

Whitman says ruling will hurt Bedford Township

BY JOSHUA KENNEDY

Bedford NOW

Jon Whitman, owner of Whitman Ford Co., says his loss in Monroe County Circuit Court against Bedford Township will have a ripple effect.

"Do you really believe I can be treated like this and it not effect what people think about Bedford?" Mr. Whitman said when asked about Judge Joseph A. Costello's ruling last week against the dealership.

"It might not show up in six months ... But I believe this hurts Bedford," Mr. Whitman said.

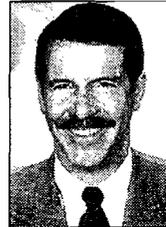
The judge last week ruled in favor of the township's defense that Mr. Whitman's five-count lawsuit was based largely on an

► *To read Judge Joseph Costello's written decision on the case, visit www.bedfordnow.com.*

admitted typo which prevailed on the township's zoning map for almost 10 years.

Judge Costello opined that he believed it "unconscionable" to hold a governmental unit to such a mistake. The lawsuit charged that the township had treated Whitman Ford's 57-acre property at the corner of Sterns Rd. and Lewis Ave. "arbitrarily and capriciously."

While the judge disagreed,



ROBERT
SCHOCKMAN



DENNIS
STEINMAN

Mr. Whitman still maintains that opinion.

"We did everything they asked us to do," he said. "We were misled at every step. Every time we were open and honest it hurt us. Every time we were honorable and transparent we got destroyed."

Testimony during the five-day trial included admission of township officials — particularly Planning Coordinator Dennis Jenkins and township Attorney Philip Goldsmith, who also represented Whitman Ford — that they believed the Whitman property to have the correct zoning for placement of a Wal-Mart.

But when rumor of a Wal-Mart deal became public knowledge in 2001, an anonymous phone call triggered research that determined the

westerly half of the Whitman property actually was zoned R-2A residential, not commercial as township officials previously had explained.

When the Whitman's petitioned for rezoning — twice to change portions of the property from residential to commercial — they were denied. Within a year, the property was redesignated on the township's master plan as parks and recreation despite years of being designated for future commercial use.

"We were told to sue by (township Clerk Robert) Schockman. Twice he told my dad that's how the township wanted to handle this," Mr. Whitman said, adding that public pressure led board members to want the matter settled by a court, not themselves.

In testimony, Mr. Schockman admitted that he did advise the Whitmans to consider suing — among other options.

"But they never asked me the follow-up question," Mr. Schockman said. "I also said to Paul Whitman, for whom I have a tremendous amount of respect, that 'You do know that townships generally win lawsuits like this? Townships

don't lose.' It was just one of many, many (possible options) I offered."

Mr. Whitman said the township promised to settle if the family forced their hand with a court battle.

"They said if we sued they'd settle. Twice they asked the judge to delay the trial so they could settle," Mr. Whitman said, adding that for nearly a year he, and representatives of Wal-Mart, met with township officials to hammer out a settlement proposal that included the development of a 203,819-square-foot Wal-Mart supercenter and gas station.

Trustee Dennis Steinman said the township put that deal together as a "back-up plan" in case the matter went to trial.

"The plan that we ultimately came up with we figured would be a fall back plan if the judge ruled against us," Mr. Steinman said, of the proposal that was first rolled out to the public at a special meeting at Bedford High School last fall. "That was the best case scenario if we had lost and something had to be put there."

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But it was township attorneys — albeit representatives of the township's insurance company — that said "Wal-Mart is coming" and that there was nothing the township could do about it.

Within hours of that meeting, representatives of Bedfordwatch.com — a citizens group organized to prevent development of a Wal-Mart on the property — began a second campaign to stop the settlement. About two weeks later, the township board members who negotiated the proposal, balked at it publicly and set the matter for trial.

Mr. Whitman today claims he spent about \$180,000, including a \$40,000 Monroe County Road Commission sanctioned traffic study, setting up the proposed settlement.

"If nothing was going on why would I do that?" Mr. Whitman asks. "They even asked me to keep moving the dealership a secret. We did everything they wanted us to do. We were guaranteed approval.

"They said they would approve the plan 5-2, with Mr. Schockman and (Treasurer Sherri) Meyer voting against

Whitman (cont.)

it," Mr. Whitman said. "Why would they have that meeting (at the high school) if they weren't behind it?"

Mr. Steinman said that's not true.

"I have never changed my opinion that that's not the place for a big box store," Mr. Steinman said. "Certainly that is not the place to put a Wal-Mart. I think that was too much for our community to bear.

"We didn't tell them anything like that," he said.

"That's simply not true. He would have needed that traffic study no matter what he would have put there."

Mr. Whitman's attorney Thomas Hansen said it was after deposing Mr. Jenkins in 2005 that township officials decided to pursue a settlement.

"And we asked them during those negotiations, 'Should we start spending money?' And they said yes," Mr. Hansen said. "They said, 'We like the plan' and to 'go for it.' It's very difficult for people to do business when that's going on."

That's something Trustee Paul Francis — who excused himself from voting on the Wal-Mart proposal because of his family relations with Mr. Whitman — they are cousins — said he agrees with.

"We need to be sure that everyone is treated the same way," he said. "That's a goal."

But on the judge's ruling, Mr. Francis said, he's not that clear.

"I've got mixed feelings," he said. "I feel the Whitman family has been wronged. I'm disappointed in how it came out that the ones doing the negotiations with the Whitmans (that) in court they said they were against it from day one. If that's the case, why did they

negotiate it at all?

"Why did they keep saying to the judge, 'Give us more time?' There is no doubt in my mind that that corner was set up to be a commercial corridor. Why widen the road?" Mr. Francis asked.

As for the next step, Mr. Whitman and his attorney say it's still up in the air.

"We're still weighing our options," Mr. Hansen said.

Mr. Whitman says he'll not move his dealership.

"Why should I? I've been here for 29 years. I've got a building paid for. Why should I move?" he said, adding that he's anxious to see the township's defense of another land use lawsuit slated for a Feb. 26 trial beginning.

In that case, former Raisinville Township Supervisor Mark Brant and his Bedford Partners development company are suing the township over another denied rezoning. This time, the lawsuit isn't about commercial development, it's about residential development.

Mr. Brant is looking to build a 450-plus home subdivision off Erie Rd.

"There is an odd dynamic in Bedford Township right now," Mr. Whitman said. "There's a pattern of behavior here that nobody wants to happen to them personally.

"They just said we don't want commercial, that people should go to Toledo, and now they're going to fight Mark Brant's residential development. What do they want? I'm not even sure they know," Mr. Whitman said.