

DENMARK TOWN BOARD MEETING MINUTES
September 6, 2011

SUPERVISORS PRESENT: Kathy Higgins, Steve Kramer, Joe Moore, Gary Dixon, Jim Keller

ABSENT: None

STAFF PRESENT: Attorney Mary Tietjen-Kennedy Graven and Planner Nolan Wall-TKDA

CALL TO ORDER: Meeting called to order @ 7:18 PM by Chair Higgins

AGENDA APPROVAL: Moore added sign survey. Higgins added AT&T and SWWD. Keller added Washington County permit. **Motion Moore/2nd Dixon approval of agenda as amended. All In Favor. Motion Carried 5-0.**

CONSENT AGENDA APPROVAL: Motion Keller/2nd Moore approval of consent agenda items which include 08/01/2011 Board Meeting Minutes, Claims #9705-9722, EFT payments- PERA 184976, MN Revenue Tax 99113274585, Federal Tax32650669, payroll ending 09/01/2011 and financial reports. All In Favor. Motion Carried 5-0.

HEARING DECISIONS/ZONING ACTIONS:

Joy Conzemius-Lewanski Commercial Kennel Interim Use Permit and Variance 80th St S PID 17.027.20.12.0004

Joy Conzemius-Lewanski and her attorney present.

Applicant is requesting an Interim Use Permit (IUP) to establish a commercial kennel business on a 20.19 acre parcel (PID 17.027.20.12.0004) located on 80th Street, between Neal and Oakgreen Avenues. The property is located in the Agricultural (A-2) District. The Applicant is proposing to construct a home on the property and is requesting a Variance from the accessory building size requirement of 5,000 sq ft for the construction of a 17,100 sq ft commercial kennel and a 2,500 sq ft livestock building to house cattle, Alpine Goats and Chickens.

Applicant- A commercial kennel is an allowed use with an IUP. The minimum acreage needed is 5 acres. The subject property is 20 acres and the building is planned to be located toward the back of the property.

Applicant submitted additional information to the Board regarding noise factors of other kennels. Residents living next to other kennels spoke regarding the lack of noise. Request is for 50 dogs, supervised by 5-6 staff, outside 5-6 hrs daily. Berm around the facility, 6 ft high cedar fence to help absorb any noise when dogs are outside. When the dogs are inside applicant thinks nothing will be heard. Arena will be floored with grass. Building will have standard insulation and wood wainscot to absorb sound. Building will be steel construction and between each kennel will be concrete blocks. A couple kennels will be completely contained for soundproofing. In boarding area ceilings will be 12 ft and kennel area 6 ft. Will install soundproofing ceiling additions. More natural lighting system on roof to cut down on windows. Applicant has done everything possible to eliminate noise. A mechanical engineer will be used to design the appropriate heating and cooling.

Dogs typically would be dropped off to stay for a period at the kennel and not dropped off/picked up on a daily basis. Daycare would most likely be used by the community. 5-6 classes of agility training per week, with 1-2 dogs per training. Puppy classes with 5 in each class. Not planning on shows, so it would not be typical for spectators to be on the property. Proposed driveway was placed to eliminate vehicle lights going directly in the home across the road. Board concern that proposed driveway access is not the safest possible access. Board directed further engineering analysis of proposed driveway location. Applicant would be open to a recommendation for driveway placement.

Planner Summary- Planner submitted 08/11/11 review and findings.

Public Comment: Approximately 30 residents were in attendance. Resident comments included concerns regarding barking noise, potential safety issues and impacts from additional traffic, and setting precedent by allowing such a large variance from the allowed non agricultural accessory structure size, general feeling that it is a residential area and not a commercial area, comments regarding lighting, speed bumps and signage.

Resident spoke in support of the kennel citing that he had personal knowledge that the Applicant does a professional job in the dog training business.

Town is in receipt of letters and petitions from Township residents and has placed all correspondence into file.

Board member spoke with several Town Board members from Nininger, Marshan & Vermillion townships and was told there has been no noise complaints related to kennels in their townships.

Public hearing was held on 08/15/11 and the Planning Commission recommended conditional approval of the CUP and the variance.

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Regarding the Variance: The Board reviewed and discussed the Criteria For Granting A Variance.

1) Is the requested variance in harmony with the general purposes and intent of the ordinance?

Moore- is not in harmony, due to the requested size. Believes a variance should only slightly deviate from the size established by ordinance.

Dixon- The requested size of the structure is too excessive to be considered as a variance.

Kramer- A large size horse arena is typically around 7200 sq ft (60x120). This request is for a substantially bigger building-not comfortable giving a variance to allow such a large building.

Higgins- Request is for a very large building.

2) Is the requested variance consistent with the comprehensive plan?

Higgins- a kennel is an allowed use within the ag district and therefore is consistent with the comprehensive plan.

3) Has the applicant established that there are "practical difficulties" in complying with the ordinance by demonstrating all of the following:

a. Is the owner proposing to use the property in a reasonable manner not permitted by the ordinance?

Higgins-proposed use is allowed by the ordinance. Commercial Kennels are an allowed use with an IUP in almost all districts. Board consensus that the owner is proposing to use the property in a reasonable manner that is permitted by the ordinance.

b. Is the plight of the owner due to circumstances unique to the property not created by the owner?

Moore- there is no circumstance unique to the property that would require the building to be larger. Keller, Dixon, Kramer and Higgins agreed.

Higgins- there are no dimensional requirements, no ravines, nothing on the property that would create circumstances unique to the property, that would require a 17,100 sq ft building to be built, when there is a 5,000 sq ft limitation on the size allowed, in the ordinance.

Board consensus that the plight of the owner is not due to circumstances unique to the property. That the plight of the owner is created by the owner in wanting a non ag building larger than allowed by ordinance.

c. Will the variance not alter the essential character of the locality if it is granted?

Moore-no. A variance to allow the requested sized of the building would alter the essential character of the locality.

Keller- Right next door is a big business, yet this will only make it worse.

Moore- putting a large commercial business right into the middle of somewhere one has not been, it can't help but change the essential character of the locality.

Kramer- Giving a variance to allow the proposed size of the building will impact the area. Would like to see the use of a kennel be allowed, without a variance from the allowed size.

Board finds that the Applicant has not established that there are "practical difficulties" in complying with the ordinance.

Motion Moore/2nd Dixon to direct the Town Attorney to prepare a resolution denying the variance for review and action at the next Board Meeting. Discussion: this will defer action on the request in order to allow the Town attorney to prepare a resolution for review and action at the October 3, 2011 Board Meeting. **All In Favor. Motion Carried 5-0.**

Board discussion with the applicant regarding addressing the Interim Use Permit request without any variance from the allowed non agricultural accessory structure size of 5,000 sq ft. Applicant requested continuation of Interim Use Permit request.

Regarding the Interim Use Permit:

Commercial Kennel is an allowed use in the Ag-2 District with an IUP. Required criteria have been met by the Applicant.

Keller- Does believe business will have an additional impact on traffic safety issues.

Moore- Already have had Township complaints on barking. Doesn't believe dogs won't create noise complaints by barking.

Board reviewed draft resolution developed from Planning Commission recommendation. Attorney to revise resolution to reflect Board discussion and to make relevant changes to the document.

Board changes in conditions and finding that were not established in the Planning Commission's recommendations are as follows:

- Finding c: Attorney to review and determine whether the 2500 sq ft livestock building would be classified as agriculture or non-agriculture based on the use and definition as established by MN Statute 273.13 subd. 23.
- Condition 1: Term of permit to be changed from 20 years to 5 years
- Condition 3: Board would like review of the number of dogs to be permitted, as appropriate for a 5000 sq ft. building.

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- Condition 7: Date of site plan would change. Applicant will need to submit new plan reflecting 5000 sq ft building.
- Condition 13: may change, based on additional engineering analysis regarding safety of proposed driveway location
- Add condition related to insulation and noise barriers prior to obtaining a building permit.

Motion Keller/2nd Kramer to direct the Town Attorney to revise the draft resolution, reflecting the Board's discussion, approving the Interim Use Permit without the requested variance, subject to the following conditions with noted revisions/additions, for review and action at the next Board Meeting:

1. The Interim Use Permit shall be approved for the Applicant for up to 20 years. A change in ownership of the parcel, except for the completion of the purchase of the Property by the Applicant, or the commercial kennel business shall cause this IUP to terminate and require a new IUP. This IUP shall terminate 20 years from the date of this Resolution, unless terminated earlier as a result of a change in ownership of the Property or of the commercial kennel. If this IUP is terminated, or if the Town Board revokes it for a violation of any of the conditions, all kennel and related uses must cease and shall not be resumed unless a new IUP is issued.
2. The Applicant shall provide evidence that she has purchased the Property within 60 days of the date of this Resolution.
3. A maximum of 50 dogs may be boarded on the site at any time. Permitted activities include boarding, training, herding training, canine daycare, and grooming. The addition of other activities, or the expansion of the use, shall require an amendment to the IUP.
4. The Town may review the IUP on an annual basis, including any complaints related to noise or barking dogs. The Town may review the IUP more frequently based on complaints related to kennel operations.
5. The Commercial Kennel shall comply with the Town's ordinance regarding keeping of dogs.
6. The Applicant shall comply with the Town's zoning regulations regarding livestock with respect to the farm animals proposed to be kept on the Property.
7. The proposed buildings shall be in substantial compliance with the Site Plan dated July 15, 2011 and must meet all requirements of the Town's Development Code, and shall be verified with the building permit application.
8. The Applicant shall construct the driveway with a width of 20 feet to meet the requirements of the Town's driveway ordinance and the recommendations contained in the Engineer's report.
9. The Applicant shall plant and maintain trees to screen the boarding/training building and the parking area.
10. The Applicant shall submit the required information regarding the septic system design, primary and alternate septic sites and soil conditions to Washington County and obtain the required County permit.
11. The Applicant shall obtain a sign permit for any proposed signage on the parcel. Signage must meet the requirements of the Town ordinance.
12. The Applicant shall construct the proposed off-street parking area in compliance with Town standards contained in Chapter Two, Part 3, Section 1.9. No parking related to the business shall be allowed on 80th Street.
13. The Applicant shall address the Engineer's comments included in the memo dated August 3, 2011 regarding access, drainage, driveways, disturbed areas, and erosion control.
14. If the project disturbs one acre or more, the Applicant shall meet the required South Washington Watershed District standards regarding stormwater rate, stormwater volume, allowable phosphorus load, and utilization of infiltration. The Applicant shall obtain any required stormwater permit from the Watershed District.
15. If the project disturbs one acre or more, the Applicant shall obtain an NPDES permit for General Construction Activities from the Minnesota Pollution Control Agency.

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16. The Applicant shall install the proposed fencing in compliance with Town standards contained in Chapter Two, Part 3, Section 1.5. Non-agricultural fencing in excess of 6 feet in height requires a building permit.
17. The Applicant shall obtain a Conditional Use Permit from Washington County for the proposed use.
18. 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.
19. A failure by the Town to take action with respect to any violation of any condition, covenant, or term of this IUP 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.
20. 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 IUP, shall not be permitted unless a new or amended interim use permit is issued by the Town Board.
21. 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 permissions and permits as may be required.
22. The Town may inspect the Property at all reasonable times for purposes of ensuring compliance with the conditions of this IUP.
23. The Applicant or owner shall correct all defects on the Property which violate any of these conditions immediately, but in no case more than 30 days of receipt of written notice from the Town.
24. Utilization of the Property for any of the uses allowed by this permit shall be deemed acceptance of, and agreement to, the terms and conditions of the permit without qualification or reservation.

All In Favor. Motion Carried 5-0.

Motion Kramer/2nd Keller to extend the 60 day rule by an additional 45 days to allow sufficient time for the Town Attorney to update or prepare the resolution in accordance with the Board's findings and determinations, and for the Town Board to review and act on the resolution, and to direct the Town Planner to provide the Applicant written notice of this extension. All In Favor. Motion Carried 5-0.

9:20 PM Chair called a break.

9:32 PM Chair called meeting back to order.

PUBLIC COMMENT: Resident submitted list of concerns regarding operation of Rumpca Gravel Pit and requested review.

BUSINESS ITEMS:

Draft Ordinance Amendments: Draft Ordinance Amendments were provided to Board. Public hearing on proposed Ordinance and Comp Plan Amendments is scheduled for September 19, 2011.

Washington County Code Red: Denmark has partnered with Washington County in the Code Red System, which is a Mass Notification System. This System will allow Public Safety and other government agencies the ability to send mass messages that can be received by a home phone, cell phone as a message or text or by an email. Joe Moore and Steve Kramer will attend the 09/08/11 training session.

Crashed Toys amended Conditional Use Permit: Crashed Toys has withdrawn their 04-2011 application for an amended conditional use permit. **Motion Higgins/2nd Moore to recognize that Crashed Toys has withdrawn its application for an amended conditional use permit, that the Town take no further action regarding the application, and that the escrow be closed and returned once all bills related to this matter have been paid.** All In Favor. Motion Carried 5-0.

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Open Space Inspections: Open Space inspections for Eagle's Watch, St. Croix Estates and Homestead Estates are done on an annual basis by staff. Board consensus to have Keller contact Washington Conservation District regarding their possible involvement in future inspections.

Warrior Dash: Warrior Dash requested a letter of reference regarding their event this summer at Afton Alps. Board consensus that the event was well run. Warrior Dash has indicated that another event will be planned for summer 2012. Denmark and Washington County are in discussions with Afton Alps regarding future events. Board reviewed draft letter of support. **Motion Moore/2nd Keller approval of the letter of reference to be sent to Warrior Dash. All In Favor. Motion Carried 5-0.**

Request For Engineering and Planning Services: Denmark is requesting proposals for planning and engineering services. Board reviewed drafts of documents to be released. Clerk will make revisions to the draft documents as directed. Deadline for accepting submittals October 13, 2011. Interviews will be scheduled between the submittal deadline and the November 7 Board Meeting. Ad for requests will be posted, placed in the Hastings Gazette and on the website.

AT&T Afton Alps: Washington County planning commission took no action regarding the requested conditional use permit for the cellular tower. Washington County has arranged for a crane to be placed on the site at Afton Alps so that residents are able to see how tall the proposed tower would be. The crane will be on the property on Saturday, September 10th from approximately 9 AM to 8 PM.

South Washington Watershed District: Keller and Higgins will meet with SWWD regarding budget items.

Signs Survey: Moore suggested Denmark hire an engineering firm to do a signs inventory to be in compliance with the mandated sign legislation. Denmark has budgeted 2012 funds towards an inventory survey.

2012 Budget Adoption and Proposed payable 2012 Levy Certification: The following 2012 budget and levy recommendation was presented and approved by the electors at the 09/06/11 reconvened Annual Meeting:

	ANNUAL BUDGET	GOV'T AIDS	OTHER REVENUE	FROM SAVINGS	CERTIFY LEVY	% BUDGET CHANGE	% LEVY CHANGE
GENERAL	79,591		55,529	0	24,062		
SALARIES	66,115		0	0	66,115		
ROAD & BRIDGE	413,850		18,000	200,000	195,850		
FIRE	146,400		400	0	146,000		
DITCH & TRASH	13,300		0	0	13,300		
PARK & REC	54,750		14,750	40,000	0		
2012 TOTALS	774,006	0	88,679	240,000	445,327	-4.5%	0.9%

Motion Moore/2nd Dixon to adopt the 2012 Budget in the amount of \$774,006 as presented. All In Favor. Motion Carried 5-0. The 2012 Budget reflects a decrease of 4.5%.

Motion Keller/2nd Kramer to certify the Proposed Property Tax Levy for Payable 2012 in the amount of \$445,327 as presented. All In Favor. Motion Carried 5-0. The 2012 Levy reflects an increase of 0.9%.

10:30 PM **Motion Keller/2nd Moore to adjourn. All In Favor. Motion Carried 5-0.**

Becky Herman

Denmark Township Clerk/Treasurer