

DENMARK TOWN BOARD MEETING MINUTES  
July 5, 2016

**SUPERVISORS PRESENT:** Kathy Higgins, Joe Moore, Karen Herman, John Strohfus

**ABSENT:** John Kummer

**STAFF PRESENT:** Attorney Gilchrist (Kennedy-Graven), Engineer Geheren (Focus), Planner Zweber (WSB)

**CALL TO ORDER:** Meeting called to order @ 7:00 PM by Chair Higgins

**AGENDA APPROVAL:** K Higgins added Tri-County road estimates to 2016 Street Improvements.

**Motion J Moore/2<sup>nd</sup> K Herman approval of agenda as amended. Voting Yes- J Moore, K Herman, J Strohfus, K Higgins. Voting No- None. Abstaining- None. Motion Carried 4-0-0.**

**CONSENT AGENDA APPROVAL:**

**Motion J Moore/2<sup>nd</sup> J Strohfus approval of Consent Agenda items which include Board Minutes 05/02/2016, Claims 10714-10735, EFT payments- PERA 375871 & 379446, MN Rev. Tax 0942142016 & 1845140032, Federal Tax 65832894 & 62147563, payroll ending 06/01/2016 & 07/01/2016 and financial reports. Voting Yes- J Moore, J Strohfus, K Herman, K Higgins. Voting No- None. Abstaining- None. Motion Carried 4-0-0.**

**HEARING DECISIONS/ZONING ACTIONS:** Rumpca 5 yr Mining Interim Use Permit (IUP) 13985 80<sup>th</sup> St S Applicant's present- Brad Rumpca, Tim Rumpca, Jack Clinton (Attorney), Kirsten Pauley (Engineer) Changes from prior IUP include an increase in the number of truck trips from 150 to 200 and increase in the depth of excavation from 900 to 860 ft. Reducing the reclamation bond from \$220,000 to \$45,000 to address the area that is open, not the entire site. Requirement to provide the Township with a blasting report within 15 days after the blast. Requirement to do additional elevation tests throughout the year which shall be provided with the annual report. Specific to 2016, Applicant will complete repairs (full depth patching as determined by the Town Engineer, Town Roads Supervisor, Representative of Rumpca) to Oakgreen Ave S by 08/15/16. Annually, a meeting with Town Engineer, Roads Supervisor and Rumpca would be held each May to determine any annual maintenance repairs that may be required, with completion of those identified, by 08/15 each year. J Clinton noted that Rumpca is in agreement with the road plan/process. More detailed reporting will be required.

Public Comment-

Rich Robinson- Pit operations in the past 5 years have been below the excavation depth of 900 ft. Would like assurance that specific person will be assigned to review depth monthly and that corrective action would be taken if not in compliance.

Tom LaVelle- Noted that an increase in trucking trips is not warranted and that trucks are running prior to 7 AM. Cited that property rights should be taken in account. Noted that his property value has decreased due the gravel pit operations.

Kirsten Pauley- In reviewing the original documents of the quarry, including the EAW, it is clear that the elevation of the quarry was based on what was then assumed to be the elevation of the groundwater table. In preparation to submit this application to the County and Township, 4 borings were drilled in the quarry floor to measure and verify the actual water table elevation. Applicant is proposing an excavation depth that is at least 10 ft above the water table. Original topography at the site dropped off to the east, which had areas that were already below the 900 ft elevation at the southeastern corner, although additional mining did occur there.

K Herman- In regards to the permit depth excavation of 900 ft, over what period of time did excavation go below the 900 ft? K Pauley- several years. Applicant was below 900 from the very start. K Herman stated that although the County/Town received the elevation reports, Rumpca would have known they were not in compliance for some time. Bothered that this non compliance was occurring and nothing was done to remediate

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it. B Rumpca- Rumpca thought they could go deeper than the 900 ft, not reading the permit correctly. Now his responsibility to oversee that going forward this will not happen.

J Strohfus asked what the remediation plan is. K Pauly- County received the elevation reports and missed the elevation depth not being compliant. Rumpca clearly understands the allowed excavation depth and the County is requiring monthly verification by a registered land surveyor of the minimum elevation of the quarry floor which is reviewed by the County Planning/Zoning Dept and will be submitted to the County and Township monthly. Going below the minimum depth would be in violation of the County CUP and Township IUP, permits are written with protocol for correcting and non resolution consequences.

J Moore questioned how a professional could establish the original elevation of the property in error. J Clinton stated that he was involved in the original 1998 application. The subject area was originally at 860 ft. before any mining occurred. The only excavation that has occurred in that portion is a 40x60 area. J Clinton noted that the County Planner had been at the site to conduct inspections, and because this portion was originally low prior to excavation, there was nothing from a physical observation that flagged anything. At the County hearing, the County noted that going forward, the surveyor's monthly report will be reviewed by the County Planning Staff, the County Surveyors Office and by the Township.

Future Plans- K Pauley. Proposal is to have the minimum mining elevation set at 860 ft for this first phase which is located in the eastern portion of the property. Based on groundwater mass of the area and water elevations of surrounding wells, the elevation of the water table slopes. It is lower at the southeast corner and rises to the northwest. One of the conditions that was approved by the County is that prior to moving into phase 2, additional presoil borings and water table elevations will be collected. Mining is only allowed into phase 1 so additional borings/elevations would be required for phase 2 with a renewal application. Phase 2 likely to begin in 5-10 yrs. Actual elevation of the water table ranges from 845.85 to 846.88 ft. across the current quarry floor. Current quarry floor elevation varies with lowest elevation at 860.7 ft.

Higgins- obviously Rumpca's excavation was below the 900 ft allowed excavation depth. The original EAW was incorrect. At that time, the elevation was already below the 900 ft. The County/Town did not notice as they reviewed the elevation reports. At this point in time, nothing can be done to go back and correct the original EAW. We do have a solid mechanism in place, with monthly monitoring/reporting/reviewing.

Attorney- Excavation depth was set based on inaccurate information. The Board is pointing out a management concern. Fortunately, because the water table is lower than originally estimated, the 900 ft mark is higher than it needed to be. The Applicant is now asking for the depth elevation to be reduced.

J Strohfus- issue is not that the baseline was wrong. It is how it is managed once information is given to you. If the permit said 900 ft, the business should have been managing within the 900 ft. regardless of what the baseline was, which is the point of frustration and credibility issues that face the residents and the Board. Board consensus to have Engineer Geheren review monthly reports for pit elevations and truck trips.

K Herman suggested that the permit not be issued until the road work was done, in order to assure that the appropriate Oakgreen work is done. Attorney- concern would be that by delaying approval/denial of the permit could trigger the 60 day rule which could result in the permit being automatically approved. Attorney noted that if there are concerns, mechanisms should be placed in the permit to address them, rather than waiting and possibly having the permit automatically approved. Engineer in belief that road proposed permit addresses Oakgreen maintenance issues.

J Clinton- in terms of the road conditions, it does not serve Rumpca's trucks or anyone else to have the road in disrepair. Rumpca has a proposal in hand from McNamara and will meet with the Road Engineer so the road work can proceed. J Clinton noted that there have been no issues between Rumpca and the Town Engineer and is anticipating that the work that is proposed is what the Town is expecting and that it will be carried out.

Trip Count- Applicant is requesting that truck loads remain at 75 per day, however, up to 20 days in the season the daily loads can increase to 150 loads per day as long as the average remains at 75 loads per day. K Herman

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asked what information Rumpca collects on a trip ticket. Product, purchaser, truck number, trucks going over the scale would have time stamps, others may not.

K Herman stated that if times are stamped on the tickets, there is opportunity to note what trucks may/may not be involved if there were an issue. Would like to see this documented and sent to the Township on a monthly basis. Re: truck trips. K Herman asked how much in advance is the pit noticed of truck traffic. B Rumpca indicated that sometimes they have a 2-3 day notice, while other times no notice. Herman not comfortable with doubling the round trips per day. If pit did have advance notice, residents in the area could be notified. Higgins expressed concerns with difficulty monitoring noticing of additional truck traffic and also getting detail on truck tickets. Moore expressed concerns regarding the Town keeping of the records and what responsibility the Town would have if they are not kept accurately. J Strohfus in agreement that the records should be kept and made available to the Board if needed, for the purpose of documentation if resident issues arise as they have in the past. Board consensus that Rumpca will keep detail truck load records and provide to Town upon request.

Attorney reviewed draft resolution with Board and Applicant.

Resolution revisions-

Change 1- Provision #4 - Add Applicant shall make available to the Town, the daily scale tickets for review upon reasonable request.

Change 2- Provision #12- Add that the independent contractor (blasting company) shall include a statement as to whether each blast was in compliance with the Bureau of Mines standards.

Change 3- Provision #12- Change the intent to blast notice from 10 days to 3 days in advance.

Change 4- Add language- Applicant shall reimburse the Town for the actual professional costs that occur to review the monthly mining depth and truck trip reports and annual participation in annual Oakgreen review.

Applicant will be billed charges. Applicant in agreement with assuming responsibility for charges. Applicant in agreement with Resolution as submitted with the noted modifications. **Motion J Moore/2<sup>nd</sup> J Strohfus to adopt Resolution 2016-12 Approving An Interim Use Permit To Continue To Operate A Gravel Mine On Property Located At 13985 80<sup>th</sup> Street South, with the revisions as noted. Voting Yes- J Moore, J Strohfus, K Higgins. Voting No- K Herman. Abstaining- None. Motion Carried 3-1-0.**

K Herman noted that she is not opposed to the resolution, but is opposed to approval of it before Oakgreen repair is done.

**BUSINESS ITEMS:**

**Erin Glen 6680 St Croix Trail LLC- Final Plat Approval:** Owner Scott Goltz present.

Planner- Proposal meets all the zoning ordinance requirements. Comments/conditions are mostly based on the Legal and Engineering reports.

Attorney provided draft resolution for review. Resolution contains the conditions within the Planner's report.

Couple of changes that reflect that the actual buildout of the improvements must comply with the approved plans.

Harry Sieben's Attorney (Leo Schumacher) has made a request for a number of revisions to the resolution conditions. The Town Attorney provided the Board with only the additional proposed edits to the resolution that he, from a legal Town perspective, was recommending to the Board. Not all of the Sieben's requested revisions are recommended by Town Attorney. The concerns relate primarily to the private driveway access issues to the Sieben property.

Leo Schumacher- Although the Sieben property is not included in the proposed development, it is adjacent to it. To complete the development certain agreements will need to be drafted to address certain easement issues.

Would like the opportunity to review and provide comments to those documents as they will affect the Sieben property through the easements that will benefit the Sieben property and also the easements that exist. The documents would probably have the need to have Sieben's join into them, and the conditions do not set forth that. Regarding the easement that currently burdens the Sieben property and benefits all three existing parcels.

There is an existing driveway that was established when Collins owned the property that provides access to the 3 existing parcels. Believes that the easement beyond the Sieben property will need to be abandoned in part by 2 of

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the parties (Pflugi and Goltz). Would like to have the easement abandoned in its entirety, preserving the easement for the benefit of the Sieben property. Now, the conditions as presently drafted do require that the easement be abandoned, but only as it relates to that portion of easement that may be located within a right of way, that would be proposed to be dedicated as part of the plat. Sieben's are seeking to have the easement abandoned so it would no longer encumber the title of the Sieben property. Sieben Attorney noted that the third party would still need to abandon their easement portion as it is within the dedicated right of way. The driveway easement in part follows the proposed location of the road, so it would be a good idea to not only abandon the Sieben portion of the easement, but also the third party portion as it relates to the property to be dedicated. Requested that the easement be abandoned as it will no longer be necessary to provide access to any of the parcel except for the Sieben parcel, would recommend that the title to the property be cleared to extinguish the easement of the property. The developer will also need to seek abandonment from the Sieben's for the portion of their easement that burdens the property to be developed that extends beyond the Sieben residence. This would be a good opportunity to clear title on all of the properties, and Sieben would like to enter into an agreement with the developer and the Town to clear so no one has a problem going forward, before the property is divided when there will be a need to deal with 11 owners rather than 1 owner. Finds it inconsistent to say that the driveway would need to be removed, but not the easement.

Town Attorney does not necessarily disagree with the abandonment, but does have concerns with conditioning that for Final Plat Approval, which would be essentially conditioning final plat approval dependant on a third party not directly involved in the proposed development. If the third party refuses/does not agree, the Applicant would not be meeting a condition of the final plat approval, which could put the Board in a position of possibly refusing recording of the final plat.

The draft resolution includes language that addresses the need to seek the release of the easement to the extent it overlaps with the road that's being dedicated. Town would not want a private easement over a Town road. Would recommend not conditioning the Sieben easement abandonment request as a part of the Final Plat approval. Would encourage the owners to work it out/clean it up, but would not recommend the Board condition that to be done as part of the final plat.

Town Attorney- Cleaning up the private easement to the extent that it overlaps with the right of way is a valid point for the Town to consider. More concerned with conditioning approval based on a third party. If the third party easement will be abandoned with respect to the overlap with Town's right of way, the third party will be involved anyway. Would be more comfortable removing that language entirely, leaving it to the involved parties to figure out rather than putting the Town in the middle of what could be dispute between the private parties. Attorney noted that you do need private approvals for the construction easements. It should be the developer's responsibility to obtain from a developer's perspective, not the Town's from an enforcement perspective.

Scott Goltz (owner)- In looking at the plat, we could probably abandon the driveway easement through the Sieben property up to the end of the Sieben property, still remaining a driveway easement for parcel A. New road goes right up to their property. Can give them access right off of the street, allowing the Sieben property to become unencumbered by the easement. Town Attorney noted that there is no question that the properties can gain access to the public road. The issue is one of consent, for removal of the entire easement.

Town Attorney- this is a private property issue and needs to be worked out by the developer. Board in agreement that this is the developer's responsibility and not the Town's.

Higgins stated that she could not vote for something that would be in conflict with to the Town Attorney's recommendation of not making the plat approval subject to the existing easement vacation issue. Higgins asked if it would help to extend the approval request allowing additional time for the developer to work to address the easement. Town Attorney noted that this could be done with written consent from the developer.

9:27 PM J Moore exited the meeting.

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K Herman asked if it would be reasonable to assume that the involved parties could clean up the easement issues within 30 days and then address the final plat approval.

Scott Goltz- Indicated he will try to do his best to vacate the easement now. Pflugi's are out of Town at this time. The project has already been delayed numerous times which is creating a financial hardship for him. Owner's development will also be encumbered by the easement so the goal is to get rid of it. Access to the Township road is a good alternative for the Pflugi parcel. Does not believe it will be a problem for Pflugi's consent to vacate their portion of the easement, but does not want to be held hostage by holding off /postponing another 30-60 days for approval of final plat, until vacation of the easement is achieved.

Board/Applicant's reviewed draft v5 resolution and additional proposed edits #18-21.

Resolution draft v5 Modifications made by Board:

Add additional proposed edits #18 through 21

Revise condition #19- deletion of the first sentence in condition #9. Modify second sentence to strike "private property owners" and replace with "parcel B" (Sieben Property).

**Motion J Strohfus/2<sup>nd</sup> K Herman approval of Resolution 2016-13 Granting Final Plat Approval For The Erin Glen Subdivision, with noted modifications. Voting Yes- J Strohfus, K Herman, K Higgins. Voting No- None. Abstaining- None. Motion Carried 3-0-0.**

**Roads 2016 Street Improvement Bids:** 80<sup>th</sup> St Reclaim (Manning to Neal). Engineer provided Board with bid tabulation/results with a recommendation to award the contract to the lowest responsible bidder, McNamara Contracting. Engineer's Estimate \$239,052.50.

McNamara Contracting \$193,240.00, Hardrives, Inc. \$199,506.41, Park Construction \$215,706.50 and Midwest Asphalt \$231,890.00.

**Motion K Herman/J Strohfus to award 2016 Street Improvement project to McNamara Contracting, lowest responsible bidder, for a bid total of \$193,240.00. Voting Yes- K Herman, J Strohfus, K Higgins. Voting No- None. Abstaining- None. Motion Carried 3-0-0.**

**Tri-County estimates:** Tri-County Services submitted estimate of \$22,043.60 for 80<sup>th</sup> St culvert replacement work and Oakgreen Ave S (north of 70<sup>th</sup>) repair \$11,690.00. 80<sup>th</sup> St. work should be done before 80<sup>th</sup> St reclaim.

**Motion J Strohfus/2<sup>nd</sup> K Herman to authorize Tri-County to proceed with road repair of 80<sup>th</sup> and Oakgreen, with approval of estimates submitted. Voting Yes- J Strohfus, K Herman, K Higgins. Voting No- None. Abstaining- None. Motion Carried 3-0-0.**

Discussion re: road supervisor discretion to authorize additional repairs. Board to discuss during budget meeting.

**Resident Solar Survey:** Board reviewed solar survey draft. K Higgins noted that after speaking with Xcel staff, the information on the survey regarding acreage may not be clear. K Herman indicated that the information would provide a better clarification of the amount of acreage a commercial solar facility could involve. J Strohfus also expressed concern regarding commercial solar language. Requested that the survey information includes that any resident can subscribe to solar energy, not just if the commercial garden is located in their county, but they can subscribe if a garden is located in any adjacent county. Prior to mailing, Planner will revise survey language to clarify discussion points.

**Cysiewski Lot Line Adjustment Escrow Release:** Lot Line Adjustment has been finalized, there are no pending charges. **Motion K Herman/2<sup>nd</sup> J Strohfus to release Cysiewski escrow balance in the amount of \$545.50 Claim #10736. Voting Yes- K Herman, J Strohfus, K Higgins. Voting No- None. Abstaining- None. Motion Carried 3-0-0.**

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**Planning Commission Vacancy: Planning Commission seat open.** Notice of vacancy published twice, notice posted on Town Hall Board and Website. Supervisor consensus not to publish again, spread the word.

**Election Judge Approval:** Potential Election Judge List- Marilyn Suchy, Jeannine Wagner, Jean Boyd, Alberta Brown, Linda Stancer, Sue Kubiak, Tammy Johnson, Cindy Krueger, Nancy Keene, Wanda Klem.

**Motion K Herman/2<sup>nd</sup> J Strohfus to approve Election Judges for the 08/09/16 Primary and 11/08/16 General Elections.** Voting Yes- K Herman, J Strohfus, K Higgins. Voting No- None. Abstaining- None. Motion Carried 3-0-0.

**Washington County Land Use Transfer:** County is requesting that Denmark consider whether they would like sole control over the regulation of subdivisions. If the Township decided to assume subdivision regulations, the county would still provide assistance with the process. **Motion J Strohfus/2<sup>nd</sup> K Herman to request that the County not exercise subdivision regulations within Denmark Township.** Voting Yes- J Strohfus, K Herman, K Higgins. Voting No- None. Abstaining- None. Motion Carried 3-0-0.

Town has received a complaint regarding an unsafe driveway access onto a property on Point Douglas Drive. Engineer has conducted a site visit noting the following: A driveway permit has not been issued for the parcel. It does not appear there is enough area between the guard rail and the property line to install a driveway approach that would meet side lot setback requirement of 20 ft. The driveway approach would not enter the right of way/road at the required 90 degree angle. Driveway grades appear to exceed maximum allowable driveway slope. Given the presence of guardrail and steep slopes on the parcel, it does not appear that there would be any location along the parcel to construct a driveway that would meet requirements of the driveway ordinance. The conditions for accessing Pt Douglas Drive from the location from which they appear to be accessing is not safe. John Townsend (Hastings Fire Dept) reviewed the property and noted that the driveway servicing the property is potentially of concern due to length, width and grade and added that he would need to have specific plans for the driveway in order to determine if there could be emergency services access. Board consensus to have Attorney write letter to the property owner letting them know that they would need to get a driveway permit for access to the property.

10:39 PM **Motion J Strohfus/2<sup>nd</sup> K Herman to adjourn.** Voting Yes- J Strohfus, K Herman, K Higgins. Voting No- None. Abstaining- None. Motion Carried 3-0-0.

Becky Herman

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Denmark Township Clerk/Treasurer

Denmark Township Chair

Addendums Resolutions 2016-12, 2016-13

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**DENMARK TOWNSHIP  
WASHINGTON COUNTY, MINNESOTA  
RESOLUTION NO. 2016-12**

**RESOLUTION APPROVING AN INTERIM USE PERMIT  
TO CONTINUE TO OPERATE A GRAVEL MINE ON  
PROPERTY LOCATED AT 13985 80<sup>TH</sup> STREET SOUTH**

**WHEREAS**, Rumpca Excavating, Incorporated (“Applicant”) has been operating a gravel mine pursuant to an interim use permit issued by Denmark Township (“Town”) and a conditional use permit issued by Washington County (“CUP”) on property owned by Ronald Magone, Helen Magone, GeorgAnn Biscoe as guardian for David Magone, and GeorgAnn Biscoe (collectively the “Owners”) located at 13985 80<sup>th</sup> Street South (PID 1702720110001 and PID 1702720130001) in Denmark Township, Washington County, Minnesota and legally described in Exhibit A, which is attached hereto and made part of this Resolution (“Property”);

**WHEREAS**, the Applicant submitted an application to the Town seeking an interim use permit (“IUP”), pursuant to the Denmark Development Code (“Ordinance”) which classifies mining as requiring an IUP, to continue its current mining operation;

**WHEREAS**, on January 9, 2012 the Denmark Town Board granted an IUP through January 31, 2017 to allow mining and recycling activities to occur on the Property;

**WHEREAS**, on April 26, 2016 Washington County approved a CUP to allow mining and recycling activities to occur for a five year time period.

**WHEREAS**, the Applicant leases the Property from the Owners and the access drive to the Property is located on an adjacent parcel (PID 1602720220001) that provides access to 80<sup>th</sup> Street South;

**WHEREAS**, the Applicant is requesting that it be allowed to temporarily stockpile material immediately to the east of the Property on an adjacent parcel (PID 1602720230001), the same parcel on which the erosion control pond is located (“Eastern Parcel”);

**WHEREAS**, the Denmark Township Planning Commission held a public hearing on the requested IUP application on June 20, 2016, heard from the Applicant and the public, and took action to recommend that the Town Board approve the requested application for the IUP with certain conditions; and

**WHEREAS**, the Town Board reviewed the Planning Commission’s recommendation at its meeting on July 5, 2016, took additional comments from the public, and hereby finds and determines as follows:

- a. The Applicant is proposing to continue a mining and surface material recycling facility on the 80-acre site owned by Magone Farms and which is identified herein as the Property.
- b. The Property is currently zoned Agricultural, A-2 Zoning District and mining is allowed within the district upon the issuance of an interim use permit.
- c. The CUP recently issued by Washington County for the Property allows the Applicant to increase the mining depth to 860 feet, increase the maximum daily trips to 300 on up to 20 days a season, and decrease the reclamation bond to \$36,000.
- d. The Applicant has requested the same changes approved by Washington County be incorporated into the IUP requested from the Town.
- e. The report submitted to the Town from the Town’s Planner and Engineer dated June 15, 2016 is incorporated herein by reference including, but not limited to, the findings contained therein. The proposed permit conditions contained in the report were modified by the Town and are replaced with the conditions contained in this Resolution; and
- f. The Town Board determines the application materials are sufficient and the proposed continuation of the mining operation, satisfies the criteria in the Ordinance for granting an IUP.

**NOW, THEREFORE, BE IT RESOLVED**, that, based on the record of this matter, and the findings and determinations contained herein, the Town Board of Denmark Township hereby approves and issues an IUP for the continued operation of mine (gravel

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and limestone quarry and surfacing material recycling facility) as described herein on the Property provided the Applicant complies with, and remains in compliance with, all of the following conditions and limitations:

1. Scope of Permit. This permit allows for the extraction and processing of sand, gravel, limestone and recycling of used concrete, aggregate and asphalt on the Property (collectively referred to herein as “mining”). Applicants shall excavate the mining area in three phases as shown on the application map as Phase 1, Phase 2 and Phase 3. The recycling of product (crushed blacktop and concrete) is allowed provided that the material is stored on the pit floor, or temporarily on the portion of the Property identified as a temporary stockpile area located immediately to the east of the Phase 1, as identified by the Applicant and approved by the Town. Any stockpile located on the Eastern Parcel shall be removed and the Eastern Parcel restored before any mining of Phase 2 may begin. Thereafter, all stockpiling shall occur only within the mining area on the Property (not on the Eastern Parcel). Said materials are to be screened, to the greatest extent reasonably possible, from the road and all property lines. Soil is allowed to be brought onto the site for restoration purposes and the Applicant shall notify the Town when the material is brought in and identify the source of the soils (community of origin). No contaminated soil is allowed on the site. A maximum of two (2) years supply of recycled material is allowed on site at any one time. Applicant shall submit a detailed estimate of the quantity and types of materials brought onto the site to the Town in the annual report. All recycled materials must be removed once every three (3) years. All scrap from the process shall be hauled to an appropriate licensed scrap yard facility. No other imported materials, other than specified above, are allowed without first securing an amended interim use permit from the Town.

As overburden is removed all topsoil must be stockpiled. All topsoil must remain at the site and be seeded with temporary cover until the time it is reused on the site. Applicant shall berm the topsoil within the fifty foot setback along the property lines and perimeter of the Property to screen the mining area. Applicant shall maintain a 40 foot gate at the entrance of the Property and the haul road.

The depth of the excavation is hereby limited to an elevation of 860 feet. No excavation shall occur within the fifty (50) foot setback area. The Applicant is not allowed to excavate to within 10 feet of the water table, which is currently estimated to be at 845 feet. The site is currently at approximately 860.70 feet. A registered surveyor must certify the mining depth monthly and this information shall be submitted to the town on a monthly basis and included in the annual report to the Town as required by this permit.

A minimum separation of 10 feet must be maintained between the quarry floor and the water table. Prior to moving into phase 2 further verification of water table elevation must be determined. Prior to moving into phase 2 at least three additional borings must be drilled along the western edge of phase 1 to verify water table conditions.

2. Term of Permit. The term of the permit shall be from July 6, 2016 to January 31, 2022. This permit shall terminate on January 31, 2022. The Applicant shall notify the Town in writing within ten (10) days of the transfer of the Property as required by the Ordinance. An amendment to the Denmark Development Code shall not be a terminating event. All uses of the Property allowed under this permit must cease upon the termination or revocation of this permit. The Applicant may apply for a new permit before the expiration of this permit.
3. Erosion Control and Drainage. The Applicant shall comply with all requirements of the site-specific stormwater pollution prevention plan developed by the applicant as required by the MPCA including monitoring effectiveness of the pond and other best management practices. A diversion berm shall be installed on the west side of the mining operation.
4. Access, Truck Routes and Trips per day. The “access route” for the gravel mine for commercial trucking purposes will be from the access driveway, onto 80<sup>th</sup> Street, as described below, west to Oakgreen Avenue South, and continuing north on Oakgreen Avenue South, to 70<sup>th</sup> Street South. The Applicant shall notify commercial truck drivers of the need to use the access route for hauling, regardless of whether the trucks are loaded or unloaded. The hauling of gravel by the Town or its contractors for use on the Town’s roads shall not be considered commercial trucking purpose or commercial hauling for the purposes of this permit. Local drop-off or pick-up of materials by non-commercial truck traffic, and commercial hauling for delivery only within the Town, are not required to utilize the access route as listed above, but shall be required to use the established driveway entrance to the Property.

Applicant agrees to maintain the access route, at its own expense, as a paved blacktopped road, 24 feet wide, with 2-foot gravel shoulders, sufficient to accommodate the anticipated traffic generated by the use. Applicant agrees to perform routine maintenance on the access route, including but not limited to, grading, crack sealing, pot hole filling, patching, overlaying and other routine maintenance, as needed. The Town shall continue to provide snowplowing, sanding and salting, ditch mowing and seal coating, if any, as reasonably determined by the Town Board.

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At the time of renewal of this permit, Oakgreen Avenue requires immediate repairs which must be completed by August 15, 2016. These repairs include full depth patching of the failing areas of pavement. The extents/limits of these repairs shall be as determined in the field by the Township Engineer, the Town Road Supervisor and a representative from Rumpca Excavating.

During the term of this permit, the Township Engineer, the Town Road Supervisor and a representative from Rumpca Excavating shall meet each May to determine necessary annual maintenance and repairs to the haul route. This maintenance and/or repairs shall be completed by August 15th of each year.

Applicant, at its own expense, will maintain a driveway entrance from the Property onto 80<sup>th</sup> Street; the driveway entrance is approximately 60 feet to the east of the current driveway location that is east of the intersection of 80<sup>th</sup> Street and Oakgreen Avenue South. If, after mining ceases, the Property is developed, the Town, pursuant to the Denmark Development Code, may designate a different access point onto 80<sup>th</sup> Street from the Property than is referred to above.

The driveway entrance from the gravel pit to 80<sup>th</sup> Street shall be crushed black top or paved with asphalt in order to reduce the dust and provide an adequate hauling surface. Approximately 6 employees would be on site during peak use of the Property.

Applicant shall provide the Town with telephone numbers of local contact personnel who can handle complaint calls regarding the traffic, dust, and noise.

The number of truck trips entering and exiting the mining site is not to exceed an average of 150 trips per day (75 round-trips) during the primary mining season and no more than 300 truck trips per day (150 round-trips) on any one day. The number of days that exceeds 150 truck trips (75 round-trips) is limited to no more than 20 days per mining season. Rumpca Excavating shall provide a monthly report of daily truck trips to the Town Clerk by the 10<sup>th</sup> of following month of operation. The Applicant shall make available to the Town the daily scale tickets for review upon reasonable request.

5. Hours of Operation. Applicant shall be allowed to conduct business year round. Operation of equipment for excavating, stockpiling, processing and hauling shall be conducted between the hours of 7:00 a.m. and 6:00 p.m., Monday through Friday. Retail sale of product is also allowed on Saturdays between the hours of 8:00 a.m. and 5:00 p.m. For purposes of this permit, "retail sales" shall mean sale of product to individuals for personal use and shall exclude commercial hauling. Except as provided herein, no operations shall be allowed on weekends or on holidays.

The Town, by a vote of the Town Board, may allow temporary deviations from the established hours or days of operation upon written request of the Applicant without having to amend this permit. In the event of an emergency (such as floods) requiring immediate response or extended work schedules, or upon a request of a public road authority requiring the delivery of materials after hours or on weekends, the Town Board, or its designee, may allow a modification of the hours or days of operation to enable the Applicant to adequately address the need for materials to respond to the emergency, the preparation for a reasonably anticipated emergency, or to satisfy the request of the public road authority.

6. Fencing, Screening and Landscape Plan. The overall mining area must remain fenced with a minimum of three strands of high tensile fencing. The fencing shall be moved or expanded as needed to also fence the temporary stockpile to be located on the Eastern Parcel. The fencing around the temporary stockpile shall remain during the entire time materials are stockpiled on the Eastern Parcel. Warning signs must be placed at reasonable intervals along the fence to warn the public of the mining area. The fencing and warning signs must be maintained in good working order at all times, including the prompt repair of any damage. Applicant shall construct and maintain such additional berms along the setback of the Property as needed to screen the operations as mining progresses on the Property.
7. Dust and Dirt. The operation shall construct, maintain, and operate all equipment in such a manner as to minimize dust conditions. All operations shall meet the applicable requirements of the Minnesota Pollution Control Agency. Dust control material must be applied by the operator to travel routes and other areas subject to disturbance within the Property. The tracking of materials onto public roads shall be minimized. Applicant shall be responsible for removing any materials that accumulate on the public road at or near the driveway entrance to the Property.

Equipment shall be maintained in safe condition in accordance with accepted industrial practices.

8. Signage. Before putting up any additional signage, the Applicant must obtain a permit from the Town and the sign must conform to the requirements of the Denmark Development Code.

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9. Restoration. Restoration of the Property must be undertaken and completed in accordance with the reclamation plan submitted as part of the application materials. The reclamation shall occur within one year of the completion of each phase of a vein. Restoration of the entire mining site shall be required within one year of the Applicant permanently ceasing its mining activities on the Property or within one year of the expiration or termination of this permit if a new permit is not obtained within 90 days of such expiration or termination. The slopes after restoration shall not have greater than a 4 to 1 slope and the Applicant shall place at least 4 inches of topsoil over the area along with seeded mulch. Permanent vegetation must be established for the site as recommended by the Washington County Conservation District. Applicant shall report on its restoration work as part of its annual report to the Town.
10. Weeds. The Applicant shall take appropriate and necessary action to control and remove weeds and noxious weeds from the Property.
11. Noise. The Applicant shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances regarding noise in the operation of the business on the Property. The use of jake-brakes or similar such engine braking by trucks hauling to, from and within the mine shall be prohibited. Rumpca Excavating shall install "No Jake-Braking" or "No engine-braking" signs.
12. Blasting. Blasting may occur only between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday. At least 3 days prior to the date of planned blasting activities Applicant shall provide the Town a written notice of intent to blast. The Town understands that an exact date of blasting may not be known or may need to be changed because of weather conditions, provided the change does not lessen any required period of notice. The Applicant shall also provide a notice of intent to blast to residents within one-half (1/2) mile of the Property at least twenty-four (24) hours in advance of any blasting. The notice to residents may be by phone, including a recorded message, and/or by mail provided the notice is received at least 24 hours before blasting occurs. Mailing the notice at least five days before the day on which blasting is planned to occur shall be deemed sufficient notice. Furthermore, the Town understands that blasting may occur over a period of days and that it is not practical to provide separate notices for each blast occurring over the period of days. As such, one notice shall be sufficient for a period of up to five (5) consecutive business days (excluding weekends and holidays) of blasting. The notice shall describe the proposed number of blasts over the entire period. The Applicant shall also telephone the Town at least 24 hours before any blasting. No blasting is allowed on holidays or weekends. Each blast must be conducted in accordance with the Bureau of Mines recommended standards for vibration and air blast.

For each blast, seismic and decibel information must be recorded by an independent contractor to confirm that the blast did not exceed the Bureau of Mines standards. That information provided the Town within 15 days of the blast, which must include a statement as to whether each blast was in compliance with the Bureau of Mines standards, and all blast reports from the previous year, shall be submitted as part of the Applicant's annual report. The testing devices may be placed in town road right-of-ways, provided such placement does not interfere with the safe use or maintenance of the road. No testing equipment may be placed on the private property of others without the owner's consent. The storage of explosives on the site is prohibited.

13. Insurance. The Applicant shall carry bodily injury and property damage public liability insurance in the amount of at least One and One Half Million Dollars and NO/100 (\$ 1,500,000) naming Denmark Township as an additional insured. The Applicant shall annually provide, as part of its report, a certificate of insurance showing at least the required amount of insurance coverage and that the Town is named as an additional insured.
14. Bond. Applicant shall provide the Town a surety bond in the amount of \$45,000 (125% of the operator's reclamation estimate of \$36,000) until all mining operations and final restorations are completed. The bond shall ensure the Property is fully restored as required herein upon the completion of mining activities on all of the phases, upon the termination of this permit without obtaining a new permit, or upon the permanent cessation of mining activities as provided herein. The bond shall continue for an additional eighteen months after the work is completed to assure compliance with all of the terms and conditions of this permit and full restoration of the Property. Such bond shall be made by an insurance company or other financial institution acceptable to the Town and shall be in a form to be approved by the Town attorney. Said bond shall be in such terms as may be required to assure full, prompt, and faithful performance of all its closure obligations for the Property under this permit and the payment of losses, damage and expense incurred or suffered, including attorney's fees, as a result of any failure, refusal or inability of Applicant to perform its closure obligations or to recover under said bond. The bond shall provide that no waiver or delay or neglect of enforcement of any obligation of Applicant shall affect the right of the Town to recover under said bond, and that no claim or demand for payment on the bond shall be made unless written notice of default and reasonable opportunity (not less than 30 days) to cure said alleged default shall have first been given to Applicant. This permit shall not be effective until the bond is in full force and effect. This permit shall terminate upon any lapse in the bond.

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15. Annual Report Required. An annual report shall be submitted to the Town on or before the 1<sup>st</sup> day of February of each year. Said plan shall outline the activities and amounts of materials removed during the year and plans for the next year. The report shall include all of the information required by this permit including, but not limited to, evidence that the insurance and restoration bond are effective and in place. The report shall include the monthly depth measurement conducted by a register surveyor. In addition, Applicant shall keep a record of all complaints made about the operation of the mine and the measures taken to deal with the complaint.
16. Fuel Storage. There shall be no on-site storage of fuel, except that the fuel for the generators shall be stored in the crushing trailers. Applicant shall ensure that the fuel is properly stored according to state and federal guidelines. Applicant shall ensure that an on-site emergency spill recovery system is present at all times the mine is in operation. All spills that are required to be reported shall be reported to the 24-hour Minnesota Statewide Emergency within 12 hours, and to the Washington County Department of Public Works and Denmark Town within 24 hours.
17. Location of Crushing Equipment. The crushing equipment must be located in the bottom of the pit and meet all required setbacks.
18. Location of Other Equipment. Vehicles (dump trucks, loaders, etc.) used for the mining operation shall be stored so that they are:
  - A. Screened from the neighboring homes to the extent reasonably possible;
  - B. In or near the bottom of the mining area to reduce noise and visible impacts to neighboring properties; and
  - C. Otherwise minimize the impact of the use of the equipment upon the surrounding neighbors.
19. Chemicals. No hazardous chemicals are allowed to be stored on the property other than fuel storage as outlined in this permit. Applicant shall notify the Hastings Fire Department about the existence and location of the storage of any chemicals on the site. Applicant shall comply with any and all recommendations of the fire chief regarding storage of said chemicals on the site.
20. Inspections. The Town, its officers, and consultants may enter the Property, after providing reasonable notice to the Applicant, at all reasonable times to conduct inspections for the purpose of ensuring compliance with this permit. Prior notice to inspect the Property is not required in the event of an emergency.
21. Amended Permit. Any alteration of the use of the Property, or of any plans submitted related to those uses, including, but not limited to, expansion of the use beyond what is allowed by this permit, shall not be permitted unless an amended interim use permit is obtained from the Town.
22. Revocation. The violation of any term or conditions of this permit including, but not limited to, any applicable federal, state, or local laws, rules, regulations, and ordinances, may result in revocation of the permit. The operator shall be given written notice of any violation and reasonable time (not less than 30 days) to cure the violation before a revocation of the permit may occur.
23. Binding Effect. The permit and its conditions are binding on the parties, their successors and assigns, and shall run with the Property until the permit is terminated or revoked as provided herein.
24. Host Fees. In the event that the Minnesota Legislature approves host fees, Applicant shall pay to the Town the fees which are allowed by the legislation.
25. Legal Compliance. This permit is subject to the requirements of the Town's ordinances and the Applicant is required to comply with all applicable federal, state and local laws, rules and ordinances, and to obtain such other permits or permissions as may be required.
26. Only Permit. This permit supersedes and replaces any other permits previously issued by the Town for the mining operation on this Property and all such previous permits are hereby repealed.

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27. Acceptance of Conditions. Utilization of the Property for any of the uses allowed by this permit shall automatically be deemed acceptance of, and agreement to, the terms and conditions of the permit without qualification, reservation, or exception.
28. No Waiver. A failure by the Town to take action with respect to any violation of any condition, covenant or term of this permit shall not be deemed to be a waiver of such condition, covenant, or term or any subsequent violation of the same or any other condition, covenant or term.
29. Town Costs. The Applicant shall pay all application fees and pay, from the escrow or in addition to the escrow if it is not sufficient, the costs the Town incurred related to processing this application. The Applicant shall ensure that its escrow account is current before this permit becomes operational. The Applicant shall also reimburse the Town on an on-going basis for the actual professional costs it incurs to review the monthly mining depth and truck trip reports, as well as the professional costs incurred related to the annual haul route maintenance and repair review.

Adopted this 5th day of July, 2016

**DENMARK TOWNSHIP  
WASHINGTON COUNTY, MINNESOTA  
Resolution No. 2016-13**

**RESOLUTION GRANTING FINAL PLAT  
APPROVAL FOR THE ERIN GLEN SUBDIVISION**

**WHEREAS**, 6680 St. Croix Trail, LLC (“Applicant”) submitted an application to Denmark Township (“Town”) for final approval of a Major Subdivision to allow the subdivision of its property containing approximately 51 acres to create eleven (11) single family lots;

**WHEREAS**, the property to be subdivided is located at 6680 Saint Croix Trail (PID # 04-027-20-41-0001 & 03-027-20-32-0010) and is legally described in Exhibit A (“Property”), which is attached hereto and made part of this Resolution;

**WHEREAS**, the Applicant has represented that it has clear title ownership of the Property;

**WHEREAS**, the Planning Commission reviewed the preliminary plat of Erin Glen Subdivision (“Plat”) at a duly noticed public hearing held on July 21, 2015, which was continued to September 21, 2015. The Planning Commission’s consideration of the Plat was then continued at the Applicant’s request and it came back before the Planning Commission on January 19, 2016. After consideration of the additional information provided by the Applicant, the Planning Commission voted to forward the application to the Town Board with the recommendation that preliminary plat approval be granted with certain conditions;

**WHEREAS**, the Town Board adopted Resolution 2016-4 on February 1, 2016, which is incorporated herein by reference an attached as Exhibit B, granting preliminary approval of the Plat subject to certain conditions (“Preliminary Approval Resolution”);

**WHEREAS**, the Applicant has requested final approval of the Plat and submitted a Plat submittal package dated May 12, 2016 including the following documents (“Submittal Package”): Response Review Letter, Final Plans, Final Plat and Tree Plans;

**WHEREAS**, the Town Board considered the final plat request at its meeting held on July 5, 2016; and

**WHEREAS**, the Town Board hereby finds and determines as follows:

- a. Except as noted within this resolution, the Applicant has complied with the conditions imposed on its approval of the Preliminary Approval Resolution;
- b. The Property is currently zoned Rural Residential (RR);
- c. Chapter 3, Section 7 of the Denmark Township Development Code (“Development Code”) allows major subdivisions containing four (4) or more lots and requires the submission and filing of a plat;
- d. One existing home is located on the site and will remain on proposed Lot 2 of Block 3

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- e. The proposed density of eleven (11) units was approved by the Town Board on March 5, 2007;
- f. The Property satisfies the minimum lot size for the proposed use;
- g. The lots to be divided are in a location where conditions are well defined;
- h. The newly created property lines will not cause any resulting lot to be in violation of the Development Code;
- i. The proposed public street (65<sup>th</sup> Street) meets the requirements of the Development Code;
- j. The proposed right-of-way connecting the proposed 65<sup>th</sup> street to the adjacent property to the north meets the requirements of the Development Code;
- k. The proposed division was prepared by a registered land surveyor;
- l. The proposed project will not have any significant impacts on utility and school capacities;
- m. The proposed project does not conflict with the Town's Comprehensive Plan or the intent of the Development Code.
- n. The Engineer's reports dated January 12, 2016, and May 25, 2016 ("Engineer's Reports") regarding this matter are hereby incorporated in this Resolution by reference;
- o. The Planner's reports dated January 13, 2016, and June 30, 2016 ("Planner's Reports") regarding this matter are hereby incorporated in this Resolution by reference, except for the conditions which are superseded by the conditions contained herein; and
- p. The final plat is consistent with the approval of the preliminary plat and was timely submitted for approval.

**NOW, THEREFORE, BE IT RESOLVED**, that the Town Board, based on the record of this matter, the Planner's Reports, and the findings and determinations contained herein, does hereby approve the final plat proposed by the Applicant subject to the following terms and conditions which must be met:

- 1. The Applicant shall enter into a development agreement ("Development Agreement") that is satisfactory to the Town Attorney. The Development Agreement shall include provisions related to, but not limited to, constructing the planned public improvements in accordance with the approved plans, providing the Town financial security for the construction of such improvements, the maintenance of public improvements, and under which circumstances the Town will assume maintenance of the roads being built, payment of the park dedication fee, required covenants, and such other provisions as the Town Attorney determines are appropriate. Such Agreement must be fully executed within 60 days of this approval and before the Plat may be recorded with the County;
- 2. A Storm Water Maintenance Agreement that details operation and maintenance schedules and responsibilities will be a condition in the Development Agreement. The Town will record this final approved Storm Water Maintenance Agreement along with the Development Agreement;
- 3. Except as otherwise noted in the Development Agreement, Storm Water Maintenance Agreement, and by this resolution, all improvements shall be constructed consistent with the Submittal Package;
- 4. The proposed connection to the cul-de-sac to the west shall be coordinated and approved by the Town;
- 5. Written approval must be provided from Washington County on the proposed turn lane improvements along St. Croix Trail prior to construction;
- 6. Revised plans must be submitted to the Town showing road names as assigned by the County Surveyor;
- 7. All well permits are subject to the requirements of the Minnesota Department of Health;
- 8. That the sewage treatment systems and their locations are approved by Washington County Department of Public Health and Environment;
- 9. The Town Attorney shall review and approve all covenants to be recorded against the Property;

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10. All construction traffic shall be limited to using St. Croix Trail and not the Town's road;
11. That all representations, written and oral, made by the Applicant and the Applicant's agents and representatives to the Town contained in and concerning the application must have been true, complete, and accurate at the time they were made;
12. The applicant complies with all conditions included in the County Plat Commission approval of March 23, 2016.
13. The Applicant shall remain in compliance with all applicable laws, rules, and regulations concerning the Property;
14. That the required park dedication fee is paid prior to the Township signing the final plat and Development Agreement;
15. That the Applicant satisfactorily completes any and all requirements after final review of the final plat;
16. That all fees, including professional fees incurred by the Town, and escrow amounts are paid;
17. The Town may enter the Property after providing reasonable notice to the Applicant or Owners, at all reasonable times to conduct inspections for the purpose of ensuring compliance with this approval. Prior notice to inspect the Property is not required in the event of an emergency.
18. Applicant is solely responsible for obtaining all permits and permissions related to the construction of the turn lane on CSAH 21 (St. Croix Trail) to 67<sup>th</sup> Street South, obtaining any temporary constructions easements that may be required, and for ensuring the construction work does not unreasonably interfere with access to any adjacent properties. The Applicant must ensure that at least temporary access is restored to the adjacent properties at the conclusion of work each day;
19. Removal of the existing driveway must be done in a manner that maintains access for Parcel B. The Applicant is responsible for obtaining all permits, permissions, and temporary construction easements as may be needed to remove the existing driveway, and for restoring the properties disturbed by such removal;
20. To the extent right-turn lane construction work on CSAH 21 (St. Croix Trail) requires closing of the access to private property, the property owners must be informed at least 24 hours in advance of the closure;
21. The Applicant shall prepare, execute, and record a 33 foot wide easement across Lot 1, Block 4 as shown on Sheet 6 General Layout of the plans to provide an alternate access for the existing Parcel B to 67<sup>th</sup> Street. The easement must be in a form acceptable to the Town Attorney;
22. All engineering consideration described in the Engineer's Reports are met;
23. The Town Chairperson and Clerk are hereby authorized and directed, upon the Applicant's compliance with the terms and conditions of this approval, to sign the final plat on behalf of the Town.

Adopted this 5<sup>th</sup> day of July, 2016.