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Whitman loses suit against Bedford

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Whitman Ford Co. has lost its lawsuit against Bedford Township.

"The fallacies of (Whitman Ford's) contentions are multiple," Monroe County Circuit Court Judge Joseph A. Costello wrote in his 44-page ruling on the case, in which Whitman Ford alleged the township acted "arbitrarily and capriciously" in dealing

with the company's 57-acre property at Sterns Rd. and Lewis Ave.

The lynchpin of the five-count Whitman Ford Co. lawsuit dealt with an admitted typo that prevailed on township zoning maps for about nine years between 1992 and 2001.

Whitman Ford attorney Thomas Hansen argued during the five-day trial that because township officials

► To read the full text of Judge Costello's decision, go to www.monroenews.com.

– including Planning Coordinator Dennis Jenkins and attorney Philip Goldsmith, who also was working for the automobile dealership – represented the error as fact, the zoning should stand.

The entire westerly half

of the property, that portion abutting the Indian Acres subdivision, is zoned R-2A residential and has been since 1976. The typo mistakenly identified the entire property as C-2 commercial.

"... This court would find it to be unconscionable to hold a governmental body to erroneous maps," Judge Costello wrote in his opinion.

Mr. Hansen's argument that township officials furthered

the confusion by continuing to represent the property as commercially zoned fails too, Judge Costello wrote, citing three different Michigan cases that provide precedent.

"One may not rely upon the informal word of individual township officials in the first place," Judge Costello opined. "Furthermore, it would not be an onerous task for one to not only make further inquiry with the township, but

to simply review the property card. The property card clearly reflects the property to be partly zoned R-2A."

Neither Whitman Ford owner Jon Whitman, his attorney Mr. Goldsmith nor his Realtor Steve Lennex pulled the property card – the township's record of individual properties, including underlying zoning and other issues

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— each testified in court.

Another part of the lawsuit alleged that the township was excluding “big box”-type stores from being developed by limiting building sizes and commercially zoned locations throughout the township.

When defense attorneys cited a commercially zoned property at Lavoy and Telegraph Rds. as being zoned appropriately and large enough to accommodate a Wal-Mart or other big box store, Mr. Lennex referred to the area as “the armpit” of the community.

The judge disagreed.

“It is clear to this court that there are a number of C-3 parcels available to a developer for a big-box store, including the (existing Whitman Ford) parcel,” Judge Costello wrote, adding that, “It has not been determined that a big-box store cannot be located along Lewis Ave. where the (Whitman) property remains zoned as C-2 and C-3.”

Mr. Hansen also argued that the township handled a similar case differently. When it was discovered that the Magdalena’s Mexican restaurant at the corner of Sterns and Douglas Rds. was actually operating on a residentially zoned property, the township allowed the owners to petition for a zoning change and followed the state zoning act.

When the error on the Whitman property was discovered — during negotiations for a possible Wal-Mart store — the zoning map was “administratively” changed within a week.

“... There was no disparate treatment when compared to the situation involving Magdalena’s Restaurant. The restaurant and surrounding area were already established,” the opinion reads continuing, “... The Indian Acres subdivision was well established before the con-

struction of the (Whitman’s) automobile dealership.

“Since the very beginning the western-most portion of the property was zoned ‘residential.’ The (township) has remained consistent in maintaining this classification. The court cannot find the two situations to be similar,” Judge Costello wrote.

The opinion cites only one matter in which the township tripped up.

“Any amendments, including the correction of a ‘mistake’ in either a zoning ordinance or a zoning map incorporated therein, need to be resolved through the Township Zoning Act,” Judge Costello wrote, adding that the township’s actions in correcting the map error don’t mean the township loses the case.

“The Michigan Legislature and the Michigan Court of Appeals have stated that changes to zoning ordinances may only be accomplished by ‘amendments or supplements’ to the zoning ordinance and not by an alteration to the map,” the opinion reads in part.

“The court directs the (township) to appropriately amend its zoning map in compliance with Michigan law.”

Bedford Township Supervisor Walt Wilburn — who negotiated a settlement with Mr. Whitman last year that would have resulted in a 203,819-square-foot Wal-Mart Supercenter and gas station on the Whitman property — said when he reviewed the facts of the lawsuit he knew the township would prevail.

“The law is the law,” he said this morning.

The zoning map mistake, Mr. Wilburn said, “was just a mistake and I don’t think the township should be held responsible for it. It’s terrible what Mr. Whitman went through and I’m sorry for that.

“I knew if the law prevailed we would win,” he said. “The proof was that it had always been R-2A residential.”

Another part of Whitman Ford’s lawsuit alleged that the township board decided to bend to the shouts of a vocal group of residents who dubbed themselves Bedfordwatch.com and railed against the possibility of a Wal-Mart.

The judge said that’s not a terrible thing in an elected official.

“The allegation that the (township) may have ‘bowed to the will of a minority’ portion of the population, even if true, is not fatal,” Judge Costello wrote. “Our system of government is based upon a ‘representative democracy,’ and one would hope that any legislative body would consider the wishes of their constituents.”

Judy Frankowski, an Ashland Dr. resident and member of Bedfordwatch.com who attended all five days of the trial, said this morning that she was relieved and excited at the ruling.

“I think it was bad that he could sue just because he didn’t get his way,” she said. “The truth is the truth. A Wal-Mart there is more than I could fathom. I’m just so happy.”

Neither Mr. Whitman nor his attorney returned phone calls for this article.

But Judge Costello left notice in his opinion for anyone else who may decide to market property for sale.

“(Mr. Whitman) is not precluded from the use of his property as it remains viable and marketable,” Judge Costello wrote, adding that Whitman Ford, “has not met his burden that the (township’s) decisions were ‘arbitrary or capricious.’

“The court would find the (township) to be in compliance with the Township Zoning Act,” the opinion reads, adding that “... before one invests or seeks investments of thousands or millions of dollars in a project, one would be well served to thoroughly review the applicable zoning ordinances.”