

CARVER COUNTY PLANNING COMMISSION
Work Session – December 18, 2018
Minutes

Members Present: Randy Maluchnik, (sitting in for Jim Ische), Jim Burns, John P Fahey, Frank Mendez, Scott Smith, Gabrielle Theis

Members Late: None

Members Absent: Jim Ische, Mark Willems

Staff Present: Emily Schmitz, Jason Mielke, Paul Moline, Adriana Atcheson, Jennifer Tichey

Pursuant to due call and published notice thereof, the December 18, 2018, regular meeting of the Carver County Planning Commission was called to order by Chairman Burns.

Minutes – A motion was made by Fahey and seconded by Theis to approve the minutes from the November 20, 2018 meeting. All voted aye. Motion carried.

Work Session – 2040 Comprehensive Plan – Chairman Burns called the work session to order at 7:00 p.m. to consider updates and review information on the proposed 2040 Comprehensive Plan

The following were present: Wayne Hubin, Steve Yetzer, Doug Weber, Mike Lynch

Paul Moline, Planning & Water Manager, gave a brief history of the Comprehensive Plan development process to date and introduced Adriana Atcheson, who presented the draft plan and highlighted some of the information that was received during the 6-month comment period. Moline encouraged comments and input from the Planning Commission members prior to bringing this document to the County Board.

Atcheson reiterated the work session is for reviewing and discussing the land use comments received concerning the draft 2040 Comp Plan 6-month review period which ended in November. The Comp Plan is a guiding and directing document used to shape the growth and development of the County for the next 20 years and is required to be updated every 10 years. All the Counties and Cities in the Twin Cities metro area are currently updating their plans. The update is guided by the Metropolitan Council. The due date is December 31, 2018, however, Carver County is in the process of applying for an extension for a due date of June 30, 2019. She used a timeline to illustrate and explained the development thus far and what needs to take place to meet the deadline of June 30, 2019. A public hearing will be held in early 2019, with the hope that a final plan will be submitted to the Met Council in April. Comments for tonight's discussion were organized into three categories: Transition Areas, Changes to Township Chapters, and Solar Energy. Ms. Atcheson explained each category/issue and encouraged comments

and questions. All the comments received during the review period will be responded to prior to the public hearing in 2019.

Transition Areas – Laketown Township has concerns with the strictness of the current Transition Area policies concerning additional density development. Atcheson identified the comments in the memo concerning this issue and also illustrated the transition areas for each city with a map. The maps also compared the Transition Areas identified in the 2030 Comp Plan to the Transition Areas in the 2040 Draft Comp Plan. Three options were proposed to address the Transition Area issue: 1) Keep the current Transition Area policy (no changes), 2) Revise the Transition Area policy to allow Conditional Uses for additional density up to 4 residential dwellings per quarter/quarter, provided they are compatible with the annexing city's future growth and zoning plan, and 3) Revise the Transition Area of Laketown Township to match the 2030 Transition Area. Staff recommends both options 2 & 3 to address this issue.

Mendez asked for copies of the maps that were presented illustrating the Transition Areas and the submitted comments and comments from staff.

This clarified that the staff recommendation is a combination of options 2 and 3.

Paul Moline reiterated that was correct. He clarified that the way this is currently written, it would affect the Transition Areas around the County, not just Laketown Township. Laketown Township has the largest Transition Area. Some of the Orderly Annexation Areas state specifically the density that is allowed in those areas, which supercedes the Comp Plan. Moline stated the Transition Area concern was raised from residents who had an issue with land rights being restricted 20+ years into the future, as there was also uncertainty on where the city would be growing. There seems to be more certainty in 10 years than in 20 and beyond.

Fahey asked for review of the building eligibility transfer rules, referring to a submitted comment.

Moline stated there was an amendment with the last Comp Plan which allowed for Townships to opt for building eligibility transfers to non-adjacent parcels within the same taxing districts.

Doug Weber, San Francisco Township, would like it clearly stated that if there are specific details addressing density options in an Orderly Annexation agreement, that language supercedes the language in the Comp Plan.

Requests of Specific Townships –

Hancock Township requested removal of the Rural Service District Areas in their Township. The proposed options for this request are: 1) Keep the RSD Areas, 2) Remove the RSD Areas from Hancock Township's chapter of the Comp Plan and County Land Use Plan. Staff recommends that the Township be allowed to remove the RSD Areas from their Township Chapter and the County Land Use Plan.

Smith asked for an explanation of the RSD Areas.

Atcheson provided a map showing the areas.

Burns stated there are 2 RSD Areas in Hancock Township; the south half of the Gotha area and Assumption.

Mendez asked why the township would request that the designation be removed.

Atcheson shared the comment from the Township stating that there has been little or no business activity in these areas for a long time, and they felt there is no longer a need for that overlay.

There was no opposition expressed on the staff recommendation.

Watertown Township – requested language be added to allow each Township the ability to determine if commercial outdoor rifle and handgun ranges are an acceptable land use within their respective Township. This would be an option similar to the current language to opt out of golf courses. Shooting ranges are currently considered an allowed use and fall under Policy LU-21, Large Scale Activities with Unique Land or Location Needs. Possible options to address this are: 1) No change to the County Policy, each Township could adopt their own ordinance for regulation, or 2) Change the County-wide Land Use Policy. Staff recommends no change, because no other Township has requested or supported this change.

Maluchnik asked what action has taken place at the Township level for these requests.

Moline stated that a resolution was passed concerning this issue.

Hubin stated there are none existing but has some inquiries to restrict.

Theis asked if the Townships can currently adopt their own ordinances regulating or prohibiting gun ranges in their township.

Moline confirmed that townships can adopt their own ordinances and could restrict gun type, size, and many other criteria. The Township ordinance must be more restrictive than the County policy.

Maluchnik asked if there are any legal issues that should be considered in allowing a separate township ordinance.

Jennifer Tichey, Carver County Attorney's Office, verified that the townships are entitled to adopt their own ordinances and it is advised that they seek legal counsel to establish that. The Township ordinance would need to be no less restrictive than any County ordinance.

There was no opposition expressed on the staff recommendation.

Building Eligibility Transfers – Laketown Township – the township requested that building eligibility transfers be allowed beyond the same taxing districts, possibly township-wide transfers, or at least without regard to the watershed district. The current policy requires that a 1 per 40 building eligibility can be transferred to a non-adjacent parcel within the same taxing district, if the township has provided for this option in their chapter of the Comp Plan. Atcheson illustrated the different taxing districts, specifically the watershed taxing districts, within Laketown Township. Possible options to address this concern are: 1) No change to the current policy, 2) Allow townships to transfer building eligibilities between watershed taxing districts. Staff recommends option 2, which is primarily an issue of concern for Laketown Township.

Burns asked why this request is unique to Laketown Township and not to others. He noted that Hollywood Township has multiple school districts and a transfer would affect the school tax revenue.

Moline clarified that the recommended change would only affect the watershed districts and not any other taxing districts. He stated there are townships that do not have more than one watershed district, however, Laketown Township has multiple. He stated the Township did not want to allow transfers between school districts, and the tax revenue for the watershed is minimal. Initially, when transfers to non-adjacent parcels was allowed, the intent was to not take away a large amount of revenue from one taxing entity and transfer it to another.

There was no opposition expressed on the staff recommendation.

Solar Energy – Atcheson highlighted and categorized some of the submitted comments concerning solar energy development within the County. Possible changes to the policy include: 1) Keep the existing language which was previously approved by the Board, 2) Strengthen policy language regarding restrictions on use of prime agricultural land, 3) Add language to clarify types of uses which would fall under energy production, 4) Add language to clarify types of uses which would be considered to serve a community purpose. She noted that some of the comments in the memo concerning solar issues, can and should be addressed in the land use ordinance and not the Comp Plan.

Mendez commented on some of the submitted comments. He agreed that it be prohibited on prime ag land. He strongly agreed that solar energy not be referred to as an essential service, and also to increase the distances between solar energy systems and non-participating residences. He asked for more information to better understand the decommissioning process and the requested map for the Met Council.

Theis stated that very specific decommissioning requirements would be helpful. She felt it is important to set standards for equipment removal and how the decommissioning escrow funds are held.

Mendez echoed the importance of defining the decommissioning funds and process for equipment removal.

Maluchnik understood the decommissioning plan to be an agreement between the landowner and the solar company and asked if the County should even be a part of that private enterprise. He asked for legal counsel on the County's options for the decommissioning process.

Tichey stated that the current language recognizes decommissioning as a private matter between the landowner and the solar company. Concerns have been expressed throughout the permitting process that the County could be held responsible for site clean-up in the case of bankruptcy or abandonment. She stated that more stringent decommissioning requirements have been implemented into the conditions of a permit. She stated that other counties may have more explicit decommissioning requirements in their land use ordinances. She stated more discussion could determine whether this issue should be addressed in the land use ordinance or the comp plan. She maintained that the decommissioning is a private matter between the landowner and the solar company.

Maluchnik asked enforcement process and the County's obligation at that time.

Tichey stated it is uncertain exactly what enforcement action would take place, whether through a lien or court action or some other measure.

Maluchnik stated he likes the idea of having an escrow for the decommissioning process because it provides some protection in the case of bankruptcy.

Mielke stated the decommissioning requirements are placed as conditions on a land use and belong in the Zoning Code. If the requirements are defined in the Zoning Code, it will help with enforcement procedures.

Maluchnik asked if there is escrow money held for other types of activities in the County.

Moline stated that escrow money is collected for WMO permits and septic projects, which is indicated in the current ordinance.

Maluchnik felt this is a precedence already in place and requiring escrow for decommissioning would be appropriate.

Fahey agreed that working on the definition and standards would be helpful with any future projects.

Maluchnik asked about a Land Use map with regard to the Met Council requirements.

Atcheson stated the draft Comp Plan was submitted to the Met Council, and one of their comments was that a map was a requirement for the Plan to be complete.

Moline stated that the solar suitability analysis map was rather confusing and was not included with this presentation. The map showed areas where sunlight shines in the County and was deemed highly suitable for solar, with the exceptions of very low areas such as a ravine. He surmised that the Met Council requirement may be directed more toward cities with tall buildings, etc., but that the map requirement was the same for all entities.

Mendez strongly opposed the use of the word 'suitability' and asked for a definition of what that might mean for the future.

Chairman Burns directed staff to do more research on the use of the term 'suitability'.

The question was raised if suitability referred to having three-phase power lines available and a specific distance from residences.

This suggested that if the Met Council is requiring that term to be used, that it might be best to add local definitions of what is suitable to add more context to the map.

Moline recommended submitting the map as it is currently available, and adding language and context explaining what is and isn't suitable and how it relates to our county.

Mendez maintained that caution with the use of the word 'suitable' and how that could be interpreted.

Doug Weber also asked that the term solar 'garden' be changed to solar 'power plant'.

This asked what the staff recommendation was for this issue.

Atcheson stated that staff did not provide a recommendation for this, but wanted to hear comments and feedback about potential changes that should be made.

Burns asked how prime agricultural land is defined and how restrictions could be placed on it.

Mielke stated there are standards in the Zoning Code that define prime agricultural soils and other soil classifications. He stated that the soil maps are from the '70's for determining any of the uses based on soil types.

Burns stated that soil types alone may not be a true indicator of prime ag land. Drainage, soil fertility and other factors could be considered.

Fahey stated some landowners may have different opinions whether their land is prime ag or not also.

This suggested conducting current soil borings or testing to indicate the soil type or strength at the cost of the solar company.

Moline stated currently one of the factors to be considered for a site is prime ag land. It doesn't say restricted based on an amount, but just considered as one of the factors.

Mielke explained how the language is used to consider and restrict prime ag land in a new residential lot. He read the definition which described land and was based on soil type.

This stated that she would support continuing to have prime ag as one consideration, an important consideration for the Planning Commission, but not a disqualifying factor for a request.

Fahey asked if the size of solar gardens are regulated, then the number of acres of land needed is also regulated by default.

Mielke stated that solar gardens are limited by the Zoning Code to a maximum of 1MW in size, which does limit the physical size of the project. The required buffer distance between solar gardens and the minimum setback to residences also restricts the areas available for such projects.

Many of the commission members felt that with the current requirements, the use of prime ag should be considered, but not be the major factor in a decision.

Considering the request that solar energy not be referred to as an 'essential service' raised the question for a clear definition of that term.

Moline stated that there are some examples that are described in current policy and the draft Plan, but they are rather broad definitions. He stated that for the Comp Plan it is intentionally broad because it is difficult to predict what will be requested.

Fahey continued and asked if there was a better definition of 'energy production'.

Moline asked the Planning Commission to consider a more definite description for 'energy production'. Is renewable energy included in this term?

This suggested that it would be beneficial if the County residents could subscribe or gain some benefit from the service provided. This is not always the case with solar energy. The term 'essential service' then becomes difficult when the local residents are not able to use it.

Burns agreed that might be unique to the solar energy, but many of the other services are providing energy to area residents.

Mendez offered that solar energy be termed an 'optional service', because other energy services are available.

This recalled discussing the term 'essential' at length and felt that it should be clarified.

Moline stated there is not a clear definition in the way the policy is currently written. There is a category of land uses that fall under essential services as opposed to a large-scale activity or other uses.

Burns asked for additional ideas on satisfying this issue.

Moline stated there may be options of different language or terms, or uses that serve a community purpose. There may be certain things that should be sited in the rural area because of their size and because they serve a broader area of the County. The draft language uses solar production to capture solar and wind energy and any other large-scale activity that would be generating power. Including language tying the service to the surrounding community might be helpful. Moline gave the example of a school bus garage. He cautioned against having a separate policy concerning solar energy, because it is impossible to know what new sources of energy will be coming in the future that could fall into that same category.

Burns asked if clarifying language could be drafted to ensure that the essential service is a benefit to the surrounding community.

Moline replied that they could draft language, however, he stated it would be broad, leaving much discretion to the Planning Commission and County Board on the service it provides to the community. He stated it might be beneficial to have some discretion on a case by case or use by use basis to determine if it is essential or serves a community purpose.

The Planning Commission suggested to clarify language and use a word other than 'essential'.

Another comment to be considered was to increase the separation distance between solar projects and non-participating residences.

Atcheson clarified that the request was specifically referring to increasing the distance from non-participating residences.

Mielke stated the current separation distance from a non-participating residence is 500 feet.

The suggestion was to increase the distance to 1,000 feet from a non-participating residence and also 3 miles between solar gardens.

Moline stated the draft language allows for those distances to be changed in the

ordinance, which is the place to address it. He stated the Comp Plan language is broader and allows for specific distances to be assigned in the ordinance.

Burns asked if it would be a benefit to offer a few different options for townships to choose which fit best into their areas.

Moline replied that options might be a solution, however, that could also lead to a potential 'mess' and difficulty between townships.

Mielke stated that it would be difficult to state specific distances or allow such options in the Comp Plan because if an applicant would need a variance for a request, that variance is from the ordinance and not the Comp Plan. The specific distances can be stated in the ordinance.

Moline stated that more general policies are written in the Comp Plan and the details are stated specifically in the ordinance. He stated that a requirement of the Comp Plan process is that within 9 months of its adoption, the ordinance must be revised. The Met council does not specifically look at the ordinance, but confirms that the review process has been completed implementing local control.

The Planning Commission suggested clarifying the language and leaving specific distances to be stated in the ordinance.

Atcheson explained the next steps in the Comp Plan process and stated that an open house will be held on the Comp Plan revisions. After that, the final draft language will be brought before the Planning Commission for approval. This is anticipated to take place in early 2019.

Burns asked about other portions of the draft Comp Plan and if they were being addressed.

Moline stated that when the final copy of the draft plan is presented to the Planning Commission, it will be the complete Comp Plan, not just the Land Use portion.

Fahey asked if all of the Township Chapters have been completed.

Moline replied that all of the township chapters are a part of the document that was released for the 6-month review. Each township approved their draft chapter which went out for comment.

Adjournment

A motion was made by Mendez and seconded by Smith to adjourn the meeting. All voted aye. Motion carried. The meeting was adjourned at 8:47 p.m.