

MINUTES
EVANS CITY COUNCIL
Regular Meeting
May 1, 2012 - 7:30 P.M.

CALL TO ORDER

Mayor Achziger called the meeting to order at 7:30 p.m.

PLEDGE

ROLL CALL:

Present: Mayor Achziger, Mayor Pro Tem Morris, Councilmembers Brown, Burmont, Neibauer, Schaffer and Rudy

AUDIENCE PARTICIPATION:

There was no audience participation.

APPROVAL OF AGENDA:

Councilmember Schaffer made motion, seconded by Councilmember Brown to approve the agenda as presented. Motion passed with all voting in favor thereof.

CONSENT AGENDA:

- A. Approval of Minutes of the Regular Meeting of April 17, 2012
- B. Acceptance of the 2011 Audited Financial Statements

Councilmember Schaffer made motion, seconded by Mayor Pro Tem Morris to approve the Consent Agenda as presented. Motion passed with all voting in favor thereof.

NEW BUSINESS:

- A. Public Hearing – Resolution No. 14-2012 – Variance Request to Section 19.48.010 of the Evans Municipal Code for Carports – 3202 11th Avenue (The Grove/Campus Crest)

Mayor Achziger opened the Public Hearing.

Zach Ratkai, Building and Planning Manager, reported the following:

The City received an application from Campus Crest, land owner, represented by Solar City Corp, for a Variance in order to construct carports. The carports will serve as the supporting structure for installation of solar panels. The property location is 3202 11th Avenue, commonly referred to as The Grove.

A previous USR for this property has been approved for the installation of solar panels and on the roofs of some of the buildings. A USR is in the process for approval of sheds to house the electrical equipment for those solar arrays. Finally a USR will be presented if the variance is approved for final approval of the carports.

A previous variance for this construction was denied by the Zoning Board of Appeals, and the applicant has resubmitted a new request with a re-design and re-location of the carports.

Solar City is proposing to construct solar carports at The Grove, Campus Crest's multi-family housing complex located at 3200-3300 11th Ave. The solar carports would be built to cover existing parking spaces on the east, and south sides of the lot. (The previous request also included the west side, which fronts on to 11th Avenue).

If approved, the applicants will also need approval of a Use by Special Review and come through the site planning process to apply for a building permit, and will be required to adhere to all the standards in the Evans Municipal Code. As known to staff at this point (without a formal application) the designs of the proposed solar carports comply with Section 18.33.060, Multifamily Architectural and Site Design Standards of the City of Evans Land Use Code. The materials and colors of the carports are compatible with the character of the surrounding buildings. Adequate pedestrian lighting will be installed in the carports.

Chapter 19.48 of the Evans Municipal Code (Accessory Structures):

Carport shall mean a structure that is not fully enclosed and which is accessory to a residence or residences and capable of being used for storage of one or more vehicles." The proposed variance will meet this code.

Maximum height. Accessory structures other than garages shall not exceed the height of the principal building or 15 feet, whichever is less. Garages shall not exceed the height of the principal building. This provision shall not apply to structures used for agricultural purposes in the AG – Agricultural – zoning district, or to structures in I –Industrial – zoning districts. The proposed variance will meet this code

Maximum number. In all R– Residential – zoning districts, only one detached accessory structure/building, not including garages, shall be permitted per 8,000 square feet of lot area, or fraction thereof, up to a maximum of three such structures per lot. The preceding provision notwithstanding, each principal building shall be allowed at least one detached accessory structure/building. For example, three mobile homes on one lot would each be allowed one detached accessory structure/building, even if the lot were less than 24,000 square feet. The proposed variance will NOT meet this code.

Garages and carports accessory to multifamily dwellings. Detached garages and carports shall be compatible with the principal building architecture, and shall incorporate similar and compatible forms, scale, materials, colors, and details. The proposed variance will meet this code due to the new submittal that allows for some façade improvements such as brick on the carports.

Carports shall be limited to six spaces per parking structure and each carport structure shall be located not closer than 20 feet to any other carport structure. The proposed variance will not meet this code – several of the carports have between 20 and 40 spaces and will be located immediately adjacent to each other.

Detached garages and carports shall have pitched roofs with a minimum slope of 4:12. The proposed variance will not meet this code.

To the maximum extent feasible, garage entries, carports, and parking garages shall not be located between a principal multifamily building and a street frontage, but shall instead be internalized in building groups so that they are not visible from adjacent public streets. The proposed variance will meet this code.

Section 19.58 of the Evans Municipal Code (Variance Criteria):

A. The City Council must find all of the following circumstances to be true in order to approve a variance:

1. Approval of the variance would not jeopardize the health, safety, or welfare of any person; Staff finds the proposed variance would meet this criteria of approval.
2. Denial of the variance would result in a practical difficulty and unnecessary hardship to the applicant; Staff finds that there is no practical difficulty or unnecessary hardship to the applicant if the variance is denied, however they would not be able to have additional solar arrays, which may cause higher electrical bills to the owner and in turn, the residents. That could be a practical difficulty or hardship.
3. Such practical difficulty and unnecessary hardship are due to an irregular, narrow, or steep lot, or other physical situation or condition of the building or land; Staff finds that this criteria could be met as the number of buildings on the lot are limited and in use with solar arrays, the shadows cast by those buildings make the location and size of the carports necessary, and the solar panels themselves are constructed in a manner that would limit the location and construction.
4. Such practical difficulty and unnecessary hardship have not been unreasonably self-imposed by the applicant. Staff finds that the owner chose to put in solar panels, so any hardship is self-imposed. However, the installation of solar panels is limited by the obvious factors of the sun, the shadow, the existing lot size, and existing construction on the lot.

The main concern with the application is the adjacency and compatibility with the existing structure and the surrounding land uses. The construction of the carports will be a significant physical addition to the site and change the character of the building and the compatibility of the building with surrounding land uses. The very large and long carports will be seen from the street frontage on 11th from the west and from the south, as well as from the north on the west side.

The Zoning Board of Appeals found that the applicant did meet the criteria for approval of the variance. Any change to that approval will require a super majority vote (5 members) of the City Council to overturn.

Mayor Achziger asked what would be the configuration and number of the carports. Mr. Ratkai stated there would be two cars nose to nose at the southern end of the property that would cover twenty spaces across.

Mayor Pro Tem Morris asked if the roof pitch would have a minimum slope of 1:12 and questioned the drainage.

Derek Esposito, applicant, representing Solar City, stated that the roof pitch would be 1:12 and it's mostly used for aesthetic purposes. This roof pitch would adequately drain snow.

Councilmember Burmont asked Mr. Esposito what material the carports would be constructed of. Mr. Esposito explained that the structure itself is a steel post set in concrete and a cantilevered steel beam as well as a brick façade covering the steel post to match the buildings. The cantilevered steel beam would have water proof steel decking.

Councilmember Burmont asked if they would be collecting sales tax on the electricity they sell to Campus Crest. Mr. Esposito said that the billing all goes through Excel's net meters. No additional electricity is being generated.

Mayor Achziger asked if anyone in attendance wished to speak in favor of the variance. No one responded.

Mayor Achziger asked if anyone in attendance wished to speak in opposition to the variance. No one responded.

Councilmember Burmont indicated that he was not in favor of the variance because the sales tax ordinance regarding taxability of electric service is subject to tax and the decrease of electric sales tax revenue from is not in the best interest in the City.

The City Attorney reiterated to Council that the only issue under consideration is the variance, not the USR. The criteria is listed in Chapter 19.58 of the Evans Municipal Code.

Mayor Achziger closed the Public Hearing.

Councilmember Burmont stated that it would be setting a dangerous precedent by approving this variance. The structures would not be completely screened and would still be visible.

Mayor Pro Tem Morris said that the applicant has not complied with three of the items required in Chapter 19.48 of the Evans Municipal Code, they are as follows:

- 1) Maximum number. In all R – Residential – zoning districts, only one detached accessory structure/building, not including garages, shall be permitted per 8,000 square feet of lot area, or fraction thereof, up to a maximum of three such structures per lot. The preceding provision notwithstanding, each principal building shall be allowed at least one detached accessory structure/building. For example, three mobile homes on one lot would each be allowed one detached accessory structure/building, even if the lot were less than 24,000 square feet.
- 2) Detached garages and carports shall have pitched roofs with a minimum slope of 4:12.
- 3) Carports shall be limited to six spaces per parking structure and each carport structure shall be located not closer than 20 feet to any other carport structure.

Councilmember Neibauer believes this is a move in the right direction. Citizens seeing solar panels would show that the City of Evans is moving into the future with conservation.

Mayor Achziger clarified that the variance approval must meet the requirements listed in Chapter 19.58.

Councilmember Rudy agreed with Councilmember Neibauer and believes saving the citizens money on electric bills would be positive.

Councilmember Burmont made motion, seconded by Mayor Pro Tem Morris to deny adoption of Resolution No. 14-2012. Motion failed 2-5. Ayes: Councilmembers Burmont and Mayor Pro Tem Morris. Nays: Mayor Achziger, Councilmembers Brown, Neibauer, Rudy and Schaffer.

Councilmember Schaffer made motion, seconded by Councilmember Rudy to adopt Resolution No. 14-2012. Motion passed 5-2. Ayes: Mayor Achziger, Councilmembers Brown, Neibauer, Rudy and Schaffer. Nays: Mayor Pro Tem Morris and Councilmember Burmont.

B. Public Hearing – Resolution No. 15-2012 – Use by Special Review – Carports with solar panels 3202 11th Avenue (The Grove/Campus Crest)

Mayor Achziger opened the Public Hearing.

Zach Ratkai, Building and Planning Manager, reported the following:

The City received an application from Campus Crest, land owner, represented by Solar City Corp, for a Use by Special Review for installation of carports. Solar City is proposing to install three carports at The Grove in order to mount solar panel on those carports. These carports will have to be approved through the variance process as they do not meet the Evans Municipal Code per Chapter 19.48.

The reason this is a Use by Special Review is that the entire project as constructed was approved by USR and any material changes or additions must also be approved by USR. The property location is 3202 11th Avenue, commonly referred to as The Grove.

The development was originally constructed in 2005 with a Use by Special Review as allowed under the code. High Intensity Commercial land, as this is zoned, allows multi-family housing to be constructed pursuant to the USR. As such, any changes to that use, including the installation of carports, must also be approved through a Use by Special Review.

19.44.020 Criteria for Use by Special Review.

A. All special uses are listed within each zoning district. If a use is proposed that is not defined within the Evans Municipal Code and does not reasonably fall within the definition of any defined use in the Municipal Code, the property owner may apply for use by special review approval in accordance with this chapter.

- B. Criteria. The following criteria shall be used to evaluate use by special review requests:
1. The proposed use is found to be unlikely to harm the health, safety, or welfare of the City or its residents. Staff finds that these criteria can be met.
 2. The proposed use would benefit the City in terms of employment, tax revenue, or other similar effects, as compared to the absence of the proposed use. Staff finds that these criteria can be met.
 3. The proposed use shall be consistent with the Evans Comprehensive Plan and shall be compatible with the surrounding area. Staff finds that these criteria can be met.
 4. The location, size, design, and operating characteristics of the proposed use shall be compatible with the existing and proposed future land uses within the general area in which the proposed use is to be located and will not create significant noise, traffic, or other conditions or situations that may be objectionable or detrimental to other permitted uses in the vicinity. Reasonable conditions may be placed on uses by special review to protect the public health, safety, and welfare by mitigating impacts. Staff finds that these criteria can be met.
 5. The site shall be physically suitable for the type and intensity of the proposed land use. Staff finds that these criteria can be met.
 6. The proposed land use shall not adversely affect traffic flow and parking in the neighborhood. Staff finds that these criteria can be met.
 7. The location of other approved uses by special review in the neighborhood shall be determined, in order to avoid an over-concentration of such uses. Staff finds that these criteria can be met.

The main concern with the application is the adjacency and compatibility with the existing structure and surrounding land uses. The applicant has submitted a redesigned site plan and more photos for review and comment.

Derek Esposito, applicant, representing Solar City displayed some photos of the proposed construction. He also explained that approximately \$30,000 in permit fees have been paid to the City to date for this project with an additional \$20,000 expected. Mr. Esposito further stated that the project would cost approximately three million dollars (\$3M) and pay for itself in approximately eighteen months.

Councilmember Burmont said that based on Mr. Esposito's figures, the estimated amount of savings on electricity would be two million dollars (\$2M) per year on which the City would lose 3.5 % in sales taxes, ultimately losing a total of seventy thousand dollars (\$70,000) per year. Based on this calculation the City would lose \$1.4 million dollars over a twenty year period.

Mayor Achziger asked if anyone in attendance wished to speak in favor of the Use by Special Review. No one responded.

Mayor Achziger asked if anyone in attendance wished to speak in opposition to the Use by Special Review. No one responded.

Mayor Achziger closed the Public Hearing.

Councilmember Burmont respectively submitted that even though the City is collecting use tax on the permits, the City would still be losing annual sales tax revenues because of the decreased electricity from the solar panels.

The City Attorney noted that the main question is whether the potential sales tax or lack of negatively impacts the City.

Mayor Achziger and Mayor Pro Tem Morris would like staff to evaluate the collection of sales tax on electricity.

Councilmember Burmont clarified that his concern is that the decrease of tax revenue does not benefit the City.

Councilmember Neibauer made motion, seconded by Councilmember Schaffer to adopt Resolution No. 15-2012. Motion passed 6-1. Ayes: Mayor Achziger, Mayor Pro Tem Morris, Councilmembers Brown, Neibauer, Rudy and Schaffer. Nay: Councilmember Burmont.

REPORTS:

The City Manager referred Council to the Monitoring Report.

The City Attorney reported on the following:

Upcoming Legislation: Bill 1356 is before House Legislature regarding the impacts of local government on the oil and gas industry. If there is a negative impact through the process of a local governmental entity, the municipality would be ineligible for revenues under the Severance Tax Fund.

AUDIENCE PARTICIPATION:

There was no audience participation.

ADJOURNMENT:

Mayor Achziger adjourned the meeting at 8:48p.m.


Shannon Metcalf/Deputy City Clerk