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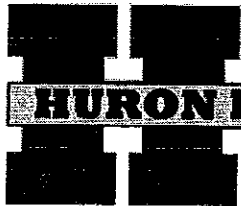
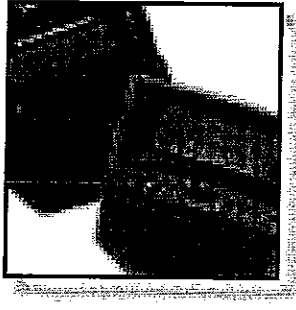
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# **Whitman Ford v. Township of Bedford**

Deponent: Adam Young

Taken: 6/14/2010



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Adam Young  
June 14, 2010

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MONROE

-----  
WHITMAN FORD, a Michigan  
corporation,  
  
Plaintiff,

-vs-

Case No. 09-027523-CH

TOWNSHIP OF BEDFORD, a  
municipal corporation,  
  
Defendant.

-----/  
The Deposition of ADAM YOUNG, taken pursuant to  
Notice in the above-entitled cause, at 222 Washington Street,  
Monroe, Michigan, on Monday, June 14, 2010, commencing at or  
about 10:45 a.m., before Diane Bennett-Siecinski, CSR-4019,  
RPR, a Notary Public in and for the County of Livingston,  
acting in the County of Monroe.

APPEARANCES:

DYKEMA GOSSETT, PLLC  
By: Mr. Thomas M. Hanson (P62725)  
1717 Main Street  
Suite 4000  
Dallas, Texas 75201

Appearing on behalf of the Plaintiff.

LENNARD GRAHAM & GOLDSMITH, PLC  
By: Mr. Philip D. Goldsmith (P37650)  
222 Washington Street  
Monroe, Michigan 48161

Appearing on behalf of the Defendant.  
  
- - -

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1 ALSO PRESENT:

2 Jon Whitman.

3 - - -  
4 I N D E X

5 Examinations

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6 MR. HANSON

3

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Adam Young  
June 14, 2010

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Monroe, Michigan

Monday, June 14, 2010

At about 10:45 a.m.

- - -

A D A M   Y O U N G ,

called as a witness by the Plaintiff, being first duly sworn,  
was examined and testified as follows:

- - -

EXAMINATION

BY MR. HANSON:

Q     Mr. Young, can you state your name for the record, please?

A     Adam Young.

Q     My name is Tom Hanson. I'm representing the Plaintiff,  
Whitman Ford, in this matter. We met before the deposition.

Have you ever had your deposition taken before?

A     This is my first time.

Q     Okay. I'm going to give you a few ground rules then.

MR. HANSON: And I'll just state for the  
record this is the deposition of Adam Young. It's being  
taken pursuant to notice for all purposes consistent with the  
Michigan Court Rules.

BY MR. HANSON:

Q     You understand you're under oath just like you were sitting  
in a courtroom with the judge next to you?

A     Yes.

1 Q Okay. The court reporter here is transcribing everything  
2 that we say. For that reason, it's important that you answer  
3 my questions verbally with a "yes" or a "no" as opposed to a  
4 shrug or a shake of the head.

5 Do you understand that?

6 A Yes.

7 Q The same thing, let's try not to talk over each other. Even  
8 if you anticipate what my question's going to be and want to  
9 get the answer out, wait for me to finish my question. I'll  
10 try to do the same thing. If you're answering something,  
11 I'll try to make sure that you are done before I ask my next  
12 question; is that fair?

13 A Yes.

14 Q Okay. If you don't understand a question, let me know that.  
15 I'll try and rephrase it. If you do answer a question, I'll  
16 presume you've understood it; okay?

17 A Okay.

18 Q Mr. Goldsmith will, at times, perhaps interpose objections to  
19 the question. I'm still entitled to get an answer  
20 notwithstanding his objections. The only time is if he  
21 specifically instructs you not to answer a question, then you  
22 can obey that instruction. But his objections don't mean  
23 that you don't have to give an answer.

24 Do you understand that?

25 A I understand.

1 Q Okay. You're in charge of the breaks today. If you need to  
2 take a break, let us know. The only caveat to that is you're  
3 not entitled to take a break to talk to Mr. Goldsmith while a  
4 question is pending; okay?

5 A Okay.

6 Q Have you got any illnesses, taking any medications, anything  
7 like that that would prevent you from giving your best  
8 testimony today?

9 A No.

10 Q And a pro forma question, don't mean anything by it, but have  
11 you ever been convicted of a crime involving dishonesty?

12 A No.

13 Q What's your educational history?

14 A Where do you want to start?

15 Q Let's start with, well, you're a high school graduate, I take  
16 it?

17 A Yes.

18 Q Where from?

19 A Valley Lutheran High School, Saginaw, Michigan.

20 Q And then where did you go after Valley Lutheran?

21 A Calvin College, Grand Rapids, Michigan.

22 Q Did you get a four-year degree there?

23 A Yes.

24 Q What's that in?

25 A Geography.

1 Q Anything else after Calvin College?

2 A No.

3 Q So you got, is that a BA?

4 A BA.

5 Q All right. How long -- well, let's start from today and work  
6 backwards. What year did you graduate from Calvin College?

7 A 2000.

8 Q All right. So, good, we don't have that far to cover.

9 From the 2000 time working backwards, what's been  
10 your employment history?

11 A Wade Trim Associates.

12 Q That's your current employer?

13 A Correct.

14 Q And you started working for them, that was your first job out  
15 of college?

16 A June, 2000.

17 Q What was your position at Wade Trim when you first started?

18 A Planner.

19 Q Did you need any special certifications or licenses to hold  
20 that job?

21 A No.

22 Q How about today, what's your job title?

23 A Professional planner.

24 Q And when did you go -- well, any steps in between planner to  
25 professional planner?



1 A Within our company, there are different, I guess, classes.

2 Q Okay. And you worked your way up that chain; is that fair to  
3 say?

4 A Yes.

5 Q What and when did you become something other than a planner?

6 A Professional planner would be 2005.

7 Q So did you have any other titles between 2000 and 2005?

8 A No.

9 Q What is the difference between planner and professional  
10 planner?

11 A In 2005, I took and passed the American Institute of  
12 Certified Planners exam.

13 Q And upon taking that exam, does that give you a particular  
14 certification?

15 A Through the American Institute of Certified Planners.

16 Q And is that automatic, then, when you obtained your AICP  
17 certification, do you automatically become a professional  
18 planner at Wade Trim?

19 A Yes.

20 Q Does the job description change from planner to professional  
21 planner?

22 A Yes.

23 Q How so?

24 A We're given more responsibility in that role and, in some  
25 cases, that might mean that I would be able to be a project

1 manager.

2 Q What's a project manager do?

3 A One where I would be the main point of contact between the  
4 client and our company.

5 Q Let me ask, in the ten years you've been at Wade Trim, have  
6 you had both public and private clients?

7 A Yes.

8 Q Is there a breakdown? Is it fifty/fifty? Is it mostly  
9 public or private?

10 A Mostly public.

11 Q And mostly like, a rough estimate, 75 percent or more, you  
12 know, 95 percent or more?

13 A 90 percent or more public.

14 Q And is that just you or is that kind of Wade Trim's business  
15 model, at least in the office that you work out of?

16 A Wade Trim mostly represents public clients.

17 Q Are you currently the project manager for Bedford Township?

18 A I am.

19 Q How long have you held that role?

20 A Since the leaving of my predecessor, which would have been I  
21 believe summer of 2000 -- I'm sorry -- summer of 2008.

22 Q And that was Julie Johnston?

23 A Correct.

24 Q Are you a project manager for any other communities right  
25 now?

1 A Yes.

2 Q What are some of those? Give me the names.

3 A Let me say that there's, within Wade Trim, the project  
4 manager would be simply managing a project, and there's also  
5 -- and that would be project specific -- and there is also  
6 one where we would have an ongoing relationship, such as what  
7 we have in Bedford Township right now, where throughout the  
8 course of time, a year's span, two years' span, we would do  
9 various projects.

10 Would you like to know who I represent in that  
11 respect?

12 Q Let me see if I can just to make sure that I'm clear.

13 When you talk about specific projects, that might  
14 be, for instance, updating a Master Plan or something like  
15 that?

16 A Correct.

17 Q Or undertaking a specific planning type of, you know, an  
18 overlay district or something along those lines?

19 Is that what you're talking about?

20 A Correct.

21 Q Okay. So that's distinct. There's project managers who  
22 serve as regular planning consultants for a community and  
23 then there's project managers that might be dealing with a  
24 specific request from a specific community; is that fair?

25 A Yes.

1 Q All right. And let's start with the first one, the one where  
2 you would be effectively the on-retainer planning consultant  
3 for a municipality.

4 What are some of the communities other than  
5 Bedford that you do that for?

6 A Ash Township, which is in Monroe County; Summerfield  
7 Township, which is in Monroe County; Arcadia Township, Lapeer  
8 County.

9 Q Any others?

10 A At present?

11 Q Yes.

12 A No.

13 Q How about in the past?

14 A City of Southgate, in Wayne County; City of Riverview, in  
15 Wayne County; and Antwerp Township, in Van Buren County.

16 Q Any others?

17 A Not that I recall.

18 Q How about the second half of project management, specific  
19 projects, what are some of the communities and projects that  
20 you've worked on?

21 A Many.

22 Q Okay. How about in 2010, are you working on any specific  
23 projects for communities right now?

24 A Yes.

25 Q Just give me a sense of what those might be.

1 A Right now I'm working on a zoning ordinance, development of a  
2 new zoning ordinance for Garfield Township in Bay County.

3 Q Okay.

4 A I'm working with the City of Marine City.

5 Q Where is that? What county?

6 A Sanilac County.

7 Q And what's that project?

8 A That is a TIFA, Tax Increment Finance Authority, update to  
9 their development and TIFA plan.

10 Q Any others currently?

11 A Yes. Davison Township, in Genesee County.

12 Q What are you doing for Davison?

13 A Working on a character study and pattern book for their  
14 downtown development authority.

15 Q Any others currently?

16 A Not that I can think of.

17 Q Have you had any of those specific projects that you've  
18 worked on for Bedford Township?

19 A Can you be more specific on what you mean by those projects?

20 Q Well, I'm thinking of a project, the kind of retained  
21 planning consultant versus a project that's more specific to  
22 a township or more specific to a, you know, a focused task.

23 Have you had any of those, of the latter, of the  
24 specific projects for Bedford Township? I'll give you an  
25 example.

1 I know that Bedford Township updated their Master  
2 Plan in 2002 and that Wade Trim was involved in that.

3 Did you work on that project?

4 A No.

5 Q Okay. Any other, I mean, zoning ordinance amendments? I  
6 know that there was some design guidelines or design  
7 ordinances that were passed and were repealed and have been  
8 proposed again.

9 Have you worked on any of those projects for  
10 Bedford?

11 A Yes.

12 Q Okay. What are those sorts of projects?

13 A I assisted Miss Johnson, at the time, in the development of  
14 that overlay district in the township zoning ordinance for  
15 the community of Temperance. I assisted in the development  
16 of design guidelines for Temperance. I assisted in the  
17 update of socioeconomic land use, transportation information,  
18 to the currently-adopted Master Plan.

19 Q I'm sorry. You said socioeconomic land use and what else?

20 A Transportation.

21 Q When was that done?

22 A I want to say 2005, 2006.

23 Q Any others in Bedford?

24 A Not that I recall.

25 Q Were you requested -- we talked a little bit about the design

1 guidelines and -- well, are you aware that the -- I'll just  
2 step back.

3 Are you aware of any level of the Township having  
4 recently considered whether new design guidelines should be  
5 implemented?

6 A No.

7 Q Okay. Are you aware of any citizens groups proposing that  
8 such guidelines be implemented?

9 A I would like you to clarify what you mean by guidelines.  
10 What type of guidelines?

11 Q Well, size limitations particularly.

12 A Yes. I'm aware of a citizen group proposing size limitation  
13 guidelines.

14 Q Okay. Were you consulted by the Township with respect to  
15 what the Township should do with that proposal?

16 A Yes.

17 Q Do you recall when that was?

18 A I believe earlier this year.

19 Q And did you produce any reports or any memos or letters or  
20 anything like that to the Township?

21 A Yes.

22 Q What did you recommend?

23 A There were various components of that proposal. In the end,  
24 I recommended that the Township not adopt the amendments as  
25 presented by that group that developed them but that if they

1 wanted to pursue further, with adopting amendments of a  
2 similar nature, that they should undergo further study.

3 Q Did the Township go back to you and request further study?

4 A No.

5 Q As far as you know, has the Township done any further study  
6 on that issue?

7 A I'm not aware.

8 Q Prior to you becoming the project manager for Bedford  
9 Township on the ongoing consulting work when Julie Johnston  
10 left, had you assisted Miss Johnston in her role as project  
11 manager for Bedford?

12 A Yes.

13 Q Okay. And it's probably a hard question, but I'm just trying  
14 to get a sense of what would your job duties have been as  
15 Julie Johnston's assistant in that role?

16 A For example, if she would review a site plan or rezoning  
17 application for another development proposal, sometimes she  
18 would have me do the background research, maybe conduct the  
19 field survey for that particular proposal, possibly even  
20 write a draft letter for her review.

21 Q Did you provide any of those services with regard to the  
22 rezoning applications that were submitted by Whitman Ford  
23 back in I believe it was 2002 and '03 on the property on  
24 Lewis and Sterns?

25 A I recall having done some level of a field survey.



1 Q What's a field survey? What does that mean?

2 A To inspect, and what we do is take a map, maybe an aerial  
3 photograph, and simply record what are the existing land uses  
4 and businesses and other facilities within the vicinity of  
5 that proposal.

6 Q Okay. Anything else that you would have done on those prior  
7 rezoning applications?

8 A I do not believe so.

9 Q You didn't draft any of the letters?

10 A No.

11 Q Other than your AICP certification, are there any other  
12 certifications or licenses that you hold?

13 A No.

14 Q And I'm speaking broadly not just in the planning field, but  
15 in general?

16 A No.

17 Q Have you ever been retained as an expert witness?

18 A No.

19 Q I assume, as part of your regular job function, you attend  
20 various planning seminars or workshops; is that true?

21 A Yes.

22 Q How frequently?

23 A We have continuing education requirements for our  
24 certification through the American Institute of Certified  
25 Planners, AICP.

1 Q How many hours do you have to do a year?

2 A We are required, every two years, thirty credits, I believe  
3 thirty, maybe thirty-two.

4 Q Have you ever heard of Paul LeBlanc?

5 A I have.

6 Q Have you ever attended any seminars where he spoke or put on  
7 by his firm?

8 A It's likely that I have.

9 Q He's a pretty well-known guy in the planning community in  
10 Michigan; is that fair to say?

11 A Yes.

12 Q A pretty frequent speaker and lecturer on planning issues?

13 A Yes.

14 Q What would be your opinion of Mr. LeBlanc as an authority on  
15 planning issues in Michigan?

16 MR. GOLDSMITH: Objection. Relevance.

17 A He's respected in Michigan.

18 BY MR. HANSON:

19 Q I take that to mean he would be regarded as relatively  
20 authoritative?

21 A Yes.

22 Q As either part of your duties or Wade Trim in general, does  
23 your firm also put on seminars?

24 A Yes.

25 Q Do you do workshops? And I'm going from my own personal

1 experience, do you do workshops for your clients,  
2 newly-elected either planning commissioners, ZBA, or board  
3 members?

4 A Yes.

5 Q In fact, do you guys have a fairly common new-officials  
6 seminar that you would give for one of your clients?

7 A We certainly have a template that we've developed and  
8 facilitated in the past that we would use as the basis for a  
9 seminar or workshop if we were called to do so by a client.

10 Q Have you ever given any of those types of seminars for  
11 Bedford Township?

12 A No.

13 Q Who's your primary contact with Bedford Township?

14 A Dennis Jenkins.

15 Q How frequently do you interact with Dennis?

16 A Phone communications, once every other month. That's an  
17 average as the last year or two.

18 Q Would that be, would that cover pretty much the time that  
19 you've been the project manager for Bedford?

20 A Yes.

21 Q Does that interaction, I would imagine, necessarily depend on  
22 the amount of activity going on in their Planning Department?

23 A Correct.

24 Q Based on the fact that you're interacting with them once  
25 every couple of months, not a lot of planning activity going

1 on in Bedford right now?

2 A Correct.

3 Q What other Wade Trim employees have worked with Bedford  
4 Township in any role in the time that you've been involved  
5 with Bedford?

6 A Since my time at Wade Trim?

7 Q Yes.

8 A Would you like names?

9 Q Sure.

10 A I know Dave Anthony, who was a planner and landscape  
11 architect. I believe he was involved with Bedford prior to  
12 Julie Johnston.

13 Q Do you think he was the project manager before Julie?

14 A I don't know that for sure.

15 Q Okay. Anything else that Mr. Anthony has done with Bedford?

16 A I don't recall specifically. I believe nothing since the  
17 time that Julie took over as the manager of Bedford Township.

18 Q Did that occur while you were at Wade Trim?

19 A I believe it did.

20 Q Can you give me a rough idea of the year?

21 A Very early on in my starting at Wade Trim. Probably 2000,  
22 2001, 2002.

23 Q Any other employees?

24 A That are still current Wade Trim employees or current and  
25 former?

Adam Young  
June 14, 2010

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1 Q Let me step back. Is Mr. Anthony still employed by Wade  
2 Trim?  
3 A Yes.  
4 Q Still in the same office?  
5 A No.  
6 Q What office is he out of; do you know?  
7 A Cleveland office.  
8 Q When did he leave; the same time period, that 2000, 2002?  
9 A No. About mid 2000's, maybe 2005.  
10 Q Any other current or former Wade Trim employees that have  
11 worked for Bedford Township?  
12 A A former employee. Would you like a name?  
13 Q Yes.  
14 A Zach Branigan. Zachary Branigan.  
15 Q And what did Mr. Branigan do for Bedford?  
16 A He would have been in a similar position as me, helping out  
17 and assisting Julie as needed on various planning and zoning  
18 tasks.  
19 Q When did he leave Wade Trim?  
20 A About 2007.  
21 Q With regard to the prior rezoning application on Whitman  
22 Ford, can you say who would have been more involved in  
23 assisting Miss Johnston; you or Mr. Branigan?  
24 A I don't really recall or know that. Either I or him would  
25 have had more or less of a role helping Julie.

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1 Q You talked about thinking that you had maybe participated in  
2 doing some field studies for that rezoning or those rezoning  
3 requests.

4 Do you recall anything specifically that  
5 Mr. Branigan might have done?

6 A No.

7 Q All right. Any other employees at Wade Trim that have worked  
8 with Bedford?

9 A Not that I would know specifically.

10 Q In the last couple years since you've been the project  
11 manager, have you had anybody assist you in anything that  
12 you've done for Bedford?

13 A No.

14 Q The workshop template that you talked about that Wade Trim  
15 has put together, what sort of topics are covered in that?

16 A A basic workshop would talk about the roles and  
17 responsibilities of the Zoning Administrator or Building  
18 Official, Board Of Zoning Appeals, Planning Commission,  
19 Township Board.

20 It would also cover general issues related to  
21 master planning, zoning, procedural issues, how to review a  
22 site plan.

23 It might also refer to statutory requirements,  
24 enabling legislation for planning and zoning.

25 Q How about things like open meetings, requirements like that,

1 would you guys have included any of that material in  
2 workshops you do?

3 A It probably would be included.

4 Q Would your workshops cover -- well, actually, let me step  
5 back.

6 Do you guys, I know some communities do it  
7 differently, but do you work with any communities where you,  
8 as the planning consultant, will draft motions either for the  
9 Planning Commission or ZBA or the Board?

10 A I do not draft a motion for the benefit of a Planning  
11 Commission, for example, prior to a meeting.

12 I, in some communities, attend Planning Commission  
13 meetings and serve as staff to the Planning Commission and  
14 might provide advice or assistance in their making of a  
15 motion.

16 Q But you wouldn't provide a template motion? I mean obviously  
17 the recommend approval or recommend disapproval is -- let me  
18 step back.

19 I know the way that it's done in the community  
20 that I used to live in is our planning consultant would  
21 provide a draft motion that would basically, you know, would  
22 have that line blank.

23 You guys don't do anything like that?

24 A I have not.

25 Q Okay. Would you provide any guidance on drafting or making

1 up motions in your workshops that you might put on for your  
2 clients?

3 A Yes.

4 Q Have you personally presented any of these workshops?

5 A Yes.

6 Q When's the last time you did?

7 A I can't recall any recently so I would say probably five  
8 years or even longer ago.

9 Q You didn't do any after the 2008 elections?

10 A I have not.

11 Q Talking generally about a rezoning request, what, from your  
12 perspective, are the important considerations in a rezoning  
13 request?

14 I know that's an intentionally-broad and  
15 open-ended question but I just want to hear unadulterated  
16 what you have to say on the topic.

17 A When I review a zoning request for a community, I would look  
18 at their Master Plan, but also take a look at compatibility  
19 of the proposed rezoning to existing land uses in the  
20 vicinity, compatibility of the proposed rezoning to the  
21 established zoning districts in the vicinity, the capability  
22 of infrastructure, public services to be able to accommodate  
23 the proposed rezoning, the capability of the land to  
24 accommodate the proposed rezoning, for example, natural  
25 features, wetlands, constraints. Those are critical issues



1 to review.

2 Q You said compatibility of land uses and the zoning districts  
3 in the vicinity.

4 What's the vicinity to you? Is it adjacent? Is  
5 it within half a mile? Is it within five miles?

6 A Certainly adjacent land uses and adjacent zoning districts.  
7 Vicinity can be looked at in different ways. In my opinion,  
8 maybe a quarter-mile radius or so, but there is no standard  
9 rule of thumb.

10 Q Other than adjacency would certainly be considered?

11 A Yes.

12 Q And then beyond that, it's kind of based upon the  
13 circumstances; is that fair?

14 A That's fair.

15 Q Okay. What sort of infrastructure questions would you look  
16 at in considering a rezoning application?

17 A Whether there is or is not public water, public sewer, public  
18 storm water, the road hierarchy.

19 Q What's that mean?

20 A Is it a local road, is it a county road, is it a primary  
21 road, is it an arterial, so on and so forth. The condition  
22 of the road, existing traffic volumes.

23 Q Any other infrastructure issues that you would look at?

24 A Not that I can think of.

25 Q If you're considering -- well, let me step back.

1                   Do you, in reviewing traffic loads, do you ever  
2                   require a traffic study to be done in connection with a  
3                   rezoning application?

4       A       That is something that could be required or requested.

5       Q       Fair enough. Have you done that in the past?

6       A       I have not recommended that to a client in my experience.

7       Q       Any particular reason why you normally don't recommend that?

8       A       Well, in many cases, a zoning ordinance would require a  
9                   Traffic Impact Study for a particular use. So in that  
10                  respect, you know, in some cases, a Traffic Impact Study is  
11                  required.

12               In other cases or in the absence of it being  
13               required, then it's just a matter of in the judgment of maybe  
14               the Planning Commission or Township Board, I might recommend  
15               or not that you ought to have a Traffic Impact Study  
16               prepared.

17      Q       Safe to say it's not a common thing?

18      A       No.

19      Q       If you're considering, as part of a rezoning application,  
20               existing traffic volume and condition of the road and things  
21               like that, do you compare and contrast potential traffic  
22               loads of the rezoning versus potential traffic loads of the  
23               property as it's currently zoned?

24      A       I have done that before.

25      Q       Would you do that at the request of the client or is that

1 something that you might just do if it was important to your  
2 own analysis?

3 A That would typically be something that would come up at the  
4 request of the client.

5 Q And when you do that, you look at -- I forget the acronym for  
6 the trip tables. What's the organization that does that?

7 A The ITE?

8 Q The ITE. Thank you. Is that typically how you would do it,  
9 look at the ITE trip tables for the potential uses?

10 A Yes.

11 Q Okay. And then you mentioned natural features, wetlands,  
12 other constraints.

13 Those other constraints, is that slopes, is that  
14 soils, is that trees, all of the above?

15 A All of those I would consider.

16 Q Any others?

17 A In some cases we might consider agricultural activities as a  
18 natural-type feature or maybe a resource-based feature. We  
19 might consider that.

20 Q So if there's kind of a historic agricultural use of the  
21 land, you might consider that?

22 A Yes.

23 Q When you look at a rezoning application, do you consider  
24 specific businesses or types of businesses that might be  
25 utilized on the site?

1 A No.

2 Q In fact, is that kind of inappropriate in the world of  
3 planning, considering a rezoning application, to think about  
4 a specific use as opposed to all of the uses that might be  
5 permitted in that district?

6 A We, in Planning, we are told to review the requested rezoning  
7 district and all of the range of uses that might be permitted  
8 in that district, not just a particular use.

9 Q All these considerations that you've been talking about for  
10 the last few minutes, those are the same considerations you  
11 utilized in your role as the project manager for Bedford  
12 Township; right?

13 A Yes.

14 Q Is there anything in the Bedford Township ordinance or  
15 anywhere else that changes your application of those  
16 considerations in Bedford?

17 A Not that I'm aware of.

18 Q Now, typically -- well, let me ask more general question.

19 Describe how you might become involved in a  
20 planning activity at Bedford Township as part of your ongoing  
21 consultant role.

22 A I would be contacted by Dennis Jenkins, who would explain the  
23 task that he would like us to perform.

24 Q Do you have a sense of at what point you would be contacted?

25 Would it be after an application, whether it's

1 rezoning or site plan approval or whatever, has come in?

2 A Yes.

3 Q Does he provide you with any information at that point?

4 A He would provide me with the application itself.

5 Q Anything else?

6 A I would typically have a discussion on the history, certainly  
7 depending on the assignment, whether it's a study or a  
8 developing amendment to the zoning ordinance, what's the  
9 background behind this proposed task.

10 Q Would you typically have a discussion on the history in a  
11 rezoning or site plan application?

12 A Probably not, not typically.

13 Q And I'm just thinking of, you know, the scenario where there  
14 is a site plan that comes through that is on a piece of  
15 property that was, say, rezoned and, you know, a year ago or  
16 something like that.

17 Would you typically expect to talk about that sort  
18 of thing with Dennis?

19 A It's possible, depending on the circumstance and the level of  
20 the history involved.

21 Q Any other information that you would typically receive from  
22 Dennis?

23 A It depends on the assignment.

24 Q Well, let's talk about a rezoning application in particular.

25 A No.

1 Q Let me ask this question based on how little interaction  
2 you've had with them.

3 How many rezoning applications have you consulted  
4 on in Bedford Township in the two years or so that you've  
5 been the project manager?

6 I know about two on this property. Is there  
7 others?

8 A I believe three.

9 Q Three in addition to the two on this property or three total?

10 A I believe three total.

11 Q Okay. And let me make sure we're clear on this. I'm talking  
12 about two rezoning applications. I'm talking about the one  
13 application submitted by Whitman Ford and then there was a  
14 subsequent application, I guess you would call it, done at  
15 the request of the Township, right, and we can get into the  
16 documents, but when I'm saying two, those are the two I'm  
17 talking about. I don't know if you have a different  
18 recollection.

19 A My recollection is an initial review of the rezoning request,  
20 a second or revised review of that rezoning request, and  
21 there was a Township-initiated rezoning request.

22 Q Thank you for clarifying that because you're absolutely  
23 correct.

24 Of the three rezoning applications that you have  
25 reviewed, are those the three?

1 A I believe so.

2 Q So no other rezoning applications other than the ones on the  
3 Whitman Ford property in the two years that you've been the  
4 project manager?

5 A To the best of my recollection, yes.

6 Q Okay. And we may have covered all of this, because what I  
7 was asking about was typical obviously. And what's typical  
8 is -- Whitman Ford is the only thing typical in your  
9 experience.

10 But how much of the history of the Whitman Ford  
11 property was explained to you by Mr. Jenkins when he first  
12 called on that first rezoning application?

13 A Certainly we discussed the background, that there were  
14 previous rezoning requests for the property, that there was  
15 litigation and that it went to trial.

16 Q And you still didn't run screaming for the exits, huh?

17 Did you go back and look at the prior requests and  
18 Julie Johnston's letters?

19 A Yes.

20 Q Were those things that the Township provided to you or did  
21 Wade Trim have those on file?

22 A We had those on file.

23 Q And you said you were aware that there had been litigation  
24 and a trial.

25 Did you go back and look at any of the testimony

1 from that trial, either Ms. Johnston's or Mr. LeBlanc's or --  
2 actually, let me ask that question.

3 Were you aware that Mr. LeBlanc had testified in  
4 connection with that prior rezoning?

5 A Yes.

6 Q Did you go back and look at his testimony?

7 A I looked at the -- and I correct me if I'm wrong, I don't  
8 know the actual term -- I believe the summary of the findings  
9 of the trial.

10 Q The Court's opinion?

11 A I believe so, yes, that, which referenced some of the  
12 testimony provided by those involved, including Mr. LeBlanc.

13 Q Let me just show you. I'm just showing you this for  
14 reference. This is actually what our conversation will end  
15 up looking like today as well. This is typically known as a  
16 transcript. Just as you can see, it's just the Q and A.  
17 This is actually from Mr. Jenkins' deposition a few months  
18 ago.

19 Do you recall reading any document that looked  
20 like this, any transcripts?

21 A No.

22 Q The Court's opinion, was that something provided to you by  
23 Mr. Jenkins or is that something that Wade Trim had on file?

24 A I don't recall where I received that.

25 Q Can you tell me why you looked at the Court's opinion?



1 A It's part of the background of the property, the requests,  
2 also for curiosity sake as well. It's a good learning  
3 experience.

4 Q In all events, I presume you regarded those materials as  
5 being relevant to undertaking your review of the applications  
6 that were submitted that are currently at issue?

7 A Yes.

8 Q In your discussions with Mr. Jenkins, did he provide you with  
9 any reasons that Mr. Whitman had for structuring the rezoning  
10 request the way he did?

11 A Yes.

12 Q What did he say?

13 A I recall talking that it was a application meant to be  
14 consistent with the result of the Court's opinion in that  
15 case.

16 Q Did you draw any conclusion after you reviewed the Court's  
17 opinion on that front?

18 A Yes.

19 Q What was that?

20 A My conclusions were, would have been formed by the opinion of  
21 the Court. The use of sound planning would include the use  
22 of buffers, transitional zoning, as a means to make it  
23 compatible adjacent land uses.

24 Q To address some of the concerns that the Court had with  
25 regard to those, in particular the subdivision to the west;

1 correct?

2 A Correct.

3 Q And just to kind of shorthand that -- and tell me if I'm  
4 wrong on this -- I take it then that your conclusion was that  
5 the rezoning request did address the concerns that were  
6 raised in the Court's opinion; is that fair?

7 A I believe that it did address some of those concerns.

8 Q Did you find anything in the Court's opinion that you thought  
9 was not addressed by the rezoning applications that Whitman  
10 submitted?

11 A Not that I recall.

12 Q You would agree with me, right, that if people like Paul  
13 LeBlanc and Julie Johnston -- not people like Paul LeBlanc --  
14 but if Paul LeBlanc and Julie Johnston had given testimony as  
15 to what would be sound planning on a piece of property,  
16 somebody could reasonably rely on that testimony in  
17 formulating a rezoning application?

18 MR. GOLDSMITH: Objection. Calls for  
19 speculation and conjecture.

20 A I certainly think it would be a good start and serve as a  
21 basis for the approach that that land owner would want to  
22 take.

23 BY MR. HANSON:

24 Q I mean property owners have, they have a Master Plan to guide  
25 them; right?

1 A Right.

2 Q They might get some advice or feedback either from a planning  
3 consultant or an in-house planning staff; correct?

4 A Correct.

5 Q But, otherwise, there's not a lot a property owner can rely  
6 upon in terms of trying to make sure that a request is going  
7 to be approved or not approved?

8 I mean the planning staff can't give that  
9 assurance; right?

10 A Correct.

11 Q And Master Plans are either the Bible or they're just a  
12 guideline or, you know, they're a somewhat fluid document in  
13 terms of how much a property owner can rely on on what a  
14 Master Plan says; is that fair?

15 A It's a guide. It's not a legal document.

16 Q And it's not uncommon, is it, that a Master Plan -- and I'm  
17 not talking about Bedford Township's -- but Master Plans in  
18 general, they may even sometimes be internally contradictory  
19 in terms of what they may suggest for a certain piece of  
20 property; is that fair?

21 A I suppose it's a possibility.

22 Q And all this is just coming back to the point that if there  
23 has been a prior trial with testimony from recognized  
24 planning experts on what would be suitable for a piece of  
25 property, you would, as a property owner, justifiably

1 reference that in putting together a rezoning application; is  
2 that fair?

3 A I would (nodding head affirmatively).

4 Q I showed you this briefly. Did you, in preparation for this  
5 deposition, did you read Mr. Jenkins' or Mr. Wilburn's  
6 transcripts of the depositions they gave a few months ago?

7 A I received a copy of Mr. Jenkins' and read through a fair  
8 amount of it.

9 Q And then you fell asleep? You don't have to answer that.

10 What other documents did you review in preparation  
11 for this?

12 A The letters that I had written to the Township.

13 Q And tell me if I'm wrong on this, three letters?

14 A Correct.

15 Q Any other documents?

16 A The letter that I had written to the Township with regard to  
17 the Proposed Zoning Ordinance Amendment that was proposed by  
18 the citizens group, I believe.

19 Q I think we can call them Bedford Watch?

20 A Bedford Watch.

21 Q Fair enough. Okay.

22 A I also reviewed some of the historical letters that Julie had  
23 written with regard to the property.

24 And we're talking about in preparation for today?

25 Q Yes.

1 A I also reviewed the opinion from the Court in the previous  
2 court case. I took a look at the Master Plan, the Bedford  
3 Township Master Plan, Bedford Township zoning ordinance. I  
4 believe that's it.

5 Q We might talk about them at some point later, but what in  
6 particular about the Master Plan did you look at?

7 A I read through the Goals and Objectives chapter, I reviewed  
8 the Future Land Use Map, and reviewed the narrative that  
9 supports the Future Land Use Map, and just briefly paged  
10 through the background components of the Master Plan.

11 Q You mean like the demographic information?

12 A Yeah.

13 Q How about the zoning ordinance, what aspects of that did you  
14 look at?

15 A I looked over the zoning districts in the ordinance.

16 Q Do you remember which districts in particular?

17 A I reviewed the office districts and the commercial districts.

18 Q Any others?

19 A Other than simply looking at the full list of zoning  
20 districts but not reviewing any others particularly.

21 Q You said office districts. Are there more than one?

22 A I believe so.

23 Q Did you have any conversations with anybody in preparation  
24 for the deposition today?

25 A I met with Mr. Goldsmith.

1 Q I don't want to know about the contents of any of those  
2 communications, but when did you meet with him?

3 A This morning prior to the deposition, one other time several  
4 months ago.

5 Q Did you, while meeting with Mr. Goldsmith, review any  
6 documents at either of those two meetings other than the ones  
7 we've already talked about?

8 A No.

9 Q Did you talk to Mr. Jenkins?

10 A I've talked to him on the phone simply making him aware that  
11 I was being deposed.

12 Q Did you talk about the substance of the lawsuit or the  
13 rezoning requests during those conversations?

14 A No.

15 Q I'm sorry that was a no?

16 A No.

17 Q I'm going to have you look at some drawings and these were  
18 marked as exhibits to the prior depositions.

19 MR. HANSON: Phil; I'm not going to remark  
20 them.

21 MR. GOLDSMITH: That's fine. There's two  
22 copies of each. I think it's Exhibit 3 and Exhibit 4.

23 MR. HANSON: Okay. I've got it.

24 BY MR. HANSON:

25 Q Let me put these in front of you. If you look, and it's a

1 little tough to read, the date key on the first one, I think  
2 it's got a 6-16 of '08, something like that, and then on the  
3 second one it's got a revision date of it looks like 8-20  
4 maybe, '08, or 6-20-08. I'm sorry. And I'm only telling you  
5 that to show that this is the second iteration. Let's just  
6 orient ourselves here.

7 You're familiar with, in general, this sketch of  
8 the Whitman property?

9 A Yes.

10 Q Okay. Obviously we're looking at it a little bit skewed, but  
11 you have Sterns Road on the south and Lewis Avenue on the  
12 east and Indian Acres subdivision on the north; right?

13 A Yes.

14 Q And we're going to talk about these parcels in some detail  
15 today. The shorthand that I'm going to use, the parcel  
16 that's in the northwest corner, I'm going to call Parcel 1;  
17 is that fair?

18 A Okay.

19 Q The parcel immediately south of that that also borders on  
20 Indian Acres, I'm going to call Parcel 2?

21 A Okay.

22 Q The one down in the southwest corner, I'm going to call  
23 Parcel 3?

24 A Okay.

25 Q The parcel that fronts on Lewis Avenue that was proposed to

1 be changed from C2 to C3 will be Parcel 4?

2 A Okay.

3 Q The parcel on the northeast corner, I will call Parcel 5?

4 A Okay.

5 Q And then the one in the middle, I will call Parcel 6?

6 A Okay.

7 Q Okay? So looking at Parcels 1 and 2, they have a uniform  
8 width distance away from the Indian Acres subdivision and,  
9 again, it's a little tough to read, but that number is 250  
10 feet originally.

11 Do you see that?

12 A I see that.

13 Q Okay. On the next iteration, that number has increased to  
14 286 feet. Do you see that?

15 A I see that.

16 Q Okay. My question to you is a pretty simple one.

17 Did you play any role in any recommendations, any  
18 advice, in that number going from 250 feet to 286 feet?

19 A I don't believe so.

20 Q Okay. And you may recall having read some of this from  
21 Mr. Jenkins' testimony, I think we talked about how that  
22 increase came to be, but I just want to find out if you had  
23 any involvement in it?

24 A I did not.

25 MR. HANSON: Okay. I think this one I am



1 going to mark even though it was previously marked.

2 (Deposition Exhibit No. 1 marked for  
3 identification.)

4 BY MR. HANSON:

5 Q Mr. Young, what's been marked as Exhibit 1 to your deposition  
6 is an August 5, 2008 letter.

7 Did you author this letter?

8 A Yes..

9 Q And I think you testified, but let me just make sure, nobody  
10 drafted this for you, this was all your work product?

11 A Yes.

12 Q And we were talking little bit earlier about the three  
13 different rezoning applications that you dealt with on this  
14 property.

15 This would be the first one; correct?

16 A Correct.

17 Q If you turn to Page 6 of the letter, the first full paragraph  
18 there -- I'm looking at these pages up here, there you go --  
19 the first full paragraph in there talks about the exception.

20 Do you see that?

21 A I see that.

22 Q Okay. And looking, again, at our drawing, is it your  
23 recollection that that exception is referring to a parcel  
24 that's centered on the south side of Sterns Road?

25 A Yes.

1 Q Okay. Do you recall the applicant -- well, let me ask this  
2 question first.

3 Other than that exception that was called out,  
4 your letter uniformly supported the rezoning application; is  
5 that right?

6 A Correct.

7 Q Do you recall the applicant doing anything in response to the  
8 exception that you called out in this letter?

9 A I know that they submitted a revised application.

10 Q And your concern was that on that particular parcel, you did  
11 not support rezoning that parcel from C2 to C3; is that  
12 correct? Or, I'm sorry, I said that wrong; didn't I? No, I  
13 said it right. Yes.

14 Let me start the question over. Your objection to  
15 that particular proposal is that you did not support the  
16 rezoning of that from C2 to C3; correct?

17 A Correct.

18 Q And that was primarily because of the residential uses across  
19 the street?

20 A That is one aspect of my concern.

21 Q What's the other?

22 A It would result in a C3 property that's fairly small and  
23 wouldn't -- that if rezoned to C3, that would be different  
24 from all the adjacent zoning districts.

25 Q Were you also concerned about having C3 zoning encroaching

1           this far towards the existing single-family development of  
2           Indian Acres?

3     A     That was a part of it, yes.

4     Q     The idea being that as you approach the western property  
5           line, you want the zoning to be decreasing as you go;  
6           correct?

7     A     Correct.

8     Q     And that's what we refer to as transitional zoning?

9     A     Correct.

10    Q     Let me just ask you. Transitional zoning is a fairly common  
11          concept in planning; isn't it?

12    A     Yes.

13    Q     I mean you typically will want to protect a single-family  
14          development from commercial development by having some sort  
15          of transitory zoning in between the two of them?

16    A     Correct.

17                         MR. HANSON: Mark this as 2.

18                         (Deposition Exhibit No. 2 marked for  
19                         identification.)

20    BY MR. HANSON:

21    Q     Mr. Young, what's been marked as Exhibit 2 to your deposition  
22          is an August 13th, 2008, letter bearing the Wade Trim  
23          letterhead.

24                         Did you also author this letter?

25    A     Yes.

1 Q Is this your review after the applicant had addressed the  
2 concern that you raised and that we saw in Exhibit 1?

3 A Yes.

4 Q I'm going to direct you to Page 5 of this letter and in  
5 particular the Findings section, and I'm not going to read it  
6 into the record, but I want you to review everything that  
7 you've written under Findings there and let me know when you  
8 finish.

9 A Okay. I've read it.

10 Q First question, do you still support everything that you  
11 stated in this letter?

12 A Yes.

13 Q You talk at the outset about the objectives and strategies of  
14 the Bedford Township Master Plan, and if you turn to Page 3,  
15 you've laid out some of those objectives and strategies.

16 Are those the objectives and strategies that  
17 you're referring to?

18 A Yes.

19 Q Tell me why it's important that a rezoning request meet the  
20 objectives and strategies of a Master Plan.

21 A The Master Plan is a community-wide document. It is a guide  
22 for rezoning. It's a guide for the zoning ordinance and,  
23 thus, any rezoning request.

24 Q And the objectives and strategies in particular -- let me ask  
25 the question this way.

1                   Are objectives and strategies a fairly common part  
2                   of any Master Plan?

3       A       Absolutely. And I don't believe a Master Plan would be one  
4                   without them.

5       Q       And so when you're talking about people throw around the  
6                   phrase in compliance with the Master Plan, being compliant  
7                   with the objectives and strategies is a critical part of  
8                   that; would you agree with that?

9       A       Yes.

10      Q       You also talk about the three zoning districts proposed on  
11                   the western property line as providing an effective land use  
12                   transition.

13                   What is that opinion based on?

14      A       Transition is the area between or the area that would  
15                   separate, in this case the district or districts, that would  
16                   separate a lower intensity district from a higher intensity  
17                   district.

18      Q       If people talk about a transitional zoning or a buffer, is  
19                   that the same thing, in your mind? Actually, let me -- I  
20                   probably asked that question poorly.

21                   Buffering can be done in a number of different  
22                   ways, including landscape features and setbacks and things  
23                   like that; correct?

24      A       Yes.

25      Q       Okay. So I guess buffing might be a larger concept, but is

1 transitional zoning one means of achieving buffering against  
2 a lower intensity use?

3 A Yes.

4 Q You typically wouldn't want, on this property, C2 zoning  
5 running right up to the existing single-family subdivision;  
6 correct?

7 A Correct. That's why we would want a buffer.

8 Q But you're not as concerned about a buffer between the C2  
9 zoning and the proposed higher density residential  
10 districts -- and Phil's not going to like me for doing it but  
11 I'm going to paraphrase Mr. LeBlanc here -- these types of  
12 residential districts typically have a more transitory  
13 populace; is that fair to say?

14 A Yes.

15 Q Also fair to say that the fact that these are proposed  
16 districts, and by "these", I'm talking about the two  
17 transitional residential zones that are proposed, those are  
18 proposed districts, not existing land uses, and does that  
19 come into play with regard to having a C2 zone immediately  
20 adjacent to it?

21 A Can you restate that question, please?

22 Q Yes. Let me ask it a different way.

23 If this rezoning application had been approved in  
24 toto, anybody who would be purchasing, either purchasing  
25 these proposed residential parcels or, alternatively, moving

1           there to live, there would know that there was commercial  
2           zoning immediately adjacent; correct?

3       A     Correct.

4       Q     Whereas with the existing land use, those folks didn't know  
5           that there might be a commercial zone immediately behind  
6           them?

7                       I'm trying to compare and contrast why it's not a  
8           concern to have a commercial zone adjacent to the proposed  
9           residential districts vis-à-vis the existing residential  
10          districts.

11                      So let me start the question over. The fact that  
12          these are only proposed, whereas Indian Acres is existing,  
13          that makes a difference in terms of determining whether the  
14          C2 zone is appropriate adjacent to it; is that fair?

15       A     It may be one consideration or one factor.

16       Q     And we've talked about another one, which is the transitory  
17           nature, more so, of a multifamily or elderly housing  
18           district.

19                      Are there other factors that weigh into that?

20       A     I wouldn't consider necessarily that the transitory nature as  
21          being the factor as is the intensity of use.

22       Q     Okay. And the multifamily and RME, are those regarded as  
23           denser and more intense uses than the single-family?

24       A     Yes.

25       Q     Any other factors that go into your consideration of why

1       having commercial adjacent to those residential parcels is  
2       appropriate?

3       A     I think the intensity of use is the main factor in my mind.

4       Q     In fact isn't it true that, in this day and age, planners  
5       typically are looking for denser housing uses with some  
6       proximity to commercial uses to promote walkability and  
7       things like that?

8       A     That is a trend in planning. Not necessarily appropriate for  
9       every community.

10      Q     Would you regard it as appropriate here?

11      A     Yes.

12      Q     And Bedford Township does have, in its zoning ordinance, I'll  
13      call them site planning requirements that would provide  
14      additional protection for this lower intensity residential  
15      use vis-à-vis the commercial uses; correct?

16      A     Correct.

17      Q     There's landscaping requirements or berming requirements,  
18      things of that nature?

19      A     Correct.

20      Q     As well as setbacks?

21      A     Correct.

22      Q     So all of this is to say there's no real need, from a  
23      planning perspective, to have an additional transitory zone  
24      between the commercial and the proposed higher intensity  
25      residential district; correct?



1 A Can you restate that question, please?

2 MR. HANSON: Actually, could you read it  
3 back?

4 (Record repeated by reporter.)

5 A I think much of the, much of the necessary transition between  
6 those two could possibly be provided by the site plan  
7 requirements or the buffering requirements from the  
8 ordinance, as you had mentioned, setbacks, walls,  
9 landscaping.

10 BY MR. HANSON:

11 Q And I talked about this a little bit with Mr. Jenkins, but  
12 this parcel couldn't be developed without some sort of road  
13 access; correct?

14 A Right.

15 Q And that road access would presumably have to come up from  
16 Sterns Road? Well, I'll take that back. I suppose it could  
17 run through (pointing).

18 But in addition to the site planning requirements,  
19 it's also highly likely that there would also be additional  
20 setbacks as a result of that road running up that property  
21 line; is that fair?

22 A Correct.

23 Q In fact, it's not uncommon in Bedford Township or elsewhere  
24 to have commercial uses adjacent to residential uses; is that  
25 correct?

1 A It's not uncommon.

2 Q And, in particular, higher density residential uses?

3 A Correct.

4 Q Let's talk a little bit about the Master Plan.

5 I'm not going to mark this, but do you recognize  
6 this as it's got a legend on it, as the Master Plan map, but  
7 it's perhaps more formally known as the Future Land Use Map;  
8 is that fair?

9 A Yes.

10 Q Do you recognize this as out of the Bedford Township Master  
11 Plan?

12 A Yes.

13 Q Looking at the property that we're talking about in  
14 particular, it's got kind of a squiggly line running through  
15 the center of it. Do you see that?

16 A Yes.

17 Q And on the Lewis Avenue side, the eastern side, it's  
18 designated for local commercial; correct?

19 A Correct.

20 Q And then on the western side, it's called For Mixed  
21 Residential/Office Commercial. Do you see that?

22 A I see that.

23 Q Now, Bedford Township does not have a zoning district that,  
24 by itself, matches up with that Mixed Residential/Office  
25 Commercial district; correct?

1 A The PUD district could --

2 Q Fair enough.

3 A -- could be the best match, but a single district, other than  
4 PUD, does not match up, in my opinion.

5 Q Do you guys do PUD's in Bedford, when I say "you guys", does  
6 Bedford Township do PUD's without a site plan?

7 In other words, let me ask it slightly  
8 differently. Is an applicant seeking a PUD required to  
9 submit a site plan with the PUD?

10 A I believe so.

11 Q A PUD is kind of a unique species of zoning in that you're  
12 actually kind of zoning to a specific site plan; correct?

13 A Correct.

14 Q So if an applicant were trying to rezone the property to  
15 comport with that Master Plan designation but didn't have a  
16 site plan, the PUD wouldn't be available to them; correct?

17 A Correct.

18 MR. WHITMAN: Can we take a break?

19 MR. HANSON: Yes. It's probably a good time.

20 (Short recess.)

21 - - -

22 BY MR. HANSON:

23 Q A couple of follow-up questions that I just want to make sure  
24 I close the loop on. You talked about your phone calls with  
25 Dennis.

1 Did you have any other communications with him?

2 Do you guys communicate by email?

3 A We do communicate by email.

4 Q Is that more frequent than the phone conversations?

5 A No.

6 Q Okay. So the once every two months, does that cover phone  
7 and email?

8 A Yeah.

9 Q Okay. If you have emails with Dennis, would those still be  
10 on your server on your hard drive?

11 Do you print those out and file them away?

12 A If it's, for example, an assignment that he's giving me, you  
13 know, do this task for this amount, I would file it, and I  
14 believe, to the best of my knowledge, the email  
15 communications I have had with him have been all assignment  
16 related. So it's possible that I would have copies of those.

17 Q Do you recall if you had any email communications with him  
18 with regard to these rezoning requests that we're talking  
19 about?

20 A Other than the emails where he might transmit the application  
21 and instruct me to perform a review.

22 Q He would send those to you by PDF; is that right?

23 A I believe he's done that. Yes.

24 Q Did you review any of those emails or anything in preparation  
25 for today?

1 A No.

2 Q We talked a little bit about the workshops that Wade Trim  
3 puts on and you had occasion to put on in the past.

4 Is litigation avoidance ever covered in those  
5 workshops?

6 A I would not say directly but indirectly in that we would  
7 provide advice by following the procedure, following good  
8 planning practice, you might be able to avoid litigation.

9 Q Got it. So if you're telling them the things that they  
10 should consider or should not consider in connection with  
11 let's say a rezoning application, that in and of itself might  
12 be a form of litigation avoidance; is that what you're  
13 saying?

14 A Correct.

15 Q Okay. We talked about the documents you reviewed previously  
16 and I asked about transcripts from the trial.

17 Did you review any other transcripts, any  
18 deposition transcripts from that last litigation,  
19 Ms. Johnston's or anything like that?

20 A No.

21 Q Did you review any of the pleadings or papers filed by the  
22 parties?

23 A I don't believe so.

24 Q And then I don't think I asked you. We talked generally  
25 about what Mr. Jenkins had said to you with regard to some of

1 the history here.

2 Do you recall specifically any part of the  
3 conversation that you had with Dennis regarding the history  
4 of this property?

5 I mean did he say anything specifically about  
6 Whitman Ford having changed the rezoning based on the trial  
7 or anything along those lines?

8 A Do you mean in the new application?

9 Q Yes. And I'm just -- you testified a little bit that when  
10 Mr. Jenkins called you for this assignment, this rezoning  
11 application assignments, he had given you some of the  
12 history, and I am just trying to get a sense, can you recall  
13 specifically what he would have said about the history?

14 A That it went to court, he would have given me a, you know,  
15 brief summary of the results, he might have instructed me to,  
16 you know, read or obtain a copy of the results but I don't  
17 recall that specifically and, yes, that this new rezoning  
18 application is a result of trying to proceed now with an  
19 understanding of how the previous court case had resulted.

20 Q Did he say anything to you about Bedford Watch?

21 A I believe I had heard about Bedford Watch, possibly even from  
22 Julie and knowing that it's an active group in Bedford  
23 Township, generally.

24 Q Have you ever spoken to anybody from Bedford Watch?

25 A I don't know. I believe this person was from Bedford Watch

1           who gave me a call sometime after I had written the rezoning  
2           opinion letter.

3       Q     Do you recall what that person's name was?

4       A     No.

5       Q     Male or female?

6       A     Male.

7       Q     Did he have a very deep voice that you might say is a radio  
8           voice?

9       A     I don't recall.

10      Q     Phil knows what I'm talking about. What did he say?

11      A     I believe he wanted a copy of my letter.

12      Q     And was he talking about the August 5 letter or the August 13  
13           letter or both?

14      A     Probably the August 13 letter.

15      Q     Do you recall, was this before the Planning Commission  
16           meeting?

17      A     I don't know if it was before or after.

18      Q     Just to set the time for you, I think that was September 10,  
19           yes, September 10, 2008.

20      A     I don't know for the time for sure. I think it was probably  
21           the week prior to the Planning Commission meeting or possibly  
22           a week prior to the Township Board meeting where it was  
23           discussed.

24      Q     Okay.

25      A     I don't know which.

1 Q How was his demeanor on the phone?

2 A I could tell that he was against the rezoning.

3 Q How could you tell that? Was it things that he said or --

4 A (Nodding head affirmatively.)

5 Q I mean was he insulting, condescending, angry?

6 A I don't think he would have called if he wasn't against it.

7 Q Did he say anything specifically that led you to believe  
8 that?

9 A I don't, I don't recall anger or anything mean or slanderous.  
10 Just a general sense that, after I got off the phone, I knew,  
11 okay, this person probably didn't like my recommendation and  
12 would be opposed to the rezoning.

13 Q Did you send him a copy of the letter?

14 A I did not. I referred him to the Planning Department.

15 Q Other than that phone call, have you had any other  
16 interactions with Bedford Watch?

17 A No.

18 Q Have you ever gone on their website?

19 A I have.

20 Q When's the last time you did that?

21 A Probably late last year. Probably after I had written this  
22 August 13 letter. Maybe even in response after this person  
23 had called me.

24 Q So it's been quite a while since you've been on their  
25 website; is that fair?



1 A Yes.

2 Q And if I asked this, I apologize.

3 Did you ever discuss Bedford Watch with

4 Mr. Jenkins?

5 A I believe so.

6 Q What was the context of that conversation?

7 A Just general information about, you know, this group, how

8 long have they been active.

9 Q Did Mr. Jenkins express any opinions about the group?

10 A No. I don't believe he did. I think he was, didn't take a

11 stance, certainly didn't express a dislike or a like, for

12 that matter.

13 Q How about other conversations with other people in the

14 Township, have you had occasion to speak with Mr. Wilburn or

15 anybody else?

16 A No.

17 Q Mr. Schockman?

18 A No.

19 Q How about Karen Kincaid, do you ever speak or correspond with

20 her?

21 A Very infrequently.

22 Q What would be the nature of that communication?

23 A Possibly her faxing over a copy of the rezoning application

24 and that's really about it.

25 Q And I talked a little bit about existing versus proposed uses

1 with regard to how it interplays with an adjacent commercial  
2 designation.

3 How about developed versus undeveloped, if the  
4 fact that you've got a developed long-standing residential  
5 zone and then you've got a zoning district that, if approved,  
6 would obviously be undeveloped initially, is that also  
7 another factor for why it's not a concern to have the  
8 commercial zone adjacent to this or these two residential  
9 zones?

10 A I don't believe so because you would always want to expect  
11 that it would be developed.

12 Q Were you asked at any point to give any opinions or analysis  
13 or recommendations about these rezoning requests individually  
14 versus these rezoning requests as requested as a whole?

15 A No.

16 Q Would it be fair to say that given that the western portion  
17 of this property sits in Mixed Residential/Office/Commercial  
18 Master Plan designation, that it wouldn't have made any sense  
19 to look at them individually?

20 A Can you repeat the question again?

21 MR. HANSON: Actually, can you read that one  
22 back?

23 (Record repeated by reporter.)

24 MR. GOLDSMITH: Objection... Calls for a legal  
25 conclusion. Also I think it's been stated on the record that

1           there is no one zoning district that encompasses all of those  
2           three proposed uses or three uses.

3    A    And can you repeat the question one more time?

4                   MR. GOLDSMITH: Sorry about that.

5                   MR. HANSON: And, Phil, you can just say  
6           "same objection" this time.

7                   (Record repeated by reporter.)

8                   MR. GOLDSMITH: Same objection.

9    A    I don't think I have an opinion of that one way or the other.

10   BY MR. HANSON:

11   Q    But Mr. Goldsmith is actually right in his objection. Absent  
12       a PUD, there's no single individual zoning district that  
13       could have been proposed that would have comported with this  
14       Mixed Residential/Office/Commercial designation; is that  
15       correct?

16   A    Right.

17   Q    We talked a little bit about the sorts of things that you  
18       review in a rezoning request and we talked a little bit about  
19       traffic studies.

20                   Are there any other sorts of studies that you or  
21       anybody else that you're aware of has reviewed, a feasibility  
22       study, an impact study, market development studies, any sort  
23       of, you know, pick your word, that are typically required or  
24       reviewed in connection with a rezoning request?

25   A    Typically required? No, not typically, but sometimes

1 required. An environmental impact statement, a market  
2 assessment.

3 Q Give me a type of circumstance that an environmental impact  
4 statement would be required.

5 A If there is known presence of wetlands on a property or  
6 suspected wetlands on a property.

7 Q So a wetland delineation survey or something of that nature  
8 to figure out where the wetlands are?

9 A That would be an example, or an endangered species.

10 Q You talked a little bit about natural features.

11 There is no natural features on this site that  
12 gave you any pause about the development of this property; is  
13 that correct?

14 A Correct.

15 Q You also mentioned -- and I forget your word for it -- but  
16 some sort of market study.

17 What's the type of scenario that you would request  
18 that in a rezoning application?

19 A One would be required if there is a question that the  
20 proposed zoning district, that the uses that would be allowed  
21 in that proposed zoning district, that there is no demand for  
22 those uses, and so a community would want to have the  
23 applicant demonstrate that there is a demand for that use  
24 prior to approving the rezoning.

25 Q Does that come up often in general commercial or general

1 residential-type rezoning requests?

2 I'm trying to get a sense of whether that's kind  
3 of a strange sort of -- strange is the wrong word.

4 I'm trying to get a sense of whether that's for a  
5 request to rezone to a district that has only, you know, a  
6 small number of permitted uses or whether it's something that  
7 might be applicable to more common zoning designations as  
8 well.

9 A I don't think it's a matter of the uses that would be allowed  
10 within a particular zoning district. I think the bigger  
11 consideration is maybe community -- the established land use  
12 pattern of the community as a whole. If --

13 Q Go ahead. Go ahead.

14 A I'll stop at that.

15 Q You didn't have any of those types of concerns with this  
16 proposed rezoning; correct?

17 A My personal opinion, I wondered about the demand of the  
18 residential components of this rezoning. That was a personal  
19 thought I had as I conducted the review.

20 Q Either the elderly housing or the multifamily or both?

21 A Both, but maybe more so the elderly housing.

22 Q The Township does have other elderly housing developments;  
23 correct?

24 A I believe so.

25 Q So it was more just a concern in your mind as to whether the

1 Township actually had a market for another elderly housing  
2 development?

3 A Right.

4 Q At any rate, did you share that concern with anybody at the  
5 Township?

6 A No.

7 Q And did anybody at the Township request or suggest that some  
8 sort of impact study of any sort be required?

9 A Not to my knowledge.

10 Q Were you aware that, in the prior lawsuit, there was a  
11 proposed settlement offered that involved the construction of  
12 a Wal-mart store on the site?

13 MR. GOLDSMITH: Objection. Relevance.

14 A I wasn't aware of a settlement agreement. No.

15 BY MR. HANSON:

16 Q Well, actually it wasn't a settlement agreement. It was a,  
17 it was a settlement that was presented to the Township at a  
18 public meeting that involved the development of a Wal-mart on  
19 the site.

20 Do you recall that?

21 A I'm not familiar with that settlement.

22 Q Okay. Do you recall hearing about there potentially being a  
23 Wal-mart developed on the site?

24 A Yes.

25 Q Did you know that, in connection with the potential

1 development of a Wal-mart, there was a traffic study prepared  
2 for this site?

3 MR. GOLDSMITH: Same objection. Relevance.

4 A I'm only aware by reviewing Mr. Jenkins' deposition.

5 BY MR. HANSON:

6 Q So suffice it to say then, you weren't aware, when you were  
7 doing the review that we've looked at in Exhibit 1 and 2,  
8 that there this was a traffic study that had been prepared;  
9 correct?

10 A Correct.

11 Q And obviously you didn't review the traffic study itself at  
12 that time?

13 A Correct.

14 Q Have you ever seen the traffic study?

15 A No.

16 Q Did you know at the time that you were authoring these  
17 reviews, that previously a Wal-mart had been proposed for  
18 development on this site?

19 A Yes.

20 Q Tell me if I'm wrong on this, but when you're conducting a  
21 rezoning application review and making a recommendation, do  
22 you kind of have to go on a worst case scenario in terms of  
23 the most intensive type of use that's permitted in a district  
24 in order to analyze its impact on the surrounding land uses  
25 and infrastructure and everything else?

1 A Yes. We review all the range of uses.

2 Q "Worst case" might have been a bad choice of words, but from  
3 the lowest intensity potential use to the highest intensity;  
4 right?

5 A Yes.

6 Q So when you were conducting this review, your recommendations  
7 were made considering the lowest intensity of uses that would  
8 have been permitted in all of these districts all the way up  
9 to the highest intensity of uses; correct?

10 A Yes.

11 Q Having talked a little bit about Bedford Watch, let me ask  
12 this question.

13 Did you either look at any of the transcripts or  
14 watch any of the video of either the Planning Commission  
15 public hearing or the Township Board's meeting when they  
16 acted on these rezoning applications?

17 A The minutes.

18 Q You looked at the minutes of both or --

19 A Planning Commission minutes, yes, and the Township Board  
20 minutes as well.

21 Q If you looked at the minutes, you'll note that one of the  
22 common themes that was voiced by members of the public were  
23 that a development of this property in line with the proposed  
24 rezoning would have an adverse effect on their property  
25 values. Do you recall that?



1 A Yes.

2 Q And I'm going to paraphrase Julie Johnston now, but isn't it  
3 true that development of a site like this, if done properly,  
4 can actually increase the valuation of properties in the  
5 surrounding community?

6 MR. GOLDSMITH: Objection. Calls for a  
7 conclusion --

8 A It could.

9 MR. GOLDSMITH: But let me finish.

10 THE WITNESS: Sorry.

11 MR. GOLDSMITH: It calls for a conclusion  
12 that could be legal in nature or that may be need to be asked  
13 of an expert appraiser.

14 A It could.

15 BY MR. HANSON:

16 Q And I'm just trying to get a sense that the notion that there  
17 might be commercial development -- well, I'll strike that  
18 question.

19 In terms of -- well, your answer to the last  
20 question was "it could". Would the fact that the commercial  
21 development was going to occur on a major intersection within  
22 the Township, would that make it more likely that it might  
23 increase the property values of the surrounding residential  
24 neighborhoods?

25 MR. GOLDSMITH: Let me add another objection,

1 Tom. Lack of foundation, because I don't, as we sit here  
2 right now, I don't know that we know what type of development  
3 would actually occur.

4 BY MR. HANSON:

5 Q Let me see if I can restate the question. Some of these  
6 things are covered in your review letters.

7 This is on one of the major commercial  
8 intersections in the Township; is that fair?

9 A Yes.

10 Q In fact Lewis Avenue is one of only two places in the  
11 Township where there is a five-lane road?

12 A I don't know that to be the case --

13 Q Okay.

14 A -- simply because I don't have that knowledge.

15 Q Yes. You're not saying it's not true, you just don't know?

16 A Right.

17 Q Is it your understanding, based on everything you've looked  
18 at, the Master Plan, Mr. Jenkins' testimony, the Court's  
19 opinion, whatever, that the Lewis and Sterns intersection has  
20 long been considered one of the major commercial nodes of the  
21 Township?

22 A Yes.

23 Q So from a planning perspective, if you're going to have a  
24 higher intensity commercial development anywhere in the  
25 Township, it would make sense to have it on this

1 intersection; correct?

2 A Or an intersection with equivalent capacity of the road  
3 network in this case.

4 Q But if this road network is at the height of capacity in  
5 terms of what's available in the Township, it would make  
6 sense to do it here; right?

7 A I believe it does here, but there are always other factors  
8 that could be involved in my answering your question.

9 Q What are some of those other factors?

10 A I guess if we would go to the -- I guess I don't understand  
11 if you're specifically asking me if this intersection? Are  
12 we talking about the specific intersection here?

13 Q Yes, I am. I'm talking about this intersection and this  
14 property, whether it makes sense, given the Township's  
15 historical regard for the property, given the road network  
16 that exists on the property, given the absence of, you know,  
17 natural features that otherwise might be impacted on the  
18 property, whether it makes sense, if there's going to be a  
19 higher intensity commercial use developed in the Township,  
20 that it would occur on this property?

21 A I agree.

22 Q Are you aware of any plans by Bedford Township to update  
23 their Master Plan?

24 A I believe I mentioned this before, but in working for Julie,  
25 when she was still around, I assisted her in updating some of

1 the background information, census data, existing land use  
2 data, with the intention at that time that it might lead to a  
3 Master Plan update.

4 Q Other than that effort, are you aware of any current plans  
5 within the Township to update the Master Plan?

6 A No. And we have not, Wade Trim has not been asked to assist.

7 Q We were looking at the Future Land Use Map a little bit  
8 earlier. Are you aware that the local commercial designation  
9 that's shown on the eastern side of this property is the only  
10 commercial designation that exists in this Future Land Use  
11 Map?

12 A Yes.

13 Q I don't know if you've reviewed it recently. Was the local  
14 commercial designation, was that narrative one of the things  
15 you reviewed in preparation for the deposition?

16 A Yes.

17 Q So you looked at it recently, but I'll put it back in front  
18 of you so it's there. Now, there is a -- well, it first  
19 talks about it's intended to provide locations for small  
20 businesses established to meet the day-to-day convenience,  
21 shopping and services needs of neighborhood residents.

22 In your mind, does that designation mean that the  
23 Master Plan doesn't support anything other than the  
24 development of small businesses?

25 A It seems to be implied by that as the only commercial

1 district in the plan.

2 Q From a planning perspective, what's your opinion of that sort  
3 of restriction?

4 A My opinion is that it's based on obviously the community  
5 sentiment and desire, as may have been uncovered during the  
6 development of this plan, to limit regional commercial uses  
7 or -- I'm sorry -- commercial uses that cater to a regional  
8 market.

9 Q It's true, isn't it, that -- well, let me go back. We've  
10 also got another part of this narrative, which says,  
11 "Individual businesses within the local commercial area  
12 should not exceed 5,000 gross square feet in commercial  
13 buildings. For multiple tenants, it should not exceed 10,000  
14 gross square feet".

15 Do you see that?

16 A Yes.

17 Q Again, from a planning perspective, what's your opinion of  
18 that sort of restriction in a Master Plan designation?

19 A I have not, in a Master Plan that I have been the manager of,  
20 included such a restriction. I think it's specific and not  
21 necessarily necessary to include in a Master Plan.

22 Q It's more the sort of thing that it should be dealt with in a  
23 zoning ordinance; would you agree with me on that?

24 A Yes.

25 Q And it's true, isn't it, that any commercial zoning district

1       could, from the lowest intensity up to the highest intensity,  
2       C-1 to C-3, could fall within that narrative; correct?

3               In other words, you could have a C-3 use that  
4       would be a small business that would cater to the needs of  
5       the local community; right?

6   A    Yes.

7   Q    And you could have a C-3 use that would be 5,000 square feet  
8       or less; correct?

9   A    Yes.

10   Q   At the same time, would you agree with me that any of the  
11       commercial districts might also be read as being inconsistent  
12       with that Master Plan narrative or could you have a C-1 use  
13       that would not be a small business catering to the local  
14       community?

15   A    I would have to review, more clearly, the list of permitted  
16       uses in the C-1 district.

17   Q    Let me see if I can find it here.

18               I've handed you the Bedford Township Zoning  
19       Ordinance, Section 400.1100 and following, which is the C-1  
20       local business district regulations.

21               And based on your answer to the last question, if  
22       you could review that and then if you need to have the  
23       question read back to you, then we'll go from there.

24   A    Okay. I have read through it.

25   Q    Okay. So I think the question was isn't it true that there

1 are C-1 uses that might not fit within the local commercial  
2 designation narrative, either by not being small businesses  
3 or not serving just the residential neighborhoods or  
4 exceeding 5,000 square feet?

5 A I believe that some uses allowed in the C-1 district might go  
6 against this Master Plan narrative in that it could be larger  
7 than 5,000 square feet, and an individual business or a  
8 combination of businesses could be larger than 10,000 square  
9 feet.

10 But I do believe that all of the uses permitted in  
11 the C-1 district are generally consistent with the day-to-day  
12 narrative here, this aspect of the narrative, whereas it  
13 seems that these (pointing) are uses that serve a localized  
14 area as opposed to people outside of the community or maybe  
15 travelers along a regional thoroughfare.

16 Q Okay. I guess then based on that answer, talking just about  
17 the size limitations, wouldn't it be true that if strictly  
18 applied, those size limitations could be read to preclude any  
19 commercial rezoning on any property that was of a sufficient  
20 size to hold a commercial building larger than those  
21 restrictions suggest?

22 A If that was the only factor that I would consider, yes.

23 Q You obviously, in writing your reviews for these rezoning  
24 applications, I don't want to say you disregarded them, but  
25 they were not a driving factor in your review; is that

1 correct? And "they", I'm referring to the restrictions.

2 A Yes.

3 Q Okay. I'm going to also get your thoughts on the Mixed  
4 Residential/Office/Commercial designation. Actually, it  
5 starts down at the bottom of this page and continues onto the  
6 next. And I'm going to specifically point you to the  
7 sentence that says, "This designation allows for any  
8 combination of residential, office or local commercial use".

9 Do you see that?

10 A Yes.

11 Q Now, that says "local commercial".

12 In your mind, do you read that as the same "local  
13 commercial" as is described up in the "local commercial"  
14 designation?

15 A Yes. I believe that's what that term is referring to.

16 Q Let me ask. It says, "Any combination of residential,  
17 office, or local commercial use".

18 Does that, in your mind, mean that a development  
19 that was comprised entirely of -- or I'm sorry -- that a  
20 proposed rezoning that was comprised entirely of residential  
21 zones? Would that comport with that narrative of the Master  
22 Plan?

23 A I don't believe this is the written the best. My personal  
24 opinion is that the intent is no, that just residential would  
25 not comport to the intent of this narrative as I read it.



1 Q Yes. We're being nitpicky on the poor planners who wrote  
2 this, but that's what we do.

3 I guess what it really boils down to is I see the  
4 word "or" in there, which I think strictly, from a  
5 wordsmith's point of view, means that it could be any  
6 combination or it could be all of one or all of the other or  
7 all of the third. I don't think that that's what that means.

8 Is that what you're telling me as well?

9 A Yes.

10 Q I tend to read that as that "or" probably should be an "and".  
11 Would you agree with me on that?

12 A Yes.

13 Q The intent is to have some aspect of all three residential,  
14 office and commercial in that designation?

15 A Yes.

16 Q Okay. Are you aware -- we've talked a little bit about the  
17 local commercial narrative and you can turn to them if you  
18 need to -- but are you aware of anything in the Bedford  
19 Township Master Plan Objectives and Strategies that would  
20 preclude the development of a large scale commercial  
21 building? Whether you want to call it a big box, we've had  
22 trouble with that definition in the past.

23 But, you know, whether it's a Wal-mart, a Home  
24 Depot, a warehouse store, a Costco, or something like that,  
25 are you aware of anything in the Master Plan that would

1 preclude or discourage that sort of development?

2 A Can you repeat the question again?

3 MR. HANSON: Can you read that back?

4 (Record repeated by reporter.)

5 A Yes. I believe there's language in here that could be used  
6 as an argument against such a development.

7 BY MR. HANSON:

8 Q And what language would you refer to?

9 A Offhand, I see -- and again, I haven't had the opportunity to  
10 review the whole Plan -- the objectives and strategies  
11 related to commercial land use. Under Objective, it suggests  
12 that we provide reasonable opportunities for the  
13 establishment of commercial uses which meet the demonstrated  
14 market needs of local residents. The term "local residents"  
15 here could be an argument.

16 Q And is that because a larger scale retail facility like that  
17 would potentially draw customers from further away than just  
18 a local market?

19 A Yes.

20 Q It's not that -- let me just make sure I'm clear on this --  
21 it's not that those stores don't serve the market needs of  
22 local residents, it's that they serve the market needs of the  
23 local residents plus more?

24 A Yes.

25 Q Okay.

1 A The strategy, the first strategy under Objectives and  
2 Strategies related to commercial land use, "Recognize the  
3 City of Toledo, Ohio, as the business center serving both the  
4 local consumer population and the subregional market base".

5 Q Let me stop you there because I think you actually --

6 MR. HANSON: Actually, could you read back  
7 that answer for me?

8 (Discussion held off the record.)

9 BY MR. HANSON:

10 Q Well, I'll tell you what I heard, Mr. Young, was that you  
11 said, "Recognize the City of Toledo Ohio as the business  
12 center" and it's a mistake and you're not the first one to  
13 make it. It doesn't say "the"; correct?

14 A It says "a".

15 Q It says "a business center".

16 Certainly Toledo, particularly if you're familiar  
17 with the Township and its surrounding environs, there is a  
18 number of retail facilities, at the northern edge of the City  
19 of Toledo, that could serve some of Bedford residents' needs.

20 Do you agree with that?

21 A Yes.

22 Q Okay. I guess what I'm struggling with is how, recognizing  
23 that fact as a strategy in your Master Plan, that discourages  
24 the notion that there might also be a similar retail facility  
25 developed within the Township itself?

1     A     Your previous question before was is there anything in the  
2           plan that could be used. All I'm saying is that this is a  
3           strategy that could be used to try and prevent. I'm not  
4           saying that it necessarily would.

5     Q     Got it. It's not one that you would necessarily use, but  
6           you're saying that it is language that might possibly be read  
7           by somebody to discourage a large scale retail facility being  
8           developed in the Township?

9     A     Right.

10    Q     Well, I guess I'll ask you your personal opinion.

11                 Does that strategy that you just read, does that  
12           mean that the Township Master Plan discourages a large scale  
13           retail facility within its borders?

14    A     I think as the Master Plan was written, that it does intend  
15           to, if not prevent, certainly limit that type of a use.

16    Q     Okay. Any other language, and I know you haven't reviewed  
17           the whole thing, but any other language that you would point  
18           to as things that could be read to discourage that type of  
19           use?

20    A     The narrative of the local commercial future land use  
21           district. Off the top of my head, the ones that we've  
22           mentioned here (pointing) is it.

23    Q     Do you recall -- let me ask you this question.

24                 Are you aware that when this Master Plan was first  
25           adopted and this Future Land Use Map was first adopted, that

1 the property that we're talking about today was designated  
2 for parkland or recreation?

3 A Yes.

4 Q When did you become aware of that?

5 A I don't know.

6 Q Was it back in connection with the earlier litigation?

7 A Very possibly.

8 Q What are your thoughts on designating this property as  
9 parkland in the Master Plan?

10 MR. GOLDSMITH: Objection. Relevance. It's  
11 not now designated that way.

12 A We would recommend against that for -- let me say I would  
13 recommend against that for a client of mine.

14 BY MR. HANSON:

15 Q And is that based on the location of this property in a  
16 relatively commercialized area?

17 A No. It's based on it not being good practice to recommend  
18 private property for public ownership.

19 Q And are you aware of that the Township ultimately obviously  
20 did amend the Future Land Use Map to take that parkland  
21 designation off?

22 A Yes.

23 Q Are you aware that it was eighteen months that went by before  
24 the Township undertook that revision?

25 A No.

1 Q Does it surprise you that it would have stayed designated as  
2 parkland for eighteen months, given the concerns that you  
3 just expressed?

4 MR. GOLDSMITH: Objection. Relevance.

5 A No. It doesn't surprise me.

6 BY MR. HANSON:

7 Q Going back to what the Master Plan map shows now -- and I  
8 think we've talked about this but I want to make sure I'm  
9 clear -- if there is no site plan, so the PUD isn't it  
10 available, the only way that you could propose a rezoning  
11 that comported with the Master Plan would be to propose a  
12 rezoning that encompassed some commercial, some residential,  
13 and some office zoning; correct?

14 MR. GOLDSMITH: Objection. I think it calls  
15 for a conclusion contrary to how this witness has previously  
16 testified, but go ahead answer.

17 A A combination of zoning districts is what would be needed, in  
18 my opinion, to comport with the Master Plan, the Mixed  
19 Residential/Office/Commercial category in the absence of a  
20 rezoning to the PUD.

21 MR. HANSON: Phil, did we mark the minutes at  
22 the last deposition?

23 MR. GOLDSMITH: I think so. Off the record.

24 (Short recess.)

25 - - -

1 MR. HANSON: Back on the record.

2 BY MR. HANSON:

3 Q Here are the minutes. I'm not going to mark these since they  
4 were already marked.

5 The minutes of the September 10 Bedford Township  
6 Planning Commission, this is one of the documents you said  
7 you reviewed?

8 A Yes.

9 Q Did you note, when you reviewed it, that the Planning  
10 Commission had voted on each of these parcels individually as  
11 opposed to voting on the rezoning application as a single  
12 whole?

13 A Yes.

14 Q Is that, in your experience, dealing with other communities,  
15 is that a common way to treat an application that has  
16 multiple rezoning requests in it?

17 A "Common" isn't the best word because it's not that common  
18 that we have rezoning requests for one property that deals  
19 with multiple types of rezoning.

20 Q That's a good clarification. The mere fact that this  
21 particular application requested a number of different zones  
22 on a single piece of property was in and of itself unusual;  
23 right?

24 A Yes.

25 Q Okay. Have you had an opportunity to consult on other

1 applications that are similar in that nature?

2 A I can recall one off the top of my head, one that I recall.

3 Q Was that in Bedford Township or elsewhere?

4 A Elsewhere.

5 Q Were the circumstances in that one similar to this where  
6 there was a Master Plan designation that called for a mixed,  
7 a mixture of uses?

8 A No.

9 Q Do you recall, did the community in that instance, not the  
10 community, but the Planning Commission in that instance, or  
11 the Board, for that matter, vote on that application  
12 individually --

13 MR. GOLDSMITH: Objection. Relevance.

14 BY MR. HANSON:

15 Q -- or did it vote on that application as a single whole?

16 MR. GOLDSMITH: I'm sorry. I didn't mean to  
17 cut you off. Objection. Relevance.

18 A I don't recall.

19 BY MR. HANSON:

20 Q Did anybody ask you whether you had an opinion as to whether  
21 the Whitman Ford application should be voted on parcel by  
22 parcel or whether it should be voted on as a single whole?

23 A No.

24 Q Do you have any opinion on that?

25 A I see it as a procedural matter and not a planning matter,



1 maybe even a legal matter. So, no, I really don't have an  
2 opinion what's best.

3 Q Let's just walk through, if you turn to Page 13.

4 MR. GOLDSMITH: Are we still on the Planning  
5 Commission?

6 MR. HANSON: Yes. We're looking at the  
7 Planning Commission notes -- or minutes. Excuse me.

8 BY MR. HANSON:

9 Q Right in the middle of that page is where the motions on  
10 these applications or these various rezoning requests start.  
11 And I'm not going to read them into the record, but the first  
12 one is referring to what I've been talking about as Parcel 1,  
13 recommending approval, because it is, and I quote,  
14 "consistent with the Master Plan and is a portion of a  
15 buffer".

16 Do you see that?

17 A Yes.

18 Q Okay. Do you agree with that?

19 A Do I agree with --

20 Q With the reasons stated in the motion for recommending  
21 approval?

22 A Yes, that it's consistent with the Master Plan. I don't know  
23 if I like the term "portion", but it is, in a sense, a buffer  
24 or a transition zone.

25 Q So your only hesitation with that language is the use of the

1 word "portion"?

2 A I guess it's just awkward, but yes, it's consistent with the  
3 Master Plan and is a transitional zone in this application.

4 MR. HANSON: Off the record.

5 (Discussion held off the record.)

6 MR. HANSON: Back on the record.

7 BY MR. HANSON:

8 Q If you go further down that page, there's a motion that  
9 relates to what I've been calling Parcel 2 and again the  
10 language is consistent with the Master Plan and is, quote, "a  
11 portion of a buffer".

12 Would you have the same response in terms of your  
13 opinion of the language there?

14 A Yes.

15 Q Turning to the next page, now we're talking about Parcel 3,  
16 the one being rezoned to PBO, and actually the top motion is  
17 withdrawn, and you'll see it's actually the next motion by  
18 Snyder there, and the reason given is "because it is in line  
19 and conforms with the Master Plan for appropriate land use  
20 and provides a buffer".

21 Do you have any problems with that language?

22 A No.

23 Q I noticed the word "portion" is not used there, which maybe  
24 makes it a little bit more in line with your opinion; is that  
25 fair?

1 A Yes.

2 Q All right. And then the next one is further down that page  
3 and it talks about Parcel 6, what I've been calling Parcel 6,  
4 the middle piece, and it actually recommends denial and the  
5 reasons given is because it, quote, "does not totally conform  
6 with the Master Plan and it would be too close and intense to  
7 the RME and RM2 residential areas".

8 Do you agree with the reasons stated there?

9 A I do not.

10 Q And is that because of everything that we've talked about,  
11 including the opinions stated in your review letters?

12 A Yes.

13 Q You believe that it would not be too close and intense to  
14 these proposed residential units, correct, or, I'm sorry,  
15 residential zones; correct?

16 A Yes, when site plan approval and all those requirements come  
17 into play.

18 Q How about the phrase "it does not totally conform with the  
19 Master Plan"?

20 I mean we've looked at a fair amount of language  
21 even just today on a few pages of the Master Plan that it  
22 would be difficult, given the language that we've looked at,  
23 for really any commercial rezoning to, quote, "totally  
24 conform with the Master Plan"; would you agree with that?  
25 Let me strike that question?

1                   It would be difficult for any proposed commercial  
2                   rezoning on a property of this size to, quote, "totally  
3                   conform with the Master Plan"; would you agree with that?

4       A       Yes.

5       Q       Given that, would you agree with the notion that a legitimate  
6                   basis for denial of this Parcel 6 would be that it does not,  
7                   quote, "totally conform with the Master Plan"?

8       A       Would I agree -- repeat the question, make sure I answer  
9                   correctly.

10      Q       Yes. I appreciate that because it was probably poorly  
11                  worded. What I'm trying to get to is we've already talked  
12                  about the stated reason of being too close and intense to the  
13                  RME and RM2 residential areas.

14                   Do you also agree that it's a legitimate basis --  
15                   strike that and start over.

16                   Do you agree that it's a legitimate basis to deny  
17                   this proposed rezoning because it, quote, "does not totally  
18                   conform with the Master Plan"?

19      A       I do not believe that total conformance to the Master Plan is  
20                  legitimate as they have -- "total", in my mind, is that it  
21                  complies with every hundred percent of the plan, every word,  
22                  every phrase.

23      Q       And, again, Master Plans in general, and this one in  
24                  particular, that's sometimes difficult, if not impossible; is  
25                  that a fair statement?

1 A Even the best-worded plan, I think it would be difficult, but  
2 also in the fact that a plan is a guide and it's not a zoning  
3 ordinance, it's not a code.

4 Q You don't need to, if you don't hit one requirement, you  
5 don't go somewhere to seek a variance; right?

6 A Correct.

7 Q It's kind of a, for lack of a better word, a wholistic look  
8 at what the Master Plan talks about and then a reasoned  
9 determination as to whether the application comports with it  
10 or doesn't; right?

11 A I agree with that statement.

12 Q Moving on to the next one that they're talking about, I  
13 believe is what I've been calling Parcel 4. And what they  
14 say there is that they're recommending approval because it,  
15 quote, "fits with the Master Plan in an area that is adjacent  
16 to and across from a C-3 zoning".

17 Do you agree with the reasoning stated there by  
18 the Planning Commission?

19 A Yes.

20 Q And then the last motion at the bottom of that page --  
21 actually, I think you flipped one, we're down at the very  
22 bottom of the page now -- is talking about what I've been  
23 calling Parcel 5, and the reason is or they're recommending  
24 approval and again the reasoning is that it, quote, "fits  
25 with the Master Plan in an area that is already commercially

1           zoned".

2                       Do you agree with that stated basis?

3     A     Yes.

4     Q     Now, obviously with the exception of Parcel 6, the Planning  
5           Commission made recommendations consistent with your  
6           recommendation; right?

7     A     Yes.

8     Q     I'll ask first specifically Bedford Township, on any of the  
9           planning activities that you've been involved in, has the  
10          Township, in any other case, acted contrary to your written  
11          recommendations?

12    A     In Bedford Township?

13    Q     Correct.

14    A     No.

15    Q     Has that happened in other communities in which you've  
16          worked?

17    A     Yes.

18    Q     This is going to be a tough question, but can you give me an  
19          estimation of how many times, in the ten years you've been at  
20          Wade Trim, in any other community that you've had a Board or  
21          a Planning Commission that has acted contrary to your written  
22          recommendation?

23                       MR. GOLDSMITH: Objection, relevance, but go  
24          ahead and answer if you can.

25    A     The actual number?

1 BY MR. HANSON:

2 Q Estimates are fine. I mean is it more than a hundred?

3 A No.

4 Q Is it less than five?

5 A No. I would say, let's say a dozen.

6 Q A dozen times?

7 A Sure.

8 Q And even a harder question. A dozen times out of how many;  
9 hundreds?

10 MR. GOLDSMITH: Same objection, relevance.

11 A A hundred.

12 BY MR. HANSON:

13 Q Would it be fair to say that it's somewhat unusual in your  
14 practice to have that occur?

15 A I can't speak for others.

16 Q Yes. I'm talking only about your experience.

17 A In my experience, yes.

18 Q One document that you haven't mentioned, did you review the  
19 Monroe County Planning Department's recommendation?

20 A Yes, I did.

21 MR. HANSON: Let's go ahead and mark that.

22 (Deposition Exhibit No. 3 marked for  
23 identification.)

24 BY MR. HANSON:

25 Q What's been marked as Exhibit 3 to your deposition,

1 Mr. Young, is a cover letter, followed by a Zoning Amendment  
2 Form, followed by an Official Township Zoning Review  
3 Memorandum, all prepared by the Monroe County Planning  
4 Department and Commission.

5 Is this the document that you reviewed?

6 A I have not seen this cover letter before; the rest, yes.

7 Q When did you review it?

8 A I received this along with the Planning Commission minutes  
9 that we referenced earlier in the Township Board minutes that  
10 you referenced, as a packet when I reviewed the  
11 Township-initiated rezoning for this Parcel 6, as you've  
12 called it.

13 Q Okay.

14 A And that was the first time I've seen this. I've reviewed  
15 this prior to our deposition.

16 Q Why did you review it prior to the deposition?

17 A I thought it might be pertinent or part of the history of the  
18 rezoning.

19 Q In your experience -- well, let me step back. As I  
20 understand it, and tell me if I'm wrong here, the Monroe  
21 County Planning Department's review is a required element of  
22 Bedford Township rezoning; is that fair?

23 It's somewhat of a legal question, so if you don't  
24 know the spot-on legal answer --

25 A I don't know if it's required by the Township.



1 Q I'll make the representation to you that that's what I've  
2 been told; okay? And Phil can contradict me if I'm wrong,  
3 but that's what I understand.

4 And, in any event, it's not uncommon for Monroe  
5 County Planning to conduct a review?

6 A Because it's a State requirement.

7 Q Fair enough. And so County Planning review is, in general,  
8 not something that you're unfamiliar with; right?

9 A Correct.

10 Q Okay. It happens in other townships and other counties;  
11 correct?

12 A Correct.

13 Q Okay. And I'll ask you, having reviewed this, you know that  
14 the Monroe County Planning Department and Commission agreed  
15 with your recommendation and recommended approval of all six  
16 of the rezoning requests; correct?

17 A I understand that.

18 Q Okay. Actually, what I'm going to ask you to do, rather than  
19 go through it line by line, and I know since you've recently  
20 reviewed it, hopefully it won't take too long, but let's take  
21 five minutes and have you review that or however how long it  
22 takes and I want to know if there is anything you disagree  
23 with or find problematic; okay?

24 A Okay.

25 MR. HANSON: We can go off the record while

3

25 Q In terms of what; types of uses that might be --

1 A Even some of the -- maybe a little bit too much of their  
2 recommendation focused on what conceptually could occur on  
3 the site.

4 Q As opposed to focusing on surrounding land uses and Master  
5 Plan conformance and the things you talked about earlier; is  
6 that fair?

7 A Yeah, I generally agree.

8 Q Okay.

9 A Yet I still believe they did a thorough job, took a look at  
10 many different issues and aspects in there, and I generally  
11 agree with what they have to say, yes, and certainly their  
12 recommendation and conclusion.

13 Q And just to nail it down, are you specifically talking about  
14 their reference to the conceptual plan that was shown for the  
15 westerly portion of the property as the portion that's giving  
16 you some pause?

17 A Yes. And they were speculating about this road and where it  
18 might be and what should be on either side of the road.  
19 Although I don't necessarily disagree with their speculation,  
20 maybe it just isn't necessary for this level of review.

21 Q Understood. Okay. Anything else?

22 A No.

23 Q All right. Thank you. I asked you earlier whether Bedford  
24 Township had ever, other than this case, gone against any of  
25 your recommendations.

1                   Are you aware of Bedford Township going against  
2                   any Wade Trim recommendation in any case?

3                   MR. GOLDSMITH: Objection. Relevance.

4       A       I'm not aware.

5                   MR. HANSON: I will mark this as well.

6                   (Deposition Exhibit No. 4 marked for  
7                   identification.)

8       BY MR. HANSON:

9       Q       Mr. Young, what's been marked as Exhibit 4 to your deposition  
10              is Bedford Township Board Minutes of December 2nd, 2008.

11                   Is this a document that you reviewed in  
12              preparation for the deposition?

13      A       Yes.

14      Q       These minutes contain six somewhat lengthy motions regarding  
15              the six rezoning requests. Do you see that?

16      A       I recall that, yes.

17      Q       Now, I'm not going to walk through the other five, but I did  
18              want to look at the motion on Parcel 6, it's on Page 4 down  
19              at the bottom, and it's a motion to deny the rezoning.

20                   And I am going to read this into the record: "For  
21              the reason", it's motion to deny, and then, quote, "For the  
22              reason that it is inconsistent with the Master Plan which  
23              provides for residential use and possible mixed office or  
24              local business use and because more of a buffer and  
25              transition is needed between the residential zoning on the

1 west to general commercial zoning and uses on the east".

2 It goes on, but I'm going to stop you there and  
3 ask you about those.

4 Do you agree, first of all, with the notion that  
5 the Master Plan provides for, quote, "residential use and  
6 possible mixed office or local business use"?

7 A In that most of what we've been referring to, if not all, of  
8 Parcel 6 is shown as mixed residential, office and  
9 commercial, I don't agree with that statement.

10 Q And is that because the Master Plan -- well, I'll ask you why  
11 don't you agree with that statement?

12 A The narrative for that Mixed Residential/Office/Commercial  
13 district, I don't think is consistent with their  
14 characterization of that as a residential use and possible  
15 mixed office or local business use.

16 I think the narrative seems to be mixed use. It  
17 doesn't indicate residential and maybe also this. I think  
18 it's mixed use.

19 Q All right. The other statement made there is, quote,  
20 "because more of a buffer and transition is needed between  
21 the residential zoning in the west to general commercial  
22 zoning and uses on the east".

23 The first question I have, we saw in the Planning  
24 Commission recommendation, they wanted a buffer between the  
25 proposed higher density residential units -- I'm sorry --

1 residential zoning districts and the C2.

2 Is that how you read the Board's motion or do you  
3 think the Board is talking about Indian Acres?

4 A I don't know.

5 Q I guess I don't either, so I guess I'll ask it both ways.  
6 Well, we've already talked about your opinions on whether  
7 additional buffering or transition is needed between the RME  
8 and the MR2.

9 So I take it if they're talking about it the way  
10 the Planning Commission was talking about it, you would  
11 disagree with that statement the same way you disagree with  
12 the Planning Commission statement; is that fair?

13 A Do you mean between Parcels 1 and 2 and Parcel 6?

14 Q Exactly.

15 A Can you repeat your question, then, or rephrase it?

16 Q Yes. And I'm sorry to be confusing, but because I'm not sure  
17 exactly what the Board's talking about, I'm trying to break  
18 it into two pieces.

19 The first piece, let's assume they're talking  
20 about they want more space between Parcels 1 and 2 and Parcel  
21 6; okay?

22 A Okay.

23 Q If that's what they're talking about, I take it that you  
24 would disagree with that statement for the same reasons that  
25 we talked about earlier with regard to the Planning

1 Commission's motion; is that fair?

2 A I'm asked to, in reviewing the rezoning, review what's in  
3 front of me. I guess I'm just thinking generally, planning,  
4 you know, what makes good planning sense. More of a buffer  
5 is always better than less of a buffer, so let me say that.

6 But I do agree, as I've indicated, that between  
7 Parcels 1 and 2 and Parcel 6, that a buffer could be achieved  
8 through site planning development standards.

9 Q And so to try and get that into a short answer, again, if the  
10 Board's talking about Parcel 1 and 2 being adjacent to Parcel  
11 6, you would disagree with that adjacency as being a basis  
12 for the denial of this rezoning request?

13 MR. GOLDSMITH: Objection. Asked and  
14 answered. He's already answered the question.

15 BY MR. HANSON:

16 Q And if the answer is you agree with that, that's fine. If  
17 the answer is no, then I need to ask you more questions about  
18 it.

19 A I don't believe it's a basis for denial.

20 Q Okay. Okay. Thank you.

21 Now, let's assume that the Board was talking about  
22 Indian Acres and that, when they say more of a buffer and a  
23 transition is needed between the residential zoning on the  
24 west, do you agree or disagree that that's a basis for  
25 denying this rezoning request?

1 A As I've indicated, in my review, I believe that what was  
2 proposed was, in my mind, an adequate transition.

3 Q The next sentence in the Board's motion says, and I'm going  
4 to quote it, "While it is recognized that the existing R-2A  
5 zoning classification does not provide the desired transition  
6 from residential uses to commercial uses, neither does the  
7 proposed C-2 zoning. Rezoning to a less intense transitional  
8 use would better fit this parcel".

9 I guess to break that down, when they're talking  
10 about the existing R-2A zoning classification, I take it  
11 they're talking about the existing R-2A on this Parcel 6; is  
12 that correct or is that a fair reading?

13 A Yes.

14 Q Okay. And it's maybe stating the obvious, that having an  
15 existing R-2A zone adjacent to not only a C-3 zone but a  
16 fairly intense C-3 use of a car dealership is not what you  
17 would consider to be normal transitional zoning; is that  
18 fair?

19 A Correct.

20 Q They then go on and say but even though that's not  
21 transitional zoning, neither is the C-2.

22 And I guess my question is do you agree or  
23 disagree that the less intensive C-2 zoning provides a  
24 transition to the more intense C-3 zone along Lewis Avenue?

25 A It does.



1 Q And so I take it that you would disagree with the statement  
2 that the proposed C-2 zoning does not provide the desired  
3 transition?

4 A I believe it does provide a transition.

5 Q Are you aware of any other instances in which Bedford  
6 Township has acted contrary to the Monroe County Planning  
7 Commission recommendation?

8 A I'm not.

9 Q And I'm not talking about just ones since you've been  
10 involved, but at any time that you've been at Wade Trim, are  
11 you aware of any such circumstance?

12 A No.

13 Q I'll ask a broader question. Are you aware of other  
14 communities in which you've worked and which there have been  
15 instances where the Board has acted contrary to a County  
16 Planning Commission recommendation?

17 MR. GOLDSMITH: Objection. Relevance.

18 A Yes.

19 BY MR. HANSON:

20 Q And, again, I'll ask it, how many times do you think that's  
21 happened?

22 A And, again, you said Monroe Planning Commission  
23 recommendation?

24 Q Well, we'll start with Monroe County and then we'll work from  
25 there, but in Monroe County are you aware of other Township's

1           that have acted contrary to Monroe County Planning?

2     A     I can think of at least two instances in one community in  
3           particular.

4     Q     Which is that?

5     A     Ash Township.

6     Q     And in that community, were those rezonings or site plans or  
7           what?

8     A     In both cases they were Master Plan updates.

9     Q     Are you aware of -- well, let me strike that.

10                 I take it then that, as you sit here today, you  
11           can't think of any other instance in Monroe County where a  
12           township has gone against the Monroe County Planning  
13           recommendation on a rezoning application?

14    A     I can't recall any.

15    Q     And, again, focus specifically on rezoning applications. Can  
16           you recall any instance in any other community that you've  
17           worked in where a township has gone against the County  
18           Planning Department's recommendation?

19                         MR. GOLDSMITH: The same objection.

20           Relevance.

21    A     I can't specifically recall an instance. If I could add to  
22           that, in my role as the consultant, I represent and am most  
23           familiar with a rezoning as it would go up to the Planning  
24           Commission level. The County recommendation always comes  
25           post-Planning Commission. I'm very often not involved at the

1 Township Board decision, or present, and therefore very often  
2 I do not even see a County recommendation. For whatever  
3 that's worth, I just wanted to clarify that.

4 BY MR. HANSON:

5 Q I appreciate that clarification.

6 Well, let's now take the rezoning limitation off  
7 and you've talked about the two Ash Township Master Plan  
8 update instances.

9 Any other instances that you can think of where a  
10 township has acted contrary to a county planning  
11 recommendation?

12 A Not that I recall.

13 Q Let me make sure I close the loop on this. These motions,  
14 both in the Planning Commission and the Board, did you have  
15 anything to do with drafting them?

16 A I did not.

17 Q Were you consulted in any fashion by anybody, Dennis Jenkins  
18 or anybody, with regard to the drafting of these motions?

19 A No.

20 Q Have you ever been involved in any sort of planning  
21 activities, site plan, rezoning, whatever, in which there was  
22 prior litigation over the same property?

23 A Yes.

24 Q How many times?

25 A Not many.

1 Q Less than five?

2 A Five or less.

3 Q Were those or were any of those rezonings?

4 A Likely one or two were.

5 Q Can you remember the specifics of those one or two rezonings  
6 in terms of what was requested the first time and requested  
7 the second time and what the result was?

8 A I really can't. I can't recall the specifics.

9 Q One thing that I can assume, since it was coming back for a  
10 second rezoning application, presumably the municipality had  
11 won in the prior litigation?

12 A I also want to make sure that you didn't say whether it was a  
13 litigation involving a rezoning decision.

14 Q Okay. Of course with that clarification, I have to ask you  
15 what sort of litigation are we talking about?

16 A I can recall an instance or two specifically where it was  
17 zoning compliance issues that resulted in litigation and then  
18 later would come before the community for a site plan or  
19 rezoning.

20 Q Let me just make sure I understand that. There is a use  
21 happening on the site that doesn't comport with the existing  
22 zoning?

23 Is that what you're talking about with zoning  
24 compliance?

25 A Correct.

1 Q Okay. And so in those one or two instances, is that actually  
2 a municipality-initiated litigation to stop a use from  
3 proceeding?

4 A Yes.

5 Q Okay. And, again, presumably the municipality won in those  
6 instances and then the applicant came back, afterwards, and  
7 requested a rezoning; is that fair?

8 A Right.

9 Q Okay. A little bit different situation than what we're  
10 dealing with here; right?

11 A I would say so.

12 Q Okay. Fair to say that, in your experience, and in anything  
13 that you've ever known about or heard of, you're not aware of  
14 any situation like this one where property owner applied for  
15 a rezoning, was denied, went to litigation, submitted a  
16 rezoning application to try and comply with the Court's  
17 order, got the recommendation of the planning consultant and  
18 the County Planning Department and at the end of the day was  
19 denied again?

20 A I'm not aware.

21 Q Okay. In fact, it's -- well, we'll get there.

22 MR. HANSON: We'll mark this one next.

23 (Deposition Exhibit No. 5 marked for

24 identification.)

25 BY MR. HANSON:

1 Q What's been marked as Exhibit 5 to your deposition,  
2 Mr. Young, it's got a cover memo with a date on it of  
3 September 25, 2005. I'll represent to you that, in  
4 Mr. Jenkins' deposition, we established that that date is  
5 just simply pulled out of left field.

6 A Okay.

7 Q If you look at the following page, it's a cover to your memo  
8 of January 9, 2009.

9 Do you see that?

10 A Okay. I see that.

11 Q First of all, I guess I question did you have a chance to  
12 review Mr. Jenkins' memo to the Board, that's the first page  
13 this exhibit, prior to today?

14 A I've never seen that.

15 Q Okay. Let me just ask you how did you first become aware of  
16 this administrative rezoning process?

17 A From Dennis Jenkins.

18 Q Do you recall when he would have contacted you?

19 A I believe it was after the New Year of 2009.

20 Q So if you remember the Board of Trustees meeting was December  
21 2, 2008, you think it would have been roughly a month after  
22 the Board's action?

23 A Yes.

24 Q Okay. We know it was sometime before January 9; correct?

25 A Of course.

1 Q Okay. What did he say? Did he call you, email you?

2 A I don't know. Probably a phone call. At that time I don't  
3 believe I had even heard of the results of the Township Board  
4 meeting on December 2, so I believe he let me know about what  
5 the Township Board did and which rezonings were approved, and  
6 the center one was not.

7 And then said, well, then, and talked about how  
8 that leaves the problem or the issue of having that  
9 residentially-zoned property in the middle of the larger site  
10 and that it was an idea, I believe his, to propose an office  
11 district rezoning initiated by the Township. I should say I  
12 don't know if it was Dennis' idea; maybe the Planning  
13 Commission, maybe the Township Board. I'm not sure.

14 Q And let me break it down a little bit in terms of whose idea  
15 was what.

16 I guess do you have any idea whose idea it was to  
17 commence an administrative rezoning at all?

18 A I really don't know whose idea it was originally.

19 Q Okay. And I'm keeping that separate from the notion of whose  
20 idea it was to, "Okay, we're going to do an administrative  
21 rezoning. Which district should we administratively rezone  
22 to?"

23 Do you have any idea who came up with the PBO  
24 concept?

25 A I can't say that for a fact either.

1 Q And did Dennis say anything to you on either one of those  
2 points?

3 A I don't recall and I don't believe he said whose idea it was.  
4 My speaking to him, I assumed that it probably was his, but  
5 again, I don't know.

6 Q How many times have you, in your work experience, dealt with  
7 an administrative rezoning request?

8 A Many times.

9 Q Describe the situations in which they might come up.

10 A They're always brought upon by a need or an issue or a  
11 concern as identified by, it could be a Planning  
12 Commissioner, it could be a staff member, and then maybe  
13 sometimes it would be brought before the Planning Commission  
14 to consider, "Okay, do we want to initiate a  
15 Township-initiated or administrative rezoning?"

16 In some cases it might be as a result of a mistake  
17 in a zoning map or something like that. Sometimes they're  
18 even as a result of an inquiry from a particular property  
19 owner, not a formal application but maybe somebody appearing  
20 before the Planning Commission and saying, "Hey, I think  
21 maybe you ought to reconsider this", or I mean it really  
22 varies across the board how that would actually start up or  
23 be initiated.

24 Q Well, and I'm trying to get a sense. Let me see if I can get  
25 a rough number of how many administrative rezonings you've



1           been involved with in your career.

2     A     I would really say quite a handful.

3     Q     I mean you know how I like to do this. Is it more than a  
4           hundred?

5     A     No.

6     Q     More than twenty?

7     A     Probably right about twenty or so.

8     Q     Of those twenty or so, how many of them are mistakes on the  
9           zoning map that need to be rectified or cleaned up?

10    A     Maybe one or two.

11    Q     Okay. How many of those might be based on an inquiry from a  
12           property owner?

13                         MR. GOLDSMITH: I'm just going to have a  
14           continuing objection to this line of questioning as to  
15           relevance.

16    A     Maybe half. And I would say maybe the other, the  
17           remainder -- and I failed to mention this -- another reason  
18           that an initiated rezoning might occur is a change in a  
19           planning document. A Master Plan change results in changes  
20           to the zoning ordinance and/or map.

21    BY MR. HANSON:

22    Q     So based on that, it sounds like of the ones you've dealt  
23           with, there is two big categories, which are either an  
24           inquiry from a property owner or a change in a planning  
25           document and a need to change the underlying zoning to

1       comport with that change?

2       A     And also a need based on or a concern coming from a Township  
3             staff member. I'm trying to think of an example here. Yeah,  
4             I'll strike that. I would say the answer to your question  
5             was yes.

6       Q     On the two main categories?

7       A     The two main categories.

8       Q     Got it. Were you ever aware of an administrative rezoning  
9             where the property owner was not contacted prior to the  
10            initiation of the rezoning?

11      A     I am not aware, but also I wouldn't be the person doing the  
12             contacting, so it's not my role as a consultant to be  
13             involved in that.

14      Q     Are you aware of any administrative rezonings where the  
15             property owner did not want the rezoning that was being  
16             proposed by the Township?

17      A     None specifically but I'm sure that there have been. In many  
18             cases the property owner is not consulted prior to the  
19             suggestion or the initiation of an administrative rezoning.

20      Q     Do you have an opinion -- well, let me just step back.

21             This administrative rezoning, as I understand it,  
22             was a result of the fact that the Board, in this case,  
23             approved five rezonings and left an oddball in the middle.

24             Would you agree with that?

25      A     It seems to be the case.

1 Q Okay. In fact I think you did testify that that's what  
2 Mr. Jenkins basically told you on the phone?

3 A Yes.

4 Q Are you aware of any other of the administrative rezonings  
5 you've been involved in that resulted from that same  
6 circumstance?

7 A Not specifically.

8 Q If you look at the first page of this exhibit, which is  
9 actually Mr. Jenkins' cover letter --

10 A Okay.

11 Q -- he talks about it being -- the first sentence he talks  
12 about a recent meeting with Township attorneys, "The subject  
13 of the Whitman Ford rezoning action by the Township Board was  
14 discussed".

15 I think you testified earlier that you sometimes  
16 might give some advice in your workshop on open meetings  
17 requirements.

18 Are you familiar with the requirements for  
19 discussing Board actions with counsel?

20 A Yes.

21 Q And if I'm not mistaken, and I know that this is legal stuff,  
22 but generally speaking there is a motion to go into executive  
23 session made at a public meeting; is that correct?

24 MR. GOLDSMITH: Objection. Calls for a legal  
25 conclusion.

1 A Again, I'm not an attorney.

2 BY MR. HANSON:

3 Q And I'm not trying to hold you to it. I'm just trying to set  
4 a background.

5 Is that your general understanding of the Open  
6 Meetings Act?

7 A Yes.

8 Q Are you aware, in this case, of whether there was any such  
9 meeting in Executive Session called prior to the meeting with  
10 the Township attorneys that's described in Mr. Jenkins'  
11 letter?

12 A No.

13 MR. GOLDSMITH: Tom, are you inferring that  
14 there was a meeting between Board members and Township  
15 attorneys?

16 MR. HANSON: I don't really know what kind of  
17 meeting there was, Phil.

18 MR. GOLDSMITH: Because that's not what it  
19 states, if you're making that inference.

20 MR. HANSON: I'm not allowed to ask about it.

21 So --

22 MR. GOLDSMITH: Well, you're right about  
23 that.

24 MR. HANSON: At least not yet.

25 BY MR. HANSON:

1 Q Were you consulted with regard to the specific zoning  
2 district that was going to be used, the PBO?

3 A You mean did I give an opinion which one should be used?

4 Q Yes.

5 A No.

6 Q That wasn't part of your assignment? It was, "We're going to  
7 administratively rezone to PBO, go do your analysis"?

8 A Correct.

9 Q Were you given any instruction on what sort of results you  
10 should reach with your recommendation?

11 A No.

12 Q I want to turn to the findings that you've got. The first  
13 question I have is you say that, "After reviewing the  
14 request, we find that the proposed rezoning is consistent  
15 with the objectives and strategies of the Master Plan".

16 Are those the objectives and strategies that you  
17 have listed at the top of the page?

18 A Yes.

19 Q Those are some of the same objectives and strategies that we  
20 looked at with regard to the Whitman rezoning application;  
21 correct?

22 A Yes.

23 Q Suffice it to say then, in your estimation, either the  
24 rezoning proposed by Mr. Whitman or the rezoning proposed by  
25 the Board would have met the Master Plan?

1 A In my opinion, yes.

2 Q Do you have any concern that the Board, by proposing to  
3 rezone to an office designation, was excluding commercial  
4 development in this area which called for mixed office,  
5 residential and commercial?

6 A I did not have a concern.

7 Q Why not?

8 A Well, there is commercial zoning in that area, commercial  
9 development.

10 Q And I appreciate that and I've got kind of more of a question  
11 just based on the fact that the Master Plan Future Land Use  
12 Map calls for straight commercial along Lewis and then, in  
13 what looks like almost a line almost drawn based on the  
14 existing commercial zones, segregates out that western  
15 portion and specifically says, "We want that to be mixed  
16 office, residential and commercial".

17 And I guess what that suggests to me is that it  
18 looks like the Master Future Land Use Map wants there to be  
19 some commercial on the western portion of the site.

20 Do you agree with me or disagree with me on that?

21 A The narrative calls for a mixture of uses -- residential,  
22 office, commercial -- in the Master Plan.

23 Q And would you agree with me that that designation seems to  
24 call out specifically the western side of this property?

25 A Yes.

1 Q So again I guess my question is I understand there is  
2 commercial uses in the area?

3 A Okay.

4 Q But given that the land use map seems to specifically want  
5 that mixture on the western half of this property, did you  
6 have any concern that rezoning to the PBO designation would  
7 be excluding commercial uses from that part of the property?

8 A It really was not a concern of mine and it didn't enter into  
9 my thought process. The mixture, in my mind, was the types  
10 of residential uses and the uses that would be allowed in the  
11 office PBO district. In my mind, that was an appropriate  
12 mixture of mixed use that would generally be consistent with  
13 the Master Plan.

14 Q And you held that belief even though there wouldn't be a  
15 commercial component to it?

16 A Yes.

17 Q Did you have any discussions with Mr. Jenkins about cutting  
18 this parcel up in any fashion to have some portion of it be  
19 office, some portion of it be commercial, some portion of it  
20 be residential?

21 A No.

22 Q Did you, as you were doing your review, did you have any  
23 concerns about the fact that the Township was simply taking  
24 this one parcel and attaching a zoning designation to it and  
25 not thinking more about what might be appropriate planning

1 for the parcel?

2 A First I was responding to the application at hand but also I  
3 felt that the proposed rezoning would, in my opinion, be  
4 generally consistent with what the intent of the Master Plan  
5 showed for that area, saying that I don't think -- or I think  
6 the lack of a commercial district isn't grounds, in my  
7 opinion, to say that it's not consistent with the Master  
8 Plan.

9 Q So suffice it to say that more than one different zoning  
10 pattern could comport with the Master Plan in this  
11 circumstance; right?

12 A Yes.

13 Q You would agree with me, as well, that the one proposed by  
14 Mr. Whitman had a commercial component on this particular  
15 side of the property whereas the one proposed by the Township  
16 did not?

17 A In the sense that the PBO district is, if you're not  
18 considering that a commercial district, yes, that's correct.

19 Q Do you consider the PBO district a commercial district?

20 A It's not an exclusively commercial district. An office,  
21 generally speaking, certainly leans much more towards the  
22 commercial side than it does on the residential side.

23 Q I agree with you on that front. But from a planning  
24 perspective, there's a difference between office and  
25 commercial; right?



1 A Yes.

2 Q Are you aware of any -- let me step back.

3 Do you have any opinion on the marketability of a  
4 office zone that doesn't have any street frontage on any  
5 major thoroughfare?

6 A I'm not an expert in that respect.

7 Q Would you agree with me it's probably not typical?

8 A No. I think there are -- I don't agree. I think there are  
9 aspects of a office or business professional office park that  
10 are a campus-style setting that are off the road, not with  
11 direct frontage.

12 Q Would you think that one of those campus-style office park  
13 settings could be achievable on a parcel of this acreage  
14 located adjacent to a number of C-3 uses?

15 A I can't say for sure, but I think some configuration could be  
16 accomplished there. I would think it could be done.

17 Q Are you aware of any other office uses in Bedford Township  
18 that are set off the road?

19 A Not that I recall.

20 Q Is it common, in your experience, to have been asked for a  
21 second analysis on a parcel so soon after you'd been -- well,  
22 let me strike that and start over.

23 You analyzed the Whitman proposal that actually  
24 went to the Planning Commission on August 13; right?

25 A Correct.

1 Q Okay. Is it common, in your experience, for a township to  
2 come back and ask for an opinion on an alternative zoning  
3 configuration so soon after you've done the first?

4 A I wouldn't say that it's common.

5 Q Has it ever happened before?

6 A In this same, under these same circumstances, not that I'm  
7 aware.

8 Q In fact has it ever happened before, with any of the  
9 administrative rezonings that you've been a part of, have  
10 they ever followed directly on the Township's denial of a  
11 rezoning requested by an applicant?

12 A Not that I'm aware of.

13 Q And that last question I wasn't limiting to Bedford Township.  
14 I was talking about your experience anywhere.

15 Is it the same answer?

16 A The same answer.

17 Q Well, let me close the loop on this. Are you aware of in any  
18 other times that Bedford Township has undertaken an  
19 administrative rezoning?

20 A No.

21 Q Do you live in Bedford Township?

22 A No.

23 Q Where do you live?

24 A Livonia.

25 Q Not that far away.

1                   Are you aware that there was a referendum  
2                   regarding the Township's rezoning in this case?

3     A     Yes.

4     Q     When did you become aware of that?

5     A     Earlier this year. I don't recall specifically.

6     Q     Earlier this year being 2010?

7                   I guess the question is did you hear about it  
8                   before the referendum actually came to be, or after?

9     A     I don't recall specifically. I don't recall.

10    Q     Did you have any discussions with Mr. Jenkins or anybody else  
11           at the Township about the referendum?

12    A     Yes. I believe I would have heard about that from him.

13    Q     Okay. And do you recall the substance of that conversation?

14    A     No.

15    Q     Did Mr. Jenkins say anything to you about any of the  
16           advertisements or campaign literature that was distributed in  
17           connection with the referendum?

18    A     No.

19    Q     Have you ever had an opportunity to see any of those types of  
20           materials?

21    A     For this specifically?

22    Q     Yes.

23    A     No.

24    Q     Do you recall hearing from Mr. Jenkins at all that the  
25           Bedford Watch folks had distributed literature to state that

1 by voting to overturn the Township's rezoning, Bedford  
2 residents would be keeping Wal-mart out of Bedford?

3 A No.

4 Q Let me make sure I got you on the same page with everybody  
5 else. Looking at the rezoning that the Township ultimately  
6 did, which is rezoning Parcels 1 through 5, are you aware  
7 that the Township never actually went through with the  
8 administrative rezoning?

9 A I am.

10 Q Okay. So leading up to the referendum, we had Parcels 1  
11 through 5 rezoned and we still had single-family zoning on  
12 Parcel 6; right?

13 A Okay.

14 Q Okay. Would you agree with me that the rezonings that the  
15 Township approved did not increase by a single inch the  
16 amount of land available for the development of a Wal-mart or  
17 any other large-scale retail facility? And if you need to  
18 look at the C-2 designation, I can show you that.

19 A I agree with your statement.

20 Q Have you had an opportunity to deal with referendum issues in  
21 other communities in which you've worked?

22 A No.

23 Q Are advising Township's on referendums, is that any part of  
24 the workshops you might provide for clients?

25 A No.

1 Q Do you have any opinion on whether a township should take any  
2 position in a referendum done in which false information is  
3 being distributed?

4 MR. GOLDSMITH: Objection. Assumes facts not  
5 in evidence.

6 A I suppose a referendum based on factual evidence is, in my  
7 opinion, not a good thing and should not be supported.

8 BY MR. HANSON:

9 Q Let me just -- I think you may have misspoke there.

10 MR. HANSON: Actually, could you read the  
11 answer back?

12 (Record repeated by reporter.)

13 BY MR. HANSON:

14 Q Did you mean to say "factual evidence" or "factual  
15 inaccuracies"?

16 A Inaccuracies.

17 Q So just to clean that up, a referendum that's based on  
18 factual inaccuracies is not a good thing, in your estimation?

19 A Correct.

20 Q And you would, in your opinion -- well, you know what, I'm  
21 going to strike that and leave the answer as it is.

22 Do you have any concerns with a public official  
23 speaking out on a referendum issue in any regard?

24 In other words, take the factual inaccuracy out of  
25 the picture. Do you have any concerns with a public official

1 speaking out on a rezoning referendum like this?

2 MR. GOLDSMITH: Objection. Irrelevancy. I  
3 don't know what his opinion on that subject might add to this  
4 litigation.

5 A I believe that's in the political interest of somebody. I  
6 can't say for or against somebody's personal motives in that  
7 respect.

8 BY MR. HANSON:

9 Q You don't have an opinion on whether a township should take a  
10 public stance to support the action that it's taken on a  
11 rezoning?

12 A Well, it would seem to make sense that a township, on an  
13 action taken of their own, should be consistent with that  
14 same action.

15 Q Are you aware that as a result of the referendum, all of  
16 Mr. Whitman's and Whitman Ford's rezoning requests have been  
17 denied?

18 A Yes.

19 Q And the zoning of the western half of the parcel, as we sit  
20 here today, I understand say western half, but the western  
21 side of the parcel is completely single-family residential?

22 A I'm aware of that.

23 Q Does that comport with the Master Plan?

24 A No.

25 Q Do you think that that's a reasonable zoning plan for that

1 property?

2 A Because it does not -- because it is not compatible with the  
3 Master Plan, I believe that it ought to be changed to  
4 something different.

5 MR. GOLDSMITH: Let me just object to this  
6 line of questioning because what has occurred has occurred  
7 because of operation of law, not anything that the Township  
8 did or didn't do. We've gone over all of the Township's  
9 actions with respect to Mr. Whitman's application for  
10 rezoning. So what exists now is there by operation of law.

11 MR. HANSON: Phil, you know my  
12 counter-argument, my counter-statement on that is the State  
13 is the State, whether it's acting by Board action or  
14 referendum. And if the State infringes on constitutional  
15 rights it infringes on constitutional rights.

16 BY MR. HANSON:

17 Q So with that in mind, I think you answered my prior question  
18 before we actually had a legal argument as opposed to really  
19 an objection.

20 But you said that it wasn't, I think, and tell me  
21 if I'm wrong, you said that you don't think it's a reasonable  
22 planning or zoning plan for that property because it doesn't  
23 comport with the Master Plan; is that right?

24 A Yeah. If you were to ask me that question for any property  
25 in the Township, I would look at the Master Plan and see what

1 the Master Plan has to say. If the Master Plan is different  
2 than what the current zoning is, then that leads me to  
3 believe that at some point in the future, it ought to be  
4 changed to something that is more consistent with the Master  
5 Plan.

6 Q You wouldn't advocate, in that situation, for an  
7 administrative rezoning in every case where that occurred;  
8 correct?

9 A Not every case.

10 Q Have you ever advocated for a township to undertake an  
11 administrative rezoning simply to have a zoning  
12 classification be changed just to adjust to the Master Plan?

13 A Yes.

14 Q When was that?

15 A I can recall specific instances and also general instances,  
16 usually following the adoption of the Master Plan.

17 Q Okay. And let's put that aside.

18 A Okay.

19 Q Can you think of any instances not -- where there wasn't an  
20 underlying planning document change where you've advocated  
21 for that?

22 A I have a case right now in Ash Township. The Master Plan  
23 there was adopted in December of 2009, a Master Plan update.  
24 I believe we initiated a couple of rezonings very soon  
25 afterwards, and there is one currently going right now, a



1 separate township-initiated rezoning.

2 Q And what's the impetus behind that third one?

3 A The impetus is that the new Master Plan shows it differently  
4 than how it's currently zoned, it's several properties, and I  
5 think it was a result of a suggestion by the property owner  
6 to maybe -- the zoning administrator, who then brought it up  
7 with the Planning Commission, said, "Okay, we have an area  
8 here of properties that are not zoned, compatible with the  
9 new Master Plan. Should we initiate a township-initiated  
10 rezoning?"

11 Q Here there hadn't been a change in the underlying Master Plan  
12 designation since I believe 2003; correct?

13 A Correct.

14 Q Okay. So that wasn't the impetus for this administrative  
15 rezoning?

16 A Right.

17 Q Certainly it didn't come about at the request of inquiry by  
18 the property owner; correct?

19 A To my knowledge, correct.

20 Q Okay. And getting back to my question, as the property sits  
21 today, the single-family residential designation over the  
22 entire thing is not consistent with the Master Plan; right?

23 A Correct.

24 Q Would you agree with me that as it sits here today, it also  
25 brings directly conflicting uses adjacent to each other, at

1           least by zoning?

2                       You've got a single-family residential use zoned  
3           immediately adjacent to a high intensity C-3 use that's  
4           actually existing?

5    A    Correct.

6    Q    Okay. Has the Township undertaken any further analysis or  
7           study or consultation with you on administratively rezoning  
8           Parcel 6?

9    A    No.

10   Q    Because Parcel 6 wasn't part of the referendum; correct?

11   A    As I understand it, correct.

12   Q    And I'll represent to you that it was not. But there would  
13           be nothing stopping the Township today from instituting  
14           another administrative rezoning on Parcel 6; correct?

15   A    I'm not an attorney or a legal expert in that respect. I  
16           don't know what can counteract a citizen referendum in this  
17           respect.

18   Q    Well, and I guess what I'm trying to -- I'll represent to you  
19           that you can take those issues out of the mix because Parcel  
20           6, the referendum had nothing to do with it. The referendum  
21           was specifically directed to the Board's action on the other  
22           five parcels.

23                       So taking the whole referendum citizen action part  
24           out of the mix, there would be nothing stopping the Board  
25           from beginning an administrative rezoning tomorrow on Parcel

1           6 that could address both the Master Plan concerns and the  
2           conflicting adjacent uses concerns; correct?

3     A     Correct.

4                         MR. GOLDSMITH: Objection. Calls for a legal  
5           conclusion.

6     BY MR. HANSON:

7     Q     And as far as you know, the Board hasn't done that; right?

8     A     To my knowledge, correct, they have not done that.

9     Q     Mr. Young, we've talked about a number of things that are  
10           uncommon at least, if not down right rare, on this property.  
11           We have the Master Plan parkland designation, we've got the  
12           Planning Commission going against your recommendations, we've  
13           got the Board going against your recommendations as well as  
14           the County Planning recommendations, we've got the Board  
15           instituting an administrative rezoning, not driven by the  
16           property owner's inquiry or a recent change to the Master  
17           Plan, we've got the referendum itself.

18                        Can you think of any other property owner in any  
19           other community where so many unusual or uncommon activities  
20           have taken place on a single piece of property?

21                        MR. GOLDSMITH: Objection. Relevance.

22     A     No.

23     BY MR. HANSON:

24     Q     And at the end of the day, Mr. Whitman, in terms of rezoning  
25           his property, to develop it in conformance with the Master

1 Plan, has effectively gotten nowhere; is that correct?

2 MR. GOLDSMITH: Objection. Relevance.

3 A Correct.

4 BY MR. HANSON:

5 Q Real general question. Have you ever been asked by Bedford  
6 Township to do any sort of feasibility or impact or market  
7 study?

8 A No.

9 Q To your knowledge, has anybody at Wade Trim ever been asked  
10 to do such a study?

11 A No.

12 MR. HANSON: Let me talk to my attorney. I  
13 might be done.

14 MR. GOLDSMITH: Your client, you mean?

15 MR. HANSON: No. My attorney.

16 THE WITNESS: There's only three or four more  
17 questions.

18 MR. HANSON: I'm doing good.

19 (Short recess.)

20 - - -

21 MR. HANSON: Back on the record.

22 BY MR. HANSON:

23 Q You mentioned, when you were talking about the times you'd  
24 been involved in the administrative rezonings, that it might  
25 come from staff members or the property owner or whomever.

1 Have you ever had one where the suggestion for the  
2 administrative rezoning came from Township attorneys?

3 A Not that I recall.

4 Q Do you have any opinions on whether it's appropriate for  
5 planning decisions to be made by or at least instigated by  
6 attorneys other than planners?

7 MR. GOLDSMITH: Objection. Relevance and  
8 also calls for comment on facts not in evidence.

9 A Initiated, initiated by an attorney, given that we are  
10 talking about the law in a municipality, I wouldn't have any  
11 objections to that, assuming that it would go through the  
12 Planning Commission for opportunity for the planners of the  
13 Township to weigh in on that.

14 BY MR. HANSON:

15 Q Would your answer be the same if the attorneys had made the  
16 determination as to what zoning district was, in fact, going  
17 to be sought by the Township?

18 MR. GOLDSMITH: Objection. Again, calls for  
19 a legal conclusion and also facts not in evidence.

20 A Assuming we're only talking about initiation of this and  
21 there is the proper opportunity for the Planning Commission  
22 and their staff to report and recommend on that, no.

23 BY MR. HANSON:

24 Q I noticed that, in your letter on the administrative  
25 rezoning, you didn't give an opinion as to whether you

1 thought some other zoning classification might be in order or  
2 whether some other configuration might be appropriate.

3 Why didn't you do that?

4 A I responded to the request at hand.

5 Q And so when you're reviewing a rezoning application, you're  
6 really not giving any input on whether what's been proposed  
7 is better or worse than something else that might be  
8 proposed, you're only responding to what's already been  
9 proposed; correct?

10 A In this case, yes.

11 Q Have there been cases when you've actually had some input on  
12 how the zoning districts are either laid out or determined?

13 A Yes.

14 Q And in this case, again, by the time it got to you, the  
15 district had already been determined; correct?

16 A Correct.

17 Q As well as the layout of where that district was going to go  
18 had already been determined; correct?

19 A Correct.

20 Q I mean there was nothing that would have stopped the Township  
21 from going ahead and invoking an administrative rezoning that  
22 would have designated less to office or more to office or  
23 more to residential or less to residential; all of that's  
24 true; right?

25 A All of that is decisions could have been considered as part

1 of the administrative rezoning.

2 Q But all those decisions were made prior to your involvement;  
3 correct?

4 A Yes.

5 Q And I think earlier you testified that an interior office  
6 park might be viable.

7 You didn't undertake any study and you weren't  
8 asked to undertake any study as to the market viability of  
9 such an office park; correct?

10 A No.

11 Q So you don't know, as a factual matter, you can't say whether  
12 that sort of rezoning would have had any economic viability  
13 or not; correct?

14 A Correct.

15 MR. HANSON: Thank you for your time.

16 THE WITNESS: You're welcome.

17 (Deposition concluded at 3:38 p.m.)

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1 STATE OF MICHIGAN )  
2 ) SS:  
3 COUNTY OF LIVINGSTON )  
4

5 CERTIFICATE OF NOTARY PUBLIC

6 I do hereby certify that the witness, whose  
7 attached testimony was taken in the above-entitled matter, was  
8 first duly sworn to tell the truth; that the testimony contained  
9 herein was reduced to writing in the presence of the witness by  
10 means of Stenography; afterwards transcribed; and that it is a  
11 true and complete transcript of the testimony given by the  
12 witness.

13 I further certify that I am not connected by blood  
14 or marriage with any of the parties, their attorneys or agents;  
15 that I am not interested, directly or indirectly, in the matter in  
16 controversy.

17 IN WITNESS WHEREOF, I have hereunto set my hand at  
18 Brighton, County of Livingston, State of Michigan, the 30th of  
19 June, 2010.

20 Diane Bennett-Siecinski  
21

22 Diane Bennett-Siecinski, CSR-4019, RPR  
23 Notary Public, Livingston County, Michigan  
24 My Commission Expires: October 12, 2012  
25