

**DENMARK TOWNSHIP  
WASHINGTON COUNTY, MINNESOTA  
Resolution No. 2023-\_\_\_**

**RESOLUTION DENYING A CONDITIONAL USE PERMIT FOR  
THE PROPERTY LOCATED AT 8319 MANNING AVENUE SOUTH**

**WHEREAS**, Boca Northe, LLC, (“Applicant”) owns the property (PID 33.63000.04.040) located at 8319 Manning Avenue South, and which is legally described in the attached Exhibit A (“Property”);

**WHEREAS**, Tony Scully, on behalf of the Applicant, submitted an application to Denmark Township (“Town”) for a conditional use permit (“CUP”) for use of a newly built accessory structure for a commercial seasonal business owned and operated by Scully called St. Croix Sewer Service on the Property (“Proposed Use”);

**WHEREAS**, in February 2023, less than five months ago, the Town issued the Applicant a certificate of compliance (“CoC”) to build an approximately 11,136 square foot agricultural accessory structure (“Building”) on the Property;

**WHEREAS**, the size of the Building far exceeded the allowed square footage of non-agricultural accessory structures allowed on the Property under Denmark Township Development Code (“Development Code”), but the Applicant assured the Town prior to issuing the CoC that the Building would only be used for agricultural purposes even though Applicant leases the agricultural portion of the Property to someone else and does not farm the Property himself. The Applicant indicated the Building was not to be used for his sewer business;

**WHEREAS**, based upon Applicant’s assurances, the Town approved the CoC allowing the oversized Building and one of the conditions placed on the CoC allowing the Building to be built is that “The accessory structure shall only be used for agricultural uses.”;

**WHEREAS**, the Proposed Use of the Building under the requested CUP is for the storage of all business tools, vehicles and equipment, as well as for storage of staff personal vehicles, related to the seasonal business called St. Croix Sewer Service, Inc.;

**WHEREAS**, the Property contains approximately 39.5 acres and is located in the Town’s Agricultural (A2) District and the Denmark Township (2040) Comprehensive Plan guides the Property as Agricultural;

**WHEREAS**, under Chapter Two, Part 3, Section 1.2 of the Development Code, the Applicant is allowed a total of 5,000 square feet for all “non-agricultural” buildings and an unlimited square footage for agricultural buildings on the Property;

**WHEREAS**, Section 1.2 (3)(E) of that part of the Development Code states “[a]ll detached accessory structures are to be used for personal or agricultural use only. No commercial use or commercial related storage is allowed in these structures except by Conditional Use Permit”;

**WHEREAS**, seasonal businesses are allowed in the A2 District with the issuance of a CUP;

**WHEREAS**, Chapter One, Section Ten of the Development Code outlines the criteria for granting a CUP within the Town, including the consideration of the following factors:

- (A) The impact of the proposed use on the health, safety and general welfare of the occupants of the surrounding lands.
- (B) Existing and anticipated traffic conditions, including parking facilities on adjacent streets and lands.
- (C) The effect of the proposed use on utility and school capacities.
- (D) The effect of the proposed use on property values and scenic views in the surrounding area.
- (E) The effect of the proposed use on the Comprehensive Plan.
- (F) The ability of the proposed use to meet the standards of the Development Code.
- (G) The affects of the proposed use on groundwater, surface water and air quality.
- (H) That the proposed use is allowed with a Conditional Use Permit in the designated zoning district in which it is proposed.

**WHEREAS**, the Denmark Township Planning Commission held a public hearing, after due notice having been provided, regarding the requested conditional use permit (“CUP”) on June 22, 2023. The Planning Commission received a report of the Town Planner, heard from the Applicant and others who wished to speak to the matter, and discussed the Applicant’s request. The Planning Commission expressed its concerns regarding the proposal to use this newly built Building for a use that is contrary to the purpose for which it was allowed to be built. The Applicant admitted during the hearing that he had contemplated parking his equipment in the Building when he sought the CoC to build it. The Planning Commission also expressed concern that granting the CUP could encourage other owners to build oversized accessory structures as “agricultural buildings” only to immediately turn around and use them for nonagricultural uses. As a result of those concerns, the Planning Commission voted 2 to 1 to forward the application to the Town Board with a recommendation that the CUP be denied;

**WHEREAS**, the requested CUP came before the Town Board at its July 10, 2023 meeting, at which the Town Board allowed further comments by the Applicant and the public; and

**WHEREAS**, the Town Board hereby finds and determines the following:

- a. The Planner's Report ("Planner's Report") dated June 15, 2023, regarding this matter, including the findings contained therein, is incorporated herein by reference. The Planner's Report expressed concerns similar to those stated by the Planning Commission, but ultimately recommended approval of the CUP with several conditions, including that only one-half of the Building may be used for commercial purposes;
- b. The Town Board agrees with the concerns expressed by the Planning Commission regarding the Applicant assuring the Town the Building will only be used for agricultural purposes to almost immediately after it was built seeking a CUP to use it as part of his sewer business;
- c. The proposed use of the Building would violate a condition of the CoC that allowed the Building to be constructed. While a seasonal business is identified as a use that is allowed in this district with a CUP, the Building proposed to be used as part of the business is prohibited from being used for anything other than agricultural purposes. The Applicant sought to construct an agricultural building, assured the Town it would only be used for agricultural purposes, and the CoC issued to allow the Building was conditioned on it only be used for agricultural purposes. By seeking approval to build an oversized building, the Applicant limited the allowed uses of the Building to agriculture and cannot now use it for nonagricultural business purposes; and
- d. The Proposed Use for which the CUP is being sought is to house business equipment in a Building that does not allow for the storage of such equipment and so the CUP must be denied.

**NOW, THEREFORE, BE IT RESOLVED**, by the Town Board, based on the record of this matter and the findings contained herein, that it hereby resolves as follows:

1. The Applicant's request for a Conditional Use Permit is hereby denied.
2. Pursuant to Chapter Once, Section 10 of the Development Code, "[n]o application for a Conditional Use Permit for a particular use on a particular parcel of land shall be resubmitted for a period of six (6) months from the date of the denial of the previous application."
3. The decision of the Town Board on the present application does not affect the right of the Applicant to use the Building for agricultural purposes under the existing CoC, provided that the conditions of the CoC are met and the use is not in violation of state law or the Development Code.

Adopted on the 10<sup>th</sup> day of July 2023.

**BY THE TOWN BOARD**

\_\_\_\_\_  
John Strohfus, Chairperson

Attest: \_\_\_\_\_  
Jessica Maurer, Clerk-Treasurer

**EXHIBIT A**  
Legal Description of the Property