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Dealer: 'Had no idea' proposed Wal-Mart site wasn't commercial

Jon Whitman testifies in lawsuit over Bedford Township rezoning fight

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MONROE - Jon Whitman testified in court yesterday that he "had no idea" his property in Bedford Township was ever zoned anything other than for commercial development. The president of Whitman Ford said he "was stunned" when he was told in 2001 by township planning and zoning coordinator Dennis Jenkins that the western half of his 51 acres at the northwest corner of Sterns Road and Lewis Avenue was actually zoned residential.

Whitman Ford, owned by Jon Whitman and other family members, filed suit against the township in 2004 for what he claims was an "arbitrary and capricious" denial of two rezoning requests - in 2003 and then again in 2004.

The suit asks for an injunction preventing the township from interfering with any proposed commercial use for the property and seeks damages in excess of \$25,000 from the township. The Whitmans currently have a contract pending for a Wal-Mart Supercenter to be built on the property.

The proposed development has angered nearby homeowners, who have packed the township hall on several occasions to protest the zoning change Mr. Whitman has sought. In 1992, the township began listing the western half of the Whitman parcel as commercial on tax bills and on township zoning maps. This continued until 2001, when Mr. Jenkins said he discovered he had made a mistake and changed it back to residential. Mr. Jenkins previously said that rezoning can only be officially changed through a township vote on the underlying ordinances, not "a clerical error."

It was revealed in court yesterday that township attorney Phil Goldsmith also represented the Whitmans in 2002 when they first negotiated a contract with Wal-Mart. "I trust Phil. He's been a lifelong friend, and he's also the township attorney... so I specifically relied on his statements about the zoning of that property," Mr. Whitman testified. Mr. Goldsmith said outside the courtroom that once he realized there was a conflict of interest, he stopped representing Mr. Whitman in his pursuit to develop the parcel.

But according to Mr. Whitman, and his attorney, Tom Hanson, of Ann Arbor, Mr. Goldsmith did stay on long enough as Whitman counsel to complete the contract with Wal-Mart, which was finalized in June, 2002, despite the fact that the zoning dispute with the township came to light in June, 2001. Yesterday Mr. Goldsmith was sitting at the defense's table with David Landry, of Farmington Hills, representing Bedford Township.

In 1973, Mr. Whitman's father, Paul Whitman, purchased the car dealership and surrounding property that is now the subject of dispute. Between then and 1993, Whitman Ford applied for seven rezoning requests, and the only one that was denied involved commercial development of a section of the land fronting Indian Trails, an about 50-year-old subdivision that is one of Bedford's largest.

For all seven of the previous rezoning requests, township records show, the western part of the Whitman property was listed as residential, a fact Jon Whitman testified he was not aware of. "My father knew it... but I didn't notice it. I didn't know any of this," said Mr. Whitman, who is now the Ford dealership's majority shareholder.



Judge Joseph Costello, left, listens as Jon Whitman testifies about proposed sale to Wal-Mart.

(THE BLADE/JEREMY WADSWORTH)

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In 1998, Mr. Whitman first hired real estate agent Steve Lennex. Mr. Lennex said he went to township hall to ask about its zoning, but was given misinformation. He said he knows that zoning maps can sometimes be inaccurate but "that's why I talked to Dennis Jenkins... that's why I talk to the people [like him] that are paid to know." After being told the land was zoned commercial, Mr. Lennex sent out a letter in 1998 to possible developers that stated, "Finally, a Bedford site that can accommodate a Meijers or other big-box."

Mr. Whitman and Mr. Lennex both testified yesterday that their current contract with Wal-Mart for the 204,000-square-foot Supercenter was finalized last June. It calls for a \$4.5 million sale price for about 32 acres. That is about \$140,000 per acre. In 2002, a similar contract with Wal-Mart was signed for that same parcel. The sales price was \$2.65 million for 33 acres, or, about \$80,000 per acre.

Several residents of the Indian Trails subdivision were on hand yesterday at the trial. They have formed a local citizens' group, Bedfordwatch.com, to oppose Wal-Mart's plans to build near their homes. Township attorney Landry asked Mr. Whitman yesterday if it made sense that Whitman Ford was seeking damages from the township due to its clerical error, when Whitman Ford's current deal with Wal-Mart is for substantially more money than its 2002 deal. Mr. Whitman said he admits, "\$4 million is higher than the \$2 million," but declined to expand on his response.

When being cross-examined by Mr. Landry, Mr. Lennex denied that he wanted to sell the acreage to a big-box store, instead of accepting the many offers they had to sell it as piecemeal lots, simply because of the extra money he and the Whitmans would make. "We were looking for something that would be good for the community... and the big-box fit that criteria," Mr. Lennex said.

Both Mr. Whitman and Mr. Lennex said the current contract with Wal-Mart is for substantially more than the 2002 contract because Mr. Whitman has agreed to move his Whitman Ford dealership off the property. He already has a parcel zoned for commercial use on Lewis south of Sterns to relocate his dealership. Moving the dealership would allow for more retail friendly out-lots around the proposed Wal-Mart, Mr. Lennex said. He said Wal-Mart preferred not to have the dealership on the property.

Under the current contract, Mr. Whitman would retain the remainder of the 51 acres not sold to Wal-Mart and would likely sell them off piecemeal to other retail stores. But Mr. Whitman said Wal-Mart would have a say on what type of businesses surrounded the company's store.

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