

STATE OF WISCONSIN  
COUNTY

CIRCUIT COURT

COLUMBIA

CAMBRIANS FOR THOUGHTFUL  
DEVELOPMENT

c/o Sarah Lloyd  
W1631 County Hwy P  
Courtland Township,  
Cambria, WI 53923,

SARAH LLOYD  
W1631 County Hwy P  
Courtland Township,  
Cambria, WI 53923,

DALLAS BUCHOLZ  
216 W. 1<sup>st</sup> Street  
Cambria, WI 53923,

JOHN MUELLER  
307 Mary Street  
Cambria, WI 53923,

LEONORE NEUMANN  
109 E. Commerce Street  
Cambria, WI 53923,

BONNIE SMITH  
101 Hillcrest Drive  
Cambria, WI 53923, and

JANELLE ZACHO  
106 Hillcrest Drive  
Cambria, WI 53923,

Plaintiffs,

v.

VILLAGE OF CAMBRIA  
111 West Edgewater Street  
Cambria, WI 53923, and

Case No.  
Case Code: 30703  
Unclassified

VILLAGE OF CAMBRIA ZONING  
BOARD OF APPEALS  
111 West Edgewater Street  
Cambria, WI 53923,

Defendants.

### **COMPLAINT FOR CERTIORARI REVIEW**

Plaintiffs, by their attorneys, Garvey & Stoddard, S.C., complain against  
Defendants as follows:

#### **PARTIES**

1. Cambrians for Thoughtful Development (CTD) is a group of citizens living in and around the Village of Cambria who are concerned about the impacts of land use and planning on their community, as well as the political process that gives rise to land use decisions. The property value and quality of life of the members of CTD are affected by the land use, permitting, and zoning decisions of the Village of Cambria and the Zoning Board of Appeals. The members of CTD are specifically concerned about an ethanol plant currently proposed for the Village of Cambria by Didion Milling, Inc. (DMI). Each member of CTD has standing in his or her own right to bring this action.

2. The above-named individual Plaintiffs are members and supporters of CTD. The individual Plaintiffs reside at the addresses shown above and will be adversely affected by the construction and operation of the proposed ethanol plant. Each individual Plaintiff has standing to bring this action.

1. Defendant Village of Cambria (“the Village” or “Cambria”) is a

municipal corporation, whose address is 111 West Edgewater Street, Cambria, WI 53923.

1. Defendant Village of Cambria Zoning Board of Appeals (BOA) is an official body of the Village of Cambria, whose address is 111 West Edgewater Street, Cambria, WI 53923. Under Cambria's zoning ordinance, the BOA's duties include hearing applications for variances and interpreting the Village's zoning regulations. Cambria Zoning Ord., § 10-1-166. The members of the BOA are Chris Jones, Ron Kohn, Chester (Chet) Stringfield (also Village President), Marilyn Cutsforth, and Jim Ebert.

### **FACTS**

1. On December 2, 2002, DMI applied for a zoning permit from the Village in order to expand its corn processing facility on property currently zoned I-2. Additionally, DMI applied for a zoning permit to construct an ethanol plant to be built on the same site.

1. Also on December 2, 2002, DMI applied for a height variance from the Village for seven structures related to its corn processing facility and proposed ethanol plant. Those seven structures, identified in DMI's letter of application, are as follows:

1. "Air ducts and related equipment"
2. "Distillation columns and related equipment"
3. "Evaporation towers and related equipment"
4. "Exhaust stack and related equipment"
5. "Bulk storage tanks and related equipment"
6. "Grain drying, handling, storage, and related equipment"
7. "Pipe rack system and related equipment"

8. The maximum height allowed for structures in I-2 districts is forty-five feet, or 2 1/2 stories. Cambria Zoning Ord., Sec. 10-1-48(d)(4).

1. On December 3, 2002, the Village posted a notice for a December 19, 2002, meeting of the BOA. The notice stated that the BOA would convene in open

regular session “to discuss a variance request from Didion Milling” to build the seven structures identified in Paragraph 6, *supra*.

9. On December 19, 2002, a member of CTD, Mitzie Duxbury, obtained a letter drafted by the Village Attorney, Vytas P. Salna, from the Cambria Village Clerk, Lois Frank. The letter was dated December 18, 2002, and had been faxed to the Village that same day. In it, Mr. Salna pointed out a provision of the Cambria zoning ordinance, Section 10-1-100, that exempts certain structures from height variances. Mr. Salna stated that “10-1-100 provides exemptions that would encompass all 7 items” in DMI’s variance application. Specifically, Mr. Salna stated that (b) of Section 10-1-100 would encompass the seven structures, as (b) exempts “grain elevators,” “manufacturing equipment and necessary mechanical appurtenances, cooling towers,” and “smoke stacks.” Mr. Salna made no findings determining what the seven structures were, how tall they might be, or how Sec. 10-1-100(b) would apply to each.

10. The full text of Cambria zoning ordinance Section 10-1-100(b) is as follows:

**Sec. 10-1-100 Modification of Height Limitations**

The district height limitations stipulated elsewhere in this Chapter may be exceeded, but such modification shall be in accord with the following:

.....

(b) SPECIAL STRUCTURES, such as elevator penthouses, gas tanks, grain elevators, scenery lofts, radio and television receiving antennas, manufacturing equipment and necessary mechanical appurtenances [sic], cooling towers, fire towers, substations, and smoke stacks, are exempt from the height limitations of this Chapter.

11. On December 19, 2002, the BOA convened shortly after 6:00 PM to discuss the DMI variance request. All BOA members were present that night, and they

elected Mr. Stringfield to chair the meeting. The only audio or video recording of the meeting was a videotape made by CTD member and individually-named Plaintiff Sarah Lloyd. Mr. Stringfield began the meeting by reading Mr. Salna's letter and announcing that, in light of the variance exception "found by the attorneys," DMI did not need the variances that were scheduled for discussion that night. Upon questioning from the audience, it became clear that DMI's attorney, Paul Dombrowski, had discovered the variance exception contained in Sec. 10-1-100 and pointed it out to Mr. Salna in a telephone call. Because Mr. Salna was not scheduled to arrive until 6:30 PM, Mr. Stringfield opened the discussion to public comment.

12. During the public comment period at the December 19, 2002 BOA meeting, it was suggested that the variance issue be tabled because of the new information about the variance exception. Additionally, citizens and BOA members asked questions in the following general areas: Was this meeting a public hearing? Why was the variance exception in Section 10-1-100 not found before? Why had DMI not gotten variances for silos it had built some years before? Following a brief discussion on these questions, Mr. Stringfield cut off the debate, stating, "I don't think these meetings are held to be public debates. That's for the courts."

13. With the public comment period closed, Mr. Stringfield asked for a motion to accept Mr. Salna's opinion that no variance was needed for the seven DMI structures. Ms. Jones so moved and was seconded by Mr. Kohn. More discussion ensued, again with some public participation. Some questions that were raised by BOA members and citizens included the following: Was the meeting properly noticed even though the subject had changed? How could DMI's distillation towers count as

“manufacturing equipment?” Should the BOA have a better understanding of what “related equipment” meant before it voted? How were these structures classified for tax purposes? Were these structures freestanding or did they sit on top of buildings?

14. About an hour after the meeting had started, Mr. Stringfield closed the discussion and called for a roll call vote. Ms. Jones’ motion carried by a vote of 3-2, with Ms. Cutsforth and Mr. Ebert voting “no.” No findings of fact or conclusions of law were made: the BOA took no evidence to determine what the seven structures DMI proposed to build were, or how Sec. 10-1-100(b) applied to each of these seven structures.

1. This complaint is timely under Wis. Stat. §§ 62.35, 62.23(7)(e)10. and the common law.

#### **FIRST CAUSE OF ACTION**

**Under Wis. Stat. §§ 62.35, 62.23(7)(e)10. and the common law, the BOA’s decision that the variance exception applied to each of DMI’s seven proposed structures was not based on or supported by substantial evidence.**

1. Plaintiffs incorporate by reference all allegations set forth in the preceding paragraphs.

17. The BOA did not take evidence or make findings of fact on the seven structures proposed by DMI; rather, it relied solely on the unsupported opinion of its attorney, who in turn was relying on the research of the applicant’s attorney. That opinion was “sprung” on the BOA that evening and was devoid of any fact-finding; for example, there was no analysis of what the seven structures were, how tall they would in fact be, or what “related equipment” was. Therefore, the BOA’s decision that these structures qualified for a variance exemption under Section 10-1-100(b) of the Cambria Zoning Ordinance was not based upon or supported by substantial evidence as required

by *State ex rel. Beierle v. Civil Serv. Comm'n of Cudahy*. 41 Wis. 2d 213, 217-18, 163 N.W.2d 606, 607-08 (1969).

18. Plaintiffs are aggrieved by the BOA's acts and omissions because they will be forced to live in close proximity to several structures normally not allowed in an I-2 district that will adversely affect their health, safety, and welfare.

#### **SECOND CAUSE OF ACTION**

**Under Wis. Stat. §§ 62.35, 62.23(7)(e)10. and the common law, the BOA's decision that the variance exception applied to each of DMI's seven proposed structures was without rational basis.**

19. Plaintiffs incorporate by reference all allegations set forth in the preceding paragraphs.

20. The BOA's decision to exempt DMI's seven structures from Cambria's variance requirements was without rational basis because the determination was not supported by any findings on record or reasonable analysis of the law, making any application of the law to the facts impossible. The BOA's decision was therefore arbitrary and unreasonable in violation of *Marris v. City of Cedarburg*. 176 Wis. 2d 14, 24, 498 N.W.2d 842, 846-47 (1993).

21. Plaintiffs are aggrieved by the BOA's acts and omissions because they will be forced to live in close proximity to several structures normally not allowed in an I-2 district that will adversely affect their health, safety, and welfare.

#### **THIRD CAUSE OF ACTION**

**Under Wis. Stat. §§ 62.35, 62.23(7)(e)10. and the common law, the BOA did not act according to the law when it decided that the variance exception applied to each of DMI's seven proposed structures.**

22. Plaintiffs incorporate by reference all allegations set forth in the

preceding paragraphs.

23. DMI did apply to the Village of Cambria for a variance. Accordingly, the Board was required to make a written decision on this application per Section 10-1-67(c) of the Cambria Zoning Ordinance after holding a public hearing.

24. The BOA failed to make a written decision when it exempted DMI from the need to obtain any variances; furthermore, it did not hold a proper public hearing as the Chair cut off the debate. Therefore, it did not follow its own rules of procedure in violation of *Marris. Id.*

25. The BOA's decision to exempt DMI from needing to obtain any variances was inconsistent with due process, and therefore not made according to law, because it was impermissibly informed by the applicant's attorney without a reasonable chance for Plaintiffs to respond. This violates the concepts of due process and fair play identified in *Marris. Id.*

26. Plaintiffs are aggrieved by the BOA's acts and omissions because they will be forced to live in close proximity to several structures normally not allowed in an I-2 district that will adversely affect their health, safety, and welfare.

WHEREFORE, Plaintiffs request the following relief:

1) That the Court declare that variances are required for each of the seven structures identified above because they are not covered by Section 10-1-100(b) of the Cambria zoning ordinance;

2) Alternatively, that the Court remand this decision to the BOA for a full hearing and complete fact-finding; and

3) That the Court grant any other relief it deems just and equitable.

Dated this 21st day of January, 2003.

GARVEY & STODDARD, S.C.  
Attorneys for Plaintiffs

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