



Office of the Clerk Treasurer
201 Delafield Street
Waukesha, Wisconsin 53188-3633

Gina Kozlik, Clerk Treasurer
clerktreas@waukesha-wi.gov
1-262-524-3550

May 9, 2023

To: Brian Running, City Attorney, Attorney's Office

Re: Claim for Unconstitutional Ordinance

Submitted by: Cramer, Multhauf & Hammes, LLP
Michael A. Snider
1601 E. Racine Ave
Suite 200
Waukesha, WI 53187-0558

On Behalf of: Cheryl Boettcher
1963 Cascade Drive
Waukesha, WI 53188

Date Claim Received: May 8, 2023

The enclosed is being sent to you to provide to our insurance or as needed for your review.

Sincerely,

Katie Panella
City of Waukesha Deputy Clerk-Treasurer

Cc: Clerk (original) / Attorney / Mayor

TMS
05-08-2023
11:25

CRAMER, MULTHAUF & HAMMES, LLP

ATTORNEYS AT LAW



Michael A. Snider

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May 5, 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 – Resident Cheryl Boettcher*
Property Location: 1963 Cascade Drive, Waukesha, WI 53188
City of Waukesha Ordinance 2023-4; Waukesha Municipal Code §§ 33.07 and 22.58(2)(g).

Dear Mayor Reilly and Interim Administrator/Clerk Kozlik:

Our law firm represents Cheryl Boettcher (“Boettcher”), who resides at 1963 Cascade Drive, Waukesha, WI 53188. Ms. Boettcher has retained us to challenge the City of Waukesha’s (“City”) recently enacted Chicken Ordinance, Section 33.07 of the Waukesha Municipal Code, as well as the recently enacted zoning amendment related to Chicken enclosures inserted at Section 22.58(2)(g) 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 Ms. Boettcher’s claim against the City related to the validity of Sections 33.07 and 22.58(2)(g) and shall set forth her itemized statement of relief sought. Wis. Stat. § 893.80(1d)(a)-(b).

Boettcher intends to challenge the entirety of Sections 33.07 and 22.58(2)(g) on grounds that they lack a reasonable basis; are arbitrary and unreasonable; bear no substantial relation to the public health, safety, morals or general welfare; violate the ex post facto clause of the United States and Wisconsin Constitutions, retroactively destroy vested property rights; and constitute unlawful zoning in whole or in part. Boettcher further intends to challenge the Ordinances on the grounds that it they are unconstitutional as applied to her and her property.

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

(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.

Boettcher does not believe the City has a reasonable basis for 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 in the City of Waukesha, and also lack any rational basis.

It is our understanding that the Common Council has received comments and a large file of information on this topic, but has essentially ignored all of it.

Section 22.58(2)(g)'s restrictions on Chicken enclosures suffers from the same infirmities as Section 33.07 discussed above. Further, as explained forth below, Boettcher is entitled to legal non-forming use of her Chicken enclosure pursuant to Section 22.61.

Legal Nonconforming Use

Boettcher has had ten chickens since before the enactment of ordinance number 2023-4, Section 33.07. In addition, she has had the Chicken enclosure depicted below for at least nine years. Boettcher's enclosure is attached to the permitted principal structure on her Property in violation of newly enacted Section 22.58(2)(g)(1) and (3) and is approximately five feet in height and ten feet in length.



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We believe this history establishes 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 building or 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. In the case of the zoning amendment concerning Chicken enclosures, Boettcher's entitlement to legal nonconforming use is clear. However, we also believe the case can be made that the City's new Chicken ordinance, Section 33.07, 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

Boettcher requests legal nonconforming use exemptions from Sections 33.07 and 22.58(2)(g) in their entirety based upon her pre-existing use and vested property rights. Should this relief not be granted, we intend to commence an action for declaratory judgment to challenge the validity of the subject ordinances. Pursuant to Wis. Stat. § 893.80(1d)(b), the relief sought by Ms. Boettcher will include temporary injunctive relief, permanent injunctive relief, a declaration that the subject Ordinances are 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 Ms. Boettcher the requested legal nonconforming use exemptions from Sections 33.07 and 22.58(2)(g).

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

Sincerely,

/s/ Michael A. Snider

Matthew M. Fernholz
Michael A. Snider

MAS

C: Ms. Cheryl Boettcher