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STATE OF MICHIGAN

CIRCUIT COURT FOR THE COUNTY OF MONROE

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WHITMAN FORD, a Michigan  
corporation,

Plaintiff,

-vs-

No. 04-18604-CH

TOWNSHIP OF BEDFORD, a municipal  
corporation,

Defendant.  
-----/

The deposition of DENNIS K. JENKINS, taken pursuant to Notice, taken at 222 Washington Street, Monroe, Michigan, on Tuesday, December 22, 2009, commencing at 10:14 a.m., before Barbara J. Turner, RPR, CSR-2343, Notary Public in and for the County of Oakland, acting in the County of Monroe.

APPEARANCES:

DYKEMA GOSSETT  
1717 Main Street, Suite 4000  
Dallas, TX 75201  
214.462.6400

BY: MR. THOMAS M. HANSON P62725

Appearing on behalf of Plaintiff.

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LENNARD, GRAHAM & GOLDSMITH, PLC  
222 Washington Street  
Monroe, MI 48161  
734.242.9500  
BY: MR. PHILIP D. GOLDSMITH P37650  
  
Appearing on behalf of Defendants.

ALSO PRESENT: MR. JON WHITMAN

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Monroe, Michigan  
Tuesday, December 22, 2009  
10:14 a.m.

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MR. HANSON: Let's let the record reflect that this is the deposition of Dennis Jenkins taken pursuant to notice and for use for all intended purposes under the Michigan Court Rules and applicable law.

DENNIS K. JENKINS,  
Called as a witness by the Plaintiff, being first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. HANSON:

- Q. Mr. Jenkins, can you just state and spell your name for the record?
- A. It's Dennis K. Jenkins. D E N N I S. J E N K I N S.
- Q. And, Mr. Jenkins, just at the outset, I know that you've given both deposition and trial testimony regarding the Whitman Ford property in a prior lawsuit regarding that property. I'm going to presume you have got some familiarity with that and try and save some time by not rehashing --
- A. Yes.
- Q. -- a lot of old business. But if I say something that

1           you think is inaccurate or you don't recall, just let  
2           me know. Is that fair?

3    A.       That's fair.

4    Q.       Since that last trial have you had your deposition  
5           taken?

6    A.       Since the last trial?

7    Q.       Yes.

8    A.       No.

9    Q.       Okay. Been involved in any lawsuits either on behalf  
10           of the Township or personally?

11   A.       No.

12   Q.       Okay. You understand that you're under oath and that  
13           you have the same obligation to tell the truth as if  
14           we were sitting in a court of law?

15   A.       Yes.

16   Q.       You've heard these before from me I know but remember  
17           that the court reporter is transcribing everything.  
18           Let's try to not talk over each other and let's try  
19           and give verbal responses as opposed to uh-huhs and  
20           unt-huhs and shakes of the head. Is that fair?

21   A.       Yes, it is.

22   Q.       Okay. And if you don't understand a question, let me  
23           know, I'll try and rephrase it. If you do, if you do  
24           answer a question, I will presume you understood it.  
25           Is that fair?

- 1 A. Yes.
- 2 Q. Okay. Mr. Goldsmith may interpose some objections.  
3 Unless he specifically instructs you not to answer, I  
4 am entitled to get an answer notwithstanding his  
5 objection. Okay?
- 6 A. Okay.
- 7 Q. All right. Are you on any medications or have any  
8 illnesses today that would prevent you from giving  
9 your best testimony?
- 10 A. No.
- 11 Q. What is your title at Bedford Township?
- 12 A. It's Planning and Zoning Coordinator.
- 13 Q. Okay. And you've held that position since when?
- 14 A. Approximately twenty-two years.
- 15 Q. Can you briefly describe your duties as the Planning  
16 and Zoning Coordinator?
- 17 A. My duties are to meet with applicants for request for  
18 site plan review, zoning changes or just general  
19 zoning ordinance questions; prepare those request for  
20 the Planning Commission; prepare public hearing  
21 notices when required; and then participate in the  
22 Planning Commission meetings and Township board if  
23 Township board approval is required.
- 24 Q. Are your duties solely related to reacting to  
25 applications for rezoning or site plan approval or do

- 1           you have other --
- 2    A.    There are other.
- 3    Q.    What are some of those other duties?
- 4    A.    Coordination of the Master Plan updates, GIS program,  
5           maintenance. Really that's the major, major points.
- 6    Q.    How about ordinance amendments, do you have any --
- 7    A.    Yeah. We take care of ordinance amendments as well.
- 8    Q.    Let me walk through a few of those duties just  
9           speaking kind of generally. On a rezoning request,  
10           it's true, isn't it, that basically you would be the  
11           first person that an applicant would talk to on a  
12           rezoning request in Bedford Township?
- 13   A.    That is correct.
- 14   Q.    One of the first things you do when you're approached  
15           by an applicant is to, what; look at the Township  
16           zoning map, look at the Master Plan; what do you do?
- 17   A.    We look at the zoning map to determine the existing  
18           zoning. We look at the Master Plan map to see if the  
19           zoning change is compatible with the Master Plan.
- 20   Q.    Okay. And why do you look at that information?
- 21   A.    Just to let the planner -- or the applicant know what  
22           the current, what the existing conditions are, and let  
23           them decide whether they want to proceed with the  
24           zoning change or not. If it is not master planned  
25           properly, they might not be able to get it approved.

1 Q. Okay. So you'll advise the applicant as to what sort  
2 of zoning they're going to need for the use that  
3 they're seeking?

4 A. Correct.

5 Q. And you will also advise the applicant as to whether  
6 the Master Plan would either support or preclude that  
7 sort of rezoning?

8 A. Correct.

9 Q. Could you describe for me the role in your mind that  
10 the Master Plan plays in the rezoning process?

11 A. The Master Plan is a guide that's prepared by -- with  
12 a heavy input from the public. It's a guide to how  
13 the public sees the Township developing over a period  
14 of about twenty years, in other words, where  
15 commercial development should go, where office  
16 development, residential development should go.

17 Q. Is that in your mind kind of the primary function of  
18 the Master Plan -- well, let me strike that and start  
19 over.

20 Part of a master plan is a future land use  
21 map, correct?

22 A. Correct.

23 Q. And is it your understanding of a master plan that one  
24 of its primary functions is to lay out on the future  
25 land use map what the township envisions for a

1 property for the future?

2 A. Correct.

3 Q. You're familiar, are you not, that for many years  
4 during the 1990s the Township zoning ordinance showed  
5 the portion of the Whitman Ford property that is not  
6 where the dealership sits, that property was  
7 designated in the zoning maps as C-2?

8 MR. GOLDSMITH: Objection. Relevance. It's  
9 been decided by the court. Go ahead.

10 BY MR. HANSON:

11 Q. You can answer.

12 A. That's correct.

13 Q. And again, I'm trying to short-circuit this, Phil, I  
14 understand your objection, but you recall from the  
15 prior trial that you changed the zoning map without  
16 public hearing and without Planning Commission action  
17 and Monroe County Planning Commission action?

18 MR. GOLDSMITH: Same objection.

19 THE WITNESS: Correct.

20 BY MR. HANSON:

21 Q. Probably I can short-circuit this without showing you  
22 documents because I don't want to have them marked as  
23 exhibits, but is it your recollection that prior to  
24 2002 the Whitman Ford property was designated in the  
25 Master Plan as non-center commercial?

1 A. What was the question again?

2 Q. Do you recall that -- well, let's start with the  
3 current Master Plan. The current Master Plan was  
4 enacted in -- or adopted in 2002?

5 A. Correct.

6 Q. Okay. Prior to that do you recall the Whitman Ford  
7 property being designated as non-center commercial in  
8 the Master Plan?

9 A. In the previous Master Plan?

10 Q. Yes.

11 A. I believe it was, yes.

12 Q. Okay. And again, this is some ancient history but --  
13 I'm going to strike that. We got testimony on that.

14 In 2002 when the new Master Plan was  
15 adopted, do you recall that the designation on the  
16 Whitman Ford property was changed to parks and  
17 recreation?

18 A. That's correct.

19 Q. And you've testified previously I believe that there  
20 was never any plan on the part of the Township to  
21 develop that property for parks and recreation, is  
22 that correct?

23 A. That's correct.

24 Q. And subsequently that Future Land Use map designation  
25 was amended so that now the Whitman Ford property is

1 shown as a combination of local/commercial and mixed  
2 office/residential and commercial, is that correct?

3 A. Correct.

4 MR. HANSON: I'm not going to mark this,  
5 Phil, this is the Master Plan. I'm just showing it  
6 for reference.

7 BY MR. HANSON:

8 Q. I'll represent to you, Mr. Jenkins, this is from what  
9 I understand to be the current Township Master Plan  
10 describing the designations of local commercial and,  
11 and other things including the mixed  
12 residential/office/commercial designation.

13 First question I have for you, in the local  
14 commercial designation there's a statement that says  
15 individual businesses within the local commercial area  
16 should not exceed five thousand gross square feet and  
17 commercial buildings for multiple tenants should not  
18 exceed ten thousand gross square feet.

19 Are you familiar with that provision?

20 A. Yes.

21 Q. Let me just ask you, what's your take on those  
22 limitations in the local commercial designation?

23 A. Well, it's part of the Master Plan that's a guide to  
24 future land use. The zoning ordinance doesn't contain  
25 the same restrictions.

- 1 Q. Would in your mind the five thousand and ten thousand  
2 gross square feet specifications set forth in that  
3 designation be a grounds for denying a rezoning  
4 request to commercial in a local commercial zone?
- 5 A. I don't believe so.
- 6 Q. It's really just a guideline, isn't it?
- 7 A. Correct.
- 8 Q. And the Township can really either ignore that  
9 provision or enforce it depending on the  
10 circumstances?
- 11 A. Correct.
- 12 Q. What in your mind might be some of the reasons that  
13 the Township would enforce that restriction?
- 14 A. Probably if they did would be characteristics of the  
15 surrounding area.
- 16 Q. Surrounding land uses?
- 17 A. Correct.
- 18 Q. When you say surrounding, do you mean immediately  
19 adjacent or do you mean surrounding in a broader  
20 sense?
- 21 A. In the general area.
- 22 Q. Okay. And would your answer be the same -- well, just  
23 so we get clear testimony, what in your mind might be  
24 some of the reasons that the Township might ignore  
25 that guideline?

- 1 A. If the building sizes in the general area were larger  
2 than that, they could, they could be consistent.
- 3 Q. When you say general area, how big of an area are you  
4 talking about?
- 5 A. Probably an area including the intersections, if it's  
6 a major roadway the intersections. I mean it's hard  
7 to say without a specific area.
- 8 Q. Well, let's talk about Lewis and Sterns.
- 9 A. Lewis and Sterns.
- 10 Q. Well, first of all, you would agree with me that Lewis  
11 and Sterns is one of the major commercial  
12 intersections in the Township?
- 13 A. Yes.
- 14 Q. And you'd also agree with me that Lewis Avenue itself  
15 is one of the two places in the Township where the  
16 road is actually five lanes?
- 17 A. Yes.
- 18 Q. And in fact the five lane portion of Lewis Avenue is  
19 the longest stretch of five-lane road in the Township,  
20 correct?
- 21 A. Correct.
- 22 Q. Would it be fair to say that up and down Lewis Avenue  
23 there is more commercial on that road than on any  
24 other road in the Township?
- 25 A. I would say there is, yes.

1 Q. Okay. On Lewis and Sterns in your opinion would that  
2 five thousand, ten thousand square foot guideline be  
3 either a -- let me strike that and start over.

4 At Lewis and Sterns in your opinion would  
5 that five thousand ten foot -- ten thousand square  
6 foot limitation, should it be ignored or should it be  
7 enforced?

8 A. I would say it could be considered but I would say it  
9 wouldn't be enforced.

10 Q. Well, let's look down at the mixed  
11 residential/office/commercial designation.

12 A. Uh-huh.

13 Q. And specifically I'm looking at the second paragraph.  
14 Last sentence says, the emphasis of this designation  
15 is a combination of residential/office and local  
16 commercial uses.

17 Does local commercial in that sentence have  
18 the same meaning in your mind as the local commercial  
19 designation in the Master Plan itself?

20 A. I would say it does.

21 Q. Okay. Is there any commercial designation that would  
22 be per se inapplicable to either the local commercial  
23 Master Plan designation or the mixed  
24 residential/office/commercial designation?

25 A. Probably the C-3, general commercial.

- 1 Q. Why is that?
- 2 A. Because of the intensity of uses.
- 3 Q. Is it your -- let me strike that.
- 4 The Master Plan, as I understand it, the
- 5 local commercial designation is the only commercial
- 6 designation in the Township?
- 7 A. That's correct.
- 8 Q. Is it your opinion then that the Master Plan of
- 9 Bedford Township does not support any rezoning to C-3?
- 10 A. If it relies solely on the Master Plan I would say
- 11 that's correct.
- 12 Q. You could have a C-3 use that would be a local
- 13 commercial use, couldn't you?
- 14 A. Absolutely, yes.
- 15 Q. I'm trying to reconcile the two things that you just
- 16 testified to in my mind. On the one hand I think, and
- 17 tell me if I'm wrong, you've testified that the local
- 18 commercial designation wouldn't preclude a rezoning to
- 19 C-3, correct?
- 20 A. That's correct.
- 21 Q. But you also made the statement that you didn't think
- 22 the Master Plan would support a C-3 zone in the local
- 23 commercial designation. You see where I'm kind of
- 24 getting at?
- 25 A. Yeah. I understand what you're getting at. But there

1 are some uses in C-3 that, you know, are lower  
2 intensity.

3 Q. But in a rezoning you don't -- you look at all the  
4 uses, correct?

5 A. Correct.

6 Q. If somebody walked into your office today, had a piece  
7 of property that was master planned for local  
8 commercial and they wanted to rezone it say from R-2A  
9 to C-3, would you advise them that the Master Plan  
10 supported that or did not support that?

11 A. I would show them the map areas and explain what the  
12 differences are and let them make the decision whether  
13 or not they want to go forward.

14 Q. Isn't it your practice though to provide some advice  
15 to an applicant as to whether you think a request is  
16 likely to succeed or fail?

17 A. Generally I don't. I just point to the Master Plan  
18 and say, you know, you're going to have to decide if  
19 it is going to be a difficult endeavor or easy.

20 Q. Do you -- at any time do you advise applicants if  
21 there are particularly difficult issues that they are  
22 going to face in a rezoning request?

23 A. Generally I don't, no.

24 Q. And just to play that out, if somebody walked in and  
25 had a property that was zoned R-2A and was master

1 planned for single-family residential and said they  
2 wanted to rezone it to C-3, would you give them any  
3 advice as to whether you thought that would be a waste  
4 of time or not?

5 A. No. I would point to the Master Plan and say, you  
6 know, the Planning Commission is going to have to --  
7 the Township board is going to have to decide on  
8 whether this is a compatible use with the area even  
9 though it's not master planned for it.

10 Q. Okay. Okay. Let's go back to our general string.  
11 You've had an applicant come in, you've talked to them  
12 and pointed them to the Master Plan and told them what  
13 sort of zoning they might need to seek for the use  
14 that they're proposing. What happens next?

15 A. The applicant decides whether or not they want to go  
16 through with the request and we take their  
17 application. And usually if it's a complicated  
18 request, it's sent to our planning consultant. This  
19 is after they pay their fees. If it's a fairly simple  
20 request, we'll just schedule public hearing and send  
21 it right to the Planning Commission for review.

22 Q. So not every rezoning request goes to Wade Trim, is  
23 that correct?

24 A. Correct.

25 Q. Do you have a practice of doing any sort of

1 pre-application meeting with an applicant?

2 A. Usually that happens when they walk in the door. We  
3 will sit down and go over all the requirements.

4 Q. Is that a statutory mandate, in other words, does your  
5 zoning ordinance require that sort of a meeting?

6 A. No.

7 Q. Typically when you have a meeting like that, do you  
8 look at drawings, do you have Wade Trim present;  
9 anything like that?

10 A. No. No, we don't. And they will usually bring in a  
11 sketch showing what they want to do.

12 Q. Who makes the decision as to whether to send a  
13 rezoning request out to Wade Trim or not?

14 A. Generally I do based on the complexity of the request.

15 Q. Do you run that by anybody at the Township or do you  
16 make that decision --

17 A. I make the decision.

18 Q. I'm just going to caution you, even though you know  
19 where my question is going, for Barb's sake, try and  
20 let me finish.

21 All right. Well, let's assume we've got a,  
22 a request that is sufficiently complex. You've  
23 determined that it should go to Wade Trim. Do you  
24 advise the applicant of consultant fees that need to  
25 be paid, is that right?

- 1 A. Yes.
- 2 Q. And then upon the payment of those fees then you will  
3 send the rezoning application to Wade Trim?
- 4 A. Correct.
- 5 Q. What happens at that point?
- 6 A. Wade Trim, the planning consultant, will do an  
7 analysis of the request and provide us with an opinion  
8 and whether it's a suitable request or not.
- 9 Q. Who is the current Wade Trim person handling the  
10 Township's planning matters?
- 11 A. It's Adam Young.
- 12 Q. How long has he been serving in that role?
- 13 A. I believe for about two years now.
- 14 Q. And he took over for Julie Johnston, is that correct?
- 15 A. Correct.
- 16 Q. What happened to Ms. Johnston?
- 17 A. Ms. Johnston got a position in Bolder, Colorado as  
18 planning director.
- 19 Q. Mr. Young as I understand it was assisting  
20 Mrs. Johnston before she left, is that correct?
- 21 A. Correct. For a period of time.
- 22 Q. Do you have any idea how long that is?
- 23 A. No, I don't.
- 24 Q. Does the Township have any say in who at Wade Trim  
25 handles the planning matters?

- 1 A. No. There's usually one planner assigned to a plan.
- 2 Q. And so when Ms. Johnston left Wade Trim said they were  
3 going to assign Mr. Young to Bedford Township?
- 4 A. Correct.
- 5 Q. All right. Has Bedford Township ever had any reason  
6 to look at whether they want to continue to utilize  
7 Wade Trim or use a different planning consultant or do  
8 it in-house?
- 9 A. No. Periodically we will review their performance and  
10 decide. But we haven't done that in a long time, so.
- 11 Q. How long is a long time?
- 12 A. Probably fifteen or more years.
- 13 Q. You've been happy with Wade Trim, I take it?
- 14 A. Basically, right.
- 15 Q. Okay. So Wade Trim has written a recommendation  
16 letter, what happens at that point?
- 17 A. That recommendation letter, well, we then schedule a  
18 public hearing and notice everyone within three  
19 hundred feet. And that recommendation is then given  
20 to the planning commissioners with the application, a  
21 copy of the application, and that's reviewed. I mean  
22 we have the public hearing, take public comment and  
23 then the Planning Commission deliberates on the  
24 request.
- 25 Q. The Planning Commission then makes a recommendation to

1 the board, is that correct?

2 A. They make a recommendation to the board, correct.

3 Q. Am I correct in that the request then goes to the  
4 Monroe County Planning Commission?

5 A. Correct.

6 Q. What's the, what's the statutory basis for sending it  
7 to Monroe County Planning? Is that in your zoning  
8 ordinance or --

9 A. It's a state requirement.

10 Q. And then after the Monroe County Planning Commission  
11 has made a recommendation, what happens at that point?

12 A. Then we send our Planning Commission's recommendation  
13 along with all the paperwork including the  
14 consultant's recommendation and Monroe County  
15 Planning's recommendation, and that is sent to the  
16 Township board for a final decision.

17 Q. So typically when a board's acting -- when the board  
18 is acting on a rezoning request, they've got four  
19 basic pieces of information which is the rezoning  
20 application itself, the Wade Trim recommendation, the  
21 Planning Commission recommendation and the Monroe  
22 County Planning recommendation?

23 A. Correct.

24 Q. And I understand there may be other things that get  
25 thrown into the packet, but those four things are

1 going to be in just about everything that goes to the  
2 board?

3 A. Correct.

4 Q. How do you determine when to schedule the board  
5 meeting for action on the rezoning request?

6 A. We usually schedule a board meeting action soon after  
7 the County Planning Commission issues their  
8 recommendation.

9 Q. Do you seek any input from the applicant in that  
10 regard or do you just go ahead and schedule it?

11 A. We will go ahead and schedule it. If they want the  
12 date changed, we will do that.

13 Q. Now, on the rezoning request at issue in, in this  
14 case, I've got a -- let's go ahead and mark this as  
15 Number 1.

16 (Exhibit 1 is marked.)

17 BY MR. HANSON:

18 Q. Mr. Jenkins, I'll represent to you that this is an  
19 exhibit for the rezoning application and I'm going to  
20 just try and shorthand a few things and I'm sure  
21 you've probably seen this map before?

22 A. Many times.

23 Q. Okay. Phil's got a better copy. Look at him over  
24 there.

25 MR. GOLDSMITH: I'll share it.

1 BY MR. HANSON:

2 Q. That's okay. I'm going to start in the northwest  
3 corner, the R-2A to RME and call that parcel one,  
4 okay?

5 A. Okay.

6 Q. The one immediately below that the R-2A to RM-2 parcel  
7 two.

8 A. Okay.

9 Q. The one below that, the R-2A and C-2 to PPO, call that  
10 parcel three.

11 A. Okay.

12 Q. The southeast corner C-2 to C-3, 3.59 acres, I will  
13 call that parcel four.

14 A. Okay.

15 Q. The northeast parcel, C-2 to C-3, 3.27 acres, parcel  
16 five.

17 A. Okay.

18 Q. And then the middle parcel R-2A to C-2, 8.28 acres, I  
19 will call that parcel six.

20 A. Okay.

21 Q. Now, obviously from me having just read that off, in  
22 this case the applicant was seeking a variety of  
23 different rezonings embodied in one rezoning request,  
24 correct?

25 A. Correct.

1 Q. Is that unusual in your experience in Bedford  
2 Township?

3 A. We are not presented with that very often. The only  
4 other time would be if a planned unit development was  
5 submitted. But no, we don't do it often.

6 Q. Taking out the PUD, well, let me just -- as I  
7 understand it, a PUD is a single rezoning request,  
8 correct?

9 A. Correct.

10 Q. You're requesting that the zoning designation be PUD?

11 A. Correct.

12 Q. So even though it might have a number of different  
13 uses, it is a single zoning request?

14 A. Yes.

15 Q. Taking out PUDs, are you aware of any other time in  
16 your experience where an applicant has submitted a  
17 rezoning application that included more than one  
18 rezoning request?

19 A. On one piece of property?

20 Q. Yes.

21 A. I can't recall right off the top of my head.

22 Q. How about on separate properties?

23 A. It's possible but again I don't recall.

24 Q. Okay. To your knowledge does Bedford Township have  
25 any written policies or ordinances governing how to

- 1 act on a rezoning application that presents multiple  
2 rezoning requests?
- 3 A. No.
- 4 Q. In your mind, and again speaking generally, what are  
5 factors that are important to a decision as to whether  
6 to rezone a piece of property or not?
- 7 A. First the Master Plan would be one component. The  
8 proposed uses and the impact that the proposed uses  
9 would have on the adjacent parcels.
- 10 Q. Anything else?
- 11 A. Planning commission, township board could consider  
12 infrastructure but it's not required.
- 13 Q. What do you mean by infrastructure?
- 14 A. Roads conditions, availability of sewer and water.
- 15 Q. You don't have any requirements that say certain  
16 zoning designations are not permitted unless there's  
17 public sewer and water available?
- 18 A. No. No.
- 19 Q. And is the same true of road access and condition?
- 20 A. Well, that, that would be up to the Monroe County Road  
21 Commission. We wouldn't consider that.
- 22 Q. Okay. How about traffic, is traffic a consideration  
23 in a rezoning application?
- 24 A. If we are presented with traffic data, they will look  
25 at it. But we don't require a traffic impact study.

1 Q. Can you recall instances in the past when the  
2 applicant has presented a traffic study, and if so,  
3 could you tell me when that might have been?

4 A. There was one that I recall that was at the  
5 intersection of Secor and Smith. That was a multiple  
6 residential use, single family, two family, four  
7 family and Monroe County Road Commission required the  
8 traffic study. We didn't.

9 Q. Prior to the rezoning they required a traffic study?

10 A. Correct.

11 Q. Does the Monroe County Road Commission have the  
12 ability to stop a rezoning that the Township board has  
13 otherwise signed off on?

14 A. No.

15 Q. I'm just trying to figure out how the mechanics would  
16 have worked in that case, that the road commission  
17 would have requested a traffic study, what can you  
18 tell me about how that came to be?

19 A. I don't really recall the circumstances except the  
20 Smith Road was considered marginal by the road  
21 commission and that could be a consideration on the  
22 rezoning to PUD which this was. The Monroe County  
23 Road Commission's control would come when the site  
24 plan was presented.

25 Q. Okay. So it was a PUD, so there was a site plan

1 presented with the rezoning application?

2 A. Right.

3 Q. Okay. So you were not only approving the rezoning but  
4 you were rezoning the site plan at the time?

5 A. Correct.

6 Q. That makes more sense to me. A straight rezoning  
7 request however, there is no requirement for a traffic  
8 study and it's not something that the Township  
9 generally looks at?

10 A. Correct.

11 Q. Other than determining whether there's sewer and water  
12 publicly available, is there any other infrastructure  
13 issues that the Township would typically look at?

14 A. No. No. There wouldn't be.

15 Q. There's sewer and water available at the corner of  
16 Lewis and Sterns, correct?

17 A. Correct.

18 Q. Now, you talked about the Master Plan or you mentioned  
19 the Master Plan and I think we've discussed that a  
20 little bit. What parts of the Master Plan do you deem  
21 important aside from the Future Land Use Map  
22 designation in considering a rezoning request?

23 A. You know, the -- I'm trying to think of what other  
24 components --

25 Q. Let me ask the question in a slightly different way.

1                   When you're, I think you testified about  
2                   pointing somebody to a master plan who comes into your  
3                   office. When you point them to the Master Plan, do  
4                   you only point them to the Future Land Use Map and  
5                   those -- and the text that accompanies those  
6                   designations or do you also point them to, for  
7                   instance, the goals and objective section of the  
8                   Master Plan or the, you know, the strengths,  
9                   weaknesses, opportunities, threat section of the  
10                  Master Plan; what sort of other things do you look at?

11    A.           Generally we do go through the goals and objectives  
12                  and strategies. Not on all requests. Most of the  
13                  requests we deal with are fairly small, the change is  
14                  fairly -- in a small parcel.

15    Q.           Do you consider -- well, let me strike that.

16                         In your mind is it at all important to  
17                  consider the Township as a whole in looking at a  
18                  rezoning request? I know you mentioned adjacent land  
19                  uses and I understand that. But in your mind as part  
20                  of a rezoning application, does benefit to the  
21                  Township as a whole play into it?

22    A.           No.

23    Q.           Okay. So we've got Master Plan. Well, you mentioned  
24                  proposed uses. Typically uses aren't proposed,  
25                  correct, in a rezoning application?

1 A. They can propose them but we really don't consider  
2 them because you look at all of these as permitted in  
3 that district.

4 Q. Do you ever look at conditional uses in a district  
5 when you're determining a rezoning application?

6 A. If it is a use permitted subject to special approval,  
7 is that the question?

8 Q. Yes.

9 A. Yeah. We look at all uses.

10 Q. Okay. Do you look at -- let me back up.

11 If you have an applicant who's come in with  
12 a rezoning request and sometimes they will include a  
13 sketch of, you know, some proposed site plan, do you  
14 consider that in connection with a rezoning  
15 application?

16 A. No. In general if they submit a site plan, the  
17 Planning Commission understands that they can't  
18 consider that, you know, during their discussions.

19 Q. In fact, it's inappropriate to consider it, correct?

20 A. It's inappropriate, correct.

21 Q. Yeah. We talked a little bit about traffic studies.  
22 In your experience in your twenty-two years at  
23 Bedford, has the Township ever required an applicant  
24 to provide any sort of feasibility study or economic  
25 analysis or market demand study in connection with a

1 rezoning application?

2 A. Not that I recall.

3 Q. Are there any written procedures for requiring such a  
4 study or conducting such a study or what it would  
5 include?

6 A. I think the Planning Commission, Township board can  
7 request it. There's no set procedure.

8 Q. You can't recall at any time the Township Planning  
9 Commission or board having actually requested such a  
10 thing?

11 A. The only time, other time that they could have and I  
12 don't recall whether they did or not, was when we were  
13 presented with a rezoning from Meijer on the Smith and  
14 Secor property.

15 Q. And I know it was a long time ago, but do you recall  
16 when that was? Was it early nineties or mid nineties?

17 A. Probably early to mid nineties.

18 Q. Okay. How -- if such a request were made, how  
19 mechanically would that fit into kind of the general  
20 process that we've been talking about, you know,  
21 meeting with you, Wade Trim review, Planning  
22 Commission action, Monroe County action; at what point  
23 would an applicant be advised that they needed to  
24 provide some additional information to the Township?

25 A. That could either be at the Planning Commission

1 hearing or at the Township board level or the planning  
2 consultant could suggest that that be considered.

3 Q. And at that point it would be up to the applicant as  
4 to whether they wanted to proceed with complying with  
5 a request or whether they wanted to let the  
6 application stand on its merits?

7 A. Correct.

8 Q. Okay. Do you know -- let me jump back to ancient  
9 history again.

10 Are you aware that at the Monroe County Road  
11 Commission's request that Whitman Ford had a traffic  
12 study prepared for the development that was proposed  
13 as part of a potential settlement of the prior  
14 lawsuit?

15 MR. GOLDSMITH: Let me just object because  
16 it involves settlement discussions and also on the  
17 basis of relevance, but you can go ahead and answer.

18 THE WITNESS: I don't, I don't recall  
19 whether that was the case or not.

20 BY MR. HANSON:

21 Q. Okay. You don't recall having ever seen a traffic  
22 study or anything like that?

23 A. I don't believe we did.

24 Q. Has the Township ever commissioned a traffic study for  
25 any use of that property?

1 A. The Township itself? I don't believe they have, no.

2 Q. Are you aware of anybody else who's done a traffic  
3 study on any potential use of that property?

4 A. No, I don't.

5 Q. It's subsequently zoned R-2A, correct? And let me --  
6 this is where our map is going to be helpful or maybe  
7 not.

8 I'm going to, I'm going to talk about the  
9 western half of the property; and I know that it's not  
10 precisely half and that the line is a little bit  
11 squiggly in there; but if I talk about the western  
12 half of the property, do you have a pretty good  
13 understanding of what I'm talking about?

14 A. Yes.

15 Q. Okay. And would you agree with me that that western  
16 half of the property is -- roughly lines up with the  
17 Master Plan's designation of mixed  
18 office/residential/commercial?

19 A. Correct.

20 Q. Okay. The western half of the property is currently  
21 zoned R-2A, correct?

22 A. Correct.

23 Q. To your knowledge has anybody ever done a traffic  
24 study of what the development of that property as  
25 single-family residential would be?

- 1 A. Not that I'm aware of.
- 2 Q. What's your, what's your level of knowledge of, of  
3 traffic studies and trip generation tables and things  
4 like that? Do you know a little bit about them, a lot  
5 about them?
- 6 A. Little bit, not a lot.
- 7 Q. Okay. You know that typically in a traffic study they  
8 will take a proposed use and then there's tables that  
9 say approximately how many trips per day will flow  
10 from that use, you're familiar with that?
- 11 A. Yes.
- 12 Q. Do you have any understanding of whether on a property  
13 of similar acreage, whether a single-family  
14 residential development would generate more trips per  
15 day than a commercial development or less?
- 16 A. State the question again.
- 17 Q. Sure. I'm just trying to find out if you have any  
18 understanding whether if -- well, let's talk about  
19 this property in particular, the western half. If  
20 that property were developed for single-family  
21 residential, do you have any understanding as to  
22 whether that would generate more or less traffic than  
23 if that were developed for commercial uses?
- 24 A. I don't have any understanding. I mean there's a --  
25 tables are derived from the transportation engineers,

1 so, you know, I couldn't say whether it would or not.

2 Q. Do you have any understanding as to whether  
3 single-family residential generates a relatively high  
4 or low number of trips as compared to some other uses?

5 A. No. I've only heard that single-family residential  
6 generally generates about ten trips per day.

7 Q. Per unit?

8 A. Per unit.

9 Q. Okay. Let's go back to our mixed  
10 residential/office/commercial Master Plan designation.  
11 Would you agree with me that Bedford Township doesn't  
12 have a single zoning classification that fits under  
13 that designation?

14 A. Correct.

15 Q. The only way to rezone a piece of property in order to  
16 achieve what the Master Plan designates that property  
17 for would be either to do a PUD or some hodgepodge of  
18 various zoning districts, is that correct?

19 A. Correct.

20 Q. In, in your estimation, does Bedford Township have an  
21 over abundance of single-family residential  
22 subdivisions today?

23 A. I don't believe so.

24 Q. Do you believe that there's a need for the development  
25 of more single-family residential subdivisions in

1 Bedford Township?

2 A. I can't say that there is personally. I don't have  
3 the market knowledge.

4 Q. Let me see how quickly I can find it. You can  
5 probably find it quicker than I can. While I'm  
6 flipping through this, this Master Plan was developed  
7 after significant public input, correct?

8 A. Correct.

9 Q. And as part of that public input you solicited  
10 comments on strengths and weaknesses and opportunities  
11 and threats in the Township?

12 A. Correct.

13 Q. All right. And as I'm looking for those strengths and  
14 weaknesses and opportunities and threats, I thought  
15 they were in the back but maybe they're not. Let's go  
16 off the record real quick.

17 (Off the record at 11:05 a.m.)

18 (Back on the record at 11:05 a.m.)

19 MR. HANSON: Back on the record.

20 BY MR. HANSON:

21 Q. Mr. Jenkins, I'm looking at page eighty-two of the  
22 Master Plan. Are these the strengths and threats and  
23 weaknesses and opportunities that we were just talking  
24 about?

25 A. Correct.

- 1 Q. Under threats do you see that there's a threat of  
2 subdivisions?
- 3 A. Correct.
- 4 Q. And I take that to mean residential subdivisions, is  
5 that correct?
- 6 A. Correct.
- 7 Q. And under weaknesses again I see too many  
8 subdivisions; do you see that?
- 9 A. Correct.
- 10 Q. Again, is that residential subdivisions?
- 11 A. Correct.
- 12 Q. Do you see any threats or weaknesses relating to too  
13 much commercial development in the Township?
- 14 A. No.
- 15 Q. Suffice it to say that when gathering public input on  
16 this Master Plan, residential subdivisions or the  
17 expansion of residential subdivisions was apparently  
18 of some concern to the public?
- 19 A. Correct.
- 20 Q. And are you familiar with another lawsuit that the  
21 Township is involved with involving Albring Farms?
- 22 A. Yes.
- 23 Q. And that lawsuit concerns the development of a  
24 residential subdivision, correct?
- 25 A. Correct.

- 1 Q. And in that case the Township denied a rezoning  
2 application for single-family residential, correct?
- 3 A. Correct.
- 4 Q. If you know, what were the bases for the Township's  
5 denial in that lawsuit?
- 6 A. I think the primary basis was the, was the Master  
7 Plan.
- 8 Q. Do you recall what portion of the Master Plan?
- 9 A. No. Well, the map primarily.
- 10 Q. Future land use map?
- 11 A. Future land use map.
- 12 Q. Designated that area as agricultural?
- 13 A. Correct.
- 14 Q. Okay. And the developer was seeking to rezone from AG  
15 to single-family residential?
- 16 A. Correct.
- 17 Q. And what's the current status of that lawsuit?
- 18 A. I believe it's -- was on appeal but I believe it's --  
19 we're not taking it any farther.
- 20 Q. Okay.
- 21 MR. GOLDSMITH: It's done.
- 22 THE WITNESS: It's done.
- 23 MR. HANSON: Yeah. I know the Court of  
24 Appeal issued an opinion a couple months ago.
- 25 MR. GOLDSMITH: Neither side filed an

1 application with the Supreme Court. There were cross  
2 appeals filed, so it's complete.

3 BY MR. HANSON:

4 Q. Okay. You mentioned one of your duties was managing  
5 updates to the Master Plan. Has this Master Plan been  
6 updated since -- well, let me strike that because I  
7 know it has.

8 When was the last time this Master Plan was  
9 updated?

10 A. 2004.

11 Q. So -- excuse me. Turn this off. Sorry.

12 Has the Township taken any steps to  
13 determine whether the Master Plan needs to be updated  
14 further?

15 A. We, we do know it needs to be looked at to determine  
16 if it does need to be updated.

17 Q. And that's under state law, correct?

18 A. Correct.

19 Q. Has the Township done anything in terms of complying  
20 with that state law?

21 A. Yeah. We will be in January.

22 Q. What's, what are you going to be doing in January?

23 A. Request that the planning commission determine whether  
24 or not the plan needs to be reopened or not.

25 Q. Do you have any thoughts on how long that process

- 1           might take?
- 2    A.     To redo the Master Plan or look at it?
- 3    Q.     Well, to make the determination as to whether it needs
- 4           to be updated?
- 5    A.     It could possibly be done in one night.
- 6    Q.     Is Wade Trim going to be issuing a recommendation as
- 7           to whether it needs to be updated or not?
- 8    A.     Probably, yes.
- 9    Q.     Have they issued a recommendation?
- 10   A.     No, they haven't issued anything.
- 11   Q.     Have they been asked to do so?
- 12   A.     Not yet.
- 13   Q.     But you believe they probably will be?
- 14   A.     I believe they will be.
- 15   Q.     Okay. In your estimation do you believe the Master
- 16           Plan needs to be updated?
- 17   A.     Not in its entirety. What we will be looking at is
- 18           new demographic information that will come from the
- 19           census.
- 20   Q.     What is the census data upon which this Master Plan is
- 21           currently based?
- 22   A.     2000.
- 23   Q.     So you're going to be looking at 2010 census data?
- 24   A.     Correct.
- 25   Q.     Other than that, are there any specific parts of the

1 Master Plan that in your mind could stand updating  
2 either changing designations on the Future Land Use  
3 Map or changing text of goals and objectives and  
4 strategies or anything of that nature?

5 A. Well, we would review goals and objectives and  
6 strategies but also take a look at the land use  
7 designations, the categories.

8 Q. In your mind are there any changes that need to be  
9 made to the land use designations, additions,  
10 subtractions, amendments?

11 A. In my mind, and this is just me --

12 Q. Understood.

13 A. -- the local commercial designation probably needs to  
14 be expanded.

15 Q. Expanded in what sense?

16 A. To include other than local commercial.

17 Q. And why is that in your mind?

18 A. Because we don't provide for anything more intense  
19 than local commercial. We don't get requests just for  
20 local commercial rezoning, so. But again, that's my  
21 opinion.

22 Q. Have you had discussions with anybody at the Township  
23 about that opinion?

24 A. Probably in the past. I don't recall specifically who  
25 or when.

- 1 Q. Any discussions in that regard relating to the Whitman  
2 Ford property in particular?
- 3 A. Not that particular case.
- 4 Q. Have you had other rezoning requests since this Master  
5 Plan was adopted that were denied because of the local  
6 commercial limitation?
- 7 A. I don't recall if there were or not.
- 8 Q. Has the Township since this Master Plan was, was  
9 adopted, has the Township approved any rezoning  
10 applications that in your mind would include a use  
11 that was not truly local commercial?
- 12 A. Since the plan was adopted?
- 13 Q. Yeah.
- 14 A. I couldn't recall specifically.
- 15 Q. Let me ask generally speaking, and this is kind of an  
16 economic question, but have rezoning applications and  
17 site plan applications, have they remained steady over  
18 the last several years or have they dropped off?
- 19 A. They've dropped off considerably.
- 20 Q. Just ballpark, how many rezoning applications do you  
21 think the Township received in 2009?
- 22 A. I don't believe we received any.
- 23 Q. How many requests for site plan approval?
- 24 A. Probably two.
- 25 Q. How about requests for site plan approval extensions?

1 A. Several.

2 Q. Was that general pattern also true in 2008 putting  
3 side the Whitman Ford rezoning application?

4 A. Towards the end I believe it was.

5 MR. HANSON: All right. Take a break? Is  
6 that all right?

7 MR. GOLDSMITH: Sure.

8 MR. HANSON: Okay.

9 MR. GOLDSMITH: You're in control.

10 MR. HANSON: Well, no. He's in control.

11 Are you kidding me. All right.

12 (Off the record at 11:14 a.m.)

13 (Back on the record at 11:32 a.m.)

14 MR. HANSON: All right. Let's go back on  
15 the record. Just a couple of quick clean-up issues.

16 BY MR. HANSON:

17 Q. When we were talking earlier about the threats and  
18 weaknesses of subdivisions and the Master Plan, I'd  
19 said residential subdivisions and I should have  
20 probably been more specific. Do you take that to mean  
21 single-family residential subdivisions?

22 A. Yes.

23 Q. And that's true both under the threats and the  
24 weaknesses?

25 A. Correct.

1 Q. Okay. Let's mark this as the next.

2 (Exhibit 2 is marked.)

3 BY MR. HANSON:

4 Q. Mr. Jenkins, Exhibit 2 to your deposition is a letter  
5 from the Monroe County Road Commission to Mr. Jeff  
6 Myers of Mannik & Smith, and it talks about a traffic  
7 study that has been prepared for a proposed Wal-Mart  
8 development at Sterns and Lewis. If you look at the  
9 cc's at the back of the letter?

10 A. Uh-huh.

11 Q. You see the Bedford Township Planning Department is --

12 A. Yes.

13 Q. -- copied?

14 A. Yes.

15 Q. Do you recall having seen this letter?

16 A. Now that I have seen it, yes.

17 Q. Okay. Does this refresh your recollection as to  
18 whether --

19 A. Yes.

20 Q. All right. Now, do you remember actually having seen  
21 the traffic study as well?

22 A. I don't believe I did see the traffic study.

23 Q. Okay. But you're aware that there was a traffic study  
24 done and that the Monroe County Road Commission had  
25 commented upon it?

- 1 A. Right.
- 2 Q. Did you review this letter in any detail when you  
3 received it?
- 4 A. Yes. I think I sent a copy to our engineer.
- 5 Q. Who would your engineer have been?
- 6 A. Well, they got a copy. They were cc'd. Arcadis,  
7 A R C A D I S.
- 8 Q. When you reviewed the copy of this letter, did  
9 anything jump out at you in terms of traffic being a  
10 significant issue with a proposed Wal-Mart that was  
11 being discussed at that time?
- 12 A. Again, it's been a while ago and seeing as how it is  
13 an engineering issue, I probably wouldn't have  
14 commented on it.
- 15 Q. Actually, if you could take however long you need to  
16 read through the letter and just -- and I know you're  
17 not a traffic engineer, but if you could tell me if  
18 there is anything in here that strikes you as a  
19 deal-breaker in terms of the proposed Wal-Mart  
20 development on this property?
- 21 A. I don't see anything that would definitely be a  
22 deal-breaker.
- 23 Q. Looking at the first page, down at the bottom, the  
24 last bullet talks about the taper length for the  
25 approach on Sterns Road and noting that the road

1 commission will require that Sterns Road be widened to  
2 three lanes all the way to Lewis Avenue as recommended  
3 in the traffic impact study.

4 Do you see that?

5 A. Correct.

6 Q. That's not unusual, is it?

7 A. No.

8 Q. In fact, it's fairly typical that the road commission  
9 will require a developer to make some road  
10 improvements as part of the development?

11 A. Correct.

12 Q. Do you recall discussing this letter with anybody at  
13 the Township when it was received?

14 A. I don't recall if I did.

15 MR. HANSON: Off the record.

16 (Off the record at 11:37 a.m.)

17 (Back on the record at 11:37 a.m.)

18 MR. HANSON: Back on the record.

19 BY MR. HANSON:

20 Q. Okay. I'm now going to talk about the rezoning  
21 request that's at issue in this lawsuit. Do you  
22 recall, Mr. Jenkins, a meeting with Mr. Whitman,  
23 yourself and Mr. Wilburn in or around May of 2008 to  
24 discuss Mr. Whitman's plans to submit a new rezoning  
25 application?

1 A. I vaguely recall we did meet with Jon and Walt.

2 Q. Okay. Do you recall -- well, what can you tell me  
3 about that meeting?

4 A. Not a lot because it's been a while ago. Just that we  
5 discussed the request.

6 Q. Do you recall discussing what had transpired in the  
7 prior trial and what some of the testimony was in  
8 terms of what would be appropriate zoning for that  
9 property?

10 A. I have a ton of meetings, so I can't, I can't tell you  
11 exactly what we discussed about.

12 Q. Do you recall Mr. Wilburn at any point saying that he  
13 wasn't concerned with what the trial testimony had  
14 been and he wanted to look forward and, and not look  
15 backward, anything like that?

16 A. I don't recall it.

17 Q. Okay. Well, let me ask you personally. Do you --  
18 step back.

19 You sat through I know some of the testimony  
20 at the prior trial. But I'm not sure, did you sit  
21 through the entire trial?

22 A. Uh-huh. Yes.

23 Q. In your own personal opinion, do you think that the  
24 testimony of the planning experts at the trial should  
25 be taken into account in determining what's the best

1 zoning for this property?

2 MR. GOLDSMITH: Objection. That presumes he  
3 remembers what the testimony was or that he has  
4 reviewed it. And I don't believe it's relevant to  
5 this cause of action. But you can go ahead and  
6 answer.

7 THE WITNESS: I don't recall. I mean I was  
8 there for the testimony but I don't recall the  
9 details.

10 BY MR. HANSON:

11 Q. I guess I've got Mr. Goldsmith's opinion but I'll ask  
12 you, regardless of what that testimony was, do you  
13 believe that that testimony would be irrelevant to  
14 determining what the appropriate zoning on this  
15 property should be?

16 A. I'm not quite sure I understand the question.

17 Q. Well, the question is do you think it's relevant what  
18 the planning and zoning experts who testified at that  
19 trial, whatever they testified to as to what would  
20 constitute sound zoning and planning for this  
21 property, would you believe that to be relevant in  
22 formulating a rezoning application and determining  
23 that rezoning application?

24 MR. GOLDSMITH: Same objection.

25 THE WITNESS: Yes.

1 BY MR. HANSON:

2 Q. The answer was yes, however, correct?

3 A. Correct.

4 Q. Okay. After that initial meeting with Mr. Whitman and  
5 Mr. Wilburn and yourself, you maintained some contact  
6 with Mr. Whitman's planning consultants DeBose,  
7 correct?

8 A. Yes.

9 Q. You remember DeBose being involved in this?

10 A. Yes.

11 Q. Okay. And you were familiar with DeBose, were you  
12 not?

13 A. Yes.

14 Q. You'd worked with them before?

15 A. Yes.

16 Q. Any general impressions or opinions of DeBose?

17 A. No. They're as an engineering firm just typical.

18 Q. Neither, you know, neither good nor bad?

19 A. Right.

20 Q. Okay. Let's go ahead and mark this next. This will  
21 probably help you with some of the dates as well.

22 (Exhibit 3 is marked.)

23 BY MR. HANSON:

24 Q. Mr. Jenkins, I'll represent to you that these are  
25 drawings that were prepared by DeBose. And it's a

1 little bit hard to read but in the date in the upper  
2 right-hand corner, I believe it's June 16th of 2008?

3 A. Right.

4 Q. Okay. Do you recall DeBose submitting these drawings  
5 for your review prior to actually submitting an  
6 application for rezoning?

7 A. Yes.

8 Q. Okay. I want to point out just a couple of things.  
9 If we look at parcels one and two.

10 A. Right.

11 Q. And you can see a measurement line on the first page,  
12 on the Z-1 page, do you see that there's two hundred  
13 and fifty feet between the Indian Acres subdivision  
14 and the residential zones that are proposed?

15 A. Yes.

16 Q. Okay. And then I'm going to point to Sterns Road, the  
17 parcel that's immediately adjacent to what we've  
18 decided is going to be parcel three?

19 A. Okay.

20 Q. Do you see that that was proposed, there was going to  
21 be a request to rezone that parcel to C-3 from C-2?

22 A. Correct.

23 Q. Okay. And having looked at all that and seen all of  
24 that, do you remember discussing this plan with DeBose  
25 or having a meeting with DeBose about this plan?

1 A. I believe I sent him a -- Tom DeBose or John Sperry an  
2 e-mail telling him to take a look at our setback  
3 schedule for the senior housing and the multiple  
4 family to make sure they had enough room there to  
5 actually build something if it were rezoned. Because  
6 it didn't appear that there was enough room there.  
7 The setbacks for those two districts are greater than,  
8 than other districts.

9 Q. Okay. So it was your, you pointed him to the setback  
10 requirements with, with the intention that they might  
11 want to consider expanding the width of those two  
12 residential zones, is that correct?

13 A. Correct.

14 Q. Is that a yes?

15 A. Yes.

16 Q. And if you look at the second page of this exhibit,  
17 Mr. Jenkins, there is a, kind of a conceptual drawing  
18 of the three westerly most parcels, numbers one, two  
19 and three, and it shows an access road and you  
20 understand, don't you, that this is purely a  
21 conceptual plan and isn't actually being proposed as  
22 something that the applicant was seeking approval for?

23 A. Yes.

24 Q. Okay. Did you suggest that they provide this sort of  
25 plan in order to show that something could be built

1 back there?

2 A. I suggested they take a look and probably increase the  
3 widths of those parcels so that they actually could  
4 build something on it. I mean if they didn't, they  
5 would be looking at a very small building.

6 Q. In any event, if there were going to be some  
7 residential development back there on parcels one and  
8 two, there would be some -- need to be some sort of  
9 access to those, those developments, correct?

10 A. Yes.

11 Q. Might not have looked exactly like the road as shown  
12 on this sheet but there would have had to have been a  
13 road back there somehow?

14 A. Yes.

15 Q. Was your, in telling them to look at the setback  
16 requirements with that two hundred and fifty foot  
17 parcel width, were you considering at all an addition  
18 increasing any sort of buffer between the Indian Acres  
19 subdivision and any commercial development?

20 A. No. Actually the original submittal was less than two  
21 hundred and fifty feet. This reflects the change that  
22 they made.

23 Q. Well, you might want to retract that. Let's -- I'll  
24 go to the next one and we can -- let's go ahead and  
25 mark this as next.

1 (Exhibit 4 is marked.)

2 BY MR. HANSON:

3 Q. Mr. Jenkins, this one has an, in the upper right-hand  
4 corner, it's the same two drawings -- well, I  
5 shouldn't say the same two drawings, but it's two  
6 similar drawings. I don't know why I have two copies  
7 of the first. But in the upper right-hand corner of  
8 Exhibit 4 in the issued for box you see there's zoning  
9 application and it's got a date of June 26th of 2008.

10 Do you see that?

11 A. What is this?

12 Q. On Exhibit 4 in the upper right-hand corner and in the  
13 box the second line of issued for?

14 A. Right.

15 Q. You see that?

16 A. Right.

17 Q. Okay. Now, if you look at page Z-1 of this exhibit,  
18 the width of parcels one and two has been increased to  
19 two hundred and eighty-six feet. Do you see that?

20 A. Yes.

21 Q. Okay. Does that refresh your recollection?

22 A. Yes. Correct.

---

23 Q. So the two fifty was the original, you suggested it be  
24 widened and they came back and when they actually  
25 applied for the rezoning, it was at two eighty-six,

1 correct?

2 A. Right.

3 Q. Can you, can you tell me if there were an access road  
4 similar to what's shown on D1 with two hundred and  
5 eighty-six feet width and then the road and then  
6 setbacks for commercial development. Can you do any  
7 sort of calculation or give any sort of estimate as to  
8 how close any commercial building could have been  
9 developed to the western property line?

10 A. No. The only thing I can tell you is that if we had  
11 the height of the building and the length of the  
12 building, then we could tell what the setbacks on the  
13 western property line would be.

14 Q. What would -- how did the schedule of regulations work  
15 in that regard?

16 A. There's a formula that says to determine the setback  
17 of the building, you take the length of the building  
18 plus two times the height and divide it by either  
19 three or six depending on what building district you  
20 are looking at.

21 Q. And C-3, if you know, and if it would help I can pull  
22 out the schedule of regulations if you want to look  
23 at, but if you know off the top of your head -- strike  
24 that.

25 In the C-2 zone do you divide by a three or

- 1 a six?
- 2 A. C-2, there was a definite setback in C-2.
- 3 Q. Okay. And I'm sorry, maybe you misunderstood my  
4 question. I'm talking now about parcel six.
- 5 A. Oh, okay.
- 6 Q. Okay. If there were a road similar to the one that's  
7 shown in the concept on G-1, then what would be the  
8 setback of a commercial building that would be  
9 developed in the proposed C-2 zone on parcel six?
- 10 A. I would need the schedule of regulations.
- 11 Q. All right. I got it in here somewhere. Is that what  
12 you need?
- 13 A. Yes.
- 14 Q. Let me first ask you, I'm showing -- again this was  
15 marked as an exhibit at trial two years ago,  
16 two-and-a-half years ago, almost three years ago, has  
17 that schedule of regulations been amended since that  
18 time?
- 19 A. No.
- 20 Q. Okay. Based on that schedule of regulations, how big  
21 of a setback would you have in C-2?
- 22 A. From that new road?
- 23 Q. From that new road?
- 24 A. I have to figure out what category that new road is.  
25 It would require seventy-five foot setback.

1 Q. That's from the center line of the road?

2 A. Yeah. I have to check another note. Yeah.

3 Seventy-five feet.

4 Q. All right. And that's from a, you were checking to  
5 see what it would be from a sixty foot right-of-way  
6 road?

7 A. There's -- the schedule lists the different types of  
8 roads. Section line roads are roads not listed in any  
9 of these categories and that's what, you know, that's  
10 what I was looking for.

11 Q. Okay. And I know that this is imprecise and that this  
12 isn't an actual plan, but if there were something in  
13 place similar to what's proposed here with the two  
14 hundred and eighty-six feet on parcels one and two on  
15 the width there and then a road with a sixty foot  
16 right-of-way and then a seventy-five foot setback from  
17 the center line of that right-of-way, would it be safe  
18 to say that we're probably looking at least four  
19 hundred feet between any commercial building and  
20 parcel six and the Indian Acres property line?

21 MR. GOLDSMITH: Well, it's two eighty-six  
22 plus thirty plus seventy-five, right? Whatever that,  
23 whatever the math is.

24 BY MR. HANSON:

25 Q. Safe to say it would be over four hundred feet?

1 A. Correct.

2 MR. HANSON: Was that an objection, Phil?

3 MR. GOLDSMITH: I'm just trying to help you  
4 out.

5 MR. HANSON: Thank you.

6 BY MR. HANSON:

7 Q. Do you have any opinions as to whether that sort of  
8 distance and that sort of zoning proposed in between  
9 any commercial development and the Indian Acres  
10 subdivision would provide an adequate transitional  
11 buffer?

12 A. I have no opinion on that.

13 Q. Do you recall hearing any testimony from any of the  
14 experts at trial as to what sort of a buffer would be  
15 appropriate in that instance?

16 A. You mean distance or type?

17 Q. Both?

18 A. I believe the experts set a transition, textbook-type  
19 transition going from residential to multiple family  
20 to office to commercial would be appropriate.

21 Q. Do you recall them saying that commercial next to  
22 multiple family would be appropriate?

23 A. I don't recall.

24 Q. How about distance, do you recall any statements as to  
25 what sort of distance would be an appropriate buffer?

- 1 A. I don't believe there was a distance discussed.
- 2 Q. And you don't have any opinions yourself as to whether  
3 four hundred feet would be appropriate or not?
- 4 A. No.
- 5 Q. Before we turn away from Exhibit 4, I just want to  
6 note that parcel on Sterns Road, it's still showing as  
7 being requested to rezone to C-3, correct?
- 8 A. Are you referring to the parcel next to the  
9 substation?
- 10 Q. Yes, I'm sorry.
- 11 A. Right. C-2 to C-3.
- 12 Q. All right. Was there any other comments you made to  
13 DeBose or anybody else, Mr. Whitman, about, about this  
14 plan in terms of things that might be changed or  
15 things that might be done to improve the plan or make  
16 it more likely to comply with the Master Plan?
- 17 A. I believe Adam Young suggested that that lot five that  
18 you're referring to be more appropriate as C-2 because  
19 of the residential across the street.
- 20 Q. All right. Before we get to that though, anything  
21 else that you suggested that they might want to take a  
22 look at or might want to do?
- 23 A. Not that I recall.
- 24 Q. Did you form an opinion as to whether the, the  
25 proposed rezoning that's reflected in Exhibit 4

1 complied with the Master Plan?

2 A. I didn't. No.

3 Q. Did you form an opinion as to whether the rezoning  
4 that was requested as reflected in Exhibit 4 was  
5 consistent with any of the testimony that you heard at  
6 the trial?

7 A. Say that again.

8 MR. HANSON: Would you read that back, Barb?

9 (The last question is read back: Did you  
10 form an opinion as to whether the rezoning  
11 that was requested as reflected in Exhibit  
12 4 was consistent with any of the testimony  
13 that you heard at the trial?)

14 THE WITNESS: I don't recall.

15 BY MR. HANSON:

16 Q. When you met with Mr. Whitman and Mr. Wilburn, did you  
17 take any notes of that meeting?

18 A. I could have but I don't remember if I did or not.

19 Q. Is it typical of you to take notes at meetings like  
20 that?

21 A. Not always.

22 Q. Okay. If you'd taken notes would you have stuck them  
23 in a file somewhere?

24 A. Probably.

25 Q. Do you recall having any office meetings with the

1 DeBose engineers?

2 A. I don't recall. I don't think I did.

3 Q. And you mentioned an e-mail, do you recall having any  
4 phone conversations with John?

5 A. I could have had a phone call with John, telephone  
6 conversation with John.

7 Q. And by that we mean John Sperry, right?

8 A. John Sperry, right.

9 Q. Let me just show you this. I'm not going to mark this  
10 as an exhibit. This is a letter dated June 19th, 2008  
11 from you to Mr. Efrem Tennenbaum at DeBose. Do you  
12 recall writing that letter?

13 A. Yes.

14 Q. And take a minute to review it and let me know when  
15 you are done.

16 A. Yes.

17 Q. And having looked at that, does that refresh your  
18 recollection as to whether you made any other comments  
19 other than the ones that you have already testified  
20 to?

21 A. Right. It does refresh my memory.

22 Q. All right. And what's your recollection?

23 A. Just looking at the plan, and I did those  
24 calculations, put the letter together and sent it to  
25 Efrem.

1 Q. And those calculations were again in regard to  
2 extending the width of parcels one and two?

3 A. Yes.

4 Q. And at the end you said, other than that, I found no  
5 other issues that needed -- need to be addressed at  
6 this point, correct?

7 A. What was the date on that?

8 Q. June 19th.

9 A. Yeah. Apparently not.

10 Q. Which would be in between the dates of June 16th when  
11 the first plan was submitted and June 26th when the  
12 second plan was submitted?

13 A. Right.

14 (Exhibit 5 is marked.)

15 BY MR. HANSON:

16 Q. Mr. Jenkins, what has been marked as Exhibit 5 has a  
17 fax cover sheet from Karen Kincaid to Mr. Whitman and  
18 Mr. Tennenbaum dated August 6th and attached to it is  
19 a letter written by Mr. Young and Wade Trim dated  
20 August 5th. Do you see that?

21 A. Yes, I do.

22 Q. And if you look at the last page of Mr. Young's  
23 letter, you're carbon-copied on the letter. Do you  
24 see that?

25 A. Correct.

- 1 Q. Ms. Kincaid works in your office?
- 2 A. Yes, she does.
- 3 Q. What's her title again?
- 4 A. She's Assistant Planning Coordinator.
- 5 Q. Let me ask you this question, how many other employees  
6 are in the Planning and Zoning Department?
- 7 A. None. That's it.
- 8 Q. Just you and Karen?
- 9 A. Correct.
- 10 Q. Do you recall receiving this August 5th, 2008 letter  
11 from Wade Trim?
- 12 A. Yes, I do. My initials are at the top kind of  
13 obscured.
- 14 Q. Is that your standard practice to write your initials  
15 and the date received?
- 16 A. Right.
- 17 Q. There's also a received stamp, is that somebody else's  
18 stamp?
- 19 A. That's our department stamp.
- 20 Q. Just so I understand the process, the letter would  
21 come in, Karen would stamp it, and then you would then  
22 initial it to show that you'd received it as well?
- 23 A. Right.
- 24 Q. Did you see a copy of this letter or any draft of this  
25 letter before it was sent?

1 A. No, I didn't.

2 Q. Did you have any occasion to discuss with Mr. Young  
3 the conclusions and findings that he was going to put  
4 into this letter before it was drafted?

5 A. I don't recall. I don't recall if I did or not.

6 Q. If you look on page six of the letter, the first full  
7 paragraph, I just want to get this out of the way  
8 because you'd mentioned it earlier, take a minute to  
9 review that paragraph and let me know when you're  
10 finished.

11 A. Okay.

12 Q. Is that the issue that you had mentioned earlier about  
13 not seeking rezoning for that parcel along Sterns  
14 Road?

15 A. In other words to leave it C-2?

16 Q. To leave it C-2 as opposed to changing it from C-2 to  
17 C-3?

18 A. Correct.

19 Q. Okay. If you turn back to page five under the  
20 findings section, I'm going to walk you through some  
21 of Mr. Young's statements and see if you agree or  
22 disagree.

23 He starts out by saying after reviewing the  
24 request, we find that the proposed rezoning, with one  
25 exception discussed below, is generally consistent

1 with the objectives and strategies of Bedford Township  
2 Master Plan.

3 Do you agree with that, with Mr. Young's  
4 findings on that point?

5 A. Yeah. Yes.

6 Q. And then he goes on to say that the proposed PBO, RM-2  
7 and RME portions of the site would provide an  
8 effective land use transition from the existing  
9 single-family residential subdivision to the west to  
10 the C-2 and C-3 portions of the site along Lewis  
11 Avenue.

12 Do you agree with that?

13 A. Yes.

14 Q. He then says, in addition to serving as transitional  
15 uses, the RM-2 and RME portions of the site would be  
16 consistent with the residential objective of providing  
17 a range of residential living choices.

18 Do you agree with that?

19 A. Yes.

20 Q. And I saw you flip back, he's referring to one of the  
21 goals and objectives that is set forth in the Master  
22 Plan for residential development, correct?

23 A. Correct.

24 Q. Do you have any opinions as to whether the Township is  
25 underserved or overserved in terms of either senior

1 housing or multiple residential housing?

2 A. I have no opinion on that. I don't know the market  
3 conditions.

4 Q. Would you agree with me that those zoning  
5 classifications are a call for more dense residential  
6 development than single family?

7 A. Would allow more dense residential development than  
8 single family, correct.

9 Q. Do you have any opinions as to whether that more dense  
10 type of residential development would provide a more  
11 adequate buffer between a commercial use and a  
12 single-family use than single-family residential?

13 A. I have no opinion on that.

14 Q. Do you recall there being any testimony on that point  
15 at trial?

16 A. I don't recall if there was or not.

17 Q. No reason to disagree with that, is there?

18 A. No.

19 Q. The next part of Mr. Young's findings says the  
20 commercial portion of the site would be appropriately  
21 buffered from adjacent land uses and would allow for  
22 compact development at an important road intersection  
23 within the Township, Lewis and Sterns.

24 Do you agree with that statement?

25 A. That's our planning consultant's review. I would say

1 I agree with it.

2 Q. He then goes on to say the proposed rezoning is also  
3 generally consistent with the Future Land Use Map of  
4 the Master Plan.

5 Would you agree with that?

6 A. Yes.

7 Q. And then he goes on to say the PBO, RM-2, RME and C-2  
8 portions of the subject site generally conform to the  
9 intent of the mixed residential/office/commercial  
10 future land use category.

11 Do you agree with that statement?

12 A. Yes.

13 Q. And then he says, finally, although the local  
14 commercial future land use designation, parents, or any  
15 other future land use designation in the Township,  
16 close parents, does not specifically encourage general  
17 commercial uses that cater to a more regional market,  
18 the proposed C-3 district portion of the subject site  
19 is appropriately buffered from residential uses and is  
20 strategically located along Lewis Avenue, a major  
21 Township thoroughfare.

22 Do you agree with that statement?

23 A. Yes.

24 Q. And then down at the bottom he summarized his findings  
25 and recommendations. First of all, he recommends with

1 the exception of that one parcel that we have already  
2 discussed, that the Planning Commission recommend that  
3 the Township board grant the request, correct?

4 A. Correct.

5 Q. And he gives four numbered reasons. The first is that  
6 the proposed rezoning would provide an effective land  
7 use transition from the existing single-family  
8 residential subdivision to the west to the more  
9 intensive commercial portions of the site along Lewis  
10 Avenue.

11 Do you agree with that?

12 A. Yes.

13 Q. The second number says the proposed rezoning is  
14 generally consistent with the Future Land Use Map of  
15 the Master Plan, which designates the subject site as  
16 mixed residential/office/commercial in the western  
17 portion of the site and local commercial in the  
18 eastern portion of the site. Although no future land  
19 use designation in the Township specifically  
20 encourages general commercial uses that cater to a  
21 more regional market, the proposed C-3 district  
22 portion of the subject site is appropriately buffered  
23 from an adjacent -- from adjacent residential uses and  
24 is strategically located along Lewis Avenue, a major  
25 Township thoroughfare.

1 Do you agree with all of that?

2 A. Yes.

3 Q. Number three says the proposed rezoning request is  
4 generally consistent with the surrounding zoning and  
5 land uses found in the vicinity of the subject site,  
6 as an appropriate land use transition as employed  
7 along the adjacent single-family residential  
8 properties and as a variety of commercial lands are  
9 currently found along the east side of Lewis Avenue  
10 and at the corner of Lewis and Sterns.

11 Do you agree with that?

12 A. Yes.

13 Q. And number four, the rezoning of the subject site  
14 would allow for a planned and compact mixed use  
15 residential, office and commercial development at a  
16 strategic location, representing an improvement to the  
17 vicinity and Township as a whole.

18 Do you agree with that?

19 A. Yes.

20 Q. I want to ask you about that last one. We talked  
21 about this a little bit earlier in terms of whether  
22 you look at the general area or benefit to the  
23 Township as a whole in a rezoning request. Do you  
24 think it's inappropriate for Mr. Young to have opined  
25 as to the benefits of this proposed rezoning to the

1 Township as a whole?

2 A. Do I think it would be inappropriate for him to make  
3 that statement?

4 Q. Yeah. Do you think it was inappropriate for him to  
5 have made that statement?

6 A. He's a planning consultant and he's certified, so I  
7 think he's got every right to do it.

8 Q. Okay. So I guess the capper would be you don't  
9 disagree with the statement and you don't think that  
10 it was inappropriate for Mr. Young to have made that  
11 statement?

12 A. No.

13 Q. Okay. All right. Now, do you recall having any  
14 conversations with Mr. Whitman or anybody at DeBose  
15 after Adam Young's letter was sent?

16 A. I may have but I don't recall.

17 Q. Do you remember having any conversations with me?

18 A. I probably would remember that.

19 Q. All right. Let's mark this next.

20 (Exhibit 6 is marked.)

21 BY MR. HANSON:

22 Q. Mr. Jenkins, what's been marked as Exhibit 6 is  
23 another set of drawings similar to the last two sets  
24 we've looked at. If you look again up in our box in  
25 the upper right for the date, the last line says

1 Bedford Township PC, August 7th, 2008. Do you see  
2 that?

3 A. Yes.

4 Q. So these would have been after Mr. Young's letter,  
5 correct?

6 A. Correct.

7 Q. And if you look at the parcel that Mr. Young had had  
8 an issue with, is now no longer being requested to be  
9 rezoned to C-3. Do you see that?

10 A. Yes.

11 Q. Does that refresh your recollection as to whether you  
12 had any discussions with Mr. Whitman or me or anybody  
13 at DeBose about whether the application was going to  
14 proceed based on Mr. Young's letter?

15 A. Yes. But that's why we sent the -- faxed the letter  
16 over to Jon or to DeBose and then a copy to Jon.

17 Q. And what did Mr. Whitman do or DeBose do in response  
18 to Mr. Young's concern on that one parcel?

19 A. They, they changed the designation from C-3 to C-2.

20 Q. And is it your understanding that the applicant did  
21 that specifically to respond to Mr. Young's concerns?

22 A. Yes.

23 Q. Did you advise Mr. Whitman to take out the request for  
24 rezoning from C-2 to C-3 on that one parcel?

25 A. I didn't advise him. We gave him the opportunity to

1           decide for themselves.

2    Q.    Suffice it to say that Mr. Whitman took that  
3           opportunity and revised the drawings?

4    A.    Correct.

5    Q.    In fact, in this process to your mind was there  
6           anything that was suggested to or asked of Mr. Whitman  
7           that he did not do?

8    A.    Not that I'm aware of.

9    Q.    By the way, just so I understand how these letters  
10           come in, do they come to you and then you put them in  
11           a packet for the Planning Commission or do they go  
12           individually to Planning Commission members? How does  
13           that work?

14   A.    No. They come into us and then we distribute the  
15           letter.

16   Q.    Okay. How far in advance of a Planning Commission  
17           meeting is a packet prepared?

18   A.    Packets are generally -- or are distributed on the  
19           Friday before the meeting so they've got all weekend  
20           and Monday, Tuesday and Wednesday.

21   Q.    Planning Commission meetings are on Thursday?

22   A.    Wednesday.

23   Q.    Wednesday. Okay.

24                   And is that just a matter of, of policy that  
25           you distribute the packets on Friday?

1 A. Right.

2 MR. HANSON: Is this number 7?

3 (Exhibit 7 is marked.)

4 BY MR. HANSON:

5 Q. Mr. Jenkins, what has been marked as Exhibit 7 to your  
6 deposition is a letter dated August 13th, 2008 from  
7 Mr. Young to Bedford Township. And again, you see on  
8 the last page that you were copied on the letter?

9 A. Correct.

10 Q. Okay. And you understand that in this letter  
11 Mr. Young is now reviewing the rezoning application as  
12 it actually went to the Planning Commission, in other  
13 words, it has the parcels one through six that we  
14 talked about on Exhibit 1 and didn't include that  
15 rezoning request on Sterns Road?

16 A. Correct.

17 Q. Okay. I'm not going to walk through this  
18 sentence-by-sentence again, but I would ask you to  
19 read what Mr. Young has written under the findings  
20 heading on page five and let me know when you've had a  
21 chance to review that.

22 A. Okay.

23 Q. Have you read the whole paragraph and the numbered  
24 paragraphs below it?

25 A. Yes.

1 Q. Okay. Anything in there that you disagree with?

2 A. For those two bolded items, no.

3 Q. I'm sorry. Are we looking at the same thing?

4 A. I got two on that page.

5 Q. Okay. And, sorry, maybe I should have walked through  
6 it sentence-by-sentence.

7 Did you review the paragraph of text under  
8 the heading of findings as well?

9 A. Yes.

10 Q. Okay. Nothing in there you disagree with?

11 A. No.

12 Q. Okay. Suffice it to say that Mr. Young is  
13 recommending that the Planning Commission recommend  
14 approval of this rezoning request?

15 A. Yes.

16 Q. He's stating that the rezoning request is consistent  
17 and in compliance with the Master Plan?

18 A. Yes.

19 Q. In bullet three you would agree with Mr. Young's  
20 assessment that the request is generally consistent  
21 with the surrounding zoning and land use?

22 A. Yes.

23 Q. And also in the same bullet that there's an  
24 appropriate land use transition employed along the  
25 adjacent single-family residential properties?

1 A. Yes.

2 Q. And would you agree with the statement that the  
3 rezoning of the subject site would allow for a planned  
4 and compact mixed use residential/office and  
5 commercial development at a strategic location  
6 representing an improvement to the Township and  
7 community as a whole?

8 A. Yes.

9 Q. Mr. Jenkins, this rezoning request complied with the  
10 Master Plan, didn't it?

11 A. In the planner's opinion, yes.

12 Q. How about in your opinion?

13 A. I don't form an opinion on it.

14 Q. But you agree with what Mr. Young's conclusions were?

15 A. Right. Personally I do.

16 Q. Okay. And personally you also agree with his  
17 conclusions that it's compatible with surrounding land  
18 uses?

19 A. Yes.

20 Q. And personally do you agree with his conclusion that  
21 the proposed rezoning would represent an improvement  
22 to the vicinity and Township as a whole?

23 A. I would agree. Yes. I would agree.

24 Q. Mr. Jenkins, do you recall being present at a rather  
25 lengthy public hearing in front of the Planning

1 Commission on this rezoning application?

2 A. Yes.

3 Q. You thought I was not going to go there, didn't you?

4 I recall being there, too.

5 First of all, let me ask, do you recall  
6 having conversations with me prior to that Planning  
7 Commission meeting as to whether the Planning  
8 Commission would act on the rezoning application as a  
9 whole or whether it would act on each rezoning request  
10 separately?

11 A. I don't recall our specific conversation but I think  
12 it was generally along those lines.

13 Q. Do you recall Mr. Kamprath, the Township's attorney,  
14 advising the Planning Commission at the meeting that  
15 in his opinion they should vote on each rezoning  
16 request separately?

17 A. Yes.

18 Q. Do you recall there being some discussion amongst the  
19 Planning Commission and myself and in particular  
20 Mr. Steinman about that particular issue?

21 A. I recall a conversation.

22 Q. Do you recall being a little bit surprised that Mr.  
23 Kamprath had made that suggestion?

24 A. No. I don't think I was.

25 Q. Do you remember if you were advised prior to the

1 meeting that the Planning Commission was going to take  
2 each request separately as opposed to acting on the  
3 application as a whole?

4 A. I believe, I believe we did talk with Marty about it.

5 Q. And when you say "we"?

6 A. Me.

7 Q. Okay. Did you have any discussions with any members  
8 of the Planning Commission about this rezoning  
9 application prior to the meeting?

10 A. I could have but I don't recall specific  
11 conversations.

12 Q. Is it not unusual for you to get an e-mail or a call  
13 or anything like that from a specific Planning  
14 Commission member with a question or a comment?

15 A. They will if they have a question before the meeting.  
16 As a matter of fact I encourage them to do that.

17 Q. If you had received any e-mails of that nature, would  
18 those still be available on your computer?

19 A. On my computer? I'm not sure -- it's not on my  
20 computer because I don't store e-mails on my computer.  
21 They are stored on a server and I don't know how long  
22 they keep them in there.

23 Q. Understood. What's your practice when you receive  
24 e-mails; do you typically print them off and stick  
25 them in a file or have somebody else do it or save

1           them in an electronic archive or anything like that?

2    A.       Sometimes we will make a copy and put it in a file,  
3           right.

4    Q.       Is that something that you try to do on a regular  
5           basis?

6    A.       Try to do on a regular basis.

7    Q.       Did you agree with Mr. Kamprath's recommendation that  
8           the Planning Commission act on the rezoning request  
9           individually as opposed to as a single application?

10   A.       I didn't have an opinion one way or another; did it as  
11           a whole or six separate areas.

12   Q.       Were you asked for your opinion prior to the meeting?

13   A.       No.    Because I wouldn't have an opinion on it.

14   Q.       Just because you didn't have an opinion doesn't mean  
15           you weren't asked.

16                            Let's mark this next.

17                            (Exhibit 8 is marked.)

18   BY MR. HANSON:

19   Q.       Mr. Jenkins, Exhibit 8 to your deposition are the  
20           minutes of the regular meeting of the Bedford Township  
21           Planning Commission for September 10th, 2008.  You see  
22           that?

23   A.       Yes.

24   Q.       Is this a -- the form of this document, is this  
25           something that you're familiar with as standard form

1 minutes for Planning Commission meeting?

2 A. Yes.

3 Q. Okay. I will have you turn to page thirteen, and  
4 there's a variety of motions interspersed throughout  
5 here to extend the meeting. I'm not going to ask you  
6 about those thankfully. But in the middle of the page  
7 there's a motion by Steinman supported by Schneider to  
8 recommend approval of the westerly portion. I'm just  
9 going to shorthand it and say this is what we have  
10 identified as parcel one.

11 A. Right.

12 Q. You agree with that?

13 A. Yes.

14 Q. And the motion is to recommend approval, quote,  
15 because it is consistent with the Master Plan and is a  
16 portion of a buffer.

17 Do you see that?

18 A. Yes.

19 Q. Do you agree with what the Planning Commission  
20 recommended on that --

21 A. Yes.

22 Q. -- parcel?

23 A. Yes.

24 Q. Okay. Further down the same page there's another  
25 motion by Steinman supported by Schneider to recommend

1 approval of parcel two. Again, quote, because it is  
2 consistent with the Master Plan and is a portion of a  
3 buffer.

4 Do you also agree with that recommendation?

5 A. Yes.

6 Q. If you turn to the next page there is a motion made  
7 and then withdrawn. But then the next motion is by  
8 Schneider supported by Abel to recommend approval of  
9 parcel three, quote, because it is in line and  
10 conforms with the Master Plan for appropriate land use  
11 and provides a buffer.

12 Do you agree with the Planning Commission's  
13 recommendation on that point?

14 A. Yes.

15 Q. I'm going, well, I will take them in order. The next  
16 one is a motion by Steinman supported by Bourque to  
17 recommend denial of parcel six, quote, because it does  
18 not totally conform with the Master Plan and it would  
19 be too close and intense to RME and RM-2 residential  
20 areas, close quote.

21 I take it based on your prior testimony that  
22 you personally disagree with the statement that the  
23 request does not conform to the Master Plan?

24 A. Yeah. I personally disagree with that.

25 Q. Do you have an opinion as to whether that particular

1 request on parcel six for commercial development,  
2 quote, would be too close and intense to the RME and  
3 RM-2 residential areas?

4 A. I don't have a personal opinion on that. I mean I'm  
5 not a planner, a certified planner.

6 Q. Do you recall there being discussion during the  
7 Planning Commission meeting of the need for a buffer  
8 against the residential districts that were proposed?

9 A. You mean the RME and RM-2?

10 Q. Yes.

11 A. Yes, I believe there was some discussion.

12 Q. You just don't have any opinion one way or another on  
13 that?

14 A. No, I don't.

15 Q. Do you recall any of the testimony from the trial as  
16 to whether a buffer between commercial and residential  
17 is more appropriate when the residential is  
18 preexisting as opposed to vacant?

19 A. Yes.

20 Q. And, and do you recall the tenor of that testimony  
21 being that if a residential zone is vacant, there's  
22 not as great of a need for a buffer because then  
23 whoever is going to purchase and develop that land  
24 will know that there is commercial next door?

25 A. Right.

1 Q. Do you have any personal agreement or disagreement  
2 with that concept?

3 A. No. But I -- as a property or a potential property  
4 buyer, I would, you know, I can make a better decision  
5 if I know what's going to be next to me.

6 Q. It's kind of common sense, isn't it?

7 A. Common sense.

8 Q. All right. Let's, let's move along. They're now  
9 talking about what we've denoted as parcel four. It's  
10 a motion by Schneider supported by Bourque. I'm at  
11 the bottom of page fourteen.

12 A. Okay.

13 Q. To recommend approval for parcel four, quote, in that  
14 it fits with the Master Plan in an area that is  
15 already commercially zoned.

16 Do you agree with that recommendation?

17 A. Yes.

18 Q. Did I miss one? I'm sorry.

19 Just ahead of that motion there was another  
20 motion by Schneider supported by Bassinger to  
21 recommend approval of what we have been calling parcel  
22 five, quote, in that it fits with the Master Plan in  
23 an area that is adjacent to and across from a C-3  
24 zoning.

25 Do you agree with that recommendation?

1 A. Yes.

2 Q. Obviously the Planning Commission's recommendation on  
3 parcel six is different than the recommendation from  
4 Adam Young at Wade Trim, correct?

5 A. Right.

6 Q. Is that common that the Planning Commission would make  
7 a recommendation that differed from what the planning  
8 consultant has said?

9 A. It has happened on occasion.

10 Q. Do you -- can you give me any estimate, has it  
11 happened once, twice, a dozen times?

12 A. I couldn't. I couldn't even estimate.

13 Q. Let's, I'm going to employ some lawyer tricks to see  
14 if I can get an estimate. Do you think it's happened  
15 more than once a year on average?

16 A. More than once a year?

17 Q. Yeah.

18 A. Well, it's not a typical year. Not had more than one,  
19 I don't think, rezoning request. But it's possible we  
20 could have more -- I mean if we were in a very busy  
21 season, it's possible it could happen more than once.

22 Q. And again, I'm just trying to get some, some averages  
23 and some estimates. Do you think in your twenty-two  
24 years as a Planning Director that the --

25 A. Planning Coordinator --

- 1 Q. I'm sorry. Planning and Zoning Coordinator. Do you  
2 think in your twenty-two years as Planning and Zoning  
3 Coordinator, that there have been twenty instances  
4 where the Planning Commission has gone against the  
5 recommendation of the consultant?
- 6 A. Probably not that many.
- 7 Q. Do you think it's been less than ten?
- 8 A. Probably less than ten.
- 9 Q. Do you think it's been less than five?
- 10 A. I don't know for sure.
- 11 Q. Okay. Suffice it to say it's, it's a pretty rare  
12 occurrence?
- 13 A. Yes.
- 14 Q. Can you remember any specific instances of it  
15 happening in other cases?
- 16 A. I don't recall. There's a lot of cases out there and  
17 I don't recall specifically which ones.
- 18 Q. What role does Monroe County Planning play in Bedford  
19 Township for a rezoning application?
- 20 A. They present advisory opinions to the Township board.
- 21 Q. Their opinion is similar to the Planning Commission's  
22 opinion in terms of it being a recommendation?
- 23 A. Similar to the planning consultant's. I mean they're  
24 both planners. Planning Commission recommendation  
25 will be based on our planning consultant's

1 recommendation. Theirs would be the same.

2 Q. Most of the time it's based on the planning  
3 consultant's recommendation?

4 A. Right.

5 Q. Not in this case as to parcel six?

6 A. Right.

7 Q. I guess I'm just, when I said similar I mean in terms  
8 of its, its legal impact on the board's final  
9 decision, is the planning, the Monroe County Planning  
10 Commission and the Bedford Township Planning  
11 Commission and your planning consultant's  
12 recommendation all have the same legal impact on the  
13 board's vote?

14 A. Yes.

15 Q. Which is to say they are all recommendations or  
16 advisory opinions?

17 A. Right.

18 MR. HANSON: Let's mark this next.

19 (Exhibit 9 is marked.)

20 BY MR. HANSON:

21 Q. Mr. Jenkins, what's been marked as Exhibit 9 to your  
22 deposition is a memorandum to the Monroe County  
23 Planning Commission from the Monroe County planning  
24 staff. Let's go ahead and mark this one next.

25 (Exhibit 10 is marked.)

1 BY MR. HANSON:

2 Q. And Exhibit 10 is a letter from the Monroe County  
3 Planning Department and Commission dated October 9th,  
4 2008, specifically from Royce Maniko, the County's  
5 Planning Director, to Robert Schockman, Bedford  
6 Township Clerk.

7 Do you see that?

8 A. Yes.

9 Q. Are you familiar with the form of these documents?

10 A. Yes.

11 Q. These are what you get back essentially from Monroe  
12 County Planning, correct?

13 A. Correct.

14 Q. And just so I understand the process, the Monroe  
15 County Planning staff prepares a recommendation like  
16 we see in Exhibit 9?

17 A. Correct.

18 Q. And then the Monroe County Planning Commission takes  
19 some action and that action is transmitted to you or  
20 to the Township along with the recommendation as we  
21 see in Exhibit 10?

22 A. Correct.

23 Q. Okay. If you could look at Exhibit 9 and turn to page  
24 four?

25 A. Okay.

1 Q. Under the heading of compatibility of the proposed  
2 district with surrounding uses, specifically looking  
3 at the west, the planning -- Monroe County Planning  
4 staff says the entire western boundary of the property  
5 abuts the rear yards of a residential area zoned R-2A.  
6 The proposed C-3 district is approximately nine  
7 hundred feet from the existing residential area. The  
8 proposed C-2 district is about two hundred feet from  
9 the existing residential area.

10 That's actually inaccurate, isn't it?

11 A. Right.

12 Q. It was actually two hundred and eighty-six feet?

13 A. Right.

14 Q. Okay. And then in between the residential area and  
15 the C-2 district are the proposed PBO, RM-2 and RME  
16 districts. The staff says, these districts are  
17 designed to be compatible with residential areas and  
18 are intended to serve as transitional districts  
19 between residential and nonresidential districts.

20 Do you agree with that assessment of the  
21 compatibility of this request with the existing  
22 single-family subdivision to the west?

23 A. Yes.

24 Q. The staff then goes on to discuss the relationship of  
25 the proposed zoning district to the local and county

1 land use plans and policies. And first starts with a  
2 description of the Bedford Township local commercial  
3 and mixed residential/office/commercial designations  
4 as we have discussed today.

5 Do you see that?

6 A. Yes.

7 Q. Okay. The staff commentary then says, it could be  
8 argued that the proposed rezoning plan is inconsistent  
9 with the local plan due to the fact that the plan  
10 calls for a much wider mixed  
11 residential/office/commercial district than that being  
12 proposed, and that a wider district would do a better  
13 job of buffering the existing residential areas from  
14 impacts of an intensely developed C-3 district along  
15 Lewis Avenue. It goes on to say, however, it could  
16 also be argued that taken together the proposed RME,  
17 PBO, RM-2 and C-2 districts, which occupy the area of  
18 the plan designated for mixed residential,  
19 accomplishes exactly what is intended by the district.

20 I take it from your prior testimony that you  
21 would fall more on the side of the argument that the  
22 proposed rezoning is what the Township was looking for  
23 in its mixed office/residential/commercial zone or  
24 designation?

25 A. Personal opinion?

1 Q. Yes.

2 A. Yes.

3 Q. And I take it you agree with the Monroe County  
4 Planning Commission's recommendation of approval of  
5 the request because it's generally compatible with  
6 surrounding uses and generally consistent with future  
7 land use plans?

8 A. Yes.

9 Q. In your experience, Mr. Jenkins, does the Township  
10 board generally follow the recommendations of the  
11 Monroe County Planning Commission?

12 A. Generally but not always.

13 Q. We are going to do our estimating game again. Is this  
14 something that happens more frequently than the  
15 Planning Commission going against the planning  
16 consultant's recommendation?

17 A. No.

18 Q. Less frequently or about the same?

19 A. About the same.

20 Q. Okay. So over your twenty-two years it's happened  
21 maybe five or ten times?

22 A. Yes.

23 Q. Can you recall any specific instances of it happening  
24 other than in this case?

25 A. Specific instances, no.

1 Q. Do you recall after the Monroe County Planning  
2 Commission's recommendation came down, do you recall  
3 setting the board's action on this application for an  
4 agenda prior to the newly elected board members being  
5 seated? Let me strike that and step back a little  
6 bit.

7 November of 2008 there were some changes to  
8 the Bedford Township board, correct?

9 A. Yes.

10 Q. And everybody knew that there were going to be changes  
11 because at least one of the board members had lost in  
12 a primary election, correct?

13 A. Correct.

14 Q. Do you recall having any discussions with either Mr.  
15 Whitman or me about having the new board versus the  
16 old board review this rezoning request?

17 A. Yes, I do recall.

18 Q. Do you recall providing any advice on that front?

19 A. I don't know that I provided advice. I just told you  
20 that there was going to be a new board and left it up  
21 you and Jon to decide what you wanted to do.

22 Q. Did you have any discussions with Mr. Wilburn or  
23 anybody else in the Township in terms of whether a new  
24 board might be more likely to approve the request  
25 rather than the old board or less likely for that

1 matter?

2 A. I don't recall having a conversation.

3 Q. Do you recall ever forming any opinions whether you  
4 kept them to yourself or not as to whether the new  
5 board might be more or less disposed to granting this  
6 application?

7 MR. GOLDSMITH: Objection as to what his  
8 opinion was on the likelihood of one board over the  
9 other board making a decision on this decision.

10 THE WITNESS: I didn't know all the new  
11 board members, so I couldn't form an opinion as to how  
12 they would vote.

13 MR. HANSON: Let me get through this and  
14 we'll take a lunch break. I probably got another  
15 hour, hour-and-a-half after this. It's also up to  
16 you, Dennis?

17 THE WITNESS: That's fine.

18 MR. HANSON: Okay. Let's go and mark this  
19 next.

20 (Exhibit 11 is marked.)

21 BY MR. HANSON:

22 Q. Mr. Jenkins, what's been marked as Exhibit 11 to your  
23 deposition are the Bedford Township board minutes of  
24 September 2nd, 2008. Do you see that?

25 A. Yes.

1 Q. And is this document in a form that is familiar to  
2 you?

3 A. Yes.

4 Q. These are standard minutes that you would see from a  
5 Bedford Township board meeting?

6 A. Right.

7 Q. And this is going to be a little bit confusing because  
8 the board numbered parcels a little bit differently  
9 than I think anybody else had, but if you -- actually,  
10 my first question is, is it typical in a rezoning  
11 request for the board to act on that rezoning request  
12 under the reports from staff section of the meeting as  
13 opposed to under a business session?

14 A. That's the way this board has always done it.

15 Q. Is that right?

16 A. Yes.

17 Q. All right. With regard to the Whitman rezoning  
18 request, specifically they start with what they call  
19 parcel one but what I think we have been calling  
20 parcel three, which is the southwesterly corner of  
21 the, of the property. Do you see that?

22 A. Okay. Right.

23 Q. I would just like you to read that. It's somewhat  
24 lengthy and I don't want to take the time to read it  
25 into the record, but if you could read that and tell

1 me whether personally you agree or disagree with the  
2 board's finding on that particular property?

3 A. Yes. I agree.

4 Q. And would you agree with me that the board's action is  
5 based on the recommendations from four bodies or four  
6 different entities; the Bedford Township Planning  
7 Commission, Bedford Township planning consultant,  
8 Monroe County Planning Commission, and the Monroe  
9 Planning Department staff?

10 A. Yes.

11 Q. All right. They then move to parcel two, which I  
12 think we have also called parcel two. And again, if  
13 you could read the board's rationale and tell me if  
14 you agree with their stated reasons for approving that  
15 rezoning request.

16 A. Yes. I agree.

17 Q. All right. The next motion concerns what we have been  
18 calling parcel one. And again, I would ask you to  
19 read what they have based their approval on and tell  
20 me if you agree with that.

21 A. Yes.

22 Q. The next is parcel four. Again, if you could read  
23 that and tell me if you agree with the board's action  
24 on that one and their stated rationale.

25 A. Yes.

1 Q. The next motion concerns parcel five and if you could  
2 read that and tell me if you agree with that one.

3 A. Yes.

4 Q. All right. Moving on to parcel six, there's a motion  
5 to deny the rezoning on parcel six. Would you agree  
6 with me that as opposed to every other motion, the  
7 motion for parcel six does not cite to the  
8 recommendations that were made by the four different  
9 entities that we talked about earlier?

10 A. Yes.

11 Q. In fact, the board finds that the proposed rezoning on  
12 parcel six is inconsistent with the Master Plan. That  
13 statement is contrary to what the Township planning  
14 consultant, the Monroe County planning staff and the  
15 Monroe County Planning Commission all found, correct?

16 A. Correct.

17 Q. The board's motion also says that more of a buffer and  
18 transition is needed between the residential zoning on  
19 the west to general commercial zoning and uses on the  
20 east. You see that right in the middle of the motion?

21 A. Yes.

22 Q. Do you have any sense -- well, let me step back.

23 You were at that board meeting, correct?

24 A. Yes.

25 Q. Do you recall there being any discussion of how much

1 more of a buffer would be needed?

2 A. I don't recall specifically if there was any mention.

3 Q. Would it -- you'd have no reason to disagree if  
4 somebody told you that there was no discussion of how  
5 much more of a buffer would be needed?

6 A. That's possible.

7 Q. In fact, to your knowledge has anybody ever suggested  
8 to Mr. Whitman this proposal would fly if the buffer  
9 was increased by a certain number of feet?

10 A. I don't think that would, no.

11 Q. To your knowledge that never occurred, correct?

12 A. No. Never happened.

13 Q. And the board concludes by saying rezoning to a less  
14 intense transitional use would better fit this parcel.

15 Do you see that?

16 A. Yes.

17 Q. Again, to your knowledge did anybody ever suggest to  
18 Mr. Whitman prior to this motion being made that  
19 parcel six should be sought for rezoning to a less  
20 intensive zoning?

21 A. I don't recall.

22 Q. And again, would it surprise you or would you have any  
23 reason to disagree if somebody told you that nobody  
24 had ever suggested that to Mr. Whitman?

25 A. No.

1 Q. Would you agree with me that the discussion at the  
2 Board of Trustees' meeting was significantly shorter  
3 than the discussion at the public hearing that had  
4 been in front of the Planning Commission?

5 A. Yeah. There was no public hearing at the board  
6 meeting, so the discussion would have been shorter.

7 Q. But even as between -- do you recall at the Planning  
8 Commission meeting there being a fairly long back and  
9 forth between me and various Planning Commission  
10 members on various aspects of the rezoning?

11 A. Yes.

12 Q. Did that happen at the board?

13 A. I don't believe it did.

14 Q. In fact, would you agree with me that there was very  
15 limited discussion amongst the board member  
16 themselves?

17 A. I don't recall exactly, you know, the discussion that  
18 took place.

19 Q. I'll ask it flat out, did you get the sense that the  
20 decision at the board level had been reached prior to  
21 the board meeting?

22 A. I didn't get that sense.

23 Q. Did you get the sense that any board members' minds  
24 were going to be changed by any of the discussion  
25 happening at the board level?

1 A. What was that again?

2 MR. HANSON: Could you read that back, Barb?

3 (The last question is read back: Did you get  
4 the sense that any board members' minds  
5 were going to be changed by any of the  
6 discussion happening at the board level?)

7 THE WITNESS: No, I didn't.

8 MR. HANSON: All right. Do we want to take  
9 a break or do we want to press ahead?

10 MR. GOLDSMITH: It's up to you.

11 THE WITNESS: Take a break.

12 MR. HANSON: Take a quick half hour or so,  
13 is that all right?

14 MR. GOLDSMITH: Sure. Come back at 1:30?

15 MR. HANSON: Yeah. 1:30, 1:45, somewhere in  
16 there.

17 MR. GOLDSMITH: That's fine.

18 MR. HANSON: All right.

19 (Off the record at 1:03 p.m.)

20 (Back on the record at 1:53 p.m.)

21 BY MR. HANSON:

22 Q. Mr. Jenkins, we talked earlier about how Mr. Whitman  
23 had changed various aspects of this proposal in  
24 response to one suggestion from you and one suggestion  
25 from Wade Trim. Have you had other applicants who've

1 done similar things in the past?

2 A. As far as my comment you mean?

3 Q. As far as your comment or people resubmitting after  
4 getting something from Wade Trim that suggests an  
5 issue?

6 A. I'm sure it has happened on occasion.

7 Q. Have you ever known of any occasion where an applicant  
8 made changes in response to suggestions from  
9 consultants or in-house planning and yet were still  
10 denied the rezoning that they sought?

11 A. I don't recall if we have or not.

12 Q. How many times do you think? Is it common that  
13 somebody has, has changed things in response to  
14 suggestions you make or Wade Trim makes?

15 A. No. Again, it doesn't happen very often. Usually if  
16 we get a rezoning, there's an area that is shown on  
17 the plan, and we just look at the area and then the  
18 uses in that area. But in this case since there was a  
19 partial site plan submitted, it was probably wise to  
20 check to make sure the rezoning district they were  
21 asking for would accommodate what they were intending.  
22 But normally there's no site plan, so we don't.

23 Q. This, as we have talked about, this particular Master  
24 Plan designation kind of either needs to be a PUD or a  
25 variety of different zoning districts to comply,

1 right?

2 A. Right.

3 Q. You wouldn't think that a request to rezone to all of  
4 some form of residential or all of some form of  
5 commercial or all of some form of office would comply  
6 with the mixed designation, would it?

7 A. With just one use for that particular area?

8 Q. Yeah.

9 A. No. Not, not strictly comply with that designation.  
10 It's not a mixed use.

11 Q. Yeah. Given that, would you regard it as -- let me  
12 strike that and think of a better way to ask this  
13 question.

14 Given that this Master Plan designation  
15 practically demands a submittal of various types of  
16 rezonings, doesn't it seem a little nonsensical to  
17 take them up one-by-one and approve or deny some but  
18 not others?

19 MR. GOLDSMITH: Let me just object from the  
20 standpoint I don't think the Master Land Use Plan  
21 demands a request for any rezonings because the  
22 property as zoned already contained mixed uses;  
23 contained a C-2 area, contained -- actually two C-2  
24 areas along Lewis Avenue; C-3 area along Lewis Avenue;  
25 an existing C-2 where no request was made; and then

1 the remaining R-2A and C-2 along Sterns Road remained  
2 residential. So it didn't demand any type of rezoning  
3 request as far as that goes. That's my objection.

4 MR. HANSON: What was the objection?

5 MR. GOLDSMITH: Your statement was isn't it  
6 true that the Master Land Use Plan demands a rezoning.

7 MR. HANSON: So your objection is misstates  
8 the document?

9 MR. GOLDSMITH: Misstates the document.

10 MR. HANSON: Thank you, Phil.

11 MR. GOLDSMITH: It doesn't demand rezoning.

12 MR. HANSON: I appreciate your testimony.

13 BY MR. HANSON:

14 Q. Well, let me ask this question of you, Mr. Jenkins.  
15 No. Actually, Barb, could you re-read my question?

16 (The last question is repeated: Given that  
17 this Master Plan designation practically  
18 demands a submittal of various types of  
19 rezonings, doesn't it seem a little  
20 nonsensical to take them up one-by-one and  
21 approve or deny some but not others?)

22 THE WITNESS: Not really. I mean the  
23 Planning Commission and Township board can look at  
24 rezoning requests any way they want, whether it is one  
25 whole request or individuals. They may not seem --

1           may not be appropriate in their minds, all the  
2           rezoning.

3   BY MR. HANSON:

4   Q.     Let's talk about what we like to call the  
5           administrative rezoning. You might as well go ahead  
6           and mark this as next.

7                           (Exhibit 12 is marked.)

8   BY MR. HANSON:

9   Q.     Mr. Jenkins, Jenkins been marked as Exhibit 12  
10           purports to have a date of September 25th, 2005 but  
11           considering it is enclosing a Wade Trim letter of  
12           January 9th, 2009 I think that that date is mistaken.

13                           Would you agree with me on that? I'm  
14           looking at your cover memo.

15   A.     Yeah. Right. We probably forgot to change the date  
16           on the cover memo.

17   Q.     You didn't write any memos to the Township board about  
18           an administrative zoning change to parcel six at any  
19           time prior to or about January of 2009, did you?

20   A.     Not that I recall.

21   Q.     Where did this idea come from of administrative  
22           rezoning parcel six?

23   A.     Discussion with the attorneys. It states it in the  
24           memo.

25   Q.     Do you recall when that meeting was?

- 1 A. No. Probably would have been in December.
- 2 Q. After the board had acted on December 2nd?
- 3 A. Right.
- 4 Q. And sometime prior to January 9th when Wade Trim wrote  
5 their letter?
- 6 A. Correct.
- 7 Q. Do you recall who was at that meeting?
- 8 A. I believe it was Walt, David Landry and Phil, if I'm  
9 not mistaken.
- 10 Q. And yourself?
- 11 A. And myself.
- 12 Q. Did you come out of that meeting with a directive to  
13 get an opinion from Wade Trim as to administrative  
14 rezoning?
- 15 A. I would have, yes.
- 16 Q. How did you decide to have them look at PBO for the  
17 administrative rezoning as opposed to some other  
18 rezoning classification?
- 19 A. If I recall during the, some of the discussions PBO  
20 was mentioned.

21 MR. GOLDSMITH: Let me just object. If  
22 you're going to talk about what was discussed during a  
23 meeting with counsel, and you may or may not be,  
24 that's privileged. And I'm going to instruct you not  
25 to testify as to discussions held with legal counsel.

1 THE WITNESS: Okay.

2 MR. GOLDSMITH: But if you're talking about  
3 another meeting with Township board members and the  
4 supervisor or the planner, that's fine.

5 THE WITNESS: It was with the -- a couple of  
6 the board members asked me what -- about PBO and I  
7 said that was their call.

8 BY MR. HANSON:

9 Q. Do you recall who the board members were?

10 A. Probably Walt, Larry O'Dell.

11 Q. Okay. Just so I understand, and I understand  
12 Mr. Goldsmith's objection and instruction and I don't  
13 want to hear about conversations between attorneys,  
14 but the PBO decision was made in some -- or not made,  
15 you got direction regarding PBO from board members not  
16 in a meeting where attorneys were present?

17 A. No.

18 Q. Do you recall was it a physical meeting or did you get  
19 phone calls or e-mails?

20 A. It was a physical meeting.

21 Q. And this would have been again sometime in that  
22 December/January time period?

23 A. Probably towards the end of December.

24 Q. And do you have an actual memory of a meeting in your  
25 office or Walt's office?

1 A. I think they were spontaneous meetings. I don't think  
2 they were held together. I think there were two  
3 different conversations.

4 Q. Okay. So you had a conversation with Walt and then a  
5 conversation with Mr. O'Dell?

6 A. Uh-huh.

7 Q. As to what might be an appropriate zone for the, for  
8 parcel six?

9 A. Yeah. They actually, Larry O'Dell actually is the one  
10 that suggested PBO might be appropriate.

11 Q. What other discussions did you have? Did you discuss  
12 PBO with Walt after that point or --

13 A. Larry talked to Walt about it and Walt talked to me.

14 Q. What did you feel about the proposed rezoning to PBO?

15 A. At the time I thought it could be consistent in its  
16 transition as well as C-22.

17 Q. I'm trying to, I'm trying to be mindful of, of  
18 Mr. Goldsmith's instruction and I know that -- I think  
19 you've stated in a public meeting that the decision  
20 was made, well, I'll ask the question flat out and you  
21 guys can do what you want with it.

22 To your knowledge was the decision to go  
23 with the administrative rezoning taken in  
24 contemplation of a lawsuit being filed by Whitman  
25 Ford?

- 1 A. No. What happened after the rezoning was approved,  
2 they left a big chunk of residential right in the  
3 middle of the multiple family and the C-3 and the C-2,  
4 and I mean that wouldn't, wouldn't be a good  
5 transition either.
- 6 Q. Wouldn't be a good transition to?
- 7 A. From a single family to multiple family back to single  
8 family to C-3.
- 9 Q. I guess my question is why in your estimation wouldn't  
10 that be a good transition from -- because I understand  
11 you're trying to transition from the commercial to the  
12 existing single family, right?
- 13 A. Right.
- 14 Q. Because you want to protect the existing single  
15 family?
- 16 A. Right.
- 17 Q. So I guess my question is why wouldn't leaving parcel  
18 six as R-2A protect that single-family residential  
19 existing?
- 20 A. Well, you're -- before the rezonings took place, there  
21 was a large piece of single-family residential butting  
22 up against the C-3. When they approved parcels one  
23 and two, that transition didn't exist anymore. I mean  
24 it went from multiple family to single family to C-3.  
25 So in their minds it wasn't, it wasn't a good

1 transition. You've got a single -- a piece of  
2 single-family residential surrounded by  
3 non-single-family residential districts.

4 Q. Well, I guess, I'm trying to figure out who, who, who  
5 were the -- who was the Township attempting to protect  
6 or benefit; was it the existing residential  
7 subdivision to the west?

8 A. No. This would be future residents of that eight-acre  
9 parcel.

10 Q. All right. So I guess to understand your testimony,  
11 the Township was attempting to provide a benefit to  
12 Whitman Ford as the current property owner?

13 A. Or future property owner if it was ever developed as a  
14 family subdivision.

15 Q. What sort of market data or market conditions or  
16 anything like that did the Township look at in  
17 deciding to go with the PBO designation?

18 A. I don't think we looked at any data.

19 Q. Did they -- was there any consideration as to whether  
20 that administrative rezoning would enhance or detract  
21 from the economic viability of the property?

22 A. No.

23 Q. Was there any consideration as to the salability or  
24 developability of land containing an office district  
25 that had no road frontage?

- 1 A. No.
- 2 Q. Are you aware of any other areas in the Township that  
3 are either zoned or used as office buildings that  
4 don't have road frontage?
- 5 A. It's possible that something years and years ago might  
6 have been approved like that but we wouldn't do it  
7 now.
- 8 Q. Why not?
- 9 A. Because you can't develop it without road frontage.  
10 You can't get a building permit.
- 11 Q. Did anybody consult with Mr. Whitman or anybody else  
12 at Whitman Ford about the administrative rezoning  
13 before beginning to -- the process?
- 14 A. Not that I'm aware of.
- 15 Q. Did you express any opinions as to whether anybody at  
16 Whitman Ford should be consulted about the Township  
17 instituting a zoning change on their land?
- 18 A. I didn't. I didn't make any suggestion.
- 19 Q. As you sit here today, do you have any opinions about  
20 the Township undertaking to change zoning on a piece  
21 of property that the property owner hasn't requested?
- 22 A. No. I don't have an opinion on it.
- 23 Q. If, if we go back to Exhibit 1, you do have it in  
24 front of you, and if we assume that the, parcel six is  
25 going to be rezoned to PBO, can you tell me what

1 portion of that western part of the property would  
2 have been devoted to the commercial use as is called  
3 out in the mixed office/residential/commercial Master  
4 Plan designation?

5 A. The PBO down in the lower western corner and of course  
6 the existing C-2.

7 Q. Well, I guess my question is, if you look at parcel  
8 six as PBO as the Township was planning to rezone it,  
9 is it your testimony that PBO would satisfy the  
10 commercial designation?

11 A. It would satisfy the office designation.

12 Q. Understood. The question was what would, what would  
13 satisfy the commercial designation?

14 A. Probably the C-2 in the middle. I don't know what  
15 parcel number that was.

16 Q. The one that was existing C-2?

17 A. Sure.

18 Q. Going down on Sterns Road?

19 A. Right.

20 Q. So the portion of that, the slice of that parcel that  
21 would have fallen into that designation would have  
22 satisfied the commercial zone for the Master Plan?

23 A. I believe it would.

24 Q. So C-2 comports with the Master Plan's mixed  
25 office/residential/commercial designation?

- 1 A. Yes. Because you can have local commercial uses in  
2 C-2. Almost all the uses in C-1, all the uses in C-1  
3 can be put in a C-2 district.
- 4 Q. All those uses can also be put in a C-3 district?
- 5 A. Correct.
- 6 Q. In fact, if we look at what the board did on parcels  
7 four and five in rezoning those to C-3?
- 8 A. Right.
- 9 Q. The board said, we read it before the break and I  
10 think you agree with it, the board said that that,  
11 those rezonings complied with the Master Plan,  
12 correct?
- 13 A. Correct.
- 14 Q. And those are master planned as local commercial,  
15 correct?
- 16 A. Correct.
- 17 Q. So it's -- C-3 is compatible with the local commercial  
18 designation of the Master Plan?
- 19 A. Some uses in C-3. The reasons they agreed to it was  
20 because uses across the street were C-3 as well. So  
21 it wasn't the only reason why they recommended it.
- 22 Q. But you would agree with me that the local commercial  
23 designation in the Master Plan can support a rezoning  
24 to C-3?
- 25 A. Again, I'm not an expert but I believe it could.

1 Q. It certainly was one of the reasons that the board  
2 used to support these rezonings, correct?

3 A. Correct.

4 Q. And as I understand your testimony based on the parcel  
5 down on Sterns, existing C-2, that the C-2 zone  
6 designation can also satisfy the commercial  
7 requirement in the mixed office/residential/commercial  
8 designation?

9 A. Correct.

10 Q. Now, you talked about how the transition didn't make  
11 sense now that there were multiple family in between  
12 the two single-family zones?

13 A. Right.

14 Q. That only occurred because the board didn't take up  
15 the Whitman rezoning application as a single whole,  
16 correct?

17 A. Correct.

18 Q. And it only happened because the board approved some  
19 of the rezoning requests but did not approve the one  
20 in the middle, correct?

21 A. Correct.

22 Q. Are there other areas of the Township that in -- well,  
23 let me step back because I need to make sure I  
24 understand this.

25 Was it the board's concern that that zoning

1 pattern didn't comply with the Master Plan or was it  
2 the board's concern that that zoning plan -- well, let  
3 me start, start over. Strike that question.

4 Was it the board's concern that the zoning  
5 resulting from their December 2nd vote didn't comport  
6 with the Master Plan?

7 A. You know, you would almost have to talk to them about  
8 it. I don't know what their major concern was.

9 Q. I will. But if you, if you have any, I mean as I  
10 understand it, you were taking direction from them?

11 A. Yeah.

12 Q. And to the extent that --

13 A. I think the main concern was that it was single family  
14 surrounded by multiple family and C-3.

15 Q. So I guess if we're looking at kind of the overarching  
16 reasons for rezoning, you know, either the Master Plan  
17 or surrounding land uses, you would put this more in  
18 the surrounding land uses category than in the Master  
19 Plan category?

20 A. We can put it in both categories. I mean you look at  
21 surrounding land uses and Master Plan uses that are  
22 proposed and you make the decision, so.

23 Q. Well, as the board left it on December 2nd, 2008 you  
24 certainly had a residential component, an office  
25 component, and a commercial component on that piece of

1 land, correct?

2 A. Correct.

3 Q. What steps has the board taken to ascertain whether  
4 there are other areas of the Township that raise  
5 similar concerns with respect to the existing zoning  
6 of undeveloped land being either incompatible with the  
7 Master Plan or not compatible with surrounding land  
8 uses?

9 A. We haven't taken any action.

10 Q. Has the board ever taken any action, any such action  
11 in the twenty-two years you've been the Planning and  
12 Zoning Coordinator?

13 A. Not that I can recall.

14 Q. Has the board ever instituted an administrative  
15 rezoning on any other property?

16 A. The only time we did was, and this was at the property  
17 owners request, the Township paid for it, they  
18 requested that their property be changed from C-1 to  
19 residential. And then when the map was adopted in  
20 1977.

21 Q. All right. So we got 1977 the Township adopts a  
22 zoning ordinance?

---

23 A. Right.

24 Q. And in accordance with doing that, they  
25 administratively placed zoning -- or placed properties

- 1 within zoning districts, correct?
- 2 A. Correct.
- 3 Q. Okay. That obviously was Township-wide and not  
4 property specific, correct?
- 5 A. Right.
- 6 Q. When was -- at what point did the other administrative  
7 rezoning occur?
- 8 A. Probably ten, ten years or so ago.
- 9 Q. Okay. Where was that, do you recall?
- 10 A. At the intersection of Douglas and Sterns. And I  
11 believe there were a couple of them up on Summerfield  
12 Road, similar situation.
- 13 Q. Okay. What's the property at Douglas and Sterns? Was  
14 it a commercial enterprise?
- 15 A. No. There were single-family residences that were  
16 zoned commercial. Presented a problem to some of the  
17 property owners because they couldn't get equity loans  
18 or refinance.
- 19 Q. Okay. So the people, the homeowners came to the  
20 Township --
- 21 A. Right.
- 22 Q. -- and said you guys have zoned our property  
23 commercial, we don't want it to be commercial, what  
24 can we do? Is that a fair characterization of what  
25 happened?

1 A. That's fair.

2 Q. Okay. And the Township -- now were those properties  
3 zoned commercial back in 1977?

4 A. Yes. There was a situation back in 1977 where some  
5 property owners came in and asked their property be  
6 rezoned, you know, the way it is zoned. And in some  
7 cases it was just, you know, the Master Plan.

8 Q. And these were just cases where people's property,  
9 their homes got zoned commercial just in some kind of  
10 broad brush application of a Master Plan?

11 A. Correct.

12 Q. Okay. And the Township out of the goodness of its  
13 heart said you're right, you shouldn't be zoned  
14 commercial, you don't want to be zoned commercial,  
15 we're going to pay for having these properties zoned  
16 back to residential?

17 A. Correct.

18 Q. And you said there was one on Sterns and Douglas and  
19 then two other properties?

20 A. There were several on Sterns and Douglas and then I  
21 think one or two on Summerfield that were --  
22 Summerfield Road that were zoned commercial used as  
23 residential.

24 Q. And were those administrative rezonings, did they all  
25 take place about the same time?

- 1 A. About the same time.
- 2 Q. Has the Township other than in 1977 ever undertaken an  
3 administrative rezoning without even consulting with  
4 the property owner much less getting their consent?
- 5 A. I don't recall.
- 6 Q. Would you have records of that?
- 7 A. We would have to go through all the rezonings from  
8 1977 to today and then pull each file out and review  
9 it.
- 10 Q. You've done that before, haven't you?
- 11 A. Not that far back.
- 12 Q. Well, I'll put it in a document request rather than  
13 ask for it here.
- 14 Suffice it to say you could do it?
- 15 A. It could be done.
- 16 Q. Any sort of feasibility or impact study done before  
17 the Township advanced the ball on the administrative  
18 rezoning?
- 19 A. No.
- 20 Q. Traffic study?
- 21 A. No.
- 22 Q. Any economic analysis of whether this was going to  
23 improve or, or denigrate the economic viability of  
24 that property?
- 25 A. No.

1 Q. Putting side the fact that you couldn't get a building  
2 permit for an office development that didn't have road  
3 frontage, what's your opinion of the developability of  
4 office space that's tucked back off the road behind a  
5 car dealership and bank and a bar and a utility  
6 substation?

7 A. I don't have an opinion on it. I mean there's  
8 probably a market out there someplace for it. I can't  
9 predict what the markets are going to be tomorrow.

10 Q. And as we sit here today, are you aware of any other  
11 office uses in the Township that don't have road  
12 frontage?

13 A. As I said, I would have to look at the map. Off the  
14 top of my head I don't recall.

15 Q. And I understood your map comment to refer to whether  
16 -- talking about zones. I'm talking about uses,  
17 actual on the ground uses, are you aware of any?

18 A. No.

19 MR. GOLDSMITH: Let me just object from this  
20 standpoint: This property as laid out now has no road  
21 frontage for the RME, has no road frontage for the  
22 RM-2, nor does it have any road frontage for the C-2  
23 if that would have been adopted by the Township board.

24 So, Tom, I guess I don't know where you are  
25 going with that line of questioning because none of it

1 has any road frontage for any of those particular  
2 uses.

3 MR. HANSON: Is there an objection in there,  
4 Phil? I heard an argument. I didn't hear an  
5 objection.

6 MR. GOLDSMITH: Just the question, the  
7 question as posed is --

8 MR. HANSON: I appreciate --

9 MR. GOLDSMITH: -- is unfair from the  
10 standpoint that you're asking about road frontage  
11 issues when it wouldn't have road frontage if it was  
12 C-2 and the RME and the RM-2 doesn't have road  
13 frontage. You have the conceptual plan that was used  
14 earlier in the deposition which shows a possible road  
15 going through the property but --

16 MR. HANSON: And again, to me that's not an  
17 objection but an argument. I guess my only response  
18 would be I think there's a market difference between  
19 when an owner asks for something and when a Township  
20 imposes something.

21 BY MR. HANSON:

22 Q. Anybody else that you're aware of that was involved in  
23 discussions about this administrative rezoning besides  
24 -- putting aside the meetings with the attorneys,  
25 anybody else besides yourself and Mr. Wilburn and

1 Mr. O'Dell?

2 A. Not that I recall.

3 Q. Did you and Mr. Wilburn and Mr. O'Dell or anybody else  
4 for that matter talk about any other potential  
5 administrative rezonings?

6 A. No.

7 Q. Let me, let me start that question over.

8 Did anybody to your knowledge talk about  
9 rezoning that parcel to any other designation, any  
10 other zoning district?

11 A. After the Township board.

12 Q. After December 2nd, 2008?

13 A. Not that I recall.

14 Q. Was there ever any discussion of rezoning it to a PUD?

15 A. The entire parcel?

16 Q. No. Just --

17 A. Just that one piece?

18 Q. Just that parcel?

19 A. Not that I recall.

20 Q. Or C-1?

21 A. C-1 may have been mentioned but I don't recall  
22 specifically.

23 Q. Was there any consultation with Wade Trim or any other  
24 planning consultants or experts prior to you sending  
25 this out to Wade Trim for their opinion?

- 1 A. No.
- 2 Q. If you could turn to page four of Mr. Young's letter.
- 3 A. Okay.
- 4 Q. And he's got his conclusions of his review of the  
5 administrative rezoning. You see that?
- 6 A. Yes.
- 7 Q. In the third paragraph number he again, similar to his  
8 opinion on the Whitman Ford request, he states that  
9 the rezoning would represent an improvement to the  
10 vicinity and Township as a whole. Do you see that?
- 11 A. Yes.
- 12 Q. Do you recall him having the same analysis of the  
13 Whitman Ford rezoning? We can go back and pull out  
14 the letter if you want to refresh yourself.
- 15 A. You mean the original request?
- 16 Q. Yes.
- 17 A. Yes.
- 18 Q. Yeah. The 2008 request. Do you agree with  
19 Mr. Young's analysis of the administrative rezoning  
20 request?
- 21 A. Yes.
- 22 Q. So suffice it to say that in your estimation there's  
23 -- can be multiple different ways to comply with a  
24 Master Plan?
- 25 A. Yes.

- 1 Q. And there can be multiple zoning districts that might  
2 provide an improvement to the vicinity and the  
3 Township as a whole?
- 4 A. The transition, correct.
- 5 Q. In this instance the Township decided that it was  
6 going to decide what that transition was as opposed to  
7 letting the owner decide what that transition would  
8 be?
- 9 A. Correct.
- 10 Q. And in -- to your knowledge the Township's never taken  
11 that action before on any other property in the  
12 Township?
- 13 A. Right off the top of my head, not that I recall.
- 14 Q. Do you ever recall meeting, I'm going to take you back  
15 to before your meeting with Mr. Whitman and Mr.  
16 Wilburn back at the start of this whole process, do  
17 you recall meeting with anybody from Rudolph Libbe  
18 Development Company?
- 19 A. Several times.
- 20 Q. Okay. Those meetings were in between the end of the  
21 last lawsuit and Mr. Whitman's getting involved in  
22 seeking rezoning again?
- 23 A. I believe it was.
- 24 Q. Okay. Do you recall how many meetings you had with  
25 them?

- 1 A. At least one.
- 2 Q. And you said several times before?
- 3 A. Yeah. I recall at least one.
- 4 Q. Okay.
- 5 A. I mean I've had meetings with Rudolph Libbe on other  
6 projects as well.
- 7 Q. Fair enough. But on --
- 8 A. On this one?
- 9 Q. On this property you can remember at least one  
10 meeting?
- 11 A. Uh-huh. Yes.
- 12 Q. Do you believe that there may have been more?
- 13 A. There could have been.
- 14 Q. Okay. Do you recall what the discussions in that  
15 meeting were about?
- 16 A. I think they were just general, you know, what can we  
17 do with this property. And I explained to them what  
18 it was -- as is, as zoned, and explained to them they  
19 would have to get a zoning change or submit a PUD for  
20 anything else.
- 21 Q. Do you recall Ms. Johnston being a part of that  
22 meeting?
- 23 A. I don't recall if she was.
- 24 Q. You don't have any recollection of -- well, let me  
25 step back.

1                   If she had been at that meeting, fair to  
2                   assume that they would have had to have paid in  
3                   advance for her attendance?

4    A.     Right.

5    Q.     And you don't have any recollection of them having  
6            paid in advance for Julie Johnston to attend a  
7            meeting?

8    A.     No. I don't recall.

9    Q.     Do you recall ever having a meeting with them with Mr.  
10           Wilburn present regarding this property?

11   A.     It's possible we did. I don't recall it.

12   Q.     What did you understand their interest in the property  
13           to be at the time?

14   A.     Developing it as commercial, commercial lots.

15   Q.     And I threw a legal word at you there, but by interest  
16           I meant not their -- what were they interested in, I  
17           was -- what was their stake in the property?

18   A.     Oh.

19   Q.     If you know?

20   A.     They weren't the owner. I think they were just  
21           looking at possibly buying it and developing it.

22   Q.     Is that common for you to have meetings with  
23           developers who are interested in purchasing property?

24   A.     Yep. They can request a meeting.

25   Q.     Do you need the owner's consent to hold such meetings?

1 A. No, not really. I mean we're not approving anything.  
2 Just talking about it.

3 Q. Are you a resident of the Township?

4 A. Yes.

5 Q. Where do you live generally?

6 A. Generally on Temperance Road between Jackman and  
7 Lewis. Closer to Jackman.

8 Q. Are you familiar with an organization known as Bedford  
9 Watch?

10 A. Yes.

11 Q. Have Bedford Watch or ever -- any of its members ever  
12 met with you regarding the Whitman property?

13 A. We've never had any formal meetings. They may have  
14 stopped at the counter to talk to us about it.

15 Q. Do you recall any of those conversations or telephone  
16 conversations with any of the Bedford Watch folks?

17 A. Telephone conversations?

18 Q. I'm trying to get a sense of what your communications  
19 with Bedford Watch has --

20 A. Just answering questions that they have. I don't call  
21 them up and say let's get together.

22 Q. And they've never requested a formal meeting and come  
23 in and sat down and talked to you?

24 A. Possibly. One representative. I don't know all of  
25 the members of the organization.

1 Q. I can probably run down a few that you would probably  
2 know. Who was the one that possibly might have  
3 requested a meeting?

4 A. Jim Duggen.

5 Q. And did you have a meeting with Mr. Duggen?

6 A. Yes.

7 Q. Do you recall when that was?

8 A. Probably eight months ago, six or eight months ago.

9 Q. So just doing the math, that would have been right  
10 around the time that this lawsuit was filed?

11 A. Yes.

12 Q. What was the nature of that meeting request or what  
13 was discussed?

14 A. He was asking me what uses could go in the different  
15 zoning districts and building size and those kinds of  
16 questions. So we just got the zoning book out and  
17 went over it with him.

18 Q. Anything else?

19 A. Not that I recall.

20 Q. You mentioned building size. At one time there was a  
21 specific building size limitation in the commercial  
22 zoning districts, was there not?

23 A. Correct.

24 (Exhibit 13 is marked.)

25

1 BY MR. HANSON:

2 Q. Mr. Jenkins, I only want to -- I'm going to represent  
3 to you that this is a four or five year old article  
4 from Bedford Now talking about getting rid of those  
5 building size limitations that we were just  
6 discussing. Does that sound about right to you in  
7 terms of when those building size limitations were  
8 taken out?

9 A. Yes.

10 Q. Okay. What I want to direct you to is the first full  
11 paragraph in the second column. There's a quote from  
12 somebody named Norm Hinshaw. And he says, my take on  
13 that, referring to the seventy thousand square foot  
14 limitation, was that the restriction was originally  
15 put in that ordinance to prevent the Wal-Mart  
16 store-Mart from going on the Whitman property.

17 Do you see that quote?

18 A. Yes.

19 Q. Do you agree with that quote? Do you agree with  
20 Mr. Hinshaw's analysis? And I know that this is  
21 hearsay and we don't know if he was misquoted, but do  
22 you agree that those size limitations were enacted  
23 specifically in response to the possibility of a  
24 Wal-Mart going in on the Whitman property?

25 A. I don't think it was meant strictly for the Whitman

1 property. I think it was meant for most of the large  
2 parcels.

3 Q. Whitman was the only one at the time that was actively  
4 in discussions with --

5 A. Right.

6 Q. -- a big box retailer, correct?

7 A. Yes.

8 Q. And it was after Mr. Whitman came forward and went  
9 public with his plans to sell to a large scale  
10 retailer that those restrictions were put in place,  
11 correct?

12 A. Correct.

13 Q. You would agree with me that there is a pretty  
14 contemporaneous cause and effect?

15 A. I would agree with that.

16 Q. Getting back to Mr. Duggen, is it true that there is a  
17 -- there have been new proposals to reenact some sort  
18 of building size limitation?

19 A. Yes.

20 Q. What's the status on those?

21 A. We are waiting for an opinion letter from Wade Trim on  
22 the advisability of that.

23 Q. Was the genesis of -- let me strike that. Start over.

24 Who came up with that ordinance amendment  
25 idea?

- 1 A. As far as I know it was a committee of the Bedford  
2 Watch Group. But it was presented to the board by Jim  
3 Duggen.
- 4 Q. What was the board's response to that presentation?
- 5 A. They said they would pass it on to the Planning  
6 Department.
- 7 Q. That means you correct?
- 8 A. Right.
- 9 Q. Have you had any conversations with Mr. Wilburn or any  
10 other board members about those potential  
11 restrictions?
- 12 A. I did. Particularly the fact of, that in my opinion a  
13 lot of the commercial buildings in the Township would  
14 become nonconforming.
- 15 Q. What is the specific size limitations that are  
16 currently proposed?
- 17 A. I don't recall the specific locations. There was one  
18 for each commercial district. And then there was a  
19 formula to determine what the net parcel area was.
- 20 Q. And just so I understand the process, was, was  
21 proposed ordinance language drafted by the Bedford  
22 Watch Group?
- 23 A. Yes.
- 24 Q. And then presented to the board?
- 25 A. Right.

- 1 Q. And then that same ordinance language went straight  
2 from the Bedford Watch Group to the board to you?
- 3 A. Correct.
- 4 Q. Did you make any revisions to it?
- 5 A. No.
- 6 Q. And now Wade Trim is currently undertaking an analysis  
7 of that language?
- 8 A. Correct.
- 9 Q. Have you had any discussions with any board members as  
10 to the likelihood of passage of that amendatory  
11 language?
- 12 A. Not the likelihood of passage. It would have to go to  
13 the Planning Commission and they would decide whether  
14 or not they're even going to pursue it.
- 15 Q. Did you have the opportunity to decide whether or not  
16 it was worth pursuing?
- 17 A. No. I basically was told to send it on.
- 18 Q. Who told you that?
- 19 A. Township board.
- 20 Q. So just so I understand, the board's action was to  
21 direct you to send that out to Wade Trim for an  
22 opinion?
- 23 A. Right.
- 24 Q. In your estimation, does the Bedford Watch Group have  
25 any other goal or objective other than to stop

1 development on the Whitman Ford property?

2 A. Not that I'm aware of.

3 Q. Would that lead you to believe that the current  
4 proposal to amend the ordinance and reenact some  
5 building size limitations is an effort by that group  
6 to curtail development on the Whitman Ford property?

7 MR. GOLDSMITH: Objection. Speculation and  
8 conjecture. But you can answer.

9 THE WITNESS: Based on what I've heard and  
10 seen, that probably would be the primary focus.

11 BY MR. HANSON:

12 Q. Have you heard any board members express an opinion as  
13 to the merits of this proposed legislature?

14 A. The only one would have been Walt when I explained to  
15 him what the restrictions -- restrictive, you know,  
16 scope of the, the proposal as they submitted it would  
17 be.

18 Q. And what was Mr. Wilburn's opinion?

19 A. He was a little surprised.

20 Q. Surprised in what sense?

21 A. How restrictive it would be.

22 Q. Did you have that conversation before or after the  
23 board directed you to send it on to Wade Trim?

24 A. That would have been after.

25 Q. Just so I understand, the board directed you to send

1 it on to Wade -- well, let me step back.

2 Could the board have decided not to do  
3 anything with it, let it --

4 A. I'm sure they could have.

5 Q. But instead the board sent it to you and directed you  
6 to send it on to Wade Trim and it was after that that  
7 Mr. Wilburn discovered how restrictive some of the  
8 limitations would be?

9 A. Correct.

10 Q. All right. If I put it in the document request for  
11 your counsel, would you be able to send me a draft of  
12 that?

13 A. Yeah.

14 Q. And any correspondence relating to it?

15 A. Yes. I will.

16 Q. Have you had any other meetings with Bedford Watch or  
17 any other group about these, about this proposed  
18 restriction?

19 A. I haven't, no.

20 Q. Do you know of anybody who has?

21 A. Not that I know of.

22 Q. Are you aware of a group known as Citizens to Preserve  
23 Bedford?

24 A. Never heard of them.

25 Q. Any other meetings other than your meeting with

- 1 Mr. Duggen or perhaps casual conversations at the  
2 counter, any other meetings with Bedford Watch, and  
3 I'll rattle off some names for you; Judy Frankowski?  
4 A. She stopped in once in a while, not lately.  
5 Q. Doug Bermick?  
6 A. Doug Bermick, occasionally.  
7 Q. And again, are these counter conversations?  
8 A. Counter, you know, I don't have office meetings with  
9 them.  
10 Q. Kevin Tracy?  
11 A. Yes. Just casual conversations.  
12 Q. Dennis or Cheryl Rabb?  
13 A. Haven't talked to them in probably a year or so.  
14 Q. And in these casual conversations, are they ever  
15 inquiring about anything other than the status or  
16 possibility of development on the Whitman property?  
17 A. No.  
18 Q. Do you have an understanding of the Bedford Watch  
19 Group having been the, the primary motivators of the  
20 referendum that was held in Bedford Township on May  
21 5th?  
22 A. Yes.  
23 Q. Okay. Finish to, to respond to the board's December  
24 2nd decision?  
25 A. Right.

1 Q. Okay. If you look back at Exhibit 1, and I'm going to  
2 use Wal-Mart just because it's the easiest thing to  
3 conceptualize for what we are talking about here, a  
4 Wal-Mart would be a permitted use in the C-2 zone,  
5 correct?

6 A. Yes.

7 Q. Looking at Exhibit 1, and understanding that the board  
8 did not rezone parcel six, how much more space was  
9 available on the property for a Wal-Mart after  
10 December 2nd as opposed to before December 2nd?

11 A. Well, all the C-2 or C-3 parcels in C-2 would be  
12 available for a Wal-Mart development.

13 Q. Okay. And again, the question is how much more  
14 property was available?

15 A. Oh, not enough.

16 Q. Not a single inch, correct?

17 A. Correct.

18 Q. Would you agree with me, and you being a resident of  
19 the Township and having seen probably the ads and the  
20 fliers and the yard signs that the referendum was  
21 largely about overturning the board's decision to  
22 allow a Wal-Mart on the Whitman Ford site?

23 A. It wasn't about overturning the Wal-Mart. There was  
24 no Wal-Mart decision. It was to overturn the whole  
25 zoning that the Township board approved.

1 Q. Let me just state it a slightly different way.

2 Would you agree with me that according to  
3 the campaign literature that was distributed prior to  
4 the referendum, that the referendum was all about a  
5 Wal-Mart or other big box store?

6 A. Yes.

7 Q. All right. Let me, let's go ahead and mark this next.

8 (Exhibit 14 is marked.)

9 BY MR. HANSON:

10 Q. Describe what's been marked as Exhibit 14,  
11 Mr. Jenkins. And I'll show you the actual so you can  
12 compare it. It's a double-sided postcard and some of  
13 it unfortunately didn't come through on the copying.  
14 So we can look at the original as we, as we look at  
15 this, but just looking at the front of this, do you  
16 recognize that particular postcard? Have you seen  
17 that before?

18 A. I've never seen it before.

19 Q. Would it surprise you if I told you that that was  
20 distributed in Bedford Township prior to the May 5th  
21 referendum?

22 A. No, it wouldn't surprise me.

23 Q. If you look on the, what I'm calling the front which  
24 is the one with the ballot and the Whitman rezoning  
25 ballot box.

1 A. Right.

2 Q. And you see say no to big box stores in Bedford, do  
3 you see that?

4 A. Yes.

5 Q. This referendum had absolutely nothing to do with  
6 whether there would be big box stores in Bedford, did  
7 it?

8 A. No.

9 Q. It says say no to crumbling roads. In your opinion,  
10 did this referendum have anything to do with the  
11 condition of the roads in Bedford Township?

12 A. Not that I'm aware of.

13 Q. It says say no to increased crime. As far as you know  
14 or in your opinion did this referendum have anything  
15 to do with an increase or decrease in crime in Bedford  
16 Township?

17 A. No.

18 Q. It says no to declining property values. As far as  
19 you know, did this referendum have anything to do with  
20 either increasing or decreasing property values in  
21 Bedford Township?

22 A. No.

23 Q. And then it says say no to traffic nightmares. As far  
24 as you know, did this referendum have anything to do  
25 with causing or -- causing an increase or a decrease

1 in traffic in Bedford?

2 A. You know, let me qualify this. All of these they  
3 stated would be a result of a Wal-Mart. That wasn't  
4 their primary focus though, to improve the roads or  
5 decrease the crime.

6 Q. And that's -- thank you for summarizing it. I think  
7 what, where I'm going, basically this campaign  
8 literature is in your mind a say no to Wal-Mart piece,  
9 correct?

10 A. I believe so.

11 Q. Okay. And if you look at the back side, which again  
12 the copy doesn't do justice to, but the emphasis again  
13 is all on what supposedly will happen in the Township  
14 if a big box store is developed in the Township,  
15 correct?

16 A. Correct.

17 Q. And again, the referendum, either passage or denial of  
18 the referendum, would not change by a single inch the  
19 amount of land available for a big box store on this  
20 property, correct?

21 A. Correct.

22 MR. HANSON: Let's go ahead and mark this  
23 next.

24 (Exhibit 15 is marked.)

25

- 1 BY MR. HANSON:
- 2 Q. Are you a reader of local papers, Mr. Jenkins?
- 3 A. Yes.
- 4 Q. Toledo Blade?
- 5 A. Unfortunately.
- 6 Q. Monroe Evening News?
- 7 A. Yes.
- 8 Q. Would you agree with us that as reported in the local  
9 press, this referendum on May 5th was largely cast as  
10 a decision about whether there would be a big box  
11 store on the Whitman Ford property?
- 12 A. Yes.
- 13 Q. In fact, the headline on Exhibit 15 here says Bedford  
14 voters kill rezoning of parcel for big box store,  
15 doesn't it?
- 16 A. Correct.
- 17 Q. That headline is a complete and utter misnomer, isn't  
18 it?
- 19 A. Yes.
- 20 Q. Bedford voters on May 5th did absolutely nothing with  
21 regard to big box store, did they?
- 22 A. No.
- 23 Q. I presume you saw a number of the campaign signs that  
24 were put in people's yards prior to the referendum?
- 25 A. Primarily around that parcel, yes.

1 Q. Same question. Well, no, let me strike that. Not the  
2 same question.

3 Those signs were all steered toward the  
4 question of whether there should be a big box store  
5 and in particular a Wal-Mart on the Whitman Ford  
6 property, correct?

7 A. Correct.

8 Q. How many times in your twenty-two years has a board  
9 rezoning action been subject to a referendum?

10 A. Not since I've been here. There was one prior to  
11 that.

12 Q. Okay. But in your twenty-two years this is the first?

13 A. This is the first.

14 Q. Was there any -- did you have any conversations with  
15 anybody inside Township Hall about the referendum? As  
16 the signatures were being gathered, as they were being  
17 turned in, you probably remember there was even  
18 something I think on the six o'clock news with the  
19 cameraman sitting there in Township Hall showing the  
20 petitions being handed in. Do you recall that?

21 A. Yeah. I think that was Mr. Schockman.

22 Q. No comment.

23 Was there any discussion in Township Hall --  
24 did you have any discussions with Mr. Schockman or Mr.  
25 Wilburn or Mr. O'Dell about this referendum and what

- 1           it would mean and why it was happening?
- 2    A.    I think the question was more what it would mean if it  
3           passed.  In other words, what do we, what do we have  
4           left.
- 5    Q.    You mean, and let's make sure we are clear on  
6           terminology here, passage of the referendum would  
7           actually approve the board's action?  A no vote meant  
8           overturn the board's action?
- 9    A.    Is that how --
- 10   Q.    You want me to show you the postcard again?  It says  
11          vote no.  Oh, you can't see the no.
- 12   A.    That doesn't necessarily mean that that's accurate.  
13          You know, I don't recall the actual wording of the  
14          ballot.
- 15   Q.    Okay.  Well, let's just, for purposes of our  
16          discussion here whether we are right or wrong, let's  
17          say a no vote meant no to the board's action and a yes  
18          vote meant yes to the board's action.  Okay.  So with  
19          that understanding in mind, the discussion was over  
20          what would happen if the board's action were  
21          overturned, is that correct?
- 22   A.    Correct.
- 23   Q.    Okay.  What sort of discussions did you have?
- 24   A.    I think the discussion I had with at least one of the  
25          board members is what -- if it's approved, if they are

- 1           successful, what does, what zoning are we looking at  
2           on the property. And I said basically what was there  
3           before the board acted on it.
- 4    Q.    Which board member was that that you had that  
5           discussion with?
- 6    A.    Probably Walt.
- 7    Q.    Do you recall having more than one discussion with Mr.  
8           Wilburn?
- 9    A.    I don't recall.
- 10   Q.    Anything else other than what would we be left with, I  
11           mean was there any discussion as to how the Township  
12           might react to the referendum; whether the Township  
13           would undertake to provide any information to the  
14           public, anything like that?
- 15   A.    Not that I'm aware of.
- 16   Q.    Did anybody within the Township ever ask you whether  
17           all this campaign literature that was being circulated  
18           and these press stories that were coming out, whether  
19           they were accurate or inaccurate?
- 20   A.    Not that I recall.
- 21   Q.    Do you recall seeing any campaign literature or  
22           campaign ads or anything like that about the --  
23           whether the board's action complied with the master  
24           plan?
- 25   A.    Not that I recall.

- 1 Q. See any campaign ads about economic development?
- 2 A. Not that I recall.
- 3 Q. Did you see any campaign ads talking about sound  
4 planning and zoning principles?
- 5 A. No.
- 6 Q. It's all about Wal-Mart, right?
- 7 A. Correct.
- 8 Q. Did you send any -- well, let me ask you, personally.  
9 Did you have concern that the citizens were  
10 effectively going to the poles to vote to overturn a  
11 board action based on complete misinformation?
- 12 A. Do you mean the, the public, the voters --
- 13 Q. Yes.
- 14 A. -- being misinformed?
- 15 Q. Yes.
- 16 A. It's hard to say whether they paid any attention to  
17 what they read. You know, a lot of them just voted no  
18 because they don't like Wal-Mart.
- 19 Q. Well, again, this -- they voted no because they don't  
20 like Wal-Mart but this referendum had absolutely  
21 nothing to do with Wal-Mart?
- 22 A. Correct.
- 23 Q. Again, begs my question, did it concern you that there  
24 were people going to the poles voting no just because  
25 they didn't like Wal-Mart when in fact Wal-Mart had

1 absolutely nothing to do with what they were voting  
2 on?

3 A. Yes, I do.

4 Q. Did you raise those concerns with anybody within the  
5 Township?

6 A. I think we all, we all agreed that, you know, nowhere  
7 during this whole process of rezoning it did we  
8 consider a Wal-Mart because it was the way the  
9 properties were configured and these things could be  
10 put in there. So Wal-Mart at least to me wasn't,  
11 wasn't the issue.

12 Q. Well, and I understand that on the rezoning and I want  
13 to make sure that I'm keeping the rezoning separate  
14 and apart from the referendum. Because as we have  
15 seen, the referendum truly did not -- Wal-Mart could  
16 put the same store on the Whitman property today than  
17 it could have on December 1st, correct?

18 A. Correct.

19 Q. That it could have on December 2nd, correct?

20 A. Correct.

21 Q. And that it could have on May 6th, correct?

22 A. Correct.

23 Q. Neither the rezoning that the -- the action the board  
24 took nor the referendum changed an inch of land that  
25 was available for a Wal-Mart store on that property?

1 A. Correct.

2 Q. Okay. And you started your answer to my last question  
3 by saying something like we all were concerned. And I  
4 just want to make sure, did you have discussions with  
5 people within the Township where there were concerns  
6 expressed that the referendum was about an issue that  
7 was -- had absolutely no impact?

8 A. The conversation that I had, well, basically it was,  
9 you know, I guess frustration that the, you know, the  
10 referendum was more about the Wal-Mart than how the  
11 property was zoned.

12 Q. And was that a conversation with Mr. Wilburn?

13 A. Yes.

14 Q. Okay. Was there any discussion about trying to  
15 counteract any of the Wal-Mart misinformation that was  
16 being put out there by the Bedford Watch Group?

17 MR. GOLDSMITH: Just let me object because  
18 the expenditure -- if where you're going is the  
19 Township, the expenditure of Township funds to  
20 influence the outcome of an election is not possible,  
21 it's contrary to statute, if that's where you're going  
22 with this.

23 MR. HANSON: Again, Phil, I'm not sure I  
24 heard an objection there. I heard an argument. And I  
25 understand that that might be a relevance objection.

1 But I'll go where I'm going to go.

2 Barb, could you re-read that question?

3 (The last question is read back: Was there  
4 any discussion about trying to counteract  
5 any of the Wal-Mart misinformation that was  
6 being put out there by the Bedford Watch  
7 Group?)

8 THE WITNESS: Not that I'm aware of. I mean  
9 I'm not privy to all the conversations that go on.

10 BY MR. HANSON:

11 Q. As far as you know, did any Township official make any  
12 statement whatsoever in the run-up to the referendum?

13 A. Not that I recall.

14 Q. Do you have any understanding as to how the Bedford  
15 Watch Group is, is funded?

16 A. Through donations for memberships from the people that  
17 belong to it. And I know there is, they are listed as  
18 an LLC, so dues I would imagine.

19 Q. Do you have any knowledge of the Bedford Watch Group's  
20 campaign finances?

21 A. No. I know they are not, and I'm not sure how that  
22 works, I mean whether they are considered a political  
23 action committee or just a private company that has a  
24 mission. So I don't know how they're, how they're  
25 funding works.

1 Q. Would you agree with me, Mr. Jenkins, that the outcome  
2 of the referendum means that the rezoning request  
3 submitted by Whitman Ford had been rejected in --  
4 totally?

5 A. Correct.

6 Q. And right now the zoning on the property is the same  
7 as it's been for the last thirty years or so?

8 A. Correct.

9 Q. In your estimation is that wholesale rejection of the  
10 Whitman Ford rezoning request reasonable?

11 A. In my personal opinion?

12 Q. Yes.

13 A. I don't think it was reasonable.

14 Q. Would you deem it to be arbitrary and capricious?

15 A. No.

16 Q. Why not?

17 A. Are you talking about the referendum?

18 Q. I'm talking about the fact that as we sit here today,  
19 Whitman Ford made six rezoning requests and as we sit  
20 here today each of them has been rejected?

21 MR. GOLDSMITH: I'm just going to object  
22 based upon the fact that, that the last so-called  
23 rejection was done by referendum pursuant to the  
24 Township -- or the Zoning Enabling Act, not by action  
25 of the Township board.

1 THE WITNESS: Correct. I agree.

2 BY MR. HANSON:

3 Q. Unfortunately, you can't just agree with him. You  
4 have to answer my question.

5 My question is, I'm talking about the fact  
6 that each of the rezoning requests, not a single one  
7 has been approved?

8 MR. GOLDSMITH: Objection. Lack of  
9 foundation. It's facts not in evidence.

10 BY MR. HANSON:

11 Q. Would you agree with my statement?

12 MR. GOLDSMITH: Some of them have been  
13 approved.

14 THE WITNESS: Yeah. Some of them have been  
15 approved by the Township board but the voters rejected  
16 them.

17 BY MR. HANSON:

18 Q. Okay. Would you agree with me today that of the six  
19 rezoning requests that Whitman Ford requested, not a  
20 single one is currently in effect today?

21 A. Correct.

22 Q. Either by the board or by the voters, each one has  
23 been rejected?

24 A. Correct.

25 Q. Okay.

1 A. Well, no. The board approved all but one. The voters  
2 rejected all of them. That's the way I understood  
3 your question.

4 MR. GOLDSMITH: By operation of law.

5 BY MR. HANSON:

6 Q. I'm not sure I understood your distinction. The board  
7 approved all but one?

8 A. Right.

9 Q. There was a referendum on those five?

10 A. Right.

11 Q. And the voters rejected those five?

12 A. Right.

13 Q. So the board rejected one, the voters rejected five?

14 A. Correct.

15 Q. As we stand here today, either by board vote or by the  
16 referendum, each of the six has been rejected?

17 A. Right.

18 Q. Okay. And again, in your estimation would those  
19 rejections be deemed arbitrary and capricious?

20 MR. GOLDSMITH: Asked and answered.

21 Objection.

22 THE WITNESS: I'm not an attorney, so.

23 BY MR. HANSON:

24 Q. Just asking for your opinion as the Planning and  
25 Zoning Coordinator of Bedford Township?

1 MR. GOLDSMITH: Asked and answered. That's,  
2 that's one objection. The other objection calls for a  
3 legal conclusion.

4 BY MR. HANSON:

5 Q. If it was asked and answered, I would love to hear the  
6 answer.

7 A. I don't have an opinion on that. I'm not an attorney.

8 Q. You have no opinion?

9 A. No.

10 Q. Currently the western half of the property, the  
11 portion that's designated mixed  
12 office/residential/commercial, what's that currently  
13 zoned?

14 A. R-2A, single-family residential.

15 Q. Does that comport with the mixed  
16 office/residential/commercial Master Plan  
17 designation?

18 A. The entire western half of the parcel?

19 Q. Yeah. The parcel --

20 A. Currently?

21 Q. Yes.

22 A. That's currently zoned residential. Just that  
23 portion, no.

24 Q. Has the Township board considered undertaking an  
25 administrative rezoning to rezone that property so

1 that it does comport with the Master Plan?

2 A. No.

3 Q. From where you sit, was the, was the board's decision  
4 to go against the recommendation of their planning  
5 consultant and the Monroe County planning staff and  
6 the Monroe County Planning Commission influenced by  
7 the Bedford Watch Group?

8 A. I couldn't, I couldn't say whether it was or not.

9 Q. You recall from the last lawsuit Mr. Whitman  
10 presenting a proposal for a Wal-Mart store?

11 A. Yes.

12 Q. You were involved in those discussions, correct?

13 A. Yes.

14 Q. Do you recall approximately how long that process went  
15 on, those discussions?

16 MR. GOLDSMITH: Objection. Relevance.

17 THE WITNESS: I couldn't even guess how long  
18 it went on.

19 BY MR. HANSON:

20 Q. If it went on for six or more months would that  
21 surprise you?

22 A. No.

23 Q. Do you recall there being several meetings?

24 A. I believe there was, yeah.

25 Q. And those meetings attended by Township's attorneys

1 and several different board members?

2 MR. GOLDSMITH: Same objection. Relevance.  
3 Has nothing to do with the current litigation that  
4 we're in now.

5 BY MR. HANSON:

6 Q. Do you recall any of those board members at any of  
7 those meetings ever expressing to Mr. Whitman or  
8 anybody else that they were adamantly opposed to the  
9 development of a Wal-Mart store in the Township on  
10 that property?

11 MR. GOLDSMITH: Same objection.

12 THE WITNESS: I don't recall.

13 BY MR. HANSON:

14 Q. Do you recall that in the first of those several  
15 meetings a schematic drawing of a Wal-Mart store was  
16 shown to the Township officials who were present?

17 MR. GOLDSMITH: Same objection.

18 THE WITNESS: I remember a schematic but I  
19 don't know if it was a Wal-Mart -- specifically was  
20 identified as a Wal-Mart.

21 BY MR. HANSON:

22 Q. Do you have any recollection of what some of the  
23 Township official's comments and concerns were with  
24 regard to the proposal that was being advanced by Mr.  
25 Whitman?

1 MR. GOLDSMITH: Same objection.

2 THE WITNESS: I think it was primarily  
3 buffering.

4 BY MR. HANSON:

5 Q. Do you recall -- strike that.

6 Do you recall there being discussions about  
7 details such as the size of detention ponds and  
8 parking spaces and things of that nature?

9 MR. GOLDSMITH: Same objection.

10 THE WITNESS: I don't recall.

11 BY MR. HANSON:

12 Q. Do you recall there being discussions about signage  
13 and particular site plan restrictions on either the  
14 proposed Wal-Mart or any of the outlots?

15 MR. GOLDSMITH: Same objection.

16 THE WITNESS: I don't really recall.

17 BY MR. HANSON:

18 Q. At some point during the course of those meetings --  
19 well, let me strike that.

20 Did you, did you understand from the outset  
21 of those meetings that if it weren't a Wal-Mart, we  
22 were talking about some form of large scale retail  
23 facility with outlots surrounding it?

24 A. Correct.

25 Q. Do you recall any Township official present at any of

1 those meetings ever saying no, we will not approve  
2 such a settlement?

3 MR. GOLDSMITH: Same objection.

4 THE WITNESS: I don't recall.

5 MR. HANSON: All right. Let's take a break.  
6 I'm going to go get the next three hours of my  
7 questions.

8 MR. GOLDSMITH: Okay.

9 (Off the record at 3:15 p.m.)

10 (Back on the record at 3:43 p.m.)

11 BY MR. HANSON:

12 Q. A couple of things to follow-up, Mr. Jenkins.

13 Were you -- did you have any meetings or  
14 discussions or conversations with any lawyers or  
15 planners or anybody that was hired by the Bedford  
16 Watch Group or any of those individuals?

17 A. No.

18 Q. Are you aware of them having hired any lawyers or  
19 planners or anything like that?

20 A. I don't know that they have hired one but they have  
21 one as a member.

22 Q. And that's Mr. Duggen?

23 A. Correct.

24 Q. Are you aware of any other expenditures that they have  
25 made, might have made, other than we've talked about

1 campaign signs and seen some postcards and stuff like  
2 that; anybody said anything to you, heard anything on  
3 the street, down at the Foodtown, anything about  
4 Bedford Watch having hired anybody or spent any money  
5 on anything?

6 A. Not that I know of other than their website.

7 Q. Getting back to Mr. Duggen and these size  
8 restrictions, I know you mentioned the formula and  
9 it's complicated and you don't know it off the top of  
10 your head, can you give me any examples of any sort of  
11 businesses that would be rendered nonconforming by  
12 these size restrictions?

13 A. There are examples of Taco Bell that they are building  
14 now. The --

15 Q. That's over -- is that Secor and Sterns?

16 A. Yeah. That would not have been possible to be built  
17 under that formula. Just about -- most of the  
18 buildings in that intersection would not be able to be  
19 rebuilt under their formula.

20 Q. How about Northtown Chevrolet?

21 A. Yeah. That would be able to be rebuilt.

22 Q. That would be or would not be?

23 A. Would be. There's enough acreage there.

24 Q. Oh, okay. So it depends on the size of the parcel?

25 A. Yeah.

- 1 Q. Okay. So it's not, it's not like the old size  
2 restriction which was a flat no matter how big your  
3 parcel is it's, it's X; this is some combination of --
- 4 A. If I recall, it is a combination of maximum sizes and  
5 then their calculation of the net parcel area.
- 6 Q. Okay. Now, what does that mean for a nonconforming  
7 building in terms of expansion, renovation, things  
8 like that? Can that business expand or renovate or  
9 change ownership without becoming conforming?
- 10 A. If fifty percent or more of the building is destroyed,  
11 technically no, but they have their options. They  
12 could go to the ZBA.
- 13 Q. Is that the only time if fifty percent of the building  
14 is destroyed that the new regulations would kick in?
- 15 A. Possibly if they would change the use from one  
16 category to another.
- 17 Q. If there was a change of ownership and a change of  
18 use?
- 19 A. No.
- 20 Q. What about change of use?
- 21 A. No. I have to think about that one.
- 22 MR. GOLDSMITH: May I?
- 23 MR. HANSON: No.
- 24 MR. GOLDSMITH: Okay.
- 25 MR. HANSON: You may in a second but let me

1 finish up, finish up.

2 THE WITNESS: I think basically it would be  
3 if more than fifty percent of the building were  
4 destroyed.

5 BY MR. HANSON:

6 Q. Let me ask you about financing. Would it impact, we  
7 talked a little bit earlier about how some residential  
8 property owners were having trouble getting re-fies  
9 and whatnot, would commercial property owners have any  
10 financing difficulties if they were in a nonconforming  
11 situation?

12 A. Yes, unless they self-financed.

13 Q. But getting financing from a bank, getting a loan  
14 against their property might be an issue?

15 A. Yes.

16 MR. HANSON: Okay. Phil, did he say  
17 everything right on that?

18 MR. GOLDSMITH: Pretty close. I mean any  
19 expansion or modification of a prior legal  
20 nonconforming use has to go to the ZBA, has to; and,  
21 and it can be transferred from one owner to the other  
22 without ZBA approval as long as there is not a  
23 manifest to intent to abandon prior to the  
24 nonconforming use but it burdens the property  
25 seriously.

1 MR. HANSON: We're going to have Jon's  
2 deposition of Bill is going to follow this one.

3 MR. GOLDSMITH: I'm sorry, Barb.

4 MR. WHITMAN: You don't have to be sorry,  
5 you're right.

6 BY MR. HANSON:

7 Q. Okay. I wanted to take one more quick look at our  
8 Future, Future Land Use Map.

9 As you look at this map, Mr. Jenkins, can  
10 you tell me, I'm trying to get a sense of what's local  
11 commercial versus what's mixed  
12 residential/office/commercial in terms of what's  
13 developed and what's vacant. In other words, I know  
14 on the Whitman property basically the stuff that's  
15 denoted local commercial is largely developed. I know  
16 there is some undeveloped in there but that's largely  
17 developed whereas the mixed portion is all  
18 undeveloped. And my question is, is that true in  
19 other parts of the Township where you're showing local  
20 commercial and mixed office/commercial/residential?

21 A. Are they developed?

22 Q. Is the, is the pattern that the local commercial  
23 designation is put on property that's already  
24 developed commercial and the mixed  
25 office/residential/commercial designation is largely

- 1 attached to undeveloped property?
- 2 A. No, not necessarily. Developed for their intended  
3 uses of mixed office, right.
- 4 Q. Well --
- 5 A. Or developed in any way?
- 6 Q. Developed in any way?
- 7 A. This has senior housing on it.
- 8 Q. And just so, for the record, you're pointing at the  
9 Dean and Lewis?
- 10 A. Dean and Lewis would be the Moongate Apartment  
11 Complex.
- 12 Q. Okay.
- 13 A. And then Secors south of Sterns is -- half of it is  
14 developed as a commercial, you know, development.
- 15 Q. Would, would, for instance, on Secor and Sterns, would  
16 that need some sort of high density commercial  
17 residential to go with it in order to comport with  
18 that Master Plan designation?
- 19 A. Would it need it? Well, there's not, not residential.  
20 Or it's residential condos. Right now it doesn't need  
21 anything. I mean there is a vacant spot here that was  
22 zoned PBO.
- 23 Q. Okay. Gotcha.
- 24 A. And this area Dean and Douglas is already developed as  
25 the bowling alley and there is a medical complex next

1 to it.

2 Q. Okay. How about down in the Smith Road area?

3 A. This area right here there are some single-family  
4 residences on this property and there's an office  
5 building on the corner. This parcel is vacant and  
6 that's on Lewis south of Smith. And this parcel is  
7 occupied by a church. And this area, a church and a  
8 bank.

9 Q. If, if those parcels similar to the Whitman parcel  
10 were going to be up for development, would it be  
11 your estimation that the Master Plan would require  
12 some form of high density residential on those  
13 properties in order to fit within that mixed use  
14 designation?

15 A. You know, I'm not quite sure how to answer that  
16 question because I don't know if that, again the  
17 Master Plan being a guide, if that category requires  
18 one of each of those elements or whether it can be  
19 two of them or not. Kind of hard to say.

20 Q. Let me ask the question a slightly different way.

21 Would you agree with me that in any sort of  
22 mixed-use-type development, when planners go around  
23 mixed use in this day and age, you're not talking  
24 about mixing uses with single-family residential,  
25 you're talking about mixing uses with typically,

1           you know, some sort of high density new urban  
2           condos or apartments or something like that, is that  
3           correct?

4    A.     Correct.

5    Q.     Okay.  So if there is residential that's going to be  
6           developed on any of these areas that are designated as  
7           the mixed use in the Master Plan, you would expect to  
8           see some sort of high-density type of residential  
9           development?

10   A.     Probably, yes.

11   Q.     Okay.  Has the Township at any point undertaken any  
12           sort of analysis as to whether that sort of  
13           development is needed or desirable or feasible for the  
14           Township to be developed in that fashion?

15   A.     The Township hasn't initiated any studies.

16   Q.     Other than the demographic data in the Master Plan,  
17           correct?

18   A.     Correct.

19   Q.     Okay.  Safe to say isn't it that the Township I think  
20           can be described as a, either rural and/or somewhat of  
21           a bedroom-community type of place; is that fair?

22   A.     Correct.

23   Q.     Okay.  And would you agree with me that new urban  
24           style condos and apartments might not necessarily be  
25           the best match for that sort of a community?

- 1 A. The only condos we have right now are basically geared  
2 towards older residents.
- 3 Q. Sure.
- 4 A. And they're not exclusively older, they've got some  
5 younger people in them but primarily they've been sold  
6 to older residents.
- 7 Q. And have you ever, ever had any developers coming in  
8 looking to develop a condo development or apartment  
9 complex in the Township that wasn't geared towards  
10 senior housing?
- 11 A. Yes.
- 12 Q. Okay. When was that most recently?
- 13 A. Most recently was probably four years ago and that's  
14 at the corner of Smith and Secor.
- 15 Q. And is that developed now?
- 16 A. Partially. The single family is developed and the  
17 infrastructure is between two and four family but then  
18 the market dropped.
- 19 Q. How long has the infrastructure been in?
- 20 A. About two years.
- 21 Q. And no building yet?
- 22 A. Two homes.
- 23 Q. Two of the multiple --
- 24 A. There's two single-family homes.
- 25 Q. Two single-family homes?

1 A. Right.

2 MR. HANSON: Okay. Anything else? All  
3 right. We stand adjourned. Thank you for your time.  
4 We'll see you soon.

5

6 (Deposition concluded at 3:56 p.m.)

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