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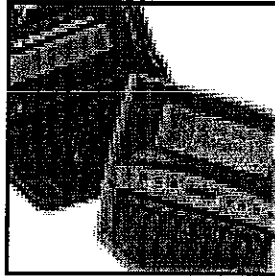
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Whitman Ford v. Township of Bedford

Deponent: Walt Wilburn

Taken: 12/23/2009



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

WHITMAN FORD, a Michigan corporation,
Plaintiff,

-vs-

Civil Action

No. 04-18604-CH

TOWNSHIP OF BEDFORD, a municipal
corporation,
Defendant.

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The Deposition of WALT WILBURN,
Taken at 222 Washington Street,
Monroe, Michigan,
Commencing at or about, 10:15 a.m.,
Wednesday, December 23, 2009
Before Michelle C. Vining, CSR #2335, RPR

1 **APPEARANCES:**

2

3 THOMAS M. HANSON P62725

4 Dykema Gossett PLLC

5 1717 Main Street

6 Suite 4000

7 Dallas, TX 75201

8 Appearing on behalf of the Plaintiff

9

10 PHILIP D. GOLDSMITH P37650

11 Lennard Graham & Goldsmith, PLC

12 222 Washington St.

13 Monroe, MI 48161

14 Appearing on behalf of the Defendant

15

16 **ALSO PRESENT:** LARRY O'DELL

17 JON WHITMAN

18

19

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1 Monroe, Michigan
2 December 23, 2009
3 About 10:15 a.m.

4 WALT WILBURN,
5 having first been duly sworn, was examined and testified on
6 his oath as follows:

7
8 MR. HANSON: Mr. Wilburn, good
9 morning. We have met before. I'm going to tell you what I
10 told Mr. Jenkins yesterday at the start of his deposition,
11 and that is I know you've given testimony regarding this
12 property in the past. There was a prior lawsuit.

13 There are some things that I'm going to assume just
14 to try and expedite things, and I assume that you've got some
15 familiarity with this property and its history.

16 At the same time, if I say something that either
17 you don't remember, or you think I've got wrong, just let me
18 know and we'll go from there; is that fair?

19 A. Fair enough.

20 EXAMINATION BY MR. HANSON:

21 Q. There's a few ground rules. I don't know, well,
22 have you been deposed since the last time I deposed you a
23 couple years ago?

24 A. No.

25 Q. Have you been involved in any other lawsuits either

1 on behalf of the township, or personally in the last couple
2 of years?

3 A. No.

4 Q. Just as a reminder, we do have the court reporter
5 here transcribing everything we say. Because of that, you
6 need to give verbal answers, yeses, and nos as opposed to
7 uh-uh's and uh-huh's. Is that fair?

8 A. Yes.

9 Q. And then for the same reason, even if you know what
10 my question is going to be, if you could let me finish it
11 before you start answering it, and I'll try to do the same
12 and not talk over you, okay?

13 A. Yes.

14 Q. You understand you're under oath, the same oath as
15 if you were sitting in a Court of law?

16 A. Yes.

17 Q. Mr. Goldsmith will sometimes interpose objections.
18 Unless he specifically instructs you not to answer, however
19 I'm still entitled to your answer not withstanding his
20 objection, do you understand that?

21 A. Yes.

22 Q. Are you taking any medications, or have any
23 illnesses that would prevent you from giving your best
24 testimony today?

25 A. No.

1 Q. You are currently Bedford Township Supervisor,
2 correct?

3 A. Yes.

4 Q. Is that your full-time occupation?

5 A. Yes.

6 Q. How long have you been the Bedford Township
7 Supervisor?

8 A. Five years.

9 Q. You were elected in 2004?

10 A. Yes.

11 Q. What are some of your duties as the township
12 supervisor?

13 A. Chief executive officer of the township,
14 spokesperson for the township. I run board meetings, oversee
15 planning, building, assessing, ordinance, and a lot of the
16 general day-to-day duties. Meet with different people, talk
17 to them about things that might be happening in the
18 community. Go out and do things, speak to seniors, stuff
19 like that.

20 Q. How about finances, does your job include --

21 A. Yes, I, part of, I have, we have a Budget
22 Committee, and I'm part of the Finance Committee, too.

23 Q. We were just talking before the deposition about
24 the recession. What in your estimation has been the impact
25 of the recession on Bedford Township's finances?

1 A. It's been a negative impact. We have had to layoff
2 people. Our building department is way down. There's not
3 much going on in the township. So it's been a negative, it's
4 been a negative impact.

5 Q. So you've laid off some Building Department
6 employees. I assume that means inspections and things of
7 that nature which probably due to the recession are, there's
8 not a high demand for them at this point anyway, is that
9 fair?

10 A. Yes.

11 Q. What other sorts of job cuts have you had to
12 undertake? Anything other than in the Building Department?

13 A. Yes, we had in the Assessment Department, we had a
14 receptionist, we don't have that person anymore. So I think
15 we had a total of five employees that we laid off or
16 eliminated the jobs.

17 Q. When were those jobs eliminated?

18 A. Last April. I believe it was that, it took effect
19 last April.

20 Q. What is the Bedford Township, let's go off the
21 record.

22 (An off the record
23 discussion was held)

24 MR. HANSON: Let's go back on
25 the record.

1 BY MR. HANSON:

2 Q. What is Bedford Township's fiscal year?

3 A. July 1 to July 1. July to July.

4 Q. Just so I understand the job cuts, were those jobs
5 eliminated in preparation for your planing for the fiscal
6 year, July 2, 2009 to July 2, 2010?

7 A. Yes.

8 Q. Have you had to amend your budget for the current
9 fiscal year since you adopted that budget?

10 A. We had several limits, yes, amendments.

11 Q. Have those amendments been tied to decreasing
12 revenues?

13 A. Yes.

14 Q. What has been the cause of decrease in revenues
15 from your prospective?

16 A. State revenue sharing.

17 Q. When were the state revenue sharing cuts announced?

18 A. Well, depends on which time you want to talk about.
19 We sort of, we were looking at a moving target from probably
20 February right on through until we passed the budget.

21 I mean which is, you, even right now you don't know
22 if you're to get another one or not.

23 Q. How does Bedford Township provide for police
24 services?

25 A. We have a township millage that provides for four

1 police officers, and we pay for the other six out of the
2 general fund. We paid, it is 80/20. We pay 80 percent, the
3 county picks up the other 20 percent.

4 Q. So the police force has county deputies?

5 A. Yes.

6 Q. That are dedicated to the --

7 A. Subcontracted from the county sheriff.

8 Q. Have you had to eliminate any of your deputies as a
9 result of any of your budgetary reactions?

10 A. No.

11 Q. Do you anticipate having to do that?

12 A. That is a possibility. I mean it's on the table.
13 I mean they are talking. They haven't given us a definite
14 answer. They talked about increasing our eighty percent to
15 maybe a higher number, and if that happens, then we would
16 have to, the Budget Committee, we would have to go back and
17 look at things again to see, we could end, we could end up
18 having to lay off some officers, yes.

19 Q. When you say they're talking about increasing the
20 percentage, you're talking about the county commission?

21 A. Yes, sir.

22 Q. It sounds familiar.

23 Are you currently in your planning process for the
24 next fiscal year budget?

25 A. We have been steady all along, yes. The Budget

1 Committee meets regularly, at least monthly, and will be
2 picking that up meeting right after the first of the year.
3 I'm sure we'll start meeting at least two or three times a
4 month.

5 Q. Who else is on the Budget Committee?

6 A. Mr. O'Dell and Mr. Francis, and our finance
7 director.

8 Q. Who is the finance director?

9 A. Dave Manning.

10 Q. Is he a full-time employee of the township?

11 A. Yes, sir.

12 Q. Again, I will caution you to wait for me to finish
13 my question.

14 A. Okay.

15 Q. Does the township employ an outside accountant?

16 A. Yes.

17 Q. Who is that?

18 A. Don McGuire.

19 Q. Is he with a firm?

20 A. Yes, he has his own firm.

21 Q. His own firm?

22 A. Yes.

23 Q. If you know, for the current fiscal year, what is
24 the township's budget for legal fees?

25 A. I don't recall right off the top of my head.

1 Q. When you were planning, when the Budget Committee
2 was planning its current fiscal year budget, did the
3 possibility of having this lawsuit impact your line item for
4 that legal fee budget?

5 A. We know that there's going to be an expense, and it
6 would come out of the general fund. We probably had
7 estimated maybe possibly anywhere from fifty thousand to a
8 hundred thousand dollars.

9 Q. Has the Budget Committee had any occasion to revise
10 that estimate since you came up with that budget?

11 A. No.

12 Q. Is it fair to say that the budgeting issues have
13 been one of the big issues that you've had to deal with since
14 you've been supervisor of the township?

15 A. This year, yes.

16 Q. In past years, not so much?

17 A. In past years, until we started hitting this
18 recession thing. We were doing fairly, we were doing very
19 good.

20 Q. Just generally speaking, what are some of the other
21 big issues in your own words that the Board has had to deal
22 with since you've been supervisor?

23 A. Roads. It is a constant issue. We're facing a big
24 problem there right now because of all the funding cut-backs.
25 Once again, our Building Department, our building funds are

1 way down. The economy in general is way down. We're losing
2 businesses, you know, small businesses are closing up because
3 they just can't make it.

4 So those are some of the things we're dealing with,
5 and just trying to keep things afloat.

6 Q. Do you have any, can you give me a ballpark on how
7 many small buildings have closed up say in 2009?

8 A. I'd say at least five, okay, and I don't know if
9 that is good number or not.

10 Q. Fair enough. I'm just trying to, like I say, I'm
11 trying to get a ball park.

12 You mentioned roads. When you said funding cuts, I
13 presume you're talking about cuts made by the Monroe County
14 Road Commission?

15 A. Yes.

16 Q. Does the county road commission have ownership of
17 all public roads in the township?

18 A. Yes.

19 Q. What is the township's financial contribution for
20 upkeep of the roads?

21 A. Right now, it would be one hundred percent. If we
22 want anything done. I mean, I mean at least, if we want to
23 fix a road or anything like that, there's, you know, we'd
24 have to pay for it.

25 Q. How about regular maintenance such as snow plowing,

1 salting and things of that nature?

2 A. They are doing the best they can, which is not an
3 acceptable job as far as we're concerned.

4 Q. So is the township having to expend funds to do
5 those sorts of -

6 A. We don't have them to expend right now.

7 Q. What is the road commission's policy in terms of
8 clearing snow after a snow event?

9 A. They'll do the primary, well, they will do the
10 state roads first, repair roads next, and if they can get to
11 the subdivisions in three or four days, they're the last.

12 Q. They don't authorize any overtime to plow roads at
13 this point?

14 A. You'd have to ask them.

15 Q. How about salting, is it the same thing?

16 A. Yes, sir.

17 Q. You mentioned the roads. You've mentioned at lot
18 of the budgetary impacts. Any other big issues that the
19 Board has had to deal with since you've been supervisor?

20 A. Well, we built, you know, a new Township Hall.
21 Things like that. There's been several issues, but I don't
22 know if you want to call them issues, or just things that we
23 normally, we had to get done.

24 Q. I'm just trying to get a sense of things that have
25 taken up more or less of your, or the Board's time. It

1 sounds like the budget and the recessionary impacts have been
2 the biggest?

3 A. The Board, there was a lot of time spent on putting
4 together a plan for the Township Hall. We have been working
5 on streetscapes. We have parks we have been working on. We
6 have, trying to, the Economic Development Committee has been
7 working on streetscapes.

8 We have a park that the DDA has been working on,
9 and there's been, but just to have any one thing, you know,
10 there's a whole group of things that you're doing all at the
11 same time.

12 Q. How about the rezoning of the Whitman property,
13 would you characterize that as a significant issue that the
14 Board has had to deal with?

15 A. Yes.

16 Q. Since you've been supervisor?

17 A. Yes.

18 Q. I want to get just your thoughts on what generally
19 speaking a rezoning entails. And again, from your
20 prospective, what in your mind are some of the material
21 factors that are important in considering a rezoning request?

22 A. Does it fit the needs of the community. I would
23 say is that is an appropriate thing. I'd want to take a look
24 at what kind of an impact it has in the area, where it is
25 being done, and the other thing is how the Planning

1 Commission feels about it, and how the community planning
2 feels about it, and we try to listen to what they have to
3 say.

4 Q. How do you assess, you mentioned the needs of the
5 community. How do you assess whether a rezoning application
6 fits the needs of the community?

7 A. Well, I guess you'd, I would look at it and say you
8 know, is this something that Bedford needs that is going to
9 be, as it is being proposed to go there. I mean there's a
10 lot of things that would have to go into that answer.

11 Q. I'm trying to get a sense of what some of these
12 things might be.

13 Is it your own personal observation, do you talk to
14 people in the community, do you read newspapers, do you read
15 internet blogs?

16 A. All those things.

17 Q. Do you ever conduct any sort of economic analysis
18 or feasibility studies or anything like that?

19 A. Well, I think that we have looked at the Planning
20 Commission, things like that. I mean we try to get a pulse
21 of what is going on and how people feel about things. At
22 least, I don't, I'm out in the community a lot and I'm one to
23 one, face to face with people, so you can go to the Dairy
24 Mart and find out anything you want to find out.

25 Q. How about on the specific question of does the

1 township ever undertake any sort of economic analysis or
2 feasibility study of a proposed rezoning?

3 A. I, as a board, we haven't.

4 Q. Have you ever done so on your own or individually?

5 A. No. I mean I think our township planners, that is
6 what we depend on them to do.

7 Q. When you say township planners, who are you
8 referring to?

9 A. Well, I would say Wade Trim.

10 Q. They are the township's hired planning consultant?

11 A. That is, yes.

12 Q. I think you also said something to the effect of
13 you look at whether it has an impact on the community. What
14 sort of impact are you talking about?

15 A. Well, does it go along with the Master Plan that
16 the people put together, things like that. That is what I'm
17 talking about.

18 Q. For you personally, how big of a role does the
19 Master Plan play in your decision as to whether to approve or
20 deny a rezoning request?

21 A. I would say it has to play a big role, okay, in
22 what we do. Because if we, you know, that is something that
23 the community, residents have put together, and I think that
24 is part of our job is to listen to what they have put
25 together and try to adhere to it as much as possible..

1 Q. If you have got a rezoning request coming up on a
2 Board agenda, do you do it with the Master Plan and make your
3 own determination as to whether the Master Plan supports it
4 or doesn't support it?

5 A. Yes.

6 Q. Do you also look at what the township planners have
7 to say on whether the Master Plan supports it or doesn't
8 support it?

9 A. Yes.

10 Q. I think you also mentioned county planning. Would
11 you also rely on their analysis as to whether it fits the
12 Master Plan or not?

13 A. Yes, I would take all those into consideration.

14 Q. Do you ever consult any other outside planning,
15 experts other than your consultants at Wade Trim in
16 connection with analyzing a rezone request?

17 A. No.

18 Q. You personally, you don't have a land use or a
19 planning background, you don't have an education or prior
20 work history prior to becoming supervisor?

21 A. No.

22 Q. How about Mr. Jenkins, do you ever discuss rezoning
23 applications with him in connection with making a
24 determination on whether it should be approved or denied?

25 A. I never approach it that way.

1 Q. How would you approach it?

2 A. I may ask him, you know, what is going on, or ask
3 for information from him.

4 Q. But you would never seek his opinion?

5 A. I didn't ask for his opinion or what his decision
6 might be, no.

7 Q. Why is that?

8 A. All I want is the information. I'll make my own
9 mind up.

10 Q. Would it be fair to say though that you will look
11 at the opinion of Wade Trim or County Planning, is that
12 correct?

13 A. I will look at our Planning Commission, not just
14 Mr. Jenkins, okay, County Planning and Wade Trim. We look at
15 all the reports when there's something like that in front of
16 us for a rezoning. We have all these reports. As board
17 members it's our job to study those to try to make a good
18 decision on what is before us.

19 Q. When you're considering a rezoning application, do
20 you ever consider specific businesses that might be able to
21 be located on a property if the rezoning application is
22 approved?

23 A. I think that's usually what is in front of us when
24 somebody is asking for rezone and usually, usually you're
25 looking at what is going to be put there. That is why the

1 rezoning is requested in most cases.

2 Q. How about if the applicant is not proposing a
3 specific business, but is simply proposing a rezoning, would
4 you consider specific businesses or stores, or types of
5 structures that could be placed on the property?

6 A. For that type of zoning?

7 Q. Yes.

8 A. Well, I think you, yes, you have to, I mean your
9 zoning ordinance is going to tell you what could be on there
10 according to what it's zoned.

11 Q. Are you aware of during your tenure as supervisor
12 an applicant ever being required to complete any sort of
13 feasibility study or impact study, or economic analysis, or
14 market demand study, or anything in connection with the
15 rezoning application?

16 A. I don't recall for sure, but I think we might have
17 asked another individual to do an impact study on roads.

18 Q. Do you recall which circumstance that might have
19 been?

20 A. It was a subdivision going in on Erie Road, and I
21 think we might have asked, I'm not positive about that, we
22 asked for the study on the traffic count.

23 Q. Was that in connection with the rezoning
24 application or in connection with an actual site plan
25 approval?

1 A. Site plan and rezoning.

2 Q. Was it a PUD?

3 A. No. No.

4 Q. Are you aware of instances in connection with site
5 plan approvals where the road commission has requested
6 traffic studies prior to approving?

7 A. I'm not aware of it.

8 Q. Other than that one perhaps traffic study that
9 might have been requested on the subdivision on Erie Road,
10 can you think of any other instances where the Board has
11 requested any sort of again, I'm throwing out a bunch of
12 words and I'm trying for it to be a catch-all, but traffic
13 studies, market demand studies, feasibility studies, impact
14 studies, anything like that?

15 A. Not that I recall.

16 Q. Is it fair to say that the township itself has
17 never engaged anybody to conduct any of those sorts of
18 studies in connection with the rezoning application?

19 A. Not that I'm aware of.

20 Q. How would you describe your level of familiarity
21 with the township's current Master Plan?

22 A. I'd say fairly well.

23 Q. Is it a document that you have occasion to review
24 on a regular basis?

25 A. Well, I have a lot of things to look at, Mr.

1 Hanson, and that is not one I pull out every day and look at.
2 I look at it when there's a need for me to look at it, I take
3 a look at it. I don't go look at it every day.

4 Q. Again, I'm just trying to get a sense of whether it
5 is a document you've never looked at, or whether it a
6 document you look at ever day, and it sounds like it is
7 somewhere in between that?

8 A. Somewhere in between, yes. I'm familiar with it,
9 but it is not one I pull out to look at every day. There's a
10 lot of things we, to look at. We generally look at what we
11 have to look at about what is going on at the time.

12 Q. So in connection with some other issue that is in
13 front of the Board that might require review of the Master
14 Plan, you might pull it out and take a look at it, is that
15 fair?

16 A. Yes.

17 Q. Some of these questions are based on some things
18 that Mr. Jenkins told me yesterday, and I know you weren't
19 present for that, and if I mischaracterize anything, I'm sure
20 your attorney will let us all know very quickly.

21 Are you familiar with any plans by your Planning
22 Department to update the Master Plan?

23 A. I do believe that we're getting ready to update the
24 Master Plan here in the near future, yes.

25 Q. Do you have any understanding of what some of the

1 issues that might be looked at in connection with that
2 update?

3 A. No, I couldn't, I can't elaborate on that because I
4 really don't know exactly what, where that is going to lead
5 us to.

6 Q. Is that the sort of things that Mr. Jenkins would
7 typically come to you and say, you know, Supervisor Wilburn,
8 we need to take a look at our Master Plan, so I'm going to be
9 working on that for the next few weeks, is that, I'm trying
10 to get a sense of how the office works?

11 A. We are required by law to do it, okay, to keep that
12 Master Plan updated, and I believe it's every five years we
13 have to take it out and look at it. Okay. And I believe
14 that is where we're at right now.

15 Q. Are you familiar with the future land use map in
16 the current Master Plan?

17 A. Uh-huh.

18 Q. Is that a yes?

19 A. I'm sorry, yes.

20 Q. Are you, well, here, let me pull it out so we can
21 take a look at it. We didn't mark this as an exhibit
22 yesterday, and I'm not going to mark it today either.

23 This is, I'll represent to you that this is a copy
24 of the township's current Master Plan, and this is what is
25 depicted as the Master Plan map.

1 Is this when I say future land use map, is this
2 familiar to you as to what I'm talking about?

3 A. Yes.

4 Q. Are you familiar with the commercial designations
5 on Bedford Township's future land use map?

6 A. Uh-huh.

7 Q. Is that a yes?

8 A. Yes.

9 Q. Is it accurate to say that the only stand alone
10 commercial designation in the Bedford Township Master Plan is
11 for what is called local commercial?

12 A. Yes.

13 Q. I'm just asking you as township supervisor, does
14 that cause you any concern, do you have any issue with the
15 fact that that is the only commercial stand alone
16 designation?

17 A. Right now?

18 Q. Yes.

19 A. No.

20 Q. How about not right now, but, well, when you
21 limited it as right now, is that because of the current
22 economic recession?

23 A. Yes.

24 Q. In a more healthy economy, would that, the fact
25 that there's only a local commercial stand alone designation

1 be of concern to you?

2 A. Yes.

3 Q. Is that one of the things that the township might
4 look at as it prepares to update its Master Plan?

5 A. I can't speak to that because I don't know what the
6 group will look at first.

7 Q. Fair enough. Fair enough.

8 I'm going to flip back to page 95 of the Master
9 Plan. Specifically I'm look at the text accompanying the
10 local commercial designation.

11 In particular, Mr. Wilburn, I'd like to direct you
12 to a sentence about in the middle of the text that says
13 individual businesses within the local commercial area should
14 not exceed five thousand gross square feet, and commercial
15 buildings for multiple tenants shall not exceed ten thousand
16 gross square feet. Do you see that?

17 A. Yes.

18 Q. In your opinion, is that a hard and fast
19 requirement of the Master Plan that needs to be applied when
20 you are looking at a rezoning application?

21 A. I have never looked at it, looked at one with that
22 in mind. So I really don't have a good answer for you, Mr.
23 Hanson.

24 Q. I'll try and get at it then a slightly different
25 way. I disagree, I think that answer was fine.

1 But having said that, would you, if you were
2 considering a rezoning application, would you believe it to
3 be a reason to deny that rezoning application because of the
4 potential that that square footage restriction might not be
5 able to be enforced?

6 A. Well, if this is, this is what is in the Master
7 Plan right now, this is also what is in our ordinance right
8 now, that number? That is what I'm trying to get at here
9 because I know that is where we're going.

10 Q. Well, we're going there but just not yet.

11 A. Okay.

12 Q. I'm not talking about the ordinance. The ordinance
13 is something different, and I know that the ordinance is what
14 you look at when you're looking at a site plan?

15 A. Right.

16 Q. And in trying to decide whether to approve a site
17 plan or not. Right now I'm just talking about a --

18 A. Zoning issue.

19 Q. A zoning issue and a rezoning application. When
20 you're not looking at a site plan, you don't have any sort of
21 proposed footprint or anything like that, and really maybe my
22 question can be more directly stated in this fashion.

23 If you have a rezoning application to a commercial
24 zoning in an area that is designated in the future land use
25 map as local commercial, would you believe that that square

1 footage restriction would effectively prohibit any commercial
2 rezoning on a property that could support a building greater
3 than those square footage restrictions?

4 MR. GOLDSMITH: I will object.

5 Asked and answered, because I think he answered it by
6 stating, by asking you a question, and I understand this is
7 his deposition, as to what the zoning ordinance calls out.

8 MR. HANSON: You can answer.

9 MR. GOLDSMITH: You can answer.

10 A. Well, it's a zoning request, okay. So if it is a
11 zoning request, you don't know what is going to go on there.
12 So then the zoning request, if you're, you don't always know
13 what is going to be put on the property, but if it is
14 rezoned, then they are going to have to adhere to that, or
15 they're going to have to adhere to the ordinance. And
16 whether it is denied or not, that is not up to me to decide.
17 That is up to the Board of Zoning Appeals or the Planning
18 Commission.

19 BY MR. HANSON:

20 Q. I think I understand your answer to be that you
21 wouldn't take that square footage limitation into account in
22 connection with a zoning application, is that a fair
23 response?

24 A. How could I? I don't know what is going to go
25 there.

1 Q. How familiar are you with the, let me ask one other
2 question while we're on this particular point.

3 The township also has a mixed residential, office,
4 commercial Master Plan designation, correct?

5 A. Uh-huh.

6 Q. Yes?

7 A. Yes.

8 Q. Turning to the next page, the second paragraph of
9 this text here, and specifically the last sentence says the
10 emphasis of this designation is a combination of residential,
11 offices and local commercial uses. Do you see that?

12 A. Yes.

13 Q. My question is the local commercial uses that is
14 referred to in that text, does that in your mind correspond
15 with the local commercial designation set forth earlier in
16 the Master Plan?

17 A. Yes.

18 Q. In your mind, is a rezoning application not in
19 compliance with the Master Plan if be rezoning it makes the
20 property capable of serving a market greater than just the
21 local market?

22 A. Well, it says local there, so I don't really know
23 how to answer that question.

24 Q. I don't either. I mean that is why I'm asking you.

25 Would you reject a rezoning application if it gave the

1 property the opportunity to serve more than just a local
2 market?

3 A. No.

4 Q. You don't believe the Master Plan prohibits that?

5 A. No.

6 Q. Would you agree with me, well, let me step back and
7 ask your level of familiarity with the commercial zoning
8 classifications. I'm not talking about the Master Plan now.
9 I'm talking just the zoning ordinance.

10 A. C-1, C-2, C-3?

11 Q. Yes.

12 A. Yes.

13 Q. Would you agree with me that any of those zoning
14 classifications might fit within the local commercial
15 designation in the Master Plan?

16 A. Yes.

17 Q. Going back to the mixed office residential
18 commercial Master Plan designation, would you agree with me
19 that Bedford Township doesn't have a single stand alone
20 zoning district that fits into that Master Plan designation?

21 A. I'm not aware of that.

22 Q. Does that mean you're not aware of any, or you just
23 don't know off the top of your head?

24 A. I don't know off the top of my head.

25 Q. Fair enough. As the Master Plan updating process

1 proceeds, what do you anticipate your role being in that
2 process?

3 A. Probably very little, because it basically, you
4 know, the citizens and the Planning Commission and they're
5 the ones that make the decision. I don't like to, I'm, I'm
6 not going to be in there. I don't think it's up to me to
7 have an impact on what their decisions are, okay.

8 As township supervisor I think I should sort of be
9 a little bit, stay a little bit away from that. I don't want
10 to be on top of it. I want to know what is going on, but I
11 don't know want to be influential in their decision making.

12 Q. As you know, we had a lawsuit regarding this
13 property a couple years ago. The township won that lawsuit.
14 I'll represent to you that it was February or March of 2007.
15 I don't remember exactly off the top of my head, but do you
16 recall some time after that, in fact, earlier this year Mr.
17 Whitman coming in and having a meeting with you and Mr.
18 Jenkins about a new rezoning request for that property?

19 A. I recall that Jon came in, yes, and we talked, you
20 know.

21 Q. What can you tell me about that meeting?

22 A. The only thing that I can say that there was
23 something, there was a, I think he, we were presented a
24 schematic, and Mr. Whitman also knows that there's no
25 decision making in my office, and also that anything there

1 just because I look at it, maybe I like it, maybe I don't,
2 but it always has to go to the Township Board. That is the
3 truth. I know that Jon would agree that that is what we
4 talked about.

5 Q. Is there anything else that you can remember about
6 that meeting? Was it a friendly meeting, was it acrimonious?

7 A. A friendly meeting.

8 Q. Do you recall there being any discussion about
9 testimony that had been given in the prior lawsuit, either in
10 deposition or during the trial itself?

11 A. I don't recall anything, Mr. Hanson.

12 Q. Do you recall there being any discussion on Mr.
13 Whitman's part of the reasons for why he was preparing his
14 rezoning request the way he was preparing it?

15 A. It's been two years I think now, if not longer
16 since we talked about that. But I think if you, Mr. Whitman
17 was trying to follow the direction that he felt he had been
18 given.

19 Q. Do you recall when you were in that meeting whether
20 you agreed that Mr. Whitman was trying to follow direction
21 that he had been given, you disagreed, you had no opinion?

22 A. I don't think I gave any opinion at that time.

23 Q. How about as you sit here today, have you formed
24 any opinion as to whether Mr. Whitman in formulating a new
25 rezoning request was trying to follow the direction he had

1 been given?

2 A. I think that was pretty much stated in our vote
3 when we voted on this rezoning request.

4 Q. Do I take that answer to be that no, you don't
5 think that Mr. Whitman followed the direction he had been
6 given?

7 A. I think that the Board agreed with almost
8 everything, 90, 95 percent of what Mr. Whitman had submitted.
9 We just didn't agree with one piece of it, and that is the
10 part that we voted against.

11 So for the most part, I felt that he had done, he
12 was trying to do the best he could to do what he was asked to
13 do.

14 Q. Again, to parse your answer a little bit there, do
15 I take that to mean that in your estimation on what we have
16 been calling Parcel 6, the middle parcel, do you understand
17 what I mean when I say Parcel 6?

18 A. Yes, sir.

19 Q. Actually let's just --

20 A. I know right where it's at.

21 Q. Let's really quickly, this was marked yesterday for
22 Dennis' deposition, but to make sure we're clear, this was
23 Exhibit 1. When I'm talking about Parcel 6, I'm talking
24 about the parcel that on this exhibit 1 says R-2A to C-2,
25 8.28 acres.

1 I just want to make sure we're all talking about
2 the same thing here.

3 A. I know.

4 Q. Getting back to it, do I take it by your answer
5 then that in your estimation, Mr. Whitman had not followed
6 the previous direction that he had been given with regard to
7 his request for Parcel 6?

8 A. I can't, you know, I'm not going to say that he
9 didn't follow direction, because I don't know exactly what
10 direction he was given, because there was a whole trial that
11 went on. There was a lot said in that trial. I didn't say
12 everything in that trial. There was a lot of expert
13 witnesses that talked in that trial.

14 I just felt the Board felt that he, that the plan
15 he submitted, we agreed on everything except for the one
16 parcel. I can't say somebody is wrong just because, you
17 know, we disagreed with the zoning of that piece. That's it.

18 Q. In connection with the 2008 rezoning application,
19 did you go back and review testimony from the trial, or from
20 depositions in connection with making your determination?

21 A. I looked at the Master Plan, okay, and found that
22 to be the best transitional zoning according to the Master
23 Plan.

24 Q. I appreciate that answer, but I'm not sure it
25 responded to my question, which is did you personally go back

1 and look at trial testimony, or deposition testimony?

2 A. No.

3 Q. Do you believe that testimony from the prior
4 lawsuit, whether in deposition or at trial, is not relevant
5 to making a determination on the 2008 rezoning request?

6 A. I took the information that I felt was important,
7 looked at it, and made my decision based on that, and that
8 was the Master Plan. Transitional zoning is what I was
9 looking for, and I didn't base it on what was said in the
10 trial, no. That is what I look for, and that is what I based
11 it on, and I didn't base it on what was said in the trial.

12 Q. I understand your testimony is clear that you
13 looked at the Master Plan and that you didn't look at
14 testimony from the trial. My question is slightly different.

15 A. Okay.

16 Q. Did you believe that the prior trial testimony
17 would not be relevant to making your determination?

18 MR. GOLDSMITH: Let me object.
19 I think the question has been asked and answered, and I
20 think, Tom, you are getting into an area that you're
21 precluded from getting into, and that is inquiring as to the
22 reasons for the decision that he as a Board member made in
23 connection with this rezoning application.

24 MR. HANSON: I'm simply trying
25 to get a sense of what information he felt was relevant and

1 not relevant. I mean, and to me he hasn't answered that
2 question. It is really yes or no.

3 I've heard you say that you didn't look at it, and
4 if that means that you didn't think it was relevant, that's
5 fine. Is that your answer?

6 A. I'll say yes to that.

7 BY MR. HANSON:

8 Q. Did you have any understanding of changes that were
9 made to Mr. Whitman's rezoning application from the time you
10 met with him earlier this year to the time he actually
11 submitted his rezoning request, do you have any familiarity
12 with any of these changes?

13 A. I just, I saw what the rezoning request was going
14 to look like.

15 Q. And I understand that. I guess my question is, I
16 know that you got a rezoning request in your board packet
17 when it came time to vote on it, and you got the consultant's
18 opinion, the Planning Commission recommendation, and
19 community planning recommendation on that rezoning request.

20 My question is did you have an understanding of
21 whether that rezoning request had changed at all from the
22 time you first met with Mr. Whitman to the time it was
23 finally in and officially submitted?

24 A. I don't recall, Mr. Hanson.

25 Q. Did you personally, either at that meeting that we

1 we're talking about earlier, or at any time afterwards make
2 any suggestions or comments to Mr. Whitman about his rezoning
3 request that he did not follow?

4 A. No.

5 Q. Are you aware of anybody at the township either
6 board, planning commission, or not an official, but somebody
7 in the planning department or anywhere else having made any
8 suggestions or comments to Mr. Whitman about his rezoning
9 application that he did not follow before he submitted it to
10 the township?

11 A. Not that I'm aware of.

12 Q. Mr. Wilburn, I'm going to hand you an exhibit that
13 was marked yesterday as exhibit 7 to Mr. Jenkins' deposition.
14 This is an August 13 Wade Trim letter.

15 Phil, I'm not going to remark it.

16 MR. GOLDSMITH: No, that is not
17 necessary.

18 MR. HANSON: Mr. Whitman, what
19 has been placed in front of you and previously marked as
20 Exhibit 7 in Mr. Jenkins' deposition is an August 13, 2008
21 letter from Wade Trim regarding the Whitman Ford rezoning
22 request. Have you had an opportunity to review this letter
23 in the past?

24 A. It has been awhile.

25 Q. Is this one of the piece of information that you

1 would have reviewed in connection with making your
2 determination?

3 A. Yes.

4 Q. On page five of this letter under the heading of
5 Findings, Mr. Young has a long paragraph of text, and then
6 he's got a concluding sentence, and you probably recall and
7 you see that Wade Trim suggested the Planning Commission
8 recommend that the township rezoning request be approved. Do
9 you see that?

10 A. Yes.

11 Q. Then he gives a number of reasons. The first being
12 that the proposed rezoning would provide an effective land
13 use transition from the existing single family residential
14 subdivision to the west, to the more intensive commercial
15 portions of the site along Lewis Avenue. Do you see that?

16 A. Yes.

17 Q. Do you agree with that?

18 A. Do I agree with what?

19 Q. With what Mr. Young has stated there about the
20 proposed rezoning providing an effective land use transition?

21 A. I agree with what I voted on, okay.

22 Q. My question is do you agree with what Mr. Young
23 stated in his letter?

24 A. Apparently not, because it is not exactly what I
25 voted on.

1 Q. So the answer is no?

2 A. I guess, yes, the answer would be no.

3 Q. What is the basis, Mr. Wilburn, for your
4 disagreement with that statement?

5 A. You're going from a residential to resident, you're
6 still having the RME, multiple houses which is still
7 residents, and you weren't asked to go to PBO, and then
8 commercial, which is transitional zoning in my eyes.

9 Q. Just so I can understand your answer, it's your
10 belief that transitional zoning should have PBO in between
11 the multi-family and senior housing zones proposed by Mr.
12 Whitman?

13 A. Yes.

14 Q. And the commercial zones proposed by Mr. Whitman?

15 A. Yes.

16 Q. Is that belief in land use transition, is that just
17 based on your own personal opinion, or is that something that
18 you've gotten consultation on from --

19 A. It is based on looking at the Master Plan and being
20 counseled, you know, and doing some studying on it, yes.

21 Q. What sort of studying?

22 A. Well, looking into land uses in other areas and
23 seeing transitional zoning trying to come up with a
24 definition of transitional zoning. To me that is
25 transitional zoning. That is the reason I voted the way I

1 did for that zoning application.

2 Q. What other sorts of things, you mentioned the
3 Master Plan. What other, and you also mentioned looking at
4 some other land use patents. Are you talking about other
5 land use patents in the township?

6 A. No, I'm talking about, I'm talking about talking to
7 other people who are in different townships and asking them
8 how do you know, what you think about this transitional
9 zoning, and then going to some of the planning people,
10 talking to them.

11 To me this is consistent with the Master Plan, you
12 know, in a transitional zoning area. Once again, this is
13 what the Township Board voted on. That is what I voted on.
14 So that is my answer.

15 Q. You mentioned having talked to some people in other
16 townships. Who are some of these people?

17 A. I talked to several people.

18 Q. Do you recall who any of them were?

19 A. Not right off the top of my head.

20 Q. Would you have talked to other supervisors in other
21 townships, or planning officials in other townships?

22 A. I had talked to several people about this, and I
23 don't recall exactly who they were, okay.

24 Q. Then I think you said you talked to some of our
25 planning people. Do you recall who some of these planning

1 people were?

2 A. No, not planning people, but Mr. Jenkins.

3 Q. So you talked about studying the Master Plan and
4 you talked about studying some other land use transitions,
5 and talking to some people in other townships and talking to
6 Mr. Jenkins.

7 Any other bases for your belief, for your
8 disagreement with Mr. Young's statement here?

9 A. The only thing I can tell you is I try to get my
10 own, figure the definition of transitional zoning and how it
11 fits into the Master Plan, and what we were asking him to do
12 here, and that is how I felt about it. That is what I come
13 up with. This would be a good transitional zoning going in
14 to the commercial part of it.

15 Q. When you say this would be a good transitional
16 zoning --

17 A. No, I'm talking about what we voted on at the
18 Township Board.

19 Q. Did you talk to Mr. Young?

20 A. No.

21 Q. Did you talk to Paul Leblanc?

22 A. No.

23 Q. Did you talk to Julie Johnston?

24 A. No. I read their reports.

25 Q. The second reason given by Mr. Young for his

1 suggestion of recommend approval is that the proposed
2 rezoning is generally consistent with the future land use map
3 of the Master Plan, which designates the subject site as
4 mixed residential, office, commercial in the western portion
5 of the site and local commercial in the eastern portion of
6 the site.

7 Just focusing on his conclusion that they proposed
8 generally is consistent with the future land use map, do I
9 take it you disagree with his conclusion there?

10 A. Yes.

11 Q. Why is that, what is the basis for that
12 disagreement?

13 A. Same reason I gave on the other is because I voted,
14 I thought that the PBO was a better transition in zoning
15 going toward the commercial. Bring it between the
16 multi-family and a C-2.

17 Q. Well, I guess my question is slightly different,
18 because his conclusion is slightly different. He is talking
19 about being consistent with the future land use map. And my
20 question is more specifically, what is your basis for
21 believing that Mr. Whitman's rezoning application was not
22 consistent with the future plan use map, is there some
23 portion of the master land use?

24 A. There's nothing that I didn't base it on to tell
25 you the truth. I based it upon what I was looking at as far

1 as that piece of property and transition. As far as the
2 future land map use, I didn't base a decision on that. So
3 what he says here about the future land use map, I don't, I'm
4 didn't look at that part.

5 Q. The second sentence in that paragraph says although
6 no future land use designation in the township specifically
7 encourages " general commercial " close quote uses that
8 cater to a more regional market, the proposed C-3 district
9 portion of the subject site is appropriately buffered from
10 adjacent residential uses and is strategically located along
11 Lewis Avenue, a major township thoroughfare.

12 Do I take it that you disagree with his conclusion
13 that I just read in that sentence?

14 A. About it being a strategically located along Lewis
15 Avenue, a major thoroughfare?

16 Q. Yes. We can break it down. Do you agree or
17 disagree?

18 A. I agree with that part.

19 Q. How about the proposed C-3 district portion of the
20 subject site is appropriately buffered from adjacent
21 residential uses. Do you agree with that?

22 A. The proposed site that you've just showed me?

23 Q. Yes, I can, let me put it back in front of you so
24 you can see.

25 A. Once again, this is a good buffer, but then we need

1 something between here and there. Okay. That is what the
2 whole, that is what the whole thing was about.

3 You still have multiple housing here. You want to
4 go to C-2. We're saying this should be PBO, and I still say
5 that. It doesn't matter what he says. That is still how I
6 feel about it.

7 Q. It doesn't matter what Mr. Young says?

8 A. I mean it doesn't, that doesn't have any bearing on
9 the decision I made there, no.

10 Q. If you can recall, Mr. Wilburn, how many times in
11 your tenure as supervisor have you voted on something that
12 was contrary to the recommendations of Wade Trim?

13 A. That I don't recall.

14 Q. Is it something that happens frequently?

15 A. No. I wouldn't say that.

16 Q. Can you recall other than this case any specific
17 instance, and let me change my question slightly. Can you
18 recall any specific instance where the Board voted on
19 something that was contrary to the recommendation of Wade
20 Trim?

21 A. I don't recall.

22 Q. If you flip to the back on Exhibit 7 that we were
23 looking at, Mr. Young has a third reason for his
24 recommendation of approval. He says the proposed rezoning
25 request is generally consistent with the surrounding zoning

1 and land uses found in the vicinity of the subject site as an
2 appropriate land use transition is employed along the
3 adjacent single-family residential properties and as a
4 variety of commercial lands are currently found along the
5 east side of Lewis Avenue and at the corner of Lewis/Sterns.

6 Do you see that?

7 A. Yes.

8 Q. Do I take it that you disagree with that statement?

9 Actually let me break it down.

10 A. Please.

11 Q. Since he says several things in there.

12 A. Yes.

13 Q. Let's start with the first part. The proposed
14 rezoning request is generally consistent with the surrounding
15 zoning and land uses found in the vicinity of the subject
16 site. Do you agree with that statement?

17 A. He says generally. So that leaves room. So, okay,
18 I'll agree with that statement, yes.

19 Q. And then he goes on to say as an appropriate land
20 use transition is employed along the adjacent single-family
21 residential properties, do you agree with that statement?

22 A. I agree that that is true with the RME and the
23 RM-2, okay. So far so good.

24 Q. Then he goes on to say and as a variety of
25 commercial lands are currently found along the east side of

1 Lewis Avenue and at the corner of Lewis/Sterns.

2 Do you agree with that statement?

3 A. I believe so.

4 Q. Did we go three for three on that? Do you agree
5 with what is stated in paragraph 3?

6 A. Once again, we can go through this every time you
7 want to, but it still it boils down to that right there, and
8 that is the only thing that we're going to disagree on, okay.

9 Q. And that right there again, you pointed to Parcel
10 6?

11 A. Parcel 6, yes.

12 Q. Paragraph 4 of the rezoning or of Mr. Young's
13 letter, excuse me. He states the rezoning of the subject
14 site would allow for a planned and compact mixed use,
15 residential, office and commercial development at a strategic
16 location, representing an improvement to the vicinity and
17 Township as a whole.

18 And again, he says a couple of things there's so
19 I'll break it down.

20 The first part, the rezoning of the subject site
21 would allow for a planned and compact mixed use, residential
22 office and commercial development at a strategic location; do
23 you agree with that statement?

24 A. Yes.

25 Q. Then he concludes by saying representing an

1 improvement to the vicinity, do you agree with that
2 statement?

3 A. I can't agree or disagree on that right now.

4 Q. Why not?

5 A. Because I don't know what the impact of that, would
6 be on that area right there. But the most part, I guess I
7 could say I agree with it.

8 Q. And he concludes by saying that an improvement to
9 the township as a whole. Would you agree or disagree with
10 that assessment?

11 A. If all the road work and infrastructure work is
12 done, yes. It is not, no, I think it will be a hinderance to
13 the area right there unless we can get road improvements done
14 and things like that.

15 Q. Your concern would be traffic?

16 A. Absolutely.

17 Q. And maintenance of the roads?

18 A. Absolutely.

19 Q. Has the township ever done any sort of study on
20 what the traffic impacts would be on that parcel if it were
21 developed for single family uses?

22 A. No. Not that I'm aware of.

23 Q. Is it fair to say that in your opinion, traffic at
24 that intersection is currently at somewhat of a problem?

25 A. I don't know if it a problem right now. It's

1 pretty, it gets pretty backed up there even now, but during
2 like when people are coming home from work or going to work,
3 but I wouldn't say it is a problem.

4 But if you increase the traffic flow by thousands
5 of cars a day or something, I'm sure it would be an issue,
6 yes.

7 Q. Would you agree that that would be true whether
8 that property, the remainder of that property were developed
9 for commercial uses or for single family uses?

10 A. I would say it would be true either way. The only
11 difference if it was residential would be that you would,
12 instead of commercial, you'd be getting a lot more commercial
13 truck traffic through that area then you would if it were
14 residential.

15 MR. GOLDSMITH: Can we go off
16 the record?

17 MR. HANSON: Sure.

18
19 (An off the record
20 recess was held)

21 MR. HANSON: We can go back on
22 the record.

23 BY MR. HANSON:

24 Q. Mr. Wilburn, you're aware obviously that both the
25 Planning Commission and the Board of Trustees voted on these

1 rezoning requests individually as opposed to as a single
2 application, correct?

3 A. Yes, I am.

4 Q. Were you aware, were you aware that the Planning
5 Commission was going to vote in the way it did before that
6 Planning Commission meeting?

7 A. No, I was not.

8 Q. You weren't advised that that was the way it was
9 going to go?

10 A. No, sir.

11 Q. Did anybody solicit your input or opinion on that
12 question?

13 A. No.

14 Q. What is your opinion as to whether that was an
15 appropriate way to treat this rezoning application or not?

16 A. I thought it was the right way to do it.

17 Q. Why is that?

18 A. Because that way you had an opportunity if you
19 didn't like, you know, one piece, it was broken down in to
20 pieces so if you didn't like one piece, then you could say
21 so. I liked the way it was done.

22 Q. I think I asked you this question in connection
23 with the Board, but let me ask it in connection with the
24 Planning Commission, and I understand you're not on the
25 Planning Commission, you don't attend their meeting.

1 Actually do you typically watch the Planning
2 Commission meetings on the cable television?

3 A. Not all the time. It's--there's plenty to do,
4 okay.

5 Q. Did you watch the Planning Commission meeting on
6 the night of the public hearing?

7 A. No, sir I did not. I was sitting downstairs in my
8 office.

9 Q. For the whole meeting?

10 A. Pretty much.

11 Q. A late night in the office.

12 Are you aware of any other instances, other than
13 this one, where the Planning Commission has issued a
14 recommendation different than what was recommended by Wade
15 Trim, since you've been supervisor?

16 A. I don't recall of any.

17 Q. I think you also mentioned that one of the things
18 that you take into account in making a determination on the
19 rezoning application is the recommendations of County
20 Planning, is that correct?

21 A. I take into consideration all the information that
22 is put in front of me. It doesn't mean that I'm going to go
23 along with all the information that is presented to me.

24 Q. Monroe County Planning's recommendation is one of
25 the pieces of information that is in front of you?

1 A. That would be true.

2 Q. Is that true of every rezoning application or site
3 plan approval? In other words, does Monroe County Planning,
4 to your knowledge, issue a recommendation on every rezoning
5 application?

6 A. I do believe so. I believe they issue, anything
7 that goes to Planning for rezoning, go to our Planning
8 Commission, I believe it is sent out to Monroe County
9 Planning and sent back to the township in that order.

10 Q. So in other words, it is part of the normal course
11 of business that you would have a Monroe County Planning
12 recommendation in your packet?

13 A. True.

14 Q. I'm going to hand you what was marked as Mr.
15 Jenkins' deposition as Exhibit 9. I'll ask you to review
16 that and let me know if that is a document that is familiar
17 to you.

18 A. I'm sure I've seen this before.

19 Q. I'll represent to you that this is the Monroe
20 County Planning staff's recommendation on the Whitman
21 rezoning application, the 2008 rezoning application.

22 Would this have been the document that would have
23 been in your packet?

24 A. If you say so, yes.

25 Q. No reason to dispute that?

1 A. No.

2 Q. Do you recall specifically having reviewed this
3 document prior to the Whitman rezoning application coming in
4 front of the Board of Trustees?

5 A. I recall going over it, yes.

6 Q. I'm going to turn your attention to page 4.
7 There's a heading that says Compatibility of the proposed
8 district with surrounding uses. And specifically to the west
9 it says the entire western boundary of the property abuts the
10 rear yards of a residential area zoned R-2A. The proposed
11 C-3 district is approximately 900 feet from the existing
12 residential area. The proposed C-2 district is about 200
13 feet from the existing residential area. In between the
14 residential area and the C-2 district are the proposed PBO,
15 RM-2, and RME districts.

16 Then the report says these districts are designed
17 to be compatible with residential areas, and are intended to
18 serve as transitional districts between residential and
19 non-residential districts.

20 And focusing on that last sentence, do you agree or
21 disagree with what the report states?

22 A. As far as these being transitional options?

23 Q. Yes. You know, well, let me just, I read this when
24 he says these districts, I read that as referring to PBO,
25 RM-2 and RME, is that a fair reading?

1 A. I'd say that is a fair reading, yes.

2 Q. So he's talking about those districts, and again he
3 says they are designed to be compatible with residential
4 areas and are intended to serve as transitional districts.
5 Do you agree or disagree with what has been written there?

6 A. Well, if it means what I think it means, that these
7 three types would be transitional zoning between residential,
8 yes, those three types I would agree with.

9 Q. You would agree that those are intended to serve as
10 transitional districts between residential and nonresidential
11 districts?

12 A. Yes.

13 Q. In the next section of this report the very first
14 sentence says the proposed rezoning is generally consistent
15 with the local future land use plan. Do you see that?

16 A. Yes.

17 Q. I take it by your prior testimony that you would
18 disagree with that statement, or would you agree with it?

19 A. I would disagree with it because of the fact that,
20 you know, I think that this would be, the PBO is something
21 that needs to be transitioned between the RME and the
22 commercial.

23 Q. When you just said between RME and the commercial,
24 are you also including the RM-2, let's just look back on
25 exhibit 1.

1 A. Right.

2 Q. I just want to make sure I'm understanding what
3 you're saying. You're talking about a transition between the
4 two proposed --

5 A. No, I'm talking about here to here.

6 Q. I understand that but --

7 A. And this to this. Not here to here.

8 Q. I understand that. Let me finish asking my
9 question so I can make sure that we're clear.

10 What you're talking about is a transition between
11 the proposed RME and the proposed RM-2 shown on these two
12 western most parcels, and the commercial portion of the site?

13 A. Right.

14 Q. You're not talking about a transition from the
15 existing single family development to the commercial portion
16 of the site?

17 A. I agree that this is a good transition to start
18 from here, okay, to the commercial.

19 Q. I'm not trying to argue with you, but for the
20 purpose of the record.

21 A. Right, I'm not trying to argue.

22 Q. I know but when you point to it and say yes, it
23 doesn't transcribe well.

24 So you were saying you agree to this, and you're
25 pointing to the RME, is a good transition or starting point I

1 think you said, from the existing single family residential,
2 is that correct?

3 A. That would be what I say, yes.

4 Q. But your objection is that you believe that there
5 needs to be an additional transition between these two
6 proposed residential zones?

7 A. And the C-3.

8 Q. The RME and the RM-2, and the C-3 on Lewis Avenue?

9 A. Yes.

10 Q. Let me ask this question. Do you believe that this
11 rezoning request would have been more acceptable if the RME
12 and RM-2 districts were actually proposed as PBO districts?

13 A. I can't answer that question. I don't know the
14 answer to that. I'm only one person on a board.

15 Q. I understand that. I'm just trying to get a sense
16 of -- as I understand it, your concern with the rezoning as
17 Mr. Whitman proposed it was that he proposed residential
18 zones, the RME, and the RM-2, and then right next to that had
19 proposed a C-2 zone, is that your concern?

20 A. That was the Board's concern, yes.

21 Q. Is that your concern as you sit here today?

22 A. That was my concern, yes, that is what we were
23 talking about.

24 Q. Again, I'm just trying to get a sense of where your
25 thoughts are.

1 Do you believe that, well, let me strike that and
2 try and start over.

3 As you sit here today then, is it your belief that
4 any proposed rezoning on the Whitman property that had any
5 form of residential next to any form of commercial would be
6 inappropriate?

7 A. That is what I'm saying, yes.

8 Q. Did you ever express that opinion to Mr. Whitman at
9 any point?

10 A. I don't believe so.

11 Q. So as far as you know, did anybody at the township
12 ever express that opinion to Mr. Whitman?

13 A. I don't think so. I can't speak on behalf of
14 everybody, Mr. Hanson, because I don't know what everybody
15 did.

16 Q. I understand, and I'm only asking what you know,
17 and if you know of something, then tell me, and if you don't,
18 then you don't.

19 A. I don't.

20 Q. Let me just ask generally speaking. Prior to
21 submitting a rezoning application and having it acted upon by
22 the Township Board, what would you advise an applicant to do
23 in terms of trying to figure out what was the best way to
24 propose a rezoning application and then to get a rezoning
25 application that might be approvable by the Board?

1 A. What would I advise somebody to do?

2 Q. Sure.

3 A. I don't think I'd be giving advice, because that is
4 not something that I'd want to put my nose to doing, okay. I
5 don't think that is up to me to give advice.

6 I think Mr. Whitman did what he thought was the
7 best thing to do. I really believe that.

8 Q. Do you think that Mr. Whitman was trying to follow
9 what direction he had been given from the township over the
10 long history of this property?

11 A. Before I --

12 MR. GOLDSMITH objection.
13 Foundation. What advice had he been given over the duration?
14 Lack of foundation.

15 MR. HANSON: You can answer the
16 question.

17 A. I don't know if he, I don't know what advice he had
18 been given, because I wasn't there when this first came to
19 pass. I don't know what happened.

20 I read all the documentation, the documents that
21 were presented. I think that he presented a plan in good
22 faith, and that's all I can say about it.

23 BY MR. HANSON:

24 Q. I understand your answer, and I think it's
25 responsive and I appreciate it. Let me ask it a slightly

1 different way.

2 A. Sure.

3 Q. Which is are you aware, I'm talking specifically
4 about this 2008 rezoning request, are you aware of Mr.
5 Whitman having received any advice from anybody at the
6 township that he didn't follow?

7 A. I'm not aware of anything. I don't really believe
8 he had received a lot of advice from the township itself. I
9 think he took the advice that came out during the trials and
10 from the consultants, planning consultants and things like
11 that and put together a plan that he thought would fit with
12 what they requested.

13 Q. Let's just turn to the last page of five of this
14 Monroe County Planning document. Then specifically the
15 report at the bottom as a recommendation. Staff recommends
16 that the Monroe County Planning Commission advise the Bedford
17 Township Board that it recommends approval of this request
18 for the following reasons: And it gives two. The first is
19 that it's generally compatible with surrounding uses.

20 You know the question that is coming. Do you agree
21 or disagree with that statement?

22 A. Generally compatible with the surrounding uses,
23 yes.

24 Q. And then the second is that it's generally
25 consistent with future land use plans.

1 A. Yes.

2 Q. Would you agree with that statement?

3 A. I agree with that, yes.

4 Q. As we sit here today, Mr. Wilburn, do you think
5 that the property as it is currently zoned is consistent with
6 the Bedford Township Master Plan?

7 A. The way it sits right now?

8 Q. The way it sits right now.

9 A. According to what I just looked at, no.

10 Q. Real quickly, this was Exhibit 10 to Mr. Jenkins'
11 deposition. This is on October 9, 2008, a letter from Monroe
12 County Planning, Director Royce Maniko to the Clerk Robert
13 Schockmann of Bedford Township.

14 You'll see, Mr. Wilburn, that Mr. Maniko in his
15 cover letter notes that at its meeting of October 8, 2008,
16 the Monroe County Planning Commission approved the zoning
17 amendment.

18 He then goes on to say the County Planning
19 Commission believes that the proposed revision would be
20 consistent with sound planning and land use principles. His
21 statement that, or his assessment of the County Planning
22 Commission's belief that the proposed revision would be
23 consistent with sound planning and land use principles.

24 Do you agree or disagree with that belief expressed
25 by the County Planning Commission?

1 A. Well, I agree with it in general, okay.

2 Q. You added the in general qualification.

3 A. The same as we have been adding to everything else
4 we have been talking about. I agree with it except for the
5 one, you know. There's several. This is not just black and
6 white, okay, on the land use there, or what is mixed use,
7 what is acceptable, what isn't acceptable.

8 You know, our, the Township Board feels that, we
9 approved everything except for the one piece. So that is the
10 only thing we didn't approve, and we asked for a PBO instead
11 of C-2. That's it.

12 Q. When you say you asked for a PBO instead of C-2,
13 you're talking about the administrative rezoning?

14 A. Yes.

15 Q. After the Board's action?

16 A. Yes.

17 Q. Nobody had asked Mr. Whitman for that prior to the
18 Board going through that administrative rezoning process?

19 A. We could not, it had already been to Planning
20 before it came to Bedford Township Board. We could not do
21 that during that session.

22 We had to do what we did at that time, and then
23 come back and do the other at another meeting. We could not
24 stop in the middle of that, and that is why we rezoned it the
25 way we did.

1 Q. Understood, and again, you're not aware of anybody
2 at the Township having suggested to Mr. Whitman to seek some
3 sort of office rezoning prior to the administrative rezoning?

4 A. I don't know what all conversations went on with
5 Mr. Whitman.

6 Q. Mr. Wilburn, this is Exhibit 11 to Mr. Jenkins'
7 deposition. I'll ask you to take a look at that and let me
8 know if you are familiar with that?

9 A. Yes.

10 Q. These are the Township Board Minutes from December
11 2, 2008, correct?

12 A. Right, yes.

13 Q. This is the meeting at which the Board acted upon
14 the 2008 Whitman rezoning application?

15 A. Yes.

16 Q. Hopefully I can do this relatively quickly. If you
17 go to the second page where the motions start, the first is a
18 motion by Mr. O'Dell, seconded by Ms. Hauser-Hurly with
19 regard to what is denoted there as Parcel 1, which is
20 identified as the southwest corner of the Whitman property.
21 It gives a number of reasons for approving that request for
22 rezoning, do you see that?

23 A. Yes.

24 Q. These are the same sorts of reasons that you've
25 been talking about in terms of what you looked at in making

1 your decision?

2 A. Yes.

3 Q. We have got the recommended for rezoning by the
4 Bedford Township Planning Commission, right?

5 A. Yes.

6 Q. Recommended for rezoning by the Bedford Township
7 Planning Consultant, correct?

8 A. Yes.

9 Q. Recommended for rezoning by the Monroe County
10 Planning Commission, correct, and recommended for rezoning by
11 the Monroe County Planning Department staff, correct?

12 A. Yes.

13 Q. And then it goes on to cite that written reports
14 that each of these agencies has produced, correct?

15 A. Yes.

16 Q. If you go through, you'll note that that motion by
17 Mr. O'Dell is followed by substantially similar citings,
18 substantially similar reasons and reports for Parcel 2, which
19 is the parcel that was rezoned to RM-2, and then what is
20 denoted here as Parcel 3, which is the parcel that was
21 rezoned RME; do you see that?

22 A. Yes.

23 Q. And I guess I'll just ask you you would agree with
24 me that all of these motions that I'm going to call out
25 reference to all of these agency's reports and

1 recommendations, correct?

2 A. Yes.

3 Q. Again, Parcel 4, which is the one in the southeast
4 portion of the property again calls out the same agency
5 recommendations and reports, correct?

6 A. Yes.

7 Q. And then Parcel 5, which is the northeast parcel,
8 again the Board approved that citing, the same
9 recommendations and reports, correct?

10 A. Yes.

11 Q. Then we get to Parcel 6. It is a motion by Mr.
12 O'Dell, seconded by Mr. Goebel to deny the rezoning on Parcel
13 6. And the reason stated is that quote "It is inconsistent
14 with the Master Plan which provides for residential use and
15 possible mixed office or local business use and because more
16 of a buffer and transition is needed between the residential
17 zoning on the west to general commercial zoning and uses on
18 the east."

19 I'm just going to stop there because there's a lot
20 said in that motion. This is the motion that was ultimately
21 passed by the Board, correct?

22 A. Yes.

23 Q. What is your understanding of why the request on
24 Parcel 6 was inconsistent with the Master Plan?

25 A. We wanted more of a transitional zoning from the

1 multiple housing to the commercial.

2 Q. What about the next statement where it says it's
3 inconsistent with the Master Plan which provides for
4 residential use and possible mixed office or local business
5 use, what is that, what portion of the Master Plan is the
6 motion speaking to when it talks about providing for
7 residential use and possible mixed office or local business
8 use?

9 A. I don't know. I can't quote you on that.

10 Q. Would you agree with me that none of the consultant
11 letters, or the Monroe County Planning written report don't
12 talk about this request being inconsistent with the Master
13 Plan?

14 A. Right.

15 Q. You would agree with me?

16 A. I would agree with you, yes.

17 Q. And none of those written reports talk about how
18 the Master Plan provides for a residential use and possible
19 mixed office or local business use?

20 A. Yes.

21 Q. The next part of this motion says because more of a
22 buffering and transition is needed between the residential
23 zoning on the west to general commercial zoning uses on the
24 east, and again just so I'm clear on this, when it talks
25 about between the residential zoning on the west, in your

1 mind, that is referring to the RME and the RM-2 zones that
2 Mr. Whitman had requested to be created?

3 A. Yes.

4 Q. As you sit here today, can you give any sense of
5 how much more of a buffer, I understand your transition point
6 is that there should be office in-between there. As you sit
7 here today, do you have a sense of how much of a buffer would
8 be needed between those residential uses and the commercial
9 uses?

10 A. I can't answer that. I don't know what the
11 distance would be if that is what you're asking me, and I
12 believe that is --

13 Q. That is. When I see buffer, there's a lot of
14 things that go into a buffer, but distance --

15 A. Fencing.

16 Q. Fencing, birming, trees all these things that we
17 talked about three years ago.

18 The motion goes on to say while it is recognized
19 that the existing R-2A zoning classification does not provide
20 the desire transition from residential uses to commercial
21 uses, neither does the proposed C-2 zoning.

22 Do you see that?

23 A. Yes.

24 Q. That again goes to your understanding, or your
25 belief, or opinion that C-2 should not be next to the

1 multi-family and senior zones that Mr. Whitman had proposed
2 and the Board had approved, correct?

3 A. Yes.

4 Q. At the same time, the Board was recognizing that
5 the existing R-2A didn't provide that sort of transition
6 either, correct?

7 A. Yes.

8 MR. HANSON: Let's just go ahead
9 and mark this. Shall we go in order?

10 MR. GOLDSMITH: You can if you
11 want to, that's fine, but --

12 MR. HANSON: Rather than have
13 Wilburn 1 and Jenkins' 1 and all that stuff.

14 MR. GOLDSMITH: Fine.

15 MR. HANSON: I'd prefer to do
16 that. I think we left off at, let me see, 15. Do you have
17 anything higher than 15?

18 MR. GOLDSMITH: No, 15 was it.

19 MR. HANSON: So let's just mark
20 this as plaintiff's 16.

21 DEPOSITION EXHIBIT #16
22 WAS MARKED BY THE REPORTER
23 FOR IDENTIFICATION .

24 BY MR. HANSON:

25 Q. If you could hand that to the witness. Mr.

1 Wilburn, I'll represent to you that these are pages from a
2 transcript of the proceedings on December 2, 2008, the Board
3 of Trustee's meeting. I've got the entire transcript here if
4 you'd like to take a look at it and confirm it, but that is
5 my representation.

6 What this excerpt is is a couple of pages of some
7 statements that you made at the meeting.

8 A. Okay.

9 Q. I just wanted to ask you about a couple of your
10 comments here. If you would turn to the second page of the
11 exhibit which is page 67 on at the transcript. The first
12 full paragraph says there is certain things we can look at
13 when we have these requests in front of us; do you see that?

14 A. Yes.

15 Q. What sort of things are you talking about when you
16 say there are certain things we can look at?

17 A. Well, we look at the, you know, the letters of
18 reference that we get and the recommendations from other
19 entities.

20 We look at what is going on in the community. I
21 mean things like that. There are certain documentation that
22 we look at, and something that we can't just be led by, I
23 think you know, people stomping their feet. That was my nice
24 way of putting it.

25 Q. Let me cut to the chase on that statement, and

1 since some of those people stomping their feet are not
2 sitting here in this room. Is that, you're referring to the
3 folks affiliated with the group known as Bedford Watch?

4 A. Well, that would be something that I'm alluding to,
5 yes. I mean I don't, they have good things to say, too, but
6 I mean the Board is led by, we try to make decisions on what
7 is put in front of us and not be, you know, led by people
8 screaming at us, I guess. I'd rather make decisions on good
9 information.

10 Q. I appreciate that response, and I think I know what
11 you're alluding to, but I just want to make sure that we're
12 clear on the record what you are alluding to.

13 When you say people screaming at us, you are not
14 referring to Mr. Whitman, or any of his representatives that
15 have appeared at any of these meetings?

16 A. I'm not specifically going to sit and mention
17 anybody. I'm just going to say we based our decision upon
18 what we see in front of us and what is factual, not
19 fictional.

20 Q. Your next statement in the transcript is that there
21 are certain things we can't look at. Again, can you describe
22 that or explain that sentence to me? What are some of the
23 certain things that you don't want to look at?

24 A. I'm thinking those are some of the things, you
25 know, we can't listen to false advertising and stuff like

1 that, and false statements being made. We have to go with
2 what is in front of us and what is presented to us that are
3 actually the facts and make our decisions upon these facts.

4 Q. Again, without asking you about any other groups or
5 individuals, do you hold any opinion that either Mr. Whitman
6 or any of his representatives presented any sort of false
7 statements or --

8 A. No.

9 Q. Or inaccurate facts in connection with this
10 rezoning request?

11 A. No.

12 Q. You go on to say we looked at everything we
13 possibly could. Do you see that?

14 A. Yes.

15 Q. Let me, you're using the word we here. I presume
16 you're referring to the Board, is that fair?

17 A. That would be what I would be referring to, yes.

18 Q. When you say we looked at everything we possibly
19 could, I'm presuming you didn't go around and pull each
20 individual board member as to what they looked at?

21 A. No. It is a matter of speech when you're chairman
22 of a Board. When you're chairing a meeting, it is a matter
23 of speech, you know, when it comes out of your mouth. We are
24 all, we are all one. We represent, we're there together, and
25 I may have misspoke by saying that, but it was unanimously,

1 almost an unanimous vote, so I figured we tried, I know the
2 Board works hard and we try to get, look at everything and
3 study what we're doing before we get there to make a
4 decision. Now, I don't recall the Board if that is what
5 you're asking me.

6 Q. I didn't think so, but I just wanted to make sure.

7 Do you know, did you have any conversations with
8 any board members before hand that anybody had gone back and
9 reviewed any of the trial testimony, or deposition testimony?

10 A. I didn't have any conversation with anyone about
11 that.

12 Q. So you didn't look at any of that testimony, and
13 you don't know if anybody else did?

14 A. I absolutely, I definitely don't know if anybody
15 else did.

16 Q. Your next sentence in there says we did find, well,
17 actually strike that. Let me make sure I close the loop on
18 one thing here.

19 Do you believe that it was inappropriate or
20 improper, illegal for you to have reviewed prior testimony
21 from the prior lawsuit, whether in trial or deposition, prior
22 to making a decision on this rezoning?

23 A. Would it have been illegal for me to --

24 Q. Illegal, inappropriate, improper.

25 A. I don't think it would have been, but I don't

1 recall doing it though.

2 Q. I understand, but just when you say there are
3 certain things we can't look at, you're not referring to
4 saying you couldn't have looked at prior testimony?

5 A. When I say looked at, I'm talking about negative
6 publicity, things like that, okay, the rumors at the Dairy
7 Mart, or some place like that.

8 Q. Your next sentence says we did find that the R-2A
9 did not, and then it looks like you corrected yourself, the
10 C-2 did not constitute a buffer from the Indian Acres; do you
11 see that?

12 A. Yes.

13 Q. Again, I just want to make sure that I'm clear on
14 what your objection was to that C-2. Is it that it was not
15 buffering Indian Acres?

16 A. No.

17 Q. Or it wasn't buffering --

18 A. It wasn't buffering the multiple housing that was
19 being presented to us.

20 Q. Okay. Did you, in your estimation, did you think
21 that the rezoning application proposed by Mr. Whitman did
22 provide enough of a buffer to Indian Acres?

23 A. You mean with the multiple housing?

24 Q. Yes.

25 A. Yes.

1 Q. Then your last sentence there says that was one
2 thing we felt we could hang our hat on for sure.

3 A. Yes.

4 Q. What does that mean?

5 A. That means that we felt that that was what we were
6 doing, we were doing the right thing.

7 Q. Let me --

8 A. I know what it sounds like, but that wasn't the
9 intent of it. What I meant is we, that was one thing that we
10 knew for sure that we were right. I mean it wasn't like it
11 was just something-- is that my exact words? I'm sure it is,
12 yes, okay.

13 Q. Well, trust me, I don't want to spend all day here
14 anymore than you do, but I do want to try to understand what
15 your words mean.

16 I know that you are very cognizant of what you say
17 and in a public board meeting and --

18 A. Try to be.

19 Q. And I understand that, trust me, I understand that.

20 When you're talking about the one thing in that
21 sentence, are you talking just about the Parcel 6 rezoning to
22 C-2, or are you talking about what you said in the previous
23 sentence, which is the C-2 did not constitute a buffer from
24 the Indian Acres? I'm just trying to get a sense of --

25 A. That is what I'm talking about. The C-2 did not

1 constitute a buffer between, and we felt that, you know, we
2 felt that the PBO was something that should go there for
3 sure. I guess that is, I'm trying to, it has been a while.
4 So--

5 Q. Let me ask another question about it. What
6 discussions did you have with individual board members
7 regarding this rezoning application before the Board meeting?

8 A. I didn't have any.

9 Q. You didn't talk about this rezoning application
10 with any board member?

11 A. No. I talked to Mr. Jenkins. I talked to, you
12 know, I did go over, well, I went out to the Planning
13 Commission trying to get some idea why we did what we, why it
14 was done the way it was done, and but I didn't sit down and
15 talk with any board members about it, no.

16 Q. I think you testified when you talked to Mr.
17 Jenkins you were just getting information, you weren't
18 seeking his opinion?

19 A. Right.

20 Q. Then I think you also talked about talking to
21 various officials in other townships, correct?

22 A. I was just trying to get a feel for what goes on
23 other places.

24 Q. Let me just ask you, I think you might have
25 recognized this or realized this as you read it, but when you

1 say that was one thing we felt we could hang our hat on for
2 sure, is that in reference to any potential litigation over
3 your action as a board?

4 A. I don't think so. I mean I just think that was
5 something that we knew we had to take care of. It is what we
6 were trying to take care of.

7 Q. Would you agree with me that it might be read that
8 way?

9 A. Yes, I would.

10 Q. I don't think I brought this up, but I want to real
11 quickly. This is what was marked as exhibit 8 in Mr.
12 Jenkins' deposition. Do you recognize this document, Mr.
13 Wilburn?

14 A. It looks like the Planning Commission meeting.

15 Q. September 10, 2008?

16 A. Yes.

17 Q. When you talk about reviewing the Planning
18 Commission decision as you're looking at a rezoning
19 application, is this the document that you review?

20 A. These would be the things that we would be reading,
21 yes.

22 Q. So it's safe to assume that the September 8, 2008
23 minutes were part of the packet you were reviewing?

24 A. Yes.

25 Q. If you turn to page 14.

1 A. I don't think these are numbered.

2 Q. It is up at the top left.

3 A. Okay.

4 Q. By the way, I asked if you had any conversations
5 with any board members prior to the meeting. Did you have
6 any email communications with any board members prior to that
7 meeting about this application?

8 A. Not that I'm aware of, no.

9 Q. If you had any emails, would they still be on your
10 computer or server somewhere?

11 A. I don't think so. I mean I don't usually, you mean
12 did I say hey, what are you going to do, or something like
13 that?

14 Q. Anything.

15 A. No. No.

16 Q. Are you a frequent emailer?

17 A. Only when I, I do email when I need to.

18 Q. Are you one of the types of people who when you get
19 emails, you'll print them out and put them in a file
20 somewhere?

21 A. No, not usually.

22 Q. Do you take any steps to save any emails
23 electronically?

24 A. For what purpose?

25 Q. Any purpose at all.

1 A. No.

2 Q. Some people do it, some people don't. I'm asking
3 which one you are?

4 A. No.

5 Q. Fair enough. I just want to focus your attention,
6 Mr. Wilburn, on it's actually I think the third motion on
7 page 14 of the Planning Commission Minutes.

8 A. Okay.

9 Q. I'll represent to you that this is the motion to
10 recommend denial of what we have been calling Parcel 6. Do
11 you see that?

12 A. Is this on 14?

13 Q. Yes.

14 A. Yes, I see it.

15 Q. The Planning Commission's stated reasons read in
16 total that the request does not totally conform with the
17 Master Plan, and it would be too close and intense to the RME
18 and RM-2 residential areas. Do you see that?

19 A. Yes.

20 Q. As you sit here today, and in comparing that stated
21 reasons for the Planning Commission's recommendation versus
22 the stated reasons for the Board of Trustee's action as is
23 shown on Exhibit 11, in your mind is there any differences,
24 inconsistencies, anything like that between those two stated
25 reasons?

1 A. No.

2 Q. Let me ask you, and I'll go back to Exhibit 11,
3 which is the Board Minutes. Again looking at page four of
4 the Board Minutes.

5 A. Okay.

6 Q. You would agree with me that the motion to deny the
7 rezoning on Parcel 6 makes no reference at all to the
8 recommendation of the Bedford Township Planning Consultant?

9 A. I'd agree it makes no reference to it.

10 Q. Would you agree with me that that motion makes no
11 reference to the recommendation of the Bedford Township
12 Planning Commission?

13 A. Yes.

14 Q. And would you agree with me that that motion makes
15 no reference to the recommendation of the Monroe County
16 Planning Commission?

17 A. Yes.

18 Q. And would you agree with me that that motion makes
19 no reference to the recommendation of the Monroe County
20 Planning Department staff?

21 A. Yes.

22 Q. And would you agree with me that that motion makes
23 no reference to any of the written reports submitted by the
24 Planning Consultant, or the Monroe County Planning Commission
25 staff?

1 A. Yes, but I'd also like to say that we don't
2 reference each entity in a motion most of the time, and you
3 can go back and look through our minutes, you know, lots of
4 meetings on everything, and you'll see that we don't
5 reference all of these different entities.

6 Q. Would you agree with me that every other motion on
7 the Whitman parcel referenced all of those documents and
8 agencies?

9 A. Yes.

10 Q. Do you have an understanding of whether the motions
11 that were presented at the Township Board meeting on December
12 2, 2008, whether they had been drafted in advance of the
13 meeting?

14 A. Do I have an understanding of that?

15 Q. Yes.

16 A. That's possible, but I'm not, I don't know for
17 sure. I can't answer that for sure right now.

18 Q. Did you see a draft of the motions before the
19 meeting?

20 A. No, sir, I did not.

21 Q. Has it happened before that somebody might draft a
22 motion prior to a meeting and bring it with them to a
23 meeting?

24 A. I don't know of that.

25 Q. Have you ever done that, draft a motion and then in

1 advance and bring it to a meeting?

2 A. I may have asked for advice.

3 Q. Who would you ask for advice from?

4 A. If there was something that was, you know, I mean
5 maybe I might ask the attorney if it's, you know, if this is
6 right, or can you say this or not.

7 Q. Do you have any understanding as to whether or not
8 these motions were drafted by the Township's attorneys?

9 A. No, sir, I don't.

10 Q. Does Bedford Township have any rules or policies
11 for recusal from a vote?

12 A. Well, our policy is unless you, I think that you
13 know, we would have to check with, we check with MTA from
14 time to time to see if somebody had, you know, is there a
15 monetary gain, you know, and I would have to talk to him
16 about that more because I don't know.

17 Q. You can call him by his name. By him are you
18 talking about Mr. Goldsmith?

19 A. I'd have to talk to Mr. Goldsmith about that,
20 because there's some things, you know, there are some things
21 that people just, I guess, what do they say, if it just
22 sometimes it is what people perceive to be can be a mistake.
23 So you have to be careful.

24 Q. The appearance of impropriety, is that the phrase
25 you're thinking of?

1 A. Yes, the appearance of impropriety can be more
2 dangerous than anything else, even if it's not.

3 Q. I understand all that, and I appreciate all that.
4 My question was a little bit more specific and direct.

5 Does the Township have any guidelines or standards
6 or requirements for recusal that are put down in writing?

7 A. I think if you have an interest, a personal
8 interest or financial gain in some vote that is being taken,
9 if you decide to excuse yourself, you can. I don't think
10 we're going to.

11 As far as policy, I don't believe there is anything
12 written in policy that says that.

13 We have our township guide and manuals that we get
14 from the MTA and we try to use that as a guideline, as a
15 guide when we have questions.

16 Q. Is there any procedure, if a board member doesn't
17 act personally themselves, him or herself to recuse, is there
18 any process by which another board member can seek to recuse
19 a board member?

20 A. I assume, and I would have to just say I would
21 assume that if somebody knew something that somebody else
22 didn't know, and they were a board member, and they saw that
23 there was some financial gain or reason why one person might
24 not, they can ask for that person to be recused from voting.

25 I don't have, you know, I'm not positive of that,

1 but I, you know, if there was a board member that I thought
2 shouldn't be voting on an issue, I certainly would ask him to
3 recuse himself.

4 Q. Has that ever happened in your time as supervisor?

5 A. No. Not that I'm aware of.

6 Q. Did you have any concerns with any of the Board
7 members in connection with the Whitman rezoning application?

8 A. No, sir, I did not.

9 Q. Did you know prior to the meeting how the township
10 board vote was going to come out on the Whitman rezoning?

11 A. Did I know prior to the meeting?

12 Q. Yes.

13 A. No, but I had a pretty good idea.

14 Q. What was that idea based on?

15 A. I had a pretty good idea it was going to come out
16 the way it did because of the fact of what the Planning
17 Commission recommended.

18 Q. Anything else other than the Planning Commission's
19 recommendation?

20 A. It made sense to me.

21 Q. I'm going to guess whether it is at the Dairy Mart
22 or where ever else in Bedford Township that in particular, in
23 the days leading up to the Township Board's vote on this
24 issue, that you talked to a number of residents about the
25 upcoming vote, is that a fair?

1 A. That is not true.

2 Q. Tell me what is true then?

3 A. The truth is I don't talk to anybody about, I
4 didn't talk to anybody about this. I didn't talk to anybody
5 about what I was going to do or what we were going to do.
6 That is very inappropriate.

7 A lot of times I listen to, I may listen but I
8 don't get, I don't give opinions because I don't know who I'm
9 talking to or how they might feel about certain things.

10 Q. Maybe I miss-asked the question. Let's assume that
11 you were asked about it. Is that a fair assumption that
12 residents would in the days leading up to this vote,
13 residents would stop you on the street and ask you about it?

14 A. I, they might, no. Not really. No. I don't
15 think, I don't, I can't recall anybody asking me that.

16 Q. So just in the universe of people that you talk to
17 and things that you looked at, we have got the documents that
18 you've testified to, we have got some folks from other
19 townships, and we have got Mr. Jenkins?

20 A. Uh-huh.

21 Q. Is that yes?

22 A. Yes.

23 Q. Nobody else that you talked to prior to the vote?

24 A. Not that I recall, Mr. Hanson.

25 Q. What we have been kind of shorthanding is the

1 administrative rezoning. Do you understand what I'm talking
2 about when I use that shorthand?

3 A. Yes.

4 Q. I'm talking about the township initiated action to
5 rezone Parcel 6 to PBO.

6 A. Yes, sir.

7 Q. Describe for me how that notion of an
8 administrative rezoning was hatched at the township?

9 A. How that came about?

10 Q. Yes.

11 A. Well, we had this parcel there. We approved
12 everything except for the one parcel, Parcel 6. So now we're
13 sitting there with this parcel in the middle of commercial
14 and PBO, or and residential. We're sitting there with this
15 piece that is really multiple housing, and then residential
16 right in the middle of that and commercial.

17 So as far as we were concerned that was definitely
18 not being consistent with our Master Plan, so we went and
19 made an attempt to fix that.

20 Q. Do you recall whose idea it was?

21 A. Well, it was probably something that we talked over
22 with our attorneys.

23 Q. I don't want to know the substance of any
24 communication with attorneys, but within the township and
25 excluding attorneys, who was it that first floated the idea,

1 if you know?

2 A. I don't know.

3 Q. Did you come up with the idea yourself?

4 A. I didn't come up with the idea myself, no. I know
5 I didn't, but what I'm saying though is we knew that having
6 that, something had to be done because we knew what it should
7 be to satisfy what our plans. We knew what it should be in
8 order to satisfy what we were really looking for, okay, in a
9 plan, and residential was not what it should be.

10 We looked at it with the zoning change that we made
11 that was a textbook transition from residential, multiple
12 housing, PBO, commercial. That is how that came about.

13 Q. Do you recall who you first discussed the idea
14 with, again, excluding conversations with your attorneys, and
15 well, let me just represent to you this.

16 A. Okay.

17 Q. Mr. Jenkins testified that he believed that the
18 idea came about in connection with a meeting with the
19 township's attorneys, and that is his testimony, and I have
20 no reason to question it or agree with it or disagree with
21 it. Is that your recollection as well?

22 A. That is my recollection.

23 Q. Fair enough. Who did you talk to about it, again
24 taking out the attorneys, did you talk to anybody else in the
25 township about it?

1 A. I'm sure that we probably talked about it. We must
2 have. I mean, or I don't know, there might have been some
3 conversation between the attorneys and the other board
4 members. I don't know.

5 Q. Do you recall having any discussions with Mr.
6 Jenkins about it or giving him any direction?

7 A. No. I think I talked to Dennis about it, yes.

8 Q. Do you recall --

9 A. Did I give him direction, no.

10 Q. Do you recall directing him to have Wade Trim do an
11 analysis?

12 A. I don't recall.

13 Q. To your knowledge, has the township board
14 undertaken a review of other areas of the township that might
15 be inconsistent with the Master Plan and undertake an
16 administrative rezoning?

17 A. Not to my knowledge. We were dealing with this
18 one, not something else.

19 Q. Has that ever happened since you've been supervisor
20 of the township?

21 A. I've never had this before me before like this.

22 Q. Have you ever undertaken any analysis of whether
23 there's other areas of the township that are inconsistent
24 with the Master Plan, or are not classic textbook zoning and
25 saw to administratively rezone them?

1 A. No. We weren't dealing with that.

2 Q. Did anybody, well, did you, or as far as you know,
3 anybody else in connection with the township contact Mr.
4 Whitman with regard to the administrative rezoning?

5 A. I did not. I'm not aware of any, I don't know if
6 anyone else did or not.

7 Q. Why not?

8 A. Why don't I know?

9 Q. No, why didn't nobody contact Mr. Whitman?

10 A. Why didn't nobody contact him?

11 Q. Right.

12 A. I didn't contact him. I don't know if he was
13 contacted or not.

14 Q. Did you have any concern about seeking a rezoning
15 on somebody's property without having contacted them first?

16 A. Did I have a concern about it, no.

17 Q. Why not?

18 A. Because we were trying to put the plan together
19 that would, that was consistent with our Master Plan.

20 Q. Do you think it is appropriate for a township to
21 undertake to rezone a property owner's property--

22 A. Do I think it is appropriate?

23 Q. Let me finish my question, please.

24 A. Okay.

25 Q. Do you think it is appropriate for a township to

1 undertake to rezone a piece of property without consulting or
2 gaining the consent of that property owner in advance?

3 A. Do I think it is appropriate? In this case, yes.

4 Q. Do you think it is appropriate in any other case?

5 A. I don't know. I haven't been presented with any
6 other case like this.

7 Q. You think it is appropriate in this case because of
8 why?

9 A. We were taking, we were just trying to be
10 consistent with the Master Plan and go forward with the
11 zoning.

12 Q. I think you testified earlier that the property as
13 it currently sits is not consistent with the Master Plan,
14 correct?

15 A. I don't believe so.

16 Q. What action is the township taking to insure that
17 the property is consistent with the Master Plan?

18 A. We're not doing anything right now, because we're
19 in a lawsuit over this thing.

20 Q. Is that the only reason that the township is not
21 taking any action to insure this property is consistent with
22 the Master Plan?

23 A. I would say that, yes.

24 Q. If this lawsuit were not under way, would it be
25 your intention to undertake another administrative rezoning?

1 A. I can't answer that because that is something that
2 the whole Board does, not just Walt Wilburn.

3 Q. You answered the question in reference to this
4 case, but I guess I would ask generally speaking, do you
5 believe it's appropriate for a township to administratively
6 rezone a property without the owner's consent or
7 consultation?

8 A. I can't answer that because it depends on the
9 situation.

10 Q. No opinion on that?

11 A. No opinion.

12 Q. Would the administrative rezoning that the township
13 sought to undertake have provided for any commercial zoning
14 in the mixed, office, residential, commercial property that
15 is designated in the Master Plan?

16 A. I, I'm not sure, Mr. Hanson. I don't know exactly
17 what your question is.

18 Q. Well, my question is would you agree with me that
19 the mixed, office, residential, commercial Master Plan
20 designation contemplates some inclusion of commercial zoning?

21 A. Yes.

22 Q. Would the administrative rezoning that the Board
23 was undertaking have included any commercial zoning in that
24 property so designated?

25 A. Administrative rezoning?

1 Q. Yes.

2 A. No.

3 Q. Is it your testimony then that the mixed, office,
4 residential, commercial Master Plan designation is met by
5 property that does not have any commercial zoning on it?

6 A. I don't know how, no, that is not, I don't think
7 so.

8 Q. I'm just trying to understand. I think you've
9 testified, and I think I understand that the Board was
10 concerned with making this property compliant with the Master
11 Plan?

12 A. Exactly. Well, compliant with the rezoning action
13 that we had just taken.

14 MR. HANSON: Off the record.

15
16 (An off the record
17 discussion was held)

18 MR. HANSON: Let's go back on
19 the record.

20 BY MR. HANSON:

21 Q. You were concerned that the zoning action that you
22 had just taken made the property non-compliant with the
23 Master Plan, is that correct?

24 A. We were concerned about, yes, I would say that's
25 true. I would have to say that's true. But we could not

1 take action on that the same, at that same board meeting.

2 Q. Let me ask you this question. Prior to undertaking
3 the administrative rezoning, did you, or to your knowledge,
4 anybody else associated with the township, investigate any
5 other types of options that would have included a commercial
6 component on that western portion of the property?

7 A. No.

8 Q. I know I'm talking in what if land at this point,
9 but, for example, did anybody look at Parcel 6 and say well,
10 geez maybe we could make, you know, the southern part of it
11 commercial, or make half of it commercial, or anything like
12 that? Was there any sort of discussion about any of that, or
13 was it just we're going to make Parcel 6 PBO and that's it?

14 A. The way this was presented to us, the Parcel 6 was
15 already outlined that way and that is what we looked at, and
16 that is the way we looked at it.

17 Q. I understand that. I'm just trying to get a sense
18 of whether, planners can do all sorts of crazy things when
19 they sit down around a table.

20 A. I know.

21 Q. But was there any, as far as you know, did anybody
22 sit down and --

23 A. I didn't have --

24 Q. Hold on, let me finish my question so we don't
25 confuse her too much.

1 A. Okay.

2 Q. Did anybody sit down and kind of slice and dice up
3 the property and say well, geez, if we put a commercial zone
4 here, and a multi-family here, or anything like that, was
5 there any sort of planning in that respect done?

6 A. Not that I'm aware of, Mr. Hanson. Not that it
7 didn't happen, but not that I'm aware of.

8 Q. Am I correct in assuming that as far as you know,
9 the township didn't have any economic analyses done of the
10 administrative rezoning, or traffic studies done, or
11 feasibility studies, or impact studies, or anything like
12 that?

13 A. No.

14 Q. Are you aware of any other place in the township
15 where there are offices that do not have road frontage?

16 A. I can't answer that. I don't, I'm not aware or
17 unaware. I'm not aware of or unaware of.

18 Q. You don't know of any off the top of your head?

19 A. Not off the top of my head, no.

20 Q. Do you have any opinion as to the desirability of
21 having office space tucked back behind commercial with no
22 road access?

23 A. I just assumed there would be road access to that
24 property through however this was developed.

25 Q. I appreciate that answer. I don't think it was

1 quite responsive to my question. Do you have any opinion of
2 having office zoning tucked behind the commercial with no
3 road access?

4 A. Well, if it doesn't have road access, it shouldn't
5 be there, but once again, it was my opinion that there would
6 be a way to get back through there.

7 Q. Are you aware of any other times since you've been
8 supervisor that the township has undertaken an administrative
9 rezoning without the property owner's consent?

10 A. No.

11 MR. HANSON: Let's take a brief
12 break. Is that all right?

13 A. Sure, I guess. I want to finish this.

14 MR. HANSON: As do I. I
15 probably have got, well, I'm not going to estimate the time.
16 Off the record.

17
18 (An off the record
19 lunch break was held)

20
21 MR. HANSON: Back on the record.

22 BY MR. HANSON:

23 Q. Mr. Wilburn, you're familiar, of course, with a
24 group known as Bedford Watch?

25 A. Yes.

1 Q. Had you ever had occasion to meet with any
2 representatives of Bedford Watch?

3 A. When you say meet, can you define that? You mean
4 did I go meet them, is that what you're saying?

5 Q. Well, did you ever have a meeting with any of them
6 in your office, or did you ever go to any of their meetings?

7 A. Never went to any of their meetings. They have
8 came to my office a couple of times to try to get information
9 out of me with no success.

10 Q. Do you recall the last time that they came to your
11 office?

12 A. It's been quite awhile, because, let's see.
13 Probably, it's probably been at least a couple years or a
14 year, year and a half maybe.

15 Q. Let me see if I can put some timing context on it.
16 Did you have any meetings with them since the Board
17 took its action?

18 A. No.

19 Q. So that would be December 2 of 2008. Did you have
20 any meetings with them in between the time the end of the
21 trial in 2007, and the new rezoning application in August of
22 2008?

23 A. No.

24 Q. Did you have any meetings with them --

25 A. Can I stop you?

1 Q. Yes, go ahead.

2 A. I never actually had a meeting with them at all.
3 They came into my office asking questions. I don't call that
4 a meeting though.

5 Q. Understood. You didn't have a pre-planned meeting
6 on your calendar?

7 A. No. No, they just showed up.

8 Q. Who in particular?

9 A. Judy Francowski, Kevin Tracy and Jim Duggan.

10 Q. How about a group called Citizens To Preserve
11 Bedford, have you ever heard of that group?

12 A. I think it's the, if it is the one I'm thinking
13 about, Gene Stock.

14 Q. No, a different group.

15 A. Then I don't know.

16 Q. When did you first become aware of, let me step
17 back. Is it your understanding that the Bedford Watch Group
18 was the group that was kind of behind getting this referendum
19 on the ballot this past May?

20 A. Absolutely.

21 Q. When did you become aware that the Bedford Watch
22 was going to be trying to get this on the ballot?

23 A. When they came to the township and asked for
24 information at the clerk's office on how to do it.

25 Q. Were you there? Did you talk to them at that time?

1 A. No.

2 Q. You heard about it from somebody?

3 A. No, I did not talk to them.

4 Q. You heard about it from somebody at the front
5 counter?

6 A. Yes.

7 Q. Do you recall the conversation you had?

8 A. Just I think Miss Francis told me that they had
9 came in and got a petition and asked for what they had to do
10 to get a referendum.

11 Q. We had this little bit of confusion yesterday with
12 Mr. Jenkins. I want to make sure we don't start off on the
13 wrong foot.

14 My understanding is that voting yes on the
15 referendum meant approving the township's zoning actions, and
16 voting no meant overturing the township's zoning actions.

17 A. I believe that would be correct.

18 Q. Would you agree with me, Mr. Wilburn, that we can
19 look back at Exhibit 1, or which ever map --

20 A. This is mine.

21 Q. Which ever map you want to look at there. Would
22 you agree with me that the rezoning actions that the Board
23 took on December 2 did not increase by a single inch the
24 amount of commercially zoned land on the Whitman Ford
25 property?

1 A. I believe that would be true.

2 Q. In fact, isn't it also true that the Board's
3 rezoning actions on December 2 did not increase by a single
4 inch the amount of space that would be available on which to
5 develop say a Walmart store?

6 A. Are you talking about the Board's actions?

7 Q. Yes.

8 A. That would be true.

9 Q. Would you also agree with me that the referendum to
10 overturn the Board's action was largely focused on preventing
11 a Walmart from being developed on the Whitman Ford property?

12 A. Absolutely.

13 Q. I'm going to show you what was marked as Exhibit
14 14, and there's the exhibit, but this is a color glossy of
15 the postcard it represents.

16 A. I have seen that.

17 Q. Have you seen that postcard before?

18 A. Yes. Oh yes, I've have seen it.

19 Q. This was a postcard that was distributed in Bedford
20 Township prior to the referendum, correct?

21 A. Yes, sir. I saw it. It was, I believe that came
22 in the mail, as a matter of fact.

23 Q. If you turn to the second page of the exhibit, if
24 you look up in the top right hand corner, you see that it's
25 got the Citizens To Preserve Bedford Community on there?

1 A. Care of. That would be the same group.

2 Q. Kevin Tracy is also affiliated with the Bedford
3 Watch?

4 A. Absolutely.

5 Q. Prior to this mailing, had you ever heard of the
6 Citizens To Preserve Bedford, or actually prior to today,
7 have you ever heard of Citizens To Preserve Bedford?

8 A. To be very honest with you, I may have heard it,
9 but I don't remember it or recall it.

10 Q. Fair enough.

11 MR. GOLDSMITH: Let's go off the
12 record for a minute.

13
14 (An off the record
15 discussion was held)

16 MR. HANSON: Back on the record.

17 BY MR. HANSON:

18 Q. Have you ever had occasion to discuss any of
19 Bedford Watch's financial expenditures with anybody?

20 A. No.

21 Q. Have you ever had any knowledge of --

22 A. No.

23 Q. Have you ever had any knowledge of Bedford Watch
24 having hired attorneys?

25 A. I don't recall. No.

1 Q. Have they ever referenced in any of their
2 discussions with you having hired an attorney or anything
3 like that?

4 A. Not that I'm aware of.

5 Q. How about planning experts or anything like that,
6 have they ever talked to you about anybody who purports to be
7 a planning expert?

8 A. No. They go on the web site, go to MTA, or the web
9 sites and try to get information through there.

10 I think Mr. Duggan is now, he was going to school
11 to be an attorney. He may, I don't know if he's an attorney
12 now or not, but he usually ends up giving the legal advice to
13 them, seems like. That is what it seems to be anyway.

14 Q. You are an elected official, correct?

15 A. Yes, sir.

16 Q. You run for office, correct?

17 A. Yes, sir.

18 Q. As such, I'm going to assume that you've got at
19 least some familiarity with Michigan's Campaign Financing
20 Laws?

21 A. Yes, sir.

22 Q. Did you, in fact, do you have a political action
23 committee established to support your candidacy?

24 A. Yes.

25 Q. You're aware that there's certain reporting

1 requirements?

2 A. Yes.

3 Q. Are you aware that those reporting requirements
4 also apply to political action committees advocating in
5 support of a ballot referendum?

6 A. Am I aware of it?

7 Q. Yes.

8 A. No, I'm not.

9 Q. Fair enough. Do you know if Bedford Watch has ever
10 filed any campaign finance reports in connect with --

11 A. I --

12 Q. Let me finish.

13 A. Okay.

14 Q. Do you have any knowledge of Bedford Watch having
15 ever filed any campaign finance reports relating to its
16 political activities in Bedford Township?

17 A. No, I do not.

18 Q. I assume since you've not or you don't recall
19 having heard of the group, you have no knowledge of the
20 Citizens To Preserve Bedford Committee having filed any such
21 campaign finance reports?

22 A. No, I do not.

23 Q. As township supervisor, does it form any part of
24 your concern over what is going on in the township that the
25 people who might be advocating ballot referendum issues might

1 be keeping up with their campaign finance reporting?

2 A. Can I explain?

3 Q. Absolutely.

4 A. That is the clerk's job, okay, not mine. It is
5 also, and what they don't do, it is the county clerk's job.

6 Q. So the short answer to my question is no, it is not
7 part of your concern to supervise?

8 A. It is not part of my job, right.

9 Q. If you could turn back to the first page of that
10 exhibit, or if you want to just look at the face card.

11 Do you see it has got the Say No checklist, kind of
12 on the left hand side there. It says say no to big box
13 stores in Bedford.

14 In your opinion, Mr. Wilburn, did the referendum
15 have absolutely anything to do with big box stores in
16 Bedford?

17 A. Not that I'm aware of.

18 Q. Did the referendum have anything to do with
19 crumbling roads in Bedford Township?

20 A. I suppose that that would depend be on who's making
21 the accusation.

22 Q. I'm asking in your opinion.

23 A. In my opinion, no.

24 Q. In your opinion, did the referendum have anything
25 to do with increasing or decreasing crime in Bedford

1 Township?

2 A. No.

3 Q. In your opinion, did the referendum have anything
4 to do with increasing or decreasing property values in
5 Bedford Township?

6 A. No.

7 Q. In your opinion, did the referendum have anything
8 to do with increasing or decreasing traffic nightmares in
9 Bedford Township?

10 A. No.

11 Q. And in your opinion, did the referendum have
12 anything to do with increasing or decreasing light and noise
13 pollution in Bedford Township?

14 A. No, but this would only exist depending on what was
15 developed there.

16 Q. Sure.

17 A. And there was nobody who knew anything about
18 anything being developed there. This was a rezoning. It was
19 not a proposal or building something.

20 Q. But again, and I think we agree on this point, what
21 the Township Board did didn't increase the commercially zoned
22 land on that property at all?

23 A. No.

24 Q. So to the extent that there was going to be light
25 and noise pollution created by commercial uses, the same ones

1 could be created after the Board's action as could be created
2 before the Board's action?

3 A. That's true.

4 Q. Also the same ones could be created after the
5 referendum as before the referendum, correct?

6 A. That's true also.

7 Q. Did you have any concern, and I think you testified
8 that you got that very postcard in the mail. Did you have
9 any concern that the Citizens of Bedford were going to vote
10 on a referendum based on what appears to be outright
11 misinformation?

12 A. Well, these came out right before, just prior to
13 the election. Once again, I'm not in charge of elections in
14 Bedford Township. The Clerk's Department is in charge of
15 that. That is what they do. They probably were aware of
16 this I'm sure. Some of us, I'm not sure if we got it in the
17 mail, but I did see it, okay.

18 I think, you know, they were just reaching for,
19 grabbing at straws, anything that they could to use as scare
20 tactics.

21 Q. And I understand, you know, it is not your job to
22 monitor campaign literature and deal with mailings and
23 campaign finances and all that. I'm more concerned with
24 generally speaking, as a Bedford Township supervisor, did you
25 have any concerns or qualms at all about this referendum

1 upcoming with scare tactics of misinformation being
2 promulgated?

3 A. I don't have an opinion. I don't have an opinion
4 on that. It's not, you know, if I have an opinion, it is my
5 personal opinion.

6 If they were breaking the law, if they had been
7 breaking the law, that is an issue that would have been taken
8 up by the Clerk's Office, not mine.

9 Because once again, they run the elections. I
10 don't. I try to stay on top of things as much as possible.

11 There's a lot of things that go on in the community
12 that aren't above board sometimes, but you have to go through
13 a lot of hoops to get that stopped.

14 Q. Did you see any campaign signs either in support of
15 or opposed to the referendum?

16 A. There were signs out, too, yes.

17 Q. Were the signs almost, well, did you see any signs
18 that didn't say something about Walmart or big box stores?

19 A. I thought, I think some of the signs said Vote No
20 on Walmart or something like that.

21 Q. How long were those signs out before the election?

22 A. Prior to, probably about the same time as the other
23 election signs were out. I'm not sure. I think you have
24 thirty days prior and thirty days after to get them down.
25 No, you have like five days after to get the signs down.

1 Q. Does Bedford Township have any sign ordinances?

2 A. Yes, we do.

3 Q. Let me finish.

4 A. Sorry.

5 Q. That prohibits putting campaign signs up too far in
6 advance of an election?

7 A. Yes.

8 Q. Do you know what is the days, how many days?

9 A. Thirty days prior to the election.

10 Q. And five days after?

11 A. Yes, I think it's five days after.

12 Q. And is the clerk responsible for enforcing that?

13 A. Well, actually, yes and no. I'm in charge of the
14 Ordinance Department. The ordinance offices are in charge of
15 making sure that the sign placement is done correctly, so it
16 probably does come under me.

17 Q. I think I got your --

18 A. There are different things though as far as
19 personal private property, you know, with putting something
20 in your purse.

21 We have jurisdiction over road right-of-way and
22 stuff like that. So if somebody puts something on their
23 personal property, it is pretty hard for me to enforce
24 anything on that one.

25 Q. Understood. I think I got your opinion speaking as

1 supervisor that seeing campaign signagel and literature that
2 purported to make this election all about a Walmart, was not
3 something that you could concern with yourself with as
4 supervisor, is that fair enough?

5 A. No, I don't, well, I, I tried not to take a stand
6 on it because it was, you know, I work for all the citizens,
7 and just not, you know, not just one or two or three or four.
8 I work for all of them. So the referendum was put on there
9 and then they put these--do I like false advertising, no.

10 Q. Would you consider that to be false advertising?

11 A. In some cases, yes.

12 Q. Now, speaking of you as Walt Wilburn, private
13 citizen, does it upset you to see false advertising being
14 used in campaigns, whether it is this campaign or any
15 campaign?

16 A. Absolutely.

17 Q. I know that it's probably tough to separate Walt
18 Wilburn, private citizen, from Walt Wilburn, supervisor of
19 Bedford Township, but did you talk to anybody in advance of
20 the referendum about your view that this might be false
21 advertising?

22 A. I didn't see this.

23 Q. How about the signagel?

24 A. No. I mean, well, did I talk to anybody?

25 Q. Yes.

1 A. Well, I mean, you know, you run into people.

2 Q. And what sorts of things would you talk about?

3 A. The only thing I would say is this is not about a
4 Walmart. There is no Walmart. That was my comment.

5 Q. Did you run into people who professed to believe
6 that that referendum was about a Walmart?

7 A. Sure.

8 Q. Did you do anything to try and disabuse them of
9 that notion?

10 A. Once again, I kept my opinions to myself most of
11 the time. Okay. Because of the fact it's a hot issue. I
12 don't think the township supervisor should be out in the
13 public talking, you know, trying to tell people to believe
14 one way, if they believe another way.

15 Q. Why do you, why don't you think it's appropriate
16 for you to do that?

17 A. It's not my job to go out there and sell something
18 to somebody else when it comes to that. I mean there's
19 enough information on the, you know, out and about that
20 people can get all the information they want to if they want
21 to find out the truth about things.

22 We are probably one of the most transparent Boards,
23 I mean being on television and everything that there is in
24 the whole county.

25 Q. Did it bother you at all that a legislative act of

1 your Board, which I'm sure all of you put a lot of time and
2 thought and anxiety into, was being attacked in a referendum
3 that was fueled by false advertising?

4 A. Did it bother me at all?

5 Q. Yes.

6 A. Well, it wasn't, well, I won't say it was the false
7 advertising that bothered me. It bothered me that we spent a
8 lot of time trying to do the right thing, and felt we did the
9 right thing to have all that just thrown away.

10 Q. Did you ever speak to any reporters in connection
11 with the referendum?

12 A. I'm sure I did.

13 Q. Did you ever take that opportunity to tell
14 reporters that the referendum wasn't about a Walmart store?

15 A. I think I said it at a Township Board meeting.

16 Q. Did you say it at a Township Board meeting prior
17 to, in between the time that the referendum was put on the
18 ballot and the time of the election itself?

19 A. I can't tell you that. I don't know for sure.

20 Q. Do you know of any legal reason why you couldn't,
21 let me strike that and start over.

22 I understand that there are prescriptions against
23 the expenditure or township funds for campaign purposes, I
24 get that.

25 A. Yes.

1 Q. Are you aware of any legal reasons that would
2 prohibit an individual Board member, or other elected
3 official from speaking out on any particular campaign issue?

4 A. Probably. I don't know if there's any legal issues
5 there, but, you know, I think that's a personal choice. It's
6 just not Jon writing a letter, and he can put it in the
7 newspaper. That is his opinion. A lot of people don't feel
8 that's right either, but it is his opinion, and he has a
9 right to do that.

10 Some things that he said may have been, that other
11 people might have felt weren't totally true either, but who
12 knows that.

13 But this incident, a lot of things that are said
14 may not be totally true. If somebody wants to get into an
15 argument with him over this, you do it.

16 Q. I appreciate that response, and I just want to make
17 sure that I'm clear. When you're talking about what, for
18 lack of a better phrase, your desire to take a neutral stance
19 publicly on the referendum, is that a fair characterization?

20 A. You could say that, yes, because I am not just, I'm
21 the township supervisor, but I'm also part of the seven
22 member Board. Okay. Our actions as individuals reflect on
23 all seven of us. So we have to be very careful what we're
24 doing. That is the way I see it.

25 Q. I just want to make sure that I understand that

1 your desire to stay neutral, for example, on this referendum
2 question comes from your own personal belief as to what is
3 appropriate and inappropriate as a public official as opposed
4 to some legal requirement?

5 A. Yes. Yes.

6 Q. Did you discuss the referendum with any of the
7 other Board members prior to the vote?

8 A. Prior to?

9 Q. Prior to the referendum election?

10 A. We all, you know, we talk, you know, here and there
11 about it. It's not like, you know, trying to figure out what
12 might happen. Would it really pass. Things like that.

13 Q. Was there any discussion as to --

14 A. What we would do if it --

15 Q. Just a minute.

16 A. Go ahead. I'm sorry.

17 Q. Was there any discussion as to whether the
18 referendum was a good idea, bad idea, anything like that?

19 A. The discussion is they have a right to do it.
20 Okay. If they could get the signatures, they have a right to
21 do it. That is the only part of the discussion I had.

22 It's their right. Whether they would be successful
23 or not, that was another. We weren't sure.

24 Q. As I understood it in the meantime, the Board had
25 instituted the process of the administrative rezoning, right?

1 A. Yes.

2 Q. With the intention that if the referendum was voted
3 down, in other words, if the rezoning was overturned --

4 A. Then we would go ahead with our plan as, we would
5 go ahead with the rezoning of the PBO.

6 Q. I think we just said it backwards. If the rezoning,
7 if the Board's action was overturned, you were going to drop
8 the administrative rezoning, is that right?

9 A. Had to.

10 Q. Why is that?

11 A. Why would I want to make it PBO when nothing else
12 in there existed?

13 Q. Wouldn't the PBO have still provided some
14 transition between the existing commercial and Indian Acres?

15 A. It could have, yes.

16 Q. Would going forward with the administrative
17 rezoning after the other rezonings had been overturned have
18 made that parcel more or less consistent with the Master
19 Plan?

20 A. I, I really don't know how to answer that, because
21 we just felt that if the part, the rest of it didn't take
22 place, then that, there was no reason to have that take place
23 either. So that's all I can say on that one.

24 Q. Would you agree with me that as the property sits
25 there today, as it's currently zoned today, not one single

1 inch of Whitman Ford's request for rezonings have been
2 approved?

3 A. I believe that would be correct.

4 Q. Do you think the whole sale rejection of the
5 Whitman Ford rezoning request is reasonable?

6 A. The rejection of the whole thing?

7 Q. As we sit here today, the whole thing, Mr. Whitman
8 hasn't gotten anything, correct?

9 A. No, I can't, no, I don't think that was reasonable.
10 I thought what was reasonable was what we, what the Board
11 voted to do. I thought that was reasonable.

12 Q. And from that answer, just to extrapolate, you
13 think that what was caused by the referendum was not
14 reasonable?

15 A. Yes.

16 Q. Are you aware, Mr. Wilburn, of a potential, let me
17 step back.

18 You recall at one time that the Bedford Township
19 zoning ordinance imposed some size limitations on commercial
20 buildings?

21 A. I sure do.

22 Q. Was that, in fact, one of the issues that you
23 campaigned on when you were elected supervisor?

24 A. No. I campaigned against that site, those size
25 issues during the time before I was ever supervisor. I was

1 part of the BICA organization, and I believe you probably
2 have that in the paper where I spoke to that issue,
3 because --

4 Q. Let me show you what was marked as Exhibit 15 in
5 Mr. Jenkins' deposition yesterday. I'll represent to you,
6 Mr. Wilburn, that this is an article from the Bedford Now of
7 September 30, 2005, which was shortly after you had been
8 serving as supervisor, correct?

9 A. Right.

10 Q. Does that sound about right as to when the size
11 limitations were taken off the books?

12 A. Right, but I had worked on this prior to ever
13 becoming township supervisor.

14 Q. I understand that. Then ultimately they were taken
15 off the books as you were supervisor, correct?

16 A. Uh-huh.

17 Q. That is a yes?

18 A. Yes.

19 Q. The question I have for you, there's a quote from
20 Norm Henshaw. It is in the second column, the first full
21 paragraph, and he says my take on that, referring to the
22 building size limitations, was that the restriction was
23 originally put in that ordinance to prevent a Walmart from
24 going on the Whitman property.

25 Do you see that quote?

1 A. Yes, I do.

2 Q. Would you agree with Mr. Henshaw's quote on that
3 point?

4 A. I don't really know if I can agree to that, but I
5 would say it was to prevent big box stores maybe. I don't
6 disagree with it. I don't, but I think that is, that might
7 have been the way he saw it. I think it was to prevent
8 something big going in, yes.

9 Q. Something big going in on the Whitman property?

10 A. I don't know if it was just the Whitman property or
11 anywhere.

12 Q. Has there been any discussion of a big box store
13 going into Bedford Township on anywhere but the Whitman
14 property, as far as you know?

15 A. There was issues about a Meijer over on Smith and
16 Secor at one time.

17 Q. How about in the last, how about in the time since
18 you've been supervisor?

19 A. There was one on Secor and Smith.

20 Q. A Meijer was going to go in over there?

21 A. They were looking at it, again, yes.

22 Q. Do you recall when that was?

23 A. That was probably, I've had been in office about
24 maybe a year.

25 Q. Had Meijer looked at Secor and Smith in the past?

1 A. I believe they had. I'm not a hundred percent
2 sure.

3 Q. Like fifteen years ago or so?

4 A. I don't know the timeframe.

5 Q. Are you aware, let's go ahead and mark this next as
6 Exhibit 17.

7

8 DEPOSITION EXHIBIT #17
9 WAS MARKED BY THE REPORTER
10 FOR IDENTIFICATION

11 BY MR. HANSON:

12 Q. Mr. Wilburn, what has been marked as Exhibit 17 is
13 a chain of emails, the top one --

14 A. From me.

15 Q. From you to Gene Stock, correct?

16 A. Right.

17 Q. It looks like you sent your email to Mr. Stock on
18 November 13 of 2009, correct?

19 A. Yes.

20 Q. First of all, who is Duane Tucker?

21 A. He's our zoning administrative.

22 Q. Township full-time employee?

23 A. Yes.

24 Q. Do you have an understanding that Bedford Watch is
25 proposing to have an ordinance passed that limits building

1 sizes?

2 A. Am I aware of that?

3 Q. Yes.

4 A. Oh yes.

5 Q. Tell me what you know about that.

6 A. I just know that they brought an ordinance to the
7 Township Hall, and wanted me to put it on the agenda, the
8 ordinance change, and I said that's not the way things take
9 place.

10 And I also told, and then they brought enough
11 copies to all the Board members got a copy. And I said this
12 would have to go to the Planning Commission first, and go
13 through the regular channels just like everything else did.

14 Q. What did you do at that point?

15 A. What did I do at that point?

16 Q. Yes.

17 A. I turned it over to Mr. Jenkins to take it from
18 there.

19 Q. Did you direct Mr. Jenkins to forward it on to Wade
20 Trim to get their analysis?

21 A. Yes.

22 Q. Let's step back one second. I don't know how to
23 say this nicely.

24 A. Try it.

25 Q. I'm just going to say it. Can anybody just walk in

1 off the street and hand the supervisor an ordinance and have
2 the supervisor then pass it along to the Township consultant
3 for analysis?

4 A. Well, yes. You can do that, yes. You can't just
5 walk in and tell me to put it on the agenda. That's not
6 going to happen.

7 Q. Does the township have to pay Wade Trim to analyze
8 this zoning ordinance?

9 A. Yes. Yes.

10 Q. Do you believe you would be within your right as
11 supervisor if somebody walked in off the streets with an
12 ordinance to say I'm not going to have the township spend any
13 money on analyzing this?

14 A. Would I have that authority? I don't think I would
15 want to take that position, not without the Board, the rest
16 of the Board members' support.

17 Q. Did you discuss sending this out to Wade Trim for
18 an analysis with other Board members?

19 A. They knew about this, yes.

20 Q. Was it discussed at a Board meeting?

21 A. It was discussed, but I think Mr. Goldsmith was
22 there.

23 Q. Was this executive session or?

24 A. It was at a regular Board open meeting.

25 Q. Okay. What do you think of the proposal?

1 A. What do I think of it?

2 Q. Yes.

3 A. I think you know what I think of it.

4 Q. Actually, I don't.

5 A. The same thing that I talked about it before.

6 Q. That is what?

7 A. I think it puts most, just about every business in
8 Bedford Township in a legally non-conforming status.

9 Q. I take it by your tone of voice that you believe
10 that not to be a benefit to the township?

11 A. Absolutely.

12 Q. Why did you forward this on to Mr. Stock?

13 A. Gene Stock was on the Board of BICA organization,
14 and he was on the same committee as I was when we were trying
15 to get this fixed. That is why I forwarded it to him, to let
16 him know that here we go again. What he did with it from
17 there, I have no clue.

18 Q. Do you know who Terry Koral is, K-o-r-a-l?

19 A. No, I do not.

20 Q. If you read, well, this Exhibit 17 appears to start
21 with an email from Terry Koral, and it appears that Mr.
22 Tucker at some point got a copy of what Miss Koral had sent,
23 correct?

24 A. I guess.

25 Q. Do you see the email that appears to start the

1 chain from Terry Koral?

2 A. Right.

3 Q. The last sentence says we also need to keep
4 reminding the Board that the lawsuit needs to go to court and
5 not be settled by consent judgment and give Whitman whatever
6 he wants.

7 A. Who said that?

8 Q. I'm just reading off the email. Do you see that?

9 A. Oh, no, I didn't even see that.

10 Q. Do you see that last sentence?

11 A. Now, I do, yes.

12 Q. Does that give you any understanding as to whether
13 these proposed building changes, I'm sorry, these proposed
14 ordinance changes that would limit building size might be
15 motivated by an attempt to limit development on the Whitman
16 property?

17 A. That would be a personal opinion.

18 Q. I'll take your personal opinion.

19 A. I would say that that would be, once again, to try
20 to limit any big box store coming into Bedford Township.

21 Q. Although you'd agree with me, wouldn't you, that on
22 the email where this --

23 A. I can --

24 Q. Let me finish. On the email where this proposed
25 ordinance apparently made its way somehow into Township Hall,

1 the only property referenced is the Whitman property?

2 A. That was her opinion though, not mine.

3 Q. I understand, but you'd agree with me that that is
4 the only property referenced?

5 A. That is what she referenced, or I think that is
6 what she...

7 Q. You mentioned that Mr. Goldsmith has made some
8 statement as to these proposed amendments at various Board
9 meetings. Was that at your direction that he, well, let me
10 step back.

11 Did you direct Mr. Goldsmith to review the
12 ordinance amendments?

13 A. I'm not quite sure. I don't think I did. I think
14 he was at the Board meeting and we were asked about it by Mr.
15 Duggan.

16 MR. GOLDSMITH: Either him or
17 Birmick.

18 A. And, yes, and Mr. Goldsmith was at that Board
19 meeting, and he explained what was taking place.

20 BY MR. HANSON:

21 Q. Just in terms of the process?

22 A. Exactly.

23 Q. Do you know have you or anybody else on the Board,
24 or the Board as a whole requested any sort of review from the
25 Township's attorney on the proposed ordinance amendments?

1 A. You mean as far as where it's at right now?

2 Q. Any sort of review, any sort of analysis?

3 A. Not yet, I don't believe so.

4 Q. Do you plan to?

5 A. When it gets to the proper stages, yes. We'll take
6 the recommendations from, it is just going to go through the
7 process and has to go to planning, and then at some point in
8 time we'll get some information, we'll get the information
9 back on it with their suggestions and recommendations.

10 MR. HANSON: Mr. Wilburn, I'm
11 going to have these two documents marked exhibits 18 and 19.

12

13 DEPOSITION EXHIBITS #18, & #19

14 WERE MARKED BY THE REPORTER

15 FOR IDENTIFICATION.

16 BY MR. HANSON:

17 Q. Mr. Wilburn, what has been marked as Exhibits 18
18 and 19 are the complaint and the answer to the complaint that
19 have been filed in this lawsuit.

20 Have you had a chance to review either one of these
21 documents?

22 A. Not thoroughly.

23 Q. I'm sorry?

24 A. Not thoroughly.

25 Q. Did you receive a copy of the complaint?

1 A. I believe we did.

2 Q. Did you take any part in formulating any of the
3 responses to the complaint?

4 A. I believe we did. Yes.

5 Q. I know that frequently these things are done,
6 perhaps not more than frequently, they're drafted by an
7 attorney and then reviewed by --

8 A. That would be the case.

9 Q. Reviewed by the client, and I don't want to know
10 about any of your conversations with Mr. Goldsmith or
11 anything like that. I do want to ask you about a couple of
12 the wordings here and see if you have any thoughts or not.

13 On paragraph 28 of Exhibit 18, let me know when
14 you've had a chance to review that.

15 A. I read it.

16 Q. When I talk about the settlement of the prior
17 lawsuit, do you have an understanding of what that is
18 referring to?

19 A. You're talking about the one that when we went to
20 court over, the zoning of what it was, what it should be, and
21 what it was actually?

22 Q. I'm not sure what that answer meant, but let me be
23 a little bit more clear.

24 When I'm talking about, and the phrase here in the
25 complaint is the negotiating the site plan for the aborted

1 settlement of the prior lawsuit.

2 Do you recall having been in several meetings
3 involving I think just about everybody in this room absent
4 the court reporter to discuss proposed settlement --

5 A. To try to come up --

6 Q. Let me finish. To discuss proposed settlement of
7 the last lawsuit?

8 A. I don't know if that is what we were discussing was
9 settlement or not. I know we discussed some different ways
10 of putting things together, I believe.

11 Q. Whether you call it settlement or something else,
12 you do recall discussing a site plan with me, Mr. Whitman,
13 Mr. O'Dell, Mr. Goldsmith?

14 A. I recall looking at a site plan.

15 Q. Do you recall discussing a site plan?

16 A. We had few words here and there, but I, when you,
17 you know, when you say discussing, I mean it sounds like we
18 spent hours and hours going over something which we did not.

19 Q. Do you remember how many meetings you had?

20 A. I think we had, might have had a, meet a couple of
21 times.

22 Q. Would you dispute it if somebody said that we had
23 four meetings?

24 A. I don't recall.

25 Q. Do you recall the period of time over which those

1 meetings were spread?

2 A. No, I do not.

3 Q. As you sit here today, would you have any reason to
4 dispute if somebody told you that those meetings occurred
5 over a period of six months?

6 A. No.

7 Q. Do you recall that in the course of those meetings
8 that Whitman Ford proposed a site plan that showed a
9 commercial development, and in particular a Walmart store,
10 208 feet from the Indian Acres property line?

11 MR. GOLDSMITH: Let me just
12 object as to relevancy. Also I guess by definition, at least
13 in your complaint, it dealt with settlement negotiations,
14 which are not evidence in this case, but you can answer the
15 question.

16 A. Do I recall looking at a proposed plan that showed
17 it's a Walmart 208 feet, is that what you're asking?

18 MR. HANSON: Correct.

19 A. I saw a plan. Do I recall the 208 feet, no, I do
20 not.

21 BY MR. HANSON:

22 Q. Do you recall ever expressing any objection in any
23 of those meetings to the site plan that was proposed by
24 Whitman Ford?

25 A. I never expressed approval or disapproval, because

1 I think I might have been quoted as saying I could have said
2 looks okay to me, but it has to go, but the rest of the Board
3 has to look at it.

4 Q. If you turn to Exhibit 19. It's a little bit like
5 doing--leave that page open. Sorry.

6 The Township's response to paragraph 28 on the
7 settlement, well, I shouldn't say on the settlement. The
8 Township's response to paragraph 28 is that it denies the
9 allegations for the reason that the allegations are untrue.

10 A. Are what?

11 Q. Untrue. You can read it yourself if you want.
12 It's the top of the page on exhibit --

13 MR. GOLDSMITH: Here is the
14 allegation in the complaint. Here is the corresponding
15 response.

16 A. Once again, we didn't, you know, you said did we
17 discuss the settlement? No. We looked at a conceptual plan,
18 a proposed plan.

19 BY MR. HANSON:

20 Q. Let me ask you this question. Can you read
21 paragraph 28 and tell me what in your mind is untrue?

22 A. In the course of negotiating the site plan for the
23 aborted settlement of the Prior Lawsuit, Whitman Ford
24 proposed (with no objection from Township officials until the
25 Board rejected the settlement in toto) that the nearest

1 commercial development be 208 feet from Indian Acres.

2 MR. GOLDSMITH: Let me just
3 object. Same objection, Tom, relevance, and it involves
4 settlement negotiations in a prior litigation.

5 But you can go ahead and answer his question.

6 A. Once again, there was never a settlement discussed.
7 Any time that I ever looked at anything with Mr. Whitman, he
8 was showing us something that he thought would be good for
9 that particular parcel. I didn't say it was going to fly. I
10 didn't say it wasn't going to fly. All I said is it has to
11 be looked at by the entire Board, and I've said several times
12 that I am one person on a seven member Board.

13 MR. HANSON: Phil, would you
14 agree that your objection, given your client's testimony that
15 there was no settlement discussions, that your objection
16 should be withdrawn?

17 MR. GOLDSMITH: No. I won't
18 agree to that.

19 MR. HANSON: There was either
20 settlement discussions or there weren't settlement
21 discussions. I don't think you can on the one hand say that
22 there was settlement discussions and say it's not relevant,
23 but on the other hand, say that there were no settlement
24 discussions, unless the allegation has been true.

25 MR. GOLDSMITH: You allege in

1 your complaint that there were settlement discussions. I've
2 heard one witness's interpretation of what transpired. So
3 no, I won't withdraw the objection.

4 MR. HANSON: We may have to just
5 take it up with the Judge at some point.

6 MR. GOLDSMITH: We might.

7 BY MR. HANSON:

8 Q. Let me just understand your testimony on this
9 point, Mr. Wilburn. Is your belief that there is something
10 untrue in paragraph 28 is that it presumes that there was
11 some sort of settlement discussions?

12 A. Yes.

13 Q. This, Mr. Wilburn, was marked as Exhibit 2 to Mr.
14 Jenkins' deposition. It is a letter from the Monroe County
15 Road Commission dated July 27, 2006, to Mr. Jeff Myers of
16 Mannik & Smith. Do you see that?

17 A. Yes.

18 Q. Why don't you take a moment to review this letter
19 and let me know when you've completed your review.

20 A. Okay.

21 Q. Do you recall ever having seen this letter before?

22 A. I'm sure I probably did.

23 Q. You'll notice it is copied to the Township Planning
24 Department, do you see that, correct?

25 A. Yes.

1 Q. Do you recall during the course of having meetings
2 with Mr. Whitman, and myself, and Mr. Goldsmith and others in
3 connection with the prior lawsuit there being discussion of a
4 traffic study being prepared?

5 A. It seems to me there was something said, yes.

6 Q. Do you recall at any point being asked if it was
7 advisable for Mr. Whitman to spend the money on a traffic
8 study?

9 A. No, sir, I did not.

10 Q. If someone were to testify to that, would you
11 dispute that testimony?

12 A. That I was aware of it?

13 Q. That somebody asked you?

14 A. I couldn't testify either way. I'm not aware of
15 it.

16 Q. Understood. Do you recall ever having seen a copy
17 of a traffic study?

18 A. No.

19 Q. You were aware, however, that a traffic study had
20 been completed some time in or around July of 2006, correct?

21 A. Uh-huh.

22 Q. That is a yes?

23 A. Yes.

24 Q. If you could turn to paragraph 65 on Exhibit 18. If
25 you could on 19 you may as well just follow along on Exhibit

1 19 as well.

2 A. 65?

3 Q. Yes. Mr. Wilburn, if you look at the preceding
4 paragraphs before 65, you'll see that the allegations are
5 talking about the Board's actions with regard to the rezoning
6 requests that is at issue in this lawsuit. Do you see that?

7 A. Yes.

8 Q. So the allegation made in paragraph 65 says thus,
9 the Board's action did not increase the amount of
10 commercially zoned property on the property.

11 In paragraph 65, the Defendant has denied the
12 allegations again for the reason that said allegations are
13 untrue.

14 I just want to get your opinion on reading the
15 allegation in paragraph 65 as to what is untrue about that
16 allegation?

17 A. You're asking me what is untrue about the
18 allegation in 64?

19 Q. 65.

20 A. That is the Board's actions did not increase the
21 amount of the commercially rezoned property on the property.

22 Q. If you don't know, you don't know.

23 A. I don't know. I don't know.

24 Q. I'm just trying to get your thoughts.

25 A. I thought that was a trick question.

1 Q. No, it's not a trick question. I think it is a
2 trick answer by your attorney, but that's another topic for
3 another day.

4 If you could look at paragraph 66, and if you could
5 review that and then I'll ask you the same question, could
6 you tell me in your estimation what, if anything, is untrue
7 about those allegations?

8 A. I don't know what is untrue about it.

9 Q. Nothing in your knowledge as you sit here today is
10 untrue about it, correct?

11 A. No.

12 Q. If you could review paragraph 69, and again at the
13 same time as you're reviewing it, after you reviewed it, if
14 you could let me know what in your estimation is untrue about
15 that allegation?

16 MR. GOLDSMITH: Which paragraph?

17 MR. HANSON: 69.

18 A. Okay. That is we didn't just rely on those things
19 to make decisions on 1 through 5. Okay. And we didn't just
20 rely and disregard that recommendation on 6. We had our own,
21 we had reasons, as I presented in my earlier statements, for
22 saying, for doing that.

23

24 BY MR. HANSON:

25 Q. You agree with me though, and we can go back and

1 look at the exhibit if we need to, that the motion that was
2 approved by the Board did not reference the planning
3 consultant's recommendations and reports?

4 A. That's true.

5 Q. You'd agree with me that the motions on Parcel 1
6 through 5 did reference the consultant's report and
7 recommendation, correct?

8 A. Yes.

9 Q. So --

10 A. Can we stop for just a second here, okay?

11 Q. Off the record?

12 A. Off the record or --

13 (An off the record

14 discussion was held)

15 MR. HANSON: Let's go back on
16 the record.

17 BY MR. HANSON:

18 Q. Just to recap, the issue that you take with
19 paragraph 69 is that you want to make sure that it's not
20 construed as saying that the Board relied only on the
21 township planning consultant's report and recommendation on
22 Parcels 1 through 5, is that fair?

23 A. Right, that's fair.

24 Q. I'll ask you to review paragraphs 70 and 71 with
25 the same question in mind as to what issues you have with

1 those paragraphs?

2 A. I don't have any issues at all with them. We did
3 not, we do not just depend on their recommendations to make
4 decisions.

5 Q. If you could turn to paragraph 76, and let me, go
6 ahead and review the answer as well.

7 A. Okay.

8 Q. Let me try to short circuit this. As I understand
9 it, the administrative rezoning came up in front of the
10 Planning Commission, is that true?

11 A. To the best of my knowledge, yes.

12 Q. And as I understand it, a motion to recommend
13 approval was made, and only garnered three votes, and there
14 were only five planning commissioners present at the meeting,
15 does that sound familiar to you?

16 A. That very well could have happened.

17 Q. I'm just trying to find out what the denial of this
18 paragraph is based on, and I think it is my own imprecise
19 drafting, which I said a motion to approve as opposed to a
20 motion to recommend approval.

21 Is that, as far as you know, the reason why this
22 paragraph is denied as untrue?

23 A. I don't know.

24 Q. Okay. Paragraph 78, if you could review that
25 allegation and the answer to that allegation.

1 A. Upon information and belief no one associated at
2 township, campaign publicly to support the Board's action.
3 That would be true.

4 Q. So paragraph 78 is true?

5 A. I would say so.

6 Q. Let's take a break and let me talk to Jon and see
7 if we can get out of here. Off the record.

8

9 (An off the record
10 discussion was held)

11 MR. HANSON: Let's go back on
12 the record.

13 BY MR. HANSON:

14 Q. Mr. Wilburn, we talked a little bit about some of
15 the advertising and campaign literature that was bouncing
16 around before the referendum, and I think you made some
17 allusion to the clerk and the clerk's responsibility over
18 elections, is that correct?

19 A. Yes.

20 Q. Is it your belief that the clerk has some
21 obligation to take some action if there is either false
22 advertising, or scare tactics, or those sorts of things on in
23 an election?

24 A. I think you can inform the authorities I believe,
25 the proper authorities. I don't think he can take it on

1 himself, no, we don't have anybody to do it.

2 Q. Do you think that he has an obligations to inform
3 the authorities?

4 A. That I can't, I don't know.

5 Q. I'm going to --

6 A. I can't even, I don't even know if he saw it.

7 Q. Mr. Wilburn, I'm looking at page 82 of the Master
8 Plan, and in particular, I'm looking at some of the
9 strengths, threats and weaknesses and opportunities that are
10 identified as having been part of the public input in the
11 Master Plan.

12 Have you had occasion to review this at various
13 times in the past, I presume?

14 A. I've looked at it, but I haven't reviewed it.

15 Q. This isn't the first time you've seen this?

16 A. No.

17 Q. I want to point out specifically it talks about
18 under threats, there's mention of subdivisions, and I just
19 want to make sure that, I did this with Mr. Jenkins, and I
20 want to make sure that you and I are on the same page, too.

21 When I see subdivisions, that to me is talking
22 about single family residential subdivisions, is that your
23 understanding?

24 A. For the most part, yes.

25 Q. Then on weaknesses, again we have got identified

1 too many subdivisions. And again, I read that to mean too
2 many single family residential subdivisions; is that a fair
3 reading?

4 A. I would say so, yes.

5 Q. With the referendum basically seeking to overturn
6 the Board action--

7 A. Yes.

8 Q. And in particular, the Board action in rezoning
9 several parcels of single family residential to other
10 things--

11 A. Yes.

12 Q. Didn't the effect of the referendum go exactly to
13 the threat and weakness of too many single family residential
14 subdivisions that are called out in the Master Plan?

15 A. I suppose you could look at it that way. I wasn't
16 looking at it at that way at the time. As a matter of fact,
17 I wasn't looking at any of that at the time. I was only
18 looking at what was in front of me, and what we were trying
19 to do.

20 Q. Would you agree with me that as supervisor of the
21 township, it's at least part of your job duty to try and look
22 for, and respond to potential threats to the township's
23 well-being?

24 A. Yes.

25 Q. You just in this particular instance, you either

1 didn't view the referendum as a threat, or otherwise didn't
2 remember this part of the Master Plan?

3 A. Well, I didn't, that is a two-sided question.

4 Did I, you know, I mean did I review the referendum
5 as a threat? No. I figured, you know, I, the only threat I
6 saw was the financial threat to the township. Because of the
7 fact that we had to pay for that, we would have had to pay
8 for that to go on the ballot.

9 It was fifteen thousand, nine thousand dollars I
10 think we ended up paying, or fifteen thousand, I'm not sure.
11 You can check at the clerk's office.

12 But, and as far as the subdivision, I didn't see it
13 as a threat because the economy is so terrible nobody is
14 going to be building anything anyway, so it didn't even come
15 into my mind.

16 Q. You mentioned the financial considerations that ran
17 through your head as the referendum was coming up. Would you
18 agree with me that the referendum's passage, or I'm sorry,
19 let me strike that.

20 Would you agree with me the fact that through the
21 referendum all of Mr. Whitman's rezoning requests had been
22 turned down, would you agree with me on that, right?

23 A. Yes.

24 Q. Would you agree with me that given that all of his
25 rezoning requests had been rejected, that probably made the

1 likelihood of a lawsuit significantly higher?

2 A. Yes.

3 Q. And that also would have a financial cost to the
4 township as we discussed, right?

5 A. Yes.

6 Q. Did that come into your mind at all as you were in
7 the days and weeks leading up to the referendum as to whether
8 the adverse impact of passage or rejection of the Board's
9 action, the adverse financial aspect was something that you
10 should try to avoid?

11 MR. GOLDSMITH: Let me just
12 object. I guess, Tom, I'm confused of where you're going
13 with this. It is relevancy, because I mean, I'm not here to
14 ask you questions.

15 My objection though is relevance, because isn't
16 referendum a rights secured to the people through the
17 constitution and made procedurally possible through the
18 zoning enabling act or the statutes, and the township can't
19 do anything to prevent that from happening.

20 So my objection is relevance. I mean what could
21 the township have done to prevent the referendum?
22 Relevance.

23 MR. HANSON: I understand that
24 there's nothing the township could have done to prevent the
25 referendum from occurring.

1 BY MR. HANSON:

2 Q. Is it your belief that you, Walt Wilburn,
3 personally could have done nothing to have prevented the
4 referendum from overturning the Board's decision? In other
5 words, the result of the referendum, not the fact of the
6 referendum itself, but the result?

7 A. Do you mean should I have been out there publically
8 campaigning?

9 Q. Do you believe that had you done so, it might have
10 changed the result at all?

11 A. I don't have a clue. I would not know the answer
12 to that.

13 Q. All right, we will adjourn.

14 A. Very good.

15 MR. HANSON: Thank you for your
16 time.

17 A. Thank you.

18 MR. GOLDSMITH: No questions.
19 I'll take an e-trans.

20

21 (The deposition was concluded at 3:30 p.m.,
22 signature of the witness was not requested by counsel for the
23 respective parties hereto)

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CERTIFICATE OF NOTARY

STATE OF MICHIGAN)

) SS

COUNTY OF WAYNE)

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

Michelle C. Vining, CSR 2335, RPR
Notary Public,
Wayne County, Michigan

My Commission expires: 11-27-11