

Fri, Apr 9,
10:39 AM

Carl Andeer <candeer@vlct.org>

Hi Bill,

There's no way to give a definitive answer because section 201 allows for the ZBA to review things "... not specifically listed within a district only upon finding that the proposed use is of the same general character as those uses listed for that district ...," and you cite several districts where "recreational/entertainment" and "educational" uses are allowed. So, it's possible someone could argue that a firearms training facility is possibly permissible in certain districts pursuant to section 201 review (however this review is something the ZBA "*may*" do and it seems it would still be reviewed under the narrow section 201 requirements, i.e. "...will not adversely affect other uses within the district or adjoining lands." It would really come down to the specifics of the application.

If the town is worried about this, it could amend the bylaws to list more specific restricted uses in certain districts (as long as the amendments to the bylaws were consistent with the town plan).

The town could also adopt a standalone ordinance regulating firearm discharge. Generally, municipalities have the authority to regulate the use and discharge, but not the possession, of firearms. 24 V.S.A. § 2291(8) (see full text below). However, in regulating the use or discharge of firearms, the municipality may not directly regulate

hunting, fishing and trapping. 24 V.S.A. § 2295 (see full text below). It may also not "prohibit, reduce, or limit discharge at any existing sport shooting range, as that term is defined in section 5227 of Title 10." 24 V.S.A. § 2291(8). This means that a municipality cannot regulate shooting ranges in existence at the time of the passage of this law (H.447 took effect on May 5, 2006). State law defines a "sport shooting range" as "an area designed and operated for the use of archery, rifles, shotguns, pistols, skeet, trap, black powder, or any other similar sport shooting." This is an extremely broad definition whose only identifying characteristics are that the range be "designed" and "operated" for use of sport shooting. Finally, municipalities may also adopt noise ordinances pursuant to 24 V.S.A. § 2291(14) (see below) which you mentioned you have in our model noise ordinance.

Title 24 : Municipal And County Government

Chapter 061 : Regulatory Provisions; Police Power Of Municipalities

Subchapter 011 : Miscellaneous Regulatory Powers

(Cite as: 24 V.S.A. § 2291)

§ 2291. Enumeration of powers

For the purpose of promoting the public health, safety, welfare, and convenience, a town, city, or incorporated village shall have the following powers:

(8) To regulate or prohibit the use or discharge, but not possession of, firearms within the municipality or specified portions thereof, provided that an ordinance adopted under this subdivision shall be consistent with section 2295 of this title and shall not prohibit, reduce, or limit discharge at any existing sport shooting range, as that term is defined in 10 V.S.A. § 5227.

(14) To define what constitutes a public nuisance, and to provide procedures and take action for its abatement or removal as the public health, safety, or welfare may require.

Title 24 : Municipal And County Government

Chapter 061 : Regulatory Provisions; Police Power Of Municipalities

Subchapter 011 : Miscellaneous Regulatory Powers

(Cite as: 24 V.S.A. § 2295)

§ 2295. Authority of municipal and county governments to regulate firearms, ammunition, hunting, fishing, and trapping

Except as otherwise provided by law, no town, city, or incorporated village, by ordinance, resolution, or other enactment, shall directly regulate hunting, fishing, and trapping or the possession, ownership, transportation, transfer, sale, purchase, carrying, licensing, or registration of traps, firearms, ammunition, or components of firearms or ammunition. This section shall not limit the powers conferred upon a town, city, or incorporated village under subdivision 2291(8) of this title. The provisions of this section shall supersede any inconsistent provisions of a municipal charter. (Added 1987, No. 178 (Adj. Sess.), eff. May 9, 1988.)

There is also a criminal statute in the meantime that may help; 19 V.S.A. Section 1022, noise in the nighttime, expressly prohibits shooting guns after sunset and before sunrise so neighbors could refer these complaints to law enforcement.

We strongly recommend the board have a legal review of any ordinance regulating firearm discharge or use prior to its adoption.

Cheers,

Carl Andeer

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From: Bill Dunkel <bdunkel1455@gmail.com>

Sent: Thursday, April 8, 2021 11:51 AM

To: Garrett Baxter <gbaxter@vlct.org>

Subject: Windham zoning questions



Sat, Apr 10,
9:46 AM

Bill Dunkel
<bdunkel1455@gmail.com>

to Carl

Thank you, Carl, for getting back to me and for your thoughts on this matter. Rather than trying to regulate the discharge of firearms (which sounds like a potential nightmare) or adding more restricted uses in specific zoning districts, couldn't we just add "Paramilitary/firearms training

facilities" to the list of prohibited uses that are articulated in Sec. 207 of our zoning regulations? Section 207 reads as follows: "Uses similar in nature to those specifically permitted may be permitted with conditional use review, but these uses are specifically prohibited in the Town of Windham as they are inherently harmful and detrimental to the public welfare." There follows a list of eleven prohibited uses including blast furnaces, slaughterhouses, rendering plants...refining or manufacturing of petroleum, gas, explosives...bulk storage of explosives, etc. Wouldn't it be easier and clearer if we added paramilitary style facilities as a twelfth prohibited use?

Thanks for your further consideration of this matter.

Bill



Mon, Apr 12,
4:13 PM

Carl Andeer

to me

Hi Bill,

Yes, that's one avenue – and if the town updates its bylaws it definitely needs to include a well-thought of definition for "Paramilitary/firearms training facility." Note that bylaws, like ordinances, are restricted in that they can't regulate the possession of firearms and can't regulate hunting, trapping, and fishing or shooting ranges that were in existence of a certain date as I described in my first response.

