noise is defined as an unwanted sound or a combination of sounds that has adverse effects on health. These effects can manifest in the form of physiologic damage or psychological harm through a variety of mechanisms.").

172. See *Noise*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/science/noise> (last visited Oct. 25, 2023) ("Noise, in acoustics, any undesired sound, either one that is intrinsically objectionable or one that interferes with other sounds that are being listened to.").

173. See MD. CODE ANN., ENV'T § 3-101(c)(1) (West 2023) ("'Noise' means the intensity, frequency, duration, and character of sound. (2) 'Noise' includes sound and vibration of subaudible frequencies."); CAL. HEALTH & SAFETY CODE § 46022 (West 2023) ("'Noise' means and includes excessive undesirable sound, including that produced by persons, pets and livestock, industrial equipment, construction, motor vehicles, boats, aircraft, home appliances, electric motors, combustion engines, and any other noise-producing objects.").

174. See Daniel Fink, *A New Definition of Noise: Noise is Unwanted and/or Harmful Sound. Noise is the New 'Secondhand Smoke'*, 39 PROC. MEETINGS ON ACOUSTICS 050002, 8 (2020); Dunlap, *supra* note 3, at 62 (describing sound as an unwanted noise).

175. See U.S. ENV'T PROT. AGENCY, NOISE EFFECTS HANDBOOK, at 53–60 (Oct. 1979); DR. ALICE H. SUTER, NOISE AND ITS EFFECTS, ADMIN. CONF. U.S. (Nov. 1991); see also Dunlap, *supra* note 3, at 51–52 (discussing noise-induced hearing loss, negative effects that noise has on children, and other problems attributable to noise pollution).

lead to the development of learning disabilities.¹⁷⁶ Further, long-term exposure to noise pollution may lead to increased levels of anxiety and hostility, a generally lower quality of life,¹⁷⁷ and even a reduced life expectancy.¹⁷⁸

To combat the resultant harms of noise, local jurisdictions will commonly enact noise regulation in an attempt to provide a middle ground for the community to peacefully coexist.¹⁷⁹ While local noise regulation may be helpful for some noises, such as a neighbor's loud music playing late into the night, jurisdictions are often handcuffed by legislative action prohibiting the passage of ordinances that regulate noise from a gun range.¹⁸⁰

B. *Mechanics of Noise Ordinances*

Generally, noise regulations come in two basic varieties. First, noise ordinances can specify maximum decibel limits that may be produced during certain periods of the day.¹⁸¹ Second, noise ordinances can ban loud noise outright, irrespective of the time of day.¹⁸² Between the two, state courts generally favor decibel limit regulations, given that such regulations are generally more measurable and less subject to varying interpretations as to what constitutes "loud noise."¹⁸³ Decibel regulations, however, are not immune to

176. Dunlap, *supra* note 3, at 52.

177. *Id.*

178. See Lisa Mulcahy, *You Can't Ignore All That Road Noise: It Could Shorten Your Life*, L.A. TIMES (Jan. 9, 2016), <https://www.latimes.com/health/la-he-road-noise-20160109-story.html>.

179. See *infra* Section III.B.

180. See generally Cotter, *Outdoor Sport Shooting*, *supra* note 2, at 44–46 (discussing how many states expressly prohibit local governments from enacting noise ordinances related to gun ranges).

181. See, e.g., *McCray v. City of Citrus Heights*, No. Civ.S-99-1984WBSDAD, 2000 WL 1174728, at *1 (E.D. Cal. Aug. 7, 2000) (reviewing noise ordinance restrictions of amplified music between the hours of 10:00 P.M. and 8:00 A.M.); *State v. Clarksburg Inn*, 375 N.J. Super. 624, 635 (N.J. Super. Ct. App. Div. 2005) (reviewing the constitutionality of daytime and nighttime noise ordinances); see also Dunlap, *supra* note 3, at 56 (stating that "[g]enerally, well-drafted noise ordinances and nuisance laws . . . regulate a decibel limit or the unreasonableness of the amount or type of noise").

182. See, e.g., *United States v. Doe*, 968 F.2d 86, 87 (D.C. Cir. 1992) (reviewing the constitutionality of a federal noise ordinance that broadly bans noise levels in excess of sixty decibels); see also Dunlap, *supra* note 3, at 56.

183. See *Doe*, 968 F.2d at 89 (holding that a local ordinance defining unlawful noise to be any sound in excess of sixty decibels did not pass constitutional scrutiny, observing that "it is impossible not to conclude that the means chosen [are] substantially broader than necessary to achieve the government's interest").

constitutional review.¹⁸⁴ Additionally, noise ordinances commonly define where and how noise measurements must be taken to create uniformity against what should be an objectively measurable standard.¹⁸⁵ This ensures that the readings will be as consistent, uniform, and correct as possible. It can also assist gun range owners by enabling them to purchase their own decibel meters to determine whether they are complying with the specifications set out in an ordinance.

For localities passing noise ordinances that are without specific decibel limits, enforcement can become challenging, especially when the regulation has ambiguous language like banning “unnecessary or unusual noise which annoys, injures, or endangers comfort.”¹⁸⁶ Absent specific decibel limits, regulations based on subjective determination are often struck down by courts for failing to survive constitutional scrutiny.¹⁸⁷ Having noise ordinances that limit loud and excessive noise is certainly a start, but day-to-day application and enforcement of these ordinances are not without practical issues. For example, there are issues pertaining to the training of law enforcement as well as the funding to purchase equipment necessary to monitor decibel levels. For those living in rural environments, it is not uncommon for law enforcement to be stretched thin or without funds to purchase decibel reading devices, thereby leaving landowners with a type of impromptu-vigilante enforcement responsibility. If decibel reading devices are not used, ambiguity abounds when determining what constitutes excessive noise. Further, even if law enforcement receives a complaint, the wrongdoer could temporarily discontinue the activity, only to start again after law enforcement leaves.¹⁸⁸

In many respects, noise ordinances are akin to the proverbial “all hat and no cattle”—a solution on its face but “[m]ost anti-noise laws have . . . been almost entirely unworkable.”¹⁸⁹

184. *Id.* at 90.

185. See, e.g., ARIZ. REV. STAT. ANN. § 17-602 (2023) (providing specific requirements for the measurement of noise pursuant to the American National Standards Institute’s standard methods (ANSI S1.2-1962)).

186. *Nichols v. City of Gulfport*, 589 So. 2d 1280, 1281 (Miss. 1991) (holding that a local noise ordinance providing that “unnecessary or unusual noises shall not be made or caused to be made or continued to be made which either annoys, injures or endangers the comfort, repose, health or safety of others” failed to pass constitutional scrutiny); see also *Dunlap*, *supra* note 3, at 72 (stating that ordinances have been struck down “for being based too much on subjective determinations”).

187. See *Nichols*, 589 So.2d at 1282.

188. See *Dunlap*, *supra* note 3, at 73.

189. Steven N. Brautigam, *Rethinking the Regulation of Car Horn and Car Alarm Noise: An Incentive-Based Proposal to Help Restore Civility to Cities*, 19 COLUM. J. ENV’T L. 391 (1994).

C. The Tug-of-War Between Neighbors and the Problems with Noise Regulation

Since the Great Migration west,¹⁹⁰ one fundamental privilege has been afforded to American landowners—the right to use their property as they so desire.¹⁹¹ This right was conferred under the Fifth Amendment of the U.S. Constitution.¹⁹² The right, however, is not absolute. A maxim often cited in nuisance cases—*sic utere tuo ut alienum non laedes*—translates that one shall use their property in a manner that does not cause injury to another's property.¹⁹³ Courts have applied this maxim to hold that "one may not make such an unreasonable use of [their] property that it substantially impairs the right of another to peacefully enjoy [their own] property."¹⁹⁴

These rights seem to be the opposite sides of the same coin, effectively posing neighbor against neighbor. Take for example, owner A, an avid carpenter who builds elaborate art in their backyard studio on Saturday mornings. Owner B, the next-door neighbor, works a late shift on Fridays and is not able to get to bed until late Saturday morning when, just a few short hours later, they are violently awoken from sounds of commercial grade circular saws and benchtop sanding tables. Who wins?

Absent an express ordinance restricting carpentry in private backyards, should A be permitted to continue making noise on Saturday mornings? Should B prevail because the noisy sounds of circular saws clearly interfere with B's quiet use and enjoyment of their property? Or does B simply have to endure it, every Saturday morning, week after week? If the basis to prevent A from using their backyard studio is *any* sound that will negatively affect B's enjoyment of their property, what is A left to do? Each time B finds a noise offensive, can B simply knock on A's door and demand it to stop? Can A then slam the door in B's face knowing that there is not an actionable violation? These questions are

190. See *Pa. Coal Co. v. Mahon*, 260 U.S. 393, 415–16 (1922).

191. See *Racine v. Glendale Shooting Club, Inc.*, 755 S.W.2d 369, 372 (Mo. Ct. App. 1998) ("The general rule is that a property owner has the right to exclusive possession and control of his property and the right to devote it to any type of lawful use which satisfies his interests."); see also *City of Fredericktown v. Osborn*, 429 S.W.2d 17, 22 (Mo. Ct. App. 1968) ("[A] owner has the right to the exclusive possession and control of his property, and the right to devote it to such lawful uses as will subserve his interests.").

192. See U.S. CONST. amend. V.

193. See *Dep't of Transp. v. PSC Res., Inc.*, 419 A.2d 1151, 1157 (N.J. Super. Law. Div. 1980) ("Calling the law of nuisance the oldest form of land use control, the court stated that it evolved from the ancient maxim 'Sic utere tuo et alienum non laedes'—one must so use his rights as not to infringe on the rights of others.").

194. *Racine*, 755 S.W.2d at 372.

difficult to answer and even more difficult to police. Notably, when it comes to gun ranges, states with noise ordinances set the acceptable decibel levels so high that police enforcement would never realistically occur.¹⁹⁵

IV. ILLUSTRATIVE CASES

The following cases illustrate the growing frustrations and dismay many landowners experience when realizing that their state positioned them to be a casualty of development and left with no pathway to seek redress against the legalized nuisance of gun range operations. Absent a showing of actual property damage or physical injury, private nuisance claims are all but toothless,¹⁹⁶ providing gun range owners with a statutory get-out-of-jail-free card that allows them to pollute their surrounding airspaces with the noxious sounds of war and to do so without concern for the disregarded landowner victims substantially harmed as a result.

A. Shepard v. The Pollution Control Board

In *Shepard v. The Pollution Control Board*,¹⁹⁷ plaintiff landowners brought noise pollution claims against a local gun range that provided skeet and trap shooting on its property.¹⁹⁸ The shooting primarily occurred on Thursdays from 5:00 P.M. to 10:00 P.M.¹⁹⁹ Occasionally, the shooting activities would be scheduled for Wednesdays and Fridays, along with certain holidays.²⁰⁰ In their complaint, the aggrieved homeowners alleged violations of the Illinois Environmental Protection Act (IEPA) and sought a cease and desist order restricting all sound emissions from the gun range.²⁰¹ Further, the landowners alleged that the sound emanating from the gun range negatively interfered with the quiet use and enjoyment of their property, restricted their outdoor recreational activities, and depreciated the value of their property.²⁰²

195. See, e.g., OKLA. STAT. tit. 63, § 709.2 (2022) (ensuring gun ranges are in compliance with the law so long as the noise emanating from the range does not exceed 150 decibels).

196. See *supra* Section I.A.1, I.A.2.

197. 651 N.E.2d 555 (Ill. App. Ct. 1995).

198. *Id.* at 557.

199. *Id.*

200. *Id.*

201. *Id.*

202. *Id.*

On appeal, the state appellate court evaluated section 24 of the IEPA, which provided that “[n]o person shall emit beyond the boundaries of his property any noise that unreasonably interferes with the enjoyment of life or with any lawful business activity, so as to violate any regulation or standard adopted by the Board under this Act.”²⁰³ However, any confidence in finding relief under section 24 was quickly dismissed because certain activities are expressly excluded from the regulation; “[n]o Board standards for monitoring noise or regulations prescribing limitations on noise emissions shall apply to any organized amateur or professional sporting activity”²⁰⁴

As yet another example of losing the war before it began, the IPEA defines organized sporting activity to include “skeet, trap or shooting sports clubs in existence prior to January 1, 1975”²⁰⁵ Thus, the appellate court affirmed that the shooting club was exempt from noise pollution regulation.²⁰⁶

B. Concerned Citizens of Cedar Heights-Woodchuck Hill Road. v. DeWitt Fish & Game Club, Inc.

In *Concerned Citizens of Cedar Heights-Woodchuck Hill Road. v. DeWitt Fish & Game Club, Inc.*,²⁰⁷ plaintiff landowners filed a lawsuit against the owner of a gun range seeking a permanent injunction to prevent defendant’s use of property as a commercial sporting range.²⁰⁸ In four separate causes of action, the plaintiffs alleged the gun range constituted (1) a private nuisance, generally, (2) “a public nuisance by virtue of the impulse noise” caused by the discharge of firearms as well as (3) a public and (4) private nuisance due to the discharge of lead.²⁰⁹ Defendant submitted proof that “it was in compliance with the local noise control” regulation.²¹⁰

The Appellate Division of the New York Supreme Court granted the gun range owner’s motion for summary judgment.²¹¹ The court held that the plaintiffs failed to demonstrate the defendant’s use of the property caused a substantial and

203. *Id.* at 558; *see also* 415 ILL. COMP. STAT. 5/24 (2022).

204. *Shepard*, 651 N.E.2d at 559 (emphasis added).

205. *Id.*

206. *Id.* at 562.

207. 755 N.Y.S.2d 192 (N.Y. App. Div. 2003).

208. *Id.* at 193.

209. *Id.*

210. *Id.*

211. *Id.*

unreasonable interference with the use of their property and “failed to allege an injury different from that suffered by other residences in their community.”²¹²

C. *Woodsmall v. Lost Creek Township Conservation Club, Inc.*

In *Woodsmall v. Lost Creek Township Conservation Club, Inc.*,²¹³ defendant operated a gun range in rural Indiana, providing users access to handgun and large caliber rifle ranges.²¹⁴ In 1972, the trial court issued an order “restricting skeet and trap shooting . . . to certain times and days and banning ‘any shooting whatsoever’” after 10:30 P.M.²¹⁵ Some thirty years later, shooting at the gun range increased significantly when the local police department began using it for training, after losing the use of another range at a nearby federal penitentiary.²¹⁶ Plaintiffs filed a complaint seeking injunctive relief to abate the nuisance and specifically requested that all firearm discharge cease or, alternatively, to restrict the usage of rifles and handguns.²¹⁷ After a bench trial, the court denied the plaintiffs’ injunctive relief.²¹⁸

On appeal, the plaintiffs alleged that the increase in shooting activity at the gun range interfered with the quiet enjoyment of their property.²¹⁹ One plaintiff complained of “feeling anxious after hearing sounds of gunfire.”²²⁰ Plaintiffs argued that stray bullets landed on some of their property but the court did not see much weight in the stray bullet evidence because plaintiffs could not definitively establish that the defendant’s property was the source of the hazard.²²¹ The court reasoned that “a factfinder could infer that shooting in the heavily wooded area near the [plaintiff’s property] is not limited to . . . [defendant’s] members and visitors.”²²² Another plaintiff testified to “hearing a shot, and [that] four or five days later her husband found a spent bullet lying on

212. *Id.* (quoting *Saks v. Petosa*, 584 N.Y.S.2d 321, 322 (N.Y. App. Div. 1992)) (holding that petitioners who fail to allege an injury different from that suffered by other residents in their community could not maintain an action alleging public nuisance).

213. *Woodsmall v. Lost Creek Twp. Conservation Club, Inc.*, 933 N.E.2d 899 (Ind. Ct. App. 2010).

214. *Id.* at 901.

215. *Id.* at 901–02.

216. *Id.* at 902.

217. *Id.*

218. *Id.*

219. *Id.*

220. *Id.* at 903.

221. *Id.*

222. *Id.*

the back deck” with its origin unknown.²²³ The court held that plaintiffs failed to establish a claim of private nuisance and affirmed the lower court’s denial of relief for the landowner plaintiffs.²²⁴

D. 3 Rivers Logistics, Inc. v. Brown-Wright Post No. 158 of American Legion, Department of Arkansas, Inc.

In *3 Rivers Logistics, Inc. v. Brown-Wright Post No. 158 of American Legion, Department of Arkansas, Inc.*,²²⁵ defendant was a charitable organization that owned forty acres in rural Arkansas County.²²⁶ Plaintiffs included a business that operated from a tract land adjacent to defendant as well as landowners residing on property that adjoined the defendant’s property.²²⁷ All plaintiffs occupied their property prior to the defendant’s construction of the gun range that provided users with designated areas to discharge handguns, rifles, and shotguns.²²⁸ After shooting began, the plaintiffs filed a complaint contending that the noise produced by the gun range constituted a private nuisance and interfered with their “use and enjoyment of their property.”²²⁹ Additionally, the plaintiffs argued that immunizing defendant from noise-based lawsuits constituted an unconstitutional private taking²³⁰ as the excessive noise emanating from the gun range was not consequential or incidental, and substantially diminished the value of their property without just compensation.²³¹ The plaintiffs thus sought injunctive relief and damages for the decrease in the value of their property.²³²

The defendant argued that it was immune from noise-based lawsuits.²³³ The circuit court found the defendant’s argument persuasive and granted its motion

223. *Id.* at 904.

224. *Id.* at 904–05.

225. *3 Rivers Logistics, Inc. v. Brown-Wright Post No. 158 of Am. Legion, Dep’t of Arkansas, Inc.*, 548 S.W.3d 137 (Ark. 2018).

226. *Id.* at 139.

227. *Id.*

228. *Id.*

229. *Id.*

230. *Id.* at 143; *see also* ARK. CONST. art. 2, §22 (“The right of property is before and higher than any constitutional sanction; and private property shall not be taken, appropriated or damaged for public use, without just compensation therefor.”).

231. *See 3 Rivers Logistics*, 548 S.W.3d at 143.

232. *Id.* at 139.

233. *Id.*; *see also* ARK. CODE ANN. § 16-105-502(a) (2023) (“Notwithstanding any other provision of law to the contrary, a person who operates or uses a sport shooting range in this state shall not be subject to civil liability or criminal prosecution for noise or noise pollution

to dismiss.²³⁴ On appeal, the court affirmed, holding that the “burden on appellants’ use of their property, and its diminution in value, is insufficient to rise to the level of a taking.”²³⁵ The court also emphasized that “the mere fact that a partial use of one’s property is burdened by regulation does not amount to a taking.”²³⁶ Regarding the issue of nuisance, the court held that because the county had not passed any noise control regulations applicable to the gun range, the defendant was by default in compliance and the immunity statute applied.²³⁷

E. Landolt v. Glendale Shooting Club, Inc.

In *Landolt v. Glendale Shooting Club, Inc.*,²³⁸ defendant was an owner-operator of a gun range in rural Missouri and subject to a trial court injunction in 1987 resulting from nuisance complaints brought by the Racines, the original plaintiffs who alleged the noise emanating from the range constituted a public and private nuisance.²³⁹ The injunction did not bar all activities at the defendant’s range but instead, in an effort to reduce noise, restricted the volume of shooting activities, the caliber of weapons, and the times and days during the week that they could occur.²⁴⁰ On appeal, the state appellate court affirmed the trial court’s injunction.²⁴¹ In 1988, the Missouri legislature enacted an immunization statute, protecting gun ranges from nuisance actions.²⁴² The defendant moved to dissolve

resulting from the operation or use of the sport shooting range if the sport shooting range is in compliance with noise control ordinances of local units of government that applied to the sport shooting range and its operation at the time the sport shooting range was constructed and began operation.”).

234. See *3 Rivers Logistics*, 548 S.W.3d at 140.

235. *Id.* at 143.

236. *Id.* at 143 (citing *J.W. Black Lumber Co., v. Ark. Dep’t of Pollution Control & Ecology*, 717 S.W.2d 807 (Ark. 1986)).

237. See *id.*

238. 18 S.W.3d 101 (Mo. Ct. App. 2000).

239. *Id.* at 103.

240. See *Racine v. Glendale Shooting Club, Inc.*, 755 S.W.2d 369, 372 (Mo. Ct. App. 1988).

241. See *Landolt*, 18 S.W.3d at 103 (citing *Racine v. Glendale Shooting Club, Inc.*, 755 S.W.2d 369, 374 (Mo. Ct. App. 1988)).

242. MO. REV. STAT. § 537.294(2) (2023) (“All owners and authorized users of firearm ranges shall be immune from any criminal and civil liability arising out of or as a consequence of noise or sound emission resulting from the use of any such firearm range. Owners and users of such firearm ranges shall not be subject to any civil action in tort or subject to any action for public or private nuisance or trespass and no court in this state shall enjoin the use or operation of such firearm ranges on the basis of noise or sound emission resulting from the

the injunction, which was later inherited by the Landolts as the substituted plaintiff and the new owners of the affected property, asserting that it had been rendered unjust due to the enactment of the new statute.²⁴³

Holding for the defendant, the court noted that "a permanent injunction based on a condition subject to change may be vacated or modified in order to avoid unjust or absurd results when a change occurs in the factual setting or the law which gave rise to its existence."²⁴⁴ The court further reasoned that "[e]ven if an injunction has matured into a final judgment, when the legislature amends the substantive law on which an injunction is based, the injunction may be enforced only insofar as it conforms to the changed law."²⁴⁵

Although the case was a matter of first impression for the Missouri Court of Appeals, it looked to a Pennsylvania case that was virtually identical. In *Soja v. Factoryville Sportsmen's Club*,²⁴⁶ landowners who were located near a gun range filed a nuisance complaint based on noise.²⁴⁷ The trial court granted injunctive relief that limited the days and hours the gun range could operate.²⁴⁸ After the injunction was issued, the Pennsylvania legislature passed an immunity statute nearly identical to that of Missouri.²⁴⁹ The defendant sought to have the injunction dissolved and the Supreme Court of Pennsylvania agreed, holding that a permanent injunction is continuing in nature but it does not provide the injured party a perpetual right to enforce the injunction should the law that warranted the initial injunction change in a manner that it would no longer warrant such relief.²⁵⁰ Persuaded by *Soja*, the court remanded the case to determine whether

use of any such firearm range. Any actions by a court in this state to enjoin the use or operation of such firearm ranges and any damages awarded or imposed by a court, or assessed by a jury, in this state against any owner or user of such firearm ranges for nuisance or trespass are null and void.").

243. *Landolt*, 18 S.W.3d at 104.

244. *Id.* at 105 (quoting *Lee v. Rolla Speedway, Inc.*, 668 S.W.2d 200, 204–205) (Mo. App. 1984)).

245. *Id.* (citing *Viacom, Inc. v. Ingram Enterprises, Inc.*, 141 F.3d 886, 890 (8th Cir. 1998)).

246. *Soja v. Factoryville Sportsmen's Club*, 610 A.2d 491 (Pa. Super. Ct. 1992).

247. *Id.* at 492.

248. *Id.*

249. *Id.*

250. *Id.* at 494–495 (stating "a permanent injunction is executory and continuing in nature and does not give the aggrieved party a perpetual or vested right in the remedy, the law governing the order, or the effect of the injunction" and "the enactment of the statute was clearly a change in the law warranting dissolution of the injunction").

the defendant was operating within the range of normal use as required by the state's immunity statute.²⁵¹

As these cases demonstrate, immunity statutes effectively strip existing landowners with any ability to preserve their constitutional rights to the quiet use and enjoyment of their respective properties. The void of legal enforcement mechanisms for disregarded landowner victims' rights demonstrates the necessity for legislatures across the country to amend these statutes in a manner that accommodates the rights of rural landowners that have been acclaimed and enjoyed for generations.

V. THE SOLUTION

The solution is not to police noise decibel levels. As previously addressed, doing so is not feasible when put into practical application.²⁵² There are, however, a few solutions that may provide the best opportunity for gun range owners and rural landowners to find middle ground.

First, state legislators must pass reforms that both require gun range owners who desire to open a new range within a reasonable vicinity of existing landowners to receive prior informed consent and provide a statutory requirement for fair and just compensation to those landowners who do not consent. This provides a mechanism to the gun range owner who is keen on opening the gun range at a specific location and protects non-consenting landowners from the resulting loss of property value once the gun range is operational.

Second, if informed consent is viewed as too intrusive when balanced against the rights of the gun range owner, then legislation should be reformed to provide existing rural landowners the right to bring noise abatement claims against newly established gun range owners operating within close proximity. In turn, legislation should also put the onus on the landowner by requiring the complaint to be filed within a reasonable time of the gun range beginning its operation, such as within two years. Should the landowner fail to file within the prescribed statute of limitations, then the gun range owner is free to operate without concern of future claims.

Third, if existing landowners do not provide their prior informed consent to the establishment of a new gun range or if landowners wishing to assert claims have moved to or near an existing gun range, legislation should permit such landowners to bring claims for noise abatement when operations at the gun range

251. *Landolt v. Glendale Shooting Club, Inc.*, 18 S.W.3d 101, 105 (Mo. Ct. App. 2000).

252. *See supra* Section III.C.

rise to a substantial change.²⁵³ This approach provides the gun range a mechanism to continue its existing operation and creates a pathway for redress for landowners who moved to the nuisance if the existing gun range substantially changes its activities, such as a gun range expanding its previous outdoor handgun-exclusive range to include the use of large caliber rifles or increasing its usage from two days per week to four.

Any of the above three solutions avoid the issues associated with non-governmental actors exercising an unconstitutional takings power²⁵⁴ and provide a pathway for disparaged landowners to seek redress under traditional and recognized causes of action that ensure landowners' constitutional property rights remain protected.²⁵⁵

CONCLUSION

After nearly two hundred years of American jurisprudence protecting a landowner's right to the quiet use and enjoyment of their property, state legislatures across the country saw fit to erode this once revered protection due to their apparent focus on the advancement of corporate enterprise and providing a mechanism for greater urban expansion. Accomplished by states adopting broad and sweeping immunity laws, gun range owners enjoy the freedom to operate with near complete impunity by being fully protected against public and private nuisance claims brought by landowners desperately seeking relief from the unwavering noise obsolescence produced by a nearby gun range.

Under the most favorable interpretation, legislative immunity has effectively protected loud and excessive gun range noise by codifying it as a legalized nuisance. Under the least favorable interpretation, immunity statutes have created state-sponsored frameworks for private individuals to freely exercise an unconstitutional takings power over rural land. Landowners, as the disregarded victims, have been cast aside and seemingly forgotten.

Reforms must accommodate the rights of existing landowners. State legislators must pass reforms that both require newly established gun operations to receive prior informed consent from landowners who will be adversely affected by the introduction of a gun range neighbor and provide a statutory requirement for fair and just compensation to harmed landowners who do not provide their consent. Alternatively, if informed consent is viewed as too intrusive when balanced against the rights of the gun range owner, then

253. Such a solution is only viable, however, if the statute clearly and *reasonably* defines what constitutes a substantial change. *See supra* Section II.A.

254. *See supra* Section I.A.4, I.A.5.

255. *See supra* Section I.A.

legislation should be reformed to allow existing rural landowners to bring noise abatement claims against newly established gun range operations, and to also allow noise abatement claims when the activities and noise levels of an existing gun range have substantially changed. Any of these solutions avoid the issues associated with non-governmental actors that exercise an unconstitutional takings power and provide a pathway for disparaged landowners to seek redress under traditional and recognized causes of action that ensure landowners' constitutional property rights remain protected.

Father Time is often the best barometer to determine who was on the right side of history, and one has to question the intent behind the passage of the immunity laws discussed in this Article. Legislators should be mindful that the negative consequences imposed by gun range immunity laws are not simply limited to the impairment of a landowner's quiet use and enjoyment of their property. Immunity laws also provide no recourse for those living or working near a gun range whose health has been negatively affected by gun range operations, such as through resultant permanent hearing loss or the mental anguish of not feeling safe in one's own home out of fear of stray bullets causing bodily harm or death.

Without legislative reform, rural landowners are left to question what, if anything, can be done. As a great orator of our time once said, "[i]f you don't like it, learn to love it,"²⁵⁶ and, for the time being, this may be the only coping mechanism these disregarded victims must begrudgingly adopt.

256. *The 10 Best Quotes of 'Nature Boy' Ric Flair's Career*, THE ATLANTA CONST. (Aug. 14, 2017), <https://www.ajc.com/sports/the-best-quotes-nature-boy-ric-flair-career/yEXintoJyar6tp3BVhakWJ/>.

In regard to the proposed shooting range located at 23579 200th street, I have compiled a combination of statistics, personal experience and opinion to not only calm potential concerns, but also reinforce the need for an open to the public shooting range.

Firstly, there are many benefits to an open to the public shooting range to a rural area.

1. Safe and Controlled Environment

It provides a designated and regulated area for firearm use, reducing unsafe target shooting in forests or open land.

2. Firearm Education and Training

Ranges can offer courses in gun safety, marksmanship, and responsible firearm ownership for hunters, sport shooters, and new gun owners.

3. Support for Local Hunting Culture

Minnesota has a strong hunting tradition. A range allows hunters to sight in rifles and practice before hunting season.

4. Economic Development

Attracts visitors from surrounding areas, which can benefit local businesses like gas stations, restaurants, and sporting goods stores.

5. Community Engagement

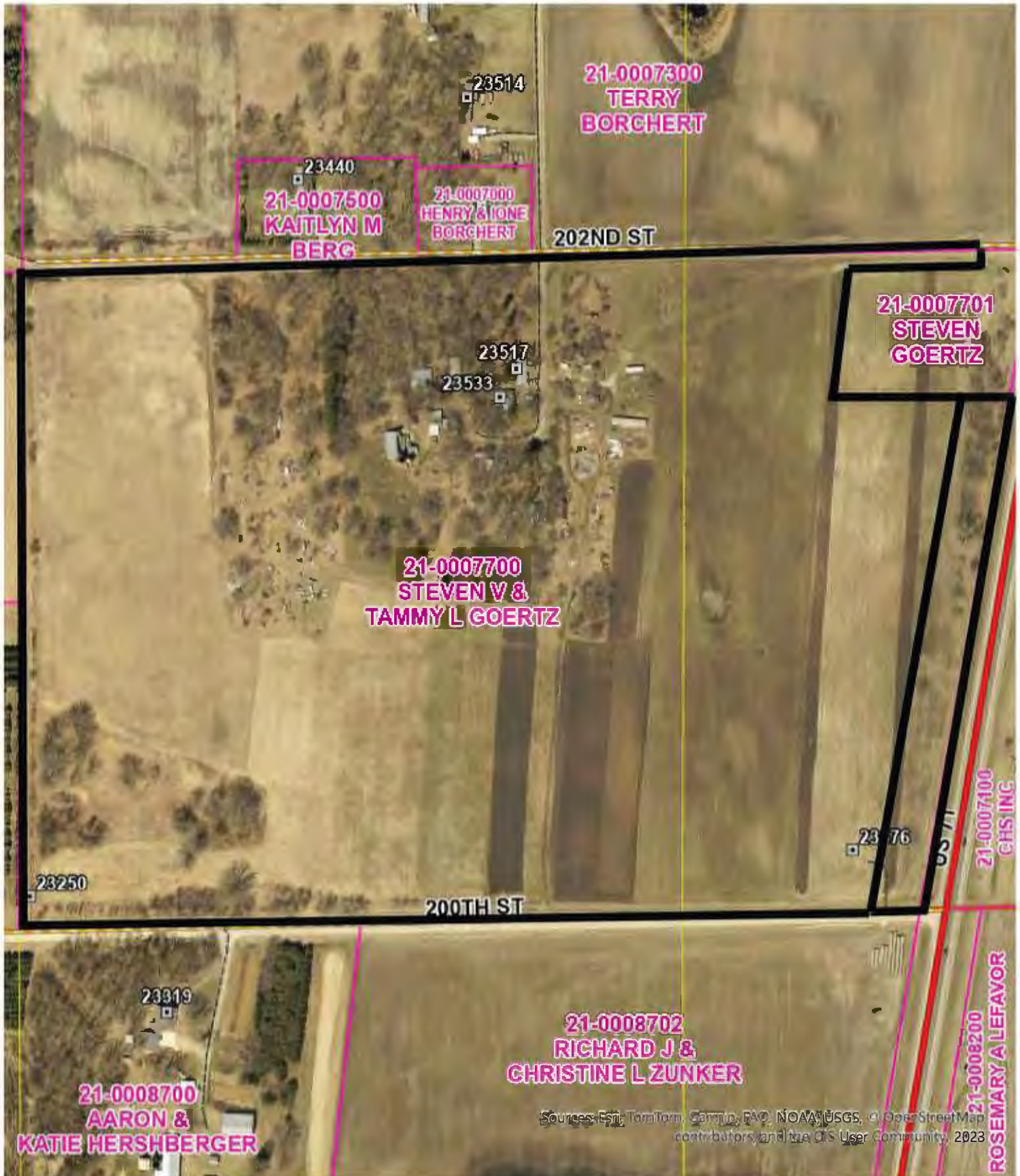
Can host shooting competitions, youth programs, and other events that build community.

Secondly, as a firearms instructor I teach in my classes that practice makes a better shooter. The number 1 question asked by my students is “where do I go shoot?”. The best answer I can give them is you can try to join a sportsman’s club. As many of you may not be aware, sportsman’s clubs are not required to let anyone join or use their facilities. They can discriminate anyway they see fit because they are a “private club”, nor do they have to be ADA compliant. Furthermore, they do not require a range safety officer to be present during operation like an open to the public shooting range does. We chose to provide an open to the public range to accommodate those who don’t feel welcome at these clubs, need the extra guidance of an onsite instructor or cannot access them due to physical disability, some being the result of the service to protect our freedom. The population of Todd County as of July 1, 2024, is 25,955 with about 8,958 living within city limits. 69.5% are over the age of 18, putting the potential gun owners at roughly 18,000 (about 6,200 living within city limits). The current number of permit to carry a firearm holders is 3,034 (about 1,050 within city limits).

Lastly, I will give my background and opinion. I grew up at RR 3 Box 131 (23517 202nd street) on the farm My grandfather purchased in 1956 and sold to my father 1997. This is where the proposed parcel split and building site are located. When I was twelve I took a hunter safety course learning how to properly handle a firearm (the respect was already there as we had several guns in the house). We have always practiced marksmanship with various different types of guns and cartridges on this property. In 2021 I expanded my interest into pistols and took a permit to carry class and purchased my first handgun. In a very short period of time, I fell in love with that aspect of firearms, so much, that in August of 2024 I became a USCCA certified firearms instructor. In the past 4 years I have discharged nearly 500 rounds of various types of cartridges each month with my family and close friends (even in the winter with subzero temperatures) with zero noise abatements thus far. If a shooting range will cause nuisance noise issues during appropriate operating hours, will me discharging my personal firearms on my family's private property become an issue? Do I have to worry about my unalienable constitutional right being banned on a farm I have referred to as home even after I moved away? Do I not have the right to shoot with my children and someday grandchildren as I have with my father and grandfather all my life because of people moving onto 5-acre tracts from urban areas to ruin the way of life my family has lived for nearly 70 years? We are simply trying to live the American Dream that so many of my family and yours have fought and even died to defend.

God Bless America,

Joshua Goertz



Sources: Esri, Terraform, Garmin, FAO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community, 2023

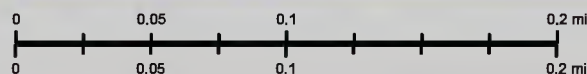
Todd County

MINNESOTA



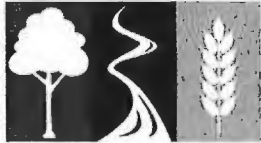
Todd County GIS
215 1st Ave S, Ste 102
Long Prairie, MN 56347
(Office) 320-732-4248

LetterLayout



The Todd County GIS & Land Services Department has made every effort to provide the most accurate and up-to-date information available in this publication and cannot be held responsible for any unforeseen errors or omissions. If the recipient wishes to locate parcel corners and property lines, employ the services of a Registered Land Surveyor.

Printed on:
Thursday, April 10, 2025



WHERE THE FOREST MEETS THE PRAIRIE

Todd County
• MINNESOTA • EST. 1855 •

Receipt # 2025-0058
PLANNING & ZONING
215 1st Avenue South, Suite 103
Long Prairie, MN 56347
Phone: 320-732-4420 Fax: 320-732-4803
Email: ToddPlan.Zoning@Co.Todd.MN.US
Received

APR 07 2025

JLC
Todd County Planning
& Zoning

CONDITIONAL USE PERMIT APPLICATION

Applicant William & Dawn Vokes Mailing Address 33246 Co. Rd 156 Albany Mn 56007
Site Address 11734 Co. Rd 47 Grey Eagle MN. 56336
Phone Number [REDACTED]
Property Owners Name & Address (if not applicant) _____

Parcel ID(s) 11-0027400 Township Grey Eagle Lake/River Name Big Birch Lake
Zoning District (circle one): AF-1; AF2; R-2; R-10; UG; RT; Comm; L-M; or Shoreland. AD

Full and Current Legal Description(s) Attached
(attach if necessary)

Current tax statement or other proof of ownership attached ☒ yes () no

Measurement of land involved: Width 330.27 Length 2382.71 Acres 17.4

Septic System: Date installed _____ Date of latest Compliance Inspection _____

Is an upgrade needed: () yes () no New Design with Watab

Site accessed by: ☒ public road () easement

If easement, is the easement legally recorded? () yes () no

Detailed Explanation of Request:

Seasonal Campground w/ hookups. 40x40 office Building
17 Sites

1. Did you meet with the Township Board to present the Application for Conditional Use Permit?

Yes ☒ No _____ Date of the meeting: 10 / 17 / 24

This was signed originally but I am unable to locate.

Optional Township Board Signature _____

Board Position _____

Will the request create an excessive burden on the existing roads or other utilities? Explain **NO** - this is a small campground with a limited # of campsites - ensuring manageable traffic levels that align w/ typical road capacity in a seasonal-only use.

Is the requested use compatible with the surrounding properties? **Explain**

YES. We intend that it promotes low-impact tourism, preserves open spaces, and supports local economy, maintaining the area's natural character + tranquility.

Could the use significantly depreciate near-by properties? **Explain**

W3 do not believe so, it is designed to blend w/ the natural environment, operate seasonally, w/ minimal year-round impact and attract responsible outdoor enthusiasts. also, well managed campgrounds can enhance the area's appeal, potentially increasing property value →

Will the structure and the use have an appearance that will not have an adverse effect on near-by

properties? **Explain** It will not because its design to blend w/ the natural landscape.

Using minimal and aesthetically pleasing RV sites, screened by trees and vegetation.

Thoughtful site planning w/ natural buffers - low impact lighting will ensure the campground maintains the rural character of the area while preserving scenic views for neighboring properties.

Will the requested use create an adverse affect on near-by properties because of noise, odor, glare, hours of

operation, or general unsightliness? **Explain** n o. It will be carefully managed to minimize disruptions. There will be quiet hours and respectful policies while proper waste management and sanitation facilities will prevent odors. The design will maintain a visually appealing environment.

**RETURN APPLICATION, SITE PLAN, SEWER INFORMATION AND ANY ADDITION
INFORMATION, AND FEE TO:**

Todd County Planning & Zoning Office
215 1st Ave South, Suite 103
Long Prairie, MN 56347

Fee: ^{600.00}~~\$500.00~~ or After-the-Fact Fee: ^{1,200.00}~~\$1,000.00~~ payable to "Todd County"

Only complete applications may be placed on an agenda

****A PARCEL IN JOINT OWNERSHIP MUST PROVIDE WRITTEN SIGNATURE OF ALL OWNERS****

Dawn M Vowles
Applicant Name Printed

Signature

Date 3/13/28

Same

Property Owner Name Printed

Signature (If different than applicant)

Date _____

A Conditional Use Permit expires and is considered invalid unless they are substantially completed within thirty-six months of the date the CUP is granted by the County Board (*Section 5.05(N) of the County Zoning Ordinance*).

by promoting local recreation + tourism

Property ID Number: 11-0027400
Property Description: 11734 COUNTRY 47
SECT-20 TWP-127 RANG-32 S2 N2 S2 NE4 & S2 N2 OF GOVT LOT 2
LYING E OF CO RD 47 18.04 ACRES

GREY EAGLE TWP
18.04 ACRES

WILLIAM R & DAWN VOWLES
33246 CO RD 156
ALBANY MN 56307

39781-T
Paid in full
5/15/24

Step 1	Values and Classification	2023	2024
Estimated Market Value:	52,200	61,200	
Homestead Exclusion:			
Taxable Market Value:	52,200	61,200	
New Improve/Expired Excl:			
Property Classification:	RES NON-HSTD	RES NON-HSTD	
Sent in March 2023			

Step 2	Proposed Tax	2023	2024
*Does Not include Special Assessments Debt in November 2023		496.00	
Property Tax Statement			
First Half Taxes:		245.00	
Second Half Taxes:		245.00	
Total Taxes Due in		490.00	

You may be eligible for one or even two refunds to reduce your property tax.
Read the back of this statement to find out how to apply.

Taxes Payable Year	2023	2024
First Half Taxes:	245.00	245.00
Second Half Taxes:	245.00	245.00
Total Taxes Due in	490.00	490.00
REFUNDS?		
Taxes Payable Year	2023	2024

1. Use this amount on Form M1PR to see if you are eligible for a property tax refund
File by August 15th. IF BOX IS CHECKED, YOU OWE DELINQUENT TAXES AND ARE NOT ELIGIBLE
2. Use this amount on Form M1PR to see if you are eligible for a property tax refund.
Property Tax and Credits
3. Property Taxes before credits
4. A. Agricultural market value credits to reduce your property tax
B. Other credits to reduce your property tax
5. Property taxes after credits
Property Tax by Jurisdiction
6. County A. B.
7. City or Town
8. State General Tax
9. School District 2753
10. Special Taxing Districts:
A. VOTER APPROVED LEVIES
B. OTHER LOCAL LEVIES
A. REGION V
B. SAUK WATER SHED DISTRICT
C.
D.
11. Non-school voter approved referenda levies
12. Total property tax before assessments
Special Assessments 13. A.
on Your Property
PRINCIPAL
INTEREST
TOTAL
14. YOUR TOTAL PROPERTY TAX AND SPECIAL ASSESSMENTS

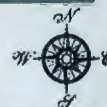
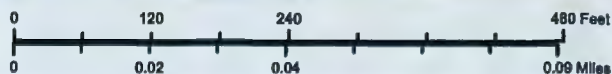


Todd County
MINNESOTA



Todd County GIS
215 1st Ave S, Ste 102
Long Prairie, MN 56347
(Office) 320-732-4248

Site Map



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Printed on:
Friday, October 6, 2023

I am a 3rd generation resident on Big Birch Lake with a lifelong connection to the area. For well over 100 years, this property has been in my family – the broader area was once my grandparents' farm and homestead. My father was born and died on this property. I'm not a casual visitor and the area is well-known by me. With first-hand knowledge of the area, there are questions, considerations and concerns re: the request to develop a seasonal campground across the road at 11734 County 47.

SCANNED

General

- What is the need for this campsite for the area?
 - Other campgrounds with close lake access, wooded camp sites already exist in on this lake.
- What is the attraction for campers at this location?
 - Not a great spot for a campground
 - Lake access not easily or safely accessible (lake shore in immediate area is private, residential property)
 - No walking paths and no bike paths; walking/biking on County 47 is extremely dangerous due to extremely narrow shoulders, ditches, blind spots, speeding traffic
- What is the planned lake access?
- What supporting studies & plans have been done & who did them? Are they public record yet? If not, when will they be?
 - Environmental
 - Grading/Drainage
 - Hydrogeological (to under impact to existing wells)
 - Traffic

Watershed/Storm Water Management

- Where would we find a copy of the grading/drainage plan prepared by an engineer to address the storm water management due to significant increase in impervious surface?
 - The natural flow of water today is through the NW corner of the property, into a culvert and then into the properties of residents directly across the road. The water then flows through our properties and into Big Birch Lake.
 - Being downstream, additional storm water run-off directly and negatively impacts our properties, resulting in higher flooding and erosion, all flowing into the lake (creating additional sediment). This is a critical concern given the negative impact to existing use of our properties and related property values.
- What is the plan to prevent additional storm water run-off into existing residential properties?

County Road 47 Impact & Safety Concerns

- What studies were performed to determine an expected low-level impact to existing roads (especially County 47)?
- County 47 is already a busy road, especially during the summer season which is anticipated to be prime-time use of the campground drawing additional traffic. The road also has incredibly narrow shoulder and ditches along both sides.
 - With first-hand experience, I can attest that the road is not safe today for pedestrians or cyclists.

- The road is a busy thoroughfare, especially during summer months when traffic is at it's peak.
- Drivers frequently exceed the 40mph speed limit.
- This part of the road is particularly tight with downhill traffic coming from both directions.
- Hill to south creates blind spots which can make it challenging to make a turn off/on Cty 47.
- RVs/campers/boat trailers are different than standard vehicles = increased weight, increased size, more time required to accelerate and stop, require larger turning radius. Combined with known blind spots and speed of county road traffic, there are grave concerns for safety of residents, campers and drivers in this area with a big number of large-vehicle traffic turning on/off the road in this particular spot.

Campground Clarity

- The permit application references the site will be carefully managed. What specifically does that mean? Will a campsite manager be on site? 7/24?
- What are the defined quiet hours?
- What is the defined seasonal use? Memorial Day – Labor Day?
- What type of buffer or screening is planned to minimize impact to neighboring properties? How long before planned landscaping will reach maturity and what measures will be taken for immediate buffering?
- How will any smell issues be addressed when pumping all the designated holding tanks?

Impact to Existing Residential Properties

- What studies or documented proof can be provided to support the statement that the planned campsite is not believed to depreciate near-by properties?
 - Many people go to the lake for peaceful, quiet surroundings. This makes other properties without a nearby campground likely to be more appealing to avoid concerns with related noise levels, trespassers, increased traffic, odors, litter, etc.
- The planned campsite driveway placement appears to be directly across from our property. There are a number of related concerns with the impact this has on our property:
 - Natural for large vehicles to need wider turn radius/clearance; on a busy county road with extremely narrow shoulders, this makes our property a primary area to be used/encroached repeatedly by vehicles trying to clear the turn with a significant risk of damage to existing mailboxes, grassy areas on our property as well as increased wear & tear to that part of our driveway.
 - At a minimum the driveways should be offset and accommodations made on campsite property to ensure proper accommodations larger vehicles need to safely turn on/off County 47 without negatively impacting private property across the road.
- By inviting 70+ changing, casual visitors to the immediate area, what measures are to be taken to mitigate the higher risk of trespassers on neighboring properties, especially since there is no convenient lake access for campers at that site?
- Without access to more detailed plans/information, there are concerns with increased noise, light pollution, litter/refuse.



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◆ AI Overview



In Minnesota, you cannot discharge a firearm within 500 feet of a building occupied by humans or livestock without the written permission of the owner, occupant, or lessee, according to Minnesota law. This applies to private land, including private campgrounds, and public right-of-ways, according to the Minnesota DNR. However, if you are hunting from water, a private shooting preserve, or public land, you can hunt within 500 feet of a building, says the DNR. Additionally, firearms must be unloaded and cased, and bows unstrung, when in or within 200 feet of any campground, picnic area, beach, parking lot, interpretive site, or trailhead in state forests, according to the DNR. 

**State Forests Rules |
Minnesota DNR**Hunting and Shooting State forests
and wildlife management areas are... Minnesota DNR ⋮**Minnesota Depart
- Facebook**Oct 15, 2020 — Minneso
- Q: How far away from i Facebook · Minneso

SCANNED

Patrick Smith

Planning Commission Questions/Issues

What was the townships comments?

Public Safety-Traffic Issues - Concerns with our safety with RV and 5th wheel traffic.

Entrance is directly across from our driveway. Why there? Safety concerns, we have a hill up our driveway to highway. Pulling out has been a safety issue for many years with current traffic.

Road has no shoulder

40 MHP Speed Limit – traffic rarely drives at or below speed limit

Hill just south of proposed entrance

Is there a turn lane proposed?

I would like you to take a turn lane as a top consideration

How are they proposing to handle the increased drainage?

Water runoff flows under the hwy via a culvert across the back yard of Aprile Barton, through our property, though the Rodenwald"s, then into the lake. See copies.

Where do they plan to use lake water access? Has the DNR been notified or involved? If not, why?

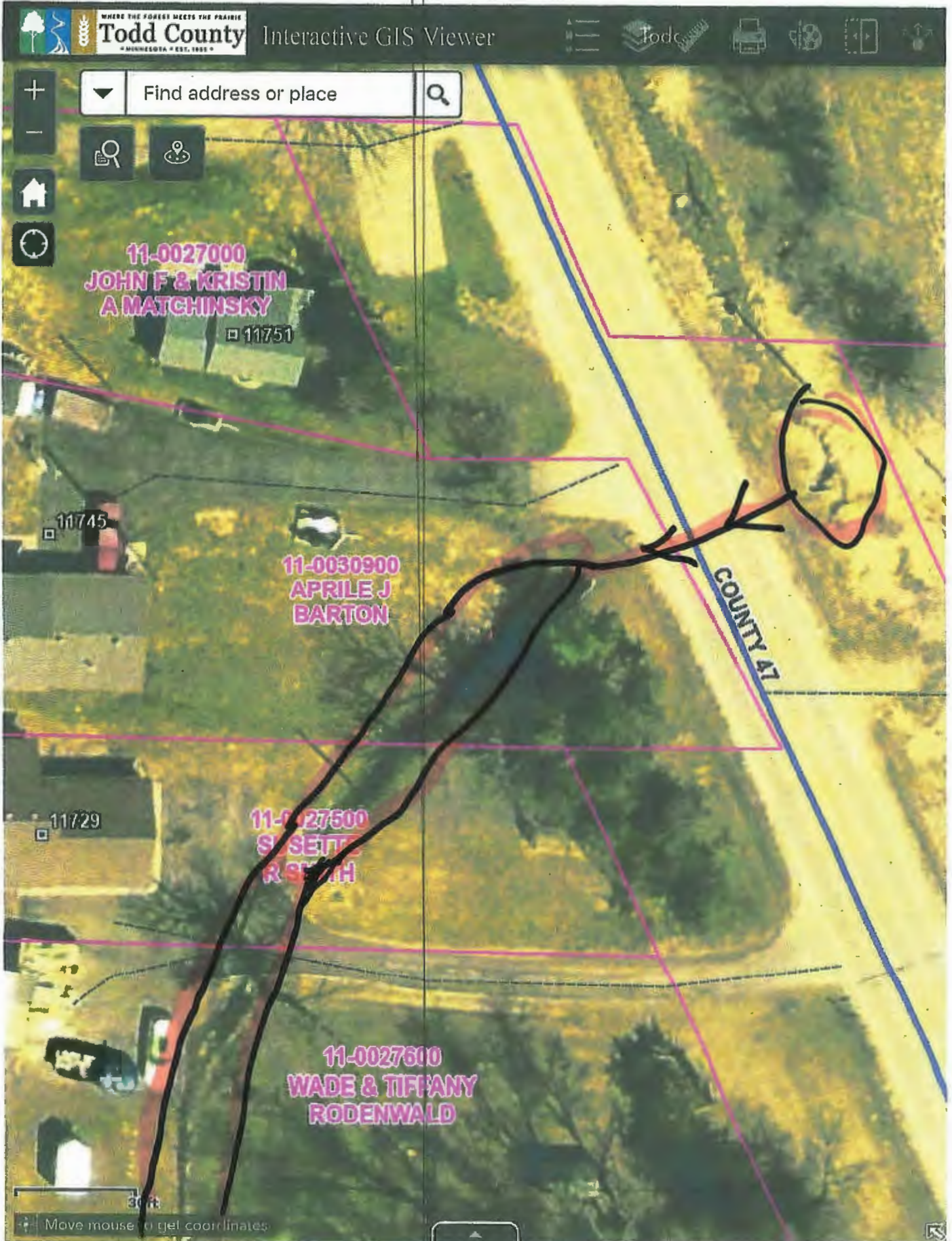
Noise issue

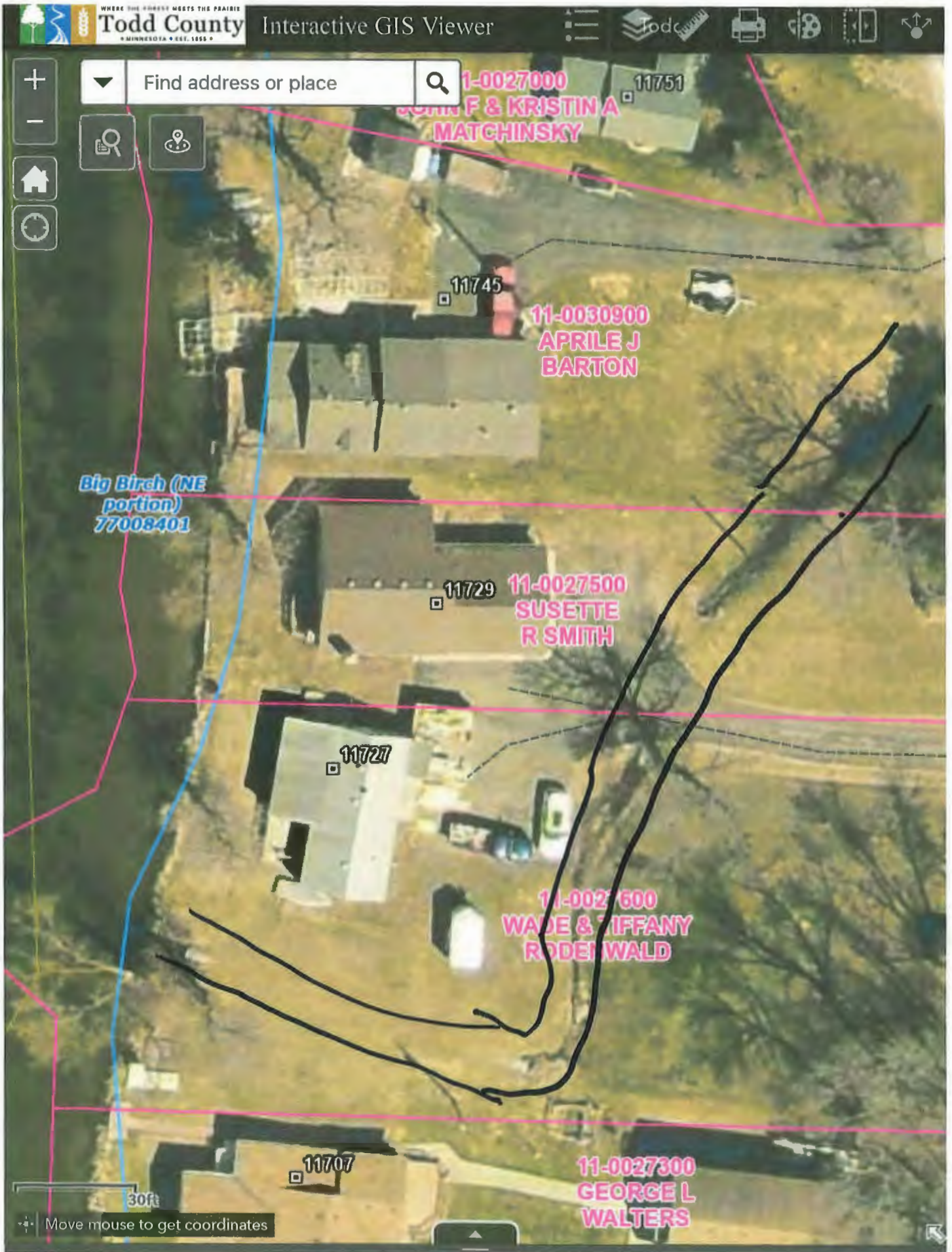
17 pads with 4 people per pad is a potential added 68+ people not including staff. How are you going to ensure noise issues will be minimized?

Owners do not live in the area. How will they immediately address issues?

Where are the campers parking trailers and non camping vehicles?

What are next steps and when?





Planning & Zoning Committee:

As a life-long resident across from the requested development site (11745 Co Rd 47), and family generations before me, we have concerns about the development of an RV park directly across the street.

We do not understand the 'draw' for this location for an RV park; as this space has no current lake access or boat launch, on a busy road, no shoulder, no walking paths. It would seem feasible that this would not be the best space for such a project.

Therefore, we have questions with no time for answers. This development would also add substantial cost to myself and other residents to accommodate excess water runoff and safety.

We ask that you please consider our perspective when reviewing this request: how this development, in this space, would affect the current residents, the added costs for the residents, lowering of property taxes, crime and safety, and the effect on the current beauty, tranquility, and lake health of the area.

Unanswered questions for current residents

1. **It's stated: "we believe property values may increase"? How can that be true?**
2. **Liability for property owners (taken from the MN State Law Library): "If a child is injured on a lakeshore property due to a condition that would be considered an attractive nuisance, the property owner could be held liable for damages, even if the child was trespassing. This liability is based on the premise that the property owner had a duty to take reasonable precautions to protect children from harm, especially if they knew or should have known that children were likely to be **attracted** to the dangerous condition".**
 - **Currently, there is no lake access. My private property holds the view of the lake, and the shoreline would be very inviting; especially if we were not there. RV guests can easily come down the driveway to launch a kayak, canoe, shore fish, or even use the dock. Am I supposed to install a fence around my entire property, blocking their view of the lake, yet further assuring safety?**
3. **Excess water run- off should be maintained on RV property and not through culvert that empties to the lake. The expanded culvert that was upgraded by the city a few years ago has already caused excessive water and swell into my property.**
 - **Serious concern is water supply and storm water run- off. Since the current culvert empties from the campsite property into my private property, there is concern about impermeable surface coverage, run-off, erosion, and storm water management. Currently, heavy rain will flood my property. I would be burdened with an added cost of controlling increased water run off to keep it from constant flooding of my property.**
 - **Other potential impact like erosions of soils into my private property and emptying into lake.**
4. **Fencing around the property so their guests know private property from park property?**
5. **There is already a strain with internet in this area and we are told it will not be updated until 2028. As someone who works remotely, how will the increase need for internet be impacted?**

6. What screening methods will be in place? A fence, trees, wall?
7. RV guests may be seasonal, are the RV's seasonal as well, or would be permanently parked?
8. As time goes on, would the 17 electrical sites be expanded? Creating more issues?
9. How is dust controlled with RV and increased traffic?
10. Is there a 10yr RV rule to help maintain a certain level of quality and appearance within the park?
11. Is there extra parking for extra vehicles/trailers?
12. Would county road 47 be utilized for excess parking, making it even more dangerous?
13. Is this park also being used for storage over the nonseasonal months? Creating an eye sore?
14. Is there a required amount of liability, and property insurance?
15. What is the process to control campers and not allow them to trespass?
16. How do the developers intend to mitigate or manage common RV park problems (weekend parties, water, wastewater, power, traffic, poor maintenance, lack of security)?
17. Has an environmental impact study been done on this request?
18. Are any road considerations on the table? Impact studies for traffic congestion? No one seems to care that this road is extremely dangerous and there is no shoulder or walking paths, with a blind curve, and hill. Though the speed limit is 40mph, this is not followed regularly, particularly with morning and evening commuters heading to and from the freeway. We know this because we live it.

Conditional Use Permit Requested Considerations

1. Control excess water and storm run-off in holding pond.
2. Fencing surrounding RV park so guests know private property lines.
3. Berm screening with trees and at least 3 trees deep.
4. Garbage enclosed, away from road where odors would not intrude on nearby residents.
5. Provide additional parking for extra guests and trailers, not allowing use on County Road 47.
6. Provide low level lighting for decreased elimination onto lake properties.
7. Traffic Safety- provide turn lanes with turn around.
8. Quiet Hours are at minimum 11PM to 8AM. No generator noise included.
9. Minimum of age of 21yrs to rent a site.
10. Fire safety-Fires must be in fire ring; not on ground.
11. Seasonal dates Memorial Day to Labor Day. No permanent RV's left to age and become an eye sore.

We thank you for your consideration,

Orlin Lesetmoe, and Aprile and David Barton
Adbarton811@gmail.com
11745 County Road 47
Grey Eagle, MN 56336
651-202-7024



▼ Find address or place



*Big Birch (NE
portion)
77008401*

11-0027000 11751
**JOHN F & KRISTIN A
MATCHINSKY**

11745
11-0030900
**APRILE J
BARTON**

11729
11-0027500
**SUSETTE
R SMITH**

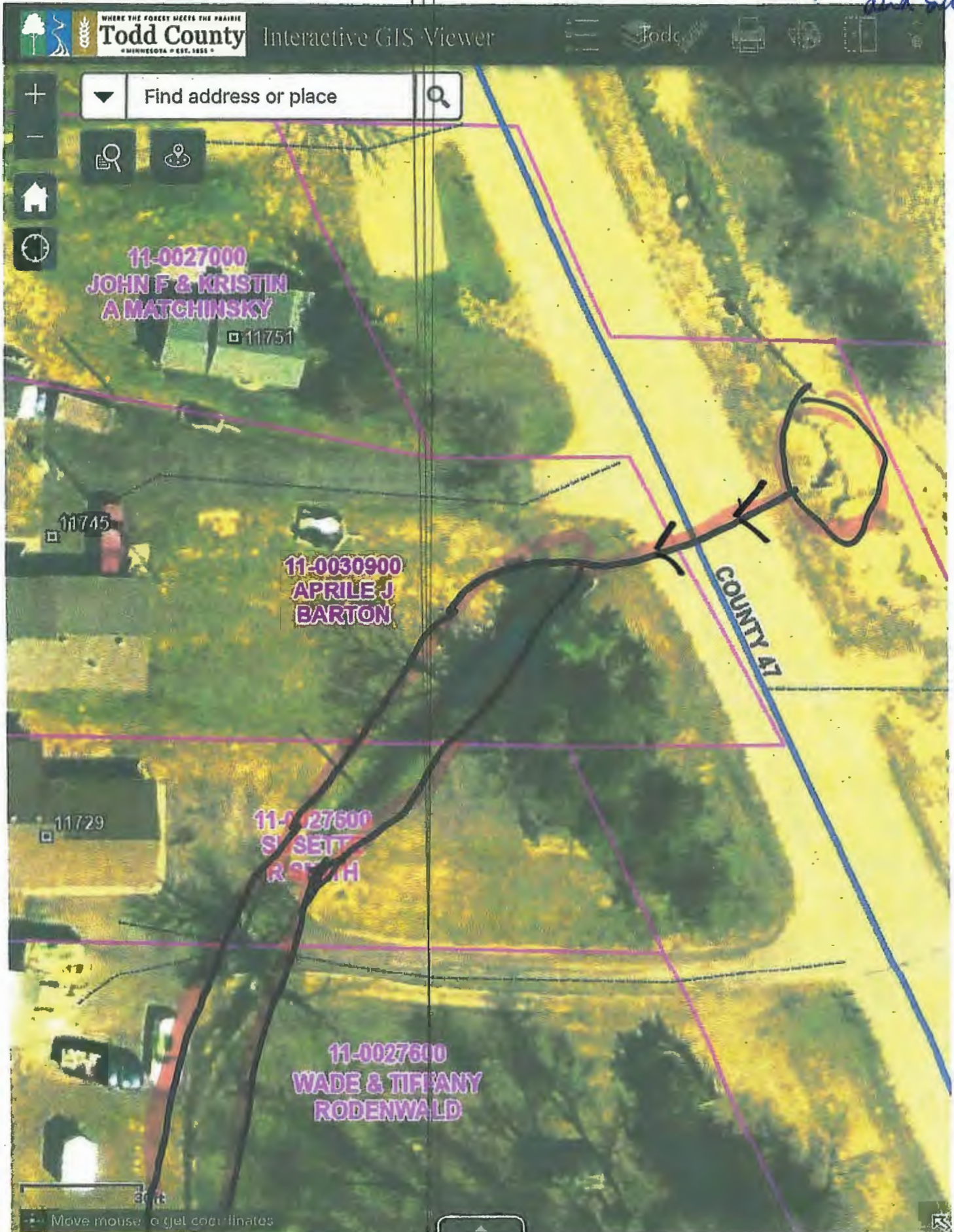
11727
11-0027600
**WADE & TIFFANY
RODENWALD**

11707
11-0027300
**GEORGE L
WALTERS**

30ft

Move mouse to get coordinates

Submitted on behalf of Property Owners Barton's
and Seitter's



Todd County Planning Commission
215 1st Avenue South, Suite 103
Long Prairie, MN 56347

SCANNED

200 Meadowlark Lane
Melrose, MN 56352

Dear Board Members,

I am unable to attend the May 1st public hearing regarding the Conditional Use Request by William & Dawn Vowles, near my property on Big Birch Lake.

My property, located at 11795 County Road 47, was purchased with an expectation of an area with cabins and single-family homes nearby, with no commercial traffic, other than the Existing Historic Rock Tavern.

According to MNDOT, there are over 850 vehicles a day that use this stretch of road. The traffic is bearable, but additional campers and traffic is a safety issue.

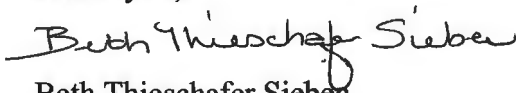
Noise, music, and lighting are additional concerns to property owners near the proposed property.

While considering your findings of facts for this Conditional Use please consider:

- The area is not zoned for this use, nor should it be in the future.
- This use is in Conflict with the County's 2030 Comprehensive Plan.
- The Proposed use is not compatible with the existing property uses.
- The existing properties have a low density and agricultural use. The proposed use is in conflict with that.
- This will create additional requirements for the County.
- The proposed use will be detrimental to the people, property and general welfare because of the production of traffic, noise, smoke, fumes, glare, odors, and other nuisances.
- The proposed use will result in the destruction of natural, scenic, and historic features to the land.

With all of that being stated, I am not in favor of, nor should the Planning Commission be in favor of, a campground being developed at 11734 Co. Rd 47.

Thank you,



Beth Thieschafer Sieben
11795 County 47
Grey Eagle, MN 56336

SCANNED

April 21, 2025

11456 County 47
Grey Eagle, MN 56336

TODD COUNTY
Planning & Zone
215 1st Avenue South, Suite 103
Long Prairie, MN 56347

Subject: PID: 11-0027400
William & Dawn Vowles: Sec 20, Grey Eagle Township Big Birch Lake
11734 Co. Rd. 47, Grey Eagle. MMN 56336

Planning & Zoning Staff:

There is no need for a Campground on this end of the Big Birch Lake as there is no Public Access on the East Side of the Lake. There is a Campground in the State Park on the South end of Big Birch Lake with Public Access.

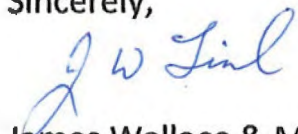
This has been a Residential Area ever since we bought our property in 1966 and wish that it doesn't change.

Side effects from this change might impact safety to our property and water as a creek runs through the North End of our property into the lake with a possible Pollution Problem.

More than that there will be a constant moving of people in and out which will cause it to be a more transient area that has always been about family residential properties with everyone looking after each other and their property.

Our wishes are to decline permission and stop the rezoning of this subject property.

Sincerely,



James Wallace & Maryellen Lind
Kevin A. Lind ET AL

SCANNED

April 23, 2025

Planning and Zoning
215 1st Avenue South, Suite 103
Long Prairie, MN 56347

Re: Todd County Planning Commission meeting, Thursday, May 1st

To Whom it May Concern:

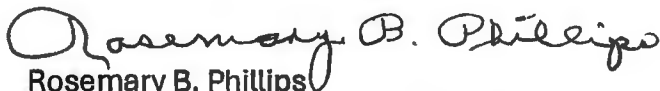
I am hereby expressing my objections to Item 8 on the Agenda I received:

William & Dawn Vowles: Section 20, Gey Eagle Township, Big Birch Lake
Site Address: 11734 Co Rd 47, Grey Eagle, MN 56336 PHD: 11-0027400
"Request for Seasonal Campground with hookups, 40' x 40' office building
and 27 sites in Recreational Development Shoreland Zoning District"

Allowing this development to proceed would result in increased traffic and use of the lake during the busiest seasonal months without providing any additional benefit to the local economy. It would also require additional water and septic facilities, which would impinge upon water quality in Big Birch Lake. I believe allowing this development could influence future development around the lake.

Thank you for considering my views.

Sincerely,



Rosemary B. Phillips
11913 County Road 47 (P. O. Box 82)
Grey Eagle, MN 56336
C: 407-697-0632

Sue Bertrand

From: [REDACTED]
Sent: Thursday, May 1, 2025 3:21 PM
To: Sue Bertrand
Subject: request Vowles campsite dev

SCANT

TODD COUNTY SECURITY NOTICE:

This email originated from an external sender. Please exercise caution before clicking on any links or attachments and consider whether you know the sender. For more information please contact MIS.

To: Todd County Planning Commission

Re: Request for Development by William and Dawn Vowles for a 17 site seasonal campground with hookups, plus a 40x40 office building

To Whom It May Concern:

First of all, I am very concerned that neither my neighbors, Bruce and Linda Westbrook at 11311 County 47 nor I at 11329 County 47 received a notice of the above meeting. Fortunately another person, who did receive a notice informed us of the meeting. I wonder just how many people who were supposed to receive notices did in fact get them.

I oppose the above request for two main reasons:

1. Development across the road from a lake generally has negative impacts on the lake and the surrounding ecosystem. The primary negative effects include increased runoff, more pollution and habitat loss. Approval of this development also could mean the start of second tier development, meaning increased density around the entire lake. More people/higher density equals more problems!
 2. More people equal an increase in traffic on County 47. It can also mean the chance for more accidents of all sorts as this road is not well patrolled, yet is certainly well-travelled!
- I am not able to attend this meeting, and will follow up with my neighbors to hear the outcome.

Mary Cebuhar. 5/1/25

[REDACTED]
We must do everything in our power to save beautiful Big Birch Lake!



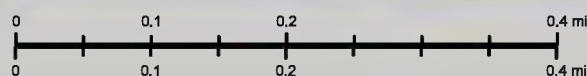
Sources: Esri, TomTom, Garmin, FAO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community, 2023.

Todd County
MINNESOTA



Todd County GIS
215 1st Ave S, Ste 102
Long Prairie, MN 56347
(Office) 320-732-4248

LetterLayout



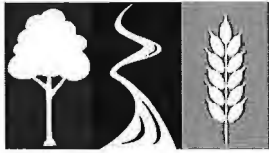
The Todd County GIS & Land Services Department has made every effort to provide the most accurate and up-to-date information available in this publication and cannot be held responsible for any unforeseen errors or omissions. If the recipient wishes to locate parcel corners and property lines, employ the services of a Registered Land Surveyor.

Printed on:
Wednesday, April 9, 2025

Received

APR 22 2025

JCC 4/22/25
Todd County Planning
& Zoning



WHERE THE FOREST MEETS THE PRAIRIE

Todd County
• MINNESOTA • EST. 1855 •

PLANNING & ZONING

215 1st Avenue South, Suite 103

Long Prairie, MN 56347

Phone: 320-732-4420 Fax: 320-732-4803

Email: ToddPlan.Zone@Co.Todd.MN.US

APPLICATION FOR REZONING

Applicant Angelo + Marjorie Smieja Mailing Address 23465 Ellis Court, Long Prairie, MN 56347
Amy + Jacob Wiener
Site Address 23465 + 23468 Ellis Court, Long Prairie, MN 56347
Phone Number [REDACTED]

Property Owners Name & Address (if not applicant) _____

Parcel ID(s) 21-0018900, 21-0018909, 21-0018908 Township Round Prairie

Land is currently zoned: AF-1 / AF-2 / R-2 / R-10 / Comm. / LM-I / Shoreland

If Shoreland list Lake/ River: _____

Zone requested: AF-1 / AF-2 / R-2 / R-10 / Comm. / LM-I / Shoreland

Full and Current Legal Description(s) parcel # 21-0018908, 21-0018909, 21-0018900

Current tax statement or other proof of ownership attached? X Yes _____ No

Reason for Rezoning Request To be zoned properly for Ag use

Did you meet with the Township Board to present the Application for Rezoning?

Yes X No _____ Date of the meeting: 4 / 14 / 25

[Signature]
Optional Township Board Signature

Chairman
Board Position

Aerial photo or survey showing land to be rezoned must be attached.

If the applicant is not the property owner, both signatures are required below.

Angelo + Marjorie Smieja
Amy + Jacob Wiener
Applicant Name Printed

Angelo J. Smieja
Marjorie A. Smieja
Signature

3-29-2025
Date

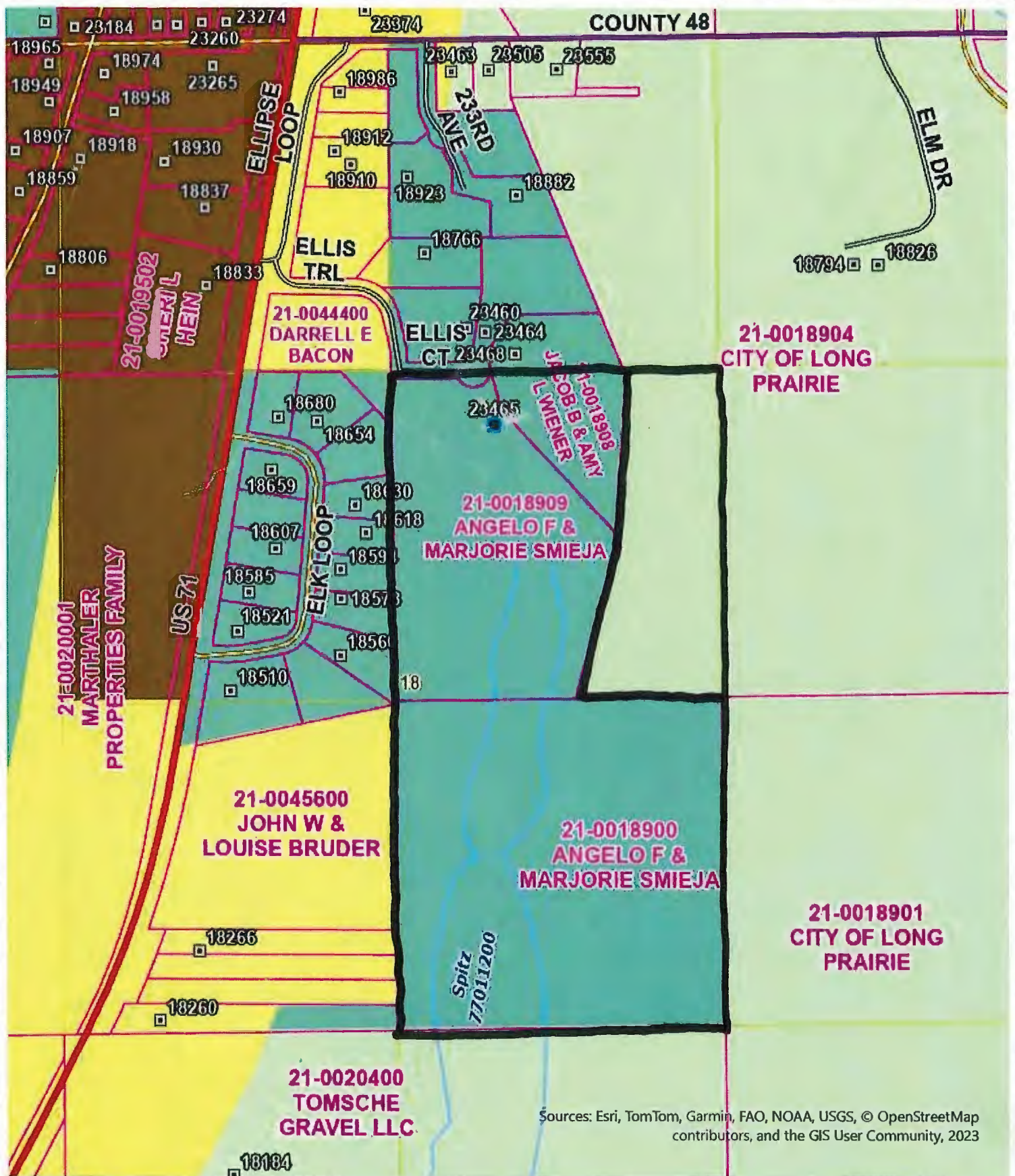
Jacob B. Weiner
Petition for Rezoning

Page 2 of 3

Revised 1/15/2025

RZ# Amy L. Weiner
2025-04

Receipt# 2025
0132



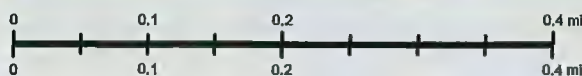
Sources: Esri, TomTom, Garmin, FAO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community, 2023

Todd County
MINNESOTA



Todd County GIS
215 1st Ave S, Ste 102
Long Prairie, MN 56347
(Office) 320-732-4248

LetterLayout



The Todd County GIS & Land Services Department has made every effort to provide the most accurate and up-to-date information available in this publication and cannot be held responsible for any unforeseen errors or omissions. If the recipient wishes to locate parcel corners and property lines, employ the services of a Registered Land Surveyor.

Printed on:
Monday, March 24, 2025

TODD COUNTY, MINNESOTA

☒ No Delinquent Taxes
☒ Transfer Entered

Certificate of Real Estate value (☒) received () not required

CRV # 210898 ecrv 1357056

Date 12.14.2021 Deed Tax Amount \$ 132.00

Todd County Property Records & Taxpayer Services Division

Handwritten initials

OFFICE OF THE COUNTY RECORDER
TODD COUNTY, MINNESOTA

Certified filed and/or recorded on: December 14, 2021 3:50 PM

Linda Daoust, County Recorder

Well Certificate () Received

Received from: INTEGRITY TITLE INC

Returned To: INTEGRITY TITLE INC
EASTON PLACE II
2209 JEFFERSON ST #301
ALEXANDRIA, MN 56308

529489

COUNTY COMPLIANCE FUND: \$11.00
RECORDER TECHNOLOGY FUND: \$10.00
STATE TREASURY GEN FUND: \$10.00
GENERAL ABSTRACT: \$14.50
STATE DEED TAX: \$132.00

(Top 3 inches reserved for recording data)

WARRANTY DEED
Individual(s) to Joint Tenants

Minnesota Uniform Conveyancing Blanks
Form 10.1.5 (2013)

eCRV number: 1357056

DEED TAX DUE: \$132.00

DATE: December 08, 2021
(month/day/year)

FOR VALUABLE CONSIDERATION, Angelo F. Smieja and Marjorie A. Smieja, husband and wife ("Grantor(s)"), hereby convey(s) and warrant(s) to Jacob B. Wiener and Amy L. Wiener ("Grantee"), as joint tenants, real property in Todd County, Minnesota, legally described as follows:

Lot 4, Block 1, DISMAS ACRES, Todd County, Minnesota; according to the recorded plat on file and of record in the office of the County Recorder, Todd County, Minnesota.

Check here if all or part of the described real property is Registered (Torrens) ☐

together with all hereditaments and appurtenances belonging thereto, subject to the following exceptions:
Easements, restrictions and reservations of record, if any.

Seller certifies there is NO individual sewer/septic system on the subject property.

Check applicable box:

- ☒ The Seller certifies that the Seller does not know of any wells on the described real property.
- ☐ A well disclosure certificate accompanies this document or has been electronically filed. (If electronically filed, insert WDC number: _____.)
- ☐ I am familiar with the property described in this instrument and I certify that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate.

Grantor

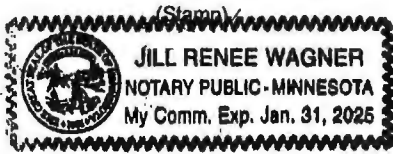
Angelo F. Smieja
Angelo F. Smieja

Marjorie A. Smieja
Marjorie A. Smieja

21-0018908

State of Minnesota, County of Douglas

This instrument was acknowledged before me on December 08, 2021, by Angelo F. Smieja and Marjorie A. Smieja, husband and wife.



A handwritten signature in cursive script, appearing to read "Jill Wagner", written over a horizontal line.

(signature of notarial officer) _____

Title (and Rank): _____

My commission expires: _____

THIS INSTRUMENT WAS DRAFTED BY:
(insert name and address)

Integrity Title, Inc.
2209 Jefferson Street, Suite 301
Alexandria, MN 56308

TAX STATEMENTS FOR THE REAL PROPERTY DESCRIBED IN
THIS INSTRUMENT SHOULD BE SENT TO:

(insert legal name and residential or business address of Grantee)

Jacob B. Wiener and Amy L. Wiener
17803 161st Ave
Osakis, MN 56360

TODD COUNTY, MINNESOTA
No Delinquent Taxes
Transfer Entered
Certificate of Real estate value received 241108/ecrv1630894

Date 03-21-2024
Deed tax: \$676.50
Todd County Property Records &
Taxpayer Services
PID 21-0018900

Document #: A540452

03-21-2024 at 4:20 PM
KIMBERLY BOSL
TODD COUNTY RECORDER
Long Prairie, MN
Fee Amount: \$46.00

Return via MAIL:
ANGELO SMIEJA
23465 ELLIS COURT
LONG PRAIRIE, MN 56347

(Top 3 inches reserved for recording data)

WARRANTY DEED
Individual(s) to Individual(s)

Minnesota Uniform Conveyancing Blanks
Form 10.1.1 (2018)

eCRV number: 1630894

DEED TAX DUE: \$ 676.50

DATE: 3/21/2024
(month/day/year)

FOR VALUABLE CONSIDERATION, Darrell E. Bacon, single person
(insert name and marital status of each Grantor)

("Grantor"),
hereby conveys and warrants to Angelo F. Smieja and Marjorie A. Smieja
(insert name of each Grantee)

("Grantee"), as

(Check only one box.) ☐ tenants in common, (If more than one Grantee is named above and either no box is checked or both boxes are checked,
☒ joint tenants, this conveyance is made to the named Grantees as tenants in common.)

real property in Todd County, Minnesota, legally described as follows:

NW1/4SE1/4 of S18, T128, R33W 40.27 acres determined by licensed surveyor

Check here if all or part of the described real property is Registered (Torrens) ☐

together with all hereditaments and appurtenances belonging thereto, subject to the following exceptions:
NONE

Check applicable box:

- ☒ The Seller certifies that the Seller does not know of any wells on the described real property.
- ☐ A well disclosure certificate accompanies this document or has been electronically filed. (If electronically filed, insert WDC number: .)
- ☐ I am familiar with the property described in this instrument and I certify that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate.

Grantor

Darrell E. Bacon
 (signature) DARRELL E. Bacon

(signature)

(signature)

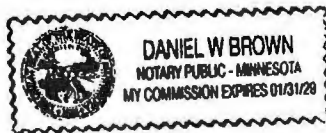
(signature)

State of Minnesota, County of TODD

This instrument was acknowledged before me on 03/21/2024, by Darrell E. Bacon, single person
 (month/day/year)

(insert name and marital status of each Grantor)

(Stamp)



Daniel W. Brown
 (signature of notarial officer)

Title (and Rank): Notary

My commission expires: 01/31/2029
 (month/day/year)

THIS INSTRUMENT WAS DRAFTED BY:
 (insert name and address)

Darrell Bacon
 18756 US 71
 Long Prairie, MN 56347

TAX STATEMENTS FOR THE REAL PROPERTY DESCRIBED IN THIS INSTRUMENT SHOULD BE SENT TO:
 (insert legal name and residential or business address of Grantee)

Angelo Smieja
 23465 ELLIS COURT
 Long Prairie, MN 56347

21.56 Acre Tract

That part of the Southwest Quarter of the Northeast Quarter (SW¼ NE¼) of Section 18, Township 128 North, Range 33 West, Todd County, Minnesota, described as follows:

Commencing at the east quarter corner of said Section 18;

thence South 89 degrees 06 minutes 20 seconds West, assumed bearing along the east-west quarter line of said Section 18, a distance of 1909.75 feet to the point of beginning of the land to be described;

thence North 14 degrees 51 minutes 20 seconds East 584.00 feet;

thence North 03 degrees 43 minutes 20 seconds East 98.14 feet to the southerly most corner of the plat of DISMAS ACRES, according to the recorded plat thereof;

thence North 43 degrees 04 minutes 21 seconds West, along the southerly line of said DISMAS ACRES, 672.06 feet;

thence North 15 degrees 23 minutes 24 seconds West, along said southerly line of DISMAS ACRES, 171.04 feet to a point on a 70.00 foot radius curve, which center of circle bears South 89 degrees 03 minutes 46 seconds West from said point, said curve also being said southerly line of DISMAS ACRES;

thence southwesterly, along said curve and along said southerly line of DISMAS ACRES, central angle 151 degrees 52 minutes 22 seconds, 185.55 feet;

thence South 89 degrees 03 minutes 46 seconds West, not tangent and along said southerly line of DISMAS ACRES, 273.31 feet to the west line of aforesaid Southwest Quarter of the Northeast Quarter (SW¼ NE¼);

thence South 00 degrees 30 minutes 31 seconds East, along said west line of the Southwest Quarter of the Northeast Quarter (SW¼ NE¼), a distance of 1290.25 feet to the center of aforesaid Section 18;

thence North 89 degrees 06 minutes 20 seconds East, along aforesaid east-west quarter line of Section 18, a distance of 741.34 feet to the point of beginning.

The tract contains 21.56 acres more or less, subject to any easements of record.

40.27 Acre Tract

The Northwest Quarter of the Southeast Quarter (NW¼ SE¼) of Section 18, Township 128 North, Range 33 West, Todd County, Minnesota.

The tract contains 40.27 acres more or less, subject to any easements of record.



That part of Lot 4, Block One,
DISMAS ACRES lying within
the SW 1/4 NE 1/4 of Section 18,
Township 128 North, Range 33 West,
Todd County, Minnesota





WHERE THE FOREST MEETS THE PRAIRIE

Todd County

• MINNESOTA • EST. 1855 •

PLANNING & ZONING

215 1st Avenue South, Suite 103

Long Prairie, MN 56347

Phone: 320-732-4420 Fax: 320-732-4803

Email: ToddPlan.Zone@Co.Todd.MN.US

Receipt # 2025-0183

CONDITIONAL USE PERMIT APPLICATION

Applicant Daniel Tomsche DVM Mailing Address 304 Golf View Dr Albany, MN 56307

Site Address 27246 State 28 Grey Eagle, MN 56336

Phone Number [REDACTED] E-Mail Address [REDACTED]

Property Owners Name & Address (if not applicant) Ronald & Mary Lou Bussman
27950 State Hwy 28, Grey Eagle, MN 56336, in addition to applicant

Parcel ID(s) 03-0018600 03-0018602 Township Birchdale Lake/River Name

Zoning District (circle one): AF-1 AF2; R-2; R-10; UG; RT Comm; L-M; or Shoreland.

Full and Current Legal Description(s) PT SENW; PT NESW 23-127N-33W
(attach if necessary)

Current tax statement or other proof of ownership attached (X) yes () no

Measurement of land involved: Width Length Acres 1.5

Septic System: Date installed Date of latest Compliance Inspection 4/10/25 JLC

Is an upgrade needed: () yes (X) no

Site accessed by: (X) public road (X) easement

If easement, is the easement legally recorded? () yes () no

Detailed Explanation of Request:

We are applying to construct a 276' x 128' total confinement barn for 350 head of dairy cows
>1000 lbs and add a 5.2M gallon, HDPE lined earthen basin for manure storage.
Animal units will increase from 960 AU to 992 AU.

Did you meet with the Township Board to present the Application for Conditional Use Permit?

Yes X No Date of the meeting: 04 / 29 / 2025

Optional Township Board Signature

Board Position

CUP# 2025-010

Will the request create an excessive burden on the existing roads or other utilities? **Explain**

The site is served by MN State Hwy 28. There will be a slight increase in traffic. No new utilities will be needed.

Is the requested use compatible with the surrounding properties? **Explain**

Within the agricultural preservation districts, the construction, expansion and operation of feedlots and other agricultural uses are permitted or permitted with conditions.

Could the use significantly depreciate near-by properties? **Explain**

Will not. This is an existing active facility. No depreciation of near-by properties is anticipated. The facility design and operation are consistent with other dairy facilities in the county and state.

Will the structure and the use have an appearance that will not have an adverse effect on near-by properties? **Explain**

The planned facilities are consistent with the current facility and other facilities in the county and state.

Will the requested use create an adverse affect on near-by properties because of noise, odor, glare, hours of operation, or general unsightliness? **Explain**

There should not be any increase in odor with current BMP's. No increase in noise, glare, or unsightliness is anticipated. Hours of operation will remain the same as this is an active facility.

**RETURN APPLICATION, SITE PLAN, SEWER INFORMATION AND ANY ADDITION
INFORMATION, AND FEE TO:**

Todd County Planning & Zoning Office
215 1st Ave South, Suite 103
Long Prairie, MN 56347

Fee: \$500.00 or After-the-Fact Fee: \$1,000.00 payable to "Todd County"

Only complete applications may be placed on an agenda

****A PARCEL IN JOINT OWNERSHIP MUST PROVIDE WRITTEN SIGNATURE OF ALL OWNERS****

Daniel Tomsche

Applicant Name Printed
Mary Lou Bussmann

Ronald Bussmann

Property Owner Name Printed

Don Tomsche

Signature
Mary Lou Bussmann

Ronald Bussmann

Signature (If different than applicant)

5/5/2025

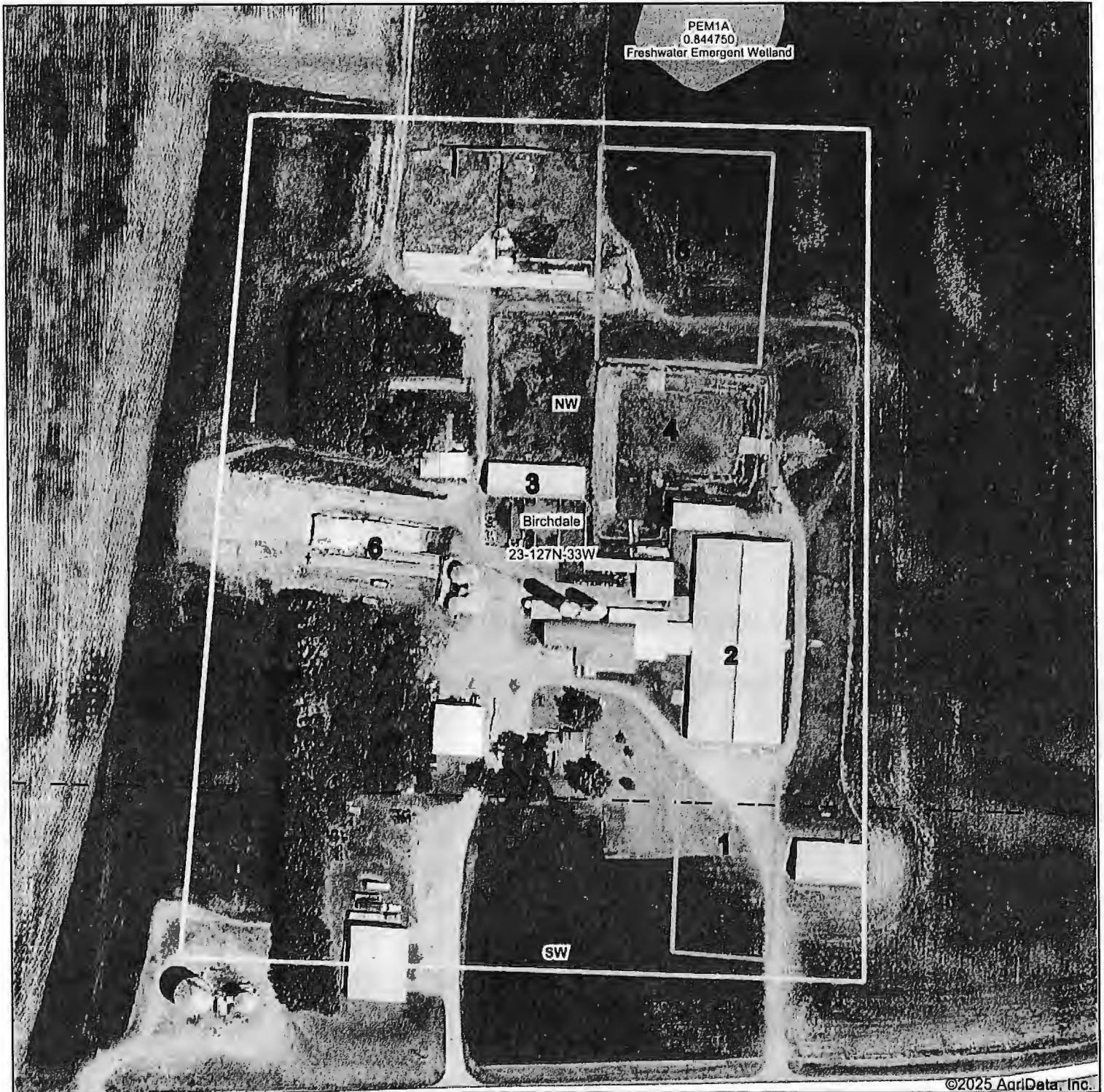
Date

5-15-2025

Date

A Conditional Use Permit expires and is considered invalid unless they are substantially completed within thirty-six months of the date the CUP is granted by the County Board (Section 5.05(N) of the County Zoning Ordinance).

Ward Spring site map



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Maps Provided By:



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www.AgrIDataInc.com

Boundary Center: 45° 47' 48.48, -94° 48' 11.83

23-127N-33W
Todd County
Minnesota

0ft 206ft 412ft



3/27/2025

Animal feedlot or manure storage area permit application

CSF and Interim Permit Program

Doc Type: Permit Application

Applicability: Use this form to obtain, modify, or extend the term of a construction short form (CSF) or interim permit when a feedlot meets both of the following:

- The feedlot is located in a delegated county.
 - Map of delegated counties: <https://www.pca.state.mn.us/sites/default/files/wq-f1-12.pdf>
- The feedlot does not meet or exceed a federal large Concentrated Animal Feeding Operation (CAFO) threshold.
 - Table of large CAFO thresholds: https://www3.epa.gov/npdes/pubs/sector_table.pdf

All other feedlots must use the MPCA online permit application service available at: <https://webapp.pca.state.mn.us/services/login/>. After completing and signing this form, submit it and any required enclosures to the County Feedlot Officer (CFO).

Keep a copy of this application form and all submittals for your records.

I. Permit type and reason for application

Feedlot Registration Number: 153-81354

Please indicate which type of feedlot permit you are applying for
(choose only one):

☒ Construction Short Form ☐ Interim (correcting a pollution hazard)

Please indicate the reason for the permit application (choose only one):

- ☐ New Permit
(No existing CSF or interim permit)
- ☐ Permit Modification
(Changes to sites with an existing CSF or interim permit)
- ☐ Permit Extension - Current CSF or Interim Permit number: _____
(Work not completed prior to permit expiration)

For extension requests only - Indicate below the reason(s) the work may not be completed prior to permit expiration

Estimated amount of time required to complete the work: _____ ☐ days ☐ months

Note: The length of the extension is limited to 24 months for CSF permits and 90 days for interim permits

Note: When the notice to neighbors and property owners is required the content of the notice must include the date the original permit was issued and the new proposed completion date as well as the normally required information.

II. Owner's name(s) and address(es) - (All partners of a Limited Liability Partnership (LLP) must be listed.)

Primary owner - Will be used as the mailing address

Name: Daniel Tomsche DVMAddress: 304 Golf View DrCity: Albany State: MNPhone: 320-267-2911 Zip: 56307Email: dtomschedvm@gmail.com

Additional owner - attach additional sheets as necessary

Name: Ronald & Mary Lou BussmanAddress: 27950 State Hwy 28City: Grey Eagle State: MNPhone: 320-285-7251 Zip: 56336

Email: _____

Note: The term owner includes all persons having possession, control, or title to an animal feedlot or manure storage area (including lessees or renters). All owners must be listed. Attach to this application the names, addresses, and phone numbers of all additional owners.

III. Facility name and site address

Site Name: Ward Springs☐ Facility is a MN Ag Water Quality Certified Farm (MAWQCP)

Complete if facility address is different than the primary owner address:

Street: 27246 State Hwy 28City: Grey Eagle State: MNPhone: _____ Zip: 56336

Contact person for day-to-day activities

Name: Daniel Tomsche DVMStreet: 304 Golf View DrCity: Albany State: MNPhone: _____ Zip: 56307

Cell phone: _____

Email: dtomschedvm@gmail.com

(General letters/notices may be sent by email where one is indicated.)

IV. Facility location

County: Todd

Township name: Birchdale

Township (26 – 71 or 101 – 168)	Range (1 – 51)	Section (1 – 36)	¼ Section (160 acre) (NW, NE, SW, SE)	¼ of ¼ Section (40 acre) (NW, NE, SW, SE)
T 127 N	R 33 W	23	NW SW	SE NE

V. Sensitive features

1. Is any part of the facility within 1,000 feet of any type of surface waters or tile intake? ☒ Yes ☐ No

If Yes, select all types below

☐ Lake ☐ River ☐ Stream (Perennial or Intermittent) ☐ Tile Intake
☐ Pond ☒ Creek ☐ Ditch ☒ Wetland ☐ Calcareous Fen ☐ Unknown

2. Is any part of the facility located within 300 feet of a river/stream? ☐ Yes ☒ No

3. Is any part of the facility located within a delineated flood plain (100 year flood)? ☐ Yes ☒ No

4. Is any part of the facility located within designated shoreland? ☐ Yes ☒ No

5. Is any part of the facility located within 1,000 feet of a karst feature?
(sinkholes, caves, disappearing springs, resurgent springs, karst windows, dry valleys, or blind valleys) ☐ Yes ☒ No

If Yes, complete a. and b. below:

- a. Are there 4 or more sinkholes within 1,000 feet? ☐ Yes ☐ No

- b. Is any part of the facility within 300 feet of a known sinkhole? ☐ Yes ☐ No

6. Is any part of the facility located within 1,000 feet of a well: ☒ Yes ☐ No

If Yes, complete a. and b. below:

- a. What is the shortest distance from a well to any animal holding area? 50 ft.

What is the shortest distance from a well to any manure storage area? 400 ft.

- b. Indicate if the well is any of the following types:

☐ a community water supply well
☐ a well serving a public school as defined under Minn. Stat. § 120A.05
☐ a well serving a private school excluding home school sites
☐ a well serving a licensed child care center where the well is vulnerable (Minn. R. 4720.5550, subp. 2)

VI. Environmental Review (complete when construction or expansion is proposed)

Mandatory environmental review is required for the addition of 1,000 or more animal units (AU) at any facility. This threshold is reduced to 500 AU in "sensitive areas". The facility is within a sensitive area when any of the following apply.

- Any part of the facility is within a delineated floodplain (yes to question 3 above)
- Any part of the facility is within designated shoreland (yes to question 4 above)
- Any part of the facility is within 1,000 feet of a karst feature (yes to question 5 above)
- Any part of the facility is within a vulnerable drinking water supply management area
- Any part of the facility is within a federal, state, or local wild and scenic river district
- Any part of the facility is located within the Minnesota River Project Riverbend area or the Mississippi headwaters area

Additionally mandatory environmental review is required for "Phased actions". Phased actions are two or more projects located in the same geographic area and constructed within three years of each other by the same proposer. When this is the case, the animal units from all projects are combined to determine if environmental review is required.

Do you have ownership interest in another livestock operation that was constructed/expanded within the past three years or are you substantially certain you will be constructing/expanding another livestock operation within the next three years?

☐ Yes ☒ No

If Yes, how far away (straight-line distance) is it located from the project proposed in this application? _____ miles

There are also rule provisions to require completion of the environmental review process in the event of a citizen petition or upon the discretion of the MPCA. Please see the MPCA fact sheet entitled "When is Environmental Review Required for Feedlots" (available on the MPCA website at <https://www.pca.state.mn.us/quick-links/environmental-review> and/or Minn. R. 4410 for further details.

VII. Animal numbers and animal unit (AU) calculation

Complete the table below to identify the **maximum** number of animals housed at that facility. All animal numbers and animal sizes used to complete this table should reflect the animal holding **capacity** of the facility even if the facility does not currently house or propose to house that number of animals. At no time is the number of animals at the facility allowed to exceed the capacity provided below without first obtaining a permit or permit modification.

Current Capacity - List the current head count **capacity** for each animal type in column 3 below. For sites with a permit, this should match the currently permitted number of animals. Next, multiply the AU Factor in column 2 by the number of animals listed in column 3 to get the **Current AU Capacity** for each animal type (column 4). Finally, add together all AU's in column 4 to get a total at the bottom of the chart. *If this application is for a brand-new feedlot site leave columns 3 and 4 blank. (i.e., bare piece of ground)*

Final Capacity - List the final head count **capacity** for each animal type in column 5 below. This number should include current animals plus or minus any expansion or reduction in each animal type. This should reflect the maximum AU capacity requested with this permit application. Next, multiply the AU Factor in column 2 by the number of animals listed in column 5 to get the **Final AU Capacity** for each animal type (column 6). Finally, add together all AU's in column 6 to get a total at the bottom of the chart.

1. Animal type	2. Animal unit factor	Current facility capacity		Final facility capacity (Current +/- Changes)	
		3. Head count	4. Animal units = column 2 x column 3	5. Head count	6. Animal units = column 2 x column 5
A. Dairy cattle					
Mature cow (milked or dry) over 1,000 lbs.	1.4	350	490	680	950
Mature cow (milked or dry) under 1,000 lbs.	1.0	50	50		
Heifer	0.7	150	105		
Calf	0.2	150	30		
B. Veal					
Veal	0.2				
C. Beef cattle					
Slaughter steer/heifer, stock cow, or bull	1.0	75	75		
Feeder cattle (stocker or backgrounding), heifer	0.7	300	210	60	42
Cow and calf pair	1.2				
Calf (weaned)	0.2				
D. Swine					
Over 300 lbs.	0.4				
Between 55 and 300 lbs.	0.3				
Under 55 lbs.	0.05				
E. Horses					
Horse	1.0				
F. Sheep					
Sheep or Lamb	0.1				
G. Chickens with a liquid manure system					
Layer Hens or Broilers	0.033				
H. Chickens with a dry manure system					
Broilers over 5 lbs.	0.005				
Broilers under 5 lbs.	0.003				
Layer Hens over 5 lbs.	0.005				
Layer Hens under 5 lbs.	0.003				
I. Turkeys					
Over 5 lbs.	0.018				
Under 5 lbs.	0.005				
J. Ducks					
Duck (with a liquid manure handling system)	0.01				
Duck (with a dry manure handling system)	0.01				
K. Animals not listed in A to J (AU factor in column 2 = average weight of the animal type divided by 1,000 lbs.)					
Animal type:					
Total animal unit capacity			Current AU capacity		Final AU capacity
Add all numbers in column 4 for Current AU total			960		992
Add all numbers in column 6 for Final AU total					

VIII. Animal holding areas

Do any animals at the facility have access to pasture? ☐ Yes ☒ No

Complete the table below for the following animal holding areas. If needed, continue your list on an additional copy of this page.

- Total confinement barn with underfloor pit** - A barn where animals cannot access an outdoor area and liquid manure enters storage directly beneath the floor. This includes "shallow pits" or "pull plugs".
- Total confinement barn** - A barn where animals cannot access an outdoor area.
- Partial confinement barn** - A barn where animals can directly access an outdoor area (i.e., associated open lot).
- Open lot** - An uncovered area where animals are housed outdoors.
- Individual animal housing area** - A structure that houses only one animal at a time (i.e., calf huts/hutches).
- Working-Sorting-Hospital area** - A structure or area, covered or uncovered, where animals temporarily enter during load-out or load-in events or when additional care is needed to address medical issues with the animal.
- Milk parlor-Holding area** - A structure or area where animals temporarily enter prior to or during milking.

List each animal holding area in a separate column

Animal holding area ID	Use the far right column for non-rectangular holding areas					Non-Rectangular
Facility Site Sketch ID (i.e., #1, A, Barn 1)	1	2	3			
Status: (check one box only)	☒ Proposed	☐ Proposed	☐ Proposed	☐ Proposed	☐ Proposed	☐ Proposed
Proposed - not permitted previously or permitted but not yet operational	☐ Existing	☒ Existing	☒ Existing	☐ Existing	☐ Existing	☐ Existing
Existing - current operational component	☐ Eliminating	☐ Eliminating	☐ Eliminating	☐ Eliminating	☐ Eliminating	☐ Eliminating

List approximate holding area dimensions in feet

(If non-rectangular, use the far right column and list surface area)

Type of animal holding areas	Length X Width	Length X Width	Length X Width	Length X Width	Length X Width	Non-Rectangular (Surface Area)
Total confinement barn with underfloor pit	X	X	X	X	X	sq. ft
Underfloor pit maximum depth (ft)	Pit Depth:	Pit Depth:	Pit Depth:	Pit Depth:	Pit Depth:	Pit Depth:
Underfloor pit volume (gal)	gal	gal	gal	gal	gal	gal
Total confinement barn	276 X 128	268 X 112	X	X	X	sq. ft
Partial confinement barn	X	X	128 X 36	X	X	sq. ft
Associated open lot dimensions (list area for non-rectangular lots)	X	X	60 X 130	X	X	X
	sq. ft	sq. ft	sq. ft	sq. ft	sq. ft	sq. ft
Open lot	X	X	X	X	X	sq. ft
Individual animal housing area (i.e., calf huts/hutches that house one animal)	X	X	X	X	X	sq. ft
	Quantity:	Quantity:	Quantity:	Quantity:	Quantity:	Quantity:
Working-Sorting-Hospital area	X	X	X	X	X	sq. ft
Milk parlor-Holding area	X	X	X	X	X	sq. ft
Other buildings for animal husbandry	X	X	X	X	X	sq. ft

Indicate the maximum capacity (number of animals) of each animal holding area

The total number of all animals listed should match the final animal numbers listed on page 3.

Animal numbers						
Mature dairy cows (over 1,000 lbs.)	348	332				
Mature dairy cows (under 1,000 lbs.)						
Dairy heifers						
Dairy calves						
Veal						
Slaughter steer/heifer, stock cow or bull						
Feeder cattle-stocker/background/heifer			60			
Cow and calf pair						
Beef calves (weaned)						
Swine over 300 lbs.						
Swine between 55 and 300 lbs.						
Swine under 55 lbs.						
Horses						
Sheep or lamb						
All chickens with liquid manure system						
Broiler chickens over 5 lbs. - dry system						
Broiler chickens under 5 lbs. - dry system						
Laying hens over 5 lbs. - dry system						
Laying hens under 5 lbs. - dry system						
Turkeys - over 5 lbs.						
Turkeys - under 5 lbs.						
Other:						

IX. Liquid Manure Storage Areas (LMSA)

Complete the table below for all your LMSAs based upon liner type. If needed, continue your list on an additional copy of this page.

Additional Instructions:

1. **Do not list below barn LMSAs in this table** – This information has been captured in the animal holding areas table.
2. LMSAs with more than one liner type - List this LMSA in the category that represents the sidewall primary liner type.
For example: a LMSA with a concrete floor and earthen sidewalls should be listed in the LMSA - Earthen category.
3. LMSAs with dual liners, which is a primary liner underlain by a secondary liner (typically only in karst susceptible areas) - List the LMSA in the category that represents the primary liner; which is, the liner in direct contact with the manure.
For example: a HDPE plastic lined LMSA underlain by a compacted clay liner should be listed in the LMSA - Synthetic category.
4. Use the two right columns for circular and other non-rectangular shapes.

LMSA ID		List each LMSA in a separate column					Circular	Non-Rectangular
Facility Site Sketch ID		5						4
Status: (check only one)	☐ Proposed ☐ Existing ☐ Eliminating	☒ Proposed ☐ Existing ☐ Eliminating	☐ Proposed ☐ Existing ☐ Eliminating	☐ Proposed ☐ Existing ☐ Eliminating	☐ Proposed ☐ Existing ☐ Eliminating	☐ Proposed ☐ Existing ☐ Eliminating	☐ Proposed ☐ Existing ☐ Eliminating	☐ Proposed ☐ Existing ☐ Eliminating
See animal holding area table for definitions								

Type of LMSA Liner		List approximate LMSA dimensions in feet					Circular	Non-Rectangular
Do not list below barn LMSAs		(If non-rectangular, use the appropriate column and list diameter or surface area)						(Surface Area)
LMSA - Earthen	X	X	X	X	X	Diameter:		sq. ft
Maximum depth (ft)	Depth:	Depth:	Depth:	Depth:	Depth:	Depth:	Depth:	Depth:
LMSA - Concrete	X	X	X	X	X	Diameter:		sq. ft
Maximum depth (ft)	Depth:	Depth:	Depth:	Depth:	Depth:	Depth:	Depth:	Depth:
LMSA - Synthetic ^a	X	280 X 230	X	X	X	Diameter:		36240 sq. ft
Maximum depth (ft)	Depth:	Depth: 16	Depth:	Depth:	Depth:	Depth:	Depth:	Depth: 12
LMSA - GCL ^b	X	X	X	X	X	Diameter:		sq. ft
Maximum depth (ft)	Depth:	Depth:	Depth:	Depth:	Depth:	Depth:	Depth:	Depth:
LMSA - Steel tank ^c	X	X	X	X	X	Diameter:		sq. ft
Maximum depth (ft)	Depth:	Depth:	Depth:	Depth:	Depth:	Depth:	Depth:	Depth:
LMSA - Other	X	X	X	X	X	Diameter:		sq. ft
Maximum depth (ft)	Depth:	Depth:	Depth:	Depth:	Depth:	Depth:	Depth:	Depth:

List the LMSA volume in gallons	
Volume of LMSA (gal)	5,200,000
	1,800,000

- a. Synthetic liners include all plastic or rubber liners (HDPE, EPDM, LDPE, LLDPE, PVC, etc.).
- b. GCL refers to all types of geosynthetic clay liners where bentonite clay is confined between two synthetic membranes (i.e., bentomat®).
- c. Steel tank refers to above ground steel tanks including those with concrete floors (i.e., slurystore®).

X. Other Facility Components

Complete the table below for the following facility components. If needed, continue your list on an additional copy of this page.

1. **Permanent Stockpile** - An area where solid manure is stored or processed. Do not list temporary stockpiles
2. **Feed Storage Area** - Areas where any type of feed is stored in outdoor piles/bunkers, including those covered with plastic.
DO NOT list vertical silos, grain bins, commodity sheds, or other totally enclosed structures.
3. **Mortality Compost Area** - ONLY list mortality management areas that compost dead animals with litter or manure.
4. **Vegetated Infiltration Area (VTA)** - A vegetated area with berms on all sides so that liquid can only leave via infiltration into the soil.
5. **Filter-Buffer Strip** - A vegetated area where liquid flows over a grassed area and is allowed to leave the area via surface flow.

Component ID		List each component in a separate column					Non-Rectangular	Non-Rectangular
Use the two far right columns for non-rectangular shapes								
Facility Site Sketch ID	6							
Status: (check only one)	☐ Proposed ☐ Existing ☐ Eliminating	☐ Proposed ☐ Existing ☐ Eliminating	☐ Proposed ☐ Existing ☐ Eliminating	☐ Proposed ☐ Existing ☐ Eliminating	☐ Proposed ☐ Existing ☐ Eliminating	☐ Proposed ☐ Existing ☐ Eliminating	☐ Proposed ☐ Existing ☐ Eliminating	☐ Proposed ☐ Existing ☐ Eliminating
See animal holding area table for definitions								

Type of Component		List approximate component dimensions in feet					Non-Rectangular	Non-Rectangular
(If non-rectangular, use one of the two far right columns and list surface area)								
Permanent Stockpile	X	X	X	X	X	sq. ft		sq. ft
Feed Storage Area	180 X 100	X	X	X	X	sq. ft		sq. ft
Mortality Compost Area	X	X	X	X	X	sq. ft		sq. ft
Infiltration Area (VTA)	X	X	X	X	X	sq. ft		sq. ft
Filter-Buffer Strip	X	X	X	X	X	sq. ft		sq. ft

XI. Construction stormwater (CSW) requirements (complete only if construction is proposed)

When construction activities are proposed, indicate the expected acreage of soil disturbance: 1.5 acres

Construction at the facility disturbs one acre or more but less than 5 acres must comply with the requirements of the CSW NPDES general permit, unless a separate application is made for a CSW permit.

Prior to construction at the facility that disturbs 5 or more acres an application for a CSW permit is required.

XII. Notifications and public meetings

The notifications and public meetings below are required to be done **before** permit issuance.

A. Notification to local zoning officials

When required. This notification is required in **either** of the following situations:

- **Construction of a new** feedlot, or manure storage area (i.e. new site) of any AU capacity.
- **Expansion of an existing** feedlot, or manure storage area of any AU capacity.

Notification methods. The applicant must provide notification of the construction or expansion to all local zoning authorities, including county, town, and city zoning authorities, at least 30 days prior to commencement of the construction or expansion. This notification *must* include, at a minimum, the information provided in Minn. R. 7020.2000, subp.4.,A (1) (a) (i to v).

An example notification can be found in the factsheet [Public Notification Requirements – Feedlots](https://www.pca.state.mn.us/feedlots) available on the MPCA website at <https://www.pca.state.mn.us/feedlots>.

B. Notice to residents and property owners within 5,000 feet of a proposed project

When required. This notice is required in **either** of the following situations:

- **Construction of a new** feedlot, or manure storage area, which will have a capacity of 500 AU or more (i.e. new site).
- **Expansion of an existing** feedlot, or manure storage area, which currently has, or will have upon completion of the expansion, a capacity of 500 AU or more.

Notice methods. The owner shall not less than 20 business days before the anticipated issuance date of the permit, provide notice to each resident and each owner of real property within 5,000 feet of the perimeter of the proposed facility. This notice *must* include, at a minimum, the information provided in Minn. R. 7020.2000, subp.4.

An example notice can be found in the factsheet [Public Notification Requirements – Feedlots](https://www.pca.state.mn.us/feedlots) available on the MPCA website at <https://www.pca.state.mn.us/feedlots>.

Verification of notice.

The CFO must verify that this notice has been completed prior to permit issuance.

Please include with this permit application one of the following options that provides verification that the required notice has been completed:

- An affidavit of publication from a newspaper of general circulation used to provide this notification.
- A list of all parties, with their location, that were notified by certified mail and copies of all signed mail return receipts.
- A list of all parties, with their location, that were personally visited with a date and signature from each party and certification signed by a notary public indicating in detail what was discussed.

XIII. Certifications and signature

Notification to local officials

The Applicant certifies that, if the application includes construction of a new facility or expansion of an existing facility, all local zoning authorities have been notified in accordance with Minn. R. 7020.2000 subp. 5.

Construction Stormwater (CSW) Requirements

The Applicant certifies that, if construction will disturb 5 or more acres, they have made a separate application for a CSW permit. For construction activities that disturb at least 1 acre but less than 5 acres, the Applicant certifies to comply with the requirements of the current CSW NPDES general permit (Minn. R. 7090.2020 provides permit coverage without the need for an application).

Application processing by the MPCA

If the MPCA or CFO determines that the CFO is unable to issue the CSF or interim permit as specified by Minn. R. 7020.1600 subp. 4a, the Applicant agrees to submit a new application using the MPCA online feedlot permit application service.

Applicant Signature

I hereby certify that the design, construction, and operation of the facility will be in accordance with this application and plans, specifications, reports, and related communications approved by the CFO, and in accordance with applicable permit conditions or regulations/standards of the MPCA. I also certify under penalty of law that this document and all attachments were prepared under my direction or supervision and the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

The person that signs this application must be one of the following:

- A. For a corporation, a principal executive officer of at least the level of vice president
- B. For a partnership, a general partner
- C. For a sole proprietorship, the proprietor

By typing/signing my name below, I certify the above statements to be true and correct, to the best of my knowledge, and that this information can be used for the purpose of processing this form.

Signature: Daniel J. Tomsch Title: OWNER
(This document has been electronically signed.) Date (mm/dd/yyyy): 05/05/2025

Office phone: _____ Cell phone: _____

To sign up for electronic communications including the MPCA feedlot newsletters, please go to the MPCA website at <https://public.govdelivery.com/accounts/MNPCA/subscriber/new>.

C.D. owner Marylou Busman
signatures: Ronald Busman

Required enclosures

Permit applications submitted without all required enclosures are incomplete.

All forms are available on the CSF & Interim permits page of the MPCA feedlot program website at: <https://www.pca.state.mn.us/feedlots>

5-15-2025
Date

- ☒ A. A site sketch/aerial photograph indicating the location of the existing and proposed facility components.
- ☒ B. A Manure/Nutrient Management Plan (MMP) – The following are optional forms to assist with MMP development:

When all manure is transferred to another entity for utilization, complete a MMP using the form:

MPCA requirements when ownership of manure is transferred.

When all manure is applied to land owned, rented, or leased by the applicant(s), or applied to other land where nutrient application decisions are made by the applicant(s), complete a MMP using the spreadsheet form:

MPCA Manure Management Planner.

When some (not all) manure is transferred to another entity for utilization, complete a MMP using both forms:

MPCA requirements when ownership of manure is transferred and

MPCA Manure Management Planner.

- ☒ C. Plans and Specifications for construction, modification, or expansion of any of the following:
 - Liquid manure storage area
 - Vegetative infiltration area (VTA or VIB)
 - Permanent manure stockpile
 - Filter-Buffer strip
- ☐ D. Verification of the notifications required in part XII of this application.

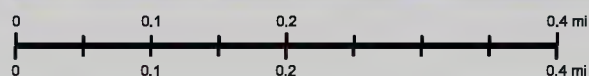


Todd County
MINNESOTA



Todd County GIS
215 1st Ave S, Ste 102
Long Prairie, MN 56347
(Office) 320-732-4248

LetterLayout



The Todd County GIS & Land Services Department has made every effort to provide the most accurate and up-to-date information available in this publication and cannot be held responsible for any unforeseen errors or omissions. If the recipient wishes to locate parcel corners and property lines, employ the services of a Registered Land Surveyor.

Printed on:
Tuesday, May 13, 2025



WHERE THE FOREST MEETS THE PRAIRIE

Todd County

• MINNESOTA • EST. 1855 •

PLANNING & ZONING

215 1st Avenue South, Suite 103

Long Prairie, MN 56347

Phone: 320-732-4420 Fax: 320-732-4803

Email: ToddPlan.Zone@Co.Todd.MN.US

Rept # 2025-0107
Received

CONDITIONAL USE PERMIT APPLICATION

MAY 07 2025

30515125
Todd County Planning
& Zoning

Applicant Emanuel Nyoder Mailing Address 20835 CO Rd. 24

Site Address 49475 Thorn Apple Rd

Phone Number [REDACTED] E-Mail Address _____

Property Owners Name & Address (if not applicant) _____

Parcel ID(s) 01-0011100 Township Battlett Lake/River Name _____

Zoning District (circle one): AF-1; AF2; R-2; R-10; UG; RT; Comm; L-M; or Shoreland.

Full and Current Legal Description(s) SW4NW4 40 acres
(attach if necessary)

Current tax statement or other proof of ownership attached () yes () no

Measurement of land involved: Width _____ Length _____ Acres 2

Septic System: Date installed _____ Date of latest Compliance Inspection _____

Is an upgrade needed: () yes (X) no

Site accessed by: (X) public road () easement

If easement, is the easement legally recorded? () yes () no

Detailed Explanation of Request:

to operate a wood working business - 96'x50'
3 employees
business all inside some outdoor storage
6AM to 7PM 5 da. a wk.

Did you meet with the Township Board to present the Application for Conditional Use Permit?

Yes X No _____ Date of the meeting: 4/15/25

Lance Quam
Optional Township Board Signature

Chair person
Board Position

Receipt # 2025-0107

Will the request create an excessive burden on the existing roads or other utilities? **Explain**

NO. Working with township

Is the requested use compatible with the surrounding properties? **Explain**

yes

Could the use significantly depreciate near-by properties? **Explain**

NO

Will the structure and the use have an appearance that will not have an adverse effect on near-by properties? **Explain**

NO. Will Keep Clean and organized

Will the requested use create an adverse affect on near-by properties because of noise, odor, glare, hours of operation, or general unsightliness? **Explain**

NO nearby neighbors

**RETURN APPLICATION, SITE PLAN, SEWER INFORMATION AND ANY ADDITION
INFORMATION, AND FEE TO:**

Todd County Planning & Zoning Office
215 1st Ave South, Suite 103
Long Prairie, MN 56347

Fee: \$500.00 or After-the-Fact Fee: \$1,000.00 payable to "Todd County"

Only complete applications may be placed on an agenda

****A PARCEL IN JOINT OWNERSHIP MUST PROVIDE WRITTEN SIGNATURE OF ALL OWNERS****

Emanuel yoder
Applicant Name Printed

Emanuel yoder
Signature

4-8-25
Date

Property Owner Name Printed

Signature (If different than applicant)

Date

A Conditional Use Permit expires and is considered invalid unless they are substantially completed within thirty-six months of the date the CUP is granted by the County Board (Section 5.05(N) of the County Zoning Ordinance).

Will the request create an excessive burden on the existing roads or other utilities? Explain

NO. WORKING WITH TOWNSHIP

Is the requested use compatible with the surrounding properties? Explain

YES

Could the use significantly depreciate near-by properties? Explain

NO

Will the structure and the use have an appearance that will not have an adverse effect on near-by properties? Explain

NO. WILL KEEP CLEAN AND ORGANIZED

Will the requested use create an adverse affect on near-by properties because of noise, odor, glare, hours of operation, or general unsightliness? Explain

NO NEARBY NEIGHBORS

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Emanuel yoder
Applicant Name Printed
ERIN W. KROSC

Emanuel yoder
Signature
Erin W. Krosc

4-8-25
Date
4-7-25

BERNICE M. KROSC
Property Owner Name Printed

Bernice M. Krosc
Signature (if different than applicant)

4-7-25
Date

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Site Plan

Outline how the intended use will be situated on the property including buildings, parking areas, signage, material storage areas, etc.

See attached

01-0009200
WILLIAM
WHITE

01-0010600
JEREMY J &
AMANDA L TRIEPKE

01-0009500
MICHAEL S
O'KEEFE

COUNTY 11

01-0011100
EMANUEL J &
ELLA L YODER

01-0010500
ENOS & RACHEL
SWARTZENTRUBER

30' culvert

50' x 26'
Parking

49475

THORN APPLE RD

01-0010200
MICHAEL S
O'KEEFE

49458
01-0011001
JACOB D & LEVI
D HERSHBERGER

01-0011200
ERVIN W &
BERNICE M KROSCH

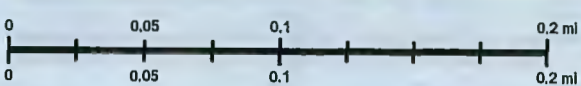
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Todd County
MINNESOTA



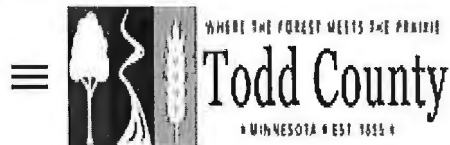
Todd County GIS
215 1st Ave S, Ste 102
Long Prairie, MN 56347
(Office) 320-732-4248

LetterLayout



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Printed on:
Tuesday, April 8, 2025



Tax Web

Counties Providing Technology
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Ver 1.1 - 04/28/2025 13:04:17



Parcel #: 01-0011100

As Of: Apr 30, 2025

Results List

Search

Dashboard

Parcel Info

Tax Info

Value Info

Special Assessments

Tax Summary

Parcel Information

Parcel Details



Twp/City

1



School

2170



Water

0



Debt

2



Agri

0

Taxpa Asmt: 2025 Pay: 2026

Taxpayer# 16520
YODER / EMANUEL J & ELLA L
20835 COUNTY 24
BERTHA MN 56437

Additional Owners

Owner

Owner# 40104
KROSCH / ERVIN & BERNICE
509 E 9TH STREET
MORRIS MN 56267

Falco: C.D.

Details

Sect	Twp	Rng	Lot	Block
11	133	34	0	0

Legal

Do not use the summaries below
on legal documents

SW4 NW4 40.00 ACRES

Misc

Escrow 0
Deeded Acres 40.00

Property Address

Street Addr	49475 THORN APPLE RD 56434
Re/Mh	REAL ESTATE
MP	01-0011100
Sect/Town/Range	11/133/34
Township/City	1 - BARTLETT
School District	2170 - MOTLEY-STAPLES

01-0009200
WILLIAM
WHITE

01-0010600
JEREMY J &
AMANDA L TRIEPKE

01-0009500
MICHAEL S
O'KEEFE

COUNTY 11

01-0011100
EMANUEL J &
ELLA L YODER

01-0010501
DALE J & PAMELA
B GALLENGER

49475

THORN APPLE RD

01-0010200
MICHAEL S
O'KEEFE

49458

01-0011001
JACOB D &
LEVI D HERSHBERGER

01-0011200
ERVIN W &
BERNICE M KROSCHE

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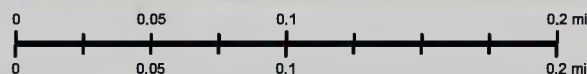
Todd County

MINNESOTA



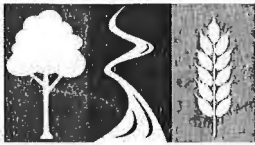
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Printed on:
Tuesday, May 13, 2025



WHERE THE FOREST MEETS THE PRAIRIE

Todd County
• MINNESOTA • EST. 1855 •

Receipt # 8025-0192

PLANNING & ZONING
215 1st Avenue South, Suite 103
Long Prairie, MN 56347
Phone: 320-732-4420 Fax: 320-732-4803
Email: ToddPlan.Zone@Co.Todd.MN.US

Received
MAY 09 2025
SKC 57525
Todd County
Planning & Zoning

CONDITIONAL USE PERMIT APPLICATION

Applicant Jodi Marohn Mailing Address 28333 284th Street Long Prairie

Site Address Same

Phone Number [REDACTED]

E-Mail Address [REDACTED]

Property Owners Name & Address (if not applicant) _____

Parcel ID(s) 12-0030200 (Pending new Parcel #) Township Hartford Lake/River Name _____

Zoning District (circle one): AF-1; AF2; R-2; R-10; UG; RT; Comm; L-M; or Shoreland.

Full and Current Legal Description(s) SEE SURVEY, PARCEL B
(attach if necessary)

Current tax statement or other proof of ownership attached () yes () no

Measurement of land involved: Width _____ Length _____ Acres 10

Septic System: Date installed 1996 NO Sewer on property Date of latest Compliance Inspection 4/29/22

Is an upgrade needed: () yes ☒ no

Site accessed by: ☒ public road () easement

If easement, is the easement legally recorded? () yes () no

Detailed Explanation of Request:

I am requesting to open an indoor riding arena with camping. Individuals will be able to bring their horses and ride indoors. I am also requesting to allow 3 RV campers onsite plus mine. (I had a house fire and will be living in a camper for the summer)

Did you meet with the Township Board to present the Application for Conditional Use Permit?

Yes ☒ No _____ Date of the meeting: 7/28/2025

[Signature]

Optional Township Board Signature

[Signature]
Board Position Chair Person

Chair Person

Will the request create an excessive burden on the existing roads or other utilities? **Explain**

No, I live by several large farms that haul large farm equipment and trailers

Is the requested use compatible with the surrounding properties? **Explain**

Yes, the majority of farms around my property have large sheds.

Could the use significantly depreciate near-by properties? **Explain**

No because all the farms around have large sheds, barns, and buildings.

Will the structure and the use have an appearance that will not have an adverse effect on near-by properties? **Explain**

No my arena is beautiful

Will the requested use create an adverse affect on near-by properties because of noise, odor, glare, hours of operation, or general unsightliness? **Explain**

No, there will not be any loud noises, only odor would be from horse manure, but there is beef cattle all around the arena.

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Jodi Marohn
Applicant Name Printed

Jodi Marohn
Signature

4-28-25
Date

Jodi Marohn
Property Owner Name Printed

Signature (If different than applicant)

Date

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Site Plan

Outline how the intended use will be situated on the property including buildings, parking areas, signage, material storage areas, etc.

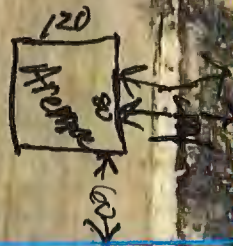
* see attached

12-0030200
JODI I
MAROHN

16-0029500
DANIEL J &
DEANNA D OPSAL

12-0030201
KAREN A
TWARDOWSKI

285TH AVE



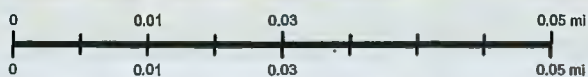
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Todd County
MINNESOTA



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Printed on:
Tuesday, April 29, 2025

FESTLER LAND SURVEYING

1611 FIRST AVENUE NE, LITTLE FALLS, MN 56345 (320) 632-4396

SECTION 25, TOWNSHIP 130, RANGE 33,
TODD COUNTY, MINNESOTA

SURVEY FOR: JODI MAROHN

PROPOSED PARCEL A:

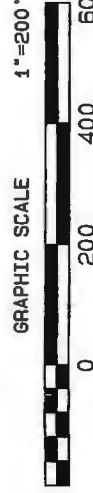
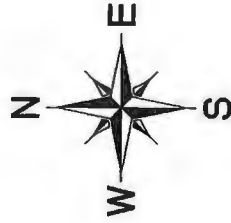
That part of the Southeast Quarter, Section 25, Township 130, Range 33, Todd County, Minnesota, described as follows:
Commencing at the northeast corner of said Southeast Quarter; thence South 89 degrees 10 minutes 55 seconds West, assumed bearing, 600.16 feet along the north line of said Southeast Quarter to the point of beginning; thence continuing South 89 degrees 05 minutes 55 seconds West 641.41 feet; thence South 04 degrees 05 minutes 16 seconds West 615.99 feet; thence South 82 degrees 57 minutes 10 seconds East 322.01 feet; thence South 00 degrees 30 minutes 09 seconds East 710.55 feet to the point of beginning. Subject to 284th Street on the north.

PROPOSED PARCEL B:

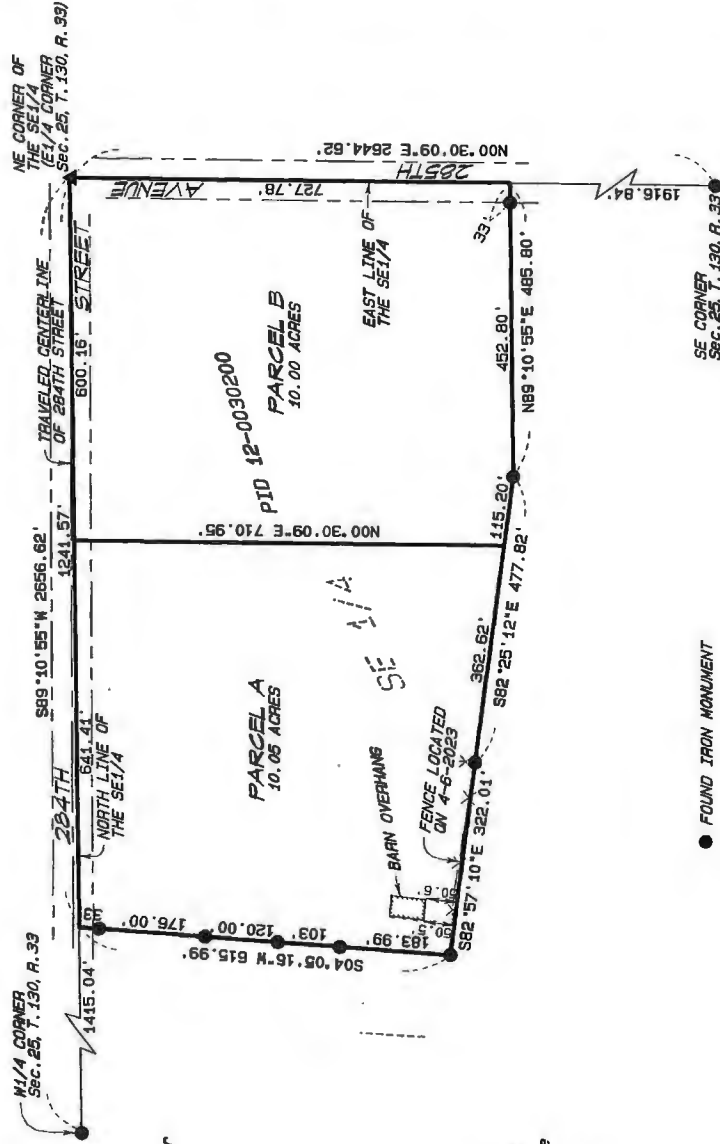
That part of the Southeast Quarter, Section 25, Township 130, Range 33, Todd County, Minnesota, described as follows:
Commencing at the northeast corner of said Southeast Quarter; thence South 89 degrees 10 minutes 55 seconds West, assumed bearing, 1241.57 feet to the point of beginning; thence South 04 degrees 05 minutes 16 seconds West 615.99 feet; thence South 82 degrees 57 minutes 10 seconds East 322.01 feet; thence South 00 degrees 30 minutes 09 seconds East 710.55 feet to the point of beginning. Subject to 284th Street on the north and 285th Avenue on the east.

SURVEY NOTE:

--No field work was completed for this survey. All Section corners, fences, and buildings were located previously by Festler Land Surveying and are being used as part of this survey.



- FOUND IRON MONUMENT
- ▲ FOUND SPIKE

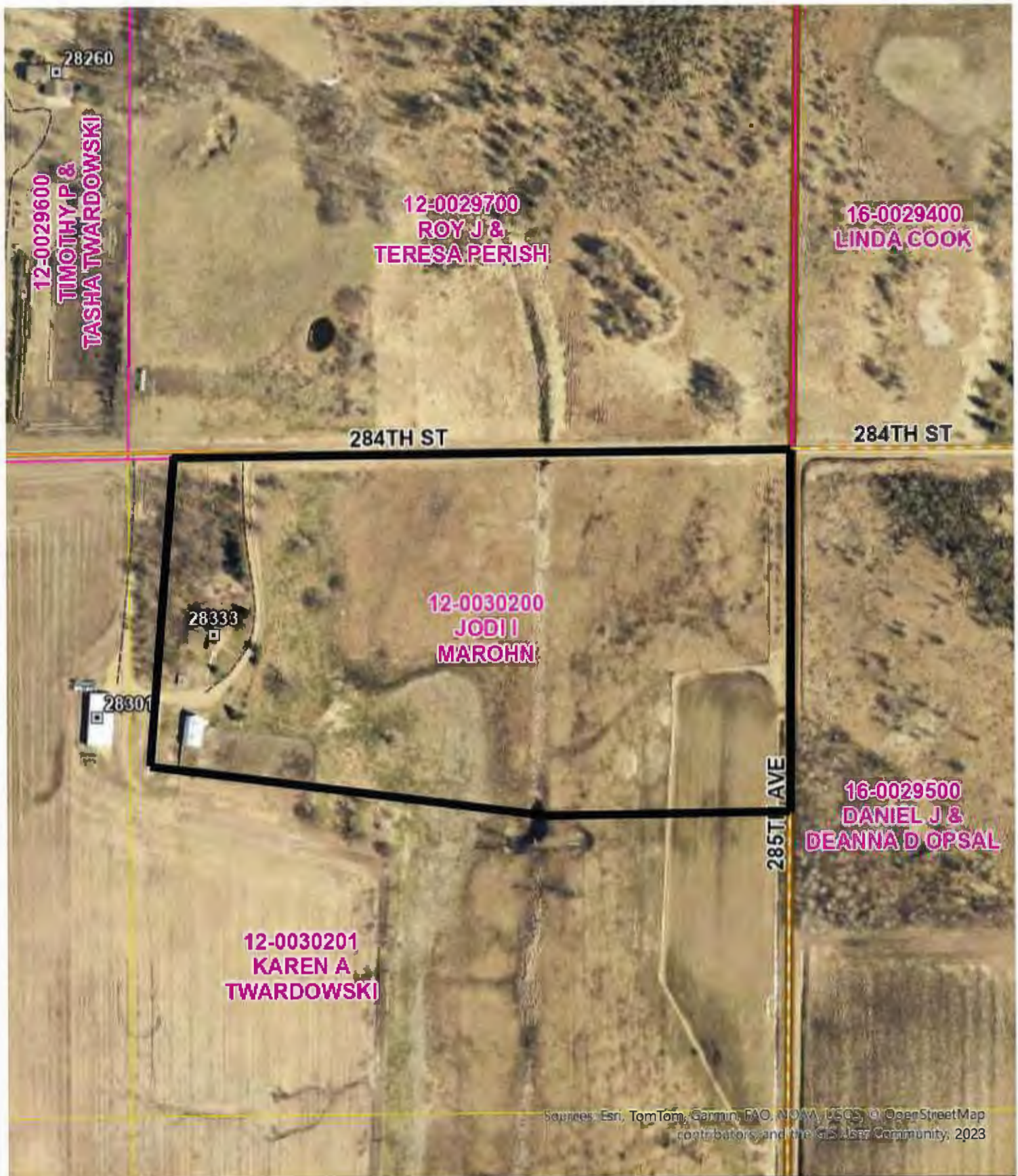


Digitally signed by Jared Festler
DN: cn=Jared Festler, o=Festler Land Surveying, ou=Land Surveying, email=jfestler@festlerlandsurveying.com, c=US, postalCode=56345, serialNumber=13121515, version=3
Date: 2025.01.13 12:05:15 -0800

Jared
Festler

I HEREBY CERTIFY THAT THIS SURVEY, PLAN OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY REGISTERED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF MINNESOTA.

Reg. No. 55338 Date January 13, 2025 Job No. 2024-344 Book No. N/A



Sources: Esri, TomTom, Garmin, FAO, NOAA, USGS, OpenStreetMap contributors, and the GIS User Community, 2023

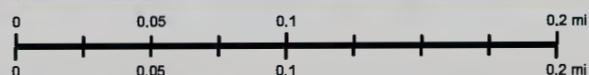
Todd County

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