

Denmark Township Board Minutes: April 4, 2005

SUPERVISORS PRESENT: Jim Fitzpatrick, Kathy Higgins, John Kummer, Gary Dixon, Jim Keller

OTHERS PRESENT: Attorney – Kevin Shoeberg; Engineer – Cara Geheren

CALL TO ORDER: Jim Fitzpatrick called meeting to order at 7:01 p.m.

ELECTION OF CHAIR:

Fitzpatrick opened nominations for Chair. Motion Kummer/2nd Dixon to nominate Higgins. Motion Keller/2nd Higgins to nominate Fitzpatrick. Motion Dixon/2nd Kummer to close nominations. Discussion re: role of chair as person who runs the meetings & signs Township documents. Higgins withdrew as nominee. Motion Higgins/2nd Keller to appoint Fitzpatrick chair. Motion carried with Fitzpatrick abstaining. Motion Higgins/2nd Dixon to nominate Kummer Vice-Chair. Motion Keller/2nd Dixon to close nominations. Motion Keller/2nd Dixon to appoint Kummer vice-chair. Motion carried.

AGENDA APPROVAL:

Motion Keller Fitzpatrick/2nd Kummer to approve agenda. Motion carried.

CONSENT AGENDA APPROVAL:

Motion Fitzpatrick/2nd Kummer to approve consent agenda. Fitzpatrick noted typos in minutes. Motion carried.

HEARING DECISIONS:

- **St. Croix Ridge:** Shoeberg summarized status. Discussion of ordinances relating to this development. Items yet to be resolved: maintenance of ponds, conservation easements, signage. Concerns regarding no homeowners association – who will be responsible for pond maintenance? Recommend that in future easement to ponds be left open. Culvert issue has been resolved.
 - Higgins – what signage did Planning Commission require for Eagle’s Watch? Bluff line is posted no mow, etc.
 - Shoeberg – Can require signage posting bluffline. Town Board must decide who would hold conservation easement. Reminded that ordinances still control what can be done.
 - Higgins – thought intent was homeowners association. Is conservation easement necessary with current ordinances?
 - Geheren – Questions feasibility of individual homeowners maintaining ponds. Criteria must be in place for maintaining and cleaning ponds. Concerns about compliance with WMO standards.
 - Shoeberg – agrees with concerns.
 - Geheren – Denmark not yet under NPDS regulations requiring local governments to inspect ponds but will be some day. Future policy decision to be made by Board re: pond maintenance.
 - Higgins – questioned cost to inspect/maintain ponds. Who will pay the costs?
 - Shoeberg – 2 ponds serve more than this development – could pay for out of general fund, storm sewer assessment or determine who benefits and levy special assessment.
 - Keller to Geheren – how frequently are ponds maintained and inspected? how much to clean? Geheren – as needed basis. no idea of cost to clean. Board should be very careful in decision – may set a precedent. Suggest set up a storm water district.
 - Higgins – are titles clear? Have other issues been resolved?

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- Shoeberg – will provide written verification of clear titles, easement issues being addressed, other issues will be resolved in development agreement.
- Motion Fitzpatrick/2nd Kummer to approve preliminary plat subject to planning commission recommendations and conditions of 2/22/05 and condition in letter dated 03/11/05 from Attorney to developer. Easement language granting township access to the two ponds to be included in Development Agreement. Kummer – Shoeberg: include language in development agreement advising that township has authority/intent to create a watershed.
Motion carried.
- Dennis Sachs representing Schroeder: 2 easements occur on preliminary plat. Shoeberg – development agreement will show easements. Are construction plans separate from development agreement? Yes

ADD TO AGENDA:

Sheriff's deputy report for month of March – 23 traffic citations, 133 calls for service, theft at Afton Alps, 1 vehicle theft.

PUBLIC COMMENT:

- Frank Femling – stated that sheriff should be placed first on agenda so he doesn't have to wait. All agreed.

BUSINESS ITEMS:

- **Complaint 04-12 – commercial business in residential area.**
 - Kummer – Jerry Meier operating a business at 122nd & Neal in a residential area. Spoke with both parties, not able to reach an agreement. Board should decide the issue – specify ingress/egress area, restriction to not increase size of operation.
 - Shoeberg – did draft of settlement agreement. Board needs to agree on terms.
 - Meier – could Board issue a temporary permit? Possibly if a settlement agreement is reached. Currently, 20-30 vehicles parked on property as well as equipment. Meier has rented a place in Woodbury, 30-50% of vehicles & equipment will be moved there. Needs time to find a commercial property. Search will take about 3 years. Most neighbors don't have a problem with the operation.
 - Keller – operation is in violation of ordinances, cannot continue.
 - Londa Anderson – they initiated written complaint because told they had to. Result: good relationship with neighbors has been jeopardized. Board should have noticed Meier's operation was against ordinance and taken care of it. Goal should be to preserve enforcement of township ordinances.
 - Cheryl Holz – lives in next house down from Meier. Concerns: noise all the time, trucks, equipment parked, area is a mess. Meier has been in violation since 2000. Why didn't board do something? Operation is obvious – didn't Board members see it? Why did complaint have to be in writing with resultant hard feelings?
 - Fitzpatrick – no staff for inspecting ordinance violations. Board must depend on complaints.
 - Meier – has asked about CUP in the past – told to continue operating until someone complained.
 - Keller – motion: Propose July 1, 2005 as date to move business operation. 2nd: none
Motion fails.
 - Dixon – how long has business operation been going on? Since 2000. Formal complaint late 2004. Meier: seasonal construction business – 6 months a year – they bury cables for Comcast. No construction work done at 122nd Street location.
 - Shoeberg – issue is violation of ordinance, Board must address complaint.

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Motion Kummer/2nd Dixon to allow Meier to complete the season and conduct no business after 12/31/05. Premises to be vacated by 04/01/06. Motion carried. Higgins described township policy requiring that all complaints be put in writing or presented directly by complainant. It is difficult for Board to deal with situations where people wish to not be identified.

- **Brabec Variance**

- Shoeberg summarized request - lot is a one acre parcel and is a lot of record with the county. Soil borings have been submitted. No county permit until approved by Board. One acre lot not allowed under current ordinance, however parcel existed prior to ordinance. Brabec's have owned since 1950's. Recommend approval. If variance not approved, lot is unbuildable. Dennis O'Donnell thinks township should approve. Get septic permit and survey location of house – suggest limit size to 3 bedroom house.
- Fitzpatrick – lot is completely against Governor's Critical Area Rules.
- Shoeberg – if denied, township may have to purchase property – suggest variance conditioned on approval of septic permit by the county. Houses on other side of the road are closer than 150'
- Geheren – would be helpful to see a grading plan.
- Higgins –In previous years, lot was judged unbuildable. Steve Biscoe – when he was on the Board, lot was unbuildable. Thought it was tax forfeited – is someone going to buy it? Shoeberg - this is a different lot – these issues are decided on case by case basis. Higgins – this lot was discussed on 4/30/02 – Board decided unbuildable.
- Kummer –**questioned attorney on specifics of a variance.**
- Shoeberg – if Board decision is “No”, applicant could say this is a regulatory taking ie: lot was buildable, laws have changed, now lot is unbuildable.
- Higgins – read from 11/8/04 recommendations of Planning Commission – denied – failed to meet requirements. Shoeberg - Board asked attorney to review. This is a hardship to the Brabec's who have owned since 1959 – hardship defined as no reasonable use of the property after changes to ordinance. Would not be a hardship to any new owner. Discussion of other houses on the bluffline. What if house burns down – can it be rebuilt?
- Fitzpatrick – what if we don't make a motion? Shoeberg – Board has to make a decision.
- Motion Higgins/2nd Kummer to approve variance subject to Shoeberg's 4/1/05 memo to Board, County approval of proposed septic system, and County approval of variance. Discussion: Fitzpatrick thinks issue is ludicrous – laws adopted since 1970's have been against this type of variance. Motion carried with Higgins, Kummer & Dixon voting Aye. Fitzpatrick & Keller voting Nay.

- **Minute posting to the website** – discussion of motion from annual meeting to post “unapproved” minutes.

- Shoeberg – concerns about proposed timelines for posting. No legal prohibitions against posting unapproved minutes but concern that minutes may contain errors.
- Kummer – residents are able to call clerk to get information on what happened at the meeting. Suggest post “items discussed at the meeting”, then post minutes after approved.
- Fitzpatrick – proposed time limits between meeting and posting to website not reasonable. How much time needed to post items discussed and approved minutes?
- Motion Keller/2nd Higgins: Post only approved minutes on the website. Motion carried with Higgins, Fitzpatrick & Keller voting Aye; Kummer, Dixon voting Nay.

- **Website/Newsletter** – Keller stated Paul would continue doing website for \$75 per month.

- Peg Powers – it takes 2 full days to do the newsletter then 1 day for copying and putting together. Would like someone else to do the “busy work”.
- Higgins – proposed cost per year for website is almost \$1000.

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- Keller – suggest hold over for next meeting.
- Powers – agrees to create a newsletter before next meeting – asked Board to send critical items. Fitzpatrick stated that item to be discussed at next meeting.
- **Recording meetings** – Higgins requested that minutes be recorded for purpose of clerk preparing meeting minutes. Recording to be erased recording after minutes are done. Shoeberg agreed. Concensus that meetings may be taped for purpose of preparing minutes. Board instructed clerk to investigate cost of recorder.
- **Afton Apple CUP** – Shoeberg indicated weddings are being done – violation of current CUP.
 - Frank Femling – not objecting to getting new CUP. In the process of getting building into compliance. Questioned what is grandfathered in, what needs a CUP? Has been doing weddings for 15 years.
 - Higgins – reason issue was raised is due to Health & Safety concerns with large groups.
 - Femling – intending to apply for a CUP – working on sinks, etc. should be done within a week. First wedding scheduled in May.
 - Higgins – Deadline for May PC Meeting is 4/18
 - Shoeberg Suggest a temporary CUP or agreement for 2 months on condition that Femling apply for CUP by 4/18. Shoeberg to draft temporary permit.
 - Motion Kummer/2nd Keller to draft a temporary permit to allow Afton Apple to continue use of property for weddings until 6/30/05 conditioned on application by 4/18/05 for an amended CUP. If application not submitted by that date, no weddings after 6/30/05. Discussion – Dixon – Is that enough time to get a CUP? Yes. Motion carried.
- **Homestead Estates Yield Plan** – Frank Femling provided copies of plan to Board members. Red areas are unbuildable, green areas are buildable showing 14 lots on 80 acres. Discuss concerns about road location – cul-de-sac is ½ mile long – would it be approved? Indicated upper road meets county requirements.
 - Higgins - read from 3/30/05 letter regarding issues with proposed shared road. Greg recommends approval of 13 lots. Femling - parts of road are on Stoffel property. Lots 1,2,3 100% on Stoffel property, lot 4 on ½ Stoffel ½ Femling property, all other lots on Femling property. Road is not part of each 5 acre lot and not a detriment to Stoffel. If shared road is not allowed, lots will decrease to 12.
 - Shoeberg – plan is a conventional layout. This will be a policy decision of a concept for use of open space and allowable density.
 - Fitzpatrick – plan has a road alignment issue. Keller – concerns about location of upper road.
 - Femling – road meets county requirements. Only issue is length of cul-de-sac. Shoeberg (to Femling) – issue is also how road should be aligned. Allow use of a shared road? Approve 13 or 14 lots? Femling – if approved as a cul-de-sac would be okay with the county. Thru road would probably not be okayed. Lyla Davie's and granddaughter's lots would be part of development. Township has allowed this type of cul-de-sac before.
 - Geheren – issue is road alignment with 80th Street.
 - Shoeberg – we need a motion
 - Fitzpatrick – look at yield plan the same as a conventional layout and apply same standards to everyone.
 - Kummer – cannot consider road without alignment with 80th Street.
 - Motion Keller/2nd Dixon to approve 13 lots on a yield plan. Motion carried.
 - Geheren – does someone inform Greg of what was decided? Higgins will call and in the future clerk will inform Greg of decisions.
- **Award Bids:**

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- **Gravel** – Bryan Rock bid: \$7.90 ton placed (100% crushed limerock)
Solberg bid: \$7.15 ton placed (limerock and foreign material)
3500 needed for township roads
 - Kummer – try 100% limerock on ½ of road, limerock/foreign material on other ½?
 - Jim Herman – 45 years of experience maintaining roads. Township does not want any foreign material – its not solid rock. Result will be soft spots and washboard roads. Roads should be all limerock.
 - George Stoffel – foreign material includes sand – will not set up like limestone. Result will be bad roads.
 - Motion Kummer/2nd Higgins to accept Bryan Rock bid for \$7.90 ton. Motion carried.
- **Dustcoating** – Dustcoating bid: \$.61
Dustmaster bid: \$.70
 - Motion Kummer/2nd Higgins to accept Dustcoating bid for \$.61. Motion carried.
- **Town Hall Mowing** – Steve Herman bid: \$100 per mowing, weed control \$50 per time plus cost of chemicals
 - Motion Keller/2nd Kummer to accept Steve Herman bid. Biscoe – does that include trim shrubs? Shrubs are included. Higgins raised question of whether conflict of interest present with awarding mowing contract to family member of Clerk/Treasurer. Shoeberg stated here is no conflict of interest due to fact that Clerk/Treasurer has no voting ability. All official Town Board actions are voted on by Town Board members only. Motion carried.
- **Ditch Mowing** – Butch Wagner bid: \$50 per hour
Jim Herman bid: \$45 per hour
 - Motion Kummer/2nd Keller to accept Jim Herman bid. Motion carried.
 - Higgins – dustcoating and gravel contracts are 1 year, other contracts are 3 years.
- **Summer road projects** – Kummer suggests overlay of 110th south from Highway 21 east to the river and Neal Avenue 110th to 122nd. Estimated cost almost \$300,000. Use unspent funds from previous years to augment current year budget.
 - Biscoe – some roads are wavy – should make them more level and eliminate dips.
 - Geheren – possibly use blue **topping**. Discussion of reasons for waves. Agree both roads in rough shape. 131st Court is also bad. Will provide detailed plans in May. Advertise for bids with 8/31/05 completion date. Consider overlay of Neal 80th to 90th? Wait for Rumpca decision.
 - Motion Kummer/2nd Keller to approve overlay of 110th south from Highway 21 east to the river and Neal Avenue 110th to 122nd with milling and overlay similar to last year. Motion carried.
- **Maintenance – Driveway culverts**. A number of plugged driveway culverts were identified on this year's road tour.
 - Question re: who is responsible for maintenance of driveway culverts. Shoeberg – the homeowner
 - Biscoe – does it make a difference if the road is blacktop or gravel? What about storms and gullywashers?
 - Jim Herman to Shoeberg – what does the state law say? Concerns about driveways and snow melting. Shoeberg – draft letter from township to residents regarding responsibilities for driveways.
- **Planning Commission Ordinance**
 - Higgins – propose change to Planning Commission Ordinance that minutes of meetings be taken by Township Clerk/Treas. Proposed change hasn't been discussed with the Planning Commission. Keller – could an email be sent to members? Not known if all members have email. Opposition by members not anticipated.

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- Motion Higgins/2nd Keller to change Planning Commission ordinance Section 4B to read: "Town clerk shall keep minutes of Planning Commission meetings and hearings". Motion carried. Shoeberg to draft language change for approval @ next Board Meeting. Once Board approves language amendment, will be published and implemented. Public Hearing not necessary.
- **Incorporation** – Shoeberg met with Kevin Corbid to get specific financial information on property taxes for agricultural property. Suggest meeting with Board – determine information to be presented, issues, what's been done in other townships – then public meeting.
 - Fitzpatrick – previous problems with reporters – misinformation, getting quotes wrong. Discuss prior to setting up public meetings.
- **Urban Short Course**
 - Higgins – propose standing resolution for staff to go to MAT and CTAS Training sessions. Fitzpatrick agreed should be standing policy.
 - Biscoe – suggest including meeting pay and mileage paid at the standard IRS rate.
 - Motion Keller/2nd Higgins to approve resolution for staff to go to MAT and CTAS training sessions including payment of meeting pay as set by the Board and mileage at the standard IRS rate. Staff attending MAT session will provide a report to the Board. Motion carried.
- Ordinance Review – schedule for 4/28/05 at 1:00 pm. Greg, Cara and Ron will attend.
- Board Workshop-Portfolio assignments – schedule for 4/21/05 at 7:00 pm.

LEGAL REPORTS:

- Klopff – County determined he only paid \$250. Will collect other \$250.
- Suburban – Shoeberg will go out tomorrow and advise Babcock of how Board will proceed. Inspect area for progress in moving cars out, re-inspect at end of week. Keller – at least 15 cars still there last Sunday. Kummer – Board should do no more negotiating with Babcock. Shoeberg – if no progress, Board will take action and notify the court. Fitzpatrick – even if cars are out, Babcock is not. Goal is to get cars out and not operate as a business.
- Rumpca – calendars submitted to Pat Kelly, arbitrator – won't know anything until he gets back to Shoeberg.

ADJOURNMENT:

- Motion Keller/2nd Dixon to adjourn at 11:52 pm. Motion carried.

Submitted by Karen Herman