

## Restrictions lifted on town parcel

Written by Mark Jaeger

Wednesday, 16 December 2009 18:01

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### Divided Town Board agrees to consider plan for Country Lane land

Town Chairman Richard Mueller had a much tougher time last week convincing the Fredonia Town Board it should consider lifting the deed restrictions placed on a 42-acre parcel owned by Ray Kirmse on Country Lane.

Earlier in the month, the Plan Commission unanimously agreed the deed restriction should be lifted, clearing the way for a public hearing on plans by Kirmse to split the parcel into two lots in the southwest corner of the township.

According to his plan, Kirmse would include seven acres with the existing storage shed he uses on the property. The remaining 35-acre lot would be used as a single home site overlooking the Milwaukee River.

The plan has been complicated by a deed restriction Kirmse agreed to years ago, essentially assuring the town that the property would never be subdivided.

He has made several appearances before the town over the past decade, proposing ways he would like to see the property divided. In each case, town officials thwarted the plans, citing the restriction placed on the land.

The split would require rezoning the seven-acre parcel from A1 to A2 agricultural, a move that would not be possible without lifting the deed restriction.

"I think this is about as good as we are going to get," Mueller told the Town Board, noting that agricultural zoning on the larger parcel would prevent any further development.

Mueller said it would only be fair to Kirmse to get a consensus of the board prior to pursuing the property split.

"Why should he spend the \$250 for a hearing if the board wouldn't be interested in allowing the split?" Mueller asked.

To make his current layout work, Kirmse has purchased a strip of land to the west that would give clear access to Hickory Drive.

That access makes the project viable, Mueller said, but he met resistance from

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supervisors.

“Why would we want to lift the restriction?” asked Supr. Cathy Stern. “The last time he came in, we said we didn’t want to see him for five years.”

Supr. Jim Stemper said retaining the deed restriction would put any future owner on notice that no further land division will be considered by the town.

“The fact is, he placed this restriction on himself,” Stemper said.

He said he would be willing to consider the proposal if he saw that neighbors don’t object.

“The problem is, if you take these deed restrictions to court they don’t hold up,” Mueller said.

“I don’t think you can expect you are ever going to get 100% support for any plan, but we can’t get to the point of holding a public hearing unless the board says it would consider lifting the deed restriction.”

Supr. Chris Janik said the days of using deed restrictions to direct land use have passed.

“What is the down side of lifting the deed restriction? He can’t do anything without coming to the board, anyway,” Janik said.

Mueller ended the debate by making a motion that the deed restriction should be lifted. The board voted 3-2 in favor of the motion, with Stemper and Stern opposed.

A public hearing will now be held on the proposal.