

DENMARK TOWN BOARD MEETING MINUTES
January 9, 2006

SUPERVISORS PRESENT: Jim Fitzpatrick, Kathy Higgins, Jim Keller and Gary Dixon

ABSENT: John Kummer

OTHERS PRESENT: Attorney Shoeberg, Engineer Geheren

CALL TO ORDER: Board Meeting called to order at 7:04 PM by Chair Fitzpatrick.

AGENDA APPROVAL: Fitzpatrick added Ordinances and 2005 Financial Audit. Attorney added Reynolds. Keller added Davison Cartway, Meier, and Sieben acreage. Motion Keller/2nd Dixon to approve Agenda as amended. Motion Carried.

CONSENT AGENDA APPROVAL: Dixon pulled financial reports. Motion Keller/2nd Higgins to approve remainder of consent agenda. Motion Carried. Dixon questioned outstanding escrow balances on Homestead Estates (-\$9200.76) and St. Croix Ridge (-\$2078.14). Attorney stated Development Agreement for Homestead Estates will take care of that balance. Riegel (St. Croix Ridge) Letter of Credit was reduced and a \$100,000 maintenance bond has been required. Both are required to carry a \$2500 balance in their escrows and attorney will take care of both. Motion Dixon/2nd Keller to approve financial reports. Motion Carried.

HEARING DECISIONS/ZONING ACTIONS: DAVIES VARIANCE

Architect presented Davies Variance request. Raised similar issues/concerns as addressed at Public Hearing. Discussion about proposed septic system. Questions raised re: septic location and feasibility of putting in a mound system. Discussion re: problems associated with relocating drainage culvert. Attorney stated that it could be considered a hardship to relocate culvert especially if current culvert is functioning properly. Discussion re: fact that only the far corner of proposed home sits at the 0 foot setback. Rest of home has been angled away from the river. Keller questioned re: retaining walls. Applicant stated that new retaining walls constructed of native limestone will be constructed around home. Keller questioned discrepancy between Planner's recommendation and final recommendation of Planning Commission. Don Schneider, Planning Commission chair, spoke to reasons and Planning Commission action/recommendation. Planning Commission did not agree with Planner's report and unanimously recommended approval of variance as submitted.

Resident comments:

Steve Biscoe: Town Board's approval of Mississippi River Corridor Plan resulted in many homes needing to request variances. States the Davies are asking for nothing more than they currently have. Variance should be approved.

Catherine Tri: Went through same process and received variance 4 ½ yrs ago. Spoke in support of Davies variance. Does not believe it will alter the essential character of the area. Law was written in 1974. Author of the legislation spoke for Tri's at the County level to explain intent of the legislation. It wasn't intended for residential homes; rather it was intended to prevent commercial development. Believes Davies should be granted variance as they will just be keeping what they have now.

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Joe Skow: Distance of proposed house from bluffline is greater than average distance of homes that exist now. Supports gravity fed septic, mound systems are designed as a 2nd best alternative. Granting the variance will result in removing 2 existing structures and decreasing housing density, which is a goal for the riverway. The right to use your property in a way that is not harmful to others is a fundamental right and I urge the board to promote this right.

John Kummer submitted the following letter to the Town Board and requested that it be read into the record:

To: Denmark Town Board

From: John Kummer

Subject: Support of the Davies Variance Request

I am writing this letter to voice my overwhelming support of the Davies variance request. Although not in attendance tonight, I am familiar with the property, and I also attended the public hearing and planning commission meeting concerning this matter.

I feel this request is a matter of principal; should the Davies, or any resident for that matter, be allowed to remove two existing structures and replace it with one more aesthetically pleasing one? Common sense says yes. I would dare to say that if request were anywhere else in the township besides the river bluff, we would probably be encouraging it. But because the Davies land is in the river bluff district; land that has been in their family for over 150 years, and a full 125 years before the river bluff statute was passed, they must now get a variance. If you need to find hardship, I say it was created by the passage of the statute in this particular case.

The planning commission voted 5-0 in favor of the variance. Residents in support of the Davies made multiple comments at the public hearing. The town board needs to support its residents in cases such as this. Butch and Diane are not asking for anything they don't already have. They want to build a new house in the same location as 2 existing ones that have been there for years. It's that simple.

I highly encourage the board to support the Davies in their request. To not do so should make you think long and hard about who were elected to serve.

Higgins submitted the following findings re: this variance request:

1. This property has been continuously owned by the Davies family since 1854, 122 years prior to the adoption of the St. Croix River Bluffland Ordinance.
2. The applicant has worked with Township staff throughout this process and has reconfigured their plans to address staff concerns.
3. The Denmark Township Planning Commission has unanimously recommended approval of the requested variance.
4. The request is in keeping with the spirit and intent of the St. Croix River Bluffland & Shoreland Management Ordinance.
5. Approval of this variance will result in a significant net improvement to the view as seen from the river as well as a net improvement to the degree of conformity to the ordinance:
 - Two non-conforming substandard light colored structures totaling 95 lineal feet on the bluffline parallel to the river will be removed.

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- The proposed new home will be placed at an angle with only the corner of it placed on the bluffline parallel to the river. The remainder of the home will angle back away from the river/bluffline.
 - The new structure will be constructed with materials and earth tone colors designed to blend with the natural surroundings.
6. The requested variance will not alter the essential character of the area. There are other homes in this area and throughout Denmark Township located on or near the bluffline. Differing setback variances have been granted to other residents based on the individual situations of the applicants. Granting of the variance does not grant additional rights to the applicant than are enjoyed by others in the area.
 7. The site has been evaluated/tested by a licensed Pollution Control Agency Professional who recommends placement of the septic system at approximately 66 feet in front of the existing structure. Due to the topography of the land and disturbed on-site soil conditions, relocation of the septic site is not possible and would create an undue hardship for the applicants.
 8. The hardship was not created by the landowner. The hardship is a direct result of the topography of the land and the existence of disturbed soil conditions on the land.
 9. The proposed height of the home is acceptable. Past practice in Denmark Township has been to measure height from the street level, not from the walkout level. The height of 42' referenced by planning staff was measured from the basement walkout level of the home. It would be unreasonable to set a different standard for the applicant than has been utilized with other applicants.
 10. The applicants have demonstrated their good stewardship of the land. Severe erosion/washout problems on the site were corrected by the homeowner in the early 1960's when they placed a 600 foot long 42" concrete culvert (buried 20'-25' deep in places). Requiring the relocation of this culvert would create undue hardship and not be in compliance with the Ordinance. Section 402.04 (1) (a) of the St. Croix River Bluffland & Shoreland Management Ordinance states: "The existing drainage patterns shall not be disturbed." Disturbing the existing drainage patterns and relocating the existing drainage culvert could possibly result in erosion problems. It does not make sense to relocate a culvert of this size/length which is doing the job it was intended to do.
 11. Requiring the applicants to relocate this home to an upper meadow which is currently being farmed creates an undue hardship and is unreasonable due to the following:
 - Relocating the home would result in removing land from agricultural production and be in direct conflict with the goals and policies of the Denmark Township Comprehensive Plan as quoted below:
 - i. Goal: "Protect a base of long-term agricultural land, as a source of open space, rural character and economic livelihood."
 - ii. Goal: "Encourage the continuation of commercial farming as a viable land use and significant economic activity."
 - iii. Policy: "Permit and encourage agricultural uses in areas not specifically designated for long-term agricultural use."

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- Relocating the home would result in the creation of additional erosion problems. Requiring such a relocation would disturb the existing drainage patterns of the site, resulting in a violation of Section 402.04 (1) (a) of the St. Croix River Bluffland & Shoreland Management Ordinance
- Requiring the relocation of the home would deny the applicants a right they currently enjoy (a home with a river view).
- There are numerous separate parcels in this 34 acre property. The separate parcels were parcels of record prior to the adoption of the ordinance in 1976.

Based on the above findings, Motion Higgins/2nd Dixon to approve the Davies Variance request allowing the proposed home bluffline setback to match the existing setback (0 feet) of the southerly structure on the site and allowing the height of the home to be as on the submitted plans, subject to the following conditions:

1. Two existing non-complying structures be removed.
2. Exterior colors including the roof shall be as on submitted plans (earth tone or summer vegetation color) to minimize visual effect from the river.
3. Site grading, erosion control, and drainage patterns be as approved by the Township Engineer prior to issuance of a grading or building permit. Erosion control to be maintained until permanent vegetation/ground cover is established. Bluff edge to be restored to native vegetation as applicable after removal of the existing structures.
4. Tree protection fencing shall be installed and maintained during construction and grading. This fencing shall be at the drip line from the crown of the trees to be preserved.

Discussion:

Fitzpatrick doesn't support moving the home to agricultural property. Doesn't believe there is an issue with the house height. Believes current drainage culvert is functioning and should not be relocated. Septic hardship should have further study. "My voting history is to vote in a manner that protects the natural resources involved. Riverway regulations were set up to say that if a structure doesn't belong there, then it shouldn't be there. However, 152 years of riverway stewardship from the Davies carries a significant amount of weight on this decision. They are not asking to do something extraordinary so I will support the motion." Keller: Has concerns about house "snuggling up" to the bluffline. Consensus reached on board re: not relocating the drainage culvert due to length, width, depth, and fact that it is functioning well. Not worth running the risk of disturbing drainage patterns in such an environmentally sensitive area. Town Engineer concurs.

Motion passed unanimously.

PUBLIC COMMENT:

Bill Krueger representing Denmark Township Historical Society requested that the Town Hall rental fee of \$25 be waived for the Historical Society as the Historical Society is a Denmark Community group. Dixon stated that Denmark 4-H groups should also have fee waived as they too are a Denmark Township Community group. Need to deal with

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question of access to building and security system. Board will take under advisement and report at the February Board Meeting.

Bruce Featherstone: Driveway work has been completed and is requesting his escrow balance to be refunded. Township Engineer will re-inspect and prepare written report to Board before February Board Meeting.

BUSINESS ITEMS:

Specialized Acres 2nd Addition-Letter of Credit reduction: Specialized 2nd requested Letter of Credit to be reduced. Engineer reported all work is complete except for placement of the bituminous wear course. Engineer recommended approval of reduction. Motion Keller/2nd Higgins to approve Specialized Acres 2nd Addition Letter of Credit reduction, subject to Engineer's report documenting status of project and \$ amount. Motion carried. Board requested that all future recommendations for credit reductions be in writing and include engineer's report as to status of project and requested reduction amount.

117th Street Plat: Atty states Plat will not be scheduled for Public Hearing until February or March, as he is tracking down related deeds. To meet with John Dwyer to finalize.

TH 95 Report: Moved to February Agenda.

Emergency Preparedness: Keller spoke with Myra Peterson. To report at Feb. Bd Mtg.

Ordinance Report: Board reported Draft Development Code has been completed. Public Hearing for Ordinances will be January 23, 2006 and notice will be posted and published in the Hastings Gazette on January 12th and 19th. Copies of the draft can be reviewed at the Town Hall, on the Denmark Township Website (denmarktownship.org), Washington County Law Library in Stillwater, Washington County Library (Park Grove Branch) in Cottage Grove and Dakota County Library (Pleasant Hill) in Hastings.

2005 Financial Audit: Township received contract from Oberloh & Associates for mandatory annual financial audit (estimate \$3650). Board received spending history on financial audits. Bid is comparable. Motion Keller/2nd Dixon to approve contract with Oberloh & Associates for 2005 audit. Motion Carried.

Reynolds Easement: Attorney reported that the Reynolds' are proposing to change the Easement access to their parcel. Board originally approved access subject to the County's approval since a County road is involved. County was concerned about the access as there was a power line in the vicinity. Reynolds attorney has indicated they have approval from both the power company and the County. Attorney asked Board how they would like to proceed. Higgins- current access was determined as a result of a development agreement re: a past subdivision. Desire was to have access directly across from 66th St. Now there will be more accesses there? Board members requested a drawing representing the current approved access as well as the proposed new access prior to any action. Discussed escrow account status. Currently have balance of 178.44. Attorney projects cost of work will be \$200-300. Escrow to be kept current. Attorney will follow up. Reynolds stated that the County has no safety concerns and that the access shares the Xcel easement. Access will be built to Township standards. To be on February agenda.

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Davison Cartway: Attorney reported that the Attorneys for the parties involved are continuing to discuss situation. Hearing would not be until March and the issue may be resolved without a hearing.

Meier: Attorney sent letter to Mr. Meier's attorney re: business operation on 122nd St. and hasn't received it back. Attorney is working on the schoolhouse property lease.

Sieben/Homestead/Davies: re: acreage between parcels. Shoeberg talked to Clinton to assure there would be no discrepancies on lot divisions as Lyla's understanding on the division was different than what was being proposed.

LEGAL REPORTS:

Rumpca: Attorney reported that Letendre not willing to arbitrate with Kelly because they wanted the right to appeal. If a non binding arbitration was done with Kelly, Letendre would retain his right to appeal to District court. Clinton's response was that he may not object if there were terms that he could agree to. Questions raised re: MAT attorney and Township attorney involvement in representing Denmark. Keller stated that Township intent is to minimize township expense. Board members comfortable with MAT representation.

Biscoe-re: Inquiry on Licensed trash Haulers. Board will review. Will put on February Agenda.

Motion Higgins/2nd Dixon to adjourn. Motion Carried.

Becky Herman
Clerk/Treasurer