

**MINUTES OF THE JOINT MEETING  
MINNEHAHA COUNTY & SIOUX FALLS PLANNING COMMISSIONS  
April 24, 2017**

A joint meeting of the County and City Planning Commissions was scheduled on April 24, 2017 at 7:00 p.m. in the Commission Room of the Minnehaha County Administration Building.

COUNTY PLANNING COMMISSION MEMBERS PRESENT: Mike Cypher, Doug Ode, Bonnie Duffy, Paul Kostboth, Mike Ralston, and Jeff Barth.

CITY PLANNING COMMISSION MEMBERS PRESENT: Sean Ervin, Katherine Fiegen, Nicholas Sershen, Kurt Johnson, and John Paulson.

**STAFF PRESENT:**

Scott Anderson, David Heinold, and Kevin Hoekman - County Planning  
Diane de Koeyer – City Planning  
Judy Zeigler Wehrkamp – States’ Attorney

The County Planning Commission Chair was presided over by Chair Mike Cypher. The City Planning Commission was chaired by Kurt Johnson.

Planning Commission Chair Mike Cypher called the Minnehaha County Planning Commission meeting to order at 7:00 p.m.

**Consent Agenda**

A motion was made for the County by Commissioner Barth and seconded by Commissioner Kostboth to **approve** the consent agenda consisting of the March 27, 2017 joint planning commission meeting minutes. The motion passed unanimously. The same motion was made for the City to **approve** the consent agenda by Commissioner Sershen and seconded by Commissioner Ervin. The motion passed unanimously.

**ITEM 1. Approval of Minutes – March 27, 2017**

As part of the consent agenda, a motion was made for the County by Commissioner Barth and seconded by Commissioner Kostboth to **approve** the meeting minutes from March 27, 2017. The motion passed unanimously. The same motion was made for the City by Commissioner Sershen and seconded by Commissioner Ervin to **approve** the meeting minutes from March 27, 2017. The motion passed unanimously.

**ITEM 2. CONDITIONAL USE PERMIT #17-19 to allow Keeping of Six (6) Fowl on the property legally described as Lot 1B, Block 1, Split Rock Heights, 3rd Addn., Section 19-T101N-R48W.**

Petitioner: Josh Payer

Property Owner: same

Location: 6610 E. Split Rock Cir.                      Approximately 0.5 mile east of  
Sioux Falls

Staff Report: David Heinold

This would allow Keeping of Six (6) Fowl.

**General Information:**

Legal Description – LOT 1B BLK 1 SPLIT ROCK HEIGHTS 3RD ADD 19-101-48  
SPLIT ROCK TOWNSHIP

Present Zoning – RR Rural Residential District

Existing Land Use – Residential

Parcel Size – 1.84 Acres

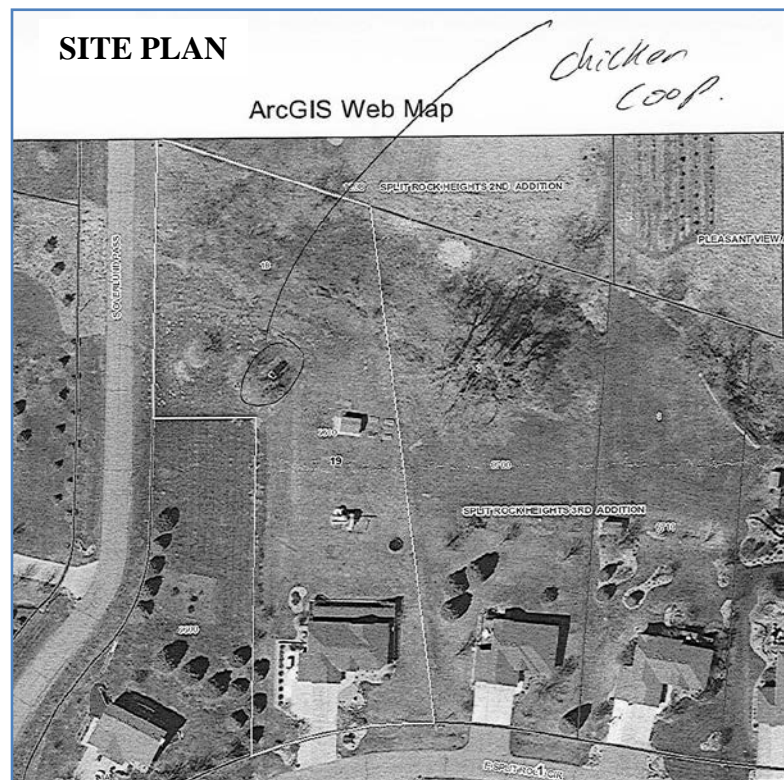
**Staff Report:** David Heinold

**Staff Analysis:**

The petitioner is requesting conditional use permit approval to allow keeping of six (6) fowl. The application narrative describes that the request is to keep a total of six (6) hen chickens. A chicken coop structure is proposed to be located approximately 200 feet north from the house on the subject property.

According to the 2002 Revised Joint Zoning Ordinance for the City of Sioux Falls and Minnehaha County, Section 4.04 (n) states:

4.04 Conditional Uses. A building or premises may be used for the following purposes in the RR Rural Residential District if a



conditional use permit for such use has been obtained in conformance with the requirements of Article 19.00:

(n) Keeping of Fowl provided the maximum number not exceed 6 fowl with no roosters

**Surrounding Land Uses Chart**

<b>Subject Property</b>	<b>North</b>	<b>South</b>	<b>East</b>	<b>West</b>
Residential	Residential	Residential	Residential	Residential



On April 10, 2017, County Planning Staff contacted the City of Sioux Falls Planning Staff and did not receive any comments regarding the proposed land use.

On April 11, 2017, staff received a few phone call inquiries and questions regarding the conditional use permit request. The nature of the phone calls indicated opposition to allow the keeping of six fowl in the neighborhood for reasons not limited to but listed as maintenance and proximity to adjacent residential properties.

On April 12, 2017, County Planning Staff visited the site of the proposed area to allow keeping of six (6) fowl and observed the sounds of chirping birds as well as barking dogs immediately when first stepping outside. The coop structure is located under the trees in the middle of the north part on the subject property, as shown in the image above but no fowl were seen occupying the caged-in area or seen in the immediate vicinity. The site conditions are appropriate in the surrounding rural residential area with considerable open space and existing natural features suitable for the conditional use permit request to allow the keeping of six fowl. Since the initial site visit County Planning staff has received numerous phone calls, emails, and letters regarding the proposed use. All of the correspondence received to date is attached for your review.

**1) The impact of the proposed use on adjacent properties shall be a major consideration. The proposed use should be generally compatible with adjacent properties and other properties in the district.**

The nature of the area consisting of lots averaging 2 acres in size presents opportunity for landowners to enjoy the company of certain domesticated animals such as dogs, cats, and other common household pets. However, uncommon animals within the definition of fowl causes smell, noise, and other concerns for adjacent landowners. The nearest residence, other than the applicant’s own house, is located approximately 200 feet away from the proposed coop structure. Most, if not all, of the properties in this district do not have fences, which can be problematic for safe animal containment within the confines of the property boundaries.

**2) Measures shall be taken to ensure that the proposed use does not alter the general character of the area or neighborhood.**

The proposed use, keeping of fowl, for personal use should not significantly affect the general character of the neighborhood with only a limited number of animals allowed per property in the Split Rock Heights subdivision area that has approximately two hundred homes on varying lot sizes over one acre in size. The proper management and care in keeping fowl should be set in place by the petitioner to mitigate concerns over any odors and other nuisances detectable to landowners in the surrounding area from the proposed use; however, complaints will be addressed relating to the Minnehaha County Public Nuisance and Animal Control Ordinances.

**3) The effects of noise, odor, traffic, air and water pollution, and other negative factors shall be eliminated or controlled through the use of screening, setbacks, and orientation.**

The proposed use should take into consideration the rights of individual landowners to enjoy their properties in coordination with the zoning ordinance through minimum setbacks of all fowl containment structures. The differences in size and shape of the lots in this subdivision present a unique situation for increased setbacks of accessory structures for the specific purpose of keeping fowl to property lines as well as houses to manage the negative effects of the proposed use on adjacent properties. Inadequate maintenance and general upkeep of the subject property where the fowl will be located according to the Minnehaha County Public Nuisance and Animal Control Ordinances may cause significant impact to surrounding property owners.

**4) The proposed use shall not adversely affect the public.**

The keeping of fowl is likely to be more commonly found in rural residential subdivisions and acreages on lots larger than one acre. While the presence of fowl in a residential setting will present odor and noise concerns, but should not significantly affect the general public beyond the personal permitted uses such as activities for daily sports and leisure in the RR Rural Residential District. The Envision 2035 Comprehensive Plan identifies the area firmly within the Transition Area for the City of Sioux Falls, which has a primary purpose of maintaining the rural landscape until the eventual development of residential and/or municipal development. The subject property lies in an existing rural residential subdivision, which was originally developed for over one acre lots. Goal 2, Action 2.1 on Page 105 of the Envision 2035 Comprehensive Plan recommends that the County follow the goals and policies for land use, economic development, rural conservation, parks and open space, natural resources, and transportation.

In the Future Land Use Plan section of the Envision 2035 Comprehensive Plan,

*Goal #2* aims to coordinate growth and land use planning among Minnehaha County, Cities, Townships, and other relative organizations. The result of this coordination is cooperation between County, Cities, and Townships for planning and implementing strategies and land use procedures.

The Shape Sioux Falls 2040 Comprehensive Plan identifies this area as a Planned Urbanized Area, which infrastructure is available to this land area and it can be annexed.

**Recommendation:**

Staff finds that the proposed use, keeping fowl, is generally compatible with the permitted uses on surrounding properties and conforms to the goals and policies of the Envision 2035 Comprehensive Plan for maintaining the rural landscape until eventual municipal development. Staff recommends **approval** of Conditional Use Permit #17-19 with the following conditions:

1. That Conditional Use Permit #17-19 allows the keeping of six (6) fowl.
2. That fowl may be kept for domestic, noncommercial use.
3. That poultry or fowl must be kept in a secure coop, pen, or enclosure from dusk until dawn.
4. That any pen, run, cage, hutch, enclosure, coop serving to house or confine fowl shall maintain a distance of 20 feet from the property line and 50 feet from adjacent residences.

**PUBLIC TESTIMONY**

David Heinold, County Planning, presented a brief overview of the staff report and site analysis for the proposed use.

Josh Payer, 6610 E. Split Rock Circle, identified himself as the petitioner and explained that the chickens never leave the cage. He continued to mention that he assumed that they could keep fowl a few years ago. Mr. Payer continued to mention that they worked through the process to get the zoning ordinance requirement changed to allow for the keeping of fowl.

Commissioner Barth asked the petitioner about the covenants in the subdivision area. Mr. Payer indicated animals according to the definition of fowl, but just want 6 hen chickens. He indicated that he provided pictures to the County Planning staff documenting various accessory buildings, fences, pet enclosures, barking dogs, and the gate latch for his chicken coop structure for joint planning commissions review. He explained that the manure from the chickens would be used for composting the garden area.

Commissioner Ode asked how many chickens the petitioner kept and Mr. Payer mentioned that there were 4 chickens on the property at most with one rooster.

Commissioner Cypher explained that the County does not enforce private covenants.

Nancy Thompson, 6600 E. Split Rock Rd., mentioned that the pictures she submitted to the county planning staff were taken three years ago of the chickens on her property. Ms. Thompson presented concern that the chickens will be bait for coyotes and other predator animals roaming in the area. She questioned the condition regarding keeping chickens in a coop or pen from dusk to dawn.

Susan Johnson, 6801 E. Split Rock Cir., mentioned that approval of the proposed use would cause unnecessary litigation as well as become a nuisance to surrounding property owners due to the cleanliness and upkeep of the coop structure. Mrs. Johnson indicated the chickens would present a readily available food source for coyotes, skunks, and raccoons already existent in the

area that may cause a harm to children and small pets.

Josie Alpers, 6609 E. Split Rock Cir., presented concern over the previous instance of the petitioner keeping fowl and roosters on the property. Ms. Alpers indicated that the sign was not readable from the road. She also mentioned concerns about continuous dog barking for ten hours straight, issues with law enforcement and noise, and the property owner not taking proper care.

Sonja Hoffman, 1209 S. Overlund Pass, questioned what is actually allowed under the definition of fowl.

Mr. Payer explained that the proposed use is not for free-range chickens. He continued to mention that the coop structure is secure as opposed to anyone being able to open the door.

Commissioner Cypher called for public testimony but there was no answer.

Commissioner Cypher closed the floor to public testimony.

### **DISCUSSION**

Commissioner Kostboth questioned if there is a mechanism for recall and review of the conditional use permit for failure to meet conditions of approval.

Scott Anderson, County Planning Director, explained the conditional use permit recall and review section of the 2002 Revised Joint Zoning Ordinance for the City of Sioux Falls and Minnehaha County.

Commissioner Barth questioned the Sioux Falls Planning Commission on their thoughts about the proposed land use and how it fits with the future growth of the City of Sioux Falls.

Commissioner Sershen explained that the keeping of chickens would be permitted without a conditional use permit application inside city limits. There was discussion on city ordinance.

Scott Anderson recommended that the joint planning commissions consider revising the language in condition number one to specify only hen chickens would be allowed to be kept.

Commissioner Paulson indicated that he does not support the request to allow the keeping of six hen chickens because there is no compelling reason for approval of the conditional use permit.

Commissioner Kostboth made a motion to approve Conditional Use Permit #17-19 with the following changes to the recommended conditions:

1. That Conditional Use Permit #17-19 allows the keeping of six (6) hen chickens.
3. That poultry or fowl must never leave the secure coop, pen, or enclosure.

Commissioner Sershen made a motion to approve Conditional Use Permit #17-19 and added that

he supports the request to allow the keeping of six hen chickens because it fits with the current City of Sioux Falls ordinance.

**ACTION**

A motion was made for the County by Commissioner Kostboth with a change to condition #1 and #3 and seconded by Commissioner Ode to **approve** Conditional Use Permit #17-19. The motion passed 4-1, Commissioner Barth voted nay. The same motion was made for the City by Commissioner Sershen and seconded by Commissioner Fiegen to **approve** Conditional Use Permit #17-19. The motion passed 3-1, Commissioner Paulson voted nay.

**Conditional Use Permit #17-19 – Approved with the following conditions:**

- 1. That Conditional Use Permit #17-19 allows the keeping of six (6) hen chickens.**
- 2. That fowl may be kept for domestic, noncommercial use.**
- 3. That poultry or fowl must never leave the secure coop, pen, or enclosure.**
- 4. That any pen, run, cage, hutch, enclosure, coop serving to house or confine fowl shall maintain a distance of 20 feet from the property line and 50 feet from adjacent residences.**

**Old Business**

None.

**New Business**

None.

**Adjourn**

A motion was made for the County to **adjourn** by Commissioner Ode and seconded by Commissioner Barth. The motion passed unanimously. The same motion was made for the City to **adjourn** by Commissioner Sershen and seconded by Commissioner Ervin. The motion passed unanimously.

The meeting was **adjourned** at 7:33 pm.