

DENMARK TOWN BOARD MEETING MINUTES
November 4, 2019

SUPERVISORS PRESENT: Kathy Higgins, Ron Simon, Bob Rucker, Shawn Racine

ABSENT: John Strohfus

STAFF PRESENT: Attorney Gilchrist (Kennedy-Graven)

CALL TO ORDER: Meeting called to order @ 7:00 PM by Chair Higgins

AGENDA APPROVAL: Motion B Rucker/2nd S Racine approval of Agenda as drafted. Voting Yes- B Rucker, S Racine, R Simon, K Higgins. Voting No- None. Abstaining- None. Motion Carried 4-0-0.

CONSENT AGENDA APPROVAL:

Motion R Simon/2nd B Rucker approval of Consent Agenda items which include Board Minutes 10/07/2019, Finance Workshop Minutes 10/07/2019, Claims #11423-11436, EFT payments- PERA 531629, MN Tax 0634541088, Federal Tax 32750153 , payroll ending 11/01/2019, Financial Reports. Voting Yes- R Simon, B Rucker, S Racine, K Higgins. Voting No- None. Abstaining- None. Motion Carried 4-0-0.

HEARING DECISIONS/ZONING ACTIONS: None.

PUBLIC COMMENT:

Dustin Featherstone present- Property owner received notice to remove hoop structure on his property. Structure is being used as an agricultural building for own personal goods.

Attorney- this is a temporary structure which is allowed by code for a period of no more than 30 days. An extension of this would require approval of the Town Board. Also, prior concerns were raised regarding advertising on the structure indicating space available for rent, but the sign was subsequently removed. Property owner was noticed by the building inspector and the attorney that the structure needs to be removed, with an extended deadline of November 30, 2019.

Structures deemed as ag structures need to be on property classified for tax purposes as agricultural property and used to store ag products/equipment.

Owner noted that his 8.1 acre parcel has approximately 3.5 tillable acres. He has planted about one acre of hemp. The crop is now in the 40x60 2400 sq ft hoop structure drying. Owner is involved in a pilot program licensed by Minnesota Department of Agriculture for the production/drying of hemp. Parcel also includes a 21x30 630 sq ft detached garage. T. 3030 sq ft of accessory structures.

Owner prefers not to construct a permanent pole barn, should the hemp production not work out. If the hemp production does work out, owner may construct a permanent structure.

K Higgins raised concerns about a precedent being set if the temporary structure is allowed to remain. Given the circumstances that the crop is currently drying in the structure, and that the structure will be unable to be removed during the winter months, Board consensus is to allow the temporary structure to remain in order to finish the 2019 crop storage/drying and to not allow any commercial storage, with the temporary structure to be removed by May 1, 2020.

Motion S Racine/2nd B Rucker to extend allowance of the temporary structure time period of 30 days to May 1, 2020 at which time it shall be removed, structure use will only be for personal ag storage and will not be used for commercial storage, for the parcel located at 13840 Point Douglas Drive S. Voting Yes- S Racine, B Rucker, R Simon, K Higgins. Voting No- None. Abstaining- None. Motion Carried 4-0-0.

BUSINESS ITEMS:

Animal Control: Kathi Pelnar, current Animal Control is retiring at the end of 2019. Brit Harmon, owner/operator of Companion Animal Control submitted a proposal to provide animal control services to Denmark Township. Town Attorney provided a draft Animal Control Services Agreement for review. Kathi Pelnar and Dr. Graham Rayshaw (Animal Humane Society) have given positive recommendations for Brit. Brit has 9 subcontractors associated with her business.

Draft Agreement is a combination of Brit's proposal and the Town's standard language for agreements. Town currently has an agreement with Animal Humane Society for impound facility.

Motion R Simon/2nd S Racine to authorize entering into a contract with Brit Harmon, Companion Animal Control for animal control services, allowing the Town Attorney and Chair to work with Brit Harmon to finalize the agreement, and authorization for Chair and Clerk to sign. Voting Yes- R Simon, S Racine, B Rucker, K Higgins. Voting No- None. Abstaining- None. Motion Carried 4-0-0.

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PFAS Conceptual Project Options: Board in receipt of the August 30, 2019 Wood project options memo. Based on the presentation by MN Dept of Health and Pollution Control Agency at the October Board Meeting, K Higgins is recommending that the Town reply to the State that we are not interested in any projects at this time but would like to remain a part of the projects plan should any water issues occur in the future. Board noted the following: The Town does not currently see a PFAS contamination concern, but does support continued monitoring within the Town. The Board would expect state resources to be provided should contamination be found in the Town. The Board does not support providing clean water to surrounding communities and expressed concerns related to the effects of a high capacity well drawing contamination into the Town and the disruption to the Town as a result of installing a water supply and distribution system.

Behrend's Assessment: 1989 assessment was deferred for 29 ½ years. Property owner provided a recording of a meeting in which the Board captured a discussion related to forgiving an assessment if the property was not development after 29 ½ years. Public hearing minutes of 09/11/1989 were also found, in which the Board made a motion indicating that at the end of the 29 ½ years, subject to no residential access being granted, the entire assessment would be abated in total.

Attorney provided draft resolution for Board review.

Motion S Racine/2nd R Simon to adopt Resolution 2019-10 Determining To Not Certify A Deferred Assessment Placed On Property Located At 14503 117th Street South. Voting Yes- S Racine, R Simon, B Rucker, K Higgins. Voting No- None. Abstaining None. Motion Carried 4-0-0.

127TH St Cul-de-sac Parking Complaint: Town received resident complaint regarding problems related to the for sale vehicles being placed at the cul-de-sac end of 127th St S (near county point). Washington County Sheriff's Department contacted the Town in May 2019 asking that the Town restrict parking of the for sale vehicles in the cul-de-sac, due to theft and vandalism of the vehicles and for the safety of neighboring residents. Board consensus to have Clerk contact the Sheriff's Department to find out if they need an ordinance or resolution in order to restrict the parking and have the Sheriff's Department issue citations.

Ditch Mowing Service Agreement: Ditch Mowing Agreement expired 11/01/2019. 2019 ditch mowing is not finished, and mowing contractor is requesting an extension. B Rucker recommended have expiration for next agreement end on December 31st. **Motion R Simon/2nd S Racine to extend the Ditch Mowing Agreement to 12/31/2019. Voting Yes- R Simon, S Racine, B Rucker, K Higgins. Voting No- None. Abstaining- None. Motion Carried 4-0-0.**

Legal Reports:

Attorney provided draft assessment policy for Board review. Discussion re: flat fee or percentage fee based on project cost for resident assessments. K Higgins noted that the Street Inventory & Maintenance Sheet needs to be reviewed for updating/accuracy of the Town's road condition/needs, in order to realize accurate costs. Attorney noted that it is preferable to get the policy in place prior to launching into an assessment process. B Rucker would like to see the full Board present for adoption of an assessment policy. Attorney noted that changes can be made to an assessment policy. Attorney will review assessment process and bring feasibility plan to Board in December.

9:25 PM **Motion R Simon/2nd B Rucker to adjourn November 2019 Board Meeting. Voting Yes- R Simon, B Rucker, S Racine, K Higgins. Voting No- None. Abstaining- None. Motion Carried 4-0-0.**

Becky Herman

Denmark Township Clerk/Treasurer

Denmark Township Chair

Addendum Resolution 2019-10

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Resolution No. 2019-10

**A RESOLUTION DETERMINING TO NOT CERTIFY A DEFERRED ASSESSMENT PLACED ON PROPERTY
LOCATED AT 14503 – 117TH STREET SOUTH**

WHEREAS, in 1989 the Town Board improved a portion of 117th Street by blacktopping it (“Project”) and acted pursuant to Minnesota Statutes, chapter 429 to specially assess the costs of the Project against the benefited properties;

WHEREAS, one of the properties subject to the special assessment is owned by Tim Behrends (“Owner”), is located at 14503 – 117th Street South (PID 33.027.20.42.0003), and is legally described in the attached Exhibit A (“Property”);

WHEREAS, the Property was not developed at the time of the Project and the amount of the assessment allocated to the Property totaled \$10,965.00 (“Assessment”);

WHEREAS, the Town Board decided at the time to defer, pursuant to Minnesota Statutes, section 429.061, subdivision 2 and without interest, the Assessment imposed on the Property for 29 ½ years or until the Property was developed, whichever occurred first;

WHEREAS, the Town recorded a certificate of deferred assessment with the County Recorder, said certificate being recorded on March 12, 1990 as Document No. 625239;

WHEREAS, when the Owner was contacted about the Town’s intent to certify the Assessment for collection as the 29 ½ year period was expiring, he indicated the Town Board told him the Assessment would be forgiven if the Property was not developed over that period;

WHEREAS, the minutes of the assessment hearing conducted on September 11, 1989 contains the following motion:

Gorgus moved to amend the original motion of 8-10-89 relative to the Behrends property assessments rescinding the deferment of interest for 5 years and substituting the following:
Interest will not be levied until December 31 of the year prior to the year in which residential access is requested.
At the end of 29 ½ years, subject to no residential access being granted, the entire assessment would be abated in total.

WHEREAS, the Owner also provided a recording of a meeting that captured a discussion related to forgiving an assessment (without mentioning names) after 29 ½ years if the property is not developed; and

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

- a. The assessment process associated with the Project was very contentious and the Town Board at the time worked to resolve the objections raised by the affected owners;
- b. Towns are authorized under Minnesota Statutes, section 429.061, subdivision 2 to defer an assessment placed on unimproved property “until a designated future year, or until the platting of the property or the construction of improvements thereon, upon such terms and conditions and based upon such standards and criteria as may be provided by resolution of the council.”;
- c. The statute allows for the forgiveness of interest, but does not provide an option for forgiving the amount of the actual assessment regardless of whether the property is developed;

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- d. Based on the language of the certificate of deferment, and the statutory language indicating that all deferred assessments must be paid in not more than 30 years, the Town Board discussed with the Town Attorney the certification of the Assessment for collection against the Property;
- e. The Town reached out to the Owner about the Assessment, which resulted in the Owner pointing out the conversations that apparently occurred at the time about the Town forgiving the Assessment in its entirety if the Property was not developed;
- f. The Property has been owned by the same Owner since the construction of the Project and it has not been developed;
- g. While forgiving a deferred assessment does not accord with the assessment process provided for under law, the Town Board determines that certifying the Assessment against the Property at this time, given the representations the Town Board apparently made at the time about forgiving it if the Property is not developed, would constitute an unreasonable hardship on the Owner and could result in costly litigation with an uncertain outcome; and
- h. The Town Board determines that it is in the best interests of the Town to follow through on the representations made to the Owner during the assessment process and that are reflected in the minutes of the hearing to forgive the Assessment imposed on the Property.

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

- 1. The Assessment imposed for the Project shall not be certified for collection on the Property and is hereby forgiven as represented by the Town Board at the assessment hearing.
- 2. This action is limited to the unique circumstances associated with this Property and does not affect any other property assessed for the Project.
- 3. The Town Clerk-Treasurer is hereby authorized and directed to record this Resolution in the office of the County Recorder.

Adopted this 4th day of November 2019. **BY THE TOWN BOARD**