

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR OKALOOSA COUNTY, FLORIDA
CIVIL DIVISION**

DIAN L. NORRIS, an individual, and
JIMMY T. NORRIS and IRMA NORRIS,
a married couple,

Plaintiffs,

v.

CASE NO.: 2018-CA-_____

OKALOOSA COUNTY; DOUGLAS S.
WEINMANN, SR., and MICHELLE M.
WEINMANN, a married couple,

Defendants.

_____ /

VERIFIED COMPLAINT

COME NOW Plaintiffs DIAN L. NORRIS, an individual, and JIMMY T. NORRIS and IRMA NORRIS (a married couple hereinafter referred to as the "NORRISES"), by and through their undersigned counsel, and sue: OKALOOSA COUNTY, DOUGLAS S. WEINMANN, SR., and MICHELLE M. WEINMANN (hereinafter collectively referred to as the "WEINMANNNS").

In support, DIAN L. NORRIS and the NORRISES allege:

1. This Court has jurisdiction over the parties and the subject matter hereof under Sections 26.012 and 86.011, *Florida Statutes*, and pursuant to Florida Statutes and Rule 1.610, *Florida Rules of Civil Procedure*.

2. Venue is proper in Okaloosa County, Florida, pursuant to Section 47.011, *Florida Statutes*, where the causes of action accrued.

3. DIAN L. NORRIS is a Florida resident and subject to this Court's jurisdiction.

4. The NORRISES are Florida residents and are subject to this Court's jurisdiction.

5. OKALOOSA COUNTY is a Florida county, and is subject to this Court's jurisdiction. The Okaloosa County Board of County Commissioners consists of Florida residents who are OKALOOSA COUNTY employees, and are subject to this Court's jurisdiction.

6. The WEINMANNNS are Florida residents and are subject to this Court's jurisdiction.

7. DIAN L. NORRIS, the NORRISES' daughter, resides at and owns the real property and improvements thereon located at 721 Forest Shores Drive, Mary Esther, Okaloosa County, Florida 32569, more particularly described as:

Lot 11, FOREST SHORES, an unrecorded Subdivision: Commencing at the NW corner of Section 19, Township 2 South, Range 25 West, Okaloosa county, Florida; thence South 88 degrees 38'36" East along the North line of said section 1000 feet to the POB; thence continue along said line 100 feet; thence South 01 degrees 29'24" West parallel to the West line of said Section 821.47 feet, more or less, to the mean high water line of Santa Rosa Sound; thence meander Northwesterly on said line 102.47 feet to a point 1000 feet East of the West line of said Section; thence North 01 degrees 29'24" East parallel to the West line of said Section 803.79 feet more or less to the POB. Less and except the North 66 feet.

8. DIAN L. NORRIS' Property is waterfront property located on the Santa Rosa Sound.

9. DIAN L. NORRIS has resided at her property since 2008.

10. The NORRISES reside at and own the real property and improvements thereon located at 717 Forest Shores Drive, Mary Esther, Okaloosa County, Florida 32569 (hereinafter the "NORRIS Property"), more particularly described as:

Commencing at the NW corner of Section 19, Township 2 South, Range 25 West, Okaloosa County, Florida, thence S 88° 38'36" E, along the North line of said Section 800 feet to the POINT OF BEGINNING, thence continue along said line 100 feet, thence S 01° 29'24" W, parallel to the West line of said Section 815.74 feet, more or less, to the mean high water line of Santa Rosa Sound, thence meander Southwesterly on said line 100.74 feet to a point 800 feet East of the West line of said Section, thence N 01°29'24" E, parallel to the West line of said Section, 842.70 feet, more or less, to the POINT OF BEGINNING, the North 66 feet being reserved for an ingress-egress easement.

11. The NORRIS Property is waterfront property located on the Santa Rosa Sound.
12. The NORRISES have resided at the NORRIS Property since 1987.
13. The WEINMANNS reside at and own the real property and improvements thereon located at 715 Forest Shores Drive, Mary Esther, Okaloosa County, Florida 32569 (hereinafter the "WEINMANN Property"), more particularly described as:

Lot 8, Forest Shores, an unrecorded Subdivision, more particularly described as follows: Commencing at the Northwest corner of Section 19, Township 2 South, Range 25 West, Okaloosa County, Florida; thence South 88°38'36" East along the North line of said Section 700 feet to Point of Beginning, thence continue 100 feet along said line, South 0129'24" West parallel to the West line of said Section 842.70 feet more or less to mean high water line of Santa Rosa Sound, thence meander Southwesterly along said line to a point that is South 0129'24" West from the Point of Beginning, thence North 0129'24" East and parallel to the West line of said Section 847.65 feet more or less to the Point of Beginning. Subject to an access easement across the Northern 66 feet of the above described property.

14. The WEINMANN Property is waterfront property located on the Santa Rosa Sound.
15. The WEINMANNS have resided at the WEINMANN Property since 2015.
16. The NORRIS Property and the WEINMANN Property are contiguous. The WEINMANN Property is adjacent to and west of the NORRIS Property, and the parcels share a

common boundary line; the WEINMANN'S' east boundary line is the NORRIS'S' west boundary line.

17. The WEINMANN Property, DIAN L. NORRIS' property, and the NORRIS Property are located in the Okaloosa County R-1 zoning district, a residential unincorporated area.

OKALOOSA COUNTY LAND DEVELOPMENT CODE

18. The Okaloosa County Land Development Code (hereinafter referred to as the "CODE") is authorized and enacted pursuant to the general powers and duties granted to the OKALOOSA COUNTY Board of County Commissioners, pursuant to Chapter 125 and specific authority found at §163.3202, *Florida Statutes*.

19. According to Section 1.02.00 of the CODE, the CODE's express intent is to promote the public health, safety, comfort, convenience, prosperity, and general welfare of residents, landowners, and business enterprise within the County.

20. Chapter 2 of the CODE establishes zoning districts, classifications, and regulations; specifically, all development or land use within the unincorporated areas must be in accordance with the regulations specified in the CODE.

21. Section 2.21.04, 10(b) of the CODE states:

Poultry. The keeping or harboring of poultry is not considered customarily incidental to residential uses of property and is prohibited in the R-1, R-2, and R-3 zoning districts except as follows:

- i. *In the R-1 zoning district, chickens (*Gallus gallus domesticus*) and domesticated ducks (*Anas platyrhynchos domesticus* - Pekins and Indian runner ducks only) may be approved by an administrative adjustment as specified in Section 1A.04.00 of this Code.*

- ii. *In the R-2 and R-3 zoning districts chickens (Gallus gallus domesticus) and domesticated ducks (Anas platyrhynchos domesticus - Pekins and Indian runner ducks only) may be approved by special exception as provided in d, below.*
- iii. *Roosters are not allowed in the R-1, R-2, or R-3 zoning districts.*

22. Section 2.21.04, 10(d) of the CODE states:

A special exception may be approved by the Board of Adjustment as specified in Section 11.02.09 of this Code after consideration of the following:

- i. *size of the property involved;*
- ii. *nature and character of the adjacent and surrounding area;*
- iii. *impact upon the adjacent and surrounding area and zoning districts;*
- iv. *potential for nuisance such as water pollution, dust, odor, noise, and vermin; and*
- v. *the type and number of animals to be kept or harbored.*

23. According to Section 11.02.09 of the CODE, the Board of Adjustment has the power and duty to “determine when special exceptions should be granted and to grant special exceptions when in harmony with the purpose and intent of this ordinance.”

24. Section 2.21.04, 10(e) of the CODE addresses the conditions that must be met upon being granted a special exception. Section 2.21.04, 10(e) states:

In granting a special exception to allow the keeping of poultry as specified in subsection b., above, the Board of Adjustment will require the following as conditions:

- I. *Roosters are prohibited.*
- II. *No person shall slaughter any chickens or ducks on any residential property.*
- III. *The sale of eggs or any other products is prohibited.*

- IV. *The chickens or ducks shall be provided with a house/coop and must be kept in the house/coop during non-daylight hours. The space per bird in the house/coop shall not be less than four (4) square feet per bird. The house/coop must be impermeable to rodents, wild birds and predators, including dogs and cats.*
- V. *Ducks must be provided a wading pool (a children's "kiddie pool" with a minimum radius of no less than 48 inches will suffice) which must be maintained with clean, fresh water.*
- VI. *During daylight hours the chickens or domesticated ducks may be kept either in the hen house/coop or a fenced enclosure in order to allow open air ranging. The top of any fenced enclosure must be covered with fence or chicken wire to prevent the birds from leaving the enclosure and to prevent the entry of predators.*
- VII. *Enclosed areas may not be any closer than five feet (5') from any property line.*
- VIII. *All fenced enclosures shall be so constructed and maintained as to prevent the harboring of rodents or other pests within the enclosure.*
- IX. **Houses/coops and covered enclosures may not be located in the front yard.**^{1,2}
- X. *Odors from chickens or ducks, their manure, or other chicken or duck related substances shall not be detectable at the property boundaries.*
- XI. *Houses/coops and enclosures shall be kept in a neat condition, including provision of clean dry bedding materials and regular removal of waste materials. All manure not used for composting or fertilizing must be removed promptly.*
- XII. *All feed and other items associated with the keeping of chickens or ducks that are likely to attract or to become infested with or infected by rodents or other pests shall be kept in secure containers or otherwise protected as to prevent rodents and other pests from gaining access.*

¹ According to the CODE's Appendix A, the **front yard** is: A space extending the full width of the lot between any building and the front lot line and measured perpendicular to the building at the closest point to the **front lot line**.

² Also, see Appendix A defining the **front lot line** as: The property line fronting a roadway right-of-way which provides the principle access; and used by the U.S. Postal Service for the delivery of mail to the structure located on the property.

XIII. *No dog or cat that kills a chicken or duck will, for that reason alone, be considered a dangerous or aggressive animal.*

(Emphasis added.) (Hereinafter referred to as the “*Special Exception Conditions.*”)

25. Section 2.21.04, 10(f) of the CODE also requires that, “Any chicken or duck kept in an R-1, R-2, or R-3 district must have a leg band or bands providing the telephone number of its owner.”

26. According to Section 11.02.09 of the CODE, violation of the Special Exception Conditions, “shall be deemed a violation of this ordinance,” and the Board of Adjustment “may prescribe a reasonable time limit within which the action required for the special exception shall be begun or completed or both.”

27. Section 11.03.02(2)-(4) of the CODE regarding CODE enforcement procedures states:

2. *Okaloosa County Code Enforcement Officers are hereby authorized to issue citations for any violations of Sections 489.101 through 489.134, 489.501 through 489.539 and 489.551 through 489.559 Florida Statutes, against persons who engage in activity for which Okaloosa County licensure, certification, or registration is required or further, against any person violating any Okaloosa County code or ordinance, wherever, based upon personal investigation, the Code Enforcement Officer has reasonable and probable grounds to believe that such a violation has occurred.*
3. *It shall be the duty of the Code Enforcement Officers to issue citations and initiate enforcement proceedings of the various codes and ordinances. However, no member of the Code Enforcement Board shall have the power to issue citations or initiate such enforcement proceedings.*
4. *Prior to issuing a citation, a Code Enforcement Officer shall provide notice to the person that has committed a violation of a code or ordinance and shall establish a reasonable time period within which the person must correct the violation. Such time period shall be no more than thirty (30) days. If, upon personal investigation, a Code Enforcement Officer finds that the person has not corrected the violation within the time period, a*

Code Enforcement Officer may issue a citation and may notify the Code Enforcement Board and request a hearing pursuant to the procedure set forth herein. A Code Enforcement Officer does not have to provide the person with a reasonable time period to correct the violation prior to issuing a citation and may immediately issue a citation if the Code Enforcement Officer has reason to believe that the violation presents a serious threat to the public health, safety or welfare, or if the violation is irreparable or irreversible.

28. According to Section 11.04.00 of the CODE, all interpretation and enforcement questions shall be first presented to the Administrative Official, and that recourse from the Administrator's decisions shall be to the Board of Adjustment.

29. As of this filing, Elliot Kampert is Okaloosa County's Growth Management Department Administrator; Lisa Payton is the County Code Enforcement Supervisor; Carlos Jones is an Okaloosa Code enforcement Officer; and Greg Stewart is the Okaloosa County Attorney. At all times material hereto, and as described below, each of these people acted in his/her respective capacity as an OKALOOSA COUNTY employee.

GENERAL ALLEGATIONS

30. According to the CODE, keeping chickens is "not considered customarily incidental to residential uses of property." Zoning districts R-1, R-2, and R-3 prohibit keeping chickens unless and until the Board of Adjustment grants an administrative adjustment or special exception.

31. In the R-1 district, where the WEINMANN property is, one must request and receive an administrative adjustment before being allowed to keep up to four (4) chickens, and must receive a special exception before being allowed to keep more than four (4) chickens.

32. Without either an administrative adjustment or a special exception, in about March of 2016, the WEINMANNNS built a chicken coop and began keeping chickens in their front yard.

33. Upon information, the WEINMANNNS had approximately fourteen (14) chickens in the summer of 2016.

34. The WEINMANNNS did not apply for either an administrative adjustment or a special exception prior to building their coop and keeping chickens in their front yard.

35. The WEINMANNNS' impermissible and illegal chicken coops plus their improper disposal of the chickens' waste created an intense stench that could then and can still be detected well beyond the WEINMANN Property's boundary lines. That stench can be detected at least as far away as DIAN L. NORRIS' front door, which is three (3) lots and approximately two hundred and fifty feet (250') from the WEINMANN Property (the same distance as from the WEINMANNNS' residence to the chicken coops).

36. In spring and summer of 2016 the WEINMANNNS' chickens were 'free ranging,' leaving the boundaries of the WEINMANN Property to graze and feed on the NORRIS Property, in blatant violation of the CODE. See photographs attached hereto labeled Composite Exhibit "A."

37. The WEINMANNNS and their children clearly have seen the chickens 'free ranging' on the NORRIS Property, as the children helped to corral them back to the WEINMANN Property on at least two (2) occasions.

38. Between late spring of 2016 and mid-June of 2017, IRMA NORRIS found at least four (4) dead chickens on her (the NORRIS) Property. The smell of the rotting animal flesh was

overwhelming, and the NORRISES and DIAN L. NORRIS had to clean up the carcasses. See photographs attached hereto and labeled as Composite Exhibit “B.”

39. By being forced to clean the WEINMANN’S chicken carcasses off their Property, the NORRISES, an elderly couple (both 83 years old), were exposed to various bacteria and diseases that can easily spread from chickens (and their waste) to humans, especially people with weakened immune systems, like the elderly³, to-wit: the NORRISES.

40. The NORRISES and DIAN L. NORRIS have also seen dead chickens on the WEINMANN Property.

41. On or about May 22, 2017, DIAN L. NORRIS filed an Affidavit of Complaint with the Okaloosa County Growth Management Department, in accordance with Section 11.03.10 of the CODE. See Affidavit attached hereto labeled Exhibit “C.”

42. In response to DIAN L. NORRIS’ complaint, on or about May 23, 2017, Code Enforcement Officer Jones (hereinafter “JONES”) visited the WEINMANN Property, inspected the chicken coop located in the WEINMANN’S front yard in violation of the CODE, took pictures, and left his business card. See the photographs attached hereto labeled as Composite Exhibit “D.”

43. Instead of contacting JONES after he left his card for them May 23, 2017, on or about May 27-29, 2017, the WEINMANN’S built a **second** chicken coop in their front yard, in an additional and blatant violation of the CODE.

³ The Center for Disease Control and Prevention (“CDC”) says that people can get *Salmonella* and other diseases and infections from backyard flocks. <https://www.cdc.gov/salmonella/backyard-flocks-06-18/index.html> “Germs from these poultry can cause a variety of illnesses in people, ranging from minor skin infections to serious illnesses that can cause death.” <https://www.cdc.gov/healthypets/pets/farm-animals/backyard-poultry.html> The CDC advises that people over 65 years old should not handle backyard poultry. <https://www.cdc.gov/features/salmonellapoultry/index.html>

44. When the WEINMANNNS built the second chicken coop, they continued to ignore the CODE. They still had not applied for, let alone received, either an administrative adjustment or a special exception to keep chickens on their Property.

45. Upon information, after building the second chicken coop, the WEINMANNNS had approximately nineteen (19) chickens.

46. On or about May 30, 2017, JONES inspected the WEINMANNNS' chicken coops again. JONES issued a correction notice ("Correction Notice 1") that stated, "Chickens/Roosters must be removed from parcel." See the Correction Notice 1, attached hereto labeled as Exhibit "E."

47. Correction Notice 1 required that the WEINMANNNS correct their CODE violation by no later than June 13, 2017, which meant removing the chickens/roosters from their property.

48. Throughout June 2017, the WEINMANNNS apparently did not even attempt to comply with the CODE or Correction Notice 1.

49. Throughout June 2017, DIAN L. NORRIS continued to email Code Enforcement Supervisor Lisa Payton (hereinafter "PAYTON") and/or JONES, complaining about the WEINMANNNS' lack of compliance and the intolerable situation at the NORRIS Property and at her Property, including the stench, the free-ranging chickens, the predation, etc. See the email exchange, attached hereto labeled as Exhibit "F."

50. By late June 2017, the WEINMANNNS still had made no attempt to make the required corrections. The NORRISSES could no longer tolerate the stench of the chickens or the presence of chicken carcasses and the associated pests in their yard, so they also filed an

Affidavit of Complaint with the Okaloosa County Growth Management Department on June 29, 2017. See Affidavit of Complaint attached hereto labeled as Exhibit “G.”

51. On June 30, 2017, more than a year after they installed the coops, the WEINMANNNS requested that the Board of Adjustment grant them a (retroactive) special exception to keep more than four (4) chickens, up to twenty (20), on their Property. See the Special Exception Application and letter attached hereto labeled as Exhibit “H” (hereinafter the “APPLICATION”).

52. Notably, the WEINMANNNS’ APPLICATION included a site plan clearly showing the chicken coops in their front yard, which the CODE expressly prohibits. (Clearly, the WEINMANNNS never intended to move their coops).

53. The Board of Adjustment held a hearing on the APPLICATION on August 9, 2017, at which County Administrator Elliot Kampert (hereinafter “KAMPERT”) advised the Board of Adjustment that if it approved the WEINMANNNS’ APPLICATION, it would be subject to the following conditions and more:

- A. The houses/coops must be impermeable to rodents, wild birds, and predators;
- B. Enclosed areas may not be any closer than five feet (5’) from any property line;
- C. Houses/coops and covered enclosures may not be located in the front yard; and
- D. Odors from chickens...shall not be detectable at the property boundaries.

See the August 9, 2017, Board of Adjustment Meeting Minutes attached hereto labeled as Exhibit “I.”

54. The Board of Adjustment discussed the ‘front yard requirement’ at length, and KAMPERT made it clear that the front yard, where the coops are still located, is the yard facing

the street and not the water. KAMPERT emphasized that if the WEINMANNNS obtained the Special Exception, they would have to move their coops to the back yard.

55. Importantly, at the August 9, 2017, Board of Adjustment meeting, KAMPERT indicated that, “[S]taff have made Mr. & Mrs. Weinmann aware of that requirement and they have indicated that **they are willing to move the coops and enclosure to their back yard.**” (See Exhibit “T”). (Emphasis added).

56. On or about August 9, 2017, the Board of Adjustment voted to grant the WEINMANNNS’ a special exception (apparently retroactively to Spring 2016). Specifically, the Special Exception allowed the WEINMANNNS to keep up to sixteen (16) chickens on their Property, provided that they complied with all its conditions. See attached hereto a copy of the WEINMANNNS’ Special Exception, labeled as Exhibit “J.”

57. Some of the WEINMANNNS’ Special Exception conditions included:

- A. The chicken coops must be impermeable to rodents, wild birds, and predators (including cats and dogs);
- B. Selling eggs is prohibited;
- C. The chickens must be kept in the chicken coops during non-daylight hours;
- D. The top of any fenced enclosure must be covered with fence or chicken wire to prevent the birds from leaving the enclosure and to prevent predators from entering;
- E. Chicken odors must not be detectable at the property boundaries;
- F. The chickens must have leg band(s) with its owners’ telephone number; and
- G. The chicken coops and covered enclosures may not be located in the front yard.

58. The WEINMANNNS did not appeal the Special Exceptions or its conditions, as they could have, pursuant to the CODE, Section 11.02.08. After receiving the Special Exception with conditions, the WEINMANNNS simply ignored it. They made no efforts to move the coops to the back yard, as expressly ordered, or otherwise to comply with the Special Exception conditions.

59. On or about September 13, 2017, PAYTON responded to the NORRISSES' inquiry, and confirmed that the WEINMANNNS had not removed the illegal coop(s). Code Enforcement issued the WEINMANNNS another correction notice ("Correction Notice 2"), ordering them to remove the coop(s) not later than September 23, 2017. See attached hereto a copy of email correspondence between PAYTON and Plaintiffs' undersigned counsel dated September 13, 2017, labeled as Exhibit "K."

60. The WEINMANNNS did not remove the coops in response to Correction Notice 2, either.

61. On or about September 20, 2017, the WEINMANNNS attended a regular OKALOOSA COUNTY Board of County Commissioners' meeting. They were not on the agenda, and simply spoke during the 'public comments' portion of the meeting. They requested that the OKALOOSA COUNTY Board of County Commissioners revise the CODE language for them, so that the WEINMANNNS could keep their illegal chickens and chicken coops in their front yard.

62. At this one family's request, OKALOOSA COUNTY, by and through the Board of County Commissioners, instructed the Planning Commission to draft language that would

amend the CODE to allow the WEINMANNNS to keep chickens in their front yard, as they had been illegally doing all along.

63. During the ensuing seven (7) months, while the Planning Commission was considering working on new language and discussing the potential amendments at various meetings, the WEINMANNNS' unlawful chickens remained in their front yard, the stench continued, and significant predation on the chickens continued, continuing to risk the spread of disease and infection.

64. Several dangerous predators have been documented on video and in photographs crossing the NORRIS Property to enter the WEINMANN Property, presumably to prey on the chickens and/or associated vermin. The documented predators include, but are not limited to: raccoons; foxes; bears; opossums; and bobcats. See photographs attached hereto labeled Composite Exhibit "L."

65. In December of 2017 and again in January of 2018, the NORRISES and DIAN L. NORRIS found and cleaned up chicken feathers strewn across the NORRIS Property, evincing the continued predation.

66. Rather than enforcing the CODE as written, and while waiting for a potential future amendment to it, OKALOOSA COUNTY, by and through County Attorney Greg Stewart (hereinafter "STEWART"), indefinitely "abated" appropriate CODE enforcement actions against the WEINMANNNS. See attached hereto a September 25, 2017, email from STEWART's associate attorney, Kerry Parsons, labeled as Exhibit "M."

67. After reviewing potential amendments to the CODE that County Staff drafted, after various meetings, and after hearing and considering comments from County Staff and the

public, the Planning Commission voted on April 12, 2018, to recommend that the Board of County Commissioners not amend the CODE to allow chickens, coops, and/or enclosures in front yards for the WEINMANNNS.

68. At all times, the CODE has been and is now clear and unambiguous that the WEINMANNNS' coops are non-compliant, and Code Enforcement has issued multiple violations and admonishments to them instructing them to remove the coops, to no avail.

69. The WEINMANNNS' chicken coops have been located in the WEINMANNNS' front yard since approximately March of 2016, in knowing, intentional, and blatant violation of the CODE. The WEINMANNNS acknowledged in August 2017 that they knew it was unlawful to keep them in their front yard, and represented that they would move them if they received a Special Exception, which was clearly not true.

71. OKALOOSA COUNTY has an obligation and duty to enforce the CODE to protect the NORRISES, DIAN L. NORRIS, and the public from the WEINMANNNS' undisputed, documented, and cited CODE violations.

72. OKALOOSA COUNTY can issue fines and/or revoke the Special Exception, as outlined in Chapter 12 of the CODE, but now willfully refuses to enforce the CODE, despite multiple County agencies' clear findings that the WEINMANNNS are in violation of it.

73. The NORRISES and DIAN L. NORRIS have been damaged by the WEINMANNNS' undisputed, documented, and cited CODE violations, which have caused: chicken stench and noise to be detectable on the NORRIS Property and DIAN L. NORRIS' Property; chicken remains to be found on the NORRIS Property; predators to frequent the

NORRIS Property; and the NORRISES' and DIAN L. NORRIS' loss of use and quiet enjoyment of their Properties.

74. DIAN L. NORRIS' home and the NORRISES' home are both at least as close to the WEINMANNNS' chicken coops as the WEINMANNNS' home is, which makes them uniquely situated. The nuisance, stench, risk of disease, and danger affect them more than other members of the general public.

75. The WEINMANNNS' undisputed, documented, and cited CODE violations have substantially diminished the fair market value of DIAN L. NORRIS' Property and the NORRISES' Property.

76. Furthermore, the WEINMANNNS' undisputed, documented, and cited CODE violations create disclosure issues that will further substantially impair and impede any efforts to sell DIAN L. NORRIS' Property and/or the NORRIS Property.

77. As a result of the WEINMANNNS' undisputed, documented, and cited CODE violations, and OKALOOSA COUNTY's inexplicable refusal to enforce and remedy them, DIAN L. NORRIS and the NORRISES have suffered special injuries apart from any injury suffered by members of the general public.

78. As residents of OKALOOSA COUNTY, DIAN L. NORRIS and the NORRISES are have a clear legal right to have OKALOOSA COUNTY perform the duties necessary to enforce and remedy the WEINMANNNS' undisputed, documented, and cited CODE violations.

79. Due to the WEINMANNNS' undisputed, documented, and cited CODE violations, and OKALOOSA COUNTY's failure and/or refusal to perform the duties necessary to enforce

and remedy them, DIAN L. NORRIS and the NORRISES do not have any other legal remedies available.

80. DIAN L. NORRIS and the NORRISES have retained the undersigned attorneys to enforce their rights, and are obligated to pay them a reasonable fee for such representation.

**COUNT I – DECLARATORY JUDGMENT
(OKALOOSA COUNTY and the WEINMANNNS)**

81. DIAN L. NORRIS and the NORRISES re-allege and incorporate by reference Paragraphs one (1) through eighty (80), above, as if stated fully herein.

82. This is an action for declaratory relief pursuant to Chapter 86, *Florida Statutes*.

83. Section 163.3202, *Florida Statutes*, mandates that counties “shall adopt or amend and enforce land development regulations that are consistent with and implement their adopted comprehensive plan.” (Emphasis added). OKALOOSA COUNTY’s mandate to *enforce* the CODE is not optional or discretionary.

84. The WEINMANNNS have knowingly, repeatedly, and blatantly violated the CODE since approximately March of 2016, and OKALOOSA COUNTY has issued Correction Notice 1 and Correction Notice 2 (the “Correction Notices”), ordering the WEINMANNNS to comply with the CODE.

85. Rather than enforcing the CODE, Special Exception Conditions, and the Correction Notices, OKALOOSA COUNTY arbitrarily decided that enforcement against the WEINMANNNS would be indefinitely “abated.” (*See* paragraph 66, above, and Exhibit “M”).

86. OKALOOSA COUNTY has cited no authority for indefinitely ‘abating’ enforcement of the CODE, the Special Exception Conditions, and the Correction Notices.

87. OKALOOSA COUNTY simply ignored, and continues to ignore, its statutory, non-discretionary duty to enforce the CODE. This ‘abatement’ is apparently applied only as to the WEINMANNNS and not to other Okaloosa County residents.

88. Despite the Planning Commission’s April 2018 recommendation that the Board of County Commissioners not amend the CODE, and with no further actions toward any CODE amendment, OKALOOSA COUNTY still refused and failed to take any action to enforce the CODE, the Special Exception Conditions, and the Correction Notices as to the WEINMANNNS.

89. Indefinitely abating enforcement action against the WEINMANNNS as to the CODE, the Special Exception Conditions, and the Correction Notices is contrary to Florida Statutes and to OKALOOSA COUNTY’s own ordinances; said abatement it is an *ultra vires* act and is void.

90. Indefinitely abating enforcement action against the WEINMANNNS as to the CODE, the Special Exception Conditions, and the Correction Notices has resulted in a *de facto* permit, special exception, or other unknown variance for the WEINMANNNS, and only the WEINMANNNS, to keep backyard chickens in their front yard, despite OKALOOSA COUNTY officially and publicly finding that this blatantly violates the CODE.

91. OKALOOSA COUNTY has no authority under the CODE to issue such a *de facto* permit.

92. There is a *bona fide*, actual, and present need for a Declaration from this Court that the WEINMANNNS are in violation of the CODE, the Special Exception Conditions, and the Correction Notices, and that OKALOOSA COUNTY has improperly failed and/or refused to enforce the CODE.

93. The Declaration sought concerns a present, ascertained, or ascertainable set of facts, or present controversy as to a state of facts.

94. DIAN L. NORRIS and the NORRISES have been damaged and specially damaged by the WEINMANN'S knowing, intentional, and willful CODE violations, and by OKALOOSA COUNTY'S refusal to enforce the CODE, the Special Exception Conditions, and the Correction Notices; specifically: chicken odors and noise are detectable on the Plaintiffs' Properties; more and more dangerous predators are frequenting the Plaintiffs' Properties; chicken carcasses continue to be found on the NORRIS Property; and the Plaintiffs have lost the use and quiet enjoyment of their Properties.

95. The WEINMANN'S ongoing CODE violations and OKALOOSA COUNTY'S refusal to enforce the CODE, the Special Exception Conditions, and the Correction Notices have substantially diminished the fair market value of DIAN L. NORRIS' and the NORRISES' Properties due to the odors and other issues that are readily observable. The WEINMANN'S ongoing CODE violations and OKALOOSA COUNTY'S abatement as to any enforcement action create disclosure issues that will further substantially impair and impede any efforts to sell DIAN L. NORRIS' and the NORRISES' Properties, for known nuisance(s) that are not readily observable.

96. DIAN L. NORRIS' and the NORRISES' immunities, powers, privileges, and rights are dependent on the facts or law applicable to the facts.

97. DIAN L. NORRIS and the NORRISES, as the WEINMANN'S neighbors (the NORRISES are the adjacent neighbors) and as the people whose homes are closest to the

chicken coops, have an actual, present, adverse, and antagonistic interest in the subject matter set forth herein, either in fact or law.

98. The parties' antagonistic and adverse interests are all before the Court by proper process.

99. The relief sought is not merely the Court giving legal advice or answering questions propounded from curiosity, but is necessary to establish the parties' immunities, powers, privileges, and rights.

100. Pursuant to §86.111, *Florida Statutes*, DIAN L. NORRIS and the NORRISES request that this Court order a **speedy hearing** in this matter, and it that be advanced accordingly on the Court's calendar.

WHEREFORE Plaintiffs DIAN L. NORRIS, JIMMY T. NORRIS, and IRMA NORRIS respectfully request:

I. That this Honorable Court declare:

A. Defendant OKALOOSA COUNTY's abatement of the CODE enforcement process was and is an *ultra vires* act, and it is void; and

B. Defendant OKALOOSA COUNTY granting the WEINMANNNS a *de facto* permit, special exception, or other variation from the law by abating any CODE enforcement action for known and documented violations, was and is an *ultra vires* act and is void;

II. That this Court Order OKALOOSA COUNTY to move forward with its CODE enforcement action against the WEINMANNNS;

III. That this Court Order that the WEINMANNNS must comply with OKALOOSA

COUNTY's CODE, the Special Exception conditions, and the Correction Notices;

IV. That this Court Order a **speedy hearing** in this matter, and advance the matter on its calendar;

V. That this Court award the Plaintiffs their taxable costs incurred herein; and

VI. That this Court grant Plaintiffs such other and further relief as it deems just and proper.

**COUNT II – MANDATORY INJUNCTION
(OKALOOSA COUNTY and the WEINMANNNS)**

101. DIAN L. NORRIS and the NORRISES re-allege and incorporate by reference Paragraphs one (1) through eighty (80), above, as if stated fully herein.

102. OKALOOSA COUNTY's CODE sets forth its express intent: to promote the public health, safety, comfort, convenience, prosperity, and general welfare of residents, landowners, and business enterprise within the County.

103. OKALOOSA COUNTY has determined that the WEINMANNNS are clearly in violation of the CODE, has issued a Special Exception with conditions, and has issued the Correction Notices, but OKALOOSA COUNTY has willfully and intentionally refused to enforce them.

104. The WEINMANNNS continue to knowingly, intentionally, and willfully violate the CODE, the Special Exception conditions, and the Correction Notices, and the violations have not been addressed or remedied.

105. Since approximately May of 2017, DIAN L. NORRIS and the NORRISES have repeatedly requested that OKALOOSA COUNTY enforce the CODE as to the WEINMANNNS' undisputed, cited, and continuing CODE violations.

106. DIAN L. NORRIS and the NORRISES have suffered, and will continue to suffer, irreparable harm, including, but not limited to: involuntary, unreasonable, and unnecessary exposure to bacteria and disease; stench; noise; unreasonable danger from predators; and loss of quiet enjoyment of their properties, if the CODE, the Special Exception conditions, and the Correction Notices are not enforced.

107. The Plaintiffs' ongoing damages caused by the WEINMANNNS' ongoing refusal to: abide by the CODE; comply with the Special Exception conditions; and comply with the Correction Notices cannot be cured, remedied, or addressed absent a permanent injunction.

108. The Plaintiffs' ongoing damages caused by OKALOOSA COUNTY's failure to enforce the CODE as to the WEINMANNNS' undisputed, documented, and cited failures to: abide by the CODE; comply with the Special Exception conditions; and comply with the Correction Notices cannot be cured, remedied, or addressed absent a permanent injunction.

109. For purposes of forcing OKALOOSA COUNTY to enforce the CODE, and the WEINMANNNS to abide by it, Plaintiffs have no adequate remedy at law.

110. DIAN L. NORRIS and the NORRISES seek a mandatory injunction requiring the WEINMANNNS to abide by and OKALOOSA COUNTY to enforce: the CODE; the Special Exception conditions; and the Correction Notices.

111. OKALOOSA COUNTY has an obligation and a mandatory duty, per §163.3202, *Florida Statutes*, to enforce the CODE in order to address the WEINMANNNS' ongoing and cited violations. This enforcement obligation is statutorily mandated, and it is not discretionary.

112. Accordingly, a mandatory injunction is reasonably necessary to protect DIAN L. NORRIS' and the NORRISES' clear legal rights.

113. The public has an interest in seeing that a county's ordinances and permit requirements are properly observed, and that its laws are enforced fairly and equitably.

WHEREFORE Plaintiffs DIAN L. NORRIS, JIMMY T. NORRIS, and IRMA NORRIS respectfully pray that this Honorable Court issue a mandatory injunction compelling the WEINMANNNS to comply with and compelling OKALOOSA COUNTY to perform its mandatory duty to enforce: the Okaloosa County Land Development Code; the Special Exception conditions, and the Correction Notices. Plaintiffs further request an award of their taxable costs incurred herein, and pray that the Court grant them such other and further relief as the Court deems just and proper.

**COUNT III – NUISANCE
(The WEINMANNNS)**

114. DIAN L. NORRIS and the NORRISES re-allege and incorporate by reference Paragraphs one (1) through eighty (80), above, as if stated fully herein.

115. As described more fully above, the WEINMANNNS are unreasonably using their Property in such a way as to injure their neighbors DIAN L. NORRIS' and the NORRISES' land and incorporeal rights.

116. The WEINMANNNS unlawfully installed chicken coops in their front yard, as close or closer to the Plaintiffs' homes as to their own.

117. The WEINMANNNS' home is approximately two hundred fifty feet (250') from their chicken coops. The WEINMANNNS' front yard chicken coops and improper disposal of the chickens' waste creates an intense stench that can be detected well beyond the WEINMANN Property's boundary lines.

118. The NORRISES' home is only approximately one hundred seventy-five feet (175') from the WEINMANNNS' chicken coops, and the stench from them is often overwhelming on the NORRIS Property. The stench can be detected at least as far away as DIAN L. NORRIS' front door, which is three (3) lots east and approximately two hundred fifty feet (250') from the WEINMANN Property (approximately the same distance that the WEINMANNNS' residence is from the chicken coops).

119. The result of the WEINMANNNS unlawfully installing the chicken coops in their front yard is that the burden of the WEINMANNNS' chickens' stench, carcasses, predators, and other issues is borne more by the WEINMANNNS' immediate neighbors, the NORRISES, than by the WEINMANNNS.

120. DIAN L. NORRIS bears the burden of the WEINMANNNS' chickens' stench, carcasses, predators, and other issues at least as much as the WEINMANNNS do, even though she lives three (3) lots away from them.

121. In addition to the stench, several dangerous predators, including but not limited to raccoons, foxes, bears, opossums, and bobcats, have repeatedly and frequently crossed the NORRIS Property to enter the WEINMANN Property, presumably to enter the chicken coops to prey on the chickens and/or associated vermin, creating a dangerous neighborhood environment. *See* Composite Exhibit "L."

122. As described above, the chickens have free-ranged on the NORRIS Property, and DIAN L. NORRIS and the NORRISES have had to clean up and dispose of multiple chicken carcasses on their own Property. By being forced to clean up the WEINMANNNS' chicken

carcasses off their Property, the Plaintiffs have been unreasonably exposed to various bacteria and diseases that can easily spread from chickens (and their waste) to humans.

123. OKALOOSA COUNTY's findings are clear and unambiguous that the WEINMANNNS' chicken coops violate the CODE; specifically, OKALOOSA COUNTY issued Correction Notice 1; a Special Exception with conditions; and Correction Notice 2 citing continuing and ongoing violations.

124. The WEINMANNNS knew that if they were granted a Special Exception, they would have to move the coops to their back yard, and they agreed to do so. But, when they received the Special Exception, they simply refused to comply with the law.

125. Moving the coops to their back yard, as required under the CODE, would place the WEINMANNNS' chicken coops significantly closer to their own home and farther from DIAN L. NORRIS' home than where they are currently located.

126. The WEINMANNNS' property use is clearly unreasonable, particularly as they know it is also unlawful.

127. DIAN L. NORRIS and the NORRISES have been damaged by the WEINMANNNS' CODE violations and the nuisance conditions.

128. The stench, noise, fear, exposure to disease and predators, and other substantial impacts of the WEINMANNNS' unlawful front yard chickens have caused Plaintiffs actual, material, and physical discomfort, beyond mere annoyance or inconvenience.

129. The stench, noise, fear, exposure to disease and predators, and other substantial impacts of the WEINMANNNS' unlawful front yard chickens have caused Plaintiffs to alter their normal habits and the ways in which they routinely use their properties.

130. The WEINMANNNS' ongoing, willful, and intentional non-compliance with the law, combined with their failure to exercise ordinary care in using their property, have unreasonably interfered with DIAN L. NORRIS' and the NORRISES' peaceful enjoyment, use, and occupation of their properties.

131. The WEINMANNNS' actions have substantially diminished the fair-market value of DIAN L. NORRIS' and the NORRISES' properties due to the odors and other issues that are readily observable. This also creates disclosure issues that will further substantially impair and impede any efforts to sell DIAN L. NORRIS' and the NORRISES' properties regarding the known nuisance(s) that are not readily observable.

132. The Plaintiffs' situation is intolerable, and any reasonable person suffering similar stench, noise, fear, exposure to disease and predators, and the other substantial impacts would also find the situation intolerable.

133. The WEINMANNNS' violations have created a private nuisance that has caused DIAN L. NORRIS and the NORRISES to suffer appreciable, substantial, and tangible damages, including, but not limited to, damages from annoyance, discomfort, and inconvenience, and rising to actual, material, physical discomfort and a significant deleterious impact on their lives and property values.

WHEREFORE Plaintiffs DIAN L. NORRIS, JIMMY T. NORRIS, and IRMA NORRIS respectfully pray that this Honorable Court award them their damages caused by Defendants DOUGLAS S. WEINMANN and MICHELLE M. WEINMANN's Nuisance arising from their negligent, willful, and intentional non-compliance with the law and failure to exercise ordinary care in using their property. Plaintiffs further request an award of their taxable costs incurred

herein, and pray that the Court grant them such other and further relief as the Court deems just and proper.

Respectfully submitted on December 19, 2018.

/s/ Shari Thieman Greene
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