

MINUTES OF THE REGULAR MEETING OF THE WEST JORDAN PLANNING AND ZONING COMMISSION HELD NOVEMBER 4, 2009 IN THE WEST JORDAN COUNCIL CHAMBERS

PRESENT: Justin Stoker, Chad Nichols, Nathan Gedge, David McKinney, Ellen Smith, John Winn, and Jesse Valenzuela.

STAFF: Tom Burdett, Greg Mikolash, Ray McCandless, Robert Thorup, Julie Davis, and Rodger Broomé.

OTHERS: Jim Lems, Dan Lawes, Janci Lawes, Marvin Coggins, Morgen Peck, Dan Eatchel, Irma Ramos, Ben Southworth, Maryann Clark, Jerry Garner, Reed Scharman, and Jeanette Scott.

The briefing meeting was called to order by Justin Stoker.

A correction on page 6 of the minutes was noted. The agenda was reviewed. It was clarified that the commissioners could give recommendations for any amendments to the proposed ordinance. Similar codes from other agencies were reviewed before drafting this one. It was noted that this code would not prevent a planned community from enacting CC&R's to be more restrictive in this matter. The application process was clarified regarding signatures of abutting neighbors. There was a discussion regarding the number of chickens allowed without a fee as there seemed to be a conflict in the proposal.

The regular meeting was called to order at 6:02 p.m.

- 1. Consent Calendar**
Approve Minutes from October 21, 2009

MOTION: Nathan Gedge moved to approve Consent Calendar Item #1 modifying page 6 paragraph 10, the phrase 'does fit' to 'does not fit'. The motion was seconded by David McKinney and passed 7-0 in favor.

MOTION: David McKinney moved to modify the meeting agenda to move Business Item #2 to follow Item #3 after the public hearing item. The motion was seconded by Nathan Gedge and passed 7-0 in favor.

- 3. Text Amendment - Amend the West Jordan Municipal Code making revisions to: Title 6 Police and Public Safety: Sections 6-3A-1, 6-3E-1, 6-3E-2, 6-3E-3, 6-3E-4, Title 13 Zoning Regulations: Sections 13-5B-2, 13-5C-4, 13-5J-4, regarding the keeping of fowl (chickens and pigeons) in residential zoning districts; City Wide; City of West Jordan (applicant) [#TA20090003]**

Ray McCandless gave an overview of the item, which occurred as a result of an administrative directive from City Council to consider an ordinance that conditionally allows chickens for family egg production in the city's low density residential zoning districts. The proposal was a cooperative effort with city Animal Control, Police, and Attorney's Office. This affects both the Animal Control ordinance and Zoning Ordinance. He reviewed some of the key points of the code, including: a definitions update, they cannot be considered house pets, there will be no sale or income from the chickens, number of chickens allowed is based on lot area. Up to 3 chickens are allowed on lots between 6,000 and 9,000 square feet, and up to 5 chickens on lots greater than 9,000 square feet in area. They can only be on properties with single-family detached dwelling units, a duplex, or a twin home, but they are not allowed in multifamily districts. Roosters and crowing hens are not allowed. Chickens are not allowed to roam freely or be kept in a dwelling. Provisions are included that assure health of the birds and that sanitary conditions of grounds and enclosures are maintained. The proposal indicates that a minimum distance of 30 feet be maintained from the nearest primary structure on adjoining properties, 5 feet from the property line, and 10 feet from the subject property dwelling. Coops are not allowed in the front or corner side yard. The footprint of the coop and run area cannot exceed 50 square feet and the height cannot exceed 6 feet. Coops are exempt from the accessory structure building provisions of the zoning ordinance. A fowl keeping permit will be required for 3 or more chickens, but that needs to be clarified as part of the recommendation. Signatures from

abutting owners are required as part of the application process. Keeping of chickens is considered a temporary use, and no non-conforming rights are established. Existing rural residential, agricultural or VLSFR district animal rights provisions are not affected by this ordinance.

Allowing chickens in residential areas is a shift in policy as animals typically associated with rural and agricultural land uses have not historically been allowed in single-family, two-family and twin-home neighborhoods. With the conditions as proposed, staff anticipates minimal conflicts between neighbors, and a generally positive contribution to the general health and welfare of West Jordan citizens. Based on the findings contained in this report, staff recommended that the Planning Commission forward a positive recommendation to the City Council to amend the city code.

David McKinney referred to 6-3E-4B7 and asked for clarification regarding the requirement for a permit if there are fewer than 3 chickens.

Robert Thorup said the fee is waived for less than 3 chickens, but the permit is still required.

David McKinney understood that the ordinance as written could prohibit someone from keeping chickens if a neighboring property owner does not sign the application.

Robert Thorup said that is correct.

Marvin Coggins, West Jordan resident, was glad that this change was coming forward. He lives in the A-1 district and has chickens. Once a neighbor boy got a chicken from him, but a few weeks later he had to return it because his home wasn't zoned for chickens. Mr. Coggins felt that having a chicken is like having any other kind of animal that builds citizenship and character when there is a responsibility to care for an animal. Often children on the neighboring school site enjoy looking at his animals, and he would like other people to have the opportunity to own chickens themselves and also to be able to have roosters.

Justin Stoker asked Mr. Coggins if he had any feedback regarding the proposed setbacks of structures.

Mr. Coggins said that he felt they should be able to roam free. He said they are good at keeping out the slugs, snails, mosquitoes, etc., which helps to care for the environment. He asked that they be lenient about the coops, because they are expensive. He felt that as long as they have a shelter, water, and feed it doesn't matter about the coop. He didn't like the fact that a neighbor could prohibit someone else from having them.

Janci Lawes, West Jordan resident, stated that she is an attorney and brought up some points in the proposal that could cause problems. She was a proponent for backyard chickens as they are healthy and help to promote self sufficiency for families as well as teaching children a lesson in responsibility. She felt that the limited footprint of the coop and run is too small, because some people use standing structures as coops. Also, the size limit could cause a reduction in the size of the run, which may jeopardize the health of the chickens. She asked if experts were consulted in determining the 50 square foot limit. She didn't know why the maximum size would be limited on private property. The requirement for abutting property owner signatures could potentially prohibit up to five people from keeping chickens if only one person refuses to sign the application of their neighbors. Such an application is not required for the keeping of any other animals such as a dog. She had an issue of requiring the property owner to give permission for animal control to access to the property without providing limits to that access, because that may be a violation of the constitution regarding unlawful search and seizure.

Dan Lawes, West Jordan resident, stated some of the benefits of having chickens is that they are easy to care for, are less noisy than dogs, they cause no messes on the neighbors front lawn, and the manure can be used for composting. He stated that dog runs are not limited in size. He understood the need for licensing the chickens, but wondered why they needed a permit to have them and the requirement for neighbor sign-off. He said the ordinance doesn't allow for recourse in the case where your neighbor is opposed, such as an appeal. He said

authorized access to animal control is not required for keeping dogs. He noted that Ft. Collins, Colorado, which is similar in size to West Jordan, enacted a similar ordinance last September, and they have only had four complaints; two of which were unfounded.

David McKinney asked Mr. Lawes if he knew how many people were keeping chickens in Ft. Collins.

Dan Lawes thought the article said that 63 permits were issued. There were four complaints with two being unfounded, and two were people who purchased roosters thinking that they had purchased hens.

Jerry Garner, West Jordan resident, stated that a recent article said New York City allows for any number of chickens, but no roosters, so if Manhattan can allow chickens so can West Jordan. He said that chickens can survive in a 2' x 1' x 1' area and never touch the ground for those that just lay eggs, but then there are free range chickens. He said if a coop is too far from the home, the chickens will freeze to death fairly easily, especially if there are only a few birds. He thought they should reconsider the minimum distance from the home. Anything over 80 degrees or under 50 degrees decreases the egg production. He didn't agree with the requirement for the permission of neighbors, because if it is a nuisance the neighbor will call and report it. He said some rooster types aren't as noisy as others. He felt that keeping chickens is also an educational tool. He thought the ordinance should be written to make it easier for people to have them.

Maryann Clark, West Jordan resident, stated that she is the backdoor neighbor of the Lawes' who had chickens during the summer. She said she would not give permission for them to have chickens, because her family spends a lot of time in the backyard and there was a smell that came from the chickens. She didn't think there would be a way to keep the smell away in a neighborhood like this even if the coops are kept up. She researched the area when they bought their home 21 years ago to make sure the area didn't allow for pigeons and chickens, so it would be unfair to change that now. She didn't mind if people keep chickens if they have the room for it and it doesn't infringe on the neighbors. She thought that the chicken feed that is on the ground will bring rats and other vermin. She didn't want to be the one to have to make a complaint, because it will cause friction between neighbors. Where the zoning is already established it shouldn't be messed with. Her home is only 30 feet from the back fence, so if the coop is at the back fence it will affect her.

Jeanette Scott, West Jordan resident, was in favor of the change. She said chickens are clean birds and are good to the environment by keeping insects down. They teach responsibility and self reliance to children. She agreed that the chickens will freeze to death if they don't have a heating unit, and she didn't see a problem with allowing them to be kept near the house. She felt that the 50-foot run seemed too small, because they need room to get enough sunshine to have strong eggs. She also said that they are quiet birds. Ms. Scott responded to inquiries about shell strength. The chickens themselves can cause cracks, the way they lay their eggs, and some pesticides can cause a thinner shell. She indicated that there are feeders that can be hung so feed does not have to be on the ground.

Reed Scharman, West Jordan resident, said he had lived at his residence for 24 years. He has six neighbors that have direct contact with his property. He said that there are rural residential and agricultural places in the city that are zoned for animals, and then there are zones for residential living. These kinds of questions start to push a gray area as far as what we will allow. He felt the city needs to be careful. When this subdivision was created the developers looked at this issue, because he had to sign CC&R's that stated he wouldn't have chickens or rabbits, etc. The proposed ordinance doesn't warn the public that they may be in violation of CC&R's even if they obtain a permit and comply with city ordinances. The lots in his subdivision are 10,000 square feet, but that doesn't matter, because the distance to the back fence is 30 feet, which is no different than a lot in the 5,000 or 6,000 square foot lot areas. Lot size doesn't determine lot shape. So, he wondered why there is a designation of lot size. If chickens are good and belong in the city, then they need to be put everywhere. He would rather that they are allowed everywhere than have to be the one to either sign off or deny someone else the privilege.

Justin Stoker allowed additional comment from those who previously spoke.

Jerry Garner explained that one of the best ways to achieve good, strong eggs is with oyster shell that can be mixed with the feed. He said that one advantage to having the coop near the house is that the owner will smell the odor before the neighbor does and will take care of the problem. He explained how to treat chickens so they don't pass diseases to humans.

Dan Lawes thought that the raising of peacocks was allowed in his zone, and there is a peacock farm at the end of his road. Peacocks are much louder than chickens, so why not allow chickens.

Further public comment was closed at this point for this item.

John Winn asked if CC&R's overrule a city ordinance if they are more strict than the ordinance.

Robert Thorup said the CC&R's can be more strict, but they can't be less strict.

Chad Nichols said he was initially against this. Noise was a concern, but since roosters and crowing hens are not allowed that solves that issue. He felt that smell is still an issue that needs to be considered. In his situation, if his backyard neighbor were to place one in the farthest part of the yard it would be half again closer to his house than the home where the chickens are. He is a proponent of landowner rights and it should be your right to have chickens, but when does that begin to infringe upon the rights of someone else. He was also concerned with the sanitary situation, because he didn't think the code enforcement officers have the manpower to stay on top of the situation if it should become a problem. He didn't believe that everyone would take care of the coops and the yards, because he has seen some pretty rundown yards in the city. He thought that the idea would be helpful in this economy by providing eggs. He felt that the application process was a good idea. He liked the idea of getting permission of the neighbors. It might prevent some from being able to have chickens for now, but it is a first step in allowing the option for those who want it. Neighbors can work together in compromise as to the location of the coop, etc. He felt that the setback from the fence should be more like 10 feet rather than 5.

Justin Stoker said the 30' rule from neighboring structures was implemented to address the smell issue. He asked Commissioner Nichols if he felt it should be greater than that.

Chad Nichols felt that the application process helps in that situation, because it requires that you speak to your neighbors about those types of things, and they can work out a compromise. That is what he would do, because he has picnics out near his fence, and he wouldn't want chickens right next to that.

David McKinney appreciated the public comments and could see the arguments on both sides. However, he was against the proposed ordinance, because he didn't think the size of property that is proposed is large enough for this type of use. There is already provision for raising chickens in rural residential and agricultural zones. He lives on a lot that is approximately 12,000 square feet, and he wouldn't want them next to him. He said there is no doubt that chickens smell and make noise. His neighbor's dogs bark all night, and it drives him crazy. If his neighbor wanted a chicken coop there is no way he would agree to it. The city allows for the raising of chickens, and with the cost of the feed and structures he wasn't sure that it makes economical sense, because eggs aren't that expensive. He felt that the raising of chickens and other animals is fine in the right place, but not in a suburban neighborhood. If the ordinance is presented, he would be in favor of tabling the issue so staff can address some of the issues brought forward regarding recourse, access by animal control, etc.

John Winn said we have certain property rights, but the neighbors have rights as well. He is familiar with chicken coops and they stink, so he didn't think five feet from a property line was enough. It could be that these lots are too small for raising chickens. He didn't think that it would be an economic benefit with the small amount of chickens that would be allowed. However, raising chickens can help to build character for children. He was in favor of tabling the issue to discuss ideas and get feedback from other ordinances, but he was not for it at this time.

Ellen Smith said the money saving issue is moot for one or two chickens, but they are only talking about one or two chickens. This is West Jordan and at this point in time in the history of the city, you can drive down almost any street and it is not purely suburban, but there is a mix of residential and agricultural. She didn't see a problem with the proposal, but the recourse issue needs to be discussed before they have a good ordinance to consider. She said that other types of pet birds make more noise than a chicken.

Justin Stoker was in favor of increasing the setback from the property line to be 15 or 20 feet, which could limit them from being in 6,000 square foot lots, but they might be too small anyway. He was also in favor of eliminating the setback from the principal structure on the subject property so the chickens don't freeze. He said the portion of the code that talks about animal control inspections says that all inspections, entries, and examinations shall be done in a reasonable manner based upon cause. If the property owner refuses entry onto the property the officer may obtain and execute a search warrant. He didn't think that search and seizure would be a problem regarding right of entry. He didn't think they had to table this, but they can fine tune it. The council and the city as a whole is a semi rural community in favor of animal rights and he felt that chickens belong in areas such as R-1-8, R-1-10, and R-1-12.

David McKinney said with respect to chickens freezing, that the outside of the house will be at ambient temperature, and the only reason the chickens would be warmer next to the house is because the coop would be sheltered a little better so the heat that the chickens generate would be kept inside the coop. Otherwise, an unheated coop will be at the same temperature as the outdoors. A wind screen could be built for a coop no matter where it is located.

Justin Stoker asked Robert Thorup for the basis that this be at least 10 feet from the principal structure.

Robert Thorup said in all the ordinances there was a concern to try to separate this particular function from residential structures. The theory was that this use is unique and not usually found in a residential district, so it should be separated from the house, fence, and neighbors. But there was not a study to determine the distance of ten feet.

Chad Nichols wanted to clarify that he thought they could work with this proposal, and he thought that the application process is good as a starting point. In the future if the City Council reviews this portion of the code they could lighten the rules and not require the signatures.

Ellen Smith said whatever they discuss here will still go on to City Council, so she didn't think they had to table the item. Her suggestions would be to increase the setback from the property line. She didn't think a chicken coop was different from a dog run or rabbit hutch that people have beside their home. She felt that if the coop were allowed to be next to the home it may not bring the temperature up, but it would be protected more and the effects of the weather on the coop would not be as strong.

David McKinney said they can deny this and then the city can revise it and bring it back.

Greg Mikolash said there isn't any science to bringing this back. Staff already looked at other ordinances and used the best parts of those. He suggested that they either deny it or give staff their suggestions tonight for the few items that they have concerns with so staff knows the direction the commission wants to go.

MOTION: David McKinney moved to forward a negative recommendation to the City Council to amend the City Code as proposed. The motion was seconded by Nathan Gedge.

John Winn said if the majority of the commission felt that there are ways to work this out tonight and give their suggestions then there is no reason to deny it.

Ellen Smith said they are here to work this out tonight if they can.

Roll Call Vote:

Commissioner McKinney – yes

Commissioner Winn – no

Commissioner Valenzuela – no

Commissioner Smith – no

Commissioner Gedge – yes

Commissioner Nichols – no

Commissioner Stoker – no

The motion failed 2-5.

Chad Nichols said he would rather forward a positive recommendation the amendments to change the distance from the property line.

Justin Stoker said his suggestion would be to make the use permitted on lots 10,000 square feet or larger and making it an Administrative Conditional Use for anything smaller than that. He would also increase the setback to 15 feet from the property line and eliminate the phrase that requires it to be ten feet away from the principal structure.

MOTION: John Winn moved to forward a positive recommendation to the City Council for the code as attached, changing the distance from property line to 15 feet, eliminating the phrase ‘10 feet away from the home’ allowing the chicken coop to be next to the home, and changing the permitted use to lots 10,000 square feet or larger and making it an administrative conditional use on anything less than 10,000 square feet. The motion was seconded by Ellen Smith.

David McKinney said it was folly to allow chickens in residential neighborhoods with such small lots.

Ellen Smith asked if any of the other codes mentioned anything about recourse if the neighbors do not sign the application.

Ray McCandless and Robert Thorup indicated they didn’t see anything that addressed it.

Roll Call Vote:

Commissioner Winn – yes

Commissioner Gedge – no

Commissioner Smith – yes

Commissioner Stoker –yes

Commissioner McKinney – no

Commissioner Valenzuela – yes

Commissioner Nichols – yes

The motion passed 5-2 in favor of a positive recommendation.

Justin Stoker informed the audience that the item would be forwarded to the City Council where they could provide further comments.

2. Approve Planning Commission Calendar for 2010

Tom Burdett noted that the proposed schedule is a result of the changes made by City Council, which moved the meeting dates to the first and third Tuesday of each month.

MOTION: Ellen Smith moved to approve the Planning Commission calendar for 2010. The motion was seconded by Nathan Gedge and passed 7-0 in favor.

Tom Burdett said the next General Plan Committee meeting is on November 10th to discuss Urban Design. The elements of the plan will be presented to the Planning Commission for their recommendation beginning the first part of next year.

Nathan Gedge congratulated Commissioner Nichols on his recent election to the City Council.

MOTION: Nathan Gedge moved to adjourn.

The meeting adjourned at 7:25 p.m.

David McKinney
Vice Chair

ATTEST:

JULIE DAVIS
Executive Assistant
Community Development

Approved this _____ day of _____, 2009