

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MONROE

WHITMAN FORD,
a Michigan corporation,

Plaintiff,

vs.

TOWNSHIP OF BEDFORD,
a municipal corporation,

Defendant.

CASE NO. 09-27523-CH

HON. JOSEPH A. COSTELLO, JR.

ANSWER TO COMPLAINT; NOTICE
OF AFFIRMATIVE DEFENSES;
PROOF OF SERVICE

Thomas M. Hanson (P-62725)
Attorney for Plaintiff

Dykema Gossett, PLLC
2723 South State Street, Suite 400
Ann Arbor, Michigan 48104
Telephone: (734) 214-7668

Philip D. Goldsmith (P-37650)
Attorney for Defendant

Lennard, Graham & Goldsmith, P.L.C.
222 Washington Street
Monroe, Michigan 48161-2146
Telephone: (734) 242-9500

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ANSWER TO COMPLAINT

NOW COMES the Township of Bedford, by and through its attorneys, Lennard, Graham & Goldsmith, P.L.C., and for its Answer to the Plaintiff's Complaint states as follows:

NATURE OF THE ACTION

1. Defendant admits the allegations set forth in paragraph 1 of Plaintiff's Complaint, with the exception of the last sentence, wherein it is stated that the property on which the dealership is located has been zoned "C-3" since at least 1977. Answering further, Defendant affirmatively states that the Plaintiff has applied for and has been granted rezonings since 1977 which has increased the area of the real property now zoned "C-3".

2. Defendant admits that Whitman Ford also owns approximately forty-three (43) acres of vacant land surrounding the dealership property. Answering further, Defendant denies that Bedford Township engaged in unreasonable, arbitrary and/or capricious treatment concerning the zoning of the vacant land, for the reason that said allegations are untrue.

PARTIES, JURISDICTION AND VENUE

3. Admitted.

4. Admitted.

5. Admitted.

6. Admitted.

THE 2008 REZONING REQUEST

7. Admitted.

8. Defendant neither admits nor denies the allegations of paragraph 8 of the Plaintiff's Complaint for the reason that Defendant is without sufficient information to form a belief as to the truth of the allegations and therefore Plaintiff is left to its strict proofs.

THE PRIOR LAWSUIT

9. Defendant admits that Plaintiff previously requested the Township to rezone the entire property to C-3 and that Bedford Township denied said request. Answering further, the denial was based upon a multitude of factors.

10. Admitted.

11. Admitted.

12. Defendant neither admits nor denies the allegations of paragraph 12 of the Plaintiff's Complaint for the reason that Defendant is not privy to what Whitman Ford understood or did not understand with respect to development of the subject property and therefore Plaintiff is left to its strict proofs.

13. Defendant admits that this Honorable Court extended the Scheduling Order in the prior lawsuit based on representations that the parties were engaged in serious discussions concerning land use issues raised in said lawsuit.

14. Defendant denies the allegations set forth in paragraph 14 of the Plaintiff's Complaint for the reason that the Township officials were never privileged to discussions and/or negotiations that Plaintiff had with Walmart concerning the property.

15. Defendant admits that Plaintiff developed a comprehensive site plan for development of the subject property, which, among other things, showed a landscaped buffer between a proposed Walmart store and Indian Acres Subdivision.

16. Defendant admits that Whitman Ford commissioned a traffic study and submitted same to the Monroe County Road Commission for consideration. Answering further, Defendant denies that it had full knowledge of the traffic study and/or the entire purpose for which it was commissioned.

17. Defendant admits that the Township Fire Chief reviewed a proposed site plan, but denies that the Fire Chief gave final approval for same.

18. Admitted.

19. Admitted.

20. Admitted.

21. Admitted.

22. Admitted.

23. Defendant denies any conclusions drawn by Plaintiff from Ms. Johnston's and/or Mr. LeBlanc's testimony and affirmatively states that said testimony speaks for itself.

24. Defendant denies any conclusions drawn by Plaintiff from Mr. LeBlanc's testimony and affirmatively states that said testimony speaks for itself.

25. Defendant neither admits nor denies the allegations of paragraph 25 of Plaintiff's Complaint pertaining to Plaintiff's motivation for its 2008 rezoning request for the reason that Defendant is without sufficient information to form a belief as to the truth of the allegations and therefore Plaintiff is left to its strict proofs. Answering further, although Plaintiff sought to limit its request for C-3 zoning along Lewis Avenue, it sought a rezoning from R-2A to C-2 for the 8.28 acre parcel, which could conceivably allow for an intense commercial use in close proximity to residentially zoned parcels.

26. Defendant neither admits nor denies Plaintiff's allegations concerning its motivation for submitting its 2008 rezoning request for the reason that Defendant is without sufficient information to form a belief as to the truth of the allegations and therefore Plaintiff is left to its strict proofs. Answering further, Defendant affirmatively states that Mr. LeBlanc's prior testimony speaks for itself.

27. Defendant denies Plaintiff's attempt to characterize Plaintiff's proposed rezoning as being representative of the collective thought of all Township officials. Answering further, the suggestion of one Township official does not bind the Township Board.

28. Defendant denies the allegations set forth in paragraph 28 of the Plaintiff's Complaint as stated for the reason that said allegations are untrue.

INPUT FROM TOWNSHIP PLANNING STAFF AND CONSULTANT

29. Defendant neither admits nor denies the allegations of paragraph 29 of the Plaintiff's Complaint for the reason that Defendant is without sufficient information to form a belief as to the truth of the allegations and therefore Plaintiff is left to its strict proofs.

30. Defendant neither admits nor denies the allegations of paragraph 30 of the Plaintiff's Complaint for the reason that Defendant is without sufficient information to form a belief as to the truth of the allegations and therefore Plaintiff is left to its strict proofs.

31. Defendant neither admits nor denies the allegations of paragraph 31 of the Plaintiff's Complaint for the reason that Defendant is without sufficient information to form a belief as to the truth of the allegations and therefore Plaintiff is left to its strict proofs.

32. Defendant denies the allegations set forth in paragraph 32 of the Plaintiff's Complaint as stated for the reason that said allegations are untrue.

THE TOWNSHIP'S MASTER PLAN

33. Defendant neither admits nor denies the allegations of paragraph 33 of the Plaintiff's Complaint for the reason that Defendant is without sufficient information to form a belief as to the truth of the allegations and therefore Plaintiff is left to its strict proofs.

34. Defendant states that its Master Land Use Plan speaks for itself.

35. Defendant states that its Master Land Use Plan speaks for itself.

36. Defendant states that its Master Land Use Plan speaks for itself.

37. Defendant denies Plaintiff's attempt to characterize Mr. LeBlanc's prior testimony and states that said testimony speaks for itself.

38. Defendant denies the allegations set forth in paragraph 38 of the Plaintiff's Complaint for the reason that said allegations are untrue.

THE TOWNSHIP'S PLANNING CONSULTANT RECOMMENDS APPROVAL

39. Admitted.

40. Admitted.

41. Defendant admits only that Mr. Young's six page letter speaks for itself.

42. Defendant admits only that Mr. Young's six page letter speaks for itself.

43. Defendant admits only that Mr. Young's six page letter speaks for itself.

44. Defendant admits only that Mr. Young's six page letter speaks for itself.

45. Defendant admits only that Mr. Young's six page letter speaks for itself.

46. Defendant admits that a copy of Mr. Young's August 13, 2008 letter is attached to the Plaintiff's Complaint as Exhibit 2.

THE PLANNING COMMISSION RECOMMENDS
APPROVAL OF PARCELS 1-5, AND DENIAL OF PARCEL 6

47. Admitted.

48. Admitted.

49. Admitted.

50. Admitted.

51. Admitted.

52. Admitted.

53. Admitted.

54. Defendant admits that a copy of the September 10, 2008 Minutes of the Bedford Township Planning Commission is attached to Plaintiff's Complaint as Exhibit 3.

THE MONROE COUNTY PLANNING STAFF
RECOMMENDS APPROVAL OF ALL PARCELS

55. Defendant admits only that the October 1, 2008 Monroe County Planning Commission Memorandum speaks for itself.

56. Defendant admits only that the October 1, 2008 Monroe County Planning Commission Memorandum speaks for itself.

57. Defendant admits that a copy of the Monroe County Planning Staff's Memorandum of October 1, 2008 is attached to Plaintiff's Complaint as Exhibit 4.

THE COUNTY PLANNING COMMISSION
RECOMMENDS APPROVAL OF ALL PARCELS

58. Admitted.

59. Admitted.

60. Defendant admits that a copy of Mr. Royce Maniko's October 9, 2008 letter, together with an attachment is attached to Plaintiff's Complaint as Exhibit 5.

THE TOWNSHIP BOARD APPROVES
REZONING OF PARCELS 1-5, AND DENIES PARCEL 6

61. Admitted.

62. Defendant admits only that the reasons for approval of Parcels 1, 2 and 3 are stated in the meeting Minutes.

63. Defendant admits only that the reasons for approval of Parcels 4 and 5 are stated in the meeting Minutes.

64. Defendant admits only that the reasons for denying the request for rezoning of Parcel 6 are stated in the meeting Minutes.

65. Defendant denies the allegations set forth in paragraph 65 of Plaintiff's Complaint for the reason that said allegations are untrue.

66. Defendant denies the allegations set forth in paragraph 66 of Plaintiff's Complaint for the reason that said allegations are untrue.

67. Defendant denies the allegations set forth in paragraph 67 of Plaintiff's Complaint for the reason that said allegations are untrue.

68. Defendant denies the allegations set forth in paragraph 68 of Plaintiff's Complaint for the reason that said allegations are untrue.

69. Defendant denies the allegations set forth in paragraph 69 of Plaintiff's Complaint for the reason that said allegations are untrue.

70. Defendant denies the allegations set forth in paragraph 70 of Plaintiff's Complaint for the reason that said allegations are untrue.

71. Defendant denies the allegations set forth in paragraph 71 of Plaintiff's Complaint for the reason that said allegations are untrue.

72. Defendant admits that a copy of the Township Board's Minutes of December 2, 2008 is attached as Exhibit 6 to the Plaintiff's Complaint.

THE MAY 5, 2009 REFERENDUM AND
“ADMINISTRATIVE REZONING” OF PARCEL 6

73. Defendant neither admits nor denies the allegations of paragraph 73 concerning a group of Bedford residents' thought process for the reason that Defendant is without sufficient information to form a belief as to the truth of the allegations and therefore Plaintiff is left to its strict proofs. Answering further, Defendant admits that a Referendum Petition was circulated throughout Bedford Township.

74. Defendant admits that a referendum was placed on the May 5, 2009 ballot.

75. Defendant denies that its action resulted in an unreasonable land use pattern. Defendant was authorized only to act upon the rezoning application submitted by Plaintiff. Answering further, Defendant is authorized by the Michigan Zoning Enabling Act to undertake rezoning on its own initiative and the Township Board authorized the commencement of the process to rezone Parcel 6 from R-2A to PBO.

76. Defendant denies the allegations set forth in paragraph 76 of the Plaintiff's Complaint as stated for the reason that said allegations are untrue.

77. Defendant admits only that a referendum election was held on May 5, 2009.

78. In answer to paragraph 78 of the Plaintiff's Complaint, Defendant states that it would have been inappropriate for the Township to campaign and/or use Township resources to influence the referendum vote one way or the other.

79. In answer to paragraph 79 of the Plaintiff's Complaint, Defendant states that the rezoning approved by the Township Board for five of the six parcels was reversed by the referendum vote.

80. Defendant admits that subsequent to the referendum vote it withdrew the proposed rezoning for Parcel 6.

81. Defendant denies the allegations of paragraph 81 of the Plaintiff's Complaint as stated. Answering further, the legislative action of Defendant was to approve five of the six rezoning requests. Subsequent to said approval, the referendum process, as provided for in the Zoning Enabling Act defeated the legislative action taken by Defendant.

82. Defendant denies that there was a wholesale denial of the 2008 rezoning request, as that statement is contrary to the facts of this case. Answering further, Defendant denies that its action was contrary to principals of sound planning and zoning.

83. Defendant denies that there was a wholesale denial of the 2008 rezoning request, as that statement is contrary to the facts of this case. Answering further, Defendant denies that its action was contrary to the testimony of Mr. LeBlanc from the prior lawsuit.

84. Defendant denies that there was a wholesale denial of the 2008 rezoning request, as that statement is contrary to the facts of this case. Answering further, Defendant denies that its action was contrary to the testimony of Ms. Johnston from the prior lawsuit.

85. Defendant denies that there was a wholesale denial of the 2008 rezoning request, as that statement is contrary to the facts of this case. Answering further, Defendant denies that its action is contrary to the Township's Master Plan.

86. Defendant denies that there was a wholesale denial of the 2008 rezoning request, as that statement is contrary to the facts of this case. Answering further, Defendant denies that its action was contrary to the recommendations of the Township Planning Consultant.

87. Defendant denies that there was a wholesale denial of the 2008 rezoning request, as that statement is contrary to the facts of this case. Answering further, Defendant denies that its action was contrary to the recommendations of the Township Planning Commission.

88. Defendant denies that there was a wholesale denial of the 2008 rezoning request, as that statement is contrary to the facts of this case. Answering further, Defendant denies that its action was contrary to the recommendations of the County Planning Department staff.

89. Defendant denies that there was a wholesale denial of the 2008 rezoning request, as that statement is contrary to the facts of this case. Answering further, Defendant denies that its action was contrary to the recommendations of the County Planning Commission.

90. Defendant denies that there was a wholesale denial of the 2008 rezoning request, as that statement is contrary to the facts of this case.

91. Defendant denies the allegations set forth in paragraph 91 of the Plaintiff's Complaint. Answering further, Defendant affirmatively states that it set in motion a process allowed for under the Zoning Enabling Act to rezone Parcel 6 to PBO, which comports entirely with the Master Plan.

92. Defendant denies the allegations set forth in paragraph 92 of the Plaintiff's Complaint as stated. Answering further, Defendant affirmatively states that referendum is a tool provided to the citizens by the Michigan Constitution and the Zoning Enabling Act. The result of the referendum stands as the will of the people.

93. Defendant denies the allegations set forth in paragraph 93 of the Plaintiff's Complaint as stated.

94. Defendant denies the allegations set forth in paragraph 94 of the Plaintiff's Complaint as stated.

95. Defendant denies the allegations set forth in paragraph 95 of the Plaintiff's Complaint as stated.

96. Defendant admits that the C-3 zoning district generally contemplates more intensive uses than those permitted in the C-2 zoning district.

THE TOWNSHIP'S HISTORICAL ARBITRARY TREATMENT OF THE PROPERTY

97. Defendant denies the allegations set forth in paragraph 97 of the Plaintiff's Complaint for the reason that said allegations are untrue.

98. Defendant denies that Bedford Township has engaged in an unrelenting desire to stifle further commercial development of the property. Answering further, the Defendant denies that it has engaged in arbitrary anti-commercial treatment of the property.

99. Defendant denies that Bedford Township has engaged in arbitrary treatment of the property. Answering further, Plaintiff totally ignores the Judgment entered in the prior litigation in setting forth the allegations contained in paragraph 99 of its Complaint.

100. Defendant affirmatively states that Whitman Ford's prior marketing efforts were contrary to the actual zoning of the property, as demonstrated in the prior litigation. Defendant denies that it engaged in any efforts to frustrate Plaintiff's attempt to market its property and/or to exact retribution against Plaintiff for attempting to market its property. Answering further, Plaintiff marketed its property for uses contrary to that which was allowed by the actual zoning of the property, as demonstrated in the prior litigation.

101. Defendant neither admits nor denies the allegations of paragraph 101 of the Plaintiff's Complaint for the reason that Defendant is without sufficient information to form a belief as to truth of the allegations and therefore Plaintiff is left to its strict proofs.

102. Defendant denies that it has boycotted Whitman Ford or engaged in any effort to boycott Whitman Ford. Defendant denies that it has defaced realty signs situated on the property. Defendant denies that it has engaged in any of the other activity alleged in paragraph 102 of the Plaintiff's Complaint.

103. Defendant admits that Dennis Jenkins sent Whitman Ford a letter on or about June 6, 2001 explaining that the property was not zoned C-2 and that an error had been made in the publication of the zoning map.

104. Defendant admits that Mr. Jenkins took certain steps to correct an error that had been made in connection with the publication of the Bedford Township zoning map.

105. Defendant denies that the Monroe County Circuit Court determined that Mr. Jenkins' action in correcting a zoning map error violated the law.

106. Defendant denies that it engaged in any efforts to frustrate development of the property. Answering further, Defendant admits only that the Master Land Use Plan has been periodically reviewed and modified over time as required by law and to further develop a vision for the development of Bedford Township.

107. Defendant admits only that it revised its Master Land Use Plan consistent with periodic reviews undertaken to comply with law and in an effort to promote citizen participation in local government held visioning sessions.

108. Admitted.

109. Defendant affirmatively states that Ms. Johnston's and Mr. LeBlanc's testimony speaks for itself.

110. Defendant denies the allegations set forth in paragraph 110 of the Plaintiff's Complaint as stated. Answering further, no professional opinion was solicited from either Ms. Johnston or Mr. LeBlanc prior to the submission of Whitman Ford's first rezoning request in 2003. The allegation, as stated, is taken out of chronological context.

111. Defendant admits that as part of its periodic review of the Master Land Use Plan, it was in fact revised to change the land use designation for the property.

112. Defendant denies the allegations set forth in paragraph 112 of the Plaintiff's Complaint for the reason that said allegations are untrue.

113. Defendant denies the allegations set forth in paragraph 113 of the Plaintiff's Complaint as stated for the reason that said allegations are untrue.

114. Defendant denies the allegations set forth in paragraph 114 of the Plaintiff's Complaint for the reason that said allegations are untrue.

115. Defendant denies the allegations set forth in paragraph 115 of the Plaintiff's Complaint for the reason that said allegations are untrue.

116. Defendant denies the allegations set forth in paragraph 116 of the Plaintiff's Complaint for the reason that said allegations are untrue.

117. Defendant denies that it is indifferent to principals of sound zoning and planning as alleged by the Plaintiff in paragraph 117 of its Complaint. Answering further, referendum is a right secured to the people by the Michigan Constitution and the Zoning Enabling Act. Use of Township resources to either promote or oppose a referendum would be wholly inappropriate.

118. Defendant denies the allegations of paragraph 118 of the Plaintiff's Complaint for the reason that said allegations are untrue.

119. Defendant denies the allegations of paragraph 119 of the Plaintiff's Complaint for the reason that said allegations are untrue.

120. Defendant denies the allegations of paragraph 120 of the Plaintiff's Complaint for the reason that said allegations are untrue.

121. Defendant denies the allegations of paragraph 121 of the Plaintiff's Complaint for the reason that said allegations are untrue.

122. Defendant denies the allegations of paragraph 122 of the Plaintiff's Complaint for the reason that said allegations are untrue.

123. Defendant denies the allegations of paragraph 123 of the Plaintiff's Complaint for the reason that said allegations are untrue.

124. Defendant denies the allegations of paragraph 124 of the Plaintiff's Complaint for the reason that said allegations are untrue.

COUNT I
(DECLARATORY RELIEF; VIOLATION OF LAW)

125. Bedford Township incorporates by reference all of its answers to paragraphs 1-124 of the Plaintiff's Complaint, as if fully set forth herein, word for word and paragraph for paragraph.

126. In answer to paragraph 126 of Plaintiff's Complaint, Defendant admits only those duties imposed by law and states affirmatively that it acted at all times in strict conformity therewith.

127. Defendant denies the allegations set forth in paragraph 127 of Plaintiff's Complaint for the reason that said allegations are untrue.

128. Defendant denies the allegations set forth in paragraph 128 of Plaintiff's Complaint for the reason that said allegations are untrue.

129. Defendant denies the allegations set forth in paragraph 129 of Plaintiff's Complaint for the reason that said allegations are untrue.

130. Defendant denies the allegations set forth in paragraph 130 of Plaintiff's Complaint for the reason that said allegations are untrue.

COUNT II
(VIOLATION OF DUE PROCESS OF LAW)

131. Bedford Township incorporates by reference all of its answers to paragraphs 1-130 of the Plaintiff's Complaint, as if fully set forth herein, word for word and paragraph for paragraph.

132. Defendant denies the allegations set forth in paragraph 132 of Plaintiff's Complaint for the reason that said allegations are untrue.

133. Defendant denies the allegations set forth in paragraph 133 of Plaintiff's Complaint for the reason that said allegations are untrue.

134. Defendant denies the allegations set forth in paragraph 134 of Plaintiff's Complaint for the reason that said allegations are untrue.

135. Defendant denies the allegations set forth in paragraph 135 of Plaintiff's Complaint for the reason that said allegations are untrue.

COUNT III
(EXCLUSIONARY ZONING)

136. Bedford Township incorporates by reference all of its answers to paragraphs 1-135 of the Plaintiff's Complaint, as if fully set forth herein, word for word and paragraph for paragraph.

137. Defendant denies the allegations set forth in paragraph 137 of Plaintiff's Complaint for the reason that said allegations are untrue.

138. Defendant denies the allegations set forth in paragraph 138 of Plaintiff's Complaint for the reason that said allegations are untrue.

COUNT IV
(EQUAL PROTECTION)

139. Bedford Township incorporates by reference all of its answers to paragraphs 1-138 of the Plaintiff's Complaint, as if fully set forth herein, word for word and paragraph for paragraph.

140. Defendant denies the allegations set forth in paragraph 140 of Plaintiff's Complaint to the extent that it is alleged that other similar rezoning applications have been approved.

141. Defendant denies the allegations set forth in paragraph 141 of Plaintiff's Complaint for the reason that said allegations are untrue.

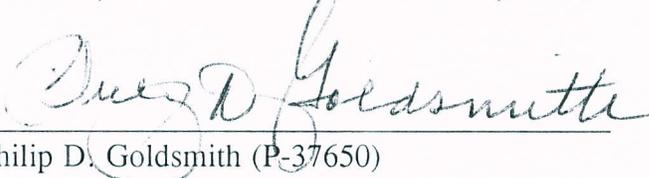
142. Defendant denies the allegations set forth in paragraph 142 of Plaintiff's Complaint for the reason that said allegations are untrue.

WHEREFORE, Defendant moves this Honorable Court to dismiss Plaintiff's Complaint, including all requests set forth in Plaintiff's prayer for relief, enter judgment on said Complaint in favor of Defendant and against Plaintiff, award Defendant all of its costs so wrongfully incurred to defend this action, including actual attorney fees, and award such other and further relief as may be necessary or appropriate under the circumstances of this case.

LENNARD, GRAHAM & GOLDSMITH, P.L.C.

Dated: August 10, 2009

By:


Philip D. Goldsmith (P-37650)

Attorney for Defendant, Township of Bedford

NOTICE OF AFFIRMATIVE DEFENSES

By further answer, Defendant, the Township of Bedford, sets forth the following Affirmative Defenses pursuant to MCR 2.111(F)(3):

1. Plaintiff's Complaint fails to state a claim upon which relief can be granted.
2. Defendant will show at the time of trial that the Township of Bedford complied with the Zoning Enabling Act and all constitutional provisions applicable to land use regulation.
3. That the Plaintiff has failed to mitigate any alleged damages.

4. That any and all zoning classifications and/or designations for the property in question seeks to further a legitimate governmental interest and is reasonably related to the furtherance of legitimate governmental interest.

5. Defendant, the Township of Bedford, reserves the right to add further Affirmative Defenses that may become known as investigation and/or discovery proceeds in this matter.

LENNARD, GRAHAM & GOLDSMITH, P.L.C.

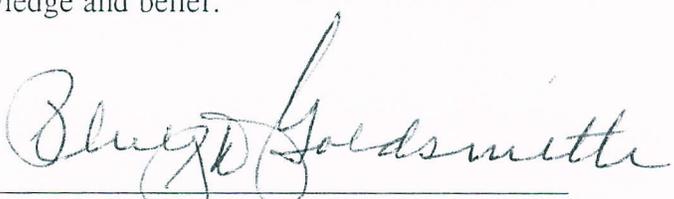
Dated: August 10, 2009

By: 
Philip D. Goldsmith (P-37650)
Attorney for Defendant, Township of Bedford

PROOF OF SERVICE

The undersigned certifies that he caused a copy of the foregoing Answer to Plaintiff's Complaint and Notice of Affirmative Defenses, to be served upon Mr. Thomas M. Hanson at Dykema Gossett, PLLC, 2723 South State Street, Suite 400, Ann Arbor, Michigan 48104, by placement of said pleading, instrument, document, or paper, in a sealed envelope for each person to be served, addressed to the person or persons to be served, and having inscribed therein the return address of Lennard, Graham & Goldsmith, P.L.C., 222 Washington Street, Monroe, Michigan 48161-2146, and causing said envelope or envelopes to be either mailed or delivered with contents included, to the person or persons to be served, at the above-stated address or addresses, on the 10th day of August, 2009.

I declare that this Proof of Service has been examined by me and that the contents thereof are true to the best of my information, knowledge and belief.


Philip D. Goldsmith (P-37650)
Attorney for Defendant