

DENMARK TOWN BOARD MEETING MINUTES
July 2, 2018

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

ABSENT: None

STAFF PRESENT: Attorney Gilchrist (Kennedy-Graven), Planner Perdu (WSB), Engineer Stempski (Focus)

CALL TO ORDER: Meeting called to order @ 7:01 PM by Chair Higgins

AGENDA APPROVAL: K Higgins added Senator Bigham. J Moore added O'Connor Park. B Rucker added Weed Control Update.

Motion J Moore/2nd K Herman approval of agenda as amended. Voting Yes- J Moore, K Herman, J Strohfus, B Rucker, K Higgins. Voting No- None. Abstaining- None. Motion Carried 5-0-0.

CONSENT AGENDA APPROVAL: Claims pulled.

Motion J Moore/2nd J Strohfus approval of Consent Agenda items which include 06/04/2018 Board Meeting Minutes, EFT payments- PERA 469173, MN Tax 2076315328, Federal Tax 73060259, payroll ending 07/01/2018, Financial Reports. Voting Yes- J Moore, J Strohfus, B Rucker, K Herman, K Higgins. Voting No- None. Abstaining- None. Motion Carried 5-0-0.

Senator Karla Bigham- State Senator Bigham addressed Board and Public. Session was a bonding session which include the 3M settlement funds. A bipartisan bill passed to separate the 850 Million \$\$ in the remediation fund to protect usage of the funds. Steps were put into the bill to allow for both public municipal and private well testing/fixing and a working group for the 3M settlement has been set up. Regional parks (including St Croix Bluffs) will receive funds for updating them. Pension bill passed which will help with stability for the State and will save money for local municipalities.

J Strohfus asked Senator Bigham if she was aware of any studies that were done for area residents with illnesses that are in the list of known illnesses caused by PFC's. Senator Bigham stated that in the biomonitoring program that was established around 2008 which is an ongoing study. The Department of Health would have those results. Washington County tracks cancer rates through the County Health Department and they have indicated that the results are not off from other areas of the twin cities. Strohfus noted that the number of kidney cancer occurrences in a close proximity area in Denmark is noticeably high compared to the total reported kidney cancer cases of 3000-6000 in the United States.

HEARING DECISIONS/ZONING ACTIONS:

Leko Variance 13452 90th St S. PID 17.027.20.34.0001- David & Muriel Leko present.

Planner- variance is to allow expansion to a legal non-conforming structure. Owners would like to rebuild a structure slightly larger than the original one 39'3" x 77" (3026.1 sq ft) which was destroyed by fire. The original structure was a unique size and the replacement structure 40' x 80' (3200 sq ft) is the closest standard size available. Difference of 173.9 sq ft. Applicants are also requesting to construct the new structure slightly outside of the footprint of the original building due to the topography/grading area. The property was part of a previously approved subdivision. In 2002, a variance was granted on the property to allow for the existing buildings to remain on the 10 acre homestead. Any expansion of the accessory structure square footage would require a variance. Building will have an agricultural use (animals and equipment).

Planning Commission recommended approval of the variance request at its 06/18/18 meeting based on the Planner's 06/13/18 Findings of Fact, subject to certain conditions. Planner recommends approval of the variance.

Attorney provided Board with 06/27/18 draft resolution. Attorney noted that the conditions imposed under the original variance are affirmed and ratified in the current resolution granting a variance for the slight variation of relocation and increase of square footage of the replacement building.

Motion J Strohfus/2nd K Herman to adopt Resolution 2018-14 Granting A Variance For The Property Located At 13452 90th Street South.

Voting Yes- J Strohfus, K Herman, J Moore, B Rucker, K Higgins. Voting No- None. Abstaining- None. Motion Carried 5-0-0.

Public Comment- None

BUSINESS ITEMS:

Wright Legacy Concept- 87th/Quadrant Ave. PID's 15.027.20.44.0001 and 15.027.20.44.0002

Planner- Review and comment on the proposed concept plan for a lot averaging major subdivision of 2 parcels totaling approximately 39.6 acres zoned Single Family Estate/St Croix River Management District Overlay.

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Yield Plan- Proposed are 10 single family residential lots ranging from 3.02 to 5.56 acres in size, with two roads ending in cul-de-sacs to access the lots. The lots meet the 2.5 acre minimum. Lot 1 does not meet the lot width requirement of 200 ft (it is shown as 156 ft) at the front building setback line(40 ft). Based on the dimensions of lots 2 through 7, in order to adjust Lot 1 to meet the minimum lot width requirement, there will be an overall reduction of the concept plan by 1 lot, resulting in a total of 9 lots. If lot 1 were adjusted, the other lots would also need to be adjusted to make Lot 1 conform, and it does not appear that there is enough extra width in the other lots to accomplish this. Engineering- Maximum length of cul-de-sac cannot exceed ¼ mile in length. Todd Erickson (Engineer for Applicants)- Corner lot 1 – one side is 820 ft wide and the other side is 156 ft wide, so the eastern portion of the lot could be widened. In belief that 10 lots could be accommodated for. K Higgins requested exact measurement for length of proposed roads. Erickson also noted that Lot 6 has excess width. Applicant in belief that there is adequate acreage for a 10 lot design and will reconfigure plan. J Strohfus in support of plan with the stipulation that proposed development come into compliance with lot design. K Herman questioned if the ravine setback would be the same as a bluff line setback (200 ft). K Higgins requested that when the next set of plans are submitted that they include for each lot building pad, septic locations, stormwater, and bluff line delineated. Applicant will revise/review plans with Staff.

Cordes/Zeaverino 12255 120th St S.- Rezone Rural Residential (RR) to Commercial Industrial (C/I) and Conditional Use Permit (CUP) Trucking

PID 06.026.20.22.0001- 20.1 acres. Ken Cordes (owner), Jack Clinton (Attorney representing owner), and David & Crystal Zeaverino (Applicants) present.

Excerpt from 06/04/18 Board Meeting

[At its 04/16/18 meeting, the Planning Commission recommended denial of the Cordes/Zeaverino requests to rezone the property from RR to C/I and for a trucking CUP based on the Planner's 04/12/18 Findings of Fact. Property owner retained an attorney for representation and Applicant's requested an extension for an additional 60 days for preparation. At its 05/07/18 Board Meeting, the Board tabled consideration of the application at the Applicant's request which changes the initial period from 5/11/18 to 07/10/18.

Planner- Applicant is requesting rezoning from RR to C/I and is also requesting a CUP to operate a trucking business and commercial outdoor storage for campers, boats, trailers and recreational vehicles, use of an above ground fuel tank in excess of 2000 gallons, commercial vehicle repair and continued use of the existing landscape company. Removed from the initial request is storage of tractor/trailers.

The CUP request is conditioned on the rezoning request being approved. In order to rezone the property from RR to C/I an amendment to the Comprehensive Plan to change the Land Use designation to C/I would be necessary.

Board would need to consider whether a land use designation change is congruent with the adjacent land use.

Board consensus to direct the Attorney to draft resolution to deny the applicant's request to rezone the Cordes property from RR to C/I, which would necessarily deny the CUP request, as the applicant's business would not be allowed in the current RR district. Attorney will draft resolution based on Board's comments, for Board review/action at the July Board meeting.]

Attorney- Attorney provided revised draft resolution which includes the procedural back round, findings from the Planner's report regarding zoning, classification of zoning and detail regarding concerns expressed by the neighbors i.e. traffic (both from existing businesses and proposed business), screening, property value, safety on the road, lighting impacts, odor and noise, etc. Also reflected is the Applicant's request to minimize the scope of the commercial uses on the property.

Resolution recounts the Boards consensus of agreement with the Planning Commission's recommendation that rezoning the property to C/I to create a third tier of commercial uses in this area is not in the best interests of the Town or of those living and working in the area. Such rezoning would be contrary to the rural residential uses that have grown up around it and the increased traffic resulting from the proposed commercial uses, as well as potential future commercial uses if the land were to be further subdivided, would place too great a burden on the transportation system in the area.

Findings in the resolution are based on the policy decision, which is based on the Comprehensive Planning process, that the subject property is guided for Rural Residential and that it is not appropriate to be rezoned C/I therefore there would be a denial of rezoning. This would necessarily deny the conditional use permit request to operate a business on the property, because those uses would not be allowed on a residential zoned property. The resolution also recognizes that no application to amend the comprehensive plan or the development code can be resubmitted for 6 months from the date of the denial of this application unless conditions have substantially changed.

Any decisions of the Board on these applications do not affect the right of the owner to continue to operate the landscaping business on the property as a nonconforming use, provided that use is not expanded.

Applicants- Jeff (Keller-Williams)- Applicants and Realtor presented new information/proposal. Provided Board with map showing change in property ingress/egress. Stated owner would be able to acquire additional property

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which would allow a road to be built from the rear of the property to the south, to allow the applicants truck traffic/outdoor storage use to use 122nd St S rather than 120th St S.

B Rucker- Map shows a 12 ft wide road? Owner would make the road as wide as Township required.

J Strohfus- Questioned what would prevent business traffic from using 120th St S., with there still being an access from the parcel to 120th St. S. Strohfus in belief that what should be considered at this time, is whether this property should be rezoned. Not a new proposal on how the property could be used which would need to be reviewed by Planning/Zoning staff. Procedurally, the first issue is consideration of rezoning the property from RR to C/C.

Applicant- As far as rezoning, the property is already surrounded by commercial property. In the 2030 Comp Plan, there was supposed to be a road going from Margo down the edge of the property. There has been a commercial business on the property for 40 years. Higgins noted that the comp plan did indicate that a road could be there, however, also noted was that the property owner would have needed to construct that road at his cost. Construction of the road would have involved Township condemnation of land and of tearing down of homes on Margo Ave S. Not a practicable solution.

Attorney- Board is not able to allow consideration of an additional substantial change at this time when the application has been already heard twice and is before the Board for action. The Board had already allowed the Applicant to reduce the scope of the request, which is a part of what is before the Board at this time. Attorney recommends that the Board take action on the requests before them. If the Board believes there may be a substantial change based on the Applicant's new proposal, the Board could allow/state that the Applicant could reapply within the 6 month period that does not allow reapplication if current requests are denied.

Ken Cordes (property owner)- States that business has been on the property for 40 years with no complaints. Developed the commercial area and put in Margo Ave. with no complaints. Had no prior complaints on the traffic. Did much screening on the property. Believes property should be rezoned to C/I.

K Herman- The property is zoned RR. The property was Ag and owner previously requested that it be rezoned to RR. Property use is what is allowed under RR property.

Tony Cordes- Should look at the best use of the land. There is no buffer zone between commercial and this RR parcel. Believes that if the parcel were to be partially rezoned commercial with ag, this would be a great opportunity to create a buffer zone because this would create a buffer for any RR development for the adjacent property to the east.

K Herman- In agreement that the parcel could stay as a transitional property, but it is not zoned commercial. If it were zoned commercial, the Board would have to allow whatever commercial uses that are allowed by ordinance on a commercial property, and that is the consideration.

Motion K Higgins/2nd J Moore to adopt Resolution 2018-15 Denying The Rezoning And Conditional Use Permit Requests For The Property Located At 12255 120th Street South. Voting Yes- K Higgins, J Moore, K Herman, B Rucker, J Strohfus. Voting No- None. Abstaining- None. Motion Carried 5-0-0.

Chapeau Homestead Estates D&U Vacation Public Hearing: Chair K Higgins call to order 8:15 PM

Attorney- When Ben Granley replatted Homestead Estates Phase 2, he gave the adjacent lot owner, Tim Chapeau a small piece of property that the new owner would like to have the unnecessary remnant drainage & utility easement vacated. Owner has combined his lot with the additional small piece. Attorney provided Board with draft resolution for review. **Motion J Strohfus/2nd J Moore to adopt Resolution 2018-16 Approving The Vacation Of Certain Drainage And Utility Easements Located Within Lots 1 And 2, Block 3, Homestead Estates Washington County, MN. Voting Yes- J Strohfus, J Moore, B Rucker, K Herman, K Higgins. Voting No- None. Abstaining- None. Motion Carried 5-0-0.**

Oakgreen Meadows 2nd Addition LOC Reduction: Engineer Geheren has reviewed the improvements in Oakgreen Meadows 2nd Addition and is recommending a reduction of Jack Lang's Letter of Credit. Original LOC 09/22/17 \$354,245.63, reduced on 11/09/17 to 204,245.63. Engineer recommendation to reduce by \$64,245.63 bringing the amended LOC to \$140,000.00. **Motion J Moore/2nd B Rucker to reduce Oakgreen Meadows 2nd Addition Letter of Credit to \$140,000.00. Voting Yes- J Moore, B Rucker, J Strohfus, K Herman, K Higgins. Voting No- None. Abstaining- None. Motion Carried 5-0-0.**

Street Signs in Developments- Development Agreements indicate that Street Signs are required to be purchased/installed at owner's expense. Asked if there was an Engineering process for signs. Engineer noted

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that ordering street signs would be part of the punch list that is required to be completed by the developer. Engineer also noted that the address range should be available once the development is platted.

2017 Financial Report: Oberloh & Associates has completed the 2017 Financial Audit and has filed the audit with the State Auditor's Office. **Motion J Moore/2nd K Herman to acknowledge completion and filing of the 2017 Financial Report performed by Oberloh & Associates.** Voting Yes- J Moore, K Herman, B Rucker, J Strohfus, K Higgins. Voting No- None. Abstaining- None. Motion Carried 5-0-0.

Election Judge Appointment/Wage: Motion J Moore/2nd K Herman to appoint the following Election Judges for the 08/14/18 Primary and 11/06/18 General Elections: Head Judges Marilyn Suchy, Jeannine Wagner and Tammy Johnson. Regular Election Judges Sue Kubiak, Alberta Brown, Linda Stancer, Wanda Klem and Nancy Keene. Approval to increase current \$10.00/Hr. Election Judge pay to \$11.00/Hr. Approval to pay Election Judge's mileage at standard IRS rate, related to Election Judge Training & Duties. Discussion: whether there should be a differential of pay between head judges and regular judges. Voting Yes- J Moore, K Herman, J Strohfus, B Rucker, K Higgins. Voting no- None. Abstaining- None. Motion Carried 5-0-0.

3M Government Working Group: County is asking if Denmark would like representation on the Government and 3M Working Group being formed to identify and recommend projects and priorities for funding with money from the 3M settlement. Higgins noted that she has been in contact with a Denmark resident who is interested in taking part in the group but will not be available for the July 13th kick off meeting. J Strohfus will attend the meeting/meetings until interested resident returns and is available.

Solid Waste Ordinance: Attorney provided Board with draft of Solid Waste Ordinance. Attorney noted changes and addition made to the 1997 Solid Waste Ordinance. New Ordinance replaces the 1997 Solid Waste Ordinance and 2006 amendment. Revision to the draft- Page 8 Section 7, Subd. 2(e). Delete "Completion of a background investigation report determining". Replace with "Consideration of". **Motion J Strohfus/2nd J Moore to adopt Ordinance 2018-03 Establishing Regulations For The Collection, Storage, And Disposal Of Solid Waste, with the revision as noted.** Voting Yes- J Strohfus, J Moore, K Herman, B Rucker, K Higgins. Voting No- None. Abstaining- None. Motion Carried 5-0-0.

Motion B Rucker/2nd J Strohfus to adopt Resolution 2018-17 Approving Summary Language For Publication Of An Ordinance (2018-03) Regulating The Collection, Storage, And Disposal Of Solid Waste. Voting Yes- B Rucker, J Strohfus, J Moore, K Herman, K Higgins. Voting No- None. Abstaining- None. Motion Carried 5-0-0.

O'Connor Park: Discussion regarding improvements to O'Connor Park. Would like to ensure that the holes that remain in the park from the past removal of trees should be addressed by filling or grading. B Rucker had architect review the site, who is recommending that the site be fenced. B Rucker also believes that a parking lot should be constructed and that the surplus soil could fill the removed tree holes. Also needed is a trail system and off street parking, natural berms to prohibit vehicles driving into the prairie section. K Higgins noted that the Town has put in roughly \$35,000 into the park with Prairie plantings/restoration, removal of trees, etc. The Board will meet at the park to review the site on July 10th at 5PM, continue discussion at the Town Hall prior to the Roads Workshop.

Weed Control Update: Received another complaint regarding noxious weeds in the right of way (122nd/Norell). Once the weed has flowered, the weed will spread if mowed. County is too busy with their own spraying to contract with Denmark. Rucker contacted the spraying company (For Control in Menomonie WI) that the County has used. Estimate of spraying costs are \$220/mile, covering 16 feet on either side of the road, which would cover most of Denmark's right of ways. Some of the approximately 37 miles of roads would amount to approximately \$8-9000. Rucker would work with the company to identify heaviest weeded roads. County and spray company are recommending a fall spraying which would kill anything potential as it takes 2 years for a plant to become mature enough to grow seeds. In the spring, heavily weeded areas could be mowed. Prior spray that county did in some areas in Denmark was effective. Board consensus to allocate expenditure of up to \$10,000.00 to spray right of way noxious weeds. Initial spraying this fall 2018 and recontact spray company in the spring 2019 to redo problem areas. Target weed is wild parsnip. Another option would be to allow leasing the ditches to farmers for haying if feasible.

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Motion J Strohfus/2nd J Moore to allocate expenditure of up to \$10,000.00 to spray noxious weeds in the right of way, per discretion of B Rucker. Voting Yes- J Strohfus, J Moore, K Herman, B Rucker, K Higgins. Voting No- None. Abstaining- None. Motion Carried 5-0-0.

Discussion re: mowing and spraying- B Rucker noted that the County indicated that any mowing would create a worse weed issue in the spring. The County tries not to mow the ditches after July 1st to avoid spreading the weed seeds. J Strohfus would advocate that we mow back as far as we can and then also spray, and spray next year too. Hit it for 2 years to hopefully get it under control and mowing can keep up then. B Rucker was told by the county not to mow. Denmark is at about 10% as compared to the infestation of Lake City. We can continue to mow small portions if it appeases the Township, the little bit of damage that could cause would hopefully be taken care of with the fall spraying. At this price, we could continue to spray at least once a year for better weed control.

Pulled Claims For Approval: Added claims #11154 Focus Engineering \$4,273.20 and #11155 Envirotech \$12,485.62. **Motion J Moore/2nd B Rucker to approve Claims #11138-11155, as revised. Voting Yes- J Moore, B Rucker, J Strohfus, K Herman, K Higgins. Voting No- None. Abstaining- None. Motion Carried 5-0-0.**

Legal Reports-

Commercial vehicles parked/operating at noncommercial property. J Strohfus will contact property owner.

9:40 PM **Motion J Moore/2nd K Herman to adjourn July Meeting. Voting Yes- J Moore, K Herman, B Rucker, J Strohfus, K Higgins. Voting No- None. Abstaining- None. Motion Carried 5-0-0.**

Becky Herman

Denmark Township Clerk/Treasurer

Denmark Township Chair

- Addendums Resolution 2018-14 Leko Variance
- Resolution 2018-15 Cordes/Zevelino Rezone & CUP
- Resolution 2018-16 Chapeau Vacation
- Resolution 2018-17 Solid Waste Summary Publication Language
- Ordinance 2018-03 Solid Waste Ordinance

Resolution 2018-14

**RESOLUTION GRANTING A VARIANCE FOR THE
PROPERTY LOCATED AT 13452 90th STREET SOUTH**

WHEREAS, David Leko and Muriel Leko (collectively the "Applicant") are the owners of property (PID # 17.027.20.34.0001) located at 13452 90th Street South, Denmark Township, Minnesota, which is legally described in the attached Exhibit A ("Property");

WHEREAS, the Property is approximately 10 acres in size and is located in the Agricultural (A-2) District;

WHEREAS, the Applicant has requested a variance to allow an expansion of a legal nonconforming accessory building that was 39'3" x 77' and was destroyed by fire on February 19, 2018 with a accessory building 40' x 80' in size, pursuant to the Denmark Township Development Code ("Development Code");

WHEREAS, the Property was part of a previously approved minor subdivision;

WHEREAS, as part of the subdivision, a variance was granted for the number of accessory structures and their total square footage to allow 7,500 square feet of existing accessory buildings to remain on the Property in excess of the 2,500 square foot limit for accessory building space on a 10 acre parcel (the "Original Variance");

WHEREAS, the Original Variance contained the following conditions, as was memorialized in the development agreement entered into for the Property dated September 27, 2000:

- A) There shall be no additional accessory buildings constructed on the property.
- B) If any existing accessory buildings fall into disrepair, they shall be removed.

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C) The accessory buildings shall only be used for personal storage or for an agricultural use as described in D below or for the housing of animals. The number of animals allowed must be in conformance with the Washington County Development Code.

D) The buildings shall not be leased to any other person or entity unless the buildings are used for the storage of agricultural products grown on the property or on nearby farmland or equipment used on the property or on nearby farmland.

Use of the property for these purposes must be approved by Washington County.

WHEREAS, the Original Variance was not recorded and a copy of the Original Variance has not been located;

WHEREAS, minutes from the Denmark Township Planning Commission (the "Planning Commission") dated June 19, 2000 indicate the Planning Commission recommended approval of the Original Variance;

WHEREAS, minutes from the July 10, 2000 Denmark Town Board meeting indicate that the Original Variance was approved with the conditions stated above;

WHEREAS, Chapter One, Section 16.2(1)(B) of the Development Code requires that nonconforming structures that are destroyed to the extent of greater than fifty percent (50%) of its estimated market value may be replaced if a building permit is applied for within 180 days of when the structure was damaged;

WHEREAS, the Applicant would be entitled to replace the accessory structure as a matter of right under the cited provision, except that the Applicant desires to relocate the structure and increase its size (though only slightly);

WHEREAS, the Denmark Township Planning Commission held a public hearing regarding the requested variance on June 18, 2018 and took action to forward the request to the Town Board with a recommendation that it grant the requested variance based on the presented findings and with certain conditions; and

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

- a. The Planner's Report ("Report") dated June 13, 2018 regarding this matter, including the findings contained therein, is incorporated herein by reference, except that the conditions proposed in the Report are superseded by the conditions contained in this Resolution;
- b. The Applicant is requesting a variance from the limitations in Chapter One, Section 16.2(1)(A) of the Development Code to replace a legal nonconforming structure outside of the original footprint and with dimensions that are larger than previous structure;
- c. Chapter One, Section 16.2(1)(B) of the Development Code permits the reestablishment of legal nonconforming structures which are destroyed to the extent of greater than fifty percent (50%) of its estimated market value so long as the building permit request is made within 180 days from the date of its destruction;
- d. The legal nonconforming structure destroyed by fire on February 19, 2018;
- e. The Applicant applied for building permit to reestablish the structure on May 11, 2018 which was within the allowed 180-day window for reestablishment;
- f. Chapter One, Section 9.1 of the Development Code permits the issuance of a variance where it is determined that, by reason of circumstances unique to the property not created by the landowner, the strict enforcement of the official controls would cause practical difficulties;
- g. The Applicant is proposing to purchase a replacement accessory structure that is 40' x 80' ("Replacement Structure");
- h. The Replacement Structure is the closest size available on the market to the Original Structure;
- i. The Original Structure was 39'3" x 77' and was a unique size and reconstructing the building to its original size is not practical;
- j. The Replacement Structure will continue to serve an agricultural purpose, which is a reasonable use under the Development Code and is consistent with the character of the area;
- k. The Original Structure was a historic barn and had been approved by the Town Board and was destroyed by a fire which is a unique circumstance not caused by landowner;
- l. The granting of a variance will not alter the essential character of the locality as an accessory structure has been on the Property for more than 18 years and was part of the original farmstead;
- m. The practical difficulties in this case are not based solely on economic conditions; and
- n. Practical difficulties exist under the present circumstances that allow, pursuant to the Development Code, the granting of the requested Variance to replace the original structure with a 40' x 80' pole barn.

NOW, THEREFORE, BE IT RESOLVED, by the Town Board, sitting as the Board of Appeals and Adjustments, that it hereby approves and issues, based on the record of this matter, the Report, and the findings contained herein, the requested variance to allow the construction of 40' x 80' accessory structure to replace the Original Building, which is located outside of the footprint of the Original Building, subject to the following conditions:

1. Permits. The Applicant shall obtain all necessary approvals and permits prior to beginning construction of the Replacement Structure, including a Certificate of Compliance since the proposed new Replacement Structure is an agricultural building over 1,000 square feet.
2. Size. The Replacement Structure being built on the Property shall not exceed 3,200 square feet in size and shall, except as provided by the variances granted herein, comply with the requirements of the Development Code.
3. Setbacks. The Replacement Structure shall meet all applicable setbacks as outlined in the Development Code, and shall be built in the area generally shown in the site plan attached as Exhibit B.
4. Additional Buildings. There shall be no additional accessory buildings constructed on the Property.
5. Repair. If the Replacement Structure or any other accessory building shall fall into disrepair, such building shall be removed.
6. Use. All accessory buildings on the Property shall only be used for personal storage, for an agricultural use, or for the housing of animals. The number of animals shall conform to the all applicable restrictions. The buildings shall not be leased to any other person or entity unless the buildings are used for the storage of agricultural products grown on the property or on nearby farmland or equipment used on the property or on nearby farmland.
7. Fees. The Applicant shall pay all planning, engineering and legal fees and costs incurred by the Town for processing this permit application. In the event any fees are outstanding, they will be paid by the Applicant within 14 days of receiving a bill from the Town. In the event the fees are not paid, this permit shall terminate automatically upon recording of a Notice of Nonpayment by the Town.
8. Inspections. The Town may inspect the Property at all reasonable times for purposes of ensuring compliance with these conditions.

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9. Original Conditions. The conditions imposed under the Original Variance as set out above are hereby affirmed and ratified. Those conditions shall continue to apply to the Property in addition to the conditions imposed pursuant to this Resolution.
 10. Acceptance of Conditions. Utilization of the Property for any of the uses allowed by the issuance of this Variance shall be deemed acceptance of, and agreement to, the terms and conditions of this Variance without qualification or reservation.
 11. Application. These conditions shall run with the land and shall not in any way be affected by the subsequent sale, lease, or other change from current ownership of the Property, and all references to the Applicant herein shall include all heirs, successors and assigns.
- Adopted on the 2nd day of July, 2018.

Resolution No. 2018-15

A RESOLUTION DENYING THE REZONING AND CONDITIONAL USE PERMIT REQUESTS FOR THE PROPERTY LOCATED AT 12255 120TH STREET SOUTH

WHEREAS, David Zeverino and Crystal Zeverino (“Applicants”) submitted two zoning applications to Denmark Township (“Town”) for the property (PID 06.026.20.22.0001) owned by Ken Cordes (“Owner”) located at 12255 - 120th Street South and legally described in the attached Exhibit A (“Property”);

WHEREAS, the first application requests the rezoning of the Property from Rural Residential (RR) to Rural Commercial/Industrial (Rural C/I);

WHEREAS, the second application requests a conditional use permit (“CUP”) for the rezoned Property to operate several businesses including a trucking business (dump trucks with an above ground fuel tank), the outdoor storage of tractor-trailers (semi-trailer trucks) and recreational vehicles and boats of others, commercial vehicle repair, and to continue to operate the existing landscaping business;

WHEREAS, on April 16, 2018, the Planning Commission held a public hearing, after due notice having been provided, on the rezoning and CUP requests, at which the Planning Commission heard from the Applicants, the Owner, and several of the neighboring owners;

WHEREAS, at the conclusion of the hearing the Planning Commission voted to forward the applications to the Town Board with a recommendation that they be denied;

WHEREAS, the application was to come before the Town Board at its May 7, 2018 meeting, but the Applicants submitted a written request to extend consideration of this matter so it would come before the Town Board at its June 4, 2018 to allow the Owner’s attorney an opportunity to provide the Town information;

WHEREAS, the Town Board allowed the Applicants, the Owner’s attorney, the Owner, and the neighboring owners an additional opportunity to speak to this matter at its June 4, 2018 meeting, after which the Town Board directed the Town Attorney to update the resolution denying the application for review and action at its July 2, 2018 meeting; and

WHEREAS, the Town Board hereby finds and determines as follows with respect to the zoning requests:

- a. The Property was previously zoned Agriculture (A-2) and, upon request of the Owner, the Town rezoned it to RR in 2009;
- b. The landscaping business located on the Property has been an on-going business operation for many years and is allowed to continue as a lawful nonconforming use, subject to the restrictions placed on nonconforming uses;
- c. The other businesses proposed for the Property are not allowed in the RR District and can only occur if the Property is rezoned to Rural C/I, and then only upon issuance of a CUP;
- d. The land to the south and west of the Property is zoned Rural C/I and the land to the north and east are zoned RR and Agricultural (A-2);
- e. The Property is guided for rural residential development in the Town’s comprehensive plan;
- f. The process for rezoning land is set out in Chapter One, Section 17 of the Denmark Township Development Code (“Development Code”);
- g. The rezoning of land is a policy decision the Town Board must make upon considering a number of factors including the zoning of the surrounding land, the types of uses that will be allowed on the land if it is rezoned, the impacts the allowed uses could have on the surrounding lands, and the appropriateness of those uses in the area given the surrounding uses and the ability of the public infrastructure and services to accommodate those uses;
- h. A large number of the neighboring owners attended the public hearing and expressed concern regarding the rezoning and the business uses the Applicants propose for the Property. The concerns expressed include, but are not limited to, the following:
 - 1) Allowing additional commercial uses in this area and truck traffic on 120th Street South is not appropriate given the residential nature of the surrounding land and the negative effect it will have on property values;
 - 2) There is already too much traffic on 120th Street South from the expanded school bus operations, the traffic from Universal Services (including employees walking across the road early in the morning), and the recent addition of a daycare center in the immediate area;
 - 3) The intersection of 120th Street South and Highway 61 is already unsafe and it will be made even more dangerous with the addition of the proposed dump truck and tractor-trailer traffic;
 - 4) Safety concerns for the residents who walk and bike on the road, which will be made worse by the additional truck traffic;
 - 5) Because the Property cannot be effectively screened due to the topography of the area, the parking of trucks, trailers, and recreational vehicles will have negative visual impacts on the surrounding land and will affect property values;
 - 6) Concern over lighting impacting the neighboring land, including both the existing lighting and the security lighting the Applicants indicated they would install in the area of the Property to be used for vehicle, trailer, and boat storage;
 - 7) Once the Property is rezoned, any number of proposed commercial and industrial uses could be proposed in the future, resulting in further commercial creep into a residential area;
 - 8) Tractor-trailers turning into the Property will need to cross into the on-coming lane of traffic at a hill, which creates serious safety concerns;
 - 9) The hill can be slippery and so trucks travelling down the hill create a safety concern for the Universal Services employees walking across the road;
 - 10) The negative impacts from the smell and noise of diesel trucks being left running in the winter while they are stored on the Property;

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- 11) The potential for fluids to leak into the ground from the stored vehicles and from fueling operations;
- 12) It is unlikely the proposed repair services will be limited to the proposed hours of operation;
- 13) The road is too narrow to handle tractor-trailer traffic;
- 14) Because of the traffic and backup at Highway 61, traffic is already diverting to other intersections; and
- 15) The additional runoff from the Property due to additional impervious surfaces being proposed;

- i. The Owner indicated that he has operated the landscaping business from the Property for many years and there has not been a traffic or safety problem. The neighbors countered that things have changed over those years with the buildup of other commercial uses in the area and the additional traffic on the road;
- j. The Applicants emphasized that they would remain mindful of the neighbors' concerns and will do what they can to minimize them in how they operate the businesses on the Property;
- k. At the June 4, 2018 Town Board meeting the Applicants expressed their desire to limit the scope of the proposed trucking business to limit it to 7 trucks, to remove the proposal to repair trucks other than their own trucks, to not allow semi-trucks, and to limit the hours in which stored items may be brought to or from the Property. The Owner's attorney submitted a letter dated May 30, 2018 making a number of arguments, including assertions that traffic was not previously identified as a concern when the commercial plat was approved several years ago, that the Town's planner did not identify traffic as being a problem, at the proposed uses are really no different than the uses that have already been occurring on the Property;
- l. Also at the June 4, 2018 Town Board meeting several neighbors once again spoke in opposition to rezoning the Property and the proposed uses. The neighbors raised many of the same concerns that they presented at the public hearing, including opposition to rezoning that would allow commercial and industrial uses in a residential area, the potential for the Property to be subdivided in the future to provide for additional commercial or industrial uses, safety on 120th Street South, and traffic congestion. Doubt was also expressed that limiting the hours when people can drop off or pick up their stored items is realistic since the Applicants indicated at least some of the storage would be for items such as boats that would be picked up whenever the owners wanted to use them. The comprehensive plan contemplates the expansion of commercial uses in other parts of the Town and so the establishment of commercial uses should be in either those areas guided for the expansion of commercial uses or on properties that are zoned to allow commercial uses.
- m. While the Town Board believes the Applicants are sincere in their promises to try to limit the impacts of their business operations, the Town Board agrees with the recommendation of the Planning Commission that rezoning the Property to Rural C/I to create a third tier of commercial uses in this area is not in the best interests of the Town or of those living and working in the area. Such rezoning would be contrary to the rural residential uses that have grown up around it and the increased traffic resulting from the proposed commercial uses, as well as potential future commercial uses, would place too great a burden on the transportation system in this area;
- n. The increased truck traffic on a Town road that already has significant traffic, including bus traffic, commercial vehicle traffic, and traffic from parents dropping off and picking up their children from a day care center creates significant concerns for public safety. These concerns, coupled with the increased congestion that would result from truck traffic attempting to enter Highway 61, which already creates backups on 120th Street South, does not support rezoning the Property to a district that would result in the introduction of additional truck traffic to an already overburdened transportation system in the area;
- o. The neighbor's raised legitimate concerns regarding the negative impacts that would result from the rezoning of the Property and the proposed business uses. Specifically, the Town Board finds:
 - (1) That despite the Applicants' assertion that the proposed business operations on the Property will not increase traffic on 120th Street South, there is little question that its trucking operations and those using the Property for short-term parking of their vehicles, boats, trailers, and other items will increase traffic on the road. Traffic on 120th Street South is already a concern and the proposed business uses will only serve to increase traffic and the related safety concerns;
 - (2) The Applicants' and Owner's attempt to refer back to a time decades ago (late 70's and early 80's) when the greenhouse business was more actively engaged in hauling activities is not persuasive as the area has changed significantly since that time. Residential development has significantly increased and approximately 10 additional businesses have been established in the area in the intervening years;
 - (3) The proposed commercial uses, as well as the additional commercial and industrial uses that could occur, if the Property is rezoned would conflict with the residential uses in the area; and
 - (4) The Town is working on updating its comprehensive plan and this area has not been identified as being appropriate for the expansion of commercial and industrial uses. The Property was rezoned from agricultural to rural residential at the Owner's request as the Town Board found such rezoning to be consistent with the residential character of the area. The proposal to now rezone the Property to allow the expansion of commercial and industrial uses into the residential area is not supportable;
- p. The Applicants' proposal to limit the number and scope of proposed business uses of the Property may reduce some of the potential negative impacts, the potential reduction is not sufficient to support the rezoning of the Property. This is a large parcel and once rezoned a number of other commercial and industrial uses could be proposed for the Property;
- q. While the Property is adjacent to property in the C/I District, that does not mean the expansion of that district as proposed is appropriate. As noted, this proposal would be creating a third tier of commercial uses that extends into residential and agricultural areas. Such expansion would conflict with those residential uses and exacerbate the existing traffic concerns;
- r. Amending the Town's comprehensive plan to guide the Property to commercial and industrial uses is not, for the reasons stated herein, in the best interests of the Town or the public health, safety, or welfare; and
- s. Having determined that rezoning the Property to Rural C/I is not appropriate, the uses proposed as part of the requested CUP are not allowed in the RR District and so must also be denied.

NOW, THEREFORE, the Town Board, based on the record of this matter and the findings contained herein, hereby resolves as

follows:

1. The Applicants' request to rezone the Property from RR to Rural C/I is hereby denied. Pursuant to Chapter One, Section 17 of the Development Code, "[n]o application for an amendment to the Township Comprehensive Plan or this Development Code shall be resubmitted for a period of (6) six months from the date of denial of a previous application, unless conditions have substantially changed."

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2. The Applicants' request for a CUP to undertake commercial uses on the Property that are not allowed within the RR District is hereby denied.
3. The decisions of the Town Board on the present applications do not affect the right of the Owner to continue to operate the landscaping business on the Property as a nonconforming use, provided that use is not expanded in violation of state law or the Development Code. Adopted this 2nd day of July, 2018.

Resolution No. 2018-16
RESOLUTION APPROVING THE VACATION OF CERTAIN DRAINAGE
AND UTILITY EASEMENTS LOCATED WITHIN LOTS 1 AND 2, BLOCK 3,
HOMESTEAD ESTATES, WASHINGTON COUNTY, MINNESOTA

WHEREAS, Denmark Township ("Town") received a petition from Timothy D. Chapeau and Heidi M. Chapeau ("Petitioners") requesting the vacation of certain drainage and utility easements located within Lots 1 and 2, Block 3, Homestead Estates, Washington County, Minnesota ("Petitioners' Property"); and

WHEREAS, the drainage and utility easements the Petitioners are requesting be vacated are legally described in the attached Exhibit A and depicted on the attached Exhibit B (collectively, the "D&U Easements"); and

WHEREAS, the D&U Easements were dedicated to the public at the time of platting and the Petitioners are requesting they be vacated because they run through the middle of the Petitioners' Property as a result of a recent lot combination; and

WHEREAS, the D&U Easements have not been built or used for the purposes for which they were dedicated; and

WHEREAS, the Town Board has the authority, pursuant to Minnesota Statutes, sections 462.358, subdivision 7 and 368.01, subdivision 25 to vacate easements dedicated to the public within a plat, including those for drainage and utility purposes; and

WHEREAS, the Town Board held a public hearing regarding the requested vacation on July 2, 2018 after providing at least two weeks' published and posted notice; and

WHEREAS, the proposed vacation was reviewed by the Town Engineer and no concerns were identified with respect to vacating the D&U Easements; and

WHEREAS, the Town Board finds that the vacation of the D&U Easements is in the interest of the public because the D&U Easements are no longer needed.

NOW, THEREFORE, BE IT RESOLVED, by the Town Board of Denmark Township as follows:

1. The D&U Easements, as legally described in the attached Exhibit A and depicted on the attached Exhibit B, are hereby vacated effective immediately.
2. The Town Board determines that no damages are owed for this vacation as any claimed damages are offset by the benefits derived from the vacation.
3. The Town Clerk-Treasurer is hereby authorized and directed to prepare and file a notice of completion of this vacation for presentation to the County Auditor and recording in the office of the County Recorder. Adopted on this 2nd day of July, 2018.

Resolution No. 2018-17

RESOLUTION APPROVING SUMMARY LANGUAGE FOR
PUBLICATION OF AN ORDINANCE REGULATING THE
COLLECTION, STORAGE, AND DISPOSAL OF SOLID WASTE

WHEREAS, on July 2, 2018 the Town Board of Denmark Township adopted Ordinance No. 2018-03 "An Ordinance Establishing Regulations for the Collection, Storage, and Disposal of Solid Waste" (the "Ordinance");

WHEREAS, it is not practical to publish the entire text of the Ordinance in the Town's official newspaper;

WHEREAS, Minnesota Statutes, sections 365.125, subdivision 2 and 368.01, subdivision 21 allows the publication of a summary of an ordinance instead of publishing the entire ordinance; and

WHEREAS, the Town Board determines publication of a summary of the Ordinance is sufficient to clearly inform the public of the intent and effect of the Ordinance and where to access the full text of the Ordinance.

NOW, THEREFORE, BE IT RESOLVED, that the Town Board hereby determines to publish the following summary language, which is hereby approved, in lieu of publishing the full text of the Ordinance:

DENMARK TOWNSHIP
WASHINGTON COUNTY, MINNESOTA
Ordinance No. 2018-03

AN ORDINANCE ESTABLISHING REGULATIONS FOR THE
 COLLECTION, STORAGE, AND DISPOSAL OF SOLID WASTE

The Town Board adopted Ordinance No. 2018-03 to update and replace its regulations on the collection, storage, and disposal of solid waste within the town. The ordinance regulates the storage of solid wastes waiting for pick up, the placement of containers, the frequency of pick up, requires a license for those who collect or haul solid waste, establishing licensing procedures, imposes requirements on licensed collectors, requires recycling collection, and imposes penalties for violating the ordinance. A copy of the full ordinance is in the Hastings Public Library, is posted on the Town's website, and is available by contacting the Town Clerk-Treasurer. Becky Herman, Clerk-Treasurer

BE IT FINALLY RESOLVED, that the Town Clerk-Treasurer is hereby authorized and directed to:

- (1) Publish the approved summary language set out above once in the Town's official newspaper;
- (2) Maintain a copy of the full Ordinance in the office of the Town Clerk-Treasurer to make available for review by the public upon request;

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- (3) Post a copy of the full Ordinance on the Town's website;
- (4) Place a copy of the full Ordinance at the Hastings Public Library;
- (5) Place a copy of the full Ordinance at the Washington County Law Library; and
- (6) Place the Ordinance in the Town Ordinance Book within 20 days together with a copy of the affidavit of having published the approved summary language and a copy of this Resolution. Adopted this 2nd day of July, 2018.

Ordinance No. 2018-03

**AN ORDINANCE ESTABLISHING REGULATIONS FOR THE
COLLECTION, STORAGE, AND DISPOSAL OF SOLID WASTE**

The Board of Supervisors of the Town of Denmark ordains:

SECTION 1. AUTHORITY AND PURPOSE

Subd. 1. Authority. This ordinance is enacted pursuant to the Town Board's authority under Minnesota Statutes, sections 115A.941, 473.811, 368.01, subdivisions 14 & 19, and such other authority as may exist under law.

Subd. 2. Purpose. The purpose of this ordinance is to:

- (a) Protect the public health, safety, comfort, convenience, and general welfare of the residents of the town;
- (b) Establish powers, duties, rules, regulations, and standards for the removal of solid waste from the town;
- (c) Comply with the requirements imposed on the town under Minnesota Statutes, sections 473.811, subdivision 5, 115A.151, and 115A.941;
- (d) Meet minimum standards and requirements established by rules of the Minnesota Pollution Control Agency and the Washington County Solid Waste Management Master Plan 2012 – 2030 and any updates to those plans approved by the state or the county; and
- (e) Provide for the administration of this ordinance and establish penalties for violating it.

SECTION 2. DEFINITIONS

For the purposes of this ordinance the following words, terms, and phrases shall have the meanings given them in this section, except where the context clearly indicates a different meaning. If a term is not defined in this section, it shall have the meaning given it in Washington County Ordinance No. 114 and, if not defined therein, it shall have the meaning given it in Minnesota Statutes, section 115A.03. The town board intends this ordinance to be consistent with state law and to the extent there is an irreconcilable conflict between state law and this ordinance state law shall prevail. This ordinance imposing additional or stricter requirements than exist under state law does not constitute an irreconcilable conflict.

Subd. 1. Bulky Waste. "Bulky waste" means household items and other discarded materials that, due to their dimensions or weight, are typically not collected as part of the regular trash and recycling, or for which there is a separate fee for collection. The term includes, but is not limited to, furniture, carpeting, mattresses, and appliances, including covered electronic devices.

Subd. 2. Collection. "Collection" means the aggregation of solid waste from the place at which it is generated and includes all activities up to the time the solid waste is delivered to a solid waste facility.

Subd. 3. Commercial Establishment. "Commercial establishment" means any premises where a commercial or industrial enterprise of any kind is carried on. The term includes, but is not limited to, restaurants, clubs, churches, and schools where food is prepared or served.

Subd. 4. Commercial Premises. "Commercial premises" means a property containing commercial establishment or a multiple residential dwelling.

Subd. 5. Composting. "Composting" means a method of recycling yard waste by allowing it to decay and then using it as a soil amendment.

Subd. 6. Construction Debris. "Construction debris" means waste building materials, packaging, and rubble resulting from construction, remodeling, repair, and demolition of buildings, and roads. The term includes, but is not limited to, waste sand, earth, brick, stone, crockery, trees, tree branches of more than two inches in diameter, and tree stumps.

Subd. 7. Container. "Container" means a container used for the temporary storage of solid waste.

Subd. 8. County. "County" means Washington County, Minnesota.

Subd. 9. Disposal or dispose. "Disposal" or "dispose" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any waste into or on any land or water so that the waste or any constituent thereof may enter the environment or be emitted into the air, or discharged into any waters, including groundwaters.

Subd. 10. Dumpster. "Dumpster" means a large container for the temporary storage of solid waste.

Subd. 11. Dwelling Unit. "Dwelling unit" means a residential building or portion thereof intended for occupancy by a single family, but not including hotels, motels, boarding or rooming houses, or tourist homes.

Subd. 12. Farm Waste. "Farm waste" means the by-products from the managed production of agricultural produce, to include cropping, raising of livestock, dairy production and poultry operations.

Subd. 13. Hazardous Waste. "Hazardous waste" has the meaning given it in Minnesota Statutes, section 116.06, subdivision 11.

Subd. 14. Licensee. "Licensee" means a private collector issued a license under this ordinance.

Subd. 15. Mixed Municipal Solid Waste or MSW. "Mixed municipal solid waste" or "MSW" means garbage, refuse, and other waste materials from residential, commercial, industrial, and community activities that the generator of the waste aggregates for collection, but does not include auto hulks, street sweepings, ash, construction debris, mining waste, sludge, tree and agriculture wastes, tires, lead acid batteries, used oil, and other materials collected, processed and disposed of as separate waste streams.

Subd. 16. Multiple Residential Dwelling. "Multiple residential dwelling" means any building used for residential purposes consisting of more than three dwelling units with individual kitchen units for each. This term includes manufacture home parks.

Subd. 17. Organic Farm Waste. "Organic farm waste" means crop residue and manure.

Subd. 18. Person. "Person" means an individual, corporation, partnership, limited liability company, association, or other legal entity.

Subd. 19. Premises. "Premises" means the property on which a residential dwelling, multiple residential dwelling, or commercial establishment is located, or a vacant parcel of property.

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Subd. 20. Private Collector or Collector. "Private collector" or "collector" means a person licensed under this ordinance to collect or haul solid waste from residential or commercial premises in the town.

Subd. 21. Recyclable Materials. "Recyclable materials" means materials that are separated from mixed municipal solid waste for the purpose of recycling or composting, including paper, glass, plastics, metals, automobile oil, batteries, source-separated compostable materials, and sole source food waste streams that are managed through biodegradative processes. Refuse-derived fuel or other material that is destroyed by incineration is not a recyclable material. The term includes all of the items identified as recyclables in the Washington County Standard List of Residential Curbside Recyclables, as it may be amended.

Subd. 22. Recycling. "Recycling" means the process of collecting and preparing recyclable materials and reusing the materials in their original form or using them in manufacturing processes that do not cause the destruction of recyclable materials in a manner that precludes further use.

Subd. 23. Residential Dwelling. "Residential dwelling" means any single building consisting of two or less dwelling units with individual kitchen facilities for each.

Subd. 24. Residential Premises. "Residential premises" means a property containing a residential dwelling.

Subd. 25. Right-of-Way. "Right-of-way" means the area on, below, or above a public road, highway, dedicated street, or cartway in which the town has an interest, including other lands dedicated to the public by plat for travel purposes, drainage, and utilities.

Subd. 26. Roll-Off Containers. "Roll-off containers" mean open-top dumpsters characterized by a rectangular footprint and designed to be transported by trucks. Roll-off containers are commonly used to contain loads of construction and demolition waste or other waste types.

Subd. 27. Roadway. "Roadway" means the travelled surface and any public right-of-way.

Subd. 28. Solid Waste. "Solid waste" means mixed municipal solid waste, recyclable materials, bulky waste, yard waste, tree waste, source-separated compostable materials, and construction debris. This term is a general reference to the wastes and other materials that are required to be managed and disposed of in accordance with this ordinance.

Subd. 29. Solid Waste Collection License or License. "Solid waste collection license" or "license" means a license issued pursuant to this ordinance to a person to collect or haul solid waste from residential or commercial premises in the town.

Subd. 30. Source-Separated Compostable Materials or SSCM. "Source-separated compostable materials" or "SSCM" has the meaning given the term in Minnesota Statutes, section 115A.03, subdivision 32a.

Subd. 31. Special Pick-Up. "Special pick-up" means any collection of material other than garbage, refuse, recyclables or yard waste including major appliances, furniture, oversized materials, and construction debris.

Subd. 32. Town. "Town" means Denmark Township, Washington County, Minnesota.

Subd. 33. Town Board. "Town board" means the board of supervisors for Denmark Township, Washington County, Minnesota.

Subd. 34. Tree Waste. "Tree waste" means tree limbs, trunks, stumps, and hard brush.

Subd. 35. Volume Based Billing. "Volume based billing" means a graduated rate structure based upon the volume of MSW collected from a residential dwelling, multiple-residential dwellings or a commercial enterprise.

Subd. 36. Waste Stream. "Waste stream" means the aggregate flow of a particular type of waste material from generation, to collection, and final disposition.

Subd. 37. Yard Waste. "Yard waste" means garden wastes, leaves, lawn cuttings, weeds, shrub and tree waste, and prunings.

SECTION 3. STORAGE AND DISPOSAL

Subd. 1. Storage. The owner of any residential premises, and any other person having refuse, must provide and keep on such premises sufficient containers for the storage of solid waste accumulated on the premises between disposal or collection. Exterior storage of solid waste on a commercial premises shall be stored in a container or dumpster. Containers shall be water tight, have tight fitting covers, be impervious to pests and absorption of moisture, and shall be used to store all exterior storage of MSW. All construction debris shall be stored in a roll-off container or dumpster, and may not be stored on the ground. If a container or dumpster is found to be in poor repair, corroded, or otherwise defective so as to permit pests to enter, or does not meet any other requirements of this section, the property owner shall be responsible for arranging for its repair or replacement. Except to the extent placed by a public authority or its contractor, a dumpster or roll-off container shall not be located in any public place including, but not limited to, any portion of a public right-of-way.

Subd. 2. Disposal. Every residential household and business in the Town is required to make adequate provisions for the collection and sanitary disposal of solid waste by means of a licensed private collector.

Subd. 3. Exemption. The town board may, upon written application, grant an exemption to the requirement to have solid waste collection service from a licensed private collector if the applicant is able to demonstrate, to the satisfaction of the town board, that they have provided for adequate means of disposal of the solid waste generated on the premises that complies with applicable state and local laws, rules, regulations, and ordinances.

Subd. 4. Frequency. The contents of containers shall be collected at least every other week, or more frequently if necessary, by a private collector licensed under this ordinance. The private collector must transfer the contents of the containers to the vehicle without spilling them. If any spillage does occur, the private collector shall clean it up immediately and completely. Collection shall be conducted in such a manner as to not create a public nuisance. Upon each collection, the containers must be completely emptied, returned to where they are kept, and the covers of the containers must be replaced. It shall be unlawful for any person to fail to dispose of solid waste that accumulates upon property owned or occupied by the person at least once every 14 days.

Subd. 5. Placement of Containers. Containers may be placed at their designated collection location the evening before the applicable collection day and shall be removed from that location no later than 12:00 p.m. on the day following the applicable collection day. Containers may never be placed in a location or in a way that interferes with the safe use of a roadway by the public or that interferes with maintenance of the roadway.

Subd. 6. Proper Disposal. It shall be unlawful for any person to dispose of recyclables, bulky waste, yard waste, tree waste, SSCM, or construction debris into the MSW waste stream.

Subd. 7. Unlicensed Collector. It is a violation of this ordinance for any person to allow MSW to be removed from their property by an unauthorized or unlicensed collector.

Subd. 8. Bulky Wastes. It shall be unlawful for any person to allow the collection or disposal of bulky waste from their property except by a private collector or by a Minnesota Pollution Control Agency approved appliance collector who must haul the bulky waste to a processing or disposal site approved by the state or the county.

Subd. 9. Yard Waste. Yard waste shall be disposed of using one of the following methods:

- (a) Contracting with a private collector to haul the yard waste to an appropriately licensed site;

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- (b) The resident transporting the yard waste to an approved compost site; or
- (c) Composting the yard waste on the resident's premises.

Subd. 10. Separation of Recyclables. Residents of a residential premises and tenants of a commercial premises are required to separate recyclables from the MSW waste stream for recycling.

SECTION 4. PROHIBITIONS

Subd. 1. Littering. It is unlawful for any person to discharge or deposit solid waste on the right-of-way of any road, street, alley, drive, park, playground, or other public place, or any privately owned lot in the town. Property owners are responsible for managing solid waste on their property until such time as it is collected by a private collector.

Subd. 2. Scavenging. It is unlawful for any person to scavenge solid waste from the property of others, or to collect solid waste without a license from the Town and an account relationship with the owner of the premises.

SECTION 5. EXCEPTION

Nothing in this ordinance prevents persons from hauling solid waste from their own residential premises or commercial premises, provided such hauling complies with all of the requirements of this section.

Subd. 1. Disposal Method. The disposal method must ensure that all solid waste will be deposited into a state-licensed or county-approved processing or disposal site in accordance with all applicable federal, state, and local laws, rules, regulations, and ordinances.

Subd. 2. Watertight Containers. All MSW shall be hauled in containers that are watertight on all sides and the bottom, and with tight fitting covers on top.

Subd. 3. Hauling Vehicle. All recyclable materials, bulky waste, yard waste, tree waste, SSCM, or construction and demolition waste must be hauled in vehicles with leak-proof bodies and be covered or enclosed so as to completely eliminate the possibility of loss of the materials.

Subd. 4. Recyclables. Recyclable materials shall be disposed of at a recycling facility, an organized recycling drive, or through a licensed recycling collector.

Subd. 5. Yard Waste. Yard waste may be composted privately, be disposed of at an approved composting facility, or through a private collector. The private composting of yard waste shall occur in a compost box which is of adequate construction to fully contain the yard waste, is secure against vermin and excess moisture, and remains aerobic to allow for the decomposition of the material. The compost shall also be screened from view of adjacent property owners.

SECTION 6. SOLID WASTE COLLECTION LICENSE REQUIRED

No person shall collect or haul solid waste from a residential premises or commercial premises, other than one's own premises, within the town without first securing a solid waste collection license from the town. The town board, in the interest of maintaining healthful and sanitary conditions in the town, as well as to protect the public infrastructure, hereby reserves the right to limit the number of solid waste collection licenses it issues in a year to four.

SECTION 7. LICENSING PROCEDURES

Subd. 1. Application. An application for a solid waste collection license must be made on the town's application form, contain the information required in this subdivision, and must be submitted to the town clerk together with a nonrefundable license fee in an amount established by the town board. An applicant shall provide all of the information required on the application. The application shall, at a minimum, require the following information:

- (a) The name, phone number, and current address of the applicant;
- (b) A list of the place or places to which the solid waste is to be hauled;
- (c) Information about the location and method of storage, if applicable, of collected solid wastes, including evidence of compliance with all town, county, state, and federal laws, rules, regulations, and ordinances;
- (d) A schedule of rates, including all applicable state and county taxes and fees, to be charged by the collector during the license period for which the application is made. The rate structure for the levels of service required by this ordinance shall be included and there shall be sufficient differences between the rates to encourage reduction of solid waste, but no less than 25% difference between each rate level. In addition, licensees shall provide rates for walk-up service, handicapped service, bulky waste, SSCM, if available, and yard waste collection;
- (e) Documentation of additional fees that will appear on the customer bills and the "specials" and "discounts" offered to customers and potential customers shall be provided to the town with the application; and
- (f) A description of any enforcement action taken against the applicant by a regulating agency (MPCA, county, town, or other) within the last two calendar years.

Subd. 2. Issuance. The town clerk is authorized to issue solid waste collection licenses under this ordinance as provided in this subdivision. The town clerk shall issue a new license, or transfer ownership of a license, upon completion of all of the following:

- (a) Receipt from the applicant of all required forms and applications, fully completed;
- (b) Receipt of the required proof of insurance, as required under this ordinance;
- (c) Receipt from the applicant of the required license fee;
- (d) In the case of an initial application, by a new licensee, said licensee shall be required to deposit an investigation fee of \$500;
- (e) Consideration of the applicant's ability to provide adequate and reliable service under the conditions of this ordinance; and
- (f) Approval of license issuance, or transfer of license, by the town board.

Subd. 3. License Expiration. All licenses issued under this ordinance shall expire on December 31st each year, unless revoked earlier.

Subd. 4. License Transfer. A license is not transferable, except upon approval of the town board. The licensee shall not be entitled to a refund of any license fee upon revocation or voluntarily ceasing to carry on the license activity.

Subd. 5. Rate Change. Every licensee shall provide not less than 14 calendar days prior notification to the town and all customers of any change in the rates to be implemented during the license period. Any increase in rates for which notification is not provided to the town shall be null and void, and may be cause for license suspension.

Subd. 6. License Renewal. An application for the renewal of a solid waste collection license must be received by the town clerk before November 1st of each year for renewal of the license for the following year. Renewal applications received by the town clerk on or after November 1st will be processed as an application for a new license. The town clerk shall issue a renewal license only after all of the following have occurred:

- (a) The applicant has completed and required forms and applications;
- (b) The applicant has provided proof of insurance, as required under this ordinance;

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- (c) The applicant has paid to the town the required license fee; and
- (d) The town board has determined the applicant is operating in good standing with the town by taking reasonable efforts to:
 - (1) Verify that all written complaints received from residents or business owners of the Town, regarding the applicant's service under the terms and conditions of the license have been resolved or are likely to be resolved in the near future; and
 - (2) Verify the applicant has not violated the standards and conditions of the license.

SECTION 8. INSURANCE REQUIREMENTS

An applicant must obtain all the insurance coverages required by this section. All costs and expense of such insurances are the responsibility of the applicant. All insurance coverages are subject to the approval by the town. For a license to remain valid, insurance coverage must be maintained by the licensee during the term of the license. The certificate of insurance and the required insurance policies shall contain a provision that the coverage afforded under the contract will not be canceled or allowed to expire until at least 30 days prior written notice has been given to the town. A license shall not be approved unless all of the required insurances are in place. A licensee may achieve the required amounts of coverage through an umbrella or excess liability policy, provided such policy provides at least the same scope and coverage as the underlying policy.

Subd. 1. Workers' Compensation. The licensee shall obtain and maintain statutory workers' compensation insurance as required under the laws of the State of Minnesota and employers' liability insurance in the amount of at least \$500,000.

Subd. 2. Commercial General Liability. The licensee shall maintain commercial general liability ("CGL") insurance with a limit of not less than \$1,000,000 per occurrence, and a general aggregate limit of not less than \$2,000,000. The CGL insurance shall cover liability arising from premises, operations, independent contractors, personal injury and advertising injury, and contractually-assumed liability. The town shall be named an additional insured on the policy and any umbrella or excess liability policies.

Subd. 3. Automobile. Licensee shall maintain automobile liability insurance with a limit of not less than \$1,000,000 for each accident and a general aggregate limit of not less than \$2,000,000. The insurance shall cover liability arising out of any auto, including owned, hired, and non-owned autos.

SECTION 9. DUTIES AND OBLIGATIONS OF A PRIVATE COLLECTOR

All private collectors shall comply with the following operational requirements. Failure to observe these provisions may result in the suspension or revocation of the solid waste collection license.

Subd. 1. Change in Operation. The collector shall operate in a manner consistent with its application materials, and shall provide notice to the town within 10 days of any change of the information, forms, or certificates filed as part of the application process.

Subd. 2. Legal Compliance. The collector shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances.

Subd. 3. Hours of Operation. No collection of solid waste shall be made except between the hours 6:00 a.m. and 5:00 p.m. Monday through Friday. Operation during these hours may have service adjusted one day to accommodate recognized national holidays, poor weather conditions, and natural disasters. Customers shall be reasonably notified of the specific day for the collection of their MSW, and the collector shall collect the materials on those days. Multiple residential dwellings and manufactured home parks are not restricted to these days of collection where combined collection service is provided through a homeowner's association or facilities management firm.

Subd. 4. Rate Options. The collector shall offer customers, at a minimum, a three-tiered rate/volume option for MSW, where the rate charged for the collection of MSW increases with the volume collected. At a minimum, rates will be set for the following approximate size categories:

- (a) 30 gallon service;
- (b) 60 gallon service;
- (c) 90 gallon service; and
- (d) Dumpsters.

Differences between rates charged for the various container sizes shall be sufficient to encourage recycling and solid waste reduction in accordance with state law and the Washington County Solid Waste Master Plan.

Subd. 5. Offered Services. In addition to collection of MSW, the collector shall offer the following services to all customers:

- (a) Recycling collection shall be provided to all customers in accordance with this ordinance;
- (b) Bulky waste collection and disposal shall be provided to all customers within five business days of request by the customer. An additional fee may be charged;
- (c) Yard waste collection and disposal shall be provided to all customers within five business days of request by the customer. An additional fee may be charged;
- (d) SSCM collection and disposal may be provided to all customers. An additional fee may be charged; and
- (e) Missed collections reported by customers shall be collected within two business days of the report of the miss.

Subd. 6. Collection Vehicles. Each collector collecting or hauling solid waste shall only use vehicles and equipment constructed and maintained so that the contents will not leak, spill, or blow out of the vehicles. Each collector shall cycle their collection equipment as necessary to avoid the leaking or spilling of material from the vehicles. The vehicles and equipment shall be kept in good working order, free from leaking hydraulic and other fluids, and be clean and as free from offensive odors as reasonably possible. The vehicles shall not stand in any public place longer than is reasonably necessary to collect the solid waste. The collector shall also ensure that the immediate collection site is left tidy and free of litter.

Subd. 7. Weight Limit. No collector may operate on any town right-of-way when the weight of said vehicle exceeds eight tons per axle. The town may set a lower weight limit on a road it identifies as being load sensitive.

Subd. 8. Reporting. All collectors shall submit to the Minnesota Pollution Control Agency, the county, and other required reporting entities required MSW, recycling, and other waste data. Failure to submit the reports shall be cause for license suspension.

Subd. 9. Access to Records. Upon demand of the town, collectors shall produce any records the town may require to verify that all collected solid waste has been disposed of in a lawful manner. Each collector shall, during normal business hours, provide the town access to books, documents, papers, and other records of the collector that are directly pertinent to the issuance and monitoring of the license and required reports.

SECTION 10. MANDATORY RECYCLING COLLECTION

Each collector of MSW shall provide its customers with an opportunity to recycle through at least bi-weekly collection of recyclables.

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Subd. 1. Collection Day. The curbside collection of recyclables shall be on the same day as the collection of other materials, but may occur at a different time within that day. The recyclables collection shall be from a location at or near the customer's collection point for other materials or some other location mutually agreeable to the collector and the customer.

Subd. 2. Materials Collected. At a minimum, the materials collected shall be at least inclusive of the Washington County Standard List of Residential Curbside Recyclables.

Subd. 3. Notice of Non-Collection. In each instance where a collector does not collect recyclable materials from a residence or business, adequate notification as to why the recyclable material was not picked up must be left with the recyclable materials left at the curbside.

Subd. 4. Ownership of Materials. The collector is deemed the owner of the recyclables upon collection.

Subd. 5. Disposal. The licensee is responsible for marketing or disposing of targeted recyclables to the appropriate recycling facility. All separated recyclables must be transported to a licensed recycling facility or delivered to an end market for sale or reuse, or brought to an intermediate collection center for later delivery to a licensed processing center or end market for recycling. It is unlawful for any person to transport for disposal, or to dispose, of designated recyclables in an MSW disposal facility. No separated recyclables may be mixed with another waste material, incinerated, landfilled, composted, or made into fuel pellets

SECTION 11. SUSPENSION, REVOCATION, OR NONRENEWAL OF A LICENSE

The town board may suspend, revoke, or not renew the license of any collector whose conduct is found to be in violation of this ordinance, or which poses a threat to the public's health, safety, or welfare. Such revocation, suspension, or nonrenewal may only occur following a public hearing at which the collector will be provided an opportunity to be heard. The town will provide the collector at least 10 days mailed notice that contains the date, time, location, and purpose of the hearing. The notice shall be sent to the collector's business address, as listed on the collector's most recent application for a license, license renewal, or the updated address provided by the collector in its written notice to the town of address change. If, after the hearing, the town board determines to suspend, revoke, or not renew a license, it shall provide the collector written notice of its action.

SECTION 12. STORAGE AND PLACEMENT FOR COLLECTION

Subd. 1. Placement. Property owners and occupants shall place their containers and bags at the end of the driveway on collection day. At all other times, the containers shall be so located, in so far as possible, out of public view in a secure place.

Subd. 2. Large Containers. Any container exceeding 90 gallons in size, and located on a commercial premises used for purposes other than single family residential, shall be contained within a building within a secure area which has an impermeable floor surface, and enclosed and screened within a 90% or greater opaque wooden or metal fence or masonry wall not less than six feet in height having a gate or doorway which remains closed except for access purposes. All enclosures must be large enough to allow for storage of containers for recyclable materials.

Subd. 3. Container Material. All containers for MSW and recyclables shall be made of suitable material, which is rodent and water proof and which will not easily corrode. Containers shall be kept tightly closed. MSW and recyclable materials may be kept in a plastic bag of such strength that the contents therein will not rip, tear, or puncture the plastic bag. In accordance with Minnesota Statutes, sections 115A.931 and 325E.046, yard waste may not be contained in plastic bags.

SECTION 13. FARM WASTE

Subd. 1. Animals. In order to protect the public health, and if no other environmentally safe method is reasonably available, carcasses of domestic livestock may be buried on agricultural property that is under the ownership or lease of the individual owning the animal.

Subd. 2. Organic Farm Waste. Organic farm waste may be composted or integrated into the soil to improve soil conditions for agricultural operations.

Subd. 3. Burning Waste. The farm exemption under Minnesota Statute, section 17.135 does not apply in the town. The county, by county board resolution, prohibits garbage burning or burying because regularly scheduled pickup of solid waste is reasonably available in the county.

SECTION 14. PENALTY

Any person convicted of violating this ordinance shall be guilty of a misdemeanor and shall be subject to a fine, imprisonment, or both, as specified in Minnesota Statutes, section 609.03.

SECTION 15. GENERAL PROVISIONS

Subd. 1. Prior Ordinance. This ordinance supersedes and replaces the Town's previous solid waste ordinance, which is hereby repealed.

Subd. 2. Interpretation. This ordinance shall be interpreted in accordance with the following:

- (a) The word "shall" and "must" are mandatory, and the word "may" is permissive;
- (b) The singular includes the plural, and the plural the singular;
- (c) The present tense includes the past and future tenses, and the future the present;
- (d) General words are construed to be restricted in their meaning by preceding particular words; and
- (e) The references made herein to statutes, rules, regulations, or ordinances of the state or county shall automatically include any amendments made thereto and any successor provisions without further action by the town board. Furthermore, such references shall serve to incorporate those statutes, rules, regulations, and ordinances by reference to the extent necessary to achieve the intent and purposes of this ordinance. However, such incorporations are intended only to give effect to this ordinance and are not intended to make the town responsible for the administration or enforcement of the statutes, rules, regulations, or ordinances being referenced.

Subd. 3. Severability. In the event that a court of competent jurisdiction adjudges any part of this ordinance to be invalid, such judgement shall not affect any other provisions of this ordinance not specifically included within the judgement.

SECTION 16. EFFECTIVE DATE

This ordinance shall be in full force and effect as of the first day of publication after adoption.

Adopted this 2nd day of July, 2018.