

CARVER COUNTY PLANNING COMMISSION
Regular Meeting – March 19, 2019
Minutes

Members Present: Jim Burns, Jim Ische, Scott Smith, Frank Mendez, John P Fahey, Mark Willems, Gabrielle Theis

Members Late: None

Members Absent: None

Staff Present: Jason Mielke, Kathleen Russell, Paul Moline, Adriana Atcheson, Jennifer Tichey

Pursuant to due call and published notice thereof, the March 19, 2019, regular meeting of the Carver County Planning Commission was called to order by Chairman Burns at 7:00 p.m.

Minutes – A motion was made by Fahey and seconded by Smith to approve the minutes from the February 19, 2019 meeting. Burns, Ische, Smith, Mendez, Fahey & Theis voted aye. Willems abstained. Motion carried.

File #PZ20190012 – Dustin & Tricia Mackenthun – Chairman Burns called the public hearing to order at 7:01 p.m. to consider a request by Dustin & Tricia Mackenthun. The purpose of the public hearing was to consider a request for an accessory structure pursuant to Chapter 152 of the County Code. The property is located in Section 7 of Benton Township.

The following were present: Dustin Mackenthun, Tricia Mackenthun, Gary Widmer, Andy Steinhagen

The following items were entered into the record:

Exhibit A – Legal Description

Exhibit B – Proof of Publication of the Hearing Notice

Exhibit C – Proof of Mailing of the Hearing Notice

Exhibit D – Site Plan

Exhibit E – Letter from the applicant dated February 15, 2019

Exhibit F - Letter to the Planning Commission and Benton Township dated March 11, 2019, and attachments

Mielke explained the applicants request to construct an approximate 36-foot by 50-foot addition to an existing 50-foot by 56-foot accessory structure for personal storage. A CUP was issued in 2001 allowing for the existing structure size. The applicants intend to remove a small garden/goat shed if this request is approved. With the addition, the total amount of personal storage on the property will be approximately 5,384 square feet, which is 1,384 larger than allowed by the Zoning Code. The structure will meet all

required setbacks. The septic system has been inspected and was issued a current Certificate of Compliance. Benton Township heard and recommended approval of the request at their February meeting. Mielke read the conditions for consideration if the request is approved.

Burns asked if the applicants are willing to remove the small shed or if that is a condition of the permit request approval.

Mrs. Mackenthun stated were intending to remove the structure as it is a small, older building.

Andy Steinhagen, representing Benton Township, confirmed the Township heard and recommended approval of the request with no objections.

A motion was made by Ische and seconded by Smith to conclude the public hearing. All voted aye. Motion carried. The public hearing was concluded at 7:05 p.m.

A motion was made by Fahey and seconded by Smith to **approve and issue Order PZ20190012** incorporating the findings of fact and staff recommendations approving the Conditional Use Permit for an accessory structure addition. All voted aye. Motion carried.

File #PZ20190008 – Robert Brose – Chairman Burns called the public hearing to order at 7:06 p.m. to consider a request by Robert Brose. The purpose of the public hearing was to consider a request for an accessory structure pursuant to Chapter 152 of the County Code. The property is located in Section 2 of San Francisco Township.

The following were present: Robert Brose, Larry Schmidt, Kevin Lundquist, Doug Weber, Dan Lind

The following items were entered into the record:

Exhibit A – Legal Description

Exhibit B – Proof of Publication of the Hearing Notice

Exhibit C – Proof of Mailing of the Hearing Notice

Exhibit D – Site Plan

Exhibit E – Letter from the applicant

Exhibit F – Letter to the Planning Commission and San Francisco Township dated March 11, 2019, and attachments

Mielke explained the applicant has a purchase agreement on an 11-acre parcel which is adjacent to his current 4.73-acre residential parcel. He recently received a variance (PZ20190007) to subdivide this parcel and combine it to his existing parcel. The applicant is requesting to construct an attached garage to his house and also construct a detached 40-foot by 60-foot pole building. This will increase the total amount of personal storage space on the parcel to approximately 5,054 square feet, which exceeds the maximum amount allowed by the Zoning Code for a parcel of this size by

approximately 1,054 square feet. San Francisco Township heard the request at their January 2019 meeting and recommended approval with the following condition:

- The access servicing the detached accessory structure (40' x 60') shall be located off the private driveway and shall NOT come off of Hayes Avenue or Hayes Ln.

Mielke read the additional conditions for consideration if the request is approved.

Chairman Burns asked about the length of the dedicated area of Hayes Ave.

Mielke used an aerial map to indicate the location of Hayes Av. He also noted there is a private driveway which extends to the south of the dedicated right-of-way of Hayes Av which services another residence beyond Mr. Brose's property.

Larry Schmidt, representing San Francisco Township, confirmed the Township's recommendation for approval of the request.

A motion was made by Willems and seconded by Smith to conclude the public hearing. All voted aye. Motion carried. The public hearing was concluded at 7:16 p.m.

A motion was made by Ische and seconded by Mendez to **approve and issue Order PZ20190008** incorporating the findings of fact and staff recommendations approving the Conditional Use Permit for an accessory structure. All voted aye. Motion carried.

File #20190014 – 2040 Comprehensive Plan – Chairman Burns called the public hearing to order at 7:17 p.m. to consider a request by Carver County. The purpose of the public hearing was to consider the Draft 2040 Comprehensive Plan pursuant to Chapter 152 of the County Code.

The following were present: Larry Schmidt, Steve Yetzer, Kevin Lundquist, Martin Walsh, Jody Flatebo, Doug Weber, Kathie Anderson, Dan Cook, Wayne Hubin, Angie Stenson

The following items were entered into the record:

Exhibit A – The Draft 2040 Comprehensive Plan

Exhibit B – Proof of Publication of the Hearing Notice

Exhibit C – Proof of Mailing of the Hearing Notice

Exhibit D – Letter to the Planning Commission and all Townships dated March 12, 2019, and attachments

Exhibit E – Six-month review comments and responses

Atcheson reviewed the Draft 2040 Comprehensive (Comp) Plan and highlighted the changes that were made since the six-month review draft. She stated that all comments received during the six-month review period have been reviewed and responses were sent to everyone who submitted comments. Plan revisions were made based on comments, consulting with other departments, and work sessions with the Planning Commission and the County Board of Commissioners. Most townships are still reviewing their chapters and additional revisions have been requested. Laketown and Hancock Townships have

already approved their chapters. Atcheson outlined the major changes in the Land Use Section in the areas of: Individual Townships, Transition Areas, Building Eligibilities, Map Revisions and Solar Energy. She used maps to illustrate and explain changes made in the Transition Areas. She clarified the Orderly Annexation Agreements supersede the Transition Area Policy. A map showing the Planned Land Use was revised and compared to illustrate changes which had been made from the draft map during the 6-month review period. Atcheson stated the title of Solar Suitability was changed to Solar Energy Potential on the map. The solar energy potential map and the calculations were added as required by the Metropolitan Council.

Atcheson noted few changes were made to the Parks, Open Space & Trails section of the plan. She explained a map illustrating a proposed trail corridor. Some route specific transit information was removed and updated information based on comments from Southwest Transit and the Metropolitan Council was included.

The Transportation section focuses on long-range plans providing management and prioritization of the County's transportation system. Atcheson noted three areas of focus on the review of this chapter: 1) public review period comments, 2) updates to the 2040 transportation model and traffic forecast, and 3) revisions to Figure 4.18 Access Spacing map. Atcheson stated staff had met with each city at least once to discuss issues relating to this chapter. Work is continuing on the 2040 Transportation Model and Traffic Forecast and it is under technical review prior to its incorporation into the final document. Atcheson illustrated the areas of change to the Access Spacing map and noted changes to other transportation maps also.

The Water Resources chapter also had few changes. She noted a map of Community and Subsurface Treatment Systems was added. Information specific to the Carver County Water Management Organization was removed, making the chapter inclusive to all watersheds within Carver County.

The amendment process was added to the Implementation chapter for future amendments once the plan is approved. More information about the revision of official controls was added.

Atcheson summarized the next steps to make all of the final revisions and proceed to present the Final Draft Plan to the County Board and then on to the Metropolitan Council for final approval. Adoption of the Final Plan by the County Board of Commissioners is expected by the fall of 2019.

Fahey asked if there is a timeline that all of the Townships would submit their chapter approvals for the plan.

Atcheson stated that not all of the Townships have had their meetings, but they should be completing the process soon. Staff will communicate with the townships within the next week to determine where they are with that process.

Willems asked the date that the Final Plan needs to be adopted by the County Board.

Moline explained that Carver County was granted a 6-month extension making June 30th the final date of submission to the Metropolitan Council.

Dan Cook, 7625 Rutz Lake Rd, said he had attended the open house and submitted comments during the review period, but also wanted to express his opinions in person. He spoke about three topics: solar, rural representation, and wind and broadband. He urged everyone to review the turmoil that has surrounded this topic in the past few years and encouraged studying other counties successes. He felt the current plan removes much of this body's zoning authority by making solar an essential service. He asked that language should be included anticipating future energy sources such as wind or large industrial batteries/capacitors. He felt the current Zoning Code language will result in the same types of negative issues, i.e. disgruntled citizens, lawsuits, etc., and offered language outlining details and reflecting the County's values toward solar. He read language from another county which he felt was appropriate and stated clearer guidelines were needed. He expressed concern about rural representation being misaligned by commissioners who live in city limits.

Ische interjected stating that the Townships currently have the right and ability to take on the task of Planning and Zoning in their own township.

Mr. Cook agreed with that statement and stated that it presents an economic challenge at this time to try to establish that, therefore leaving the townships in a difficult position. He concluded with expressing his concern on the lack of state-of-the-art internet service in the County and especially throughout the rural areas. He stated the fiber optic cabling that has been installed has not been a great benefit to the rural community.

Burns responded and disagreed with that assessment. He stated that the fiber optic has helped Hollywood Township by having many miles of lines installed. He stated a number of people have benefited from this service and others have the option to participate also. Broadband services have been added to the tower in Hollywood Township.

Mr. Cook summarized his frustrations that local resources in his area are being used and the local neighborhood is gaining nothing in return. He would like to see that culture change.

Willems stated that the broadband service has been expanded in Dahlgren Township which has helped service to many residents.

Doug Weber, representing San Francisco Township, stated he is working with a fiber optic company to increase communications services for their residents. He stated his experience in the communications business and felt that establishing a franchise in this business would be a benefit to the citizens. He stated that County involvement would be helpful so that all citizens can obtain better service.

Jody Flatebo, 8805 Appaloosa Cir, expressed her disappointment with the language in this Comprehensive Plan compared to the previous with regard to solar energy. She agreed with Mr. Cook that solar energy should not be considered an essential service. She suggested that the distance between solar gardens be increased and clearly stated in the plan. She felt that property owner rights are stronger than surrounding neighborhood rights. She asked that surrounding properties land uses be considered when solar gardens are proposed. She suggested that greater stipulations exist for absentee landowners regarding solar gardens.

Wayne Hubin, 11975 Swede Lake Rd, discussed the comments in response to Watertown Township's input to the Comp Plan concerning solar energy and stated that they are asking for language to be removed and not added. He also noted his personal comments suggesting to increase the separation distance between solar gardens and also from residences. He also asked about what the Township approval represents, what is actually being approved, and what happens if the township does not approve the chapter.

Moline replied that prior to having the County Board review the Plan, they can see that all the Townships have approved their chapters. And the Townships determine certain choices within their own township, such as density options or activities allowed or prohibited as it relates to land use. The goal is to have every township decide those choices prior to the County Board review. If a township chooses to not approve the chapter updates, it would likely default to the language currently in the chapter or the draft chapter. Ultimately, the County has the land use planning and zoning authority, and the County Board would decide for the township.

Kathie Anderson 14750 50th St, determined that with the number of lawsuits regarding solar energy projects, there must be a problem with the ordinance language. She stated that the plan seems rather lose in intention. She has read many of the briefs that went to the Court of Appeals and noted that each one included phrases or excerpts of the language from the code but not necessarily not the entire sentence and gave examples. She felt the number of lawsuits alone is indicative of a problem. She echoed the concern with solar energy and the term essential services and read the current requirements for an application under this section. She gave examples of suitable activities that would have eminent domain authority and stated that solar power plants do not have eminent domain authority and are not even serving the surrounding neighborhood. She noted the new draft plan language listed 'energy production' under essential services and questioned what that might encompass or become in the next 20 years. She also noted proposed bills in the legislature concerning changes to solar energy. She strongly recommended that solar energy be removed from essential services. She stated that solar energy has been very disturbing and upsetting for her over the past 3 years.

Mr. Cook encouraged the board to return that section of the Plan back to Mr. Moline for revisions.

Willems recalled questions about energy production from the past and asked staff for a definition.

Moline stated the existing policy does not include that term. The decisions that were made about all of the site applications concerning solar still use the essential service section and considered that use to fit in essential services. The direction given from early in the process was that energy production was added to clarify that this is where this type of use fits into the plan. The essential service guides decision-making on solar applications. That term was added as emphasis to this section, also recognizing that solar energy may not be the only type of energy that is proposed. When an application is submitted, all the criteria listed under essential service can be considered to determine approval or denial. He stated that when the ordinance revisions take place, there would be an opportunity to take the criteria and add additional information or further restrictions that would be guided by this policy. He used an example of size which could be restricted by the ordinance and would be supported by the language in the plan.

Mr. Weber asked what is dictating solar energy to be listed as an essential service. He understood that a utility is an essential service, but reasoned that power production comes from an independent source. He suggested that power production be completely separated from the essential service section. He alleged a difference between power production and power distribution.

Ms. Anderson responded that the change to put solar energy in the essential service section of the ordinance was done in 2015 by amendment 80-2015 adopted by the County Board. She stated that the County Board could also remove it from this section and move it to its own section of the ordinance.

Chairman Burns asked for any other comments. Seeing none, he suggested that this item be continued to the April meeting, since there are townships still discussing their options before finalizing and approving their chapters and also some transportation issues to be resolved.

Mendez recalled previously discussing the term 'essential' and understood it was going to be deleted in reference to solar energy. He listed synonyms defining the word essential and stated that the term should be removed from the Comp Plan. He also stated that energy production is a slippery term that could be manipulated to mean many different things, depending upon who is defining it. He encouraged the board to hear the comments that were made concerning the terms and asked for more clearly defined terms to be used. He also noted some of the advisory comments received from the Met Council and stated that this Comp Plan and ordinance should represent and serve the citizens of Carver County.

This suggested language in Policy LU-20 referencing the benefits from the land use activities should benefit Carver County and its citizens.

A motion was made by Theis and seconded by Willems to continue the public hearing to the April meeting.

Willems asked about the next steps in the process.

Moline stated that all comments made at the public hearing will be presented to the County Board. If there are minor changes, edits, or corrections, those will be done, but if it is a policy issue, it will go to the County Board for their decision.

Burns clarified that the suggested changes to language would be presented to the County Board and would not be changed prior to the meeting in April.

Moline stated that was correct.

Burns asked if there would be a list of changes presented to the County Board.

Moline stated the comments heard at this public hearing would be added to the comment record.

Fahey stated that any recommendations from the Planning Commission would be made at the April meeting.

Moline stated that a recommendation by the Planning Commission to present this to the County Board would be in order after the public hearing is closed. And other recommendations could also be added.

Burns called for a vote on the motion to continue the public hearing to the April 16, 2019 meeting. All voted aye. Motion carried. The public hearing was continued at 8:25 p.m.

Adjournment

A motion was made by Willems and seconded by Mendez to adjourn the meeting. All voted aye. Motion carried. The meeting was adjourned at 8:27 p.m.