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April 18, 2023

VIA PROCESS SERVER TO:

Gina Kozlik, Clerk/Treasurer and
Interim City Administrator
City of Waukesha – City Hall
201 Delafield Street
Waukesha, WI 53188

VIA PROCESS SERVER TO:

Mayor Shawn Reilly
Office of the Mayor
City of Waukesha – City Hall
201 Delafield Street, 3rd Floor
Waukesha, WI 53188

Re: *Notice of Claim – Stephen Green*
Property Location: 124 McCall Street, Waukesha, Wisconsin 53186
City of Waukesha Ordinance 2023-4; Waukesha Municipal Code § 33.07

Dear Mayor Reilly and Interim Administrator/Clerk Kozlik:

Our law firm represents Stephen Green ("Green"), who owns the property located at 124 McCall Street, Waukesha, WI 53186. Mr. Green has retained us to challenge the City of Waukesha's ("City") recently enacted Chicken Ordinance, Section 33.07 of the Waukesha Municipal Code. Pursuant to Wis. Stat § 893.80(1d)(a) and (b), this letter shall serve as written notice of the circumstances of Mr. Green's claim against the City related to the validity of Section 33.07 and shall set forth his itemized statement of relief sought. Wis. Stat. § 893.80(1d)(a)-(b).

Green intends to challenge the entire ordinance on grounds that it lacks a reasonable basis; is arbitrary and unreasonable; bears no substantial relation to the public health, safety, morals or general welfare; violates the ex post facto clause of the United States and Wisconsin Constitutions, retroactively destroys a vested property right; and constitutes unlawful zoning in whole or in part. Green further intends to challenge the Ordinance on the grounds that it is unconstitutional as applied to him and his property.

We find the following provisions contained in Section 33.07 especially concerning:

> (3) Keeping Certain Fowl Prohibited. The keeping of Fowl, except Chickens, is prohibited in the City of Waukesha. The only Fowl that may be kept in the City of Waukesha is Chickens, subject to the requirements of this Section.

(9) General Regulations.

(a) No more than four Chickens may be Kept per Parcel, except that six chickens may be Kept on Parcels greater than one acre in area. There shall be a grace period of 180 days from the effective date of this Section for individuals and Parcels to come into compliance with this Section.

(b) Keeping of roosters is prohibited.

(h) Chickens must be Kept at all times within a full enclosure, as defined in subsection (10), and may not be allowed to roam freely on Parcels.

Green does not believe the City has a reasonable basis for prohibiting other Fowl besides Chickens, limiting the number of chickens to four or six, or prohibiting the keeping of any roosters whatsoever. These restrictions are confiscatory in nature and are oppressive. Prohibiting chickens from roaming freely on their owners' property is arbitrary and unreasonable.

The permit and registration requirements contained in subsections (4) through (8), and the Enclosure Requirements contained in subsection (10), are exceedingly onerous and unnecessarily intrusive. These requirements appear designed to discourage and deter residents from keeping chickens and other Fowl in the City of Waukesha and lack any rational basis.

It is our understanding that the Common Council has received comments and a large file of information in opposition to the Ordinance, but has essentially ignored all of it.

Legal Nonconforming Use

Green has had up to thirty chickens, two roosters, seven ducks, and ten turkeys freely ranging on his Property prior to the enactment of ordinance number 2023-4, Section 33.07. We believe this history establishes a legal nonconforming use, and we are requesting this relief from the City. Pursuant to Section 22.61 of the Waukesha Municipal Code, the lawful use of a premise existing at the time of the adoption of a zoning ordinance may be continued although such use does not conform with the provisions of the ordinance. We believe the case can be made that the City's new Chicken Ordinance is actually a zoning ordinance as it significantly restricts the way in which a landowner may use his or her property.

Conclusion and Relief Sought

Green requests a legal nonconforming use exemption from Section 33.07 in its entirety based upon his pre-existing use and vested property right. Should this not be granted, we intend to commence an action for declaratory judgment to challenge the validity of the subject ordinance. Pursuant to Wis. Stat. § 893.80(1d)(b), the relief sought by Mr. Green will include temporary injunctive relief, permanent injunctive relief, a declaration that the subject Ordinance is void and unenforceable, and damages and attorney's fees pursuant to 42 U.S.C. 1983, *et seq.*

Please confirm receipt of this letter and let me know whether the City will grant Mr. Green the legal nonconforming use exemption.

Please feel free to contact me should you have any questions regarding the contents of this letter.

Very truly yours,

/s/ Michael A. Snider

Matthew M. Fernholz
Michael A. Snider

MAS:tlm

C: Mr. Stephen Green