

**NININGER PLANNING COMMISSION**  
**PUBLIC HEARING – APPEAL OF BEATRICE WESTERBERG**  
**July 10, 2023**

PURPOSE: The purpose of the public hearing is to consider the appeal of Beatrice Westerberg of the determination that she is not in compliance with Sections 12.0, 15.9 and 15.11(A) of Nininger Township Ordinance No. 14 at her property with a street address of 9859 140<sup>th</sup> Street East, Hastings, Minnesota.

COMMISSION MEMBERS PRESENT: John Bremer, chair; Gary Rotty; Steve Boetcher; Ted Wagner; Mary Dalaska, secretary; Mike Hamilton, township attorney

TOWNSHIP BOARD MEMBERS IN ATTENDANCE: Karen Bremer, Robert Rotty, David Bauer, Margaret Flower

HEARING CALLED TO ORDER by Chair Bremer at 7:59 p.m. Bremer announced the meeting would be recorded and that a sign-in sheet was available for those in attendance to sign in.

Bremer read aloud the hearing public notice. Township attorney, Mike Hamilton, provided a summary of the purpose of the hearing stating Beatrice Westerberg was appealing the Township's determination that her burned car, toolbox and tires are not in compliance with Nininger Township Ordinance No. 14.

PRESENTATION BY BEATRICE WESTERBERG:

- Ms. Westerberg requested the three alleged violations be vacated. She stated the flower garden car park is an art installation that it was planned, constructed and installed by her in 2016. She feels it is her First Amendment right to produce and display art of her choice at her home.
- Her attorney, Thomas F. Alexander of Larkin Hoffman in Minneapolis, states Nininger Township Ordinance No. 14 Section 7.2.3. and Ms. Westerberg's First Amendment right covers her ability to have these items lawfully displayed.
- Ms. Westerberg stated she is a gardener and artist at her residence. She gave a synopsis of her background and credentials in those areas, and provided context on how the display came about.
- In answer to the alleged violations:
  - **Section 12.0 REFUSE. All junk yards are prohibited...** Ms. Westerberg stated that activities, such as buying and selling items at junk yards, is not happening at her residence. She considers the area an art installation that is maintained. Each piece is a planter as well as a piece of art with monetary value.
  - **Section 15.9 WASTES. All solid waste material, debris, refuse or garbage...shall be kept within a completely enclosed building or properly contained in a closed, container designed for such purpose.** Ms. Westerberg stated she does not believe her items to be trash and is questioning why they are being considered as such. She maintains that there are many residents across Nininger that have similar items in view that could be considered in violation of the ordinance. She noted that she wants to be treated the same as others in the township. She is asking the Township look at the ordinance section in the context of modern-day vintage art.
  - **Section 15.11.A. It shall be unlawful for any person to store or keep any vehicle of a type requiring a license...outside of an enclosed building.** Ms. Westerberg provided pictures of how vehicles are used in vintage art displays. She stated that all the environmental hazards have been removed from the displayed car. She explained how the area was maintained in the past, how it was damaged over the past two years, and how people tell her they appreciate the display. She said the letter she received from

the Township was not clear as to what needs to be removed, and she is looking for clarification on what is acceptable regarding car parts for artistic display. She noted that artistic items (that include car parts) are similarly on display in Nininger at the Benjamin residence at the corner of Nininger Road and County Road 87 (Dale Lewis sculptures).

- Ms. Westerberg noted that she understands that in 2023 the area at the end of her driveway does not look as it should and that she did not mow/maintain the area this year because she was advised not to with the pending violations. Her plan is to return to properly maintaining the area next year if she can keep the items in place.
- Ms. Westerberg stands by her statement that this is an art installation. She asked that the Township look at her garden/art display in the context and today's vintage art world.

Chair Bremer stated the unlicensed vehicle is illegal according to the township ordinance and asked if any of the pieces have paperwork stating they are works of art?

Ms. Westerberg specified she had nothing in writing.

Chair Bremer stated that, according to state statute, the tires are considered hazardous waste and they would need to be removed.

Ms. Westerberg asked if others around the township will be required to remove tires as well.

Chair Bremer stated the township is starting to enforce now because there has been a complaint.

Attorney Hamilton affirmed the removal of the items is the result of an ordinance violation complaint.

Suspected violations in other areas of the township will be handled on a case-by-case basis to determine compliance, or not, as complaints arise, and to prevent claims that items in violation of the ordinance is art.

OTHER COMMENTS/QUESTIONS: Chair Bremer called for additional comments or questions.

- Robert Miller, neighbor to Westerberg, agreed that the items should be removed.
- David Bauer explained that he is a member of the township board and that in his day job (police officer) he relies on citizens to raise their hand and enter a complaint — that is the appropriate way for government to respond to citizenry. He said it is inappropriate for the government — most times — to use laws to target people. He also stated that artwork is subjective, and the physical appearance of the display had changed from 2016.
  - Ms. Westerberg responded that 2023 is not a typical year for the display because she was advised not to do anything with it this year and agreed it currently does not look as it should.

PUBLIC HEARING CLOSED: Chair Bremer officially closed the public hearing at 8:58 p.m.

ATTACHMENTS:

Handwritten note (Copy B)

Public Hearing Sign In Sheet

Respectfully submitted by:

Mary Dalaska, Planning Commission Secretary