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TO

Norm Young
Id. Dept. of Water Resources

FAX NO.

(208) 327-7866

DATE

9 June 00

Matter:

Shenning vs. Blading County - Enclosed please find a copy
of the Complaint filed on this date in the 5th
Judicial District, Blading County.

From:

☐ Mr. Frederickson ☒ Mr. Williams ☐ Mr. Meservy ☐ Mr. Lothspeich

☐ ORIGINAL WILL FOLLOW BY MAIL ☒ ORIGINAL WILL NOT FOLLOW BY MAIL

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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING

F.F. GUNNING and IRENE GUNNING,
husband and wife, and SUSAN GUNNING, a
single woman, dba HILLCREST DAIRY,

Plaintiffs,

vs.

GOODING COUNTY, IDAHO, a political
subdivision of the State of Idaho, TOM
FAULKNER, MITCH ARKOOSH and WIN
HENSLEE, Commissioners,

Defendants.

Case No. _____

**COMPLAINT FOR
DECLARATORY RELIEF
UNDER I.C. §10-1201 ET SEQ.**

For a cause of action against the Defendants, the Plaintiffs complain and allege as follows:

1. Plaintiffs were at all times mentioned herein and are now residents of the State of Idaho. Plaintiff, Susan Gunning, is the widow of G.C. Gunning and is his sole heir at law.

2. All matters referred to in this Complaint took place within the State of Idaho.

3. Defendant, Gooding County, was at all times mentioned herein and is now a political subdivision of the State of Idaho. Messrs. Faulkner, Arkoosh and Henslee are the duly elected and serving Commissioners of the Defendant.

4. On or about the 2nd day of March, 1995, the Plaintiffs acquired ownership of real property located in Gooding County, Idaho, more particularly described as the E½NE¼, Section 34, Township 7 South, Range 15 EBM.

5. The real property acquired by the Plaintiffs had historically been used as a dairy operation from at least 1963 forward. From 1991 through 1994, immediately prior to the Plaintiffs acquiring ownership of the real property, the real property had been used as a calf-feeding operation for up to 4,500 head of calves.

6. Prior to purchasing the real property, the Plaintiffs had formed the intention of utilizing the property for a dairy of approximately 960 cows. Because the Plaintiffs knew that their plans would require the remodeling of structures on the real property to accommodate a 960 cow dairy, the Plaintiff, through G.C. Gunning, approached the Gooding County Planning and Zoning Commission on December 30, 1994, as to the existence of any County ordinances which they needed to comply with to implement their plans. At that time, the Plaintiffs lodged with the Administrator of the Gooding Planning and Zoning Commission materials outlining their plans.

7. On December 30, 1994, the Plaintiffs were informed by the Administrator that Gooding County had no ordinances then in effect with which the Plaintiffs would have to comply to implement their plans for a 960 cow dairy on the real property above-described.

8. The Plaintiffs again inquired of the Gooding County Planning and Zoning Commission in January of 1995 and again in March, 1995, concerning the status of ordinances then in effect which would affect the Gunning's plan to implement their 960 cow dairy operation. They were informed that no such ordinances were in effect.

9. On March 2, 1995, the Zoning District of the real property occupied by the Plaintiffs was agricultural.

10. In reliance on the statements of the Gooding County Planning and Zoning Commission and the lack of ordinances prohibiting the implementation of their plans, the Plaintiffs acquired the real property on March 2, 1995, for One Hundred Sixty-Five Thousand Dollars (\$165,000.00).

11. The Plaintiffs commenced construction and remodeling of the real property to accommodate their 960 cow dairy in March of 1995, completed the process and occupied the facility with approximately 960 head of cows in October of 1996.

12. On October 20, 1993, under Gooding County Ordinance #50, since ruled unlawful and void, Gooding County issued a CAFO Siting Permit to Plaintiffs' predecessors in interest for the real property above-described in the amount of 473 head of lactating dairy cattle and 204 head of calves.

13. On or about September 27, 1995, Gooding County passed its Ordinance #60, a zoning ordinance which replaced Gooding County Ordinance #25, the previously existing zoning ordinance.

14. Gooding County Ordinance #60 provided in part after its adoption that building permits would be required for agricultural structures. This building permit for agricultural structures had not been previously required by Gooding County Ordinance.

15. In August of 1996, Gooding County, through application of its then existing ordinances, attempted to prevent Idaho Power Company from connecting power to the Plaintiffs' dairy facility being constructed on the above-described real property.

16. At the time of the adoption of Ordinance #60, Plaintiffs did not receive individual mailed notice as to the change of the zoning district from agricultural to T-2 (Transitional) as required by Idaho Code §67-6506.

17. After contact from counsel on behalf of the Plaintiffs, Gooding County relented and allowed power to be connected to the new dairy facilities.

18. Gooding County Ordinance #60 adopted on or about September 27, 1995, rezoned the above-described real property from its previous agricultural zoning to "T-2 Transitional". Under Ordinance #60, an expansion or creation of new CAFO operation is prohibited in the "T-2 Transitional Zone".

19. On or about the 10th day of February, 1997, Gooding County adopted its Ordinance #62, an ordinance covering the regulation of CAFO operations. On the 17th day of June, 1998, Ordinance #62 was held to be invalid in Case #CV 97-430, in the Fifth Judicial District of the State of Idaho for Gooding County. Gooding County appealed that decision but the appeal was subsequently dismissed. Ordinance #62 contained a requirement for the obtaining of Siting Permits by new and existing CAFO operations.

20. On or about the 10th day of August, 1997, the Plaintiffs filed with Gooding County Planning and Zoning Commission an Application for a Grandfathered Siting Permit under Ordinance #62. On or about the 14th day of October, 1997, the Administrator for the Gooding County Planning and Zoning denied the Grandfather Siting Permit under Ordinance #62. The Plaintiffs appealed the decision of the Planning and Zoning Administrator to the Gooding County Planning and Zoning Commission, which was denied by letter dated November 21,

1997. The County Commissioners remanded the matter to the Planning and Zoning Commission who again upheld the denial of the Siting Permit. This decision was appealed to the County Commissioners, where it was pending when Ordinance #62 was ruled invalid.

21. On or about the 9th day of February, 1999, Gooding County adopted its Ordinance #66, a new CAFO ordinance.

22. Like Ordinance #62, Ordinance #66 contained provisions requiring existing and new CAFO operators to obtain Siting Permits.

23. With respect to Grandfathered Siting Permits, Ordinance #62 provided in pertinent part as follows:

III. EXISTING CAFO'S:

- A. The administrator shall mail a survey sheet explaining registration procedures to all owners and operators of existing CAFO's. The owners and operators will have thirty (30) days from the date of the mailing to respond with the numbers of livestock in each category and the numbers of acres and such other information that the Administrator may deem appropriate. In the case of dairy CAFO's the approximate number of milking animals will be verified with the Department of Agriculture.
- B. Within six (6) months from the effective date of this ordinance, any person or entity ("Registrant") operating a CAFO existing as of said effective date, shall file a registration notice with the Administrator. The registration notice shall provide the following:
 - 1. Name, address, and telephone number of registrant.
 - 2. Legal description of the CAFO.
 - 3. Existing use.
 - 4. Zoning district.
 - 5. A site plan showing the following:
 - a. Dimensions, size and location of existing improvements on the CAFO.
 - b. Property lines and set backs.
 - c. Feed storage areas.

- d. Confinement areas.
- e. Waste storage areas.
- f. Wells.
- 6. A written description of the waste treatment system.
- 7. Water right permit or license from the State of Idaho.

The Administrator shall review each registration notice and determine if it is complete and if the information provided is accurate.

- C. If the Administrator determines the registration notice is complete and the information provided is accurate, the Administrator shall provide the registrant with written notification that the registration notice has been accepted and recorded with the Administrator.
- D. If the Administrator determines that the registration notice is not complete or the information provided is not accurate, the Administrator shall, within twenty (20) days of the determination, provide the registrant with written notification of the incomplete items or the inaccurate information.

24. Ordinance #66 with respect to Grandfathered CAFO Siting Permits provided, in pertinent part, as follows:

III. EXISTING CAFO'S:

- A. Within six (6) months from the effective date of this ordinance, any person or entity ("Registrant") operating a CAFO existing as of said effective date, shall file a registration notice with the Administrator. CAFOs which have previously registered with the Administrator need not re-apply under this ordinance. The registration notice shall provide the following:
 - 1. Name, address, and telephone number of registrant.
 - 2. Legal description of the CAFO.
 - 3. Existing use.
 - 4. Zoning district.
 - 5. A site plan showing the following:
 - a. Dimensions, size and location of existing improvements on the CAFO.
 - b. Property lines and set backs.
 - c. Feed storage areas.
 - d. Confinement areas.
 - e. Waste storage areas.

- f. Wells.
- 6. A written description of the waste treatment system.
- 7. Water right permit or license from the State of Idaho.

The Administrator shall review each registration notice is complete and the information provided is accurate, the Administrator shall provide the registrant with written notification that the registration notice has been accepted and recorded with the Administrator.

- C. If the Administrator determines that the registration notice is not complete or the information provided is not accurate, the Administrator shall, within twenty (20) days of the determination, provide the registrant with written notification of the incomplete items or the inaccurate information.
- D. The Registrant shall provide the complete items or the correct information to the Administrator if the registration is to be accepted. If such action occurs, the Administrator shall deem the registration notice accepted and shall record it as such in the official records of the Planning and Zoning office. The Administrator shall provide the registrant with written notification of such action within twenty (20) days of the determination.

25. Plaintiffs, by filing all required materials with the Gooding County Planning and Zoning Commission under prior ordinances had "previously registered with the Administration" in accordance with Ordinance #66, III A.

26. The language in Ordinances #62 or #66 gave the Gooding County Zoning Administrator no authority with respect to Applications for Grandfather Siting Permits other than to review the Applications for completeness and accuracy. Neither Ordinance gave authority to the Administrator to deny a Siting Permit for the reasons upon which the denial was based.

27. Ordinance #66 of Gooding County is void, for among other reasons, because its adoption was preceded by the unlawful participation of Gooding County Commissioner Win Henslee in the adoption of Ordinance #66 in violation of Idaho Code §67-6506.

28. Gooding County has taken no Court action to prohibit, to enjoin or otherwise stop the operation of the Plaintiffs' dairy on the above-described real property despite construction and operation of the dairy facilities for more than five (5) years. Despite this, Gooding County has informed other agencies of government, including but not limited to the Idaho Department of Water Resources, that the Plaintiffs' dairy is being operated without permits required by Gooding County.

29. The above-described real property has been operated continuously as a dairy containing up to 960 cows from October, 1996, to the present date.

30. Despite all of the foregoing, Defendant, Gooding County, maintains that the Plaintiffs' dairy operation is being conducted unlawfully and without permits required by Gooding County, Idaho. This position has been communicated to the Department of Water Resources of the State of Idaho, which has threatened action concerning the Plaintiffs' valuable water rights as a result thereof.

31. Plaintiffs' substantial rights with respect to the continued operation of their dairy facility, either by them or through tenants, at a level of 960 cows have been, are being and will continue to be affected and threatened by the positions and statements of Gooding County until there is a determination of the construction and/or validity of the Ordinances and actions of Gooding County, its Planning and Zoning Commission and the Administrator of the Planning and Zoning Commission, all as set forth in this Complaint.

32. Plaintiffs have been required to retain an attorney to prosecute this action. The Plaintiffs' attorneys fees and costs should be paid by the Defendants.

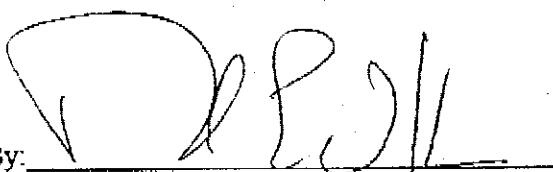
WHEREFORE, the Plaintiffs pray for judgment as follows:

1. That the Court enter an Order as follows:

- a. Determining Gooding County Ordinance #60 to be unlawful and void.
- b. Determining Gooding County Ordinance #66 to be unlawful and void.
- c. Determining that under both Ordinances #62 and #66, the Gooding County Planning and Zoning Administrator had no authority to deny Plaintiffs' Application for Grandfathered Siting Permit.
- d. That the Court further declare that no Ordinance of Gooding County, Idaho, prohibits the operation of a dairy by the Plaintiffs, either personally or through tenants, up to and including 960 cows on the real property described in the body of the Complaint.
- e. For such other and further relief as the Court may determine to be necessary or proper.
- f. For attorney's fees and costs incurred in the prosecution of this action.

DATED this 9th day of June, 2000.

FREDERICKSEN, WILLIAMS & MESERVY

By: 

ROBERT E. WILLIAMS
Attorney for Plaintiff