

DYKEMA GOSSETT*, A PROFESSIONAL LIMITED LIABILITY COMPANY, 42723 SOUTH STATE STREET, SUITE 400, ANN ARBOR, MICHIGAN 48104

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MONROE

WHITMAN FORD, a Michigan corporation,

Plaintiff,

Civil Action No.

Hon.

vs.

TOWNSHIP OF BEDFORD, a municipal corporation,

Defendant.

Thomas M. Hanson (P62725)
DYKEMA GOSSETT PLLC
Attorneys for Plaintiff
2723 South State Street
Suite 400
Ann Arbor, MI 48104
(734) 214-7668

COMPLAINT

A civil action between these parties or other parties arising out of some of the transactions or occurrences alleged in the Complaint has been previously filed in this Court, where it was given docket number 04-18604-CH and assigned to Judge Costello. That action is no longer pending.

Plaintiff Whitman Ford, Inc., by its attorneys, Dykema Gossett PLLC, hereby states as follows for its Complaint against Defendant Bedford Township:

Nature of The Action

1. Whitman Ford is a family-owned and operated business which has been in existence for more than 60 years. Since 1977, Whitman Ford has operated an automobile dealership from 7555 Lewis Avenue in Bedford Township. The dealership itself, which is located just north of the major intersection of Lewis Avenue and Sterns Road, is situated on

approximately eight acres of land zoned for "C-3-General Commercial" uses. The property on which the dealership is located has been zoned "C-3" since at least 1977.

2. Whitman Ford also owns approximately 43 acres of vacant land directly to the north, south and west of the dealership property. Whitman Ford has owned this vacant property for more than 35 years. This action is brought to contest the Township's unreasonable, arbitrary and capricious treatment of the zoning of this vacant land, and to seek an injunction prohibiting the Township from interfering with the use and/or development of the vacant land in accordance with Whitman Ford's application for rezoning submitted to the Township on or about August 7, 2008.

Parties, Jurisdiction and Venue

3. Whitman Ford is a Michigan corporation, whose mailing address is 7555 Lewis Avenue Temperance, Michigan 48182.

4. Defendant is a Michigan municipal corporation located in Monroe County, State of Michigan, whose mailing address is 8100 Jackman Road, Temperance, Michigan 48182.

5. Jurisdiction of this Court exists in that this action arises under the constitution and laws of the State of Michigan, and this being a suit for injunctive relief and a declaratory judgment.

6. Venue is proper in this Court because the Defendant is a municipal corporation situated in Monroe County, and because the property at issue in this land use dispute is located in Monroe County.

The 2008 Rezoning Request

7. On or about August 7, 2008, Whitman Ford submitted a request to rezone the Property's vacant land (the "2008 Rezoning Request"). Specifically, Whitman sought six

DYCKERMA GOSSETT, A PROFESSIONAL LIMITED LIABILITY COMPANY • 703 SOUTH STATE STREET, SUITE 400 • ANN ARBOR, MICHIGAN 48104

separate rezonings, designated as follows (a map showing the various parcels is attached hereto as Exhibit 1):

- a. Parcel 1 (the southwest corner) – From R-2A (single family residential) and C-2 (shopping center business) to PBO (professional business office);
- b. Parcel 2 (immediately north of Parcel 1) – From R-2A (single-family residential) to RM-2 (multi-family residential);
- c. Parcel 3 (the northwest corner) – From R-2A (single family residential) to RME (elderly housing residential);
- d. Parcel 4 (the northeast corner) – From C-2 (shopping center business) to C-3 (general business);
- e. Parcel 5 (along Lewis Avenue immediately south of the existing dealership) – From C-2 (shopping center business) to C-3 (general business).
- f. Parcel 6 (approx. 8 acres set in between the dealership and the proposed residential districts) – From R-2A (single family residential) to C-2 (shopping center business).

8. As is set forth below, Whitman Ford structured its rezoning request in careful consideration of the Township’s Master Plan and the past conduct and statements of Township officials and consultants as to what would constitute sound zoning and planning on the Property.

The Prior Lawsuit

9. In 2003, Whitman Ford had requested that the entire property be rezoned to C-3. The Township denied the request, essentially on the grounds that it was inappropriate to have the most intensive commercial designation adjacent to the existing single-family residential neighborhood that borders the Property to the west, known as Indian Acres.

10. Based on the Township’s denial of the 2003 rezoning requests, Whitman Ford sued the Township in Monroe County Circuit Court, Case No. 04-18604-CH (the “Prior Lawsuit”).

11. In the course of the Prior Lawsuit, Whitman Ford met with Township Board members and attorneys regarding a possible resolution.

12. Based on discussions in several meetings, which occurred over approximately six months through the spring and summer of 2006, Whitman Ford understood that any further commercial development of the Property would need to provide some form of transition or buffering for Indian Acres.

13. On at least three separate occasions, the Court extended the scheduling order in the Prior Lawsuit based on representations from counsel for both Whitman Ford and the Township that the discussions were likely to result in a settlement.

14. With full knowledge of the Township officials involved in the discussions, Whitman Ford entered into a contract with Wal Mart to sell the property.

15. A comprehensive site plan was developed and reviewed by various Township officials involved in the discussions, providing for a landscaped buffer of more than 200 feet between the proposed Wal Mart store and Indian Acres.

16. Again with full knowledge of the Township officials, Whitman Ford developed a traffic study and submitted the traffic study to the Monroe County Road Commission.

17. Upon information and belief, the proposed settlement was also reviewed and preliminarily approved by the Township Fire Chief.

18. Finally, counsel for the Township and Whitman Ford drafted and completed numerous revisions to a Consent Judgment.

19. Nonetheless, following a public hearing on the proposed Consent Judgment, the Township Board of Trustees rejected the proposed settlement.

20. The Prior Lawsuit proceeded to a bench trial commencing on January 2, 2007, continuing on various days until January 24, 2007.

21. The Township proffered two planning experts for deposition and trial testimony in the Prior Lawsuit – Julie Johnston (the Township’s regular planning consultant at the time) and Paul LeBlanc (retained as a testifying expert).

22. Both Ms. Johnston and Mr. LeBlanc opined that it was inappropriate to have C-3 zoning immediately adjacent to an existing single-family residential subdivision.

23. Both Ms. Johnston and Mr. LeBlanc further opined, however, that principles of sound planning and zoning would allow commercial uses – even “big box” retail stores – in the vicinity of existing single-family residential, provided that there was adequate buffering and/or transitional zoning.

24. When specifically asked what sort of transitional zoning would be appropriate for the Property in order to provide buffering for a “big box” store, Mr. LeBlanc identified the professional business office, elderly housing, and multi-family residential as appropriate transitional zoning districts.

25. When preparing the 2008 Rezoning Request, Whitman Ford took to heart Mr. LeBlanc’s and Ms. Johnston’s testimony. Specifically, in accordance with the Township’s expert’s concerns regarding the proximity of C-3 zoning to Indian Acres, the 2008 Rezoning Request sought to limit the most intensive C-3 zoning on Parcels 4 and 5, both of which front on Lewis Avenue. The proposed C-3 zones extend no more than 400 feet into the Property, ending approximately 900 feet from Indian Acres. By contrast, the existing C-3 zone, on which the dealership sits, is approximately 600 feet from Indian Acres. Thus, the 2008 rezoning request

did not seek to extend C-3 zoning any closer to Indian Acres than had already been in existence for more than 30 years.

26. Whitman Ford also took to heart Mr. LeBlanc's testimony regarding transitional zoning. Specifically, the zoning designations identified by Mr. LeBlanc – the Township's retained planning expert – as appropriate transitional zones are the same ones Whitman Ford requested to be adjacent to Indian Acres in the 2008 Rezoning Request: PBO (professional business office) on Parcel 1, RM-2 (multi-family) on Parcel 2, and RME (elderly housing) on Parcel 3.

27. Whitman Ford also responded to statements of Township officials in determining the depth of the transitional zones on Parcels 1, 2, and 3. In the course of the 2003 rezoning requests, one Township official had suggested that any commercial development be constructed at least 200 feet from Indian Acres.

28. In the course of negotiating the site plan for the aborted settlement of the Prior Lawsuit, Whitman Ford proposed (with no objection from Township officials until the Board rejected the settlement *in toto*) that the nearest commercial development be 208 feet from Indian Acres.

Input From Township Planning Staff and Consultant

29. When Whitman Ford initially sought input from the Township Planning Department on the 2008 Rezoning Request, the Township Planning Director and current planning consultant, Adam Young of Wade Trim, advised that the transitional residential zones proposed (approximately 250 feet at the time) were too narrow, and suggested that these zones be extended. Whitman Ford complied with this suggestion.

30. The Township planners also suggested that Whitman Ford's proposal to rezone a parcel on Sterns Road from C-2 to C-3 was problematic, given its proximity to Indian Acres and

the existence of single family residential housing across Sterns Road. Again, Whitman Ford complied with the Township's experts' suggestions, and removed the requested rezoning from its application.

31. As submitted, the transitional residential zones requested by Whitman Ford on Parcels 2 and 3 extend to approximately 288 feet from Indian Acres. Given the Township's building setback and site planning requirements and the likelihood that a road would need to be constructed to provide access to the new residential zones, any commercial building would thus be at least 350 feet from Indian Acres, and likely more than 400 feet from Indian Acres – with transitional zoning in between.

32. The transitional professional business office zone requested by Whitman Ford on Parcel 1 extends approximately 536 feet from Indian Acres; in fact, Whitman Ford's requested rezoning on Parcel 1 actually *increased* the distance between Indian Acres and the existing commercial zoning.

The Township's Master Plan

33. Whitman Ford also took into consideration the Township's Master Plan in structuring the 2008 Rezoning Request.

34. The Master Plan's Future Land Use Map denotes a jagged north-south line running approximately through the middle of the Property.

35. To the east of the line the Property is designated as "Local Commercial" – the only commercial designation included in the Township's Master Plan.

36. To the west of the line the Property is designated as "Mixed Residential/Office/Commercial."

37. As admitted by Mr. LeBlanc in testimony during the Prior Lawsuit, the Township has no zoning classification that, by itself, comports with the “Mixed Residential/Office/Commercial” Future Land Use designation.

38. Accordingly, the only means by which Whitman Ford could seek zoning that comports with the Master Plan would be either through a planned unit development or through a variety of zoning requests encompassing residential, office and commercial uses.

The Township’s Planning Consultant Recommends Approval

39. The 2008 Rezoning Request was reviewed by Adam Young of Wade Trim, the Township’s regular planning consultant.

40. By letter dated August 13, 2008, Mr. Young conveyed his review and recommendations to the Township Planning Commission.

41. Mr. Young’s letter stated Wade Trim’s recommendation that the Planning Commission recommend approval of the rezoning request.

42. As grounds for his recommendation, Mr. Young stated that “[t]he proposed rezoning would provide an effective land use transition from the existing single-family residential subdivision to the west to the more intensive commercial portions of the site along Lewis Avenue.”

43. Mr. Young also opined that “[t]he proposed rezoning is generally consistent with the Future Land Use Map of the Master Plan. . . . Although no future land use designation in the Township specifically encourages ‘general commercial’ uses that cater to a more regional market, the proposed C-3 District portion of the subject site is appropriately buffered from adjacent residential uses and is strategically located along Lewis Avenue, a major Township thoroughfare.”

DYKEMA GOSSETT & ASSOCIATES, P.C. PROFESSIONAL LIMITED LIABILITY COMPANY 4733 SOUTH STATE STREET, SUITE 400 ANN ARBOR, MICHIGAN 48104

44. Mr. Young also stated that “[t]he proposed rezoning request is generally consistent with the surrounding zoning and land uses found in the vicinity of the subject site, as an appropriate land use transition is employed along the adjacent single-family residential properties and as a variety of commercial lands are currently found along the east side of Lewis Avenue and at the corner of Lewis/Sterns.”

45. Finally, Mr. Young opined that “[t]he rezoning of the subject site would allow for a planned and compact mixed use residential, office, and commercial development at a strategic location, representing an improvement to the vicinity and Township as a whole.”

46. A true and correct copy of Mr. Young’s August 13, 2008 letter is attached hereto as Exhibit 2.

The Planning Commission Recommends Approval of Parcels 1-5, and Denial of Parcel 6

47. The Township Planning Commission considered the rezoning request on September 10, 2008.

48. Following a lengthy public hearing, the Planning Commission recommended approval of the rezoning of Parcels 1 through 5.

49. For each of Parcels 1 and 2, the Planning Commission’s stated basis for its recommendation of approval was that the proposed rezoning was “consistent with the Master Plan and is a portion of a buffer.”

50. For Parcel 3, the Planning Commission’s stated basis for its recommendation of approval was that the proposed rezoning was “in line and conforms with the Master Plan for appropriate land use and provides a buffer.”

51. For Parcel 4, the Planning Commission’s stated basis for its recommendation of approval was that the proposed rezoning “fits with the Master Plan in an area that is already commercially zoned.”

52. For Parcel 5, the Planning Commission's stated basis for its recommendation of approval was that the proposed rezoning "fits with the Master Plan in an area that is adjacent to and across from a C-3 zoning."

53. For Parcel 6, the Planning Commission's stated basis for its recommendation of denial was that the proposed rezoning "does not totally conform with the Master Plan and it would be too close and intense to the RME and RM-2 residential areas."

54. A true and correct copy of the September 10, 2008 minutes of the Bedford Township Planning Commission are attached hereto as Exhibit 3.

The Monroe County Planning Staff Recommends Approval of All Parcels

55. The Monroe County Planning Staff issued its review of the 2008 rezoning request in a memorandum dated October 1, 2008. Noting that it could be argued that the proposed rezoning "taken together . . . accomplishes exactly what is intended by the" Township's Future Land Use Map, and that the "rezoning request, when taken as a whole, provides a reasonable solution for this property," the County Planning Staff recommended that the Monroe County Planning Commission recommend approval of the request in its entirety.

56. In support of its recommendation, the County Planning Staff found that the proposed rezoning was "[g]enerally compatible with surrounding uses" and "[g]enerally consistent with [both the Township and County] future land use plans."

57. A true and correct copy of the Monroe County Planning Staff's Memorandum of October 1, 2008 is attached hereto as Exhibit 4.

The County Planning Commission Recommends Approval of All Parcels

58. On October 8, 2008, the Monroe County Planning Commission recommended approval of the 2008 Rezoning Request.

59. In his cover letter to the Township Clerk dated October 9, 2008 enclosing the County Planning Commission's recommendation and the County Planning Department staff's memorandum, Royce Maniko, the County Planning Director, noted that the "County Planning Commission believes the proposed revision **would** be consistent with sound planning and land use principles."

60. A true and correct copy of the Mr. Maniko's October 9, 2008 letter, and its enclosed Monroe County Planning Commission Zoning Amendment Form, is attached hereto as Exhibit 5.

The Township Board Approves Rezoning of Parcels 1-5, and Denies Parcel 6

61. The Township Board considered the 2008 rezoning application at its regular meeting on December 2, 2008.

62. As to Parcels 1, 2 and 3, the Board gave the following reasons for its approval of the rezoning:

[I]t was recommended for rezoning by the Bedford Township Planning Commission, the Bedford Township Planning Consultant, the Monroe County Planning Commission and the Monroe County Planning Department staff, and also for the reasons cited in the written report submitted by the Bedford Township Planning Consultant, and the reasons cited by the Bedford Township Planning Commission in its motion to recommend approval for the rezoning, and the reasons cited by the Monroe County Planning Commission in its recommendation for the rezoning, and the reasons cited by the Monroe County Planning Department in its written report recommending the rezoning, and in addition, because the rezoning is consistent with the master plan and provides a transition from single family residential zoning and uses on the west to commercial rezoning and uses on the east.

63. As to Parcels 4 and 5, the Board gave the following reasons for its approval of the rezoning:

[I]t was recommended for rezoning by the Bedford Township Planning Commission, the Bedford Township Planning Consultant, the Monroe County Planning Commission and the Monroe County Planning Department staff, and also for the reasons cited in the written report submitted by the Bedford Township

Planning Consultant, and the reasons cited by the Bedford Township Planning Commission in its motion to recommend approval for the rezoning, and the reasons cited by the Monroe County Planning Commission in its recommendation for the rezoning, and the reasons cited by the Monroe County Planning Department in its written report recommending the rezoning, and in addition, because the rezoning is consistent with the master plan and compatible with the neighboring commercially zoned and used parcels along Lewis Avenue.

64. As to Parcel 6, the Board gave the following reasons for its denial of the rezoning:

[I]t is inconsistent with the master plan which provides for residential use and possible mixed office or local business use and because more of a buffer and transition is needed between the residential zoning on the west to general commercial zoning and uses on the east. While it is recognized that the existing R-2A zoning classification does not provide the desired transition from residential uses to commercial uses, neither does the proposed C-2 zoning. Rezoning to a less intense transitional use would better fit this parcel.

65. Thus, the Board's action did not increase the amount of commercially-zoned property on the Property.

66. Further, while the Board's action did allow for more intensive commercial zoning on Parcels 4 and 5, the Board's action did not increase the amount of land available for the development of a "big box" retail store.

67. By denying the rezoning of Parcel 6, the Township Board disregarded the testimony of Mr. LeBlanc from the Prior Lawsuit.

68. By denying the rezoning of Parcel 6, the Township Board disregarded the testimony of Ms. Johnston from the Prior Lawsuit.

69. By denying the rezoning of Parcel 6, the Township Board disregarded the recommendation and written report of the Township Planning Consultant, despite having relied on the Township Planning Consultant's recommendation and written report in approving the rezoning of Parcels 1-5.

70. By denying the rezoning of Parcel 6, the Township Board disregarded the recommendation and written report of the Monroe County Planning Department staff, despite

having relied on the Monroe County Planning Department staff's recommendation and written report in approving the rezoning of Parcels 1-5.

71. By denying the rezoning of Parcel 6, the Township Board disregarded the recommendation of the Monroe County Planning Commission, despite having relied on the Monroe County Planning Commission's recommendation in approving the rezoning of Parcels 1-5.

72. A true and correct copy of the Township Board's minutes of December 2, 2008 is attached hereto as Exhibit 6.

The May 5, 2009 Referendum and "Administrative Rezoning" of Parcel 6

73. Apparently convinced that the Board's action in rezoning Parcels 1-5 would lead to the development of a Wal Mart store on the Property, shortly after the Board's action a group of residents began the process of petitioning for a referendum on the rezoning of Parcels 1-5.

74. The residents were able to obtain the requisite number of signatures on their petition, and a referendum to approve the rezoning of Parcels 1-5 was placed on the May 5, 2009 ballot.

75. In the interim, the Township Board – apparently recognizing that their action had resulted in an unreasonable land use pattern – authorized at its January 20, 2009 meeting an "administrative rezoning" of Parcel 6, from R2-A to PBO. At the meeting, Township officials commented that the Board would not act on the administrative rezoning until after the results of the May 5, 2009 referendum were known.

76. The administrative rezoning was heard by the Planning Commission at its February 25, 2009 meeting. A motion to approve the administrative rezoning failed.

77. On May 5, 2009, 6,129 residents voted on the referendum. Upon information and belief, this number represents significantly less than half of the Township's registered voters.

78. Upon information and belief, no one associated with the Township campaigned publicly to support the Board's action.

79. The referendum was defeated by a vote of 3,209-2,920, less than 300 votes.

80. Following the defeat of the referendum, at its May 12, 2009 meeting the Township Board withdrew the administrative rezoning of Parcel 6.

81. As a result of the referendum and the Board's subsequent withdrawal of the administrative rezoning, the Township, through either legislative action or referendum, has denied the entirety of the 2008 Rezoning Request.

82. The wholesale denial of the 2008 Rezoning Request is contrary to principles of sound planning and zoning.

83. The wholesale denial of the 2008 Rezoning Request is contrary to the testimony of Mr. LeBlanc from the Prior Lawsuit.

84. The wholesale denial of the 2008 Rezoning Request is contrary to the testimony of Ms. Johnston from the Prior Lawsuit.

85. The wholesale denial of the 2008 Rezoning Request is contrary to the Township's Master Plan.

86. The wholesale denial of the 2008 Rezoning Request is contrary to the recommendations of the Township planning consultant.

87. The wholesale denial of the 2008 Rezoning Request is contrary to the recommendations of the Township Planning Commission.

88. The wholesale denial of the 2008 Rezoning Request is contrary to the recommendations of the County Planning Department staff.

89. The wholesale denial of the 2008 Rezoning Request is contrary to the recommendations of the County Planning Commission.

90. The wholesale denial of the 2008 Rezoning Request is contrary to the findings of the Township Board.

91. Even prior to the referendum, the Township's denial of the rezoning on Parcel 6 left the western portion of the Property with no commercial zoning despite the Master Plan's designation of that area for Mixed Residential/Office/Commercial.

92. By denying the 2008 Rezoning Request in its entirety through referendum, the Township has left the western portion of the Property with no commercial or office zoning despite the Master Plan's designation of that area for Mixed Residential/Office/Commercial.

93. A "big box" retail store, such as a Wal Mart, is a permitted use in the Township's C-2 zoning district.

94. A "big box" retail store, such as a Wal Mart, is a permitted use in the Township's C-3 zoning district.

95. As found by the Township planning consultant, the Township Planning Commission, the Monroe County Planning Department staff, the Monroe County Planning Commission, and the Township Board, the C-3 zoning district comports with the Master Plan's "Local Commercial" designation.

96. The C-3 zoning district contemplates more intensive uses than those permitted in the C-2 zoning district.

The Township's Historical Arbitrary Treatment of the Property

97. Historically, the Township has engaged in a number of measures that, taken individually or as a whole, depict the Township's arbitrary treatment of the zoning of the

Property, all undertaken with the intent to deprive Whitman Ford from further development of the Property for commercial means.

98. The Township's unrelenting desire to stifle further commercial development of the Property runs directly contrary to the Township's long-held belief that the intersection of Lewis Avenue and Sterns Road is one of the few major commercial nodes in the Township. Indeed, this belief is reflected in the fact that Lewis Avenue, starting in front of the Property and extending several miles south into the City of Toledo, constitutes the only extended stretch of five-lane highway in the Township. The Township's arbitrary anti-commercial treatment of the Property is also belied by the fact that the Property is adjacent to and/or across the street from numerous commercial and/or quasi-commercial uses, including a bar, a bank, another car dealership, a utility substation, a commercial strip center, and the Whitman Center branch of Monroe Community College.

99. The Township's arbitrary treatment of the Property began in or about 2001. At the time, and indeed since at least 1992, the Township's official Zoning Map designated the entire vacant portion of the Property as C-2. Then and now, the C-2 zone is denominated as the "Shopping Center Business District," and includes "[a]ny retail business whose principal activity is the sale of merchandise in an enclosed building."

100. Consistent with the Zoning Map's designation, Whitman Ford had for several years been marketing the property for C-2 uses, including "big box" stores such as Wal Mart. Whitman Ford was not secretive about its plans; indeed, at the suggestion Township planning officials Whitman Ford hosted a dinner for interested neighbors at which Jon Whitman, Whitman Ford's President, explained his plans to expand the dealership and sell the remaining vacant land to Wal Mart.

101. Several people who reside in the general vicinity of the Property thereafter began a coordinated effort to frustrate Whitman Ford's efforts to market the Property and exact retribution against Whitman Ford for attempting to market the Property according to its designation on the Township's Official Zoning Map.

102. Whitman Ford has been boycotted on three separate occasions. Realty signs on the Property have been defaced. Jon Whitman has been decried in letters to the editor, websites, blogs, and public meetings as a greedy individual who cares nothing for the Bedford community, despite his and his family's longstanding involvement in the community and extensive charitable giving to various community causes.

103. On June 6, 2001 -- in what would prove to be the first of a series of actions negatively impacting Whitman Ford -- Bedford Township advised that certain portions of the Property allegedly were not zoned "C-2." A June 6, 2001 letter to Whitman Ford from Dennis Jenkins, the Township Planning Director, acknowledged that the Official Zoning Map designated the entire Property as being zoned "C-2," but stated that "[a]pparently when the [zoning] map was updated sometime in the 90's an error was made and the area of C-2 zoning was erroneously extended to the entire parcel."

104. In September 2001, Mr. Jenkins revised the Township's official Zoning Map to correct this alleged inaccuracy, and to designate certain portions of the Property as being zoned "R-2A-Single Family Residential."

105. As was determined by the Monroe County Circuit Court in the Prior Lawsuit, Mr. Jenkins' revision of the Zoning Map was undertaken in violation of the law.

106. The Township's next efforts to frustrate any further commercial development of the Property came in the form of a revised Master Plan. Since at least 1997, the Property was

designated by the Township's Future Land Use map for "Non-Center Commercial" use. According to the Township's then-existing Master Plan, "Non-Center Commercial areas are designated to recognize new uses which do not require or benefit from a location within a planned shopping area. Typical uses include auto dealers, garden stores, building materials sales, and similar uses which require a more expansive land area."

107. The Township revised its Master Plan in or about 2002, and "visioning sessions" inviting public comment were held in or about 2001, around the same time that Whitman Ford made known its intention to sell a portion of the Property to Wal Mart.

108. When the Master Plan was amended in 2002, the Future Land Use map – which had previously designated the entire Property as "Non-Center Commercial" – now designated the Property for "Parks and Recreation."

109. In the Prior Lawsuit, both Ms. Johnston and Mr. LeBlanc testified that a "Parks and Recreation" designation for the Property was not appropriate.

110. Nonetheless, the Township made no effort to change the "Parks and Recreation" designation of the Property. Indeed, when Whitman Ford submitted the first of its rezoning applications in 2003, the Property was still designated for "Parks and Recreation" on the Future Land Use Map.

111. The Township did not revise the Future Land Use Map to reflect the current designation of the Property until approximately 18 months after the Township first designated the Property for "Parks and Recreation."

112. In a further effort to curb any additional commercial development of the Property, the revised Master Plan sought to drastically reduce the potential for any significant commercial development in the Township.

113. Whereas the Master Plan had previously included designations for a variety of commercial uses, including “Neighborhood Commercial,” “Community Center Commercial” and “Non-Center Commercial,” the only stand-alone commercial designation in the current revised Master Plan is for “Local Commercial,” which the Master Plan purports to restrict to 5,000 gross square feet for individual businesses and 10,000 gross square feet for multi-tenant buildings. If applied strictly, this notation serves the Township’s intent to limit future commercial development within the Township to extremely small-scale establishments: *All* of the Township’s commercial zoning districts allow buildings greater than 5,000 square feet (provided that the property in question has sufficient acreage), and thus a strict application of this provision would mean that no property of any significant size (including the Whitman Ford Property, which easily constitutes the largest undeveloped commercially designated property in the Township) could be rezoned to any of the Township’s commercial zoning districts.

114. The Township’s arbitrary treatment of the Property is further evidenced by the settlement discussions that occurred in connection with the Prior Lawsuit. Based on those discussions, and with full knowledge of various Township officials, Whitman Ford spent tens of thousands of dollars in negotiating a purchase agreement with Wal Mart, drafting a consent judgment, and commissioning a traffic study. And yet, at the slightest indication of community disapproval, the Township Board – including various officials who had participated directly in the settlement discussions – voted to reject the proposed settlement.

115. The Township Board’s denial of the rezoning of Parcel 6 and its subsequent aborted effort to “administratively rezone” Parcel 6 to PBO is further evidence of the Township’s arbitrary and capricious approach to the Property. Although the Master Plan plainly designates this portion of the Property for some form of commercial use, no commercial use whatsoever

would be permitted under either (a) the PBO designation proposed in the administrative rezoning, or (b) the single-family residential zoning that remained in effect following the Township's denial. Thus, while the Township purported to deny the proposed rezoning of Parcel 6 because it did not "comport with the Master Plan," in fact it is the existing zoning – which has no commercial component – that does not comport with the Master Plan.

116. Upon information and belief, the Township has never, since the Zoning Map was first adopted in 1977, undertaken an administrative rezoning of any other privately-owned property.

117. The Township's indifference to principles of sound zoning and planning is further exhibited by the actions of Township officials in response to the May 5, 2009 referendum. Although denial of the referendum would (a) return the Property to a zoning designation that wholly failed to comport with the Master Plan; and (b) run directly contrary to the opinions and/or recommendations of every planner, commission, or board that had offered an opinion on the appropriate zoning for the Property, upon information and belief no Township official, elected or otherwise, publicly campaigned for passage of the referendum.

118. The denial of the 2008 Rezoning Request was arbitrary, illegitimate, and/or without substance and factual support.

119. The denial of the 2008 Rezoning Request constitutes an arbitrary, capricious and unfounded refusal to permit a legitimate land use on the Property and an unreasonable exercise of the Township's police power.

120. No reasonable governmental interest is advanced by the denial of the 2008 Rezoning Request.

121. The denial of the 2008 Rezoning Request does not substantially advance a legitimate state interest.

122. The denial of the 2008 Rezoning Request bears no substantial relationship to the public health, safety, morals or general welfare.

123. Contrary to the Township's determination, the 2008 Rezoning Request was and is compatible with neighboring land uses and appropriate for the nature and character of the Property and the surrounding lands.

124. For the reasons described above and in the reports and other information given to the Township during the course of the rezoning proceedings, the 2008 Rezoning Request would permit an appropriate and reasonable use of the Property.

COUNT I

(Declaratory Relief; Violation of Law)

125. Whitman Ford incorporates by reference as if fully set forth herein each of the preceding allegations of this Complaint.

126. In acting upon the 2008 Rezoning Request, Bedford Township was subject to the duties, limitations, liabilities, and restrictions imposed by law, including, but not limited to, Michigan's Zoning Enabling Act, MCL 125.3101 et seq.

127. For the reasons described above and in the reports presented to Bedford Township, the denial of the 2008 Rezoning Request was not based on the requirements and standards of the Zoning Ordinance, and were otherwise without basis and an unreasonable, arbitrary and capricious exercise of the police power and exclusion of legitimate land uses from the Property.

128. The present alleged zoning of the Property is inappropriate, illegal and unreasonable because it is not economically feasible or reasonable to develop the majority of the

Property for residential use considering, among other things: the size and shape of the Property, the location of the Property and the nature of surrounding land uses.

129. Bedford Township denied the rezoning request without reasonable explanation or factual justification, and there is no reasonable basis for maintaining the current zoning of the Property.

130. For the reasons stated in this Complaint, Whitman Ford is entitled to a declaration that the denial of the 2008 Rezoning Request was unreasonable, arbitrary and capricious, and an Order enjoining the Township from interfering with the development and use of the Property according to the uses proposed in the 2008 Rezoning Request.

COUNT II

(Violation of Due Process of Law)

131. Whitman Ford incorporates by reference as if fully set forth herein each of the preceding allegations of this Complaint.

132. The denial of Whitman Ford's Rezoning Applications constitutes a purely arbitrary, capricious and unfounded exclusion of a legitimate land use from the Property.

133. The denial of Whitman Ford's Rezoning Applications does not advance a reasonable governmental interest.

134. The denial of Whitman Ford's Rezoning Applications has denied it substantive due process of law, in violation of the Michigan Constitution of 1963.

135. The denial of Whitman Ford's right to substantive due process of law has caused it to incur irreparable injury, and threatens Plaintiff with future irreparable injury, for which there is no adequate remedy at law.

COUNT III

(Exclusionary Zoning)

136. Whitman Ford incorporates by reference as if fully set forth herein each of the preceding allegations of this Complaint.

137. Defendant's Zoning Ordinance and Master Plan, and the denial of the 2008 Rezoning Request, are designed to have and do have the practical effect of excluding additional commercial uses from Bedford Township in general (and from the Property in particular), in violation of constitutional, statutory and common law prohibitions against exclusionary zoning.

138. Bedford Township's exclusionary zoning has caused Whitman Ford to incur irreparable injury, and threatens it with future irreparable injury, for which there is no adequate remedy at law.

COUNT IV

(Equal Protection)

139. Whitman Ford incorporates by reference as if fully set forth herein each of the preceding allegations of this Complaint.

140. Although Bedford Township has denied the 2008 Rezoning Request, it has approved other proposed rezoning requests that comport with the Master Plan, are compatible with surrounding land uses, and otherwise embody principles of sound planning and zoning.

141. No reasonable factual or other distinction or circumstances exist to treat the 2008 Rezoning Request any differently. Moreover, a logical and unbiased analysis of the underlying facts in light of applicable land use and zoning principles, demonstrates that the zoning districts proposed in the 2008 Rezoning Request would be the most logical and appropriate choice for zoning of the Property. The Township, by refusal of the Board to rezone Parcel 6 and by referendum rejecting the rezoning of Parcels 1-5, has apparently concocted a different and/or

new interpretation of its ordinances and policies for the sole purpose of preventing Whitman Ford from developing its property for reasonable uses.

142. Defendant's refusal to rezone the Property as requested by Whitman Ford involves the selective and discriminatory enforcement and/or lack thereof of state and local laws, ordinances, plans and procedures in violation of Article I, §2 of the Michigan Constitution.

WHEREFORE, Whitman Ford respectfully requests judgment as follows:

- a. That the Court determine, declare and adjudge that Bedford Township's refusal to rezone the Property in accordance with the 2008 Rezoning Request constitutes an arbitrary, capricious and unreasonable exclusion of a legitimate land use, and/or bore no reasonable relationship to a legitimate governmental objective.
- b. That the Court determine, declare and adjudge that Bedford Township's actions constitute exclusionary zoning and/or a violation of federal, state and local laws, ordinances and practices and a violation of Whitman Ford's constitutional rights.
- c. That the Court issue an injunction preventing Bedford Township from interfering with Whitman Ford's proposed use of the Property for uses consistent with the 2008 Rezoning Request.
- d. That the Court award Whitman Ford such further or different relief as may be deemed just or appropriate, including costs and attorney fees.

Respectfully submitted,

DYKEMA GOSSETT PLLC

By: _____
 Thomas M. Hanson (P62725)
 Attorneys for Plaintiff
 2723 South State Street, Suite 400
 Ann Arbor, MI 48104
 (734) 214-7668

Date: July 2, 2009