

## Table of Contents: Topics Discussed in Deposition of Jon Whitman on June 15, 2010

### Page Number

8	Discussion of rezoning requests.
11	Meeting with Walt Wilburn and Dennis Jenkins about rezoning before request was made.
14	Discussion of what rezoning request was based upon.
15	Discussion concerning past trial and transcripts.
18	Discussion of support for the Whitman request for rezoning.
25	Discussion of various parcels in rezoning request.
33	Bedford Township's market study for the Village of Temperance Overlay.
34	Temperance residents have a weekly need for items from department stores in Toledo.
36	Discussion if Whitman property could meet the known needs in the community.
43	Discussion as to why Whitman Ford did not request a PUD.
63	Discussion of RM-2 zoning.
65	Discussion as to why PBO rezoning request needed to face Sterns Road.
67	Discussion of Bedford Township's desire for C-3 zoning (from trial statements and in settlement talks).
72	C-2 zoning request on middle parcel (trial testimony concerning step-down zoning).
73	Discussion of expert testimony of LeBlanc concerning land use pattern on east side of Lewis Avenue.
75	Discussion of planning consultant Julie Johnson's recommendation for C-3 zoning.
82	Discussion as to why Whitman Ford did not agree with individual votes for rezoning parcels.
86	Rezoning request based on what Bedford Township said they wanted at the first trial.
87	LeBlanc expert testimony at trial concerning what Bedford would like on the Whitman property.
92	Discussion of comments by Paul Whitman's concerning Planning Commission Meeting.
100	Discussion of article written by Paul Francis that was published in the Bedford Now.
102	Discussion of comments made during the referendum vote.
112	Discussion of the location that the nearest commercial building in relation to the western boundary.
118	Discussion on offers to purchase Whitman property as it exists now.
120	Discussion if there were any current offers on the Whitman property based on the current trial out-come.

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

Deponent: **Jon Whitman**

Taken: **6/15/2010**



**HURON REPORTING SERVICE**

and Video Conferencing Center

Established in 1972

**Your Certified Shorthand Reporters Since 1972**

623 West Huron Street

Ann Arbor, Michigan 48103

Phone: (734) 761-5328 Fax: (734) 761-7054

mail@huron4deps.com www.huron4deps.com

**Conference Rooms & On-Site parking available at no additional cost.**

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF MONROE

WHITMAN FORD, a Michigan  
corporation,

Plaintiff,

vs.

Civil Action

No. 09-27523-CH

HON. JOSEPH A. COSTELLO, JR.

TOWNSHIP OF BEDFORD, a  
municipal corporation,

Defendant,

---

PAGES 1 TO 122

The Deposition of JON S. WHITMAN,  
Taken at 222 Washington Street,  
Monroe, Michigan,  
Commencing at 10:37 a.m.,  
Tuesday, June 15, 2010,  
Before Dale E. Rose, CSR-0087.

Page 2	Page 4
<p>1 <b>APPEARANCES:</b> 2 3 <b>THOMAS M. HANSON</b> 4 <b>Dykema Gossett, PLLC</b> 5 <b>1717 Main Street, Suite 4000</b> 6 <b>Dallas, Texas 75201</b> 7 <b>Appearing on behalf of the Plaintiff</b> 8 9 <b>PHILIP D. GOLDSMITH</b> 10 <b>Lennard, Graham &amp; Goldsmith, PLC</b> 11 <b>222 Washington Street</b> 12 <b>Monroe, Michigan 48161-2146</b> 13 <b>Appearing on behalf of the Defendant</b> 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 Monroe, Michigan 2 Tuesday, June 15, 2010 3 About 10:37 a.m. 4 <b>MR. GOLDSMITH:</b> For the record, this is 5 the deposition of Jon Whitman taken pursuant to 6 Notice and to be used for all purposes allowed 7 under the Michigan Court Rules and Michigan law. 8 <b>JON S. WHITMAN,</b> 9 having first been duly sworn, was examined and 10 testified on his oath as follows: 11 <b>EXAMINATION</b> 12 <b>BY MR. GOLDSMITH:</b> 13 <b>Q. Jon, would you please state your full name for</b> 14 <b>the record?</b> 15 <b>A. Jon Steven Whitman.</b> 16 <b>Q. And your business address?</b> 17 <b>A. 7555 Lewis in Temperance.</b> 18 <b>Q. Just a couple of preliminary questions. Are you</b> 19 <b>on any medications that would prevent you from</b> 20 <b>giving your best testimony today?</b> 21 <b>A. No.</b> 22 <b>Q. We're here to discuss a 41 acre plus or minus</b> 23 <b>parcel in Bedford Township that you submitted a</b> 24 <b>rezoning application for in 2008.</b> 25 <b>Who is the owner of that parcel?</b></p>
Page 3	Page 5
<p>1 <b>INDEX TO EXAMINATIONS</b> 2 <b>Witness Page</b> 3 <b>JON S. WHITMAN</b> 4 5 <b>EXAMINATION BY MR. GOLDSMITH:..... 4</b> 6 7 <b>INDEX TO EXHIBITS</b> 8 9 <b>Exhibit Page</b> 10 <b>(Exhibits attached to transcript)</b> 11 <b>NOTE: Exhibits listed in order presented.</b> 12 13 <b>DEPOSITION EXHIBIT 1</b> 14 <b>application for zoning change or amendment</b> 15 <b>..... 5</b> 16 <b>DEPOSITION EXHIBIT 2</b> 17 <b>Township of Bedford, aerial imagery .... 60</b> 18 <b>DEPOSITION EXHIBIT 3</b> 19 <b>letter, Whitman to Wilburn, 10-24-08 .... 94</b> 20 21 22 23 24 25</p>	<p>1 <b>A. I believe it's Whitman Ford.</b> 2 <b>Q. And that's a Michigan corporation?</b> 3 <b>A. Yes.</b> 4 <b>Q. And Whitman Ford was the owner of that parcel at</b> 5 <b>the time the rezoning application was submitted?</b> 6 <b>A. Yes.</b> 7 <b>Q. That rezoning application -- and I don't think</b> 8 <b>we've had this marked as an exhibit yet, so I'll</b> 9 <b>do that.</b> 10 <b>DEPOSITION EXHIBIT 1</b> 11 <b>application for zoning change or amendment</b> 12 <b>WAS MARKED BY THE REPORTER</b> 13 <b>FOR IDENTIFICATION.</b> 14 <b>Q. I'm going to show you what's been marked as</b> 15 <b>Deposition Exhibit 1 and ask you if you can</b> 16 <b>identify that document.</b> 17 <b>MR. HANSON:</b> Phil, does the actual 18 exhibit have the drawings on it? 19 <b>MR. GOLDSMITH:</b> Yes, it's attached to 20 that. 21 <b>BY MR. GOLDSMITH:</b> 22 <b>Q. Do you recognize that document?</b> 23 <b>A. Yeah, Phil. This is not all my writing though.</b> 24 <b>I mean I didn't fill all this in.</b> 25 <b>Q. I was going to follow up and it's a three-page</b></p>

Page 6

1 document, is that accurate -- actually a  
2 four-page document, I'm sorry.  
3 There's two drawings, a third and  
4 fourth page there, is that correct, four pages  
5 there do you see?  
6 A. I see four pages.  
7 Q. Let's talk about the top page, the actual  
8 rezoning or application for a zoning change.  
9 You signed that document, correct?  
10 A. Correct.  
11 Q. And you signed it as a representative of the  
12 owner of the property, Whitman Ford Company I'm  
13 presuming?  
14 A. I guess, yes.  
15 Q. And there's some printing at the top of the  
16 document that provides some information. Do you  
17 know whose handwriting that is?  
18 A. I do not know specifically. I believe this all  
19 came through DuBose, but I do not know whose that  
20 is.  
21 Q. And DuBose and Associates, Incorporated, were  
22 they acting as your agent at that time?  
23 A. I hired them.  
24 Q. And that was in or about July of 2008?  
25 A. It started earlier than that, but it was in 2008.

Page 7

1 Q. When did you first hire them, if you recall,  
2 approximately?  
3 A. In the spring of 2008.  
4 Q. And what was your purpose in hiring DuBose and  
5 Associates?  
6 A. To make an application for rezoning.  
7 Q. Did they act as an engineer, as a planning  
8 consultant or in any other capacity?  
9 MR. HANSON: Object to the foundation.  
10 Go ahead and answer.  
11 A. I'm not sure what the differences are between the  
12 two things you just asked me, Phil, so I don't  
13 know if I can answer your question.  
14 They advised me.  
15 BY MR. GOLDSMITH:  
16 Q. And did they advise you with respect to planning  
17 principles? For instance, did you provide them  
18 with a copy or did they somehow obtain a copy of  
19 the Bedford Township Master Land Use Plan?  
20 A. I don't know if they have a copy of that. They  
21 did not say do this, this and this on the  
22 specific zoning things.  
23 I said to them what was said at the  
24 trial and I said this is what they said and this  
25 is what I need to see.

Page 8

1 Q. Let's back up to that. Define for me, and maybe  
2 you already just did, what the scope of their  
3 work was to be?  
4 In other words, what did you hire them  
5 to do? What directions did you give them?  
6 A. I couldn't fill this out. I don't know acreage,  
7 I don't know any of that stuff, Phil. I mean --  
8 you know, I don't know that.  
9 Q. Fair enough.  
10 A. So I couldn't figure any of that out. I knew  
11 from the trial, I knew from numerous statements  
12 what people advised us to do, and I told them  
13 this is what I need to see on any rezoning, this  
14 is what the advice has been given and I can't  
15 make this work. Can you make this work with all  
16 the other rules involved because it has to work.  
17 You just can't walk in there and I not  
18 be able to sell this land to somebody that wants  
19 to develop it. It has to work. Can you help me  
20 on what I would call the technical or detail side  
21 of all the other rules that come under -- you  
22 just ask for a piece of ground to be rezoned.  
23 And that's as simple and complex as  
24 their relationship with me was.  
25 Q. Who did you work with at DuBose and Associates?

Page 9

1 A. It started out with a guy named John Sperry and I  
2 got transferred to -- or whatever word you use,  
3 Phil, to another guy named Efreim Tinman [sic] or  
4 Tenbaum [sic] or something like that, an Efreim  
5 guy.  
6 And so somewhere in this process I  
7 worked with two different people.  
8 Q. Do you know whether or not either John Sperry or  
9 Efreim Tennenbaum I think it is -- do you know  
10 whether Efreim obtained a copy of the Bedford  
11 Township zoning ordinance?  
12 A. I do not know.  
13 Q. You mentioned the trial. Are you referring to  
14 the trial that was conducted in front of Judge  
15 Costello a few years back?  
16 A. Yes.  
17 Q. And did you obtain transcripts of that trial from  
18 any of the people who testified, for instance any  
19 of the planning experts or anyone else for that  
20 matter?  
21 A. I didn't obtain transcripts from anyone that  
22 testified.  
23 Q. What I'm asking you --  
24 MR. HANSON: And I guess I'll object as  
25 vague, but go ahead.

Page 10	Page 12
<p>1 <b>BY MR. GOLDSMITH:</b></p> <p>2 <b>Q. Let me ask it another way. Did you or anyone on</b></p> <p>3 <b>your behalf if you know order any portion of that</b></p> <p>4 <b>trial in a transcribed form so you could read it?</b></p> <p>5 A. Yes.</p> <p>6 <b>Q. After you obtained that or if someone obtained it</b></p> <p>7 <b>on your behalf did you actually provide a copy of</b></p> <p>8 <b>that to either John Sperry or Efrem Tennenbaum?</b></p> <p>9 A. No.</p> <p>10 <b>Q. You simply advised them this is what was said at</b></p> <p>11 <b>the trial, this is what I believe needs to be</b></p> <p>12 <b>incorporated into any rezoning application to</b></p> <p>13 <b>submit to the Township for its review?</b></p> <p>14 A. Effectively.</p> <p>15 <b>Q. Other than communicating that information to</b></p> <p>16 <b>those gentlemen at DuBose and Associates what</b></p> <p>17 <b>other steps did you take -- I'm going to back</b></p> <p>18 <b>away from that application for a minute -- what</b></p> <p>19 <b>things did you do prior to actually submitting</b></p> <p>20 <b>the rezoning application to Bedford Township and</b></p> <p>21 <b>it appears by the stamp it was submitted on or</b></p> <p>22 <b>about July 25, 2008.</b></p> <p>23 <b>So working backwards, what steps did</b></p> <p>24 <b>you take? For instance, did you have any</b></p> <p>25 <b>meetings with anybody at the Township?</b></p>	<p>1 <b>Q. Would it have been before or after you contacted</b></p> <p>2 <b>DuBose and Associates to engage them to assist</b></p> <p>3 <b>you in putting together a rezoning application?</b></p> <p>4 A. I contacted DuBose before.</p> <p>5 <b>Q. And this meeting that you had was, again, with</b></p> <p>6 <b>Walt Wilburn, the supervisor, correct?</b></p> <p>7 A. Yes.</p> <p>8 <b>Q. Dennis Jenkins, planning, zoning?</b></p> <p>9 A. Yes.</p> <p>10 <b>Q. And your employee Lisa?</b></p> <p>11 A. Yes.</p> <p>12 <b>Q. Is she still employed by Whitman Ford?</b></p> <p>13 A. Yes.</p> <p>14 <b>Q. And yourself, is that correct?</b></p> <p>15 A. Correct.</p> <p>16 <b>Q. Did you call for the meeting? Did you call them</b></p> <p>17 <b>up and say, "Hi, could I meet with you to discuss</b></p> <p>18 <b>rezoning or the Whitman Ford property?" or how</b></p> <p>19 <b>did the meeting actually get scheduled if you</b></p> <p>20 <b>recall?</b></p> <p>21 A. I don't know how the meeting got scheduled. I</p> <p>22 called up Dennis Jenkins and I said, "Dennis, I'm</p> <p>23 just going to tell you I'm planning on going for</p> <p>24 zoning and I just want to let you know that and</p> <p>25 if you want to talk about it, let me know and if</p>
Page 11	Page 13
<p>1 A. I met with Walt Wilburn and Dennis Jenkins.</p> <p>2 <b>Q. Just the three of you or was anybody else there?</b></p> <p>3 A. Another person came.</p> <p>4 <b>Q. Who was that?</b></p> <p>5 A. Lisa Willis.</p> <p>6 <b>Q. And who's Lisa?</b></p> <p>7 A. She's a citizen of Bedford. She also happens to</p> <p>8 work for me.</p> <p>9 <b>Q. What was your purpose in bringing Lisa along?</b></p> <p>10 A. Honestly?</p> <p>11 <b>Q. Yeah.</b></p> <p>12 A. I didn't trust anything that would be said to me,</p> <p>13 so I wanted someone there in case things were</p> <p>14 said that weren't truthful.</p> <p>15 <b>Q. So you brought her as a witness?</b></p> <p>16 A. Correct.</p> <p>17 <b>Q. Do you anticipate that she'll testify at the</b></p> <p>18 <b>upcoming trial, this trial?</b></p> <p>19 A. I don't know what Tom's plan is.</p> <p>20 <b>Q. I would like you to recall for me, first of all</b></p> <p>21 <b>when did that meeting occur?</b></p> <p>22 A. Before this obviously.</p> <p>23 <b>Q. Before the application?</b></p> <p>24 A. Before this. Sometime in the spring of 2008 and</p> <p>25 I cannot tell you the exact date, Phil.</p>	<p>1 not, I'll send you the documents."</p> <p>2 I don't know how it got planned. After</p> <p>3 that, I don't know what happened.</p> <p>4 <b>Q. Well, I'll ask you this question anyhow. You</b></p> <p>5 <b>said if you want to talk about it. You were open</b></p> <p>6 <b>to going in there and talking with township</b></p> <p>7 <b>representatives, correct?</b></p> <p>8 A. I offered.</p> <p>9 <b>Q. But you don't remember exactly after making that</b></p> <p>10 <b>statement how the meeting came to be? For</b></p> <p>11 <b>instance, did Dennis say, "Come on in, let's sit</b></p> <p>12 <b>down and talk" or if you recall?</b></p> <p>13 <b>If you don't remember, you don't</b></p> <p>14 <b>remember.</b></p> <p>15 A. He called me back and said, "We'd like to meet</p> <p>16 with you."</p> <p>17 <b>Q. And so a meeting got scheduled and you met?</b></p> <p>18 A. Correct.</p> <p>19 <b>Q. Tell me what happened at that meeting and what</b></p> <p>20 <b>was said at that meeting to the best of your</b></p> <p>21 <b>recollection?</b></p> <p>22 A. Maybe you need to ask me more -- I mean the</p> <p>23 meeting was approximately 45 minutes to an hour</p> <p>24 long. Many things were said.</p> <p>25 <b>Q. Well, let's start with that. How did the meeting</b></p>

Page 14	Page 16
<p>1 get started? Did you provide a drawing to them 2 or say, "This is what I have in mind for this 3 property"?</p> <p>4 How did the meeting start?</p> <p>5 A. The meeting was in Walt Wilburn's office. I 6 said, you know we've had a trial. I'm going to 7 do exactly what you said. I'm going to go 8 exactly what was -- you know, the things that 9 were said in the trial, the things I have from 10 that trial, and I'm going to put this forth. 11 And this is why I'm doing this, just 12 based upon what was said in the trial, not just 13 the trial but in depositions also, Phil.</p> <p>14 Q. Depositions that were taken prior to the trial, 15 is that what you're referring to?</p> <p>16 A. Correct.</p> <p>17 Q. Any depositions in particular, any particular 18 individuals that were deposed that you were 19 relying upon or thinking about at that time?</p> <p>20 A. One of them is you.</p> <p>21 Q. Any other ones?</p> <p>22 A. Julie Johnson.</p> <p>23 Q. Anyone else besides Julie?</p> <p>24 A. Paul LeBlanc.</p> <p>25 Q. Anyone else besides Paul, Julie and myself?</p>	<p>1 A. No, I do not recall the exact words. He used a 2 number of cliches when saying to me about he 3 didn't care about what happened at the trial. He 4 used a number of cliches over and over again or 5 in a series to re-emphasize on that he didn't 6 care about that.</p> <p>7 Q. Other than those comments that he made did he 8 respond in any way to your proposal to submit a 9 new rezoning application?</p> <p>10 A. What does your question -- I don't understand 11 your question.</p> <p>12 Q. You had -- when you met with him you previously 13 testified that you advised both Mr. Wilburn and 14 Mr. Jenkins that you were going to submit a 15 rezoning application, and I'm paraphrasing here, 16 that it was going to be based upon what had 17 transpired at the previous trial and in 18 depositions that were taken prior to the trial. 19 I assume -- I'm going to assume based 20 upon what some of the experts testified to, the 21 planning experts, and did he have any response to 22 that directly to your plan to submit a new 23 rezoning application?</p> <p>24 A. He repeatedly said that he didn't care what 25 happened at the trial. He repeatedly said none</p>
Page 15	Page 17
<p>1 A. On this topic, not that I can recall, Phil, at 2 this time. Maybe there is, but not that I can 3 recall.</p> <p>4 Q. Did you ask either Mr. Wilburn or Mr. Jenkins for 5 any advice or instructions as to how you should 6 construct a rezoning application at that time?</p> <p>7 A. I did not ask them how I should do that. I said, 8 "This is what you said you wanted in the trial or 9 in the transcripts or in the depositions," or, 10 "This is what the written statements say. Here 11 it is."</p> <p>12 Q. Do you recall what their response was?</p> <p>13 A. Yes.</p> <p>14 Q. Let's start with Mr. Wilburn. How did he respond 15 to that?</p> <p>16 A. He did not care to hear that. He didn't care 17 what happened at the trial. It's not the words 18 he used, Phil. He did not care what happened at 19 the trial. He did not care about that. 20 He thought I had a bad attitude. He 21 thought I was bitter about the trial. He thought 22 I should get over it, and what happened in the 23 trial didn't matter to him at all.</p> <p>24 Q. And you said those were not the words that he 25 used. Do you recall the words that he used?</p>	<p>1 of that matters. He repeatedly used cliches, the 2 past is behind us, the door is closed, the future 3 is in front of us, I need to get over it. You 4 know, we need to move on with our lives. Cliches 5 repeatedly were said when I said this is what I'm 6 going to do.</p> <p>7 MR. HANSON: Let me ask, Phil, are you 8 asking did he have -- putting aside what the 9 rezoning was based on, are you asking did he have 10 a reaction to the fact that there was going to be 11 a new rezoning application presented period?</p> <p>12 MR. GOLDSMITH: Yes.</p> <p>13 MR. HANSON: Do you understand?</p> <p>14 THE WITNESS: I don't understand his 15 question.</p> <p>16 MR. HANSON: Just put aside the fact 17 you said it was based on the trial. I think the 18 question is did he have a reaction to your 19 advising him that you were going to be submitting 20 a new rezoning application?</p> <p>21 THE WITNESS: Other than the reaction I 22 gave you? I don't understand the question.</p> <p>23 BY MR. GOLDSMITH:</p> <p>24 Q. Did he make any comment either positive or 25 negative to you submitting a new rezoning</p>

Page 18	Page 20
<p>1 application? 2 A. He said with my attitude he couldn't support me. 3 <b>Q. And other than that, he didn't comment on what</b> 4 <b>your new proposed plan was going to be, is that a</b> 5 <b>fair statement?</b> 6 A. Comment on -- 7 <b>Q. Let me ask a foundational question. Did you</b> 8 <b>disclose to him at that meeting this is what --</b> 9 <b>this is what I propose to submit to the Township</b> 10 <b>in terms of a rezoning application?</b> 11 A. I brought in a drawing, I brought in a DuBose 12 drawing, yes. 13 <b>Q. And did that -- I'm going to show you again --</b> 14 <b>well, look at what's been marked as Exhibit 1.</b> 15 <b>You have that in front of you.</b> 16 <b>There are two DuBose drawings there</b> 17 <b>and these drawings you may not have had at that</b> 18 <b>time because the first date on this is June 16</b> 19 <b>and then there's some revisions after that date</b> 20 <b>on both of these.</b> 21 <b>So based on your prior testimony, you</b> 22 <b>probably didn't have these drawings at that</b> 23 <b>meeting.</b> 24 A. Correct. 25 <b>Q. Did you have a similar drawing at that meeting</b></p>	<p>1 A. I handed him the drawing. That might not even be 2 the right word. He was given the drawing, not 3 Walt. He was given the drawing and I said -- and 4 I said I've hired DuBose, you know, and I said I 5 can't remember the guy's name right now and he 6 looked at the side and he said, "Oh, I know John 7 Sperry." 8 And so I said, "I could call you up 9 with the thing and he tells me -- John Sperry 10 assures me this would all work and I don't have 11 worthless land. This would actually be 12 developable on all the rules and he has that" 13 and I said that to Dennis. 14 <b>Q. That's what John Sperry had said to you, that you</b> 15 <b>had developable land, that it could be developed?</b> 16 A. It was a legitimate piece. 17 <b>Q. Did Dennis Jenkins offer any comments to you</b> 18 <b>based on that, what you presented to him at the</b> 19 <b>meeting and the statement you made at the</b> 20 <b>meeting?</b> 21 A. Which statement? 22 <b>Q. Well, with respect -- did he have any comments on</b> 23 <b>the drawing?</b> 24 A. He did. 25 <b>Q. Do you recall what those comments were?</b></p>
Page 19	Page 21
<p>1 <b>that you met with Mr. Wilburn and Mr. Jenkins?</b> 2 A. Similar meaning? 3 <b>Q. Similar showing how you proposed the rezoning of</b> 4 <b>the Whitman Ford property?</b> 5 A. Different but a proposed, yes. 6 <b>Q. In other words, did it show the RME and the RM-2</b> 7 <b>adjacent to the Indian Acres property?</b> 8 A. To my knowledge without that document being in 9 front of me, Phil -- to my knowledge it did and 10 to my knowledge it showed buildings on those 11 properties, to my knowledge. 12 <b>Q. All right and I take it that -- well, let me ask</b> 13 <b>the question.</b> 14 <b>Did Mr. Wilburn have any comment with</b> 15 <b>respect to that drawing that this looks good or I</b> 16 <b>don't like this and here's why or anything of</b> 17 <b>that nature?</b> 18 A. On the drawing he had no -- that I can recall he 19 had no comment. 20 <b>Q. Let's focus in on what Mr. Jenkins had to say, if</b> 21 <b>anything. With respect to the drawings that you</b> 22 <b>submitted at that meeting did you ask Mr. Jenkins</b> 23 <b>for any information or feedback, whether it would</b> 24 <b>be positive or negative, or any instruction from</b> 25 <b>him?</b></p>	<p>1 A. I can't recall his comments. He had a number of 2 questions and I could not answer his questions 3 and I referred him. 4 <b>Q. To?</b> 5 A. John Sperry. 6 <b>Q. And did he have any comment in response to your</b> 7 <b>statement that Mr. Sperry had assured you that</b> 8 <b>you had developable land and it could be</b> 9 <b>developed in conformance with the rules?</b> 10 A. What's your question again? 11 <b>Q. Did Mr. Jenkins have any response to your</b> 12 <b>statement to him that Mr. Sperry had assured you</b> 13 <b>that you had a piece of developable land that</b> 14 <b>could be developed in conformance with the rules?</b> 15 A. He asked me a number of questions about that. I 16 could not answer them and my response was, "You 17 need to talk to John Sperry." 18 <b>Q. Was anything else discussed at that meeting with</b> 19 <b>Mr. Wilburn and Mr. Jenkins at that time if you</b> 20 <b>recall?</b> 21 A. Not about this, no. 22 <b>Q. Not about the map or about the rezoning in</b> 23 <b>general?</b> 24 A. Yes, in general the rezoning. 25 <b>Q. Anything else discussed that you can remember?</b></p>



Page 22	Page 24
<p>1 A. I think we asked, "How are you?" I just think 2 the general -- 3 <b>Q. Fair enough. I'm just trying to find out if you 4 provided Mr. Wilburn or Mr. Jenkins with any 5 additional information other than the drawing and 6 if they responded with any information that would 7 provide you any direction one way or the other, 8 whether it would be negative or positive, in 9 terms of your plan to seek a rezoning of the 10 Whitman Ford parcel?</b> 11 A. I believe we left the meeting that Dennis was 12 going to contact DuBose and that was effectively 13 on the discussion in the spring of 2008 what 14 happened. 15 <b>Q. Do you know whether or not Mr. Jenkins and 16 Mr. Sperry had any discussions concerning your 17 conceptual plan?</b> 18 A. Phil, now again, this is all the truth, nothing 19 but the truth. When you ask me this, I started 20 with John Sperry. Sometime in here this Efre 21 guy took over. 22 I do not know when and which person 23 Dennis talked to and I cannot answer your 24 question exactly on this topic. 25 <b>Q. Did either Mr. Sperry or Mr. Tennenbaum contact</b></p>	<p>1 It was very detailed. 2 I cannot remember the details. They 3 asked me questions about, you know, you had three 4 different things. You had what I call senior 5 housing, apartment buildings and offices. That's 6 my words. That's not what you guys talk about, 7 but you had that. 8 And they had different things about 9 each of those and it was really -- their 10 questions to me really were developer-type 11 questions, what did I think about this, what did 12 I think about that, what do you want to do about 13 this, what do you want to do about that. 14 And I did not know the technical 15 answers to that. I'm not a developer. I have no 16 idea how to do this. And they would ask me and I 17 would say to them, "What do you think?" 18 And, "What do you think? I mean, I 19 don't know how to do this." So I never really 20 even effectively answered their questions that 21 Dennis brought up and there were numerous things 22 over this period of time from -- there were 23 numerous things and there were revisions, I think 24 you know that, Phil, there was revisions on these 25 things.</p>
Page 23	Page 25
<p>1 <b>you to advise you that Mr. Jenkins had made some 2 comments on the conceptual plan and that perhaps 3 some changes were being requested or suggested?</b> 4 <b>Did you have any conversations with 5 either of those gentlemen concerning that?</b> 6 A. Yes. 7 <b>Q. And do you recall which of those gentlemen you 8 would have talked to?</b> 9 A. Again, I think I talked to both of them because 10 it got handed off. 11 <b>Q. What was communicated to you by either Mr. Sperry 12 or Mr. Tennenbaum with respect to the comments 13 made by Dennis Jenkins after he reviewed the 14 conceptual plan?</b> 15 A. Can you ask that again? 16 <b>Q. Sure. It sounds like either John Sperry or Efre 17 Tennenbaum contacted you and said, "I discussed 18 this with Dennis Jenkins. He's made some 19 suggestions."</b> 20 <b>Do you recall having a conversation 21 like that with either of those gentlemen?</b> 22 A. Yes. 23 <b>Q. And what was said during that conversation?</b> 24 A. There were numerous things that they said, "We've 25 talked to Dennis," and it was a list of things.</p>	<p>1 And I couldn't even answer all the 2 revisions because I didn't even understand them 3 all. 4 <b>Q. Let me ask you this. There's been testimony 5 during some of the depositions that have been 6 taken already in this case that perhaps the 7 initial conceptual plan showed a width for the 8 RME parcel and the RM-2 parcel from the west 9 boundary line of the Whitman Ford parcel going to 10 the east showed a width of 250 feet I believe. 11 Do you recall that?</b> 12 A. Yes. 13 <b>Q. And I believe there's been testimony that there 14 was at least a suggestion by Mr. Jenkins that you 15 might want to consider enlarging that width. 16 Do you remember having any discussions 17 with either Sperry or Tennenbaum regarding that?</b> 18 A. Yes. 19 <b>Q. And I believe in fact later on a conceptual 20 drawing it is shown that the width of those RME 21 and RM-2 parcels was enlarged from 250 feet -- 22 and when I say "width", I mean from west to east 23 -- to 286 feet. 24 Is that your recollection?</b> 25 A. That's what I applied for.</p>

Page 26

1 Q. So what you ultimately applied for for those  
2 parcels was a width from west to east of 286  
3 feet, correct?  
4 A. That's my understanding of the width, yes.  
5 Q. And was that -- is it also your understanding  
6 that that was done to accommodate the conceptual  
7 buildings that might someday be erected on those  
8 parcels?  
9 A. It was --  
10 MR. HANSON: Hold on. Let me just  
11 object to the foundation. Go ahead, you can  
12 answer.  
13 A. It was definitely done in this process, this time  
14 period of doing that and effectively answering  
15 all the concerns Dennis Jenkins had.  
16 BY MR. GOLDSMITH:  
17 Q. Was there any -- on the conceptual drawing that  
18 you have in front of you there that's been marked  
19 as Exhibit 1, a roadway is shown, do you see  
20 that?  
21 A. Yes.  
22 Q. And that road extends from Sterns Road out to  
23 Lewis Avenue, is that correct?  
24 A. Yes.  
25 Q. And that provides access to the three westernmost

Page 27

1 parcels, would that be a fair statement?  
2 MR. HANSON: Object to foundation.  
3 A. Yeah.  
4 BY MR. GOLDSMITH:  
5 Q. In the three westernmost parcels on the Whitman  
6 Ford parcel, the one farthest to the south would  
7 be -- was slated to be or requested to be a PBO  
8 parcel, is that correct?  
9 A. Yes.  
10 Q. And then the one immediately to the north of that  
11 was slated to be an RM-2 parcel, is that correct?  
12 A. I think it's RM-2, yeah.  
13 Q. And the one immediately [sic] to the RM-2 was  
14 proposed to be a RME parcel, is that correct?  
15 A. Is RME senior?  
16 Q. Yes.  
17 A. Yes.  
18 Q. It would accommodate senior, yes. And that road  
19 shown on that conceptual parcel then would  
20 provide access to each of those proposed parcels,  
21 is that accurate?  
22 MR. HANSON: I'll object to foundation.  
23 A. Yeah, you had to have frontage off a road to  
24 develop them.  
25 BY MR. GOLDSMITH:

Page 28

1 Q. And then that road -- does that road also provide  
2 access and/or frontage to the parcel to the east  
3 of the RME and the RM-2 parcel which was proposed  
4 to be C-2?  
5 MR. HANSON: Object to foundation.  
6 BY MR. GOLDSMITH:  
7 Q. As shown on that drawing in Exhibit 1?  
8 A. Maybe I don't --  
9 Q. Well, you see where the road is, again, extending  
10 from Sterns Road and then it winds around to  
11 Lewis Avenue, correct?  
12 A. Correct.  
13 Q. And you've testified that it would provide access  
14 and frontage to the PBO, RM-2 and RM-3 parcels,  
15 correct?  
16 A. Correct.  
17 Q. And would it also provide access to this middle  
18 parcel, the 8.28 parcel that was proposed to be  
19 C-2?  
20 MR. HANSON: Well, let me just explain  
21 my objection on this and I think "access" is a  
22 little bit of a legal term.  
23 In addition, the road itself was  
24 conceptual as I think you know, but I think also  
25 particularly on the middle parcel we talk about

Page 29

1 it as a separate parcel for the rezoning  
2 purposes, but in reality that parcel may or may  
3 not have been joined with -- there's an existing  
4 C-2 that already fronts on Sterns Road.  
5 So I think you asking him if it  
6 provides access to that parcel calls for him to  
7 speculate kind of completely, so that's the basis  
8 of the objection, foundation objection.  
9 MR. GOLDSMITH: Okay.  
10 BY MR. GOLDSMITH:  
11 Q. Again, directing your attention to this road, and  
12 I understand this is a conceptual drawing and  
13 therefore a conceptual road.  
14 If this road were actually built on the  
15 Whitman Ford property it would not only provide  
16 access to PBO, RM-2 and RME, but could also  
17 provide access to what was proposed to be C-2?  
18 MR. HANSON: Same objection.  
19 A. It's possible, yeah.  
20 BY MR. GOLDSMITH:  
21 Q. And it's also possible I think, as Mr. Hanson  
22 indicated, that access could be achieved from  
23 Lewis Avenue if you combined a C-3 parcel with  
24 that C-2 parcel, would that be accurate as well?  
25 MR. HANSON: And let me just object,

Page 30

1 misstating my objection. I was talking about the  
2 parcel on Sterns which is actually -- would have  
3 had the same zoning and as it sits today I think  
4 is part of the same -- there's no land division  
5 there, even though it's split zoning.  
6 **MR. GOLDSMITH:** I think you're  
7 accurate.  
8 **MR. HANSON:** And so that's why,  
9 particularly when you talk about the middle  
10 parcel, I know it makes sense for the rezoning  
11 application. I'm not sure it makes sense when  
12 you're talking about road access.  
13 But foundation objection, you can go  
14 ahead and answer.  
15 **A.** What was your question, Phil?  
16 **BY MR. GOLDSMITH:**  
17 **Q.** If you -- let's go at it from both directions.  
18 If you joined what you proposed to be C-2, the  
19 middle parcel, which has been sometimes referred  
20 to as the middle parcel. It's an 8.28 acre  
21 parcel.  
22 If you joined that with the parcel on  
23 Lewis Avenue, that too could provide access to  
24 that parcel, is that fair statement?  
25 **A.** I would say yes.

Page 31

1 **Q.** And likewise, and as Mr. Hanson stated, this  
2 parcel, this middle parcel, is split zoned.  
3 Access could be achieved from Sterns Road as  
4 well, is that a fair statement?  
5 **A.** Yeah. Phil, I just want to say I do not agree --  
6 **MR. HANSON:** Jon, there's no question.  
7 **BY MR. GOLDSMITH:**  
8 **Q.** All right. Some reference was made during the  
9 depositions to -- not yesterday, but I believe in  
10 a previous -- one of the previous depositions,  
11 perhaps Mr. Jenkins' -- to Rudolph Libby Company.  
12 Did you consult with Rudolph Libby or  
13 did Rudolph Libby play any role in assisting you  
14 in putting together your rezoning application or  
15 conceptual drawings?  
16 **A.** No.  
17 **Q.** Did you use Rudolph Libby in any fashion to  
18 assist you with your rezoning application?  
19 **A.** No.  
20 **Q.** You indicated that you had this meeting with  
21 Mr. Jenkins and Mr. Wilburn in the spring of  
22 2008.  
23 Prior to your submission of the  
24 rezoning application in July of 2008 did you have  
25 any other meetings with any other township

Page 32

1 officials or representatives?  
2 **A.** Personally?  
3 **Q.** Personally.  
4 **A.** No.  
5 **Q.** Did anyone acting on your behalf have any  
6 meetings with any township representatives, if  
7 you know?  
8 **A.** Yes.  
9 **Q.** Who would that have been?  
10 **A.** The DuBose guys.  
11 **Q.** Anyone other than the DuBose guys?  
12 **A.** To my knowledge, no.  
13 **Q.** And do you know who the DuBose guys -- whether it  
14 was John or Efrem -- met with prior to the  
15 submission of your application?  
16 **A.** I couldn't tell you who they met with.  
17 **Q.** Have they indicated to you one way or the other  
18 whether they met with anyone other than Dennis  
19 Jenkins for instance?  
20 **A.** I think they had contact with Karen Kincaid (sp).  
21 **Q.** Do you believe or have any information that would  
22 indicate they had contact with any Planning  
23 Commission members?  
24 **A.** I don't have any information.  
25 **Q.** Or board members?

Page 33

1 **A.** I don't have any information.  
2 **Q.** In connection with your rezoning application or  
3 even considering to go forward with a rezoning,  
4 did you at any time commission a market demand  
5 study for this property or for any portion of the  
6 Whitman Ford property to determine what demand  
7 there might be for the different zoning  
8 classifications that you were proposing?  
9 **A.** Did I?  
10 **Q.** Did you?  
11 **A.** Personally?  
12 **Q.** Did you or anyone -- well, did you personally?  
13 **A.** No.  
14 **Q.** Did anyone on behalf of Whitman Ford Company  
15 perform any type of market demand study?  
16 **A.** No.  
17 **Q.** Are you aware of any market demand studies being  
18 performed for any portion of the Whitman Ford  
19 property?  
20 **A.** The Township did a study of what citizens of the  
21 village of Temperance do and this was done under  
22 the -- I think it's called the EDC or something  
23 like that, and there's a date you did this and  
24 there was a consulting firm out of Ann Arbor.  
25 And I have a copy of that, I have read

Page 34

1 that, I'm knowledgeable about that. Not to the  
2 degree of reciting it from memory, but the  
3 Township has done a study on commercial and what  
4 at least the citizens that took that survey in  
5 the village of Temperance do, so I have knowledge  
6 of that.

7 **Q. Was that survey that you're referring to, was**  
8 **that done as part of the consideration that went**  
9 **into the Village Overlay District for the village**  
10 **of Temperance?**

11 **MR. HANSON:** Object to foundation.

12 A. It had something to do with that, whether it was  
13 that reason, Phil, or not, but it was -- somebody  
14 at the Township or the Township board paid for  
15 that study on what the citizens of Temperance  
16 itself in the village do for shopping and  
17 whatnot.

18 **BY MR. GOLDSMITH:**

19 **Q. Based on your knowledge of that study what did**  
20 **that study reveal in terms of trends and what**  
21 **people in the village of Temperance prefer or do**  
22 **with respect to shopping trends?**

23 **MR. HANSON:** Object to foundation.  
24 Answer to the extent you can.

25 A. Phil, it asked a number of different things.

Page 35

1 Back when that was done the post office was still  
2 in Temperance, it hadn't moved yet. It asked  
3 what did people use daily, and then what did  
4 people use like semi-weekly and what did people  
5 use weekly and then monthly. You had these  
6 different classifications of how they do that  
7 stuff.

8 And it had like they needed a gas  
9 station weekly or semi-weekly. They used a bank  
10 weekly. They used -- they had need for food  
11 semi-weekly. They had that.

12 In that, they have a need for what was  
13 available in department stores weekly and they  
14 shop weekly at department stores in Toledo.

15 So I had a study that there was a  
16 demand for what C-2 could provide done by and  
17 paid for by the Township.

18 **Q. When you say "what C-2 could provide" I'm going**  
19 **to ask you as acting on behalf of the Whitman**  
20 **Ford Company what your opinion is as to what C-2**  
21 **could provide?**

22 **MR. HANSON:** Let me just object to the  
23 extent it calls for a legal conclusion, so it's a  
24 foundation objection. Go ahead.

25 A. I think you guys generally talk about the

Page 36

1 shopping center district and it would fulfill the  
2 shopping center need, and there was a demand at  
3 least in that survey done with those village of  
4 Temperance people that that's what they had on a  
5 weekly basis or a regular basis.

6 And I could have my timing wrong, Phil,  
7 but that thing was done under that study and I  
8 could meet a known need in the community.

9 **BY MR. GOLDSMITH:**

10 **Q. With respect to what you proposed for what's been**  
11 **referred to as the middle parcel, you proposed to**  
12 **rezone that from R-2A to C-2, correct?**

13 A. Correct.

14 **Q. And what did you envision going in on that**  
15 **particular parcel?**

16 **MR. HANSON:** Object to the foundation.

17 A. I did not envision anything. I did not envision  
18 anything. I had no plan other than to propose  
19 that.

20 **BY MR. GOLDSMITH:**

21 **Q. You had mentioned in connection with your**  
22 **response concerning the Village Overlay District**  
23 **and the study that was done that the C-2 district**  
24 **could meet the shopping needs of Bedford Township**  
25 **residents, correct?**

Page 37

1 A. Yes.

2 **Q. Did you in connection with your rezoning**  
3 **application consider that a shopping center of**  
4 **some sort could go in on that particular parcel?**

5 **MR. HANSON:** Objection, asked and  
6 answered.

7 A. Not that a shopping center itself could, no.

8 **BY MR. GOLDSMITH:**

9 **Q. Let me ask you this. DuBose when they prepared**  
10 **this conceptual drawing went to some length to**  
11 **show what could be on the westernmost PBO parcel**  
12 **if it were in fact rezoned, what could be**  
13 **conceptually on the RM-2 parcel if it were**  
14 **rezoned and what could conceptually go on the RME**  
15 **parcel if it was rezoned, correct?**

16 A. Yes.

17 **Q. Can you tell me why nothing is shown on the**  
18 **middle C-2 parcel that you proposed to be rezoned**  
19 **from R-2A to C-2?**

20 A. John Sperry suggested why don't you show them  
21 something. You're going to propose this. You've  
22 had a trial, you've had all this stuff. Why  
23 don't you show them something.

24 Showing them something is better in his  
25 opinion, John Sperry's opinion, than not doing

Page 38

1 it. Even if they reject it, you've given them  
2 something.  
3 And his advice was show something and I  
4 said okay.  
5 **Q. So you showed those three parcels, the PBO, the**  
6 **RM-2 and the RME, those proposed parcels**  
7 **obviously, correct?**  
8 **Okay, but he did not advise to show**  
9 **anything else on what you requested to be rezoned**  
10 **from R-2A to C-2?**  
11 **A. Correct.**  
12 **Q. Or the other requested rezonings?**  
13 **A. Correct.**  
14 **Q. I asked you about whether a market demand --**  
15 **whether you had done a market demand study or**  
16 **anyone on your behalf had done.**  
17 **How about any type of a feasibility**  
18 **study or economic analysis?**  
19 **A. There were no studies.**  
20 **Q. None that you commissioned or requested to be**  
21 **commissioned, correct?**  
22 **A. No studies at all that I wanted.**  
23 **Q. Is this parcel still being actively marketed by a**  
24 **broker?**  
25 **A. Yes.**

Page 39

1 **Q. And is that still Steve Lennox?**  
2 **A. Yes.**  
3 **Q. And has Steve Lennox -- to assist him in the**  
4 **brokerage of this Whitman Ford parcel, has he**  
5 **conducted any studies that you know of that would**  
6 **assist him in successfully marketing this**  
7 **property for the Whitman Ford Company?**  
8 **A. That I know of?**  
9 **Q. That you know of?**  
10 **A. No, I know of no studies.**  
11 **Q. And let me just ask you this follow-up question.**  
12 **I guess I was kind of focusing in on**  
13 **pre-application.**  
14 **Since you've submitted the application**  
15 **and since all that's happened since that time**  
16 **have you commissioned any such studies, whether**  
17 **it be marketing, feasibility or economic studies?**  
18 **A. No.**  
19 **Q. When you sat down that first time in the spring**  
20 **of 2008 with Jenkins and Wilburn was there any**  
21 **discussion at that time, if you recall, about the**  
22 **Master Land Use Plan, whether it be the Master**  
23 **Land Use Map or the narrative that accompanies --**  
24 **or that is part of the Master Land Use Plan?**  
25 **A. I don't even understand your question, Phil.**

Page 40

1 **Q. Okay. You had indicated to them that you were**  
2 **going to submit a rezoning application and that**  
3 **was going to be based at least in part on what**  
4 **had transpired in the prior trial, correct?**  
5 **A. Correct.**  
6 **Q. And was there any discussion at that time, either**  
7 **on your part or on Dennis Jenkins' part, what the**  
8 **Master Land Use Plan called for on that parcel or**  
9 **any portion of the parcel, the Whitman Ford**  
10 **parcel?**  
11 **A. No.**  
12 **Q. When you met with Mr. Jenkins and Mr. Wilburn was**  
13 **there any discussion at that time about what**  
14 **consideration either you or any of your**  
15 **professionals, I guess the DuBose people, had**  
16 **given to the impact, whether it be positive,**  
17 **negative or otherwise, that the proposed**  
18 **rezonings would have on adjacent properties or**  
19 **properties in the general area?**  
20 **MR. HANSON: Let me just interpose an**  
21 **objection. I assume your questions, Phil, are**  
22 **asking independent of what was stated by the**  
23 **experts at the trial?**  
24 **MR. GOLDSMITH: Yes.**  
25 **MR. HANSON: And I guess this goes back**

Page 41

1 to the land use question as well, simply because  
2 I think those issues were some of the things that  
3 were testified about. I think your question is  
4 independent of talking about what those  
5 transcripts showed was there any discussion and  
6 that sort of thing?  
7 **MR. GOLDSMITH: Right.**  
8 **BY MR. GOLDSMITH:**  
9 **Q. So I'll ask the question. I'm not referring to**  
10 **the trial transcripts or the deposition**  
11 **transcripts that were taken in advance of the**  
12 **prior trial, but was there any discussion held on**  
13 **what impact, whether it be positive, negative or**  
14 **neutral, that your proposed rezonings would have**  
15 **on any of the adjacent parcels or parcels in the**  
16 **area?**  
17 **A. At that meeting?**  
18 **Q. At that meeting.**  
19 **A. No.**  
20 **Q. Have you since had any conversations with any**  
21 **township representatives, whether it be an**  
22 **elected official, an appointed official such as a**  
23 **Planning Commission member or a staff member,**  
24 **concerning what impact the proposed rezonings**  
25 **would have, whether it be positive, negative or**

Page 42

1 neutral, on any of the adjacent land?  
2 A. No.  
3 Q. Did you consult -- I know we've gone over this.  
4 You talked with and consulted with DuBose  
5 associates John Sperry and Efrem Tennenbaum --  
6 and I may have already asked you this and if I  
7 did, forgive me -- did you consult with a  
8 professional planner prior to submitting your  
9 rezoning application?  
10 A. No.  
11 Q. Have you at any time during the process from the  
12 spring of 2008 up until this time consulted with  
13 a professional planner about your rezoning  
14 application or what has happened through the  
15 procedure with your rezoning application?  
16 A. No.  
17 Q. Has anyone to your knowledge on your behalf  
18 consulted with a professional planner?  
19 A. No.  
20 Q. Did you at any time consider submitting your  
21 proposed rezoning as a PUD rezoning as opposed to  
22 doing it the way you did?  
23 A. What's your question?  
24 Q. Did you -- prior to submitting your rezoning  
25 application in the form and fashion that you did,

Page 43

1 did you at any time consider submitting a  
2 rezoning application as a PUD rezoning, planned  
3 unit development rezoning?  
4 A. No.  
5 Q. Why not?  
6 A. My understanding, Phil, was there's three or four  
7 or five reasons it was not viable.  
8 Q. And what reasons were given to you that it was  
9 not viable?  
10 A. For one thing, we met with you once and  
11 effectively the Wal-Mart was a PUD. We had no  
12 underlying zoning and it was rejected.  
13 Secondly, my understanding on a PUD was  
14 it only lasts for a while. In other words, it  
15 reverts back at some time in the future.  
16 Thirdly, my understanding was if you go  
17 PUD you have all these things you have to submit  
18 along with the site plan. You have all these  
19 things you have to come up with and I didn't have  
20 them.  
21 And lastly, my understanding was it's  
22 much more onerous to do a PUD. You have much  
23 more -- I don't know, you can't develop all the  
24 land. You got much more open space, etc.  
25 So from my understanding in discussions

Page 44

1 with different people from the trial, just my  
2 understanding of it was PUD was either, A,  
3 impossible, or, B, we've done this one with the  
4 Township and got nowhere.  
5 And I didn't have anybody buying this  
6 property and I did have trial testimony what  
7 these different things should be.  
8 Q. Okay. I'm going to show you what's been  
9 previously marked in prior depositions, actually  
10 what I'm going to show you is what was marked as  
11 Exhibit 3 on December 22, '09 in the Dennis  
12 Jenkins deposition.  
13 And this also is one of the DuBose  
14 drawings. If you could take a look at that and  
15 we'll sit this aside.  
16 Is that exhibit, Exhibit 3, I believe  
17 that up in the right-hand corner, is that dated  
18 June 16, '08?  
19 A. I think it's 16, either 16 or 18, Phil, yeah.  
20 Q. Now, is that -- what was previously marked as  
21 Exhibit 3 in the Jenkins dep, is that the first  
22 drawing that was done by DuBose, and the reason I  
23 ask that is I think it depicts the RME and the  
24 RM-2 parcels has being a width of 250 feet from  
25 west to east.

Page 45

1 MR. HANSON: Object to the foundation.  
2 A. It looks like without a magnifying glass it's  
3 250.  
4 BY MR. GOLDSMITH:  
5 Q. And I think the testimony was that Dennis Jenkins  
6 had suggested that those parcels should be  
7 widened from 250 to 286 feet, is that your  
8 understanding?  
9 A. Yes.  
10 Q. And in fact that was accomplished in a later  
11 DuBose drawing, is that your understanding?  
12 A. Yes.  
13 Q. I think that may even be shown on the same  
14 exhibit.  
15 MR. HANSON: I think it's Exhibit 4.  
16 BY MR. GOLDSMITH:  
17 Q. That is shown on what was previously marked as  
18 Exhibit 4 of the Jenkins deposition. I'll show  
19 you that. I think as you stated yesterday  
20 there's two Z-1s here but if you could take a  
21 look at that Exhibit 4.  
22 That shows a width of the RM-2 and the  
23 RME parcels as 286, is that correct?  
24 A. I think it says 286. I struggle with these  
25 little numbers.

Page 46

1 Q. Yeah, they're hard to read. And then also on  
2 Exhibit 4 on the third page of Exhibit 4 it shows  
3 what we were talking about in terms of what was,  
4 I believe, submitted with your rezoning  
5 application, the conceptual drawing showing the  
6 PBO, RME and RM-2 buildings, is that correct?  
7 A. Yes.  
8 Q. You had indicated that one of the gentlemen from  
9 DuBose and Associates, whether it was John Sperry  
10 or Efrem Tennenbaum, indicated to you that it  
11 would be a good idea to show something to the  
12 Township in terms of what could conceptually be  
13 constructed on the Whitman Ford parcels.  
14 Do I understand -- is that a fair  
15 statement?  
16 A. On the ones along here, yes. No, not on the  
17 whole thing.  
18 Q. But on the western boundary, correct?  
19 A. Yes.  
20 Q. Let me ask you this, just a very direct and  
21 pointed question. Are you actually planning to  
22 build RME or RM-2 uses or PBO uses on those  
23 parcels as opposed to just setting that property  
24 aside as a buffer if there's development to the  
25 east of those parcels?

Page 47

1 A. I specifically picked those, Phil, based upon  
2 what happened in the trial.  
3 Q. Fair enough. But my question to you, and  
4 obviously the testimony in the trial speaks for  
5 itself. It's there for anybody to see who wants  
6 to see it.  
7 But setting that aside, and I  
8 understand you specifically picked those zoning  
9 classifications based on your interpretation of  
10 what was said in the trial or what was said in  
11 the trial, do you have actual plans of using  
12 those three parcels to actually construct those  
13 types of uses on the western boundary of the  
14 Whitman Ford property?  
15 A. I would not develop those, no. I have no  
16 personal plans to be a developer to do those  
17 parcels, no.  
18 Q. All right. At one point -- well, strike that.  
19 Is it your plan to -- was it your plan  
20 when you came to the Township to seek the  
21 rezonings on the Whitman Ford parcel as presented  
22 in your rezoning application to obtain those  
23 rezonings to assist you or Mr. Lennox in  
24 marketing the property as a whole?  
25 A. Yes.

Page 48

1 Q. And is it fair to say that whoever might purchase  
2 that property may or may not develop the western  
3 parcels?  
4 A. I couldn't tell you what they would do on any of  
5 them.  
6 Q. At one point in time I think you proposed a  
7 buffer along the western edge of the Whitman Ford  
8 property not in connection with this current  
9 litigation or this -- or the rezoning application  
10 that you submitted, but in the prior litigation,  
11 is that fair statement?  
12 MR. HANSON: Are you asking about the  
13 settlement negotiations that I've been told we  
14 can't ask questions about?  
15 MR. GOLDSMITH: No, I think I'm asking  
16 about what was presented at the public meeting  
17 that was held at the high school in terms of what  
18 proposed land uses could go on that parcel.  
19 MR. HANSON: I'm going to let him  
20 answer the question, but -- fair enough, go  
21 ahead, you can answer the question.  
22 BY MR. GOLDSMITH:  
23 Q. In the prior litigation there was obviously a lot  
24 of discussion concerning a Wal-Mart or another  
25 retail organization coming in and constructing a

Page 49

1 store on the Whitman Ford property, correct?  
2 A. Yes.  
3 Q. In connection with that discussion was there  
4 discussion relative to setting aside a buffer on  
5 the western edge of the Whitman Ford property to  
6 buffer that commercial use from the existing  
7 adjacent residential parcels that existed just  
8 beyond the western border of the Whitman Ford  
9 property?  
10 A. Whatever was presented at that meeting was  
11 presented, Phil.  
12 Q. What's your recollection of what was presented?  
13 A. On what -- I mean that was a detailed drawing.  
14 Q. On whether -- okay, whether there would be a  
15 buffer and what the width of that buffer would  
16 be?  
17 A. I don't remember the width.  
18 Q. You remember that a buffer was proposed though?  
19 A. I think there was buffer proposed, yes.  
20 Q. Were any other changes made to the DuBose drawing  
21 that you're aware of other than enlarging the  
22 width from west to east of the RME and the RM-2  
23 parcels?  
24 A. Yes.  
25 Q. What other changes were made?

Page 50

1 A. The original drawing, Phil, this roadway got  
2 changed.  
3 **Q. And do you know why?**  
4 A. Again, in the conversations they had with Dennis  
5 Jenkins he had questions about this and they had  
6 whatever and the roadway got changed.  
7 **Q. Do you know in what particulars it was changed?**  
8 A. I believe if you go back to Dennis' file I  
9 believe these corners got more rounded out,  
10 they're less severe, they're less sharp, whatever  
11 you guys call it, Phil.  
12 I think it's wider than it once was,  
13 but I could be wrong on both of those. But this  
14 roadway got changed besides just the width.  
15 **Q. Would you agree with me that if this road was not  
16 constructed that the RME parcel that you proposed  
17 would be landlocked?**  
18 A. That's my opinion, yeah.  
19 **Q. And the same would hold true for the RM-2 parcel,  
20 if this road was not constructed that would be  
21 landlocked, that parcel?**  
22 A. Landlocked, Phil, that it doesn't have access to  
23 Sterns or landlocked that you couldn't put an  
24 apartment there? Landlocked --  
25 **Q. Landlocked in terms -- two things -- in terms of**

Page 51

1 access either to Sterns or Lewis.  
2 **MR. HANSON:** You're talking, I assume,  
3 direct access, not access through for instance  
4 the PBO parcel or something like that?  
5 **MR. GOLDSMITH:** Correct, direct access.  
6 A. Direct access, yeah.  
7 **BY MR. GOLDSMITH:**  
8 **Q. Okay, now, I suppose if some other sort of road  
9 was constructed from Sterns Road through the PBO  
10 that that could provide some sort of access to  
11 the RM-2 parcel, is that your understanding?**  
12 A. Yes, so that's why I'm concerned to go on  
13 testimony "landlocked" because this is not  
14 landlocked if you did some things differently.  
15 **Q. So what you're indicating is that there are other  
16 possible plans that could be employed on this  
17 parcel that would provide access to the RM-2  
18 parcel?**  
19 A. Correct.  
20 **Q. How about the RME parcel, are there other  
21 possible plans that you've considered that could  
22 provide access to either Sterns Road or Lewis  
23 Avenue such that that would not be a landlocked  
24 parcel?**  
25 **MR. HANSON:** Let me make sure I'm clear

Page 52

1 because I think you changed the question. Plans  
2 that he's considered or any plan that any planner  
3 could develop at any point in time?  
4 **MR. GOLDSMITH:** Let's ask it in two  
5 parts.  
6 **BY MR. GOLDSMITH:**  
7 **Q. Plans that you have considered?**  
8 A. No, I haven't considered any plans because I'm  
9 not a developer.  
10 **Q. And has there been any discussion with John  
11 Sperry or Efreem Tennenbaum about other plans that  
12 could be developed to provide access to the RME  
13 parcel or the RM-2 parcel?**  
14 A. No.  
15 **Q. The PBO parcel that's situated in the southwest  
16 corner of the Whitman Ford property, that has  
17 access on Sterns Road of course, correct?**  
18 A. It sits next to Sterns Road, yeah.  
19 **Q. Was there ever any discussion or talk with either  
20 John Sperry or Efreem Tennenbaum about providing  
21 access to the RME parcel or the RM-2 parcel  
22 through any road network developed on what was  
23 proposed to be the C-2 parcel?**  
24 **MR. HANSON:** There's a problem with  
25 your question.

Page 53

1 A. I think it's there now.  
2 **MR. HANSON:** I think it misstates  
3 what's going on.  
4 A. I think it's on C-2 now.  
5 **BY MR. GOLDSMITH:**  
6 **Q. Maybe I don't understand what your response is.  
7 You think it's on C-2 now. What do you mean by  
8 that?**  
9 A. This road on the proposed C-2 is on the C-2. It  
10 is not on the 280 feet, whatever this is exactly,  
11 286, it's not on there. It's on the commercial  
12 now so it goes through the commercial now.  
13 **Q. All right, I understand. So if this conceptual  
14 road was actually constructed as shown on the  
15 exhibit that we're looking at, the one we're  
16 looking at now is Exhibit 4 of the Jenkins dep,  
17 it's your opinion that that's actually on what  
18 you propose to be the C-2 parcel, is that  
19 accurate?**  
20 A. Yes.  
21 **Q. Any other changes that you know of that were made  
22 to the DuBose drawings?**  
23 **MR. HANSON:** Can I ask your time frame  
24 there, Phil? Are you talking about from the very  
25 beginning to the final second package submitted



Page 54

1 for rezoning?  
2 **MR. GOLDSMITH:** Well, let's start from  
3 the very -- yeah, the total time frame, from the  
4 very beginning until the rezoning application was  
5 submitted to the Township.  
6 **MR. HANSON:** I'll just state that the  
7 documents speak for themselves, but go ahead.  
8 **BY MR. GOLDSMITH:**  
9 **Q.** You talked about the first change that was made  
10 at the suggestion I believe you testified of  
11 Dennis Jenkins was widening the RM-2 and RME from  
12 250 to 286 feet, correct?  
13 A. Yes.  
14 **Q.** And then you talked about another change also  
15 apparently at the suggestion of Dennis Jenkins on  
16 the roadway that extends from Sterns Road to  
17 Lewis Avenue, correct?  
18 A. I think they were simultaneous, not a second  
19 change.  
20 **Q.** So we know about those two simultaneous changes.  
21 Were there any other changes made to the DuBose  
22 drawings that you're aware of?  
23 A. I think they were and I can't tell you what they  
24 were because there were those technical questions  
25 and I cannot answer what those were.

Page 55

1 **Q.** Are you aware of any other DuBose drawings other  
2 than what we have in front of us and I'll start  
3 with the ones that were attached to your rezoning  
4 application which has been marked as Exhibit 1  
5 today and these other two exhibits, Exhibit 3 and  
6 Exhibit 4 from the Jenkins deposition?  
7 A. Am I aware of --  
8 **Q.** Any other drawings that were prepared by DuBose  
9 other than what we have on the table in front of  
10 us here today?  
11 A. Yes.  
12 **Q.** And did they pre-date the ones that we have on  
13 the table here today or did they come later?  
14 A. Pre-date.  
15 **Q.** And what did those drawings consist of, if you  
16 know?  
17 A. What does "consist of" mean?  
18 **Q.** What were they? What was on them?  
19 A. It was our land. They were early -- I don't know  
20 what you want to call it -- preliminary or  
21 whatever and they were changed and they were  
22 talked about and they were doing this and then  
23 they were before any of this.  
24 **Q.** Were any of those earlier editions submitted to  
25 the Township at any time?

Page 56

1 A. No.  
2 **Q.** Did any of those earlier editions show any  
3 conceptual development on the C-2 or the C-3  
4 parcels that you proposed?  
5 A. No.  
6 **Q.** Any other documents, DuBose documents, drawings,  
7 other than those earlier ones that exist to your  
8 knowledge?  
9 A. Documents?  
10 **Q.** Drawings showing the conceptual plans for the  
11 property?  
12 A. What's your question again? We're talking about  
13 drawings, right, that's your question?  
14 **Q.** You just testified that there were some earlier  
15 drawings other than what's on the table in front  
16 of us now. You testified about that.  
17 Now my question is, are there any other  
18 drawings that were done after these that we have  
19 on the table in front of us now showing  
20 conceptual plans for the Whitman Ford property?  
21 **MR. HANSON:** Object to the foundation  
22 and the form.  
23 A. I believe there's drawings that are in the large  
24 blueprint size that are not whatever size this  
25 is. I believe there are other drawings. I

Page 57

1 believe they show this, but I believe there are  
2 other large drawings.  
3 **Q.** Just larger than the ledger size that we have in  
4 front of us?  
5 A. And I am aware of those.  
6 **Q.** That would probably be a little bit easier for us  
7 to read?  
8 A. Yeah, exactly.  
9 **Q.** Let's get back to your application for rezoning.  
10 Did you deliver the application to the Township  
11 personally, if you recall?  
12 A. I think DuBose did.  
13 **Q.** And apparently he had you sign it as a  
14 representative of the property owner, correct?  
15 A. This part?  
16 **Q.** Yes.  
17 A. Yes.  
18 **Q.** That bears your signature?  
19 A. Yes.  
20 **Q.** And it's dated July 24, 2008, correct?  
21 A. Yes.  
22 **Q.** And as we discussed before, it has the DuBose  
23 drawings attached to it which I believe at that  
24 point in the procedure showed the width of RME  
25 and RM-2 as 286, is that accurate?

1 A. Yes.  
2 **MR. HANSON:** Can I just make a  
3 procedural point, Phil?  
4 **MR. GOLDSMITH:** Yes, you may.  
5 **MR. HANSON:** It appears to me that the  
6 drawings attached to this bear a final date of  
7 August 7, 2008 which is obviously after the date  
8 that the first page of the exhibit is stamped  
9 received.  
10 **MR. GOLDSMITH:** Yes.  
11 **MR. HANSON:** I just want the record to  
12 be clear that it appears that this file was  
13 supplemented in some fashion, so I don't want  
14 there to be a supposition that all of this was  
15 submitted on July 25, 2008 or sometime around  
16 then.  
17 **MR. GOLDSMITH:** Okay. I agree. It  
18 would appear that these two drawings that are now  
19 attached to the rezoning application bear a date  
20 of 8-7-08 and it says "Issued for" -- well, let's  
21 just go back up the line here.  
22 The ones that we have that are marked  
23 as Exhibit 1 of Mr. Whitman's deposition here  
24 today, up in the right-hand corner it says,  
25 "Issued for" and then it says, "Zoning review

1 6-16-08".  
2 **BY MR. GOLDSMITH:**  
3 **Q.** And let me just ask you, Jon, did you attend  
4 prior -- could this have been the date that you  
5 had the meeting with Walt Wilburn and Dennis  
6 Jenkins to initially talk about the possibility  
7 or talk about your submission of a rezoning  
8 application?  
9 A. No. Spring to me is before June.  
10 **Q.** So in any event, it says, "Issued for zoning  
11 review 6-16-08" and the next date says, "Zoning  
12 application" and that says "6-26-08" and then the  
13 next date it says "Bedford Township, PC,"  
14 Planning Commission I presume "Date 8-7-08."  
15 **MR. GOLDSMITH:** Did I say that  
16 correctly, Tom?  
17 **MR. HANSON:** I think that's what it  
18 says. I mean we'll know when we see the larger  
19 drawings, but I think that's right.  
20 I'd also point out there's yet another  
21 date received stamp on the second page of the  
22 exhibit.  
23 **MR. GOLDSMITH:** Yeah. Yeah, that  
24 indicates --  
25 **BY MR. GOLDSMITH:**

1 **Q.** Let's look at that, Mr. Whitman, if you would.  
2 If you would look at that second page of that  
3 exhibit, it would appear that that was received  
4 by the Bedford Township Planning Department on  
5 August 29, 2008.  
6 Does that look right to you?  
7 A. That's what that stamp looks like it says, yeah.  
8 **Q.** And in the box up on the right-hand corner it  
9 says, "Date 8-28-08" and it's got, "Revisions  
10 prepared by E. Tennenbaum, Thomas DuBose and  
11 Associates" and gives some other general  
12 information there.  
13 So it would appear that that  
14 information was submitted to the Planning  
15 Commission at a later date, you're right. Okay.  
16 I'm going to show you what's --  
17 **MR. GOLDSMITH:** Let's have this marked  
18 as an exhibit.  
19 DEPOSITION EXHIBIT 2  
20 Township of Bedford, aerial imagery  
21 WAS MARKED BY THE REPORTER  
22 FOR IDENTIFICATION.  
23 **Q.** Okay, you have in front of you what's been marked  
24 as Exhibit 2 and is that a map that you had  
25 prepared or is that a map that was prepared by

1 someone else?  
2 A. I did not prepare this.  
3 **Q.** Take a look at that map. Does that map  
4 accurately depict what your zoning application  
5 was at the time you presented it in July of 2008?  
6 **MR. HANSON:** Object to the foundation.  
7 A. The layout or the -- I don't know, does the --  
8 **BY MR. GOLDSMITH:**  
9 **Q.** What your proposal was, the layout that you were  
10 requesting on the rezoning.  
11 A. Without the detail?  
12 **Q.** Without any details such as are shown on what we  
13 had gone over before on the conceptual drawings?  
14 A. Yes.  
15 **Q.** All right. What I'd like to do is to go over  
16 this map with you. Some of these questions I've  
17 touched on. I'm going to go over it again and I  
18 think Mr. Hanson yesterday in the Adam Young  
19 deposition numbered these parcels or started with  
20 as Parcel Number 1 the RME parcel, and then the  
21 RM-2 parcel was 2; and the PBO was 3. I'm going  
22 to follow kind of that same line.  
23 So in the RME parcel it says the  
24 proposed rezoning was from R-2A to RME, 4.4  
25 acres, do you see that?

Page 62	Page 64
<p>1 A. Uh-huh.</p> <p>2 <b>Q. I'm going to ask you again, what -- why did you</b></p> <p>3 <b>propose that particular zoning classification for</b></p> <p>4 <b>that particular parcel?</b></p> <p>5 A. Phil, that particular zoning application was from</p> <p>6 the trial, the information at trial. How those</p> <p>7 in the back got put on those particular things</p> <p>8 was discussion with DuBose because it didn't</p> <p>9 matter to me if the RM-2 or the RME was north or</p> <p>10 south of each other.</p> <p>11 <b>Q. Did DuBose -- or did either one of the DuBose</b></p> <p>12 <b>representatives suggest to you that the RME would</b></p> <p>13 <b>be better suited where it's shown on this map</b></p> <p>14 <b>that we're looking at?</b></p> <p>15 A. Yes. I was advised to lay it out that way.</p> <p>16 <b>Q. Was any reason given to you by either one of the</b></p> <p>17 <b>DuBose gentlemen?</b></p> <p>18 A. I cannot recall.</p> <p>19 <b>Q. What proposed use did you envision for that</b></p> <p>20 <b>parcel when you submitted your rezoning</b></p> <p>21 <b>application?</b></p> <p>22 MR. HANSON: Objection, asked and</p> <p>23 answered.</p> <p>24 A. Something like senior housing. That's not the</p> <p>25 right word here, but --</p>	<p>1 said, "I think I would put the RM-2, the</p> <p>2 apartments, whatever you guys call them, next to</p> <p>3 the offices," I said, "Fine."</p> <p>4 <b>Q. When you're referring to the offices, that's the</b></p> <p>5 <b>next parcel to the south, correct, the PBO?</b></p> <p>6 A. The PBO one?</p> <p>7 <b>Q. Yes.</b></p> <p>8 A. Yes.</p> <p>9 <b>Q. And what use did you propose when you submitted</b></p> <p>10 <b>or did you envision would be -- that parcel would</b></p> <p>11 <b>be put to when you proposed your rezoning</b></p> <p>12 <b>application?</b></p> <p>13 A. Well, it's something approaching apartment houses</p> <p>14 and that's what was advised to me in the trial.</p> <p>15 <b>Q. And, again, would it make any difference to you</b></p> <p>16 <b>if any future developer put anything on that</b></p> <p>17 <b>parcel?</b></p> <p>18 A. I was just getting it ready so I could sell it.</p> <p>19 <b>Q. So you didn't care one way or the other how that</b></p> <p>20 <b>parcel would be utilized, whether it would be</b></p> <p>21 <b>used for RM-2 or kept vacant, is that a fair</b></p> <p>22 <b>statement?</b></p> <p>23 A. Fair.</p> <p>24 <b>Q. The next parcel farther to the south is the PBO</b></p> <p>25 <b>and I'm going to ask you how was that zoning</b></p>
Page 63	Page 65
<p>1 <b>BY MR. GOLDSMITH:</b></p> <p>2 <b>Q. Some form of senior housing or elderly housing,</b></p> <p>3 <b>is that fair?</b></p> <p>4 A. Yes.</p> <p>5 <b>Q. Let's go down to the R-2A to RM-2 -- well, let me</b></p> <p>6 <b>go back up to the R-2A parcel, R-2A to RME. You</b></p> <p>7 <b>said what you envisioned was something like</b></p> <p>8 <b>senior housing.</b></p> <p>9 <b>Would it have made any difference to</b></p> <p>10 <b>you whether anything was ever built on that</b></p> <p>11 <b>parcel?</b></p> <p>12 A. If a developer bought this from me and didn't do</p> <p>13 anything with it, I wouldn't care. I mean, I was</p> <p>14 getting this ready for a developer.</p> <p>15 <b>Q. All right. Let's go down to the R-2A to RM-2</b></p> <p>16 <b>parcel. How was that zoning classification</b></p> <p>17 <b>chosen for that particular parcel, the 4.4 acre</b></p> <p>18 <b>parcel, R-2A to RM-2?</b></p> <p>19 A. The RM-2 one?</p> <p>20 <b>Q. Yes.</b></p> <p>21 A. The RM-2 specifically came out at the trial, all</p> <p>22 those things, the transcripts, and in the</p> <p>23 discussion -- in DuBose which one -- do you care</p> <p>24 which one is north or south of each other.</p> <p>25 I said, "What do you think?" and they</p>	<p>1 <b>classification selected?</b></p> <p>2 A. From the trial.</p> <p>3 <b>Q. And what particularly at the trial caused you to</b></p> <p>4 <b>designate that as a change from R-2A and C-2 to</b></p> <p>5 <b>PBO?</b></p> <p>6 A. The PBO, Phil, has to have road frontage. You</p> <p>7 need access, you need visibility to have that.</p> <p>8 Nowhere in Bedford is PBO hidden off the road.</p> <p>9 And both DuBose and I thought you</p> <p>10 absolutely have to have visibility from a road to</p> <p>11 have offices to have anybody want to do that</p> <p>12 because it's such a significant part of your</p> <p>13 advertising to have your sign.</p> <p>14 <b>Q. So you believed you wanted a PBO parcel to be</b></p> <p>15 <b>part of this rezoning, is that a fair statement?</b></p> <p>16 A. Yes.</p> <p>17 <b>Q. And in consultation with DuBose that parcel was</b></p> <p>18 <b>chosen for that purpose?</b></p> <p>19 A. Yes.</p> <p>20 <b>Q. And what did you envision at the time you</b></p> <p>21 <b>submitted your rezoning application as to what</b></p> <p>22 <b>would be built on that parcel or what it would be</b></p> <p>23 <b>used for?</b></p> <p>24 A. Offices.</p> <p>25 <b>Q. Some sort of professional business office, is</b></p>

Page 66	Page 68
<p>1 that a fair statement?</p> <p>2 A. Yes.</p> <p>3 Q. The parcel to the east of the PBO parcel states</p> <p>4 existing C-2, no request to rezone. Do you see</p> <p>5 that?</p> <p>6 A. Yes.</p> <p>7 Q. I believe I heard testimony that you had -- at</p> <p>8 first you had considered asking that that be</p> <p>9 rezoned from C-2 to C-3, is that accurate?</p> <p>10 A. Yes.</p> <p>11 Q. And why did you envision or request -- I know you</p> <p>12 didn't request -- why did you envision rezoning</p> <p>13 that from C-2 to C-3?</p> <p>14 A. In the previous discussions with the township</p> <p>15 officials they wanted a visual break along --</p> <p>16 they wanted a visual break along the highways so</p> <p>17 that you wouldn't see these vast parking lots</p> <p>18 like you see over at the Kroger plaza from Secor</p> <p>19 Road.</p> <p>20 They wanted a break. They didn't want</p> <p>21 to just see asphalt. And in the C-3 zones</p> <p>22 without me getting completely flummoxed on the</p> <p>23 details, you can do smaller sizes and have</p> <p>24 smaller like this one acre -- whatever this one</p> <p>25 -- one and a half acre, you can do this, you can</p>	<p>1 at the Township that it shouldn't be rezoned to</p> <p>2 C-3?</p> <p>3 MR. GOLDSMITH: Basically yeah.</p> <p>4 MR. HANSON: Do you understand the</p> <p>5 question?</p> <p>6 THE WITNESS: No.</p> <p>7 MR. HANSON: I think his question is,</p> <p>8 why did that parcel when initially submitted you</p> <p>9 had it as C-3, but then when ultimately acted on</p> <p>10 by the Township it was requested no change.</p> <p>11 THE WITNESS: Why did I change it, is</p> <p>12 that your question?</p> <p>13 MR. HANSON: That's the change he was</p> <p>14 asking about, yes.</p> <p>15 A. Is that what you're asking me?</p> <p>16 BY MR. GOLDSMITH:</p> <p>17 Q. That's what I'm asking you.</p> <p>18 A. Why does it show that and then why did I not do</p> <p>19 that?</p> <p>20 Q. Correct.</p> <p>21 A. I got a copy of a letter from -- is it Adam</p> <p>22 Young.</p> <p>23 Q. The township planner?</p> <p>24 A. Yeah and he agreed with this and he didn't agree</p> <p>25 with the thing along Sterns, Phil, whatever that</p>
Page 67	Page 69
<p>1 break up these C's where in C-2 my understanding</p> <p>2 was you needed 5 acre minimums and you had these</p> <p>3 lot bigger things.</p> <p>4 So from the previous discussions on</p> <p>5 what do you guys want to see, you wanted to see</p> <p>6 these smaller breakups.</p> <p>7 Q. So am I correct in understanding that someone at</p> <p>8 the Township, perhaps it was Dennis Jenkins,</p> <p>9 indicated to you or to your representatives at</p> <p>10 DuBose and Associates that it would be preferable</p> <p>11 at least to Mr. Jenkins that that not be rezoned</p> <p>12 to C-3, is that a correct understanding?</p> <p>13 A. Those statements came out of meetings in this</p> <p>14 room.</p> <p>15 Q. Meetings in this room in connection with the</p> <p>16 previous litigation?</p> <p>17 A. Yes.</p> <p>18 MR. HANSON: Let me make sure that</p> <p>19 we're talking about the same question. You're</p> <p>20 asking -- your first question asked why did he</p> <p>21 initially propose it to be rezoned to C-3?</p> <p>22 MR. GOLDSMITH: Correct, with his most</p> <p>23 recent rezoning application.</p> <p>24 MR. HANSON: Yeah, but then your next</p> <p>25 question I think was, were you told at some point</p>	<p>1 acres was.</p> <p>2 And I consulted with some people and</p> <p>3 they said I'd suggest you take it out and just go</p> <p>4 with that and, you know, just leave it existing</p> <p>5 C-2 touching Sterns and so I changed the thing</p> <p>6 with the DuBose guys and we did that.</p> <p>7 Q. All right. After Adam -- when Adam Young issued</p> <p>8 his first review of your rezoning request he said</p> <p>9 -- basically I agree with you. He said that he</p> <p>10 was opposed to that -- maybe that's not the right</p> <p>11 word, but -- so you said you consulted with some</p> <p>12 people and elected to make a change.</p> <p>13 Who did you consult with?</p> <p>14 A. DuBose, Tom.</p> <p>15 Q. Anyone else?</p> <p>16 A. No.</p> <p>17 Q. So what was ultimately acted upon by the Planning</p> <p>18 Commission then was changed and I believe it's</p> <p>19 your testimony that it was changed at least in</p> <p>20 part by Adam Young's review of the rezoning</p> <p>21 application, the initial rezoning application?</p> <p>22 A. I don't agree it was acted upon by the Township</p> <p>23 Planning Commission.</p> <p>24 Q. Okay. Well, what ultimately was acted upon by</p> <p>25 the Planning Commission, when the Planning</p>

Page 70

1 Commission reviewed your rezoning request and  
2 made its recommendation what was acted upon by  
3 them and what they made their recommendation on  
4 is what is depicted in this Exhibit 2, is that  
5 accurate?  
6 A. I don't think that's accurate, no.  
7 **Q. Okay. What was acted upon by the Planning  
8 Commission?**  
9 A. I don't think this was acted upon at all.  
10 **Q. I think I understand what you're saying now.  
11 Because you weren't requesting a rezoning –**  
12 A. Correct.  
13 **Q. -- it would remain as C-2?**  
14 A. Correct.  
15 **Q. I guess what I was getting at is that you changed  
16 your initial application based on the Adam Young  
17 review and left it C-2 so that no action was then  
18 necessary by the Planning Commission?**  
19 A. Yes.  
20 **Q. Fair enough. That particular parcel says  
21 existing C-2 and it's a 5.39 acre parcel that we  
22 were just talking about, that is part of the R-2A  
23 parcel to the north of that, correct, where it  
24 says R-2A to C-2, the 8.28 parcel?**  
25 **MR. HANSON:** Object to the foundation.

Page 71

1 Go ahead.  
2 A. I don't think that existing C-2 is part of the  
3 R-2A, no.  
4 **BY MR. GOLDSMITH:**  
5 **Q. It's not all one – it's different – certainly  
6 different zoning classifications. As it sits  
7 right now it's existing C-2 on Sterns Road, 5.39  
8 acres, and then that parcel to the north of –  
9 there to the north of the existing C-2 and to the  
10 west of the C-3 where the dealership is, that  
11 R-2A parcel as it's currently zoned is all one –  
12 part of all the same parcel, correct?**  
13 **MR. HANSON:** I'll object to the  
14 foundation again.  
15 A. I don't understand your question. It's all  
16 part of one parcel. I mean I guess all of this  
17 is part of one parcel, Phil.  
18 **BY MR. GOLDSMITH:**  
19 **Q. Okay, fair enough. It's one 41 plus or minus  
20 acre parcel, correct?**  
21 A. I think it's 43, but yeah.  
22 **Q. Let's go to the parcel to the north, the R-2A to  
23 C-2 designation. Why was that particular zoning  
24 classification chosen?**  
25 A. From the trial information.

Page 72

1 **Q. Tell me in particular from the trial information  
2 what you remember that was stated at the trial  
3 during testimony that supported your decision to  
4 ask for this to be rezoned from R-2A to C-2?**  
5 A. Again, Phil, again you have that. There was  
6 testimony or there was in the stuff. They wanted  
7 a classic transition zoning and in classic  
8 transition zoning you went from the most intense  
9 and you tried to have different intervals of  
10 intensity down to the least intense, the least  
11 intense being the existing Indian Acres, Indian  
12 Road -- Indian subdivision thing to the west.  
13 So you had a car dealer C-3 which I  
14 think is -- my understanding is the most intense  
15 commercial district in Bedford. You had  
16 recommendations you do C-3 along Lewis and you  
17 needed some kind of a transition between the most  
18 existing C-3 to the multi-family or whatever the  
19 286 feet thing is called, Phil. You needed that.  
20 So you needed something in a step-down  
21 or a less intense use, so they wanted that. That  
22 is in different places.  
23 **Q. Okay.**  
24 A. Then you have specifically Paul LeBlanc say what  
25 the Township is talking about in my situation is

Page 73

1 taking the land use that is across the street on  
2 the east side of Lewis and flipping it to the  
3 west side.  
4 When you look at the land use on the  
5 east side of Lewis C-2 touches multi-family, so I  
6 needed C-2 to touch multi-family and I picked it  
7 because of those reasons.  
8 **Q. Okay. What proposed use did you envision for  
9 that particular parcel, that 8.28 acre parcel as  
10 shown on your rezoning application?**  
11 A. I didn't have a proposed use in mind. I had what  
12 was said at the trial.  
13 **Q. You did, however, have – you testified that you  
14 had a proposed use in mind for the RME, senior  
15 housing, correct?**  
16 A. Well, that's what I asked for, yes.  
17 **Q. And you had a proposed use for the RM-2,  
18 apartments, correct?**  
19 A. Yes.  
20 **Q. And for the PBO?**  
21 A. Yep.  
22 **Q. But you didn't have in mind a proposed use for  
23 the C-2?**  
24 A. Commercial.  
25 **Q. And based upon your knowledge of the zoning**

Page 74	Page 76
<p>1 ordinance, the Bedford Township zoning ordinance, 2 what types of uses could that parcel be put to if 3 it were rezoned to C-2? 4 A. Well, I said I think for my non-expert opinion 5 it's a shopping center. 6 Q. Which could be a lot of different things, 7 correct? 8 A. Correct. 9 Q. Could be a strip mall I suppose? 10 A. Whatever. 11 Q. Could be a large retail store? 12 A. A lot of things that would fit under shopping 13 center. 14 Q. One of which would be a large retail store? 15 A. Yes. 16 Q. And that C-2 property would then, of course, be 17 adjacent to the C-3 property along Lewis Avenue, 18 correct? 19 A. Yes. 20 Q. The C-3 property that currently is occupied by 21 your auto dealership, correct? 22 A. Yes. 23 Q. And then the C-3 property that was proposed to 24 the south which would be in the southeast corner 25 of the Whitman Ford property, correct?</p>	<p>1 parcel from C-2 to C-3 is supported by any other 2 document, any other information? 3 A. Yeah. 4 MR. HANSON: Object to foundation, but 5 go ahead. 6 A. Yeah. 7 BY MR. GOLDSMITH: 8 Q. And what would that be? 9 A. Directly across the street is C-3. I mean all 10 around is C-3. Next to me is C-3. 11 Q. Directly across the street from that parcel is 12 the former Chevrolet auto dealership, is that 13 correct? 14 A. Yes. 15 Q. And to your knowledge that parcel is zoned C-3? 16 A. That's my understanding you have to have, yeah. 17 Q. Supported by anything else that you are aware of? 18 A. Well, it's next to me. It doesn't touch anything 19 but the community college and the existing auto 20 dealership. It's across from C-3. 21 Yeah, I think it's supported. 22 Q. To the north of that parcel is the community 23 college, correct? 24 A. Correct. 25 Q. And that's zoned R-2A I believe?</p>
Page 75	Page 77
<p>1 A. Yes. 2 Q. Going to the -- up to the northeast corner of the 3 Whitman Ford property, what caused you to make 4 application to change that parcel, the 3.27 acre 5 parcel, from C-2 to C-3? 6 A. Julie Johnson's recommendation. 7 Q. And where did she make that recommendation? 8 A. In a letter. 9 Q. And where -- was that in connection with the 10 prior lawsuit, was that -- when was that letter, 11 I guess, issued? 12 A. A number of years ago. I made application to 13 change the zoning and in that she didn't think 14 any of it should be changed, and then in the 15 letter she makes a recommendation that north of 16 the dealership should be changed to C-3 zoning, 17 and I took her advice. 18 Q. Was anything -- any testimony introduced at the 19 prior trial one way or the other that you believe 20 supported your application to change that parcel 21 from C-2 to C-3? 22 A. In the trial? 23 Q. Yes. 24 A. No. 25 Q. Do you believe that your request to change that</p>	<p>1 A. I don't know. 2 Q. What use did you envision for that particular 3 parcel? 4 A. Commercial. 5 Q. Nothing in particular? 6 A. No, nothing in particular. 7 Q. Of course, the existing C-3 that was not acted 8 upon because no request was made for that, 9 correct -- 10 A. Correct. 11 Q. -- where the auto dealership is located? And 12 then we already talked -- well, let's go down. 13 I guess we didn't talk about the other 14 parcel that fronts on Lewis Avenue or did we, 15 the 3.59 acre parcel in the southeast corner. 16 That parcel you requested to be rezoned 17 from C-2 to C-3. What was that request based 18 upon? 19 A. In the trial. First of all, Julie Johnson 20 recommended on Lewis I asked for north of the 21 dealership, C-3 in her letter. You have existing 22 C-2 where I was at. 23 Again, in the trial they wanted to see 24 transition zoning. They wanted to see the most 25 intense on Lewis and they wanted to see less</p>

Page 78	Page 80
<p>1 intense behind it and they wanted to see less 2 intense behind that getting to the Indian Acres, 3 Indian Road subdivision. 4 <b>Q. And what proposed use did you envision for that 5 particular parcel?</b> 6 A. Some type of commercial. 7 <b>Q. After Adam Young made his initial review of your 8 rezoning application and in that review he talked 9 about the request that you had made along Sterns 10 Road to rezone to C-3 and was opposed to that, do 11 you remember that?</b> 12 A. Yes. 13 <b>Q. Were you provided with a copy of his review?</b> 14 A. Did I get a copy of the letter? 15 <b>Q. Yes.</b> 16 A. Yes. 17 <b>Q. And did you have any conversations with Adam 18 Young about his letter, about his review?</b> 19 A. No. 20 <b>Q. Do you know whether anyone acting on your behalf 21 spoke with Adam Young and had any conversations 22 with him regarding his review?</b> 23 A. I have no knowledge of that. 24 <b>Q. And then Adam Young submitted a second review 25 letter, correct, after you withdrew your request</b></p>	<p>1 A. I don't know what exactly you would mean by that 2 or who said that. I mean -- 3 <b>BY MR. GOLDSMITH:</b> 4 <b>Q. Let me ask a different question then. If you go 5 back to your conceptual drawings, your conceptual 6 drawings show a road that extends from Sterns 7 Road to Lewis Avenue, correct?</b> 8 A. Correct. 9 <b>Q. And that road is on the parcel that was proposed 10 to be rezoned from R-2A to C-2, correct?</b> 11 A. That's my opinion, yes. 12 <b>Q. And if that conceptual road was built and that 13 parcel would have been rezoned to PBO, there 14 would have been access to that parcel, correct?</b> 15 A. That road would be built, yes. 16 <b>Q. And you had indicated before that it's uncommon 17 to have PBO on anything other than a roadway for 18 -- I think for visibility purposes, is that a 19 fair statement?</b> 20 A. Yes. 21 <b>Q. And if that road were built or if it was built, 22 then that PBO would be on a roadway and it would 23 have visibility on a roadway that connects to 24 Lewis Avenue and Sterns Road, correct?</b> 25 A. A secondary non-county, non-state, non-township</p>
Page 79	Page 81
<p>1 to rezone from C-2 to C-3 along Sterns Road. Do 2 you believe that to be accurate? 3 A. Yeah, there's two letters. 4 <b>Q. And were you provided a copy of that letter, that 5 Adam Young letter?</b> 6 A. Yes. 7 <b>Q. And did you have any conversations with Adam 8 Young about that letter?</b> 9 A. No. 10 <b>Q. And do you know whether anyone acting on your 11 behalf had any conversations with Adam Young 12 about that letter?</b> 13 A. No, I have no knowledge. 14 <b>Q. With respect to the R-2A parcel, the 8.28-acre 15 parcel where you proposed to change that from 16 R-2A to C-2, there was some discussion and we're 17 going to get into this in more detail a little 18 bit later about the township-initiated rezoning 19 of that parcel. 20 But there was some discussion that that 21 parcel would be a landlocked parcel, do you 22 recall that during the deposition, a statement 23 being made that that would be a landlocked 24 parcel? 25 <b>MR. HANSON:</b> Object to the foundation.</b></p>	<p>1 road, yeah. 2 <b>Q. There has -- when your application made its way 3 to the Township Planning Commission and was 4 reviewed by the Township -- a public hearing was 5 held, correct?</b> 6 A. Yes. 7 <b>Q. And were you present at that public hearing?</b> 8 A. No. 9 <b>Q. But I believe Mr. Hanson was there on your 10 behalf?</b> 11 A. He represented me. 12 <b>Q. You were aware that the Planning Commission when 13 it reviewed your rezoning application reviewed 14 each of the six parcels separately as opposed to 15 reviewing the application as a whole, you're 16 aware of that?</b> 17 A. That's my understanding. 18 <b>Q. Did you object to that procedure being employed 19 by the Planning Commission?</b> 20 A. I wasn't there, Phil. I was surprised it 21 happened. I was surprised it happened. 22 <b>Q. Okay. I'll take that answer you were surprised 23 it happened. I'm going to follow up, did you 24 object -- I know you weren't there, but did you 25 object to it being procedurally handled in that</b></p>

Page 82

1 fashion?  
2 A. I probably would object to it, yeah. If I was  
3 asked I would probably say I don't think that's  
4 right.  
5 **Q. I'm going to ask you this. Why don't you think**  
6 **that's right?**  
7 A. Phil, your master plan, your master plan says you  
8 want compact and coordinated commercial  
9 development. If you act on them individually  
10 like you did, it certainly is not coordinated as  
11 I understand that word.  
12 In addition to that, you had a trial, a  
13 very public trial where the news media sat right  
14 there, everybody knew what happened, where you  
15 wanted this very specific step-down, the most  
16 intense on Lewis, less intense behind that, less  
17 intense behind that and then you get to Indian  
18 Subdivision.  
19 When you consider these one at a time  
20 it's, A, not coordinated and, B, you have what  
21 you said you wanted in trial in this transition  
22 zoning from most intense to least intense, you  
23 break that up.  
24 So it goes against what you said you  
25 wanted at trial and it goes against at least this

Page 83

1 compact and coordinated. It's really  
2 uncoordinated when that doesn't happen.  
3 I would have -- if I would have been  
4 asked, would have said for those two reasons I  
5 wouldn't recommend doing this.  
6 **Q. So am I to understand that you would have**  
7 **preferred that the Planning Commission act on it**  
8 **as a whole and either recommend approval or**  
9 **recommend denial as a whole without reference --**  
10 A. "Prefer" might be the wrong word. I would have  
11 recommended you do it on a whole.  
12 **Q. So my next question is, if the Planning**  
13 **Commission liked the conceptual -- or liked the**  
14 **plan but had an objection to any one parcel in**  
15 **particular, the whole thing would fall because**  
16 **maybe one parcel out of the whole --**  
17 A. I don't know.  
18 **MR. HANSON:** Jon, let him finish the  
19 question and then let me interpose an objection.  
20 **BY MR. GOLDSMITH:**  
21 **Q. Let me start over. I understand your response to**  
22 **my question. So if the Planning Commission had**  
23 **acted on it like they did, each individual**  
24 **parcel, and had recommended approval for each**  
25 **individual parcel, it still would have been the**

Page 84

1 **plan, the compact development plan with**  
2 **transitional zoning, correct?**  
3 **MR. HANSON:** Objection -- well, I'm  
4 just going to object to the extent it calls for  
5 speculation, but you can go ahead and answer that  
6 question.  
7 Your question, Phil, is if the Planning  
8 Commission had done it the way it did it and had  
9 recommended approval of Parcel 6 and then --  
10 **MR. GOLDSMITH:** Of each parcel.  
11 **MR. HANSON:** And then the Township  
12 board has then accepted the recommendation of the  
13 Planning Commission and actually approved the  
14 rezoning of Parcel 6, that's your question?  
15 **MR. GOLDSMITH:** That's my question.  
16 **MR. HANSON:** Is there a referendum in  
17 there or not?  
18 **MR. GOLDSMITH:** Not yet.  
19 **MR. HANSON:** Since we're out in  
20 hypothetical-land I want to find out which  
21 hypothetical-land we're living in.  
22 Obviously I'm going to object to that  
23 question as calling for a hypothetical answer,  
24 but Jon, you can answer the question.  
25 A. Phil, now what exactly is the question? Now that

Page 85

1 we're hypothetically -- what is the question?  
2 **BY MR. GOLDSMITH:**  
3 **Q. Let me ask the question this way. Would you**  
4 **object to the Planning Commission in the public**  
5 **hearing and in its review of your rezoning**  
6 **application to looking at each individual parcel**  
7 **that you proposed and considering the uses that**  
8 **could be put to each individual parcel?**  
9 Let me ask that question first.  
10 A. I don't know if I have an objection.  
11 **MR. HANSON:** I'm going to object. I'm  
12 going to object as asked and answered and I'll  
13 object to the form.  
14 A. I don't understand I would object.  
15 **BY MR. GOLDSMITH:**  
16 **Q. I'm just asking, would you find it objectionable**  
17 **for the Planning Commission to look at each**  
18 **individual parcel and looking at the proposed**  
19 **uses that could be put to each individual parcel**  
20 **that was presented in your overall rezoning**  
21 **application?**  
22 **MR. HANSON:** Objection, asked and  
23 answered. That's what the Planning Commission  
24 did and I think Jon has already both stated his  
25 objection and given a fairly lengthy answer as to



Page 86

1 the basis of that objection.  
2 A. There's nothing I can add to what I've said.  
3 **BY MR. GOLDSMITH:**  
4 **Q. Okay, all right. In your response to that**  
5 **question several times you indicated based on**  
6 **your reference to the prior trial what you**  
7 **wanted, meaning – I presume meaning what the**  
8 **Township wanted for the Whitman Ford parcel.**  
9 **Is that what you meant by that?**  
10 A. Yes, what the Township said they wanted, yes.  
11 **Q. Well, did the Township ever say in that trial,**  
12 **"This is what we want for the Whitman Ford**  
13 **property" or did the planning experts testify as**  
14 **to what in their opinion were sound planning**  
15 **principles that could be employed with respect to**  
16 **the development of the Whitman Ford property?**  
17 A. Well, the people that testified were the people  
18 that testified, Phil. I'm not sure any township  
19 official testified other than Bob Shockman, and I  
20 did not go off his testimony.  
21 **Q. So is it fair to say that no one at the prior**  
22 **trial said this is what Bedford Township wants?**  
23 **Rather, planning experts testified as to what in**  
24 **their opinion, their professional opinion, was**  
25 **sound planning principles that could be applied**

Page 87

1 to the Whitman Ford parcel?  
2 A. I think DuBose -- without it being in front of  
3 me, I think DuBose said this is what the Township  
4 is talking about in this situation. I think  
5 DuBose very clearly says this is what the  
6 township is talking about.  
7 **MR. HANSON:** Let me just --  
8 **MR. GOLDSMITH:** Let me follow up.  
9 **MR. HANSON:** Yeah, go ahead.  
10 **BY MR. GOLDSMITH:**  
11 **Q. DuBose didn't testify at the prior trial.**  
12 A. I'm sorry, I'm sorry. LeBlanc. I misspoke on  
13 who it was. LeBlanc clearly said this is what  
14 the Township is talking about in this case.  
15 **Q. But I guess what I'm getting at is just so the**  
16 **record is straight -- and I agree with you that**  
17 **the prior record speaks for itself. Nobody is**  
18 **going to change that. It is what it is.**  
19 **But I don't believe in my review of**  
20 **that prior record that Paul LeBlanc ever said,**  
21 **"This is what we want for the Township."**  
22 **Rather I think -- and I'm paraphrasing,**  
23 **that what he testified to is, "In my professional**  
24 **opinion as a professional planner this is what I**  
25 **think sound planning principles would be for this**

Page 88

1 **particular piece of property."**  
2 **Would you agree with that?**  
3 **MR. HANSON:** And I'll object to the  
4 extent that Mr. LeBlanc and all the experts'  
5 testimony was not based solely on sound planning  
6 principles, but also based on a review of the  
7 Township Master Plan and the Township zoning  
8 ordinance.  
9 **MR. GOLDSMITH:** I agree with that and I  
10 think they employed their expertise and applied  
11 sound planning principles based on all those  
12 documents.  
13 **BY MR. GOLDSMITH:**  
14 **Q. I just wanted to make the point that when you say**  
15 **"this is what the Township wanted", there wasn't**  
16 **any testimony per se that this is what we want**  
17 **for the parcel, this is what needs to be there.**  
18 **MR. HANSON:** And by "this", you're  
19 talking about the exact layout that Mr. Whitman  
20 proposed?  
21 **MR. GOLDSMITH:** Yes.  
22 A. The exact layout?  
23 **BY MR. GOLDSMITH:**  
24 **Q. Yeah.**  
25 A. The exact layout to the foot, no.

Page 89

1 **Q. So am I to understand then that your preference**  
2 **would have been even though this is one parcel,**  
3 **one 43 acre plus or minus parcel, that was broken**  
4 **out into several different zoning**  
5 **classifications, your preference would have been**  
6 **for the Township Planning Commission to act on it**  
7 **as one application, not separate it and either**  
8 **recommend approval or recommend denial as a**  
9 **whole?**  
10 A. I think -- yes.  
11 **MR. HANSON:** Objection, asked and  
12 answered.  
13 A. Yes and I think, Phil, when you put in the Master  
14 Plan the slash this, slash that, slash the other  
15 thing, obviously you've got to put them in there  
16 together. Maybe that's just implied, but that's  
17 how I read that.  
18 **BY MR. GOLDSMITH:**  
19 **Q. You're talking about what the Master Land Use**  
20 **Plan Map shows, correct, in terms of --**  
21 A. In the words, yes.  
22 **Q. In terms of the mixed residential, commercial,**  
23 **office designation?**  
24 A. Yes.  
25 **Q. And you understand that that's not part of the**

Page 90

1 zoning ordinance and that's not the law, correct?  
2 A. I understand that's not part of the zoning  
3 ordinance.  
4 Q. After the Planning Commission acted on your  
5 rezoning application, held the public hearing and  
6 made its recommendation did you have -- at that  
7 point in the procedure did you have any  
8 communication with any township representatives,  
9 whether it be elected officials, appointed  
10 Planning Commission members or staff members?  
11 A. After that?  
12 Q. After the Planning Commission acted.  
13 MR. HANSON: Are you talking about Jon  
14 personally?  
15 MR. GOLDSMITH: I'm going to start with  
16 Jon personally, yes.  
17 A. Personally, no.  
18 BY MR. GOLDSMITH:  
19 Q. Anyone acting on your behalf that you're aware of  
20 that might have had communication with any  
21 Bedford Township representatives?  
22 A. Paul Frances (sp) is related to our family.  
23 There was communication and there were times  
24 there were family events and there was  
25 communication or contact or whatever at these

Page 91

1 family events between our family and him.  
2 Q. Can you tell -- so there was some discussion  
3 concerning what had happened at the Planning  
4 Commission level prior to the board acting on the  
5 application?  
6 A. After the planning meeting?  
7 Q. Yes.  
8 A. I believe that was discussed, yes.  
9 Q. And who were those discussions held between, if  
10 you recall?  
11 A. I believe my folks saw them a few times and I  
12 cannot tell you where.  
13 Q. Were you present during any --  
14 A. I've answered I haven't talked to any board  
15 member. I've answered that.  
16 Q. Well, then that's good because I was taking from  
17 your answer that you may have talked to Paul  
18 Frances, but you did not talk to Paul Frances?  
19 A. In that time period.  
20 Q. After the Planning Commission acted and before  
21 the Township --  
22 A. In those months.  
23 Q. And you weren't present when your mother or  
24 father talked to Paul, is that accurate?  
25 A. Yes, that's accurate.

Page 92

1 Q. Other than some conversation that may have  
2 occurred between your parents and Paul did anyone  
3 else that you know of or anyone acting on behalf  
4 of Whitman Ford Company have any discussions with  
5 any Planning Commission members or  
6 representatives of the Township or board members?  
7 A. Yes.  
8 Q. Who?  
9 A. My father went over and talked to Walt Wilburn.  
10 Q. Were you present during that conversation?  
11 A. I've answered this.  
12 Q. I'm just following up on it. So your answer is  
13 no, you weren't present. Did your father relay  
14 to you what the substance of the conversation  
15 between him and Mr. Wilburn was?  
16 A. Yes.  
17 Q. What was the substance?  
18 A. My father was very disappointed in Denny Steinman  
19 (sp) at the planning meeting. He was very  
20 disappointed with what he said and there was  
21 going to be a vote or the township board wasn't  
22 going to vote on this before the election because  
23 there are reasons, and my father wanted to make  
24 sure that if we had a chance we would like the  
25 new board to vote on it.

Page 93

1 Q. So, Denny Steinman -- Dennis Steinman was on the  
2 Planning Commission at the time the  
3 recommendation was made on your rezoning  
4 application, correct?  
5 A. Yes.  
6 Q. He was the township board representative on the  
7 Planning Commission, is that your understanding?  
8 A. I assume. That's my understanding.  
9 Q. And was your father present at the Planning  
10 Commission or perhaps watched it on TV or how was  
11 he displeased with what Mr. Steinman had to say  
12 at the --  
13 A. There were news articles and websites and  
14 conversations. That was a highly watched  
15 meeting.  
16 Q. And so am I to understand your testimony that  
17 your father asked Mr. Wilburn as a representative  
18 of the Whitman family and Whitman Ford Company to  
19 have the Township vote on the rezoning  
20 application sometime after January 1, 2009?  
21 MR. HANSON: I'll object to the  
22 foundation and the form just because you  
23 interposed a representative of Whitman Ford in  
24 there. You can answer the question.  
25 A. No, they voted on that December, 2008, Phil, not

Page 94

1 January.  
2 **BY MR. GOLDSMITH:**  
3 **Q. I'm sorry. The new -- but it was -- the new**  
4 **board was acting at that point, correct?**  
5 A. Yes.  
6 **Q. Dennis Steinman was not a trustee at the time the**  
7 **Bedford Township board voted on your rezoning**  
8 **application, is that correct?**  
9 A. Correct.  
10 **Q. And so that was my error, sorry. Your dad asked**  
11 **that the new board vote on this as opposed to the**  
12 **-- what I'll refer to as the old board?**  
13 **MR. HANSON:** Same objection.  
14 A. That conversation happened.  
15 **BY MR. GOLDSMITH:**  
16 **Q. And I think you even wrote a letter to**  
17 **Mr. Wilburn which maybe followed on that. Let's**  
18 **have it marked as an exhibit and then we can talk**  
19 **about it.**  
20 **DEPOSITION EXHIBIT 3**  
21 **letter, Whitman to Wilburn, 10-24-08**  
22 **WAS MARKED BY THE REPORTER**  
23 **FOR IDENTIFICATION.**  
24 (A recess was taken.)  
25 **Q. You were handed before we broke Exhibit 3 which**

Page 95

1 appears to be a letter authored by you and we  
2 were just talking about when the Township board  
3 acted upon Whitman Ford's rezoning request.  
4 Could you take a look at that document  
5 and after you've looked at it I'll ask you some  
6 questions about it.  
7 A. Okay.  
8 **Q. You've looked at it? Is this a letter that you**  
9 **wrote to Bedford Township in care of Walt Wilburn**  
10 **on or about October 24, 2008?**  
11 A. Yes.  
12 **Q. And what was the purpose of your sending this**  
13 **letter to the Township?**  
14 A. My father said Walt wanted in writing a request  
15 when the board would vote on our action.  
16 **Q. Is it fair to say that it was Walt's position**  
17 **that it was your rezoning request and you could**  
18 **select the time or the date when it would be**  
19 **considered by the board, is that a fair**  
20 **statement, or did something other than that**  
21 **happen?**  
22 A. I don't know what happened between my dad and  
23 Walt exactly. I couldn't answer your question,  
24 Phil.  
25 **Q. But in any event, after the new board was seated**

Page 96

1 and sworn in, that is when your rezoning request  
2 was acted upon by the Bedford Township board, is  
3 that accurate?  
4 A. I believe that, yes.  
5 **Q. And that was at your -- at Whitman Ford Company's**  
6 **request?**  
7 A. Yes.  
8 **Q. And I take it you were not present at the**  
9 **Township board meeting when the board acted on**  
10 **your rezoning application?**  
11 A. Correct.  
12 **Q. Was anybody there on your behalf? Was Mr. Hanson**  
13 **at that meeting?**  
14 A. Yes.  
15 **Q. Well, at this point in the chronology of events**  
16 **it's obvious that the Township board adopted the**  
17 **recommendation of the Planning Commission and**  
18 **approved each of the rezonings except what is**  
19 **sometimes referred to as the middle parcel, the**  
20 **8.28 acre parcel, is that your understanding?**  
21 A. Yes.  
22 **Q. And then shortly after that action was taken a**  
23 **citizens group undertook to obtain petitions for**  
24 **a referendum, is that also your information?**  
25 A. Yes.

Page 97

1 **Q. And we've talked a little bit in prior**  
2 **depositions about the referendum. During that**  
3 **time frame, I think it was suggested at previous**  
4 **depositions -- and I don't remember if it was**  
5 **Dennis Jenkins' or Walt Wilburn's or perhaps**  
6 **both, but some questions were asked of those**  
7 **witnesses regarding whether the Township took any**  
8 **action to either oppose the referendum or let me**  
9 **ask you this.**  
10 Based on those questions that were  
11 asked I took it that you believe that there were  
12 some inaccurate statements made by the proponents  
13 of the referendum concerning the rezoning and  
14 concerning what potential uses the property might  
15 be put to, is that a fair statement?  
16 A. Based upon the depositions?  
17 **Q. Well, based upon questions that your attorney**  
18 **asked either Walt Wilburn and/or Dennis Jenkins,**  
19 **I took it from some of those questions that you**  
20 **or Whitman Ford Company representatives felt that**  
21 **the referendum was being promoted by inaccurate**  
22 **information, is that a fair statement?**  
23 A. Yes.  
24 **Q. Can you identify for me some of the information**  
25 **that was being circulated and perhaps by whom**

Page 98

1 that you felt was inaccurate?  
2 A. Without it being in front of me, Phil, I couldn't  
3 accurately do that. I mean I agree with your  
4 first statement, but we'd have to -- you'd have  
5 to refresh my memory on exactly what I would  
6 think.  
7 Q. And quite frankly I don't think I can do that  
8 because I don't have any of that information, so  
9 I was just asking you that question to determine  
10 whether you -- and maybe I should ask you this --  
11 whether you have either in your records or at  
12 your disposal information in written form that  
13 you believed was inaccurate relative to the  
14 referendum and the information that was being  
15 circulated concerning that?  
16 A. I have that, yes.  
17 Q. And so in a request to produce if I asked for  
18 that you would cooperate with your attorney and  
19 provide that?  
20 A. Yeah.  
21 Q. If it is at all relevant, but -- okay. Let me  
22 ask you this.  
23 Did you as the property owner or  
24 Whitman Ford Company as the property owner  
25 undertake any steps whatsoever to counteract what

Page 99

1 you felt were inaccurate statements being  
2 circulated in support of this referendum?  
3 A. Publicly?  
4 Q. Either publicly or privately or --  
5 A. I had private conversations with people. People  
6 would come up to me and the company and be very  
7 disappointed or mad about what was happening and  
8 we would converse with them. I had private  
9 conversations with different people.  
10 I believe everybody in the Township had  
11 that.  
12 Q. Is it fair to say that you did not hire a public  
13 relations firm or anyone like that to mount a  
14 campaign against what was being stated publicly  
15 by those who were promoting the referendum?  
16 A. Other than these private conversations I didn't  
17 do anything publicly.  
18 Q. Do you have an opinion one way or the other  
19 whether in your belief the Township should have  
20 done anything in response to inaccurate  
21 statements if in fact they were inaccurate  
22 because I'm not sure what statements were made,  
23 about statements that were being made by those  
24 who promoted the referendum?  
25 A. What's your question again?

Page 100

1 Q. I take it from some questions that were asked by  
2 your attorney that someone, whether it was you or  
3 someone connected with Whitman Ford Company, felt  
4 that the Township, Bedford Township, should have  
5 mounted some sort of a campaign to support the  
6 action that the Township board took in rezoning  
7 five of the six parcels of the Whitman Ford  
8 property?  
9 A. Well, I believe Paul Frances wrote an opinion  
10 piece in Bedford Now. Is that the name of the  
11 paper, Phil, the local paper?  
12 Q. Yeah, I believe so, yes.  
13 A. I believe Paul Frances wrote an opinion piece and  
14 he characterized it as a smear and either  
15 misinformation or disinformation on what has  
16 happened.  
17 So I think if a township official or  
18 somebody elected like that makes that kind of  
19 statement, you know, I think maybe truthful  
20 information should come forth, yeah.  
21 And I can't tell you exactly what he  
22 said, but I believe he wrote that and I believe,  
23 again, I could produce that for you, Phil.  
24 Q. Okay. Well, is it your testimony that  
25 Mr. Frances made an attempt to clear the air or

Page 101

1 accurately state what was transpiring?  
2 A. He wrote that piece. I don't know if I could  
3 characterize it as accurately stating what was  
4 transpiring or clear the air.  
5 I don't know if I would characterize  
6 that, Phil.  
7 Q. Isn't it true that you were upset or concerned  
8 that those who were promoting the referendum were  
9 characterizing this as a vote? If they were  
10 going to support -- if a registered voter in  
11 Bedford Township was going to support the  
12 referendum that it was a vote against Wal-Mart?  
13 Was that being --  
14 A. Support the referendum?  
15 Q. Meaning that --  
16 MR. HANSON: Let's make sure we're  
17 clear on what the yes vote means.  
18 A. What did the vote mean, Phil?  
19 BY MR. GOLDSMITH:  
20 Q. Well, the way I'll state it is that support the  
21 referendum meaning that if you were supporting  
22 the referendum you were seeking the zoning to  
23 remain the same?  
24 A. So overturn --  
25 MR. HANSON: Remain the same as of May

Page 102

1 4 or remain the same as of -- let's put it this  
2 way. Support the referendum equals support  
3 Bedford Watch?  
4 **MR. GOLDSMITH:** Yes because the zoning  
5 never changed once the notice of intent to seek a  
6 petition and seek a referendum is filed, at least  
7 according to the Zoning Enabling Act, the zoning  
8 doesn't change until there's a petition that's  
9 qualified by the clerk and a vote -- a ballot  
10 vote is taken, but --  
11 **MR. HANSON:** There was an ordinance  
12 amendment, but it just --  
13 **MR. GOLDSMITH:** It never took effect.  
14 **MR. HANSON:** Got it.  
15 **BY MR. GOLDSMITH:**  
16 **Q.** So what your attorney said is, I guess, what I'm  
17 asking. To support the referendum would be to  
18 support what Bedford Watch was promoting?  
19 **A.** Okay, and your question is?  
20 **Q.** I forgot my question. My question is, isn't it  
21 true that those in support of the referendum were  
22 characterizing this as a vote in support of the  
23 referendum was in essence a vote against a  
24 Wal-Mart?  
25 **A.** Among others things, I would agree with that

Page 103

1 statement.  
2 **Q.** Do you recall what other things?  
3 **A.** Well, they threw a lot of things out there, Phil.  
4 I mean it was going to bring crime, it was going  
5 to bring -- the sewers were going to overflow.  
6 The roads would never be the same. It would ruin  
7 your property values throughout the entire  
8 township.  
9 There were a number of things that I  
10 can't recall in addition to that and besides just  
11 a Wal-Mart store I mean it was going to -- kids  
12 weren't going to be safe at school effectively.  
13 It was unbelievable what was said, it  
14 was unbelievable.  
15 **Q.** Going back to the prior litigation, I believe  
16 it's alleged in your Complaint that at one point  
17 in time Whitman Ford Company had a contract with  
18 Wal-Mart for the sale and purchase of the Whitman  
19 Ford Company property, is that accurate?  
20 **A.** Yes.  
21 **Q.** And did that contract expire?  
22 **A.** Yeah.  
23 **Q.** Since that time has Whitman Ford Company entered  
24 into a contract to sell any portion of the  
25 Whitman Ford Company property from that time to

Page 104

1 the current time?  
2 **MR. HANSON:** Let me just make sure I'm  
3 clear only because I believe there might have  
4 been more than one contract with Wal-Mart.  
5 You're talking about the Wal-Mart contract that  
6 was entered into in the course of the settlement  
7 negotiations?  
8 **BY MR. GOLDSMITH:**  
9 **Q.** The last Wal-Mart contract, the last Wal-Mart  
10 contract I think that was referred to in your --  
11 in this lawsuit, in your Complaint. That that  
12 contract expired, is that a fair statement?  
13 **A.** My contracts with Wal-Mart have expired.  
14 **Q.** Since the last -- if there was more than one --  
15 since the last Wal-Mart contract expired has the  
16 Whitman Ford Company entered into a contract with  
17 anyone else for a sale of all or a portion of the  
18 Whitman Ford Company property that is the subject  
19 of this lawsuit?  
20 **A.** A contract?  
21 **Q.** Well, let's start with that, a sales contract,  
22 let's start with that.  
23 **A.** A sales contract means I'm going to buy, is that  
24 what you're saying?  
25 **Q.** Yes.

Page 105

1 **A.** No.  
2 **Q.** Has the Whitman Ford Company entered into an  
3 option with any entity after the last Wal-Mart  
4 contract expired for an option on the Whitman  
5 Ford Company property?  
6 **A.** Yes.  
7 **Q.** And with whom?  
8 **A.** Rudolph Libby.  
9 **Q.** And Rudolph Libby is a developer?  
10 **A.** Rudolph Libby is a twin of Rudolph Libby.  
11 **Q.** And they do design, build, develop construction,  
12 is that accurate?  
13 **A.** That's my opinion, that's my understanding.  
14 **Q.** When was that option entered into?  
15 **A.** Sometime in 2007.  
16 **Q.** Has that option expired or is it still operable?  
17 **A.** It ended.  
18 **Q.** Do you know whether or not Rudolph Libby was  
19 acting as an intermediary for any other entity?  
20 **A.** I don't have that knowledge.  
21 **Q.** Does anyone who acts on your behalf as an agent  
22 have any knowledge concerning that?  
23 **MR. HANSON:** Object to foundation.  
24 **A.** Not to my knowledge.  
25 **BY MR. GOLDSMITH:**

Page 106

1 Q. You're aware that Bedford Township undertook or  
2 at least started the process for a township-  
3 initiated rezoning of what has sometimes been  
4 referred to as the middle Whitman Ford parcel,  
5 the 8.28 acre parcel that you proposed to be  
6 rezoned from R-2A to C-2?  
7 You're aware of that, correct?  
8 A. Yes.  
9 Q. It's my understanding -- let me just ask you  
10 this.  
11 Did anyone connected with Bedford  
12 Township consult with you prior to undertaking  
13 that township-initiated rezoning of that parcel?  
14 A. No.  
15 Q. Adam Young was asked during his deposition by  
16 your attorney if he knew whether you were  
17 consulted about the township-initiated rezoning  
18 and I think he responded to that question.  
19 I believe the purpose for which was to  
20 determine whether you would agree to some other  
21 zoning configuration for that 8.28 acre parcel.  
22 Do you recall that question?  
23 A. No.  
24 Q. Let me just ask you this question.  
25 You just testified that you were not

Page 107

1 consulted. If you had been consulted by anyone  
2 from Bedford Township and asked whether you would  
3 agree to any other configuration on the 8.28 acre  
4 parcel, would you have entertained such a  
5 suggestion?  
6 MR. HANSON: Object to the extent it's  
7 a hypothetical that never happened and thus calls  
8 for speculation, but you're free to answer.  
9 A. I don't know what I would have done.  
10 BY MR. GOLDSMITH:  
11 Q. As we sit here today, are you at all open to any  
12 discussion with respect to that 8.28 acre parcel  
13 other than a rezoning from R-2A to C-2?  
14 MR. HANSON: Are you asking with the  
15 other five parcels currently zoned as they  
16 currently are? I guess I'll allow the question.  
17 I think it calls for speculation and a whole  
18 bunch of other things that --  
19 MR. GOLDSMITH: Your point is well  
20 taken.  
21 MR. HANSON: I mean, the Township did  
22 what it did and events ran their course after  
23 that because of the way the Township did things  
24 and --  
25 MR. GOLDSMITH: Well, I guess I dispute

Page 108

1 that events ran their course because of the way  
2 the Township did things, but in any event --  
3 MR. HANSON: Is your question --  
4 MR. GOLDSMITH: Let me re-ask the  
5 question.  
6 MR. HANSON: Okay.  
7 BY MR. GOLDSMITH:  
8 Q. Let's assume that five of the six parcels that  
9 were rezoned were actually -- let's set aside the  
10 referendum. If a referendum would have never  
11 occurred for purposes of this question, and the  
12 five of the six parcels were rezoned the way the  
13 Township board rezoned them, would you have been  
14 open to any suggestions by the Township to rezone  
15 the middle parcel, the 8.28 acre parcel, to  
16 something other than C-2?  
17 MR. HANSON: And let me, A, object to  
18 the extent it's an incomplete hypothetical. I'm  
19 going to, B, object to the form and ask a  
20 clarifying question.  
21 Are you asking the entire parcel zoned  
22 to anything other than C-2 or are you asking for  
23 some different configuration of the parcel? Are  
24 you asking if the township had initiated an  
25 administrative rezoning on all the parcels that

Page 109

1 had some different configuration?  
2 You know, I think it's a really tough  
3 question to answer without knowing what the  
4 Township might have proposed at that point.  
5 BY MR. GOLDSMITH:  
6 Q. To clarify, again, set aside the referendum so  
7 five of the six parcels were rezoned as they were  
8 rezoned by the Township which left the middle  
9 8.28 acre parcel R-2A because the township did  
10 not rezone it.  
11 So just on that 8.28 acre parcel would  
12 you have been amenable to discuss any other type  
13 of rezoning other than C-2 and that could take  
14 the form of a rezoning to a completely different  
15 classification or a mixed zoning on that parcel,  
16 a part of it being PBO, part of it being C-2,  
17 part of it being something else perhaps?  
18 THE WITNESS: Do you understand the  
19 question?  
20 MR. HANSON: I do and I'm going to  
21 object to it as obviously an incomplete  
22 hypothetical, but what he's saying, Jon, and tell  
23 me if I'm wrong here, Phil, but what he's saying  
24 is if the Township had come to you and, again, I  
25 don't know how the question is answerable.

Page 110

1 Phil, is your question if the Township  
2 had come to you and said we're going to  
3 administratively rezone the middle parcel by  
4 adding 15 feet to the two residential zones and  
5 we're going to put the rest of it C-2, is that  
6 one of the possibilities in your hypothetical?  
7 **MR. GOLDSMITH:** That's one of the  
8 possibilities, yes.  
9 **MR. HANSON:** Or one foot to the RME and  
10 the MR-2.  
11 **MR. GOLDSMITH:** That's one of the  
12 possibilities.  
13 **MR. HANSON:** I mean that's I guess --  
14 you know, so is there -- if the question is, is  
15 there any conceivable other layout or zoning for  
16 that middle parcel that Mr. Whitman would have  
17 considered, if that's the question.  
18 Again, I mean again I think it calls  
19 for speculation, but Jon, you can --  
20 A. Any conceivable, yes.  
21 **BY MR. GOLDSMITH:**  
22 **Q. With respect to the protection of the Indian**  
23 **Acres Subdivision to the west of the Whitman Ford**  
24 **Company boundary, that's been talked about in**  
25 **this litigation in some of the depositions,**

Page 111

1 correct?  
2 A. Yes.  
3 **Q. With respect to that issue, there was some**  
4 **discussion yesterday during Adam Young's**  
5 **deposition that from that boundary line, from the**  
6 **west boundary line of the Whitman Ford property**  
7 **going to the east you have 286 feet, correct, for**  
8 **the RME and the RM-2 parcels, correct?**  
9 A. That's been answered, Phil, yeah.  
10 **Q. So in addition to that it was suggested that --**  
11 **and I think during Dennis Jenkins' deposition**  
12 **Mr. Hanson was suggesting that that separation**  
13 **distance is even greater if you take into account**  
14 **the conceptual roadway that's shown in the**  
15 **conceptual plan prepared by DuBose -- do you**  
16 **understand what I'm saying?**  
17 A. Yes.  
18 **Q. So that's an additional -- do you have any**  
19 **knowledge as to how wide that road would have**  
20 **been constructed, 60 feet, is that --**  
21 **A. I thought it was 60 or 80 feet and I can't**  
22 **remember.**  
23 **Q. And then you would add to that whatever setback**  
24 **would be required in the middle parcel if in fact**  
25 **it was rezoned to C-2, do you remember that**

Page 112

1 testimony?  
2 A. Yes.  
3 **Q. So that buffer area or separation distance from**  
4 **the west boundary would be 286 plus 60 or 80 plus**  
5 **or minus, plus the setback and I believe the**  
6 **figures that were used during Dennis Jenkins'**  
7 **testimony or his deposition would have put it**  
8 **close to 400 feet.**  
9 Do you recall that?  
10 A. It was something like that.  
11 **Q. And I think it was represented or the question**  
12 **was asked that if there was a building, a**  
13 **commercial building, erected on that C-2 parcel,**  
14 **that building would have been no closer than 400**  
15 **feet from the west boundary of the Whitman Ford**  
16 **parcel, do you remember that?**  
17 **MR. HANSON:** Object to foundation, but  
18 go ahead.  
19 A. No closer to the Whitman Ford parcel?  
20 **BY MR. GOLDSMITH:**  
21 **Q. To the Whitman Ford boundary, the west boundary**  
22 **of the Whitman Ford parcel.**  
23 **MR. HANSON:** The boundary between  
24 Whitman Ford and Indian Acres?  
25 **MR. GOLDSMITH:** Right.

Page 113

1 A. So what is --  
2 **BY MR. GOLDSMITH:**  
3 **Q. To Indian Acres? Is your question 400 feet?**  
4 A. Indian Acres. Is your question 400 feet?  
5 **Q. Yes.**  
6 A. Something like that, yeah.  
7 **Q. Now, having stated all of that, that would**  
8 **require though the conceptual road actually being**  
9 **built, would you agree with that?**  
10 A. Yes.  
11 **Q. Because otherwise the separation distance would**  
12 **be no more than 286 feet if some other type of**  
13 **access were created to those RME and RM-2**  
14 **parcels, is that a fair statement?**  
15 A. Yes, that's correct, that's fair.  
16 **Q. You heard Adam Young's testimony yesterday**  
17 **regarding his review on what he referred to as**  
18 **the township-initiated rezoning for the 8.28**  
19 **parcel.**  
20 You heard his testimony regarding that?  
21 A. Yes.  
22 **Q. And I believe -- and I'll paraphrase, but he**  
23 **testified and his letter states that PBO is an**  
24 **acceptable transitional zoning parcel for that**  
25 **particular parcel.**

Page 114

1 Do you remember him stating that?  
2 A. Yes.  
3 Q. And I think he also, in all fairness, said in  
4 prior reports that C-2 in his opinion would also  
5 be an appropriate transitional zoning  
6 classification, do you remember that?  
7 A. Yes.  
8 Q. And if the conceptual road were to be  
9 constructed, access and frontage would be  
10 afforded to that parcel, whether it was zoned C-2  
11 or PBO or whether it was zoned some other zoning  
12 classification, is that accurate?  
13 MR. HANSON: Again, I'll just object to  
14 the extent that my understanding is that parcel  
15 as it sits today if it were rezoned C-2 and  
16 stayed joined with the parcel that is currently  
17 zoned C-2, both on Lewis and on Sterns, I think  
18 that it has access.  
19 So I guess my question or my objection  
20 is that the question assumes facts that aren't in  
21 evidence, but --  
22 MR. GOLDSMITH: There's some  
23 assumptions made if that road were built and I  
24 don't necessarily disagree with you. Yeah, it  
25 has access as it currently sits today.

Page 115

1 MR. HANSON: And I guess, you know,  
2 there's some definitional issues with regard to  
3 what exactly does "landlocked" mean, what does  
4 "road" mean.  
5 We get into some fairly meaty planning  
6 words that have some very different definitions  
7 depending on how they're used. But having said  
8 all that, I suspect you're going to need to reask  
9 the question now.  
10 BY MR. GOLDSMITH:  
11 Q. Basically my question is, if the conceptual road  
12 were actually constructed that's shown on the  
13 DuBose drawings and the most -- the latest  
14 edition of the DuBose drawings -- if that road  
15 were in fact constructed there would be access to  
16 that parcel, the 8.28 acre parcel, no matter what  
17 the zoning classification was, correct?  
18 A. Correct.  
19 Q. Right now the way the Whitman Ford parcel is  
20 situated is the way it's been for the last many  
21 years. The zoning is back-- I guess it never  
22 changed based on the law because of the notice of  
23 intent being filed after the Township board  
24 rezoned the five of the six parcels and the  
25 petitions being obtained and the referendum being

Page 116

1 successful, at least from the perspective of  
2 those who promoted the referendum.  
3 So based on that, the property to the  
4 west of the Whitman Ford dealership is all R-2A  
5 with the exception of the existing C-2, is that  
6 accurate?  
7 Is that your understanding?  
8 A. To the west?  
9 Q. To the west.  
10 A. Yes.  
11 Q. The remaining property along Lewis Avenue and the  
12 portion directly to the west of the utility  
13 substation is C-2, correct, with the exception of  
14 the dealership property?  
15 A. Yes.  
16 Q. It has been suggested in many, I suppose,  
17 conversations over the past several years that a  
18 retail establishment could be constructed along  
19 Lewis Avenue on those C-2 and C-3 parcels.  
20 You've heard those comments, correct?  
21 A. Yes.  
22 Q. Have you considered doing that? Have you  
23 considered developing those parcels which would  
24 allow a larger scale commercial development along  
25 the Lewis Avenue corridor?

Page 117

1 A. Yes.  
2 Q. Have you marketed -- and leaving the property to  
3 the west that's currently zoned residential as  
4 residential?  
5 A. No, I reapplied for zoning to market it. I mean  
6 I --  
7 Q. But now the way the property sits, it's  
8 residential to the west of the dealership and  
9 commercial both C-2 and C-3 on Lewis Avenue. My  
10 question is, have you considered or have you  
11 negotiated with anyone to sell those parcels for  
12 the purpose of a commercial development  
13 recognizing that the other property, the balance  
14 of the property, is zoned residential?  
15 MR. HANSON: Are you talking about a  
16 specific time period, Phil?  
17 MR. GOLDSMITH: Well, I guess at --  
18 BY MR. GOLDSMITH:  
19 Q. Let's start with a broad question, at any time.  
20 MR. HANSON: And I guess -- well, you  
21 can answer the question, Jon.  
22 A. Phil, in the previous trial Landry very  
23 specifically had every copy of every offer we  
24 had, so you would have to dig those up or we  
25 would have to go back at any time any offer, you



Page 118	Page 120
<p>1 would have to dig them up. I mean --</p> <p>2 <b>BY MR. GOLDSMITH:</b></p> <p>3 <b>Q. Well, I think those offers, if I remember from --</b></p> <p>4 A. You negotiated a lot of them.</p> <p>5 <b>Q. And I think those offers didn't envision just</b></p> <p>6 <b>utilization of the existing C-2 and C-3, but</b></p> <p>7 <b>utilization of the entire 43 acre parcel, is that</b></p> <p>8 <b>a fair statement?</b></p> <p>9 A. Yeah.</p> <p>10 <b>Q. What I'm asking is, did you at any time consider</b></p> <p>11 <b>just utilizing what's currently zoned C-2 and C-3</b></p> <p>12 <b>for the development of a -- for a commercial</b></p> <p>13 <b>development leaving the residential to the west</b></p> <p>14 <b>as residential?</b></p> <p>15 A. I have never had an offer come to me that I've</p> <p>16 turned down on just that example.</p> <p>17 <b>Q. Let me make sure I understand. Do I understand</b></p> <p>18 <b>you to say that you've never had an offer come to</b></p> <p>19 <b>you to purchase the Whitman Ford property as it</b></p> <p>20 <b>is currently zoned?</b></p> <p>21 A. Correct.</p> <p>22 <b>Q. Do you know whether or not Mr. Lennox on your</b></p> <p>23 <b>behalf has attempted to market the property in</b></p> <p>24 <b>that fashion?</b></p> <p>25 A. I could not answer that.</p>	<p>1 to sell the property.</p> <p>2 <b>Q. You or Whitman Ford Company does not want to</b></p> <p>3 <b>develop it, you would prefer to sell it as a</b></p> <p>4 <b>whole?</b></p> <p>5 A. Given -- I would prefer that, yes, yes.</p> <p>6 <b>Q. Are there any other variations that have been</b></p> <p>7 <b>presented to you that you've considered or that</b></p> <p>8 <b>the company has considered with respect to the</b></p> <p>9 <b>disposition of the property?</b></p> <p>10 <b>MR. HANSON:</b> I'll object to the form.</p> <p>11 A. Now, Phil, again we have been presented in the</p> <p>12 past -- and again you've helped negotiate some of</p> <p>13 these other things -- on different -- whatever</p> <p>14 your word exactly was that are different than</p> <p>15 this layout.</p> <p>16 That has been presented to us, yes.</p> <p>17 <b>BY MR. GOLDSMITH:</b></p> <p>18 <b>Q. But those many years ago envisioned use of the</b></p> <p>19 <b>entire property, right?</b></p> <p>20 A. Yes.</p> <p>21 <b>Q. I'm talking currently, if the judge were to</b></p> <p>22 <b>decide in your favor do you have --</b></p> <p>23 A. Currently, no.</p> <p>24 <b>Q. Let me check my notes. I think I'm either done</b></p> <p>25 <b>or close to being done here.</b></p>
Page 119	Page 121
<p>1 <b>Q. He currently is the broker who has -- does he</b></p> <p>2 <b>have an active or current listing agreement on</b></p> <p>3 <b>the parcel?</b></p> <p>4 A. Yes.</p> <p>5 <b>Q. How long has he had the property listed?</b></p> <p>6 A. This is about 10 to 12 years.</p> <p>7 <b>Q. And it's been listed with him consistently for</b></p> <p>8 <b>that period of time?</b></p> <p>9 A. Whatever the time period is.</p> <p>10 <b>Q. If in this litigation Judge Costello ruled in</b></p> <p>11 <b>your favor and entered an injunction against the</b></p> <p>12 <b>Township which would prevent the Township from</b></p> <p>13 <b>imposing its zoning ordinance against this</b></p> <p>14 <b>property and would allow you to use this property</b></p> <p>15 <b>as you requested in your zoning application, if</b></p> <p>16 <b>that happened or happens do you have any offers</b></p> <p>17 <b>waiting in the wing or proposals waiting in the</b></p> <p>18 <b>wing from any prospective developers or</b></p> <p>19 <b>purchasers?</b></p> <p>20 A. No.</p> <p>21 <b>Q. Do you have any development plans for the parcel</b></p> <p>22 <b>if that were to happen, if the judge ruled in</b></p> <p>23 <b>your favor and you were allowed to use the parcel</b></p> <p>24 <b>as you applied for in your rezoning application?</b></p> <p>25 A. Again, I believe I've answered this. I'm trying</p>	<p>1 (Pause.)</p> <p>2 <b>Q. What's your understanding if you have any</b></p> <p>3 <b>understanding of who your witnesses will be at</b></p> <p>4 <b>trial?</b></p> <p>5 <b>MR. HANSON:</b> Object to the foundation.</p> <p>6 A. I don't have an understanding.</p> <p>7 <b>MR. GOLDSMITH:</b> I'm done.</p> <p>8 <b>MR. HANSON:</b> All right, this concludes</p> <p>9 the deposition of Mr. Jon Whitman.</p> <p>10 (The deposition was concluded at 1:34 p.m.,</p> <p>11 signature of the witness was not requested by</p> <p>12 counsel for the respective parties hereto)</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

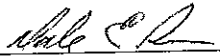
CERTIFICATE OF NOTARY

STATE OF MICHIGAN )

) SS

COUNTY OF WAYNE )

I, DALE E. ROSE, Certified Shorthand Reporter, a Notary Public in and for the above county and state, do hereby certify that the above deposition was taken before me at the time and place hereinbefore set forth; that the witness was by me first duly sworn to testify to the truth, and nothing but the truth, that the foregoing questions asked and answers made by the witness were duly recorded by me stenographically and reduced to computer transcription; that this is a true, full and correct transcript of my stenographic notes so taken; and that I am not related to, nor of counsel to either party nor interested in the event of this cause.





DALE E. ROSE CSR-0087

Notary Public,

Wayne County, Michigan

My Commission expires: 7-15-12