

**FALMOUTH ZONING BOARD OF APPEALS**

**FINDINGS AND DECISION**

**APPEAL NO:** 067-17

**APPELLANTS:** MIDWAY TRAP and SKEET CLUB OF FALMOUTH, INC  
of Teaticket, MA

**SUBJECT PROPERTY:** 284 Old Meeting House Road, East Falmouth, Massachusetts  
**Assessor's Map:** Map 28 Section 05, Parcel 001 Lot 000

**DEED/CERTIFICATE:** Book 1080 / Page 324

**SUMMARY:** Appeal of the Building Commissioner's determination in issuing a Cease and Desist Order on the pistol range – The Board Overturned the Building Commissioner's determination

**PROCEDURAL HISTORY**

1. Under a date of August 7, 2017, the appellant filed an Appeal pursuant to M.G.L. c. 40A §§ 8 and 15 and Section 240-202 of the Code of Falmouth, appealing the Building Commissioner's determination that the pistol range at Midway Trap and Skeet Club was a significant expansion by Midway and issued a Cease and Desist Order (for pistol range) on subject property known as 284 Old Meeting House Road, East Falmouth, Massachusetts.
2. Notice was duly given as required by Section 11 of Chapter 40A, M.G.L., as well as notices sent to all persons deemed to be affected thereby as they appear on the tax list, and at which hearing, at the Board's discretion, relevant and appropriate testimony was heard.
3. A duly advertised public hearing was opened on September 28, 2017.
4. The record notes that on August 7, 2017 an Appeal was filed by Attorney Edward George on behalf of Midway Trap & Skeet Club of Falmouth, Inc. regarding the determination made by the Building Commissioner to Cease and Desist the Pistol Range on subject property; also filed same day by Attorney Ament was the Appeal to extend the Cease and Desist Order to the rifle range on subject property. The Board determined at the first hearing held on September 28, 2017 to hear both appeals at the same time as both appeals affect subject property and property owner, Midway Trap & Skeet Club. The records of both appeals have substantially the same information submitted to each.
5. The public hearing was closed on November 16, 2017.
6. The file contains waivers signed by representative(s) of parties of the Appeal herein to extend the timeframe of the one-hundred (100) day appeal process.
7. At a duly posted open meeting of the Board of Appeals held on December 14, 2017 and January 3, 2018, the Board, consisting of Acting Chairman Terrence J. Hurrie, Acting Clerk Robert Dugan, Member Ed Van Keuren and Member Gerald Potamis, discussed the testimony,

affidavits and information submitted to the file. On January 3, 2018 the Board made a determination to Grant the Appeal and Overturn the Building Commissioner's Determination on the Cease and Desist Order of the pistol range. Minutes of the hearing(s) and open meeting(s) are on file in the Board of Appeals.

8. The appellants, Midway Trap and Skeet Club, were represented at the hearing by Attorney Edward George and Attorney Susan Chu.
9. The Board received documents and information prior to and during the public hearing(s) that are on file in the office of the Board of Appeals at Town Hall. The Board received a substantial amount of emails and letters from abutters and members of Midway Trap & Skeet in support of the Appeal and in opposition of the Appeal, which were all submitted to the file(s) and located in the Board of Appeals office.

#### **Letters/Referrals/E-mails from Town Departments**

08/16/2017 Referral submitted to the file from the Planning Department staff with no comment.

09/07/2017 The ZBA staff researched the building department's file for copies related to the subject property and subject issue and submitted to the file – information includes a submission of a letter to Building Commissioner Palmer from Attorney Edward George dated May 15, 2017, with attachments, regarding: Response of Midway Trap & Skeet Club of Falmouth, Inc. to enforce zoning bylaw against rifle and pistol ranges of Midway Trap and Skeet Club; and a letter from Attorney Robert H. Ament, with attachments (exhibits) regarding noise issues, maps, copy of *Charles A. Powers & others vs. Building Inspector of Barnstable* -363 Mass.648, and affidavits by three (3) individuals (appellants).

Note: ZBA sent Referral requests to: Building Department, Planning Department and Board of Selectmen

#### **Information/Letters/Aerial Photos submitted by Appellant's Representative**

08/07/2017 A letter along with a Notice of Appeal was filed with the Town Clerk and the Board of Appeals (hand delivered) dated August 7, 2017 from Attorney Edward George with an attachment of eleven (11) exhibits (see file) – with a Board date 'received' stamp of August 8, 2017

09/20/2017 Letter submitted to the file from Charles Worrilow, Treasurer of the Midway Trap and Skeet Club of Falmouth, Inc. dated September 20, 2017 regarding 'filing of supplemental document' – attached to the letter is a biography of Mr. Worrilow who through the years took photos of agricultural areas such as the aerial photos from 1960's through 2014 showing range(s) on subject property also attached to the letter

09/24/2017 Letter from Attorney Edward George to Zoning Administrator dated September 22, 2017 regarding 'Substantive Issue' and 'Procedural Issues'

- 09/28/2017 Letter submitted to the file from Attorney Edward George & Associates (on behalf of Midway Trap & Skeet Club) to the Zoning Administrator, dated September 27, 2017 containing information and attachments:
- a copy of Massachusetts Department of Environmental Protection's 'Outdoor Shooting Range Information Checklist' dated February 15, 2000;
  - Comments from Charles Worrilow regarding Attorney Ament's 9/25/17 letter;
  - Minutes of Mid-way Trap & Skeet Club Inc. dated 10/19/1960, 08/28/1961, 10/23/1961, 10/21/1962, 11/24/1963, 01/17/1965, 12/12/1984 and 03/06/1985;
  - Copies of Falmouth Enterprise ads from 10/21/1960, 11/17/1961, 12/15/1961 and 11/06/1962 regarding a Turkey Shoot at Midway Trap and Skeet Club open to the public and an ad dated 11/28/1961 noting of contest for a 12-gauge Browning; and
  - Two aerials of subject property noting rifle range area (see letter for explanation).
- 11/09/2017 Letter submitted to the file from Attorney Edward George to Zoning Administrator dated November 8, 2017 with attached affidavits from Roland E. Beliveau dated October 2, 2017, Scott Bowker dated November 7, 2017 and Gary Botelho dated November 7, 2017 - all signed under pains and penalties of perjury. Also attached were nine (9) photos of Midway Trap & Skeet Club areas.
- 11/09/2017 Letter submitted to the file from Attorney Edward George to Zoning Administrator dated November 9, 2017 with attached affidavit of Michael Rabesa dated November 8, 2017
- 11/16/2017 Attorney Edward George submitted to the file (at hearing) seven (7) photos showing trap and skeet range, rifle range and pistol range setups on subject property (with a date of 5/17/2017 at top of photos as submitted to Building Department)

**Information/Letters/Aerial Photos submitted by Other Parties**

- 09/22/2017 Two (2) letters submitted to the file from Attorney Robert H. Ament (on behalf of appellants) to Chair of Zoning Board of Appeals both dated September 21, 2017 regarding Appeals (No's. 67-17 and 68-17) and Rifle Range at subject property with an attachment of a copy of 'Notice of Prevention of Easement' dated June 26, 1984 for Falmouth Rod and Gun Club; and a copy of a 'Notice of Prevention of Easement' dated February 1, 1985.
- 09/22/2017 Letter submitted to the file from Attorney Robert H. Ament to Chair of Zoning Board of Appeals dated September 22, 2017 with attachments:
- List of complainants in this appeal represented by Attorney Ament (no signatures);
  - a GIS map;
  - a letter from Brian J. Rabesa of 295 Old Meeting House Road dated August 16, 2017 with comments on 'recently installed pistol range';
  - a notarized Affidavit from George N. Bagley dated May 17, 2017;
  - a notarized Affidavit from Andrew W. Zimmerman dated May 18, 2017;
  - a notarized Affidavit from Stephen P. Huban dated May 18, 2017; and
  - a notarized Affidavit from Robert M. Dutra dated May 17, 2017.

Note: the above four (4) affidavits state shooting of guns and its effect on these individuals.

09/25/2017 Letter submitted to the file from Attorney Robert H. Ament to Chairman of Zoning Board of Appeals dated September 25, 2017 containing information and explanation relative to the appeal. The following exhibits were attached:

- Exhibit A – ‘Massachusetts Zoning Manual’ §6.6.1 *Powers Test*;
- Exhibit B – copy of a certified USDA ‘Aerial Image Identification from 10/6/1970;
- Exhibit C1 – 1970 aerial photo;
- Exhibit C2 – 2014 aerial photo;
- Exhibit C2 – 1970 aerial with 2016 structures superimposed;
- Exhibit D – Technical Notes on Images – Information and analysis from Greg Fiske, Senior Geospatial Analyst at Woods Hole Research Center;
- Exhibit E – Notes taken from conversation regarding common firearms with Scott Bowker ;
- Exhibit F – Copy of letter to George and Beth Bagley from Rand Atlantic Cape Cod Realty dated June 4, 2017 Re: Property evaluation for homes abutting the Midway Trap and Skeet Club; and
- *Bridgewater v. John Chuckran* – 351 Mass 20, 24.

11/08/2017 Letter submitted to the file from Attorney Ament to Acting Chair Hurrie (Board) dated November 8, 2017 regarding comments from September 28, 2017 hearing

11/16/2017 Attorney Ament submitted (at hearing) a photo from 1970 with a plastic overview of 2014 showing consistency of reference line (300 ft.) of range, along with Town GIS map and property photos

### **Hearing Process -**

The Board heard testimony from the following parties:

Attorney Edward George and his associate Susan Chu represented Midway Trap and Skeet Club and spoke on the issue of the pistol and rifle range being a part of the gun club prior to a zoning change in 1971 (Annual Town Meeting, Article 49 passed March 1, 1971). The club was established in 1959 and the club/range was built in 1960. Aerial photos from 1960 show that there were no houses adjacent to subject property. In 1991 houses were constructed adjacent to the club. The affidavits submitted by Attorney Ament do not substantiate the issue of the cease and desist of the pistol range. Attorney Ament’s clients are saying the pistol range was created in 2014. Attorney George further noted that the club has had a pistol range on subject property since the 1960’s. In 2001 the DEP acknowledged that they saw the pistol and rifle range as they made two recommendations: 1) put a backstop with ballistic sand on the long rifle range; and 2) put a backstop with ballistic sand on the pistol range (see file for document from DEP). He stated that the affidavits submitted by Attorney Ament state that they (abutters) bought their homes in 2010, 2012 and 2014. The gun club with trap and skeet, rifle range and pistol range came into existence in the early 1960’s, prior to the 1971 bylaw change. There are 125 members in this club and hours of shooting are from 9:00 AM to 3:00 PM Sunday through Saturday. The aerial photos submitted by Mr. Worrilow show the rifle and pistol ranges. The club does not hold organized shoots for outsiders with pistols – only members shoot pistols and rifles. He reviewed a photo

and noted that the pistol range has always been to the left of the rifle range and has always been shorter. In 2010 a berm and backstop were put in as recommended suggestions by DEP which is the only change.

Attorney Ament represents the abutters and neighbors (Mr. /Mrs. Bagley and others – 19 in total) to Midway Trap and Skeet Club and he spoke on the issue of the cease and desist order of the pistol range and the appeal to extend the cease and desist of the pistol range that was issued by the Building Commissioner to the rifle range. Attorney Ament submitted photos (aerials), a 2014 plan of subject property, information on noise and affidavits by effected individuals. He suggests that the pistol range was newly created and that the rifle range has been altered/lengthened, which are violations of the zoning code and any alteration required a special permit. He compared aerial photos in 1968, which he believes to be inconclusive, with aerials from 1971. He suggested that the minutes of meetings of the club held in the 1960's had no mention of other activities except trap in 1970. The neighbors understand this is a trap club, however, the pistol/rifle shooting were not a scheduled activity like trap shooting – see affidavit submitted to the file from Robert Dutra that states he has been a resident since 1986 of WaterBy Estates and that the club members told him they had no increase of shooting, just trap on Sunday mornings. An incidental use of a property is not a prevailing use and it doesn't have the benefit of a pre-existing nonconforming use. According to the Building Commissioner a pistol range was created recently and we believe the rifle range appears to have been lengthened since 1971, and if it was lengthened, it required a special permit. In 2014 the pistol range was significantly expanded, the clearing was not shown in the 2012 photos (club photos), nor was it shown on a professional land surveyor's plan in March 2014 (plan created on behalf of club tenant Industrial Wireless). Attorney Ament stated that the pistol range did not exist in 1971 when the zoning bylaw changed. He noted that June of 2014 was when the noise became intolerable because of the expansion that took place. He stated that this is not about shutting down Midway; the use is not protected, it can only operate under a special permit. He spoke of the 'Powers Test' and noted that one of the test is if there is a change that results in a change to the degree of impact on the neighbors or if it results in a difference in quality or character then you would need a special permit.

Rod Palmer, Building Commissioner spoke on the issuance of the cease and desist. He noted that there are three (3) separate areas at Midway – trap and skeet area, a pistol range and a rifle range. He discussed the cease and desist order for the pistol range. He said he had received a lot of documentation, affidavits and photos and the pictures he handed in (to file – 7 pictures) were from May 17<sup>th</sup> [2017] when he visited the club. He reviewed the photos and said it was clear that the trap and skeet area (photos #1 and #2) was well established with a lot of trees and vegetation, so one could assume that it has been there for 50 or 60 years; the rifle range has a berm on it with trees and vegetation that tells you it has been there for some time, a portion is established with vegetation and an area that is just gravel with no vegetation (photos #3 and #4); the pistol range has a berm with no vegetation on it at all, at the top of the berm there are many that you can tell have been there for a long time (photos #5, #6 and #7). He said he didn't know when the berm was created but he doesn't believe it was 1970 and said he believes it was created within the last 5 – 10 years. Building Commissioner Palmer stated he has read a lot of documentation submitted and many of the affidavits contradict each other – which ones are correct – he said he doesn't know. He concluded by saying the earth berm, vegetation and other dynamics is how he came to his conclusion that the pistol range was not there in 1970.

Charles Worriow reviewed aerial photos he submitted on behalf of Midway Trap and Skeet Club that he had taken through the years during his tenure with the Soil Conservation Service.

Public Comment: Opposition to Appeal (Support Cease and Desist Order)

- Erin McCormack of 71 Southview Way since 1996 spoke in opposition to appeal citing noise and interruption of life style.
- Shelley DaWicki of 329 Old Meeting House Road since 1985 spoke about concern of noise and asking for club to obey zoning laws.
- Diane Huban of 62 Southview Way since 2001 stated that since 2014 noise from club has become deafening and could be heard during the week as opposed to previously just on Sundays.
- Karen Hargreaves of 31 Southview Way since 2007 stated that recently shooting has been more frequent and the noise has been loud with rapid fire – they avoid the playground and don't feel they can enjoy their home.
- George Bagley of 46 Southview Way since 2014 stated he is an appellant in this appeal. He was aware of a gun club when he purchased the property.
- Elizabeth Bagley of 46 Southview Way stated her husband George (appellant) has a business and office in the home and the shooting causes him stress as he has a nervous disorder and his case is progressive and debilitating with varying degrees of tremors. Stress increases the tremors which creates anxiety. She further stated that she cannot enjoy her home on the weekends due to the shooting and noise. She stated later in the hearing that closing the pistol range has done nothing because it banned only the use of the range and not use of pistols – they continue to be shot on the rifle range. Closing of the pistol range has had no affect and that is why we are asking for the cease and desist to extend to the rifle range.

Public Comment: Support of Appeal (Support of Midway)

- Brent Putnam of 97 John Parker Road stated he was a neighbor, the noise is not excessive and on most days nothing is heard. He stated when he was a Selectmen he heard no complaints on this club. He submitted photos and suggested some photos taken may not accurately show the range due to foliage (time of year taken).
- Nason Swain of 149 Percival Road suggested information submitted about individuals opposed to the gun club is incorrect. He further stated that on the plot plan Attorney Ament submitted there are no bathrooms next to the rifle range that have been there since 1960 – the plan was done by a professional and does not show the existing structure(s) or pistol range.
- Eric Debliela of 8 Elizabeth Island Road in Mashpee stated he is on the Board of Directors for Midway Trap & Skeet club and records the log book of individuals who come in to shoot: in January 21.25 hours, 19.2 hours shot in February and in March

10.30 hours (he noted that January and March they could have shot 186 hours and February 168 hours); he said this is a 'working man's club' and a travesty to close it.

- Rebecca Putnam of 97 John Parker Road since 2001 and during summertime hear very little activity. She stated she is a realtor and would like to speak against a letter from another broker that was submitted about property values. Realtors should inform buyers of the general area in which they are showing a home.
- Mike DeSouza of 39 Crocker Road who stated he is Vice President of the club and the range officer. He was president in 1985 when a letter of intent was signed. The hours of the club are 9:00 AM to 3:00 PM Sunday through Saturday. He stated they installed a gate and cameras and they video all activity and it is mandatory to sign in. He submitted minutes of a meeting of the club held in 1960. Later in hearing he stated that in 1976 he was voted into the club, but in 1970 he shot at the rifle range in the location it currently is -- only change was the bunker that was added due to DEP's recommendation.
- Mike Rabesa of 29 Milton Street stated he is the president and reiterated the hours. He noted that during hunting season there is activity on Tony Andrews Farm and Pond 14; this club gets the backlash. He stated there has never been any cannons fired from the club property. All ranges shoot away from the residences around the club -- always have. He stated later in the hearing that once or twice a year they cut down dead trees and cleanup -- the rifle range has always been the same length and in the same spot.
- Mike Gavin of 158 Old Meetinghouse Road stated he does not shoot or own a gun but supports the gun club. Has lived here nine (9) years and have heard no difference in the firing. He suggested that the photos submitted by Attorney Ament note time of year taken.
- Mike McCarthy of 18 Deolinda Place stated he is not a member but has been residing near since 2011 and has seen no increase in the firearm shooting or any noise difference. He stated he is active duty and familiar with firearms.
- Eric Peterson of 32 Bonnie Lane stated that the plan submitted by Attorney Ament (2014 plan) was for the cell tower on subject property and does not show any of the gun club ranges. He stated approximately in 1970 he was there as a kid for turkey shoots and the building was always there; the right side was always vegetated and on the left there was always gravel/earth coming down.

Attorney Ament's closing statement: Attorney Ament asked the Board to look at the photo that Mr. Worrilow submitted from 2014 that shows the pistol range area was newly disturbed. He said the Board has heard from the neighbors about how there has been a change in the noise over the years. The zoning bylaws are in place to protect everyone. Some abutters may be affected more than others and some affected less, but we believe there has been significant expansion of the club since 1970 without a special permit.

Attorney George's closing statement: He cited the definition of a gun (*an item that fires a projectile under pressure from expansion gas towards a target*) that includes rifles and pistols. This is a gun club – Midway Trap and Skeet Club is a name, the use is a gun club. He suggested there is no evidence from the opposition as to what noise they are hearing, whether it is pistol or rifle, and none of the affidavits submitted by Attorney Ament state what type of gun is being fired – all affidavits by abutters/neighbors state noise since 2014; there is no evidence submitted that a pistol range did not exist prior to 1970 – only that there is noise since 2014 – but we (Midway Trap) know that the pistol range has existed and was not created in 2014. The abutters/neighbors don't like noise from a gun club, but they moved in next to a gun club. Under Chapter 214 Section 7B of Massachusetts General Law a gun club is protected.

Member Dugan made a motion to close the hearing. Member Van Keuren seconded the motion. Motion carried 4 - 0.

Chairman Hurrie closed the hearing.

The Board discussed the appeal at duly posted open meetings of the Board held on December 14, 2017 and January 3, 2018.

### FINDINGS

The Board of Appeals, after carefully considering all of the affidavits submitted, aerials photos submitted, testimony given and evidence submitted at the hearing, makes the following findings:

The subject property located at 284 Old Meeting House Road in East Falmouth contains 19.31 Acres of Agricultural A zoned land. The subject property is owned by Midway Trap & Skeet Club of Falmouth, Inc. and is used as a gun club. Midway Trap and Skeet Club appeal the Building Commissioner's determination of a cease and desist order of the pistol range on subject property.

The Board finds through testimony, affidavits signed under 'pains and penalties of perjury' that were submitted to the file and aerial photographs by C. Worrilow (1960 through 2014) that gives indication the pistol range did exist on subject property prior to a zoning change voted by the Town in March of 1971 (Article 49). The affidavits state use of the pistol range in the 1960's. The Board further finds through testimony by officers of the subject club that the pistol range and other activity ranges located on subject property are periodically manicured and cleaned up (i.e. dead trees/plants removed), but that the location of the ranges has not changed since the 1960's. Furthermore, the Board finds through testimony and affidavits that the membership of Midway Trap and Skeet Club is capped at 125 members and that hours of activity of the club are limited to 9:00 AM to 3:00 PM daily.

The Board finds that the 2014 plan submitted by Attorney Ament under Exhibit D-1 052417 attached to a May 24, 2017 letter to Rod Palmer with the project title of 'Proposed Communications Facility' at 284 Old Meeting House Road (subject property) was created for Industrial Tower and Wireless LLC a corporation that leases a portion of subject property for a cell tower; and that the plan was not created to reference or identify the issue before this Board regarding Midway Trap & Skeet Club. The Board further finds that the letter, with attached tabs 1a through 14, submitted to the file from Midway Trap and Skeet Club of Falmouth, Inc., dated September 20, 2017 and penned by Charles Worrilow to the Zoning Board of Appeals has aerial photos from 1960 (prior to construction of gun club), 1968, 1971, 1975, 1980, 1984, 1991, 1993, 1995, 2000, 2007, 2010, 2012 and 2014 that shows a consistency of



ranges on subject property, with the exception of 1960. The Board understands that the aerials submitted, depending on time of year of photo, may not effectively pinpoint the pistol range as it is a shorter range and not as wide of a range as the trap and rifle ranges. Furthermore, the Board finds that other aerial photos from google maps and other maps submitted to the file are blurry and inconsistent for identification purposes of the ranges on subject property.

The Board finds through testimony at the hearing by Building Commissioner Rod Palmer that he stated he has read a lot of documentation submitted and many of the affidavits contradict each other – which ones are correct – he said he doesn't know. He said he didn't know when the berm was created but he doesn't believe it was 1970 and said he believes it was created within the last 5 – 10 years. He concluded by saying the earth berm, vegetation and other dynamics is how he came to his conclusion that the pistol range was not there in 1970.

The Board finds through Minutes of the Midway Trap and Skeet Club from April 27, 1960, submitted by Mike DeSouza (club member) at the hearing that the minutes reflect 'the plotting committee' who will be responsible to get the layout for the proposed 'building and ranges' for the club. The Board further finds that the affidavits submitted to the file (by Attorney George) and signed under 'pains and penalties of perjury', as well as testimony given at the hearing confirm that a pistol range existing on subject property prior to 1971 and not newly created within the last five (5) to ten (10) years as stated by Building Commissioner Palmer at the hearing. Furthermore, the Board finds through the submission of a 'Massachusetts Department of Environmental Protection Outdoor Shooting Range Information Checklist' (by Attorney George), wherein the form states that DEP visited the subject property on February 15, 2000 and noted on page 2 of the form that: *the club should develop an ESP (Environmental Stewardship Plan) ...the ESP should also discuss containment of lead bullets at, and control of runoff on the face of the rifle & handgun range berm.* Testimony was that the berm was created in 2010 as a safety precaution that was recommended by DEP in the 2000 Shooting Range Information form noted herein. The Board understands that this is not conclusive of the pistol range existing prior to 1971, however it gives credible evidence that it did exist and that it has existed for more than the five (5) to ten (10) years as stated by the Building Commissioner's testimony.

The Board finds that there was no evidence submitted that a pistol range did not exist on subject property prior to 1971. Building Commissioner Palmer further stated at the hearing: *...when photos were taken they weren't taken to determine whether or not there was a pistol range. It is challenging to look at the photos and determine if there was a pistol range there. Possibly there was and maybe they changed the site, but it would have still required a special permit.* The Board further finds that the question before this Board was not to determine if the pistol range required a special permit, but to determine if there was a pistol range existing and not newly created as stated in the letter dated July 10, 2017 by the Building Commissioner to Midway Trap and Skeet Club of Falmouth, Inc.

The Board finds that adjacent to the subject property is farm land (several acres) owned by the Andrews family and testimony was that there has been hunting by individuals done on the farm land periodically and that noise (shooting) from the hunting may have contributed to the noise the abutters/neighbors hear. The Board further finds that Midway Trap and Skeet Club of Falmouth, Inc. has always and consistently maintained clear signage on Old Meeting House Road of its existence and according to an affidavit submitted by Gary Botelho, whose father and uncle created Water-By estates, dated November 7, 2017, states: *The reality is that all of the properties in Water-By Estates, including those on Southview Way, DeoLinda Place and Luciano Botelho Way were developed in or after 1984 and every one when*

*developed was within "sound radius" of the Midway Trap and Skeet Club which had been shooting there for decades. Water-By estates was also developed, to the extent "site radius" is concerned, with its road way entrance right next to the entrance to the Midway Trap & Skeet Club and the Club has always had a prominent sign posted at its entrance identifying its existence.*

The Board finds that the "Notice of Prevention of Easement" of Midway Trap and Skeet Club, Inc., dated March 28, 1985, submitted by Attorney Ament, is inconsistent with what he submitted for Falmouth Rod and Gun Club and Falmouth Skeet Club, Inc. in language and stated use. The Board further finds that the intent of the "Notice of Prevention of Easement" for the three clubs, Midway Trap and Skeet Club, Inc. having less language, but certainly that same temp-plate by the same attorney that drafted all three (3) documents, is a legal question beyond this Board. However, the intent of the 'Notice' to inform abutters of a gun club is what this Board took into consideration.

Member Van Keuren made a motion to Grant the Appeal and to Overturn the Building Commissioner's Determination of the Cease and Desist Order on the pistol range. Member Potamis seconded the motion.

#### **NOW THEREFORE**

**BE IT RESOLVED**, that the Board of Appeals (herein referred to as Board) being of the opinion aforesaid and acting under the provisions of the Code of Falmouth voted 4 – 0 to **Grant the Appeal and Overturn the Building Commissioner's Order of Cease and Desist on the pistol range** on subject property known as 284 Old Meeting House Road, East Falmouth, Massachusetts.

Appeal Number: 067-17

Appellant: MIDWAY TRAP and SKEET CLUB OF FALMOUTH, INC.  
of Teaticket, MA

Subject Property: 284 Old Meeting House Road, East Falmouth, Massachusetts  
Map 28 Section 05 Parcel 001 Lot 000  
(Owner Midway Trap & Skeet Club of Falmouth, Inc.)

Action: The Board of Appeals, by the signature below, being present, certifies the vote of the Board as follows for the above referenced:

Vote: 4 – 0 to Grant the Appeal and Overturn the Building Commissioner’s Cease and Desist Order of the pistol range on subject property as represented to the Board based on the Findings stated above.

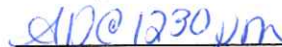


Terrence J. Hurrie, Acting Chairman, Board of Appeals

RECEIVED

JAN - 8 2013

FALMOUTH TOWN CLERK



Date Filed With Town Clerk

Notice is hereby given that any appeal from this Decision shall be made pursuant to Section 17 of Massachusetts General Laws, Chapter 40A, and shall be filed within twenty (20) days after the date of filing of this Decision in the office of the Falmouth Town Clerk.