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By MARK REITER

BLADE STAFF WRITER

Bedford is undecided on appeal of ruling in Whitman rezoning

TEMPERANCE -- Bedford Township has until Feb. 18 to appeal the Monroe County Circuit Court decision in the Whitman Ford land-use lawsuit against the township.

Judge Joseph Costello, Jr., agreed with the dealership that the election referendum that canceled zoning changes approved by the township board two years ago were capricious and arbitrary and prevent the land from being used for legitimate purposes.

Judge Costello, who heard testimony during a four-day trial in January, issued his 22-page decision Friday. In addition to overturning the May, 2009, voter referendum involving five parcels near the Lewis Avenue car dealership, Judge Costello also sided with Whitman Ford on a request to rezone an eight-acre parcel from residential to commercial.

The township board is to meet tonight, the first of two regularly scheduled meetings this month. However, Supervisor Walt Wilburn said the decision isn't on the agenda and a decision on appealing the judge's ruling to the Michigan Court of Appeals won't be taken up.

"We barely have had time to digest the decision. The board hasn't had a chance to talk about this," Mr. Wilburn said. "We will take the advice from our attorney and go from there. But we will have to get that advice."

On Dec. 2, 2008, the township board approved rezoning applications submitted by the dealership's owner and president, Jon Whitman, for modifications on five parcels, including changes that allowed for a mixture of multifamily and senior residential and professional business office development on land adjacent to the Indian Acres subdivision.

However, the board rejected Mr. Whitman's request to change the eight-acre parcel west of the dealership from residential to commercial zoning.

Bedford Watch petitioned to get the referendum on the ballot on the grounds that the zoning changes given to Mr. Whitman could open the door for construction of a big-box store such as a Walmart.

Judy Frankowski, a member of the nonprofit group, said she was disappointed with the ruling. "I didn't realize that a judge could do that; now I know that he can," she said, referring to actions nullifying the voter referendum. "I am surprised and puzzled by his decision."

She said she planned to attend tonight's township board meeting to urge officials to appeal the ruling to the higher court.

Judge Costello said in an interview yesterday he has the authority under Michigan legislative law to overturn the election referendum. He said the state law provides for courts to review referendums if parties don't believe the changes advance legitimate government interest.

"Any action can be reviewed in court," he said.

In his decision, Judge Costello cited the testimony of witnesses, including Paul LeBlanc, who testified as an expert for the township, that zoning changes approved by the board and subsequently reversed by the referendum were consistent with the township master plan and were in keeping with township ordinances.

"The township board acted reasonably as to the five parcels and the referendum inappropriately reversed it," Judge Costello wrote.