

**NEWBERRY COUNTY COUNCIL WORK SESSION
MINUTES
September 18, 2024**

Newberry County Council met on Wednesday, September 18, 2024, at 5:01 p.m. in Council Chambers at the Courthouse Annex, 1309 College Street, Newberry, SC, for a Work Session.

Notice of the meeting was duly advertised, as required by law.

PRESENT: Todd Johnson, Chairman
Robert Shealy, Vice-Chairman
Leon Fulmer, Council Member
Les Hipp, Council Member
Travis Reeder, Council Member
Karl Sease, Council Member
Johnny Mack Scurry, Council Member
Jeff Shacker, County Administrator
Joanie Winters, County Attorney
Eric Nieto, I.T. Director
Andrew Wigger, Clerk to Council/PIO

MEDIA: Kelly Duncan, The Newberry Observer

Mr. Johnson called the meeting to order at 5:01 p.m.

1. Discussion of a proposal to allow the keeping of hens as a conditional use within residential zoning districts, subject to minimum standards.

- Mr. Shacker discussed the previous ordinance that would allow, as a conditional use, keeping of hens in the residential districts, as they are currently not allowed.

This ordinance would not impact R2 (rural) as they already allow for chickens. Mr. Shacker said the way zoning works, you identify uses that are permitted on those properties and they are placed in a table, broken up into permitted, conditional, and special exceptions.

- Mr. Shacker showed a new tool developed by Mr. Brian Kelly, GIS, that shows how many districts within Newberry County are R2 (which can have chickens, and this ordinance does not modify in any way) and how the majority of the county is zoned this way. Mr. Shacker then showed the other zoning districts that this ordinance does impact.
- Mr. Shacker showed the size of the districts impacted just in case council decided to go into the direction of allowing hens based on the size of the property.
- Mr. Hipp said if you allow hens by size, no matter what, you are eventually going to get a border where someone with a smaller lot is allowed a smaller amount of hens and the owner at the adjoining property can have more, and it doesn't matter if the adjoining property is R2, you are always going to have a case if you do it by size where the neighbor can have as many as they want, or in some other cases the neighbor is going to have a larger number of hens, and you may have a limited number. He said if you do it by size, you are going to always have a case where your neighbor has the opportunity to have more hens than you. Mr. Hipp said if you keep reducing the number of hens by the size, that would be a burden to the Newberry County Zoning staff to administer.
- Mr. Reeder said a lot of the phone calls he has received were complaints about chickens running all over the place, into neighbors' yards, or the smell.
- Mr. Shacker said the details can change, but they tried to bring them an ordinance that struck a balance, giving an

owner the ability to have hens while also not impacting neighboring property owners.

- Mr. Hipp said there is no way they can zone this where you make everyone happy. He said they do have, under R2, throughout the county that this does not apply, and this is impacting a very small population in the county. He said he would venture to say within that small population, there are a lot who do not even want hens. He said they are going to great lengths, like they should, to protect freedoms and liberties, but they cannot make everyone happy.
- Mr. Fulmer said he agrees with what Mr. Hipp said and added that they will not satisfy everyone. He said he does think they need to do this, to allow this to be a minimum conditional use for those folks that do want to have hens. He said he has gotten way more phone calls the past couple of weeks prior to their last meeting regarding chickens. He said of all the folks that have called, the major complaint they have had has been around whether they will smell it, see it or hear it. He said some were concerned by an environmental standpoint, but if you look at the numbers these six hens will produce way less of an environmental concern compared to bigger dogs. He said the concern of hens running loose, they did not want that, they were concerned by a look of a chicken coop, they did not want to see it and they were also worried about smell. He said most of the folks called him thinking they were trying to ban chickens, all together. He told them no, that is not what they were trying to do, they were trying to do the opposite. He said then he had calls from people who were on larger tracks who realized they were not zoned R2, including one gentleman who had 30 acres. Mr. Fulmer said he likes the idea of setting it by the size of the property because of the people who were captured in that zoned area, he likes the idea of

giving them more than six hens. He said he understands you have one property that is allowed to have more hens than a neighbor. However, he said if he has an acre worth of land, he should not have the expectation to have as many hens on his property as a neighbor who has 30 acres and that is not a reasonable expectation. He does not think an owner with thirty acres should not have the liberty taken from him to have more than six hens. He does understand they may be difficult to implement, but he does not want to take that liberty away from someone who has that many acres. Mr. Fulmer added that the sighting criteria about being screened, chickens maintained inside a structure, needing a plan in place to handle the manure; he thinks all of that that is needed to eliminate the possibility of the concerns residents have had regarding, smell, eyesight, and the noise. He thinks the ordinance proposed does that, but he does not like the idea of what the use of an individual with a larger track of land is limited to and he thinks they need to come up with something different.

- Mr. Hipp said he does not disagree, but he is thinking about implementing the law and they currently have laws on the books that they are not implementing and that is a bad place to be. He said he likes what Mr. Fulmer is saying, and he thinks they should allow up to six hens on certain residential districts (R2 no limit), then they can have conditional approval, if you have larger property and you want more than six, you can go and apply for a conditional approval and the conditions can be set up by size of property not by districts. They can be approved by the district with requirements, but if you have a larger property and you want more chickens than that you can ask for conditional approval by the size of your property.
 - Mr. Fulmer asked if that would put more of a burden on staff to make that judgement call. Mr.

Hipp responded by saying but if you have someone with 4/10 of an acre and someone with 5/10 of an acre, one has a bigger house and the land size is almost the same and you've limited one with chickens and the other has more, to him, you go to the zoning staff and there will be a cut off with acreage.

- Mr. Hipp said you have limited one person who said they want six chickens and then they go out and buy more. He said they do not have zoning people to go out and count chickens.
 - Mr. Shealy said bottom line, they are trying to make it better than what they currently have on the books because right now, they are not supposed to have any.
- Mr. Sease said the majority of the calls he received were regarding permits and how much of a fee they will have just to have chickens on their property.
 - Mr. Shacker said he should clarify this point; the county does have a fee to go out and mark the location of a principal structure or accessory structure, that is what the chicken coop would be. He said there is a charge for that and the rational is to send a county employee to go out and take those measurements, so it really is not a permit fee but a fee to verify setbacks.
 - Mr. Fulmer said he had calls regarding that issue as well, and he told them it is a situation where you are requiring an employee to go out to someone's property to ensure you are not encroaching on another individuals' liberties and freedoms, you have to pay a fee for that and the individual who utilizes that program, pays for that program. He said that is not just county, but state and federal too.

- Mr. Sease asked for clarification, if someone is going to have chickens on R2, do they need to have a permit and have someone come out and take a look.
 - Mr. Shacker said no, it is a permitted use and the only thing with R2, if there is construction for a building the county verifies setbacks and marks that. He added in R2, there is no requirement to have a chicken coop.
- Mr. Johnson said he thinks they had a little bit of bad media that said they were going to limit chickens and that was never the intent. The intent was to open the door and not close the door. He said he would remind everyone they are in this because of bad neighbors, he said they assume that one neighbor would go to another and say, "I don't like what you're doing." And the neighbor would go, "I'm sorry, I'll fix that." But the truth is those days are really nonexistent now. He said he thinks they need to do this. He added that something along the lines of the acreage versus the district and he likes Mr. Hipp's idea of conditional use (for those with many acres). He said he also feels they should be cognizant of the fee, and they do not want people to think they are trying to tax them to use their own land when it is the opposite. He said he thinks there needs to be a balance, and he said they started this because a resident called the county out for not enforcing the rule and the last thing, they want to get into is deliberate indifference which is a cause of action. He added that he thinks there is a compromise, but with compromise both sides end up mad at you.
- Mr. Hipp said they got a lot of concerns from residents that they were taking away freedoms and liberties. He said he heard someone comment about their ordinance

and he thought that cannot be right, and it was right. He said when the ordinance was accepted, and they were probably short on time and in a hurry and they adopted boiler plat language and some of that boiler plate language does not fit the county or their circumstances. So, the comment about shrubbery and distance to trees, that was originally used to restrict in a commercial development or housing development, that was not in any way to restrict people throughout the county how they put shrubbery in their yard. He said they do need to go back through the ordinance, and if they have a law they are not implementing, they need to eliminate it.

- Mr. Johnson said they have an interest in this, but they would like to see it worded different. He then requested staff go back to the drawing board.
- Mr. Fulmer said he thinks they need to have some language in there if the adjoining neighbors are okay with the chickens, maybe there is a waiver that needs to be obtained, if the neighbors are okay with that.
- Mr. Johnson added that he would like to see something added in about frivolous complaints and if you have so many frivolous complaints against your neighbor, you are fined for that because then you are using the county to wage war against a neighbor.
- Mr. Hipp said if you have a conditional use, using what Mr. Fulmer said, one of the conditions is you do not have objection from a neighbor, and if you do not have objection, you can have more. Mrs. Winters recommended going the other way and Mr. Johnson said he would like it better to have support rather than no objection.
- Mr. Reeder said if you are living in a residential area you have to have some restrictions. Mr. Johnson said he agrees and if you have someone on a half-acre lot next to someone with 300 chickens.

2. Legal Matter(s):

a. Discussion of matters related to Newberry County's local floodplain management program and participation in the National Flood Insurance Program pursuant to SC Code of Laws Section 30-4-70(a)(2).

- Mr. Hipp made a motion to go into Executive Session; Mr. Shealy provided the second and the motion carried 7-0.
- Newberry County Council went into Executive Session at 5:43 p.m.
- Mr. Reeder made a motion to come out of Executive Session; Mr. Fulmer provided the second and the motion carried 7-0 at 5:57 p.m.

3. Adjournment.

- Mr. Shealy made a motion to adjourn; Mr. Reeder provided the second and the motion carried 7-0 at 5:57 p.m.

NEWBERRY COUNTY COUNCIL



Todd Johnson, Chairman



Andrew Wigger, Clerk to Council

Minutes Approved: 10-07-24