

DENMARK TOWN BOARD MEETING MINUTES

June 4, 2018

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

**ABSENT:** None

**STAFF PRESENT:** Attorney Gilchrist (Kennedy-Graven), Planner Maas (WSB), Engineer Geheren (Focus)

**CALL TO ORDER:** Meeting called to order @ 7:02 PM by Chair Higgins

**AGENDA APPROVAL:** K Higgins moved Solid Waste Ordinance to July Agenda. Attorney will send out an updated draft of the ordinance.

**Motion J Moore/2<sup>nd</sup> 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:**

**Motion J Moore/2<sup>nd</sup> B Rucker approval of Consent Agenda items which include 05/07/2018 Board Meeting Minutes, Claims #11122-11137, EFT payments- PERA 465793, MN Tax 2018284352, Federal Tax 21151657, payroll ending 06/01/2018, Financial Reports.** Voting Yes- J Moore, B Rucker, J Strohfus, K Herman, K Higgins. Voting No- None. Abstaining- None. Motion Carried 5-0-0.

**HEARING DECISIONS/ZONING ACTIONS:**

**Tiller Corporation 15672 87<sup>th</sup> St S.**- 5 yr Mining Interim Use Permit (IUP) PID's 15.027.20.41.0001, 15.027.20.14.0001, 15.027.20.13.0001, 15.027.20.42.0002, 15.027.20.42.0001

Christina Morrison (Tiller) and Kirsten Pauly (Sunde Engineering) present.

Tiller currently has a 5 yr IUP which will expire 07/23/18 and is requesting to continue its current operation of a sand and gravel mining and limestone quarry operation, with the additional changes as follows.

Addition of aggregate washplant to allow production of a wider variety of aggregate materials.

Depth of excavation and adjustment of reclamation grades identified by additional groundwater information.

Revised Phasing Plan based on new aggregate information.

At its 05/21/18 meeting, the Planning Commission recommended conditional approval of the 5 yr Mining IUP request, based on the Planner's 05/16/18 Findings of Fact.

Attorney summarized the IUP conditions and noted changes to the prior permit. Water table is varied across the site. Applicant documented the historical depths and rather than giving a static depth for excavation, the Applicant is requesting that the excavation depth be based on their findings which is documented on their sheet C6.

Applicant will not mine below the water table.

Access Route- shared costs. IUP includes provision for the Town and Tiller to work together regarding future road improvements/cost sharing for 87<sup>th</sup> St S.

**Motion B Rucker/2<sup>nd</sup> J Strohfus to adopt Resolution 2018-12 Granting A 5 year Mining Interim Use Permit To Tiller Corporation at the Property Located At 15672 87<sup>th</sup> St S.** Voting Yes- B Rucker, J Strohfus, J Moore, K Herman, Kathy Higgins. Voting No- None. Abstaining- None. Motion Carried 5-0-0.

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

PID 06.026.20.23.0001- 20.1 acres. Ken Cordes (owner), Jack Clinton (Attorney representing owner), and David & Crystal Zevevino (Applicants) present.

At its 04/16/18 meeting, the Planning Commission recommended denial of the Cordes/Zevevino 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.

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

Engineer- no comments.

Attorney- noted that the Applicant's are proposing to modify their initial request by elimination of semi/trailer commercial outdoor parking and outside repair.

Attorney recommended that the Board not make a final decision at this meeting, but to hear from the Applicant's and the public and based on the information presented, give direction to legal to prepare the appropriate documents to reflect the Boards decisions.

David & Crystal Zeverino- Noted that they are eliminating their original request for outdoor tractor/trailer parking and outdoor truck repair, which would reduce the number of trucks (only their own) to 7. Their trucks would be leaving the property in the morning before rush hour and would return at night, so the trucks would not be entering and exiting the property all day long. The trucks only operate during the summer season, and since this would be during summer school break, traffic would be minimized. Applicant observed traffic congestion concerns at Hwy 61/120<sup>th</sup> St and found there to be minimal congestion. Believes rezoning request is reasonable as the property is directly adjacent to the existing C/I district. The Cordes property has been a commercial trucking and excavating company since the house and shop were built over 40 years ago.

K Herman requested clarification of the proposed business use of property since they are modifying original request. Applicant indicated that they are proposing 7 trucks involved in the trucking company, only repair on their own trucks during the day, no repair on others trucks. Also proposing outdoor storage of recreational vehicles, which would include boats, campers, RV's (no semi- truck/trailers), in a one-acre area. No outdoor storage of supplies other than the existing landscape materials. Sod fields would remain. Outdoor storage proposed behind the large shed and row of evergreens at the rear of the property. Applicant noted that at only a 100 ft section of 120<sup>th</sup> St can you see the storage area. Would plant additional screening if necessary.

After clarification of proposed property use, K Herman noted that in addition to the 7 trucks that would be used for trucking, there would also be the equipment that is currently being used for the landscaping business on the property. Applicant noted that the landscaping equipment was housed in one of the sheds.

Outdoor storage operation- hours would typically be sun up to sun down seven days a week, or whatever the Town Board would agree with.

J Strohfus- If the 20.1-acre parcel was rezoned to commercial, the parcel could then potentially be subdivided into 8 lots (2.5 acre parcels). Expressed concerns regarding not being able to restrict the parcel from additional subdividing, consistent with the ordinance, if rezoned to commercial. Attorney noted that if parcel were rezoned to commercial, the home would remain as a single-family home within a commercial district. Commercially zoned, the property could potentially be subdivided into (some) additional lots.

Jack Clinton- Legal representation for Cordes (property owner). If the property went through the subdivision process, there would be a need for a separate review, addressing the need for roads/access, stormwater, so just division of the acreage into 2.5 acre lots would not be realistic.

Provided the Board with letter of comment and photos depicting the buildings/vehicles/equipment that have been historically on the property, with the existing landscaping business. Throughout the past 40 years of operations on the property, there have been no accidents, using 120<sup>th</sup> St as the primary access.

Specialized Acres commercial development was developed in two phases. Development process included review by the Township, County and MnDOT. No issues were raised about the traffic. No indication that the roads would be insufficient to handle the capacity with the new developments in addition to the Cordes current operation, with the use of 120<sup>th</sup> St. Some of the Specialized Acres traffic goes to another direction while some use 120<sup>th</sup> St. The current report related to the Cordes/Zeverino application included no concerns regarding a traffic issue. MnDOT approved the access onto Hwy 61. Zeverino' have been in operation for 10 years. Their company has had no driving accidents and are subject to background checks for their commercial driver's licenses, which carry a higher standard for licensing.

The public hearing noted that there were statements of concerns about the traffic, but nothing that was articulated on about what the traffic problems would be. Zeverino's addressed the proposed hours of operation and the number of trucks and when they would be coming in and out. No basis in the record that there would be any problem with the traffic or that there would be any public safety concern created. Concern expressed regarding stormwater. The Planner's report indicated that the impervious surface area is far below the standard in the Township ordinance. Clinton noted that the adjacent residential area occurred after the Cordes operation had been there. Property is adjacent to the current commercial/Industrial. Regarding noise concerns expressed- In

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the past 40 years of the Cordes operations, there have been no noise complaints. No indication that the Zeverino vehicles would have a noise level different than what has historically been with the Cordes' vehicles going in or out. Planner's report is indicating consistency of the application with the adjacent commercial land use (Specialized Acres) with no greater impact on traffic beyond what the current non-conforming use will allow. Clinton asked that the Board consider the benefits to the rezoning. Current non-conforming use can continue, some general constraints will apply, but generally there are no specific restraints or criteria that there would be if the property is rezoned. If the CUP were adopted, there would be specific conditions including hours of operation, noise, lighting, landscaping as specified in the Planning report. The Township would have more control over the proposed use through the zoning change and CUP than they have with the current non-conforming use. Request on behalf of the Cordes' is that the Township initiate the process to start the comprehensive land change to allow the property to be used consistently with the immediately adjacent Specialized Acres, and to move forward for the zoning and other additional steps required for the CUP.

J Strohfus- Requested information regarding this property possibly having access with Hwy 10. Applicant's responded that there had been discussions in the past but believed that there were problems with the concept and so there would be no viable access to Hwy 10. Higgins noted that the property between the Cordes parcel and Hwy 10 (Outlot A) has been purchased. A portion of the property will be used for a self-storage facility Higgins noted that since 1990-1995, ten additional businesses have been added in Specialized Acres which has resulted in additional significant traffic. Margo was a gravel road up until 1995 when it was platted, and in 1997 black top was put on the road. Since the property has been platted, additional businesses have been added: Erickson Marine, Universal Services, Stephen's Self-Storage, Ace Trailer/RMC, Polfus Implement, Valley Pontiac Buick, Anytime Fitness, Rio Gran, NMC, McFadden Storage Facility, Minnesota Coaches Little Beginnings Daycare Center. Applicant noted that all the businesses were approved without any traffic concerns in the planning reports. K Higgins noted that the traffic issue was raised as a major concern with the MN Coaches/Daycare applications. For the adjacent RR residents, their property was platted in the 1990's and their homes were built in the early 1990's. The residents have seen significant traffic increase since Specialized Acres has been developed. The planning reports for the MN Coaches/Daycare application did include traffic concerns, as did public comment. Clinton noted that the Planning report for the current applicant did not indicate that the proposed amount of trucks would cause a traffic problem.

Tony Cordes in belief that the 1995 Planning report is inaccurately stating that Margo is a gravel road. Ken Cordes stated that he put the road in down to the cul-de-sac, but never black topped the cul-de-sac. He also noted that there are not current traffic problems in the morning or at night.

Regarding the Planners report related to the current application, the Planner did ask the question for the Planning Commission and Town Board to consider, "will or will not" the proposed uses cause issues related to traffic conditions, in which the Planning Commission members did identify traffic issues in their decision.

J Strohfus asked if the property was sold without a zoning change or CUP, which proposed uses would not be allowed. Planner noted that each of the proposed uses are only allowed in the C/I district, with a CUP. The only use that could continue would be the legal non-conforming use by the Landscape business.

Ken Cordes- regarding outdoor storage/parking, hours should be between 9AM and 3PM, to eliminate traffic problems.

Public Comment:

120<sup>th</sup> St Resident- When residents purchased their property, they entered into an implied contract with the Township by which the residents invest in the Township and in return, the Township, guided by the comprehensive plan, promises not to make any decisions adverse to their property, well-being and safety. The applicant is asking that this be all thrown away for the pleasure of one and against the whole, by changing the comprehensive plan.

Ken Cordes- stated that he farmed the 20 acres that the residents live on across the road.

Tony Cordes- Comprehensive Plans are meant to be modified, which is why they have reviews. There have been various modifications to the Township comp plan because times change.

Mendel Resident- Experienced congested traffic today. Has had police at his house because of robberies in the area. Noted that as businesses grow, so does crime. Traffic has increased, the road is not being upticked, safety issues involved here.

122<sup>th</sup>/Morgan Resident- there have been a lot of added businesses. There is a lot more traffic. Establishing hours for outdoor storage between 9AM and 3PM is not realistic. To zone the parcel commercial, goes even further. How far are we going to go? As a resident, is against it. There is already enough on the road.

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120<sup>th</sup> St Resident- 120<sup>th</sup> is a narrow road with no shoulders and a hairpin turn on the east end. With the items such as boats, trailers, etc. proposed for storage, this would cause potential for accidents. Believes it is a resident's right to walk on the road if they choose to do so.

120<sup>th</sup> St Resident- Inquired whether applicant's have plans to expand in the future.

120<sup>th</sup> St Resident- Stated that he owns the property next to the daycare and that in the last 5 years the traffic has definitely increased.

120<sup>th</sup> St Resident- Just because the neighbors haven't complained about the traffic, doesn't mean it hasn't increased. Noticed that someone has placed a flag like notice on 120<sup>th</sup> stating "Slow- Children".

120<sup>th</sup> St Resident- purchased property in 1992, it was a bean field. Across the street was a sod farm which was zoned Ag. Then it was zoned RR. Had not comments/concerns with RR across the street. Did not complain about the non-conforming landscape business. Commercial business was on Hwy 61. There will be no buffer to the residential properties if this property becomes a commercial business property. Asks that a change not be made, based on what has been there for the past few years, just because no one has said anything.

120<sup>th</sup> St Resident- repeated complaints regarding the traffic issues/congestion. Many people cut through 120<sup>th</sup>/122<sup>nd</sup> to and from Prescott.

120<sup>th</sup> St Resident- Comprehensive Plan does include expanding the commercial somewhere in Denmark Township. At the Planning Commission meeting, the Planning Commission members were discussing where that could be. At the back end of the commercial district, this makes sense. Also noted that she had concerns about the traffic and added that there should be no parking on the street.

Mendel Ave Resident - back of house facing 120<sup>th</sup> St. Worries when mowing that a vehicle may go out of control onto their property. Also, road is too narrow for this type of business. Road needs to be replaced.

Resident- re: Storage business. Anyone out with their boat is not going to come back in by 3 PM, they are going to spend the day/evening out there. Those restricted hours would not work.

### Applicant's Summary-

David Zeverino- Re Traffic concerns. Traffic has increased on every road. Traffic is dangerous regardless of what road you are traveling on. 120<sup>th</sup> is already next to commercial/industrial. Applicant's trucks would be going towards Hwy 61, not in the other direction, so would only be passing 2 houses on 120<sup>th</sup> St S. There would be no additional noise, as the traffic on Hwy 61 is already heard. Applicant questioned how all the bus and daycare traffic was approved. Crystal Zeverino- reiterated that their drivers have clean driving records.

### Board Discussion:

J Strohfus-Valid arguments on both sides. If the commercial district hadn't grown so quickly, this application likely would not have been met with protest. The 120<sup>th</sup> traffic situation is significant, and the Board has addressed it many times with plan issues involved in applications with the existing commercial businesses. The applicant is bearing some of the burden of what has been increasing commercial districting after the residents have purchased their properties. The subject property, historically and today, is operating as a commercial function. Regarding commercial accesses, without being able to connect from Margo to Hwy 10 is the number one problem with traffic congestion. Board also did address a Hwy 95 access rather than Hwy 61 access with MnDOT, without resolve.

K Herman- Mindful that the Board is currently looking at updating the Comprehensive Plan, and maybe there should be some changes to what we will be considering what is our commercial district, which should be a part of the master plan and not something that is a part of the decision making regarding this application. If this property were to be rezoned as commercial, there could be some control with the use of conditions on the permit, but still would be zoned commercial with the possibility of numerous other businesses being allowed on the property. Sees Specialized Turf as a transitional property which was Ag to RR, transitioning into commercial. If there were a way to issue a CUP for a business that would not create a zoning issue would be favorable, but could not agree to rezone to C/I.

K Higgins- Can't support rezoning the property to commercial, in that the potential would be there for future subdivision, only adding to the existing 120<sup>th</sup>/Hwy 61 traffic problems. There is an existing grandfathered use on the property. The proposed trucking business does not fit within the scope of the non-conforming use. Attorney noted that a non-conforming use allows continuation of the existing use. The application for a trucking company would be an expansion of a non-conforming use that would not be allowed under the code, which is the reason the rezoning request was applied for. K Higgins- Sees a rezoning as potentially setting the Township up for difficulties in the future. Also, is very aware that there are traffic issues on 120<sup>th</sup> and 120<sup>th</sup>/Hwy 61 intersection, Town received many concerns expressed during the bus/daycare applications. Do not want to set the Township

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up for future problems with the possibility of adding additional commercial businesses, using that same intersection. It is not possible to make a connection for the commercial area to Hwy 10 right now, as the outlot is not platted.

J Moore- Hard time supporting the business side, has more sensitivity regarding the adjacent homeowners. Also noted that the Board's decisions should be made with awareness that would minimize problems for future Board members. It is difficult to follow up on CUP conditions that are set on businesses.

B Rucker- Does not want to restrict a landowner on use of their land. Unfortunately, by rezoning this property, the Board opens itself up to further subdivision and future problems.

Attorney noted that any action the Board may take in denying the rezoning and then necessarily denying the CUP, would not impose any restrictions on the current non-conforming use of the property, as long as the current use does not expand, cease to exist for a year or engage in nuisance activities.

J Strohfus- asked for clarification in respect to the comp plan and the applicant's request to rezone. Planner noted that in order to rezone the RR property to C/I, there would need to be a Comp Plan amendment from RR to C/I, before the parcel could be rezoned to C/I, so that the zoning designation would be in line with the land use. It was also noted that during the 2030 Comp Plan, at the request of the property owner, the Comp Plan was amended to change the property's land use from Ag to RR and then rezoned to RR.

Attorney noted that the Board has the authority to change land use and rezoning outside of the Comp Plan process.

K Higgins- Confirming that there is consensus to not recommend rezoning at this time and to give the attorney direction to draft a resolution to incorporate the Boards comments. K Herman in agreement.

J Strohfus- would decline support for that direction. In belief that the Board could obtain some better controls on the property by rezoning it but can also understand the opinions of the other Board members.

K Higgins- Inquired whether the Board could control the existing non-conforming use. Understands that the Board can control a new business within the constraints of the conditions in a CUP but believes that the Board cannot impose conditions on the existing landscaping business. Attorney noted that the Board can control certain parts of the existing non-conforming business such as nuisance issues, but adding conditions on an existing use and on a proposed use, does not necessarily mean that the non-conforming existing business is waiving their right to operate as a non-conforming use unless they specifically express their forfeiture of those rights. If the existing non-conforming business violated new conditions placed upon it via a CUP, it may still be able to operate under its original non-conforming status.

Attorney- The Comprehensive Plan is the policy issue guiding this application.

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.

**Public Comment:** Bill Sumner (City of Newport Council Member) addressed the Board regarding his candidacy for Washington County District 4 County Commissioner. Mr. Sumner welcomed the Board to contact him regarding any issues/comments that the Town may have.

#### **BUSINESS ITEMS:**

**Septage Application Authorization-** Washington County requires that an applicant seeking a permit to land apply septage, must obtain documentation that the local unit of government indicates that the proposed activity is allowed. The Board discussed that rather than having the applicant come to the Town Board each time they proposed to apply septage in the Town, that the Board would like to delegate authority to the Chair to review and approve applications. **Motion J Strohfus/2<sup>nd</sup> K Herman to adopt Resolution 2018-13 Delegating Authority To Acknowledge The Allowance Of The Land Application Of Septage In The Town.** Voting Yes- J Strohfus, K Herman, J Moore, B Rucker, K Higgins. Voting No- None. Abstaining- None. Motion Carried 5-0-0.

**Roads Afton 60<sup>th</sup>/Oakgreen Update-** Afton in agreement with the constructs in the letter drafted by Attorney. J Strohfus will sign and send out the letter.

**Complaints- 80<sup>th</sup> St S, 122<sup>nd</sup> St S-** Complaint received regarding 80<sup>th</sup> St potholes. Resident will mark the areas and Roads Contractor will patch if necessary. Strohfus would like Engineering to take a closer look at 80<sup>th</sup> St, related to possible improvements. Received complaints regarding potholes on 120<sup>th</sup> St S. Portion of 120<sup>th</sup> St S will be reclaimed/overlaid this summer. B Rucker noted that resident on 122<sup>nd</sup> had a complaint regarding noxious

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weeds in the 122<sup>nd</sup> St right of way. B Rucker contacted the county and found that the county just purchased a spray truck and are interested in partnering with Denmark in spraying Noxious Weeds. County tries to spray all the County right of ways by July 4<sup>th</sup>. B Rucker noted that MN Statute 1890 offered noxious weed grants of up to \$30,000.00 annually to mitigate noxious weeds. 2018 grant deadline has passed. The county would be willing to work with the Town for the 2019 application process. Rucker noted that the Town should construct a plan of both spraying and mowing weeds. Rucker and interested Board members will meet with County Weed Inspector to discuss possible program.

**Legal Reports-**

87<sup>th</sup> St (portion from 87<sup>th</sup>/Quadrant heading east). The Town has maintained the 87<sup>th</sup> St portion from 87<sup>th</sup>/Quadrant heading east. The portion is a privately owned lot documented as Tract H, which includes a portion of 87<sup>th</sup> and also serves as the access which ends in the cul-de-sac into a development on the south side of 87<sup>th</sup>. The parcel is Torrens property and is privately owned. The attorney noted that unless there is something noting a road interest on the certificate of title for the property, the Town has no rights/interest in the property. The Town has been maintaining a portion of the lot (87<sup>th</sup>) and has no legal authority to do so. Attorney recommended letting the landowner know that the Town would no longer be maintaining the privately-owned portion going forward.

Homestead Estates 78<sup>th</sup> St Construction- Engineer noted that there will be some seeding/silt fence work that still needs to be done. Engineer and Attorney recommend allowing the sale/building permits for the 2 lots on 78<sup>th</sup> St S. Clerk will send out notice of remaining escrow balance.

9:40 PM **Motion J Moore/2<sup>nd</sup> K Herman to adjourn June Board 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

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Denmark Township Clerk/Treasurer

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Denmark Township Chair

Addendum Resolution 2018-12 Tiller 5-year Mining IUP  
Resolution 2018-13 Septage Approval Authorization

**DENMARK TOWNSHIP  
WASHINGTON COUNTY, MINNESOTA  
Resolution No. 2018-12**

**RESOLUTION GRANTING AN INTERIM USE PERMIT TO  
THE PROPERTY LOCATED AT 15672 87<sup>TH</sup> STREET SOUTH**

**WHEREAS**, Tiller Corporation (“Applicant”), submitted an application for an interim use permit (“IUP” or “permit”) related to its proposal to continue to operate a sand and gravel mining and limestone quarry operation on property located at 15672 87<sup>th</sup> Street South, Hastings, Washington County, Minnesota (PID 15-027-20-41-0001, 15-027-20-14-0001, 15-027-20-13-0001, 15-027-20-42-0002, 15-027-20-42-0001) and legally described in the attached Exhibit A (the “Property”);

**WHEREAS**, the Denmark Township Planning Commission held a public hearing on the requested IUP on May 21, 2018, considered the requested reissuance of the IUP, and took action to forward the application to the Town Board with a recommendation that it be approved based on the findings, and with the conditions, contained in the planner’s report; and

**WHEREAS**, the Town Board considered the application at its June 4, 2018 meeting and hereby finds and determines as follows:

- a. The Town Planner’s report dated May 16, 2018 (“Planner’s Report”) is incorporated herein by reference including, but not limited to, the findings contained therein, which are supplemented by the findings contained herein. The proposed permit conditions contained in the Planner’s Report were modified/supplemented by the Town and are replaced with the conditions contained in this Resolution;
- b. The Property is currently zoned Rural Residential (RR);

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- c. Portions of the Property are within the Shoreland Management District due to the Property's proximity to O'Conner's Lake, which is classified as a Natural Environment Lake;
- d. Mining operations are allowed in the RR District with the issuance of an interim use permit;
- e. The Applicant has used the Property for sand and gravel mining and limestone quarry operations pursuant to a previously issued IUP and requests to continue that use pursuant to the currently requested IUP;
- f. The Applicant proposes to use the property for mining and processing of sand, gravel and limestone, including the addition of an aggregate washing plant, recycling of concrete and asphalt products, and sales of the operation's products. The Applicant desires to continue to bring portable crushing equipment onto the Property as part of its processing operations;
- g. The Applicant's "Application for Permit Reissuance" dated April 2018 ("Application Packet"), which is incorporated herein by reference, includes site maps, phasing plans, groundwater elevations, and cross-sections created by Sunde Engineering, PLLC;
- h. The Property satisfies the minimum lot size for the proposed use;
- i. The proposed mining operations are separated at least 40 feet from the delineated edge of O'Conner's Lake on the northern edge of the Property, and a 50 foot buffer of native vegetation should be maintained at O'Conner's Lake;
- j. The proposed use would comply with all other required setback areas;
- k. The proposed use complies or is consistent with the factors set out in Section 10.3(1) of the Denmark Township Development Code ("Ordinance");
- l. The Applicant discussed its on-going collection of groundwater elevation data and explained how groundwater levels can vary seasonally and over time. The Applicant also pointed out that there is a steep gradient in the groundwater level on the Property. As a result, the Applicant has requested that mining depths be based on seasonal high groundwater elevations across the site as shown on Sheet No. C6 in the Application Packet rather than a depth above the water tables as has been used in the prior IUP. The Applicant indicated mining into the water table is an accepted practice in Minnesota, but that it has no desire to mine below the water table on this Property and agreed to a condition prohibiting such mining activities;
- m. Monitoring wells were placed along O'Conner's Lake for hydrogeologic investigation and the Applicant has been monitoring the lake level on a monthly basis during the active mining season. The Applicant is seeking an expansion of its water use permit from the Minnesota Department of Natural Resources to, in part, support its proposed aggregate washing operations. The Applicant explained that the washing operations are structured such that approximately 80% of the water used for that process is recirculated and reused;
- n. The Applicant proposed to limit its mining and quarrying operations over the next five years to Phases 1, 2, and 1Q as shown on Sheet No. C2 of the Application Packet;
- o. The access route to the Property is 87<sup>th</sup> Street to Saint Croix Trail, routine maintenance of 87<sup>th</sup> Street is necessary due to the traffic to and from the Property, and the Applicant should share some portion of these routine maintenance costs;
- p. The 1,000 gallon above-ground fuel storage tank regularly located on the Property and the 1,000 gallon portable fuel storage tank that is brought to the Property during processing periods must have secondary containment designed to hold 110% of the storage tanks' capacity and must meet all other state, county and local requirements;
- q. The existing screening berm at the southwestern Property line, coniferous trees along the northern Property line and wire mesh fence at the Property's perimeter shall remain as screening and be repaired by the Applicant as needed, with additional screening berms built as mining activity progresses closer to the roadways;
- r. The Applicant may want to operate outside of the hours set forth herein, and shall request permission from the Town Board Chairperson to extend those hours of operation prior to any extension, and no hauling, processing or blasting shall occur on Saturdays, Sundays or Holidays;

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- s. Past blasting activity has not exceeded five blasts per season and the amount of blasting is not expected to change in the next five years, but the Applicant must still record blasting frequency, seismic and decibel data and submit all such records to the Town and otherwise demonstrate that each blast follows Bureau of Mines recommendations;
- t. The Applicant reported not receiving complaints from neighbors regarding its operations, except for jake braking by some haulers. The Applicant explained that those incidences were limited to new drivers and were promptly addressed by the Applicant;
- u. The Applicant has a permit from the DNR to use water from O'Conner's Lake for dust control purposes, and if that permit is suspended the mining plan states that chemical dust suppressants shall be used;
- v. No development plans are proposed for the Property as of the date of this Resolution, but a reclamation plan is in place to grade, seed and mulch the Property with slopes not to exceed 4:1 leading down approximately 100 feet to what was the floor of the mine, with the old mine floor gradually sloping downward to the southeast, consistent with the slope of the water table, except the Property would have steep limestone slopes on the southwest corner. The Applicant reported that the mining area has progressed to a point that allowed it to begin reclamation activities on the southern end of the Property in 2017;
- w. Reclamation of the Property must meet Ordinance standards, comply with reclamation plan included as Sheet No. C3 in the Ordinance Packet, and the Applicant must cooperate with the South Washington Watershed District in developing, modifying, and implementing any further reclamation plans, and
- x. The period of the permit will continue to be five years.

**NOW THEREFORE BE IT RESOLVED**, that, based on the record of this matter, the Planner's Report, the Application Packet, and the findings and determinations contained herein, the Town Board of Denmark Township hereby approves and issues an interim use permit for the continued operation of a mine as described herein on the Property provided the Applicant complies with, and remains in compliance with, all of the following conditions and limitations:

1. Scope of Permit. This permit allows for the extraction, processing, and washing of sand, gravel, limestone and recycling of used concrete, aggregate and asphalt on the Property (collectively referred to herein as "mining"). Applicant shall excavate the mining area in only Phases 1, 2, and 1Q as shown on Sheet No. C2, Mining and Phasing Plan, in the Application Packet. The recycling of product (crushed blacktop and concrete) is allowed provided that the material is stored on the pit floor. The continued crushing of aggregate, through the use of a portable crusher, and the introduction of aggregate washing are also allowed as part of the mining operation.
2. Term of Permit. The term of this permit shall be for a period of five (5) years following the date of approval by Washington County. All use of the property, except reclamation activities, shall cease upon the expiration or revocation of the permit.
3. Excavation Depths. The depth of the excavation on the Property shall not extend below the groundwater levels shown on Sheet No. C6, 2018 Groundwater Elevations, in the Application Packet. Mining below the water table is prohibited. No excavation shall occur within the fifty (50) foot setback area, which must be maintained with native vegetation.
4. Recycling. A maximum of two seasons worth of material to be recycled may be stockpiled on site.
5. Water Quality Monitoring. Water quality monitoring must be reported in the annual report to the Town. The monitoring program described in the May 2007 hydrogeologic study must be implemented. A copy of the operations Surface Water Management Pollution Prevention (SWPP) must be provided to the Town.
6. Phase 4. No mining is permitted in Phase 4 until specific mining limits are determined and approved by the Town. Mining outside of Phases 1, 2, and 1Q is not allowed under this current IUP.
7. Access Route. The Applicant will share some portion of the cost of routine maintenance of 87<sup>th</sup> Street and inform haulers to not use jake braking, to use only county roads where possible.
8. Hours of Operation. Regular operating hours are 7:00 a.m. to 7:00 p.m., Monday through Friday. The Applicant may request permission from the Town Board Chair to extend hours of operation in the event of an emergency or accelerated work schedule. No hauling, processing, or blasting may occur on Saturdays, Sundays, or Holidays without receiving prior permission from the Town Board Chairperson.

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9. Fencing, Screening and Landscaping. The perimeter fence must be maintained. Additional screening berms must be built as new areas to be mined are excavated.
10. Dust and Dirt. The Applicant must implement dust control measures described in the Mining Plan.
11. Restoration. Restoration of the Property must be undertaken and completed in accordance with Sheet No. C3, Reclamation Plan, in the Application Packet, all applicable laws, rules, regulations, and ordinances, and as provided in the conditions placed on the approvals issued for the mining operation. Restoration of the entire mining site shall be required within one year of the Applicant permanently ceasing its mining activities on the Property or within one year of the expiration or termination of this permit if a new permit is not obtained within 90 days of such expiration or termination.
12. Blasting, Noise, and Vibration. Blasting may only occur between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday. No blasting may occur on Holidays. At least 10 days prior to the date of planned blasting activities Applicant shall provide the Town a written notice of intent to blast. The Town understands that an exact date of blasting may not be known or may need to be changed because of weather conditions, provided the change does not lessen any required period of notice. Adjacent property owners must be given the option to receive notification prior to the blast. The operation must comply with all Federal, State, County, and Township noise and vibration standards. The annual report provided by the Applicant must include a record of blasting frequency, seismic and decibel data. The report must demonstrate that each blast follows Bureau of Mining recommendations.
13. Fuel Storage. All on-site fuel storage must meet Federal, State, County, and Town standards. Secondary containment of 110% of the tank's capacity must be provided. No other storage of hazardous chemicals at the site is allowed. Applicant shall ensure that an on-site emergency spill recovery system is present at all times the mine is in operation. All spills that are required to be reported shall be reported to the 24-hour Minnesota Statewide Emergency within 12 hours, and to the Washington County Department of Public Works and Denmark Township within 24 hours.
14. Inspections. The Town, its officers, and consultants may enter the Property, after providing reasonable notice to the Applicant, at all reasonable times to conduct inspections for the purpose of ensuring compliance with this permit. Prior notice to inspect the Property is not required in the event of an emergency.
15. Annual Report. An annual report must be submitted to Denmark Township outlining activities and amounts of material removed during the year and planned for next year. Depth of excavation, water quality monitoring records, and record of blasting activity must be included. Evidence of issuance and performance bond for restoration must be included.
16. Insurance. The Applicant shall carry bodily injury and property damage public liability insurance in the amount of at least One and One Half Million Dollars and NO/100 (\$1,500,000) naming Denmark Township as an additional insured.
17. Bond. A bond must be issued to Washington County and Denmark Township for an amount sufficient to cover the full cost of reclamation. The amount estimated in the Mining Plan is \$292,200.
18. Amended Permit. Any alteration of the use of the Property, or of any plans submitted related to those uses, including, but not limited to, expansion of the use beyond what is allowed by this permit, shall not be permitted unless an amended interim use permit is obtained from the Town.
19. Revocation. The violation of any term or conditions of this permit including, but not limited to, any applicable federal, state, or local laws, rules, regulations, and ordinances, may result in revocation of the permit. The operator shall be given written notice of any violation and reasonable time (not less than 30 days) to cure the violation before a revocation of the permit may occur.
20. Binding Effect. The permit and its conditions are binding on the parties, their successors and assigns, and shall run with the Property until the permit is terminated or revoked as provided herein.
21. Legal Compliance. This permit is subject to the requirements of the Town's ordinances and the Applicant is required to comply with all applicable federal, state and local laws, rules and ordinances, and to obtain such other permits or permissions as may be required.
22. Only Permit. This permit supersedes and replaces any other permits previously issued by the Town for the mining operation on this Property and all such previous permits are hereby repealed.

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23. Acceptance of Conditions. Utilization of the Property for any of the uses allowed by this permit shall automatically be deemed acceptance of, and agreement to, the terms and conditions of the permit without qualification, reservation, or exception.
24. No Waiver. A failure by the Town to take action with respect to any violation of any condition, covenant or term of this permit shall not be deemed to be a waiver of such condition, covenant, or term or any subsequent violation of the same or any other condition, covenant or term.
25. Town Costs. The Applicant shall pay all application fees and pay, from the escrow or in addition to the escrow if it is not sufficient, the costs the Town incurred related to processing this application. The Applicant shall ensure that its escrow account is current before this permit becomes operational.

Adopted this 4<sup>th</sup> day of June, 2018.

**DENMARK TOWNSHIP  
WASHINGTON COUNTY, MINNESOTA  
Resolution No. 2018-13**

**RESOLUTION DELEGATING AUTHORITY TO ACKNOWLEDGE THE  
ALLOWANCE OF THE LAND APPLICATION OF SEPTAGE IN THE TOWN**

**WHEREAS**, Washington County (“County”) requires as part of its regulations on septage that an applicant seeking a permit to land apply septage must obtain and submit to the County “[d]ocumentation from the local unit of government indicating that the proposed activity is allowed”;

**WHEREAS**, the Town Board does not directly regulate the land application of septage and does not prohibit the activity within the Town, understanding that those who engage in such activities must obtain all required permits and comply with all applicable laws, rules, regulations, and ordinances;

**WHEREAS**, requests for documentation that the use is allowed in the Town are mostly from applicants that have previously been granted approval to land apply within the Town;

**WHEREAS**, the County indicated that applicants must continue to provide documentation from the Town as part of their application submission despite the Town Board indicating that further review by the Town is not necessary; and

**WHEREAS**, the Town Board determines that delegating authority to the Town Chairperson to provide the required written documentation to the County will help facilitate the application process and avoid unnecessary delays.

**NOW, THEREFORE, BE IT RESOLVED**, by the Town Board as follows:

1. The Town Chairperson is hereby delegated the authority to review requests for documentation from applicants for a County permit to land apply septage and to provide such documentation as may be needed to satisfy the County that the proposed activity is allowed by the Town.
2. If the Town Chairperson has a question regarding a particular request, he or she may, but is not required to, forward the request to the Town Board for review and a decision.

Adopted this 4<sup>th</sup> day of June, 2018.