

DENMARK TOWN BOARD MEETING MINUTES  
October 7, 2019

**SUPERVISORS PRESENT:** Kathy Higgins, Ron Simon, Bob Rucker, John Strohfus

**ABSENT:** Shawn Racine

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

**CALL TO ORDER:** Meeting called to order @ 7:06 PM by Chair Higgins

**AGENDA APPROVAL:** B Rucker added O'Connor Park. **Motion J Strohfus/2<sup>nd</sup> B Rucker approval of Agenda as amended.** Voting Yes- J Strohfus, B Rucker, R Simon, K Higgins. Voting No- None. Abstaining- None. Motion Carried 4-0-0.

**CONSENT AGENDA APPROVAL:** K Higgins pulled Claims.

**Motion R Simon/2<sup>nd</sup> B Rucker approval of Consent Agenda items which include Board Minutes 09/05/2019, EFT payments- PERA 528215, MN Tax 1239794720, Federal Tax 14097750, payroll ending 10/01/2019, Financial Reports.** Voting Yes- R Simon, B Rucker, J Strohfus, K Higgins. Voting No- None. Abstaining- None. Motion Carried 4-0-0.

**HEARING DECISIONS/ZONING ACTIONS:** JC Land Co-Keene moved to business items.

**3M Water Settlement:**

Ginny YingLing (Minnesota Department of Health)

PFAS- Class of chemicals used in industrial products. 3M used these chemicals and dumping sites were identified as contaminating wells/drinking water. PFOA health risk limit is 0.035 ppb and over. The 2 major discharge points in southern Washington County are the St Croix and Mississippi Rivers. On the west side of the county it will go south/southwest towards the Mississippi and on the east side it goes east/southeast towards the St Croix, so the groundwater divide runs north/south bisecting the county. Denmark is on the east side of the divide and the nearest sources of contamination are on the west side. Contaminants from those disposal sites are primarily going south/southwest out to the river. Of the 106 wells sampled in Denmark, PFOA's were found in 3 wells. One well 0.039 ppb, was sealed and the other two were under 0.035 ppb. Most of the sampling in Denmark Occurred in 2007. Additional sampling will be done in the southeast corner of Denmark and near the southeast Cottage Grove border, near Pine Coulee (northwest of Eagle's Watch). Some of the Denmark businesses have been tested. MDH will continue to monitor wells in Denmark, wells selected to represent all the aquifers in the Township. Depending on the faults, depth of wells may or may not make a difference. Discussion re: illnesses related to PFAS- cancer is not the major concern attributed to PFAS. Major concern is Immune system suppression and developmental effects on babies born to mothers who have been exposed for a long time. Evidence of cancer in highly exposed persons such as workplace exposure-3M, Dupont manufacturers of the chemicals.

Gary Kreuger (Pollution Control Agency) Mediation Program

Component of 3M settlement agreement is to look at regional systems as a whole. Developed working groups to develop a conceptual drinking water supply plan for both short and long term regarding PFAS and encouraged Board Members and public to attend the Government and citizen workgroup meetings. In process of developing the plan with possible projects for consideration, which includes monitoring of wells, install of whole house filters when there is an advisory, community water systems, utilization of service water (St Croix River). PCA will not impose solutions on a community, but rather work with the community on their needs. Mediation costs are paid for by the settlement agreement. No guarantee how long the settlement money will last. Consent order stays in place and 3M would still be responsible to address any future drinking water needs, even if the settlement funds are gone. State report containing regional options will be coming out and will be distributed to the Board. Township residents requesting that their well be sampled can fill out a request form on the PCA website. The sampling is prioritized based on the level of risk; how close they are in relation to the contaminants. Consultant has drafted potential conceptual project options for Denmark. Higgins will send to Board Members. To be discussed at next Town Board Meeting.

**JC Land Co-Keene Minor Subdivision:** PID 19.027.20.12.0003 12841 90<sup>th</sup> St S 41.3 acres

Planner Maass- Applicant is requesting a minor subdivision that would divide a 6.77 acre parcel from the existing 41.3 acre parcel. The proposed 6.77 acre parcel contains an existing residence and multiple outbuildings. The remaining 34.53 acre parcel is an agricultural field. No development is being proposed. The proposed lots meet

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the minimum lot requirements for lot size, buildable area, and minimum public road frontage under the lot averaging design requirements.

At the 09/16/19 Public Hearing, the Planning Commission recommended conditional approval of the subdivision request. Planner provided Board with 08/27/19 staff report and recommends approval of requested minor subdivision based on the finding and contingent upon conditions.

Attorney Gilchrist- Attorney provided Board with draft Resolution. After review of the documents related to the prior lot spits/lot line adjustments on the original 80 acre parcel, there is one density unit on the existing 41.3 acre parcel. Upon approval of the proposed lot split, the density unit will be assigned to the 6.77 acre parcel with the house and buildings on it, and no density units will be on the remaining 34.53 acre parcel. Attorney noted that no park dedication fee should be charged for the undevelopable lot and that no septic will be required on the 34.53 acre parcel. Applicant will be required to enter into a development agreement.

Noted revision: Attorney will be adding language to the Resolution to clarify that the density unit that was designated for the 41.3 acre parcel, now is designated to the 6.77 acre parcel that the existing home is on.

**Motion J Strohfus/2<sup>nd</sup> B Rucker to adopt Resolution 2019-09 Granting Preliminary And Final Approval For A Minor Subdivision Of Property Located West Of Neal Avenue South And East Of Manning Avenue South On 90<sup>th</sup> Street South, with Noted Revision. Voting Yes- J Strohfus, B Rucker, R Simon, K Higgins. Voting No- None. Motion Carried 4-0-0.**

**2040 Comp Plan Update:** Planner Maass noted that the Met Council has accepted Denmark's final draft of the 2040 Comp Plan and will be before the full Council on November 13, 2019. Likely back to the Board in December.

K Higgins noted that the DNR has approved the MRCCA Plan.

**2019 Street Improvements:** Engineer provided Certificate of Completion for MN Paving & Materials. Warranty period for Oakgreen Ave S (70<sup>th</sup>-60<sup>th</sup>) begins 10/07/19 and ends 10/07/20. Payment will be made to MN Paving & Materials in the amount of \$244,182.03 for the reclaim/overlay. K Higgins inquired why the final payment is \$6000 higher than the bid amount. Engineer explained that we have estimated quantities and bid prices for those quantities, but we pay actual quantities. Paving of the intersection of Oakgreen/60<sup>th</sup> used more material. We put down class 5 limestone on the ends of the driveways and residents wanted the reclaim materials that they had on their driveways. These extra amounts of reclaim material were not included on the specifications. The limestone was removed, and material placed to match the residents existing driveway material. Future specs will include material that matches what existing residents have. R Simon noted that there are some areas in the project area that appear to be heavy equipment tracks on the road. Engineer stated that much of the marks are cosmetic, and that any large equipment on the road would not be covered by the contractor. Re: a 1 year warranty would put the road through a freeze/thaw cycle and anything defective would show up during that period, i.e. shouldering issues, major distress, potholes.

**Motion B Rucker/2<sup>nd</sup> J Strohfus to accept the 2017 Oakgreen Street Improvements, warranty period starting 10/07/2019 and ending 10/07/2020. Voting Yes- B Rucker, J Strohfus, R Simon, K Higgins. Voting No- None. Abstaining- None. Motion Carried 4-0-0.**

Final (and only) Pay in the amount of \$244,182.03 will be paid to MN Paving & Materials.

**Afton/Denmark 60<sup>th</sup> St S Road Agreement:**

J Strohfus- Afton is requesting that the Town consider adding class 5 gravel on 60<sup>th</sup> St S (estimated at \$25,000) to its existing Oakgreen to Neal segment. Afton also noted that if the Board would prefer not to incur the cost of adding the additional gravel, an alternative is to revise the maintenance responsibilities (swap segments) while leaving each road segment as-is. J Strohfus recommends swapping as-is. J Strohfus and Town Engineer did convey to Afton and its Engineer that Denmark's gravel roads are performance based, so if we were putting in a new gravel road, we would put in 6 inches of gravel as an install base and maintain it based on performance. Denmark's existing segment is performing well and there were no significant deficiencies. Also, Afton has placed a significant amount of gravel on their segment, due to their known issues with the segment. It still may need additional gravel. There is still a large amount of brush/overgrowth trimming needed on the Neal to Manning segment (est. \$10,000). While the Town sees some benefit of having an interconnect of asphalt, we would not proceed with a paving project that section of the road. Afton entered a development agreement regarding paving Denmark's section without Denmark's agreement. Afton has also authorized culvert work on Denmark's section. This would mean that Afton would receive the portion of 60<sup>th</sup> between Oakgreen and Neal, with no further Denmark maintenance. Denmark would receive the portion of 60<sup>th</sup> between Neal and Manning with no further

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Afton upgrades/tree trimming. Denmark would need to add additional gravel and brushing/tree trimming to its new section (Neal to Manning). If Denmark agrees to the as-is swap, our new section (Neal to Manning) should have a couple of loads of gravel added to it in 2019 and trimming in 2020.

J Strohfus is recommending that we request that Afton add additional gravel to the Neal to Manning section before Denmark takes it. And, that Denmark adds no additional gravel to our existing section before Afton takes it.

B Rucker asked if the developer involved with Afton has a conflict with Afton regarding the paving, does Denmark become a party to that? Attorney recommended not graveling the road section that would be going to Afton, and to let Afton prepare that section for paving.

Board consensus to request that Afton add additional loads of class 5 gravel to their existing section and Denmark will do the trim/brushing needed on that section. Denmark will add no additional gravel to our existing section. J Strohfus will contact Afton regarding Board's request.

**O'Connor Park:** B Rucker received an estimate from Green Acres for trees to be planted at O'Connor Park. Estimate is for a variety (autumn lace, elm, sugar maple, etc.) of 28 nice big trees for \$20,400.00. Tri-County has mulch from the trees that have been cut and would mulch the planted trees and water them until we have a freeze and water in spring if necessary, at his labor rate. Green Acres would get all the trees in this year weather permitting. Next year we would disc and plant grass. Trees will have a 1 year warranty. **Motion B Rucker/2<sup>nd</sup> J Strohfus to accept Green Acres estimate for the purchase of 28 trees/planted in the amount of \$20,400.00, authorization for Tri-County to mulch and water until freeze and in Spring 2020 if there is a dry spell. Voting Yes- B Rucker, J Strohfus, R Simon, K Higgins. Voting No- None. Abstaining- None. Motion Carried 4-0-0.**

**Survey-** Rucker will get quotes from a survey company. Because a portion of O'Connor Park is being utilized by the adjacent landowner, a permanent easement will need to be included on the survey for the western adjoining property owner to access their property. Questions raised re: giving donated property to the Town to another landowner. Attorney noted that in this case, the fence that has been there for years, agreed to by the landowner (O'Connor) who gave the parcel to the Town. This would fall under MN Rules of practicable boundaries. This is resolving what could be a potential boundary line dispute, not giving away property. **Motion K Higgins/2<sup>nd</sup> R Simon to authorize expenditure of up to \$5000.00 to have O'Connor's Park surveyed. Voting Yes- K Higgins, R Simon, J Strohfus, B Rucker. Voting No- None. Abstaining- None. Motion Carried 4-0-0.**

**Pulled Claims:** Received an additional bill (\$110.40) from Forum Communications. Revised Claim 11406 from \$69.00 to include additional billing. Total Claim 11406 \$179.40.

**Motion J Strohfus/2<sup>nd</sup> B Rucker to approve Claims #11404-11422 as revised. Voting Yes- J Strohfus, B Rucker, R Simon, K Higgins. Voting No- None. Abstaining- None. Motion Carried 4-0-0.**

**Legal Reports:**

Behrend Deferred Assessment- Assessment in the amount of \$10,965.00 recorded as being deferred without interest for 29 years or until development. Assessment may need to be recertified. Board is unsure if Behrend's are aware that this assessment is due. J Strohfus will contact Behrend's regarding the assessment. Attorney will review deferred assessment and will report findings to the Board.

Criminal action is proceeding. Civil action has been filed, resulting in a counterclaim against the Town. Attorney will prepare a draft assessment policy to bring to the Board for review.

9:24 PM **Motion B Rucker/2<sup>nd</sup> R Simon to adjourn October 2019 Board Meeting. Voting Yes- B Rucker, R Simon, J Strohfus, K Higgins. Voting No- None. Abstaining- None. Motion Carried 4-0-0.**

Becky Herman

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Denmark Township Clerk/Treasurer

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Denmark Township Chair

Addendum Resolution 2019-09 JC Land-Keene Minor Subdivision

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DENMARK TOWNSHIP  
WASHINGTON COUNTY, MINNESOTA

Resolution No. 2019-09

RESOLUTION GRANTING PRELIMINARY AND FINAL APPROVAL FOR  
A MINOR SUBDIVISION OF PROPERTY LOCATED WEST OF NEAL AVENUE SOUTH AND EAST OF MANNING  
AVENUE SOUTH ON 90<sup>TH</sup> STREET SOUTH

**WHEREAS**, Nicholas Keene ("Applicant") submitted an application to Denmark Township ("Town") for a minor subdivision for property (PID 19.027.20.12.0003) owned by JC Land Company, L.L.C. ("Owner"), which is located west of Neal Avenue South and East of Manning Avenue South on 90<sup>th</sup> Street South and which is legally described in the attached Exhibit A ("Property");

**WHEREAS**, the proposed minor subdivision divides the Property into two parcels, using a lot averaging design, which are identified as "Parcel A" and "Parcel B", as shown on the survey attached hereto as Exhibit B and legally described in the attached Exhibit C;

**WHEREAS**, Parcel B contains an existing residence and multiple outbuildings;

**WHEREAS**, Parcel A is an agricultural field, and the Applicant has indicated no plans for development at this time;

**WHEREAS**, the Owner joined in the application and has represented that they it has clear title ownership of the Property;

**WHEREAS**, the Planning Commission reviewed the request at a duly noticed public hearing held on September 16, 2019 and acted to forward the application to the Town Board with a recommendation that it be approved with certain conditions; and

**WHEREAS**, the Town Board hereby finds and determines as follows:

- a. The Property is currently zoned Agricultural A-2;
- b. The Property contains approximately 41.3 acres, which is proposed to be divided into Parcel A containing approximately 34.53 acres, and Parcel B containing approximately 6.77 acres;
- c. The proposed minor subdivision is subject to the requirements of Chapter Three, Section 6 of the Denmark Township Development Code ("Development Code");
- d. In 2017 the Town Board adopted Ordinance 2017-03, which amended the Development Code to no longer require the platting of minor subdivisions;
- e. The proposed minor subdivision proposes to create two lots where one currently exists;
- f. The Applicant submitted a complete application and related submittals to seek approval for a minor subdivision;
- g. The proposed subdivision of the Property qualifies as a minor subdivision under Chapter Three, Section 6.1 of the Development Code;
- h. No new public roads or public drainage or utility easements are proposed as part of this subdivision;
- i. The lots to be divided are in a location where conditions are well defined;
- j. The newly created property lines will not cause any resulting lot to be in violation of the Development Code.
- k. The proposed division was prepared by a registered land surveyor;
- l. The proposed minor subdivision will not have any significant impacts on utility and school capacities;
- m. The proposed minor subdivision does not conflict with the Town's Comprehensive Plan or the intent of the Development Code;
- n. Because no additional building sites are being created by the proposed minor subdivision, the Applicant is not required to pay the Town a park dedication fee;
- o. The density in the A-2 District is limited to two dwelling units per 40 acres;
- p. All of the parcels identified on the survey attached hereto as Exhibit B, which includes the Property to be divided into Parcel A and Parcel B, were divided from a single 80-acre parcel described as the North 1/2 of the Northeast 1/4 of Section 19, Township 27 North, Range 20 West, Washington County, Minnesota (the "80-Acre Parcel");
- q. A number of development agreements have been executed for properties within the 80-Acre Parcel. A development agreement dated January 3, 1994 supported the division and sale of a portion of the 80-Acre Parcel, which is part of what is now PID 19.027.20.11.0008. A development agreement dated January 2000 supported a lot line adjustment to transfer an additional 6.59 acres to what is now PID 19.027.20.11.0008. A development agreement dated December 20, 2005 supported a minor lot split that created a new parcel containing approximately 5 acres and which is now PID 19.027.20.11.0006. A development agreement dated May 8, 2006 supported another minor lot split that created another new parcel containing approximately 5 acres and which is now PID 19.027.20.11.0007. A development agreement dated June 1, 2009 supported a lot line adjustment to transfer approximately 6.35 acres to what is now 19.027.20.11.0008.
- r. At one time, the previous owners of the 80-Acre Parcel proposed an open space development for the 80-Acre Parcel and the past development agreements spoke to the potential future development. Despite having received an initial approval from the Town, the proposed development was never finally approved and has not occurred. The Town's initial approval has expired and is no longer valid.

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- s. The previous divisions of the 80-Acre Parcel resulted in the four (4) available density units being assigned among the parcels as follows:

Property	Total Density Unit	Total Density Units Remaining
PID 19.027.20.12.0003 (the "Property")	1	0
PID 19.027.20.11.0006	1	0
PID 19.027.20.11.0007	1	1
PID 19.027.20.11.0008	1	0

- t. As a result of the previous divisions of the 80-Acre Parcel, there are no remaining available density units in the 80-Acre Parcel, and therefore, no density unit will be assigned to Parcel A. The density unit previously assigned to the Property will be assigned to Parcel B, which contains an existing residence and multiple outbuildings.
- u. The Town Planner's memorandum dated August 27, 2019, developed for the requested minor subdivision ("Planner's Report"), including its findings, is incorporated herein by reference. The recommended conditions in the Planner's Report are superseded by the conditions contained in this Resolution; and
- v. The Applicant and the Owner are required to enter into a development agreement with the Town as required by Chapter Three, Section 6.2 of the Development Code.

**NOW, THEREFORE, BE IT RESOLVED**, that the Denmark Town Board, based on the Planner's Report, the record of this matter, and the findings and determinations made herein, does hereby grant preliminary and final approval of the above described minor subdivision of the Property as proposed in the survey attached hereto as Exhibit B, which will result in two parcels as legally described in the attached Exhibit C, conditioned on compliance with all of the following:

1. Development Agreement. The Applicant and the Owner shall enter into a development agreement that is prepared by the Town Attorney for the minor subdivision no later than 60 days from the date of this Resolution. The development agreement shall include provisions related to, but not limited to, payment of the park dedication fee, the allocation of the density units, and such other provisions as the Town Attorney determines are appropriate.
2. Recording. The minor subdivision shall be recorded with Washington County upon final approval by the Town Board. The Applicant is required to make such adjustments and to provide such additional information as may be required by the County in order to record the minor subdivision.
3. Density. The density unit previously assigned to the Property will be assigned to Parcel B, which is used as it contains a home. There shall be no density unit available for Parcel A.
4. Park Dedication. Because no additional building sites are being created by the minor subdivision, the Applicant is not required to pay the Town a park dedication fee.
5. Representations. All representations, written and oral, made by the Applicant and the Owner, including their agents and representatives, to the Town contained in and concerning the application must have been true, complete, and accurate at the time they were made.
6. Compliance. The Applicant shall comply with the requirements of the Development Code, the terms, conditions, and requirements contained within the development agreement, and shall comply with, and obtain all other permits required by, all other applicable federal, state, and local laws, rules and regulations.
7. Fees. The Applicant shall pay all planning, engineering and legal fees and costs incurred by the Town for processing and acting on their application. In the event the escrow provided with the application is not sufficient to fully reimburse the Town, the Applicant shall be required to pay such additional amount within fourteen (14) days of receiving a bill from the Town. In the event the fees are not paid, this approval shall terminate automatically upon recording of a Notice of Nonpayment by the Town.
8. Inspections. The Town, its officers, and consultants may enter the Property, after providing reasonable notice to the Applicant or the Owner, at all reasonable times to conduct inspections for the purpose of ensuring compliance with this approval. Prior notice to inspect the Property is not required in the event of an emergency.

**BE IT FINALLY RESOLVED**, the Town Board Chairperson and the Town Clerk-Treasurer are hereby authorized and directed to do each of the following:

1. To execute the Development Agreement for this minor subdivision on behalf of the Town once they are in a form acceptable to the Town Attorney.
2. To execute such other documents and to take such other actions as may be required to carry out the intent of this Resolution upon the Applicant's satisfactory completion of its obligations.

Adopted this 7<sup>th</sup> day of October, 2019. **BY THE TOWN BOARD**