

DENMARK TOWN BOARD MEETING MINUTES  
July 10, 2023

**SUPERVISORS PRESENT:** Dawn Johnson, Matt Ruben, Mike Femling, Julie Windschitl

**ABSENT:** John Strohfus

**STAFF PRESENT:** Troy Gilchrist (Kennedy-Graven), Kim Lindquist (WSB)

**CALL TO ORDER:** Meeting called to order @ 7:01PM by Vice Chair D Johnson

**AGENDA APPROVAL:**

**Motion M Femling/2<sup>nd</sup> J Windschitl to approve Agenda. Voting Yes- M Femling, M Ruben, J Windschitl, D Johnson. Voting No- None. Abstaining- None. Motion Carried 4-0-0.**

**CONSENT AGENDA APPROVAL:**

Clerk added claim number 12276 for the Hastings Rural Fire Association and claim 12277 for the credit card statement. M Femling pulled claim 12258 for Luhman's.

**Motion J Windschitl/2<sup>nd</sup> M Femling approval of Consent Agenda items which include 06/05/2023 Board Minutes, Claims 12252-12277, EFT payments- PERA 707848, MN Tax 478524000, Federal Tax 50708041, payroll ending 07/01/2023, and Financial Reports as amended. Voting Yes- D Johnson, J Windschitl, M Ruben, M Femling. Voting No- None. Abstaining- None. Motion Carried 4-0-0.**

**HEARING DECISIONS/ZONING ACTIONS:**

**Olson Minor Subdivision and Variance**

Keith Olson inquired if his brother could be a part of the meeting via his cell phone. Board and Attorney didn't have a problem with the request. He provided an overview of the history of the property and how the application evolved over the past months which resulted in the application in front of the board. He stated due to the pavement requirement of the road, only one family member wants a 5 acre lot off the parent property and looking to sell the existing homestead with the remaining land. They are asking for a variance to not pave the road due to only creating one lot. He also stated that the Planning Commission recommended approval at the public hearing.

J Windschitl inquired clarification with the sale of the property, the farm and land would sell as one parcel. K Olson stated that is their intent but if someone approached them, they would look at splitting it off. He stated that it would be a nice little package to sell the farmstead with all the buildings and land. D Johnson stated that it would need to be sold as one parcel because a key issue is if there is any more subdividing of that parcel the road would need to be paved.

M Femling inquired if Washington County was approached about adding a driveway from 110<sup>th</sup> Street. J Windschitl stated the County discouraged that option due to sightlines. Attorney stated the town engineer has some concern with that as well.

J Windschitl inquired where the driveway is in relation to the paved portion of Oakgreen off of 110<sup>th</sup> Street. K Olson stated it was in the northern third of the property because it was a high area would give better view and the normal flow of the land and better drainage to there.

Planner clarified it is a minor subdivision and the variance is to have direct access onto a gravel road which is inconsistent with the subdivision ordinance.

M Femling stated the rest of the land tends to bear the weight if it gets divided again and inquired how it is enforced. Attorney stated no further division of this property is allowed unless it comes back through the process which would lead staff to this resolution to enforce the condition. He stated there are three primary conditions that are standard to development agreements regarding density units, park dedication fee of \$2,000 and the restrictive covenants that if any further subdivision of the parent property will require the paving of Oakgreen. Attorney stated that at the Planning Commission Public Hearing, the applicant did express concern about that condition and think it is overly restrictive to future buyers of the property. He stated the Planning Commission forwarded the recommendation that it remain and that was the planning staff recommendation as well so it's in the resolution.

K Olson stated they still believe that condition be removed from the resolution and inquired about if someone wanted to build next to the new lot if they would be required to pave all of Oakgreen or just up to their driveway.

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D Johnson stated the whole road would need to be paved and at the time of the application there would be a discussion that would probably include cost sharing. Attorney stated it would be an issue that would be resolved when an application comes before the board. He stated this condition is to disclose and install clarity to potential buyers that this is a requirement if they choose to further subdivide.

K Olson stated a hypothetical scenario of a future buyer wanting to turn it into a vineyard. Attorney stated the restrictive covenant is condition #9 and it specifically states subdivision of parent property.

M Femling stated the road is not heavily traveled. D Johnson stated neighbor, Greg Novak, spoke in support of leaving it unpaved because that would be the residents preference.

Attorney stated a future application may come before the board which may have changed and can be addressed at that point.

Public Comment:

Greg Novak, 14325 110<sup>th</sup> St S, stated he fully supports the Olson's request to divide off 1 lot without paving the road and strongly encourages the removal of the condition regarding any future division of the property being required pave the road because it is a huge encumbrance on what would be what a 77 acre farm and home. He stated that he believes the ordinance should be changed and that the paving requirement should be for residential and single family estates not Agricultural zoning where it is one density unit per 20 acres. He stated the paving requirement needs to also be clarified as to what is expected. He also stated that if the ordinance is left as written, farmers on a gravel road in Denmark Township will not want to subdivide because they would be required to pay \$300,000-\$400,000 to pave the road. G Novak stated this is an opportunity to clarify the ordinance and make it fair for our farmers.

7:26PM Public Comment Closed

J Windschitl stated support of the minor subdivision and variance but is against removing the condition regarding further subdivision and paving of the road.

M Ruben inquired regarding the ordinances and if you can request a variance from any ordinance. He also inquired if there is a cost to request a variance. Attorney provided brief history and how this matter evolved over the past few months resulting in the request for a variance.

M Femling stated he is in favor and when it comes to subdivision later on it will be a big expense.

D Johnson stated supportive and believes the ordinance can be reviewed at a later time. She stated they need to act on what is in front of them and the condition discloses to a future buyer the requirement to pave the road.

**Motion M Femling/2<sup>nd</sup> J Windschitl to approve Resolution 2023-14 Granting Preliminary and Final Approval of a Minor Subdivision and Variance at 11487 Oakgreen Avenue South. Voting Yes- D Johnson, J Windschitl, M Femling, M Ruben. Voting No- None. Abstaining-None. Motion Carried 4-0-0.**

**St Croix Sewer CUP**

M Femling recused himself due to conflict of interest.

Planner stated the request is for a conditional use permit for use of an accessory structure for commercial use at 8319 Manning Ave S. In February of this year, the applicant applied for an Agricultural Certificate of Compliance to build an 11,136 square foot accessory structure which they noted to be used for agricultural and was approved. After the approval, the town received an application to use the building for commercial use, St Croix Sewer. The number of structures and the amount of accessory structure square footage that can be allowed by zoning district depends on the size of the lot. Given the size and zoning of the property, the owner is allowed 5,000 square feet of "non-agricultural" building and unlimited square footage for agricultural buildings. The applicant indicated a good portion would store work trucks, equipment, and supplies for the business. Planner stated the conundrum is if had been recognized that the accessory structure was not going to be solely an agricultural use structure, it would have not been approved and it have limited them to the 5000 square feet. The ordinance does allow for

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detached accessory structures to be used for commercial use with a conditional use permit. She stated there are 8 standards associated with issuing conditional use and many of them are not quite appropriate for this particular application. She also stated there are 7 conditions that were applied to the certificate of compliance, one being that the accessory structure only be used for agricultural uses.

Planner stated staff recommendation at the Planning Commission had been to support the conditional use permit with various conditions such as limiting the use of non-agricultural use to half of the building. The Planning Commission discussed this condition and did not support the request. They expressed concern with the size of the building and how it was obtained. She stated there are some benefits associated with allowing some commercial use in the building because it's a highly visible site and it's preferable to have storage of equipment and supplies within the building. Outside storage of equipment is not encouraged or allowed. Part of the issue that the Planning Commission had is the disconnection of the two approvals which put the townships in a difficult situation and therefore they didn't support granting the CUP. The resolution reflects the Planning Commission recommendation, which is consistent with the process.

Attorney stated after hearing from the applicant and the public, the board can act on the resolution as drafted or if they want to go a different direction, then he would draft a new resolution to be acted on at the August meeting.

Lisa Smith, 8319 Manning Ave S, Operations Manager for St Croix Sewer stated their previous home sold in one day before we moved to the property which happened really quickly. She stated they filled out the application for the building, knowing that they have 85% of the property planted with corn. The intent was for that building to be an agricultural building. They lease the land right now, but they are looking at taking over farming it themselves. She stated the agricultural buildings that were on the property were non-useful and they really could not operate anything out of them. Therefore, they built a building, there's another building, as you probably all know already, that we have resided, that they store all of the business equipment. There are only four employees, herself, Tony the owner, and then two other guys. They come in in the morning, they leave the property. They do not have a business where people are coming and going all throughout the day, evening, or weekends. They arrive at 6-630am, and they usually don't get back sometime between 6:00pm and 8:00pm.

J Windschitl inquired if the intent is to store farm equipment in the building. L Smith stated their intent is to store farm equipment as well as trucks for the business. J Windschitl restated the intended use is to be for both farming, whether that's their equipment or the least farmer's equipment, as well as for your business. She inquired about the number of trucks they currently have for the business and if they plan on expanding. L Smith stated they currently have three trucks which will fit in the building, and they do not plan on expanding the business.

D Johnson inquired staff, in order to build, they tore down 3 adjoining structures and built within that footprint. If those buildings were in better shape and they could have used them, we would not be having this same discussion. Attorney stated he believes that that is a practical point for the board to consider, it kind of strikes you as fair to replace those old buildings for a new one. From a strictly legal perspective, if those buildings were non-conforming, you could rebuild but it's limited to the same footprint and envelope so they could rebuild multiple smaller ones. He stated legally speaking, no, but I understand from common sense that it's not putting any greater burden, or at least not as much greater burden on the property. M Ruben inquired if the buildings were non-conforming or just not usable. Attorney stated he is unsure of the square footage of those buildings or how many were there. Planner stated the previous buildings were more than likely agricultural buildings so there would not be a limit on the number but they more than likely did not equal the square footage of the current building. She agreed with attorney that legally you can't have the same square footage in a different configuration.

J Windschitl inquired where the trucks were stored prior to this building. L Smith stated on previous property and they had a conditional use permit through the town.

M Ruben inquired if the total amount of space that the business equipment, three trucks, excavator, and trailers, would be occupying is less than 5000 square feet. L Smith stated she doesn't have an answer to that. Attorney stated the original staff report recommended half the building be used for that. M Ruben stated the ordinance is 5,000 square feet.

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L Smith stated they have another building that the trailers could fit in. She stated they feel that they have been trying to keep it clean and organized, that is their home.

M Ruben stated their website suggests that they are growing. L Smith stated when the website was created, Tony Scully and his partner split at which time they did hire three employees, but the website has not been updated since.

Public Comment:

Bob Barr, 14820 110<sup>th</sup> St S, Planning Commission Chair, stated agricultural buildings have different construction standards than a building used for commercial use. There is an 11,000 square foot building that hasn't been verified that it is built to commercial standards which is concerning. He stated for the CUP, many types of things are looked at such as floor drains, flammable traps if fuel is stored on the premises, and other things that pertain to that type of business. He also stated that the property already has a 5,500 square foot building, which brings the total square footage of accessory structures to 16,000 square feet. Had that been brought before the board and Planning Commission, the application would have been denied. B Barr stated the building was designed and built for commercial use. He recommended the town send the building inspector out to the property to make sure it is built up to commercial standards.

D Johnson stated the town received a letter of support from residents, Greg Novak.

Greg Novak, 14325 110<sup>th</sup> St S, stated the applicant took a rundown farmstead with old buildings and renovated it. They turned the pasture into tillable farmland. He stated they may have gone about all of this the wrong way, but gave them credit for going through the process to get a permit to be compliant versus operating without.

7:53PM Public Comment Closed

M Ruben inquired whether permits were pulled for all the work that they have done around the property and if the agricultural building needs a permit. Planner stated agricultural buildings do not need a building permit due to Minnesota Statue.

J Windschitl inquired if the building has any floor drains or flammable traps that Mr Barr mentioned. L Smith stated she is unsure, and the building was designed by Lester Builders. J Windschitl inquired when they expect to finish the building. L Smith stated half of the floor is poured. J Windschitl inquired if floor drains could still be added. B Barr stated they wouldn't necessarily need floor drains, but because of the type of business, equipment and possible flammable hazards that could go down the floor drains which would require flammable traps.

J Windschitl stated she believes we're in a difficult position because she likes the improvements to the property but at the same time how this came about and what their true intentions were.

D Johnson stated that these are two separate issues. For the business, there needs to be a CUP with conditions. It is seasonal, which is allowed. There isn't any impact on traffic because of the location of the property. There aren't any objections from the neighbor. The property has been improved by investing a large amount of money in the property. She stated she wished things would have happened in the reverse order. She also stated she is leaning in favor of approving; however, she would like to send Isaac out there and develop the conditions to make sure the building is appropriate for the intended use.

M Ruben stated if the property was purchased with the larger building already on it, the conversation would be different. He stated the ordinance may need to be looked at to avoid this situation in the future. He stated we should make sure permits are obtained for all the work that has been done and get them up to date.

J Windschitl stated they want to work with them on this situation, but we can't just push this through. She agrees with getting Isaac out there to look at it. L Smith inquired who Isaac is and how many CUPs have been granted in Denmark township. D Johnson stated Isaac is the town's building inspector. Attorney stated every commercial business within the town, so a lot of CUPs have been granted. Planner stated CUPs are granted for different situations.

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L Smith stated they are just trying to do the right thing; this is their livelihood. They had no intention of being deceitful.

J Windschitl inquired about the intent to eventually farm. L Smith stated it is their intention to farm and 85% of the property is planted in corn. She stated they have invested a lot of money.

D Johnson inquired attorney of how to proceed. Attorney stated the board could give him direction to prepare a resolution approving to be brought back in August and send Isaac out to do his inspections. If there are things that need to be accommodated in the resolution, they would be added before the August meeting.

Planner inquired about stopping work until building inspector gets out there so if there are issues, they can be addressed right away. L Smith stated there is a short amount of time to construct the building and they have contractors lined up. J Windschitl inquired about building plans and if they could share them with the town for the building inspector to review. L Smith stated they have building specifications from Lester Builders that she could provide. She stated she doesn't want to stop construction.

D Johnson stated the building inspector is pretty prompt on getting out to properties same day or the next day. Attorney stated he is unsure of building code and what the inspector may find. J Windschitl stated it may be helpful for the inspector to have a list of the equipment that will be stored in the building, and they can use the existing building for their equipment. It is just the agricultural building that is in question. Planner stated getting the building plans to the inspector right away, that will facilitate his review. J Windschitl stated she would like a list of the equipment that would be stored in the building prior to the next meeting.

M Ruben inquired about requiring them to obtain the permits that are needed for the work already done. D Johnson stated that they will wait for the building inspector's report before they move forward with that.

**Motion D Johnson/2<sup>nd</sup> M Ruben to direct the attorney to draft Resolution of approval and direct the building inspector to the property to inspect for commercial or agricultural use. Voting Yes- D Johnson, J Windschitl, M Ruben. Voting No- None. Abstaining-None. Motion Carried 3-0-0.**

**Public Comment:** None

**BUSINESS ITEMS:**

**Claim 12258- Luhman's**

M Femling stated Luhman's used more calcium cholesterol than in the past and he contacted Luhman's to address the issue. He stated there may have been miscommunication with the driver and roads contractor which directed the driver to apply as they have in the past. Driver stated he could see where to start and stop spraying. Luhman's stated they would reissue the claim with a credit for the additional 3700 gallons.

**Martin Marietta Screening Plan**

Attorney stated part of the IUP approval was to come back before the board with a screening plan within 60 days.

Christina Morrison, Land and Environmental Service manager with Martin Marietta, stated as they developed the screening plan, they took into consideration all the comments and input they received from neighbors throughout the review process over the course of the last several months. She stated there may be some misconceptions regarding the language used in the application that implies they are to fence in the perimeter of their property. The county ordinance states fencing shall be installed where deemed necessary and it was deemed necessary along Quadrant and along the active portion of the mine. A neighbor contacted the Mine Safety and Health Administration, a federal agency, and an agent came down from Duluth to follow up on that complaint and reviewed our sites. She stated they found them to be not out of compliance on any fronts and having a safe site, no violations were issued.

C Morrison presented the fencing and screening plan to the board which included removing a gate on the east side of the mine due to it not being in use, replace the woven wire fence on 87th Street within 6 months of road construction completion, and replace the barbed wire fence on the northwest corner of property with woven wire fencing. She stated that the Herman farm that abuts the mine has informed them that he does not want planting,

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fencing or berms between properties due to farming the land. She also stated that they have placed “no trespassing” signs every 200ft as well as add signs on the northwest corner.

C Morrison stated there are two phases with the berms. Phase one is to raise the height of the berm to the west of the entrance to achieve a total height of 15-20 feet above the road which will be completed by the end of 2023. Phase two will be the extension of the existing berm along 87<sup>th</sup> street to the western property line and wrap around the property corner and extend north approximately 150 feet with a height of approximately 20 feet above the elevation of the existing road. She addressed the plantings which will happen on the reconstructed berm on the west of the entrance which include spruce trees and red and yellow dogwood.

Board discussed the timeline and the location of the fencing on the west side of the property at great length. Board stated they are requiring Martin Marietta to fence the west side.

Laura Pope, 8858 Pleasant Ave S, inquired if , is it safe to currently say the perimeter of the active mining area is not fenced. C Morrison stated that is correct but the fence that is there was deemed necessary by county and town staff in the past. She stated what is currently being discussed is the new fencing requirements and the schedule to implement. L Pope inquired if an IUP trumps an ordinance. D Johnson stated in the IUP that was just passed states the active perimeter must be fenced and that is what is being discussed. L Pope stated in the 2018 IUP states the perimeter of the active mine is fenced. C Morrison stated in the past the fence on 87<sup>th</sup> and Quadrant was considered the perimeter until this past IUP. J Windschitl stated that is what the board is working on and is in the plan before the board. L Pope stated she feels it should be a priority for safety reasons and should be on the active mining perimeter regardless of the cost. She addressed the different heights of the berms and the need to address them as well as the county deferring decisions because they are waiting on the town’s decision.

J Windschitl stated they can't look backwards because none of them were on the Board back in 2018. She stated she feels fencing is the biggest concern as well, and that's why they are addressing this right now.

Further discussion and consensus to have them place a fence on the western side of the active mine be part of the plan this year.

**Motion J Windschitl/2<sup>nd</sup> M Ruben to approve Martin Marietta’s Screening Plan with the addition of including western fence be part of the plan this year. Voting Yes- J Windschitl, D Johnson, M Femling, M Ruben. Voting No- None. Abstaining-None. Motion Carried 4-0-0.**

**87<sup>th</sup> Street Update**

D Johnson stated the engineering report was just submitted just before the meeting and hadn’t had time to review it. M Femling stated they were supposed to have something this past month and afraid to table it. J Windschitl inquired the attorney if a special meeting could be had. Attorney stated that is definitely a possibility and would need to be posted in advance.

**Ditch Mowing Agreement**

M Femling stated he recognized the agreement expired as he directed the roads contractor to start mowing. The contract is with Tri-County Services to continue services and to raise the hourly rate to \$100 from the previous \$80. Attorney inquired if he had already mowed once and at what rate. M Femling stated he has mowed the ditches once at the \$80 per hour rate.

**Motion M Femling/2<sup>nd</sup> J Windschitl to approve Ditch Mowing Agreement with hourly rate of \$100 per hour. Voting Yes- J Windschitl, D Johnson, M Femling, M Ruben. Voting No- None. Abstaining-None. Motion Carried 4-0-0.**

**Ag Preserve Application**

Attorney stated this property had been in Agricultural Preserve and the property owner wants to put it back into Agricultural Preserve. He stated in order to be put back into Agricultural Preserve, the town needs to approve it which a draft resolution has been prepared and before the board.

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**Motion J Windschitl/2<sup>nd</sup> M Ruben to approve Resolution 2023-15 Approving Application for Re-Enrollment of Land into a Metropolitan Agricultural Preserve . Voting Yes- J Windschitl, D Johnson, M Femling, M Ruben. Voting No- None. Abstaining-None. Motion Carried 4-0-0.**

**Cannabis Business Interim Ordinance**

Attorney stated as part of the Cannabis law that was adopted by the legislature this last session, they authorized municipalities to place a moratorium on cannabis businesses which includes some but not all of the cannabis activities that are authorized by the law. This will give the town time to study and establish a policy until January 2025.

**Public Comment:**

Rich Robinson, 8833 Oakgreen Ave S, inquired about farming cash crops and cultivators for commercial sales. Attorney stated if they are growing cannabis then they would need a license from the new state office. This doesn't address hemp or CBD products.

**9:34PM** Public Hearing Closed

**Motion D Johnson/2<sup>nd</sup> J Windschitl to approve Ordinance 2023-02 An Interim Ordinance Authorizing a Study and Imposing a Moratorium on the Operation of Cannabis Businesses. Voting Yes- J Windschitl, D Johnson, M Femling, M Ruben. Voting No- None. Abstaining-None. Motion Carried 4-0-0.**

**Motion D Johnson/2<sup>nd</sup> J Windschitl to approve Resolution 2023-16 Approving Summary Language for Publication of An Interim Ordinance Placing a Moratorium on the Operation of Cannabis Businesses. Voting Yes- J Windschitl, D Johnson, M Femling, M Ruben. Voting No- None. Abstaining-None. Motion Carried 4-0-0.**

**LEGAL UPDATES:** None

9:35PM **Motion M Femling/2<sup>nd</sup> J Windschitl to adjourn July 2023 Board Meeting. Voting Yes- M Femling, M Ruben, J Windschitl, D Johnson. Voting No- None. Abstaining- None. Motion Carried 4-0-0**

Jessica Maurer

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Denmark Township Clerk/Treasurer

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Denmark Township Chair