

## **TOWN OF WEST POINT**

Public Hearing - 8:07 PM  
October 22, 1998

Variance Request by Dave Mitchell. W12616 Pleasant View Park.

Applicant plans to tear down an existing house which encroaches onto an adjoining lot, relocate a new house, build an attached garage, move the drain field, and drill a new well. Applicant and two neighbors are also planning to rip-rap along the shoreline, and need to tear down the Mitchell house to gain access to the shoreline. Neighbor Devon Osborn was in favor of the project so that the rip-rapping could be done. No one spoke against the variance request. Motion by Dave Cole to close the public hearing at 8:18 PM. Seconded by Doug Richmond. Motion carried 5-0.

### **PLANNING COMMISSION MEETING**

Pursuant to Wisconsin State Statute 19.84, the meeting of the Town of West Point Planning Commission was convened at the Town Hall on Oct. 22, 1998 at 8:18 PM. The meeting was posted in three places. The meeting was called to order by Fred Madison. Planning Commission members present were Dave Cole, Gordon Carncross, Doug Richmond, Cliff Lawton, Fred Madison and Joyce Sinkule. Absent: Dick O'Connor.

**Agenda Item #2: Approve minutes:** Motion by Dave Cole, seconded by Cliff Lawton to approve the corrected minutes of the Sept. 10, 1998 meeting and the minutes of the Sept. 24, 1998 meeting. The Sept. 10, 1998 correction was to delete Gordon Carncross' name from Agenda Item #1 and add Cliff Lawton. Motion carried 5-0 for both minutes.

On Oct. 8, 1998, there was not a quorum present for a meeting, therefore no minutes were recorded. A discussion was held regarding the agenda items.

**Agenda Item #4: Old Business:**

(A) Joyce Sinkule reported that Larry Lenerz is required to plant at least one tree in the front yard of each improved lot in his subdivision, which has been done.

(B) Doug Richmond reported on the most recent Town Board meeting. Items included:

1. Briskey rezoning request was not approved for a lack of a 2nd on a motion to approve.
2. Ryan CSM was approved after negotiating with the Ryans. A 30-foot+- area will be dedicated for potential future roadway from Klammer Road south, if future development occurs in that area. Town Attorney Jeff Clark wrote to Ryan's attorney, John Kassner.
3. A meeting will be scheduled with Marcus Cable to determine details of an agreement with them.
4. Wiring at the town hall will be upgraded.

Agenda Item #5: Correspondence:

- (A) An Ice Age Trail meeting will be held on Oct. 28, 1998 at 6:30 PM in the Lodi Town Hall at 125 Lodi Street, Lodi, WI.
- (B) A copy of a letter from Attorney Jeff Clark to Fritz Thistle will be distributed to the Plan Commission members regarding the Briskey rezoning.

Agenda Item #6: Variance for Dave Mitchell: Doug Richmond referenced a letter which Attorney Clark had written regarding the promenade located along the waterfront. Applicant verbally agreed to make some changes to his site plan and submit a more detailed map at the next meeting. The new drain field will need approval by the county, which was a concern to several commission members.

Agenda Item #7: CSM for Lawrence Matyskela: (Address: Blackhawk Drive - off Smith Park Road; between Black Hawk Drive & Tarry Lane) Presented a new CSM which is creating two lots from three lots. The new lots conform to current lot size requirements. Motion by Dave Cole, seconded by Cliff Lawton, to recommend to the Town Board that an approval be granted, contingent on approval by the Town Engineer for proper ingress and egress. Motion carried 5-0.

Agenda Item #8: Alan Reinke: Presented a proposal to divide a 27,000 square foot lot into two lots, thus creating two substandard lots. No hardship was indicated. The general consensus of the Planning Commission was that this application would be turned down if it was officially presented to the Commission.

Agenda #9: Parks and Recreation: Ice Age Trail meeting is indicated above.

Agenda #10: Variance Policy: Discussed using the Columbia County Board of Adjustment handbook, ideas presented by Cliff Lawton, some of the requirements used by the City of Baraboo, and mention the recent Wisconsin Supreme Court ruling regarding hardship as the basis for a variance, as a policy which the Plan Commission should follow.

Agenda #11: Development Moratorium: Tabled until the next meeting.

Agenda Item #12: Next Meeting Agenda:

Agenda items from this meeting: numbers 9, 10, 11 and 12

Agenda Item #13: Adjourn Meeting: Motion by Dave Cole, seconded by Doug Richmond. Motion carried 5-0 at 9:42 PM.

Respectfully submitted,



Joyce Sinkule



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Trayton Lathrop (1923 - 1998)
Donald M. Ryan
Of Counsel

October 8, 1998

Mr. Fred Thistle, Chair
Town of West Point
N2111 Smith Park Road
Lodi, WI 53555

Re: Brisky Rezoning

Dear Chair Thistle:

BACKGROUND

I am advised that Marie Brisky owns acreage located within the Town of West Point. According to the plat map, she owns numerous parcels of property in Sections 13, 19, and 24. Specifically, the plat map reveals that she owns approximately 118.75 acres in the southwest quarter of Section 13; approximately 35.5 acres in the northwest quarter of the northwest quarter of Section 24; approximately 19.61 acres in the northeast quarter of the northeast quarter of Section 24; approximately 3 acres in the southeast quarter of the southeast quarter of Section 13; and approximately 5 acres in the northwest quarter of the northeast quarter of Section 19. Each of these parcels is highlighted on the attached map section.

It is my understanding that recently a request was made on behalf of Marie Brisky to "combine" the 19.61, 3 and 5 acre parcels into one parcel and rezone the new parcel AG-2. This matter was presented to the Plan Commission, which recommended rezoning to AG-2 on less than a unanimous vote. At the most recent Town Board meeting, the Town Board's motion to approve failed for lack of a second.

During the Town Board meeting, mention was made of an alternative approach with respect to the Brisky rezoning that might benefit the Briskys and at the same time further the Town's goal, pursuant to its land use plan, of protection and preserving existing farms. I have been asked to reduce to writing how such a plan might work.

## DISCUSSION

You and the other Town Board members are aware of the concern throughout the county that the existing 35-acre rule is not fulfilling its intended purpose of deterring residential development on lands zoned exclusively agricultural. As a consequence, numerous existing farms are being "carved up" into 35-acre parcels and sold off for residential development. Many times this significantly destroys or eliminates entirely the ability to work the farmland in any efficient manner as houses are placed for the convenience of the owner and not with an eye towards productivity of the farmland. Additionally, it has resulted in many long driveways within townships which are, among other things, potentially difficult to traverse by emergency vehicles.

Accordingly, the county and townships are looking for alternative means to control and regulate development to foster the goal of preserving farmland. Unfortunately, there are not many statutory tools available. For example, although there has been a great deal of discussion regarding creating a statutory framework for the transfer of development rights or the clustering of housing, not much progress has been made in this regard.

On the other hand, some townships have begun to indirectly find ways to encourage the clustering of housing with the goal of helping to preserve farmland. Since the Town does not hold a statutory "hammer" to force such clustering, however, it must occur as part of a give-and-take between the Town and the property owner, and usually must be viewed by both as a "win-win" situation for it to occur.

Ideas or concepts are just beginning to evolve. However, I believe that over the near future concepts such as those discussed below will be discussed and used more frequently by townships in the county.

Let me give you an example of how one concept worked in a case I was recently involved. Specifically, a son wanted to construct a home on a couple of acres of land owned by his father which were part of the father's operating farm. The son was not involved in the farm operations and thus the land did not qualify for a second home. Further, the son did not want to buy 35 acres of land to construct the home, as this would disrupt the larger farm operation. The proposal was made to locate the house on a couple of nonproductive or less productive acres which would be rezoned to single-family residential. In return for rezoning the son's land to single-family residential, the father agreed to restrict an adjoining approximately 50 acres in perpetuity against further residential development without the consent of the township. The township ultimately approved the rezoning on this basis.

The township, I believe, found the compromise attractive for several reasons. First, the house was specifically located on nonproductive or less productive land and close to

the road. Second, the productive farmland was potentially preserved in perpetuity. Third, and finally, the 35-acre rule was not disregarded and ignored, since only one house was allowed to be constructed on 50+ acres of land owned by the family. If the town had insisted on the 35-acre rule, the son could have purchased 35 acres from the father but, under such circumstances, the town board would then have had little control over the development and location of the house since it could have been located anywhere on the 35-acre parcel, including in the middle of the productive land, thus destroying the productivity of that land for a long time, if not forever.

I believe that similar ideas may be attractive to you and the other members of the Town Board in appropriate circumstances. Speaking specifically to the Brisky property, it may be attractive to the Town Board to consider allowing Marie Brisky the right to cluster housing in one location in return for a covenant preserving the bulk of her farmland from further residential development. As the Board knows, if Marie Brisky was so inclined, she could carve up the bulk of her farmland into four 35-acre parcels over which the Board would have little or no control. Since this is a given under the current law, the Board might suggest to Marie Brisky that instead of using the bulk of the farmland for these residential sites she would be allowed to cluster them, most likely on the 27 acres for which she is currently seeking rezoning to AG-2. I spoke to Joe Costanza and he has viewed the 27 acres. From his preliminary review, he sees no reason why four parcels could not be developed upon the 27 acres pursuant to a certified survey map. In return for clustering four residential sites on the 27 acres, Marie Brisky would deed restrict the 154+ acres down the road. Nothing would prevent her, of course, from selling this land to others as long as it remained AG and was not used for residential development.

This scenario may present a "win-win" for both the Town and Mrs. Brisky. From the Town's perspective, in the end it has no more homes than might otherwise be potentially built on the property, but it has had a role in clustering the houses thereby disrupting less farmland and perhaps making the houses more accessible to emergency and other type services. It has, in the process, preserved 154 acres from being carved up in the future. From Marie Brisky's standpoint, she has the benefit of obtaining four home sites immediately without having to carve up the farm, and in addition to selling the home sites, she also retains the ability to ultimately sell the farmland and obtain money from both ends of the spectrum of sales.

The one downside that I see is that it may encourage a small spurt in residential development since any landowner with a substantial amount of acreage that does not presently want to carve up the acreage into 35-acre residential sites could nevertheless ask for rezoning to allow the residential development at this time and keep the remainder of the farm in tact. What the Town Board will need to decide is whether this short-term spurt is worth the long-term potential benefit of preserving

substantial amounts of farmland against future residential development within the Town.

If the Town Board would like to discuss this concept further, I would be more than willing to meet with them at any time to flesh out the details. I know that this idea is a sharp departure from past practice and will require the Board to be open to single-family residential rezoning of parcels within the Township. However, if the Town is convinced, as many others are, that the 35-acre rule is no longer working (and is perhaps detrimental to the preservation of farmland), the Town must seek alternatives on its own. This is one such alternative.

If the Town Board is inclined to proceed, it should suggest the concept to Marie Brisky and ask her surveyor to lay out a proposed CSM on the 27 acres. At the time the CSM is considered, a declaration of covenants and restrictions would be drafted not only with respect to the 4-lot CSM, but the remaining farmland as well. Among other things, each of the lots in the 4-lot CSM will be restricted to one single-family residence, regardless of the ultimate size of the lot. Therefore, even though all or part of the lot will be rezoned to single-family residential, there would be no further subdivision allowed and only one single-family residence could ever be constructed on the lot. With respect to the balance of the vacant farmland, we would also record a declaration of covenants and restrictions which would include, among other things, language along the following lines, which I am providing to you for illustration purposes only:

1. No owner of the real estate (previously described as the vacant farmland) shall ever petition or request to change the zoning district as it currently exists for the real estate (agriculture) on the date these covenants and restrictions are recorded. Notwithstanding that the real estate exceeds 35 acres, the real estate shall be and hereby is restricted to prevent any further subdivision or construction of any single-family or other residential units of any type or nature and no owner shall ever seek or request a building permit to construct same on the real estate.
2. If the owner or owners of any of the real estate shall at any time violate or attempt to violate this declaration, the Town Board of the Town of West Point, Columbia County, Wisconsin, provided the lands are within the governmental jurisdiction of said Town at the time the enforcement action is commenced or, in the event it is not, the local governing body in which it is located, shall have standing to bring proceedings at law or in equity against such owner or owners of the real estate to enjoin the violation and, if it prevails, it shall be awarded reasonable attorney's fees and costs, and any

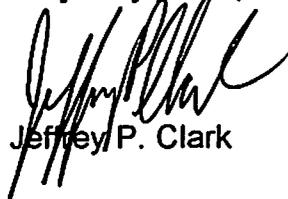
person or persons violating the covenants and restrictions shall be liable for all costs of removing and/or correcting any violation.

3. The provisions of this declaration may not be canceled, released, amended or waived by any owner of the real estate without the express written consent of the Town Board of the Town of West Point, Columbia County, Wisconsin, provided the lands are within the governmental jurisdiction of said Town at the time of cancellation, release, amendment or waiver or, in the event it is not, the local governmental body in which it is located.
4. This declaration shall be binding upon the owner of the real estate, and his heirs, personal representatives, successors and assigns. It shall be perpetual and run with the land, and bind the real estate, and shall inure to the benefit of and be enforceable by the Town of West Point, or, if any such parcel is no longer in the Town of West Point, then by such local governmental body which shall have jurisdiction over such real estate.

This should be an interesting debate and will be debated not only within the Township of West Point but many other townships within Columbia County and elsewhere as well over time.

I hope this letter aids you and the Board and, as mentioned previously, I am more than willing to meet with the Board to discuss it further at any time.

Very truly yours,



Jeffrey P. Clark

JPC/mbc

cc: Joe Costanza  
Edith Eberle  
Fred Madison, Chair,  
Town of West Point Plan Commission