

**Docket Number:** 23/13240

**Appellants:** Jessica & Mark Cochrane  
(Property Owners), 2240 SE 116<sup>th</sup> Street,  
Runnells, IA 50237

**Appeal:** Variance to increase the maximum total number of livestock animals permitted on the subject property from four (4) to six (6).

### **Background**

The subject property is located at 2240 SE 116<sup>th</sup> Street, Runnells, and is legally described as Lot 2 of Rhoten Acres, being within Section 14, Township 78 North, Range 22 West of the 5<sup>th</sup> P.M. (Camp Township). The subject property is approximately 4.27 acres in size and is zoned "RR" Rural Residential District. The subject property is located approximately three (3) miles north of the City of Runnells, and near the southwest corner of the intersection of SE 116<sup>th</sup> Street and SE Miller Drive. Surrounding properties are all zoned "RR" Rural Residential District, and properties adjacent to the north, east and west contain existing single-family dwellings. The property adjacent to the south, as well as to the east on the east side of SE 116<sup>th</sup> Street, are currently in row crop production. See *Attachment A* for a vicinity map of the subject property and surrounding area.

The subject property is "L"-shaped having approximately 150 feet of frontage to the east onto SE 116<sup>th</sup> Street, and widens out in the western two-thirds of the lot to a width of approximately 396 feet (north to south). The lot has a total depth (east to west) of approximately 600 feet. The subject property was created by the subdivision plat of Rhoten Acres, which was approved by Polk County and recorded in 2008. Rhoten Acres created the subject property (Lot 2) as well as an additional approximately 32.90-acre lot (Lot 1) adjacent to the north. Lot 1 was subsequently re-subdivided into a total of five (5) single-family lots. Four (4) of those five (5) lots contain established single-family residences. The subject property contains an existing single-family residence that was constructed in 2018, as well as a number of accessory structures, including structures for the housing of animals kept on the property.

### **Summary of Request**

The Polk County Zoning Ordinance, *Article 4: Use Regulations, Division 7: Animal Regulations, Section 1. Keeping of Animals, D.3* states: "No livestock; including pigs, cattle, sheep, goats, horses, or other large domesticated animals shall be kept on parcels smaller than one (1) acre. On parcels of one (1) acre in size one (1) such adult animal is permitted. For every additional acre in excess of one acre, any combination not to exceed one (1) additional adult animal in this class shall be permitted. There is no limit on the permitted number of juvenile (less than 6 months old) animals permitted on the property provided they are offspring to the adults currently on the property." The subject property is approximately 4.27 acres in size, which allows a maximum total of four (4) livestock per the Ordinance. The appellants currently have a total of six (6) livestock (3 horses, 1 pony and 2 goats) on the property, and are requesting a Variance to increase the maximum total number of livestock permitted on the property from four (4) to six (6) in order to retain their existing livestock animals. See *Attachment B* for a copy of the Variance Appeal Application, including narrative explanation from the appellants. See *Attachment C* for a copy of letters submitted by the appellants, including a physician letter stating the livestock and chickens kept onsite are for emotional support, as well as a letter from their animal caretaker.

Staff mailed out a total of nine (9) notices regarding this request, including the date and time of the public hearing, to surrounding property owners within the 250-foot notification boundary. To-date staff has received one (1) response in support, and three (3) responses in opposition, of this appeal.

### **Additional Background & Emotional Support Animals**

Staff became aware of the fact that the appellants have more livestock than permitted by the Ordinance due to a complaint. It's worth noting that the appellants and a neighboring property owner have submitted numerous complaints regarding each other's properties to staff over the last several months. Staff have investigated each complaint and responded appropriately, including enforcement action being taken on legitimate violations. Once staff became aware that the appellants had too many livestock, they were given the option to either remove animals or request a variance. The appellants were given the deadline of the October 2023 Board of Adjustment meeting to request a variance before facing formal enforcement action. In communication with the appellants over the last several months on this issue, they have stated the animals kept on their property are for emotional support. As earlier referenced in this report, see *Attachment C* for a copy of a submitted letter from the appellant's physician stating the livestock and chickens kept at the property are for emotional support.

The Polk County Zoning Ordinance does not address emotional support animals directly, however staff has coordinated with the County Attorney's Office regarding this claim by the appellants. The Attorney's Office opined that the County is subject to Federal and State Laws, including the Fair Housing Act, the Rehabilitation Act and the Iowa Civil Rights Act, requiring the County to provide reasonable accommodations for emotional support animals. The Zoning Ordinance does place limits on the number of animals that can be kept on properties within the unincorporated areas of the County, including dogs, cats, livestock and other small domesticated animals (poultry, rabbits, or similar). However, based on the size of the appellant's property (~4.27 acres) the Ordinance allows them to have up to three (3) adult dogs (6 months or older), three (3) adult cats (4 months or older), four (4) livestock, and 48 other small domesticated animals (poultry, rabbits, or similar). Additionally, the Ordinance does not restrict the number of juvenile (less than 6 months old) animals, including dogs, cats, livestock and other small domesticated animals, provided they are offspring to the adults currently living on the property. Therefore, the Ordinance does in fact permit a number of animals, whether emotional support or otherwise, to be kept on the subject property. The animal regulations place reasonable restrictions on the maximum number of animals that can be kept on an individual property, with the intent of balancing individual interests of property owners wanting to possess animals with the broader public interest of preventing overcrowding, excess waste and related public nuisances.

### **Natural Resources**

The subject property contains a few mature trees throughout, but no large clusters of woodlands. The site topography gradually slopes from south to north, with a high elevation of approximately 900 feet adjacent to the south lot line and a low elevation of approximately 880 feet adjacent to the north lot line. There is a platted 50-foot wide drainage easement that runs south to north along the low point of the topographical relief of the property. There is no mapped floodplain or other known environmental hazards or features.

## **Roads & Utilities**

The subject property has 150 feet of frontage to the east onto SE 116<sup>th</sup> Street, including an existing driveway entrance and access serving the property. SE 116<sup>th</sup> Street is a paved, two-lane rural cross section minor arterial roadway maintained by Polk County. SE 116<sup>th</sup> Street provides connectivity north to NE University Avenue (Hwy 163) as well as connectivity south to the City of Runnells. The property is served by public water provided through the rural water system, which is owned and maintained by Des Moines Water Works. The existing residence is served by a private wastewater treatment system located directly north of the existing residence.

## **Recommendation**

**The Board of Adjustment may grant a variance if items 1 through 5 are affirmed.**

- 1.) Are there exceptional or extraordinary circumstances or special conditions applying only to the property in question and which do not exist generally on other properties in the same zoning district which makes it impossible to place a use permitted in the district on the property?  

No. The subject property is permitted by the Ordinance to keep up to four (4) livestock animals, as well as a number of other animals, including dogs, cats and other small domesticated animals. There is not a unique circumstance or special condition related to the subject property that prohibits the keeping of animals, or warrants a variance to increase the maximum number of animals permitted.
- 2.) Is the variance necessary for the preservation and enjoyment of property rights possessed by other properties in the same zoning district in the same vicinity? (No variance can permit uses that are prohibited in a district)  

No. The keeping of up to four (4) livestock is permitted on the subject property, based on the total area of the site. All properties in unincorporated Polk County are subject to the same livestock restrictions based on zoning district and acreage.
- 3.) Will the variance preserve adjacent property and support the purpose of the ordinance and the public interest?  

No. The animal regulations are intended to balance the individual interests of property owners wanting to possess animals with the broader public interest of preventing overcrowding, excess waste and related public nuisances. The regulations are a reasonable means of maintaining neighborhood character and preventing nuisances to adjacent property owners and the greater public.
- 4.) Is there a special condition or circumstance that did not result from the actions of the applicant?  

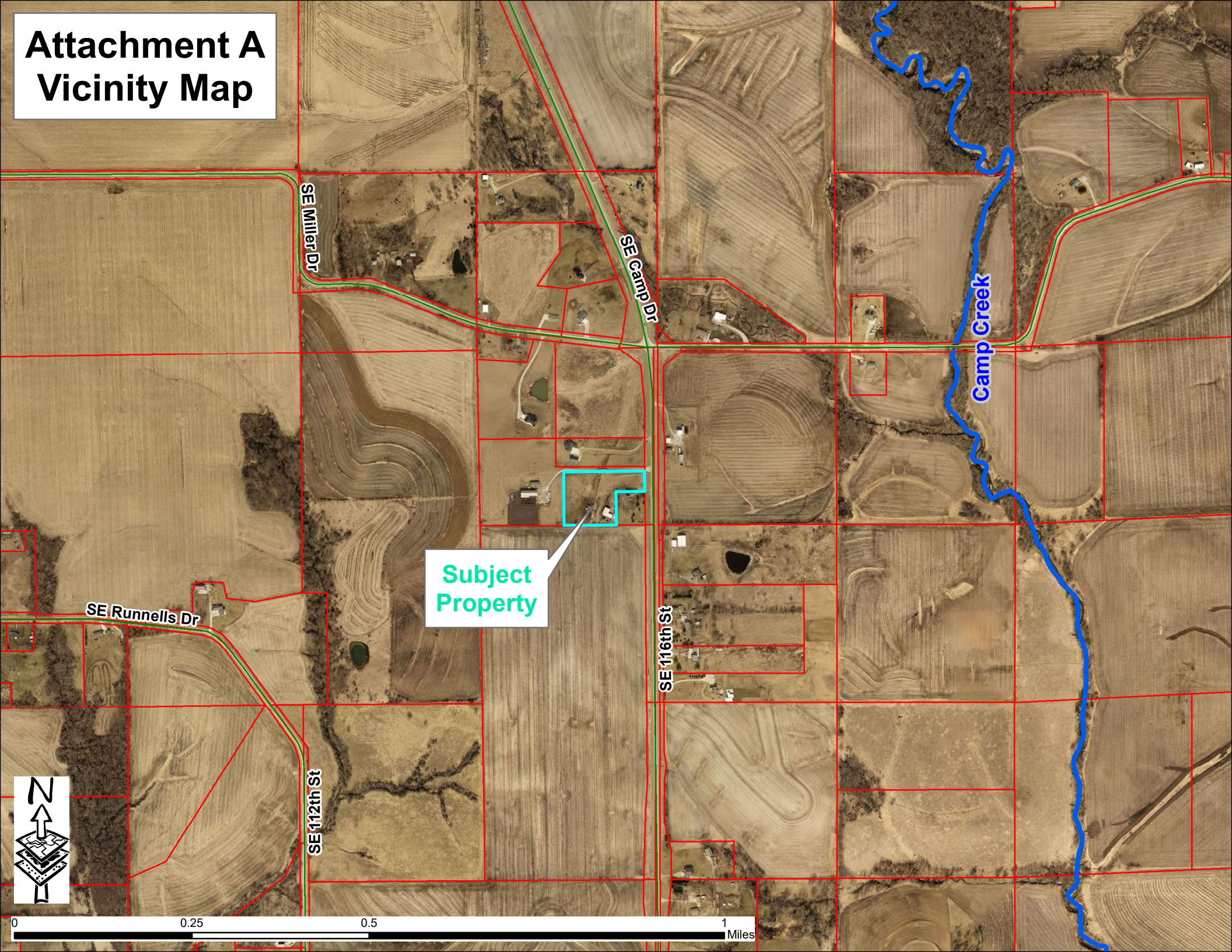
No. The appellants own the subject property and have created the condition of having more than the allowed number of livestock animals on the property.

- 5.) Does the variance support the intent of Article 7 Natural Resource Protection and Article 8 Stormwater and Erosion Control Management of the Polk County Zoning Ordinance?  
Yes. There is no impact upon these regulations.

The Board of Adjustment may grant a variance if items 1 through 5 are affirmed. Since items 1-5 were not answered in the affirmative, staff recommends denial of the requested variance.



# Attachment A Vicinity Map



SE Miller Dr

SE Camp Dr

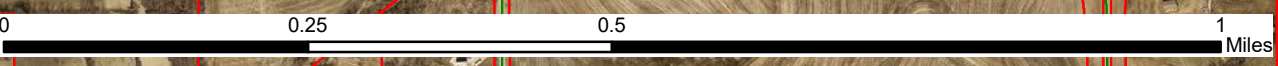
Camp Creek

SE Runnels Dr

SE 112th St

SE 116th St

Subject Property





# Attachment B

## Variance Appeal Application



### Board of Adjustment Authority

The Polk County Board of Adjustment is empowered by Iowa law and by the Zoning Ordinance of Polk County to hear requests and to make decisions on variance appeals to the Zoning Ordinance for individual properties where provisions of the Ordinance impose a unique and unnecessary hardship on the property owner and where the granting of a variance is not contrary to the intent of the Zoning Ordinance or to the public interest.

Each variance appeal is only a request to have a hearing before the Board of Adjustment. Notice of the hearing will be provided to all property owners located within 250 feet from the subject property. The Board of Adjustment will make a determination at a public hearing whether or not to approve or deny the request based on a staff report, applicant presentation, as well as public input. All appeals that are denied shall not come back to the Board of Adjustment for one year. Refunds will not be made once notice has been sent out to adjacent property owners.

Please complete the entire application and review the Variance Regulations on page 3.

1. The undersigned applicant requests that the Board of Adjustment consider this application for a variance appeal for the following general purpose. (Describe briefly the request)

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(time stamp)  
Official Use Only

2. Subject Property Address: \_\_\_\_\_

3. Subject Property Zoning District: \_\_\_\_\_

4. District and Parcel Number: \_\_\_\_\_

5. Subject Property Legal Description (attach if necessary):

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6. Filing Fee: \$353.00 per variance (each provision requested for a variance is considered a separate variance request)

7. Applicant(s) Information:

Applicant (Print Name) \_\_\_\_\_ Signature \_\_\_\_\_ date \_\_\_\_\_

Interest in Property (owner, renter, prospective buyer, etc.) \_\_\_\_\_ Email \_\_\_\_\_

Address, City, State and Zip \_\_\_\_\_ Phone \_\_\_\_\_ Fax \_\_\_\_\_

8. Applicant(s) Representative:

If the appeal is going to be represented by someone other than the applicant please provide that information below

Applicant Representative (Print Name) \_\_\_\_\_ Firm or Business Name \_\_\_\_\_

Address, City, State and Zip \_\_\_\_\_

Email \_\_\_\_\_ Phone \_\_\_\_\_ Fax \_\_\_\_\_



## Appellant Narrative

We would like you to allow us the variance for our extra animals, unfortunately we have an ongoing feud with the neighbor to the west of our property. Mr Bauer had turned us into the county even before he owned the property. We were building our forever home and living in our camper on our property. The county guy ( Gary Denning ) came out and stated the county would not have cared. Unfortunately someone turned it in. he has continually retaliating against us. Due to the fact that we turned him into the county for running his business from his residential property with his son, as he still does as of today. He has been taken to court twice by the county and ordered by the judge to stop. I am working with the County Attorney Dominic and Brian at the county as i was asked to be the eyes and ears for them and to let Brian A. aware of his actions. With that being said, the relationship with our neighbor has not been a friendly atmosphere. As that was not our intention.

All the animals on the property are my ( Jessica's ) ESA Emotional Support Animals. I Jessica have been under doctor care for my anxiety, depression and grief after losing my parents. Now the added stress and constant intimidation from our neighbor has intensified my anxiety and depression. Now here he is causing additional stress to us. It would be detrimental to myself ( Jessica ) my animals are my everything, they are my family. They bring me peace and happiness. 6 years ago it was our hopes and dreams to buy land and build our forever home along with our animal. Please don't take away what brings me joy and happiness to myself and my family.

Just for reference here is a little information on what has been happening with Mr. Bauer and ourselves. It is very unlikely if you were to contact Mr. Bauer he will not agree to allowing the variance, I had to put up no trespassing signs in the last two weeks as he is driving in our ditch and leaving tire ruts with his gator. I put the sign up and that night he ran it over, called sheriff out they went up and talked to him, put sign back up he burned it, called sheriff out again and they wrote up an incident report and I was advised to put up cameras, i put another sign up and they stole it. unfortunately the cameras were blocked from behind so was no proof of them stealing it. I then put up twine rope with the signs attached and he turned me into the county and guy came out and stated it was dangerous for cars and motorcycles passing by and a highway, so i put boulders from property line to culvert and he called county again the very next day. Had to remove them. County guy asked him to stay off property and not to drive his gator in our ditch. We own and maintain it.

Mr. Bauer continues to try and find something to turn us into the county. I am asking you please to allow us to keep our animals, they are not working farm animals they are our ESA Emotional support animals for my health. We feel it is condescending of him to constantly trying to get us in violation of codes and laws, but he continues to do so himself. We have and have no intention of breaking any codes or laws. We have a beautiful property and are continually adding to our property. We have planted several trees around our property along with several fruit trees. I have attached a letter from our ferrier along with my ESA letter from my doctor. Here is an additional list of items he has turned us in for. Living in our camper while building our forever



home, Welfare checks on children, more that twice. Non running septic, non running water, Septic Inspection, Aging pallets for our pallet wall in our home, Obnoxious weeds, swimming pool, fence around pool, ( we had a privacy fence along the west side to block his view as he has cameras pointed at our property. non registered vehicles, non running older vehicles, just this year he has turned us in for, to many large animals, non running older vehicles ( again) Non registered vehicled ( again ) Aging pallets for our wall, ( again ) Obnoxious weeds ( again ) Swimming pool ( again ) Pool deck. We hope you can find in your heart to allow us this varience as it would be deeply heartbreaking to have to rehome my furbabies, as i am very attached to them and have been on our property since day one.

Sincerely

Mark & Jessica Cochrane





**Primary Health Care at Mercy**  
250 Laurel Street Des Moines, IA 50314  
(515) 612-9595 Fax: (515) 643-4662

**CERTIFICATE FOR ESA**

August 15, 2023

**Name:** Jessica Cochran  
**DOB:** 01/06/1971

**To Whom It May Concern:**

This letter serves as an emotional support letter for Jessica Cochran in regards to her animals. The following animals which include; 3 Horses, a mini pony, 2 Dwarf Goats, several Chickens. These animals serve to provide her emotional support and I can attest that they have significantly impacted her in a positive way with regards to her well-being. I whole heartedly support this effort and please contact me for further questions.

Sincerely,

A handwritten signature in red ink, appearing to read "Ahmed Issa, MD, MBBS".

**Ahmed Issa MBBS**  
**Primary Health Care at Mercy**



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**Larry Pierick "BearFoot Horse Trimming, LLC**

515.460.2860

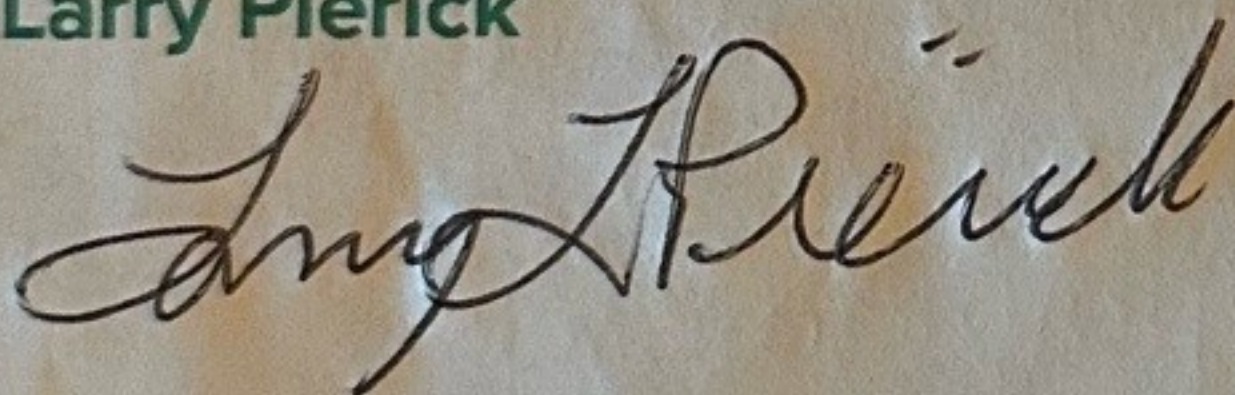
8th September 2023

**To whom it may concern**

I have been in the business for 20 years. I have a 4 year degree in Ag Studies and Operation, Minor in Agronomy and Animal Science. With Iowa State University. I have been trimming two of the horses for the past two years, along with trimming others in the last year on a regular 6 weeks schedule. All animals are in good health. I would never consider the mini pony and the two dwarf goats a full animal size.

Sincerely,

**Larry Pierick**

A handwritten signature in black ink that reads "Larry Pierick". The signature is written in a cursive style with a large, prominent initial "L".