

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MONROE

WHITMAN FORD,  
a Michigan corporation,

Plaintiff,

Case No. 04- 18604 -CH

vs.

Hon. JOSEPH A. COSTELLO, JR.

TOWNSHIP OF BEDFORD  
a municipal corporation,

Defendant.

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There is no other pending or resolved  
civil action arising out of the transaction  
or occurrence alleged in the Complaint.

COMPLAINT AND JURY DEMAND

Plaintiff Whitman Ford, by its attorneys, Dykema Gossett PLLC, hereby states as follows for its Complaint against Defendant Bedford Township.

**Nature of The Action**

1. Whitman Ford is a family-owned and operated business which has been in existence for more than 53 years. Since 1977, Whitman Ford has operated an automobile dealership from 7555 Lewis Avenue in Bedford Township. The dealership itself, which is located just north of the major intersection of Lewis Avenue and Sterns Road, is situated on approximately eight acres of land zoned for "C-3-General Commercial" uses. The property on which the dealership is located has been zoned "C-3" since at least 1977.

2. Whitman Ford also owns approximately 43 acres of vacant land directly to the north, south and west of the dealership property. Whitman Ford has owned this vacant property for more than 25 years. Since at least 1992, this vacant land has been zoned for "C-2-Shopping Center Business" uses.

3. Whitman Ford desires to develop the vacant portion of its property (hereinafter "the Property") for "C-3" uses, including an expansion of the existing automobile dealership. The expansion is absolutely necessary to allow Whitman Ford to compete with other automobile dealers in the area, including Northtowne Chevrolet. Without an expansion, Whitman Ford cannot compete with other local dealers who have substantially more zoned acreage on which to operate their businesses.

4. The proposed "C-3" uses are appropriate for the Property. The Property: (i) is located in the commercial corridor of Bedford Township, along the five-lane Lewis Avenue; (ii) is adjacent to the "C-3"-zoned land on which the existing dealership is located; and (iii) has been zoned for "C-2" commercial uses for more than a decade.

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5. In 2003, Whitman Ford submitted two separate requests for the Property. Each request sought rezoning of the Property from "C-2" to "C-3" Consistent with its increasingly anti-business stance, the Bedford Township Board of Trustees denied both rezoning requests.

6. Among other things, Bedford Township improperly claimed that, under a newly-revised Zoning Ordinance, a portion of the Whitman Ford property as being zoned "R-2A – Single Family Residential," as opposed to "C-2." Assuming, *arguendo*, that portions of the Property are zoned "R-2A," this defeats one of the principal reasons for the denial of the rezoning requests. Although Bedford Township claims that the denials were appropriate because "C-3" zoned land should not be permitted adjacent to residential zones, under the newly-revised Zoning Ordinance that situation currently exists both on the Whitman Ford parcel and at numerous other locations throughout the Township.

7. Because each of the denials was arbitrary, capricious, and without any legitimate factual support, Whitman Ford seeks, among other things: (i) entry of an Order precluding Bedford Township from interfering with the development of its Property for "C-3-General Commercial" uses; and (ii) damages in excess of \$25,000.

**Parties, Jurisdiction And Venue**

8. Whitman Ford is a Michigan corporation, whose mailing address is 7555 Lewis Avenue Temperance, Michigan 48182.

9. Defendant is a Michigan municipal corporation located in Monroe County, State of Michigan, whose mailing address is 8100 Jackman Road, Temperance, Michigan 48182.

10. Jurisdiction of this Court exists in that this action arises under the constitution and laws of the State of Michigan, and the matter in controversy exceeds the value of \$25,000, exclusive of interest and costs. Jurisdiction is further invoked pursuant to MCR 2.605 and 3.310, this being a suit for injunctive relief and a declaratory judgment.

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11. Venue is proper in this Court because the Defendant is a municipal corporation situated in Monroe County, and because the property at issue in this land use dispute is located in Monroe County.

**Commercial Zoning Of The Subject Property**

12. The subject matter of this lawsuit is the approximately 43 acres of vacant land directly adjacent to the existing Whitman Ford dealership ("the Property"). Although there is a small residential subdivision to the west of the Property, it is otherwise surrounded by commereial uses, including a bar, a bank and the Monroe County Community College.

13. From at least 1992 through September 2001, the entire Property was zoned "C-2-Shopping Center Business." The "C-2" zoning classification was clearly designated in numerous official Bedford Township and Monroe County documents including:

- The official Zoning Map for Bedford Township, as amended August 1992, which identifies the Property as being zoned "C-2" (Ex A);
- The official Zoning Map for Bedford Township, as amended June 1993, which continues the "C-2" designation for the Property (Ex B);
- The official map from the Monroe County Equalization Department which designates the Property as being zoned "C-2" (Ex C); and
- The assessment records and tax bills from Bedford Township, which, as recently as 2003, designate the Property as being zoned "Commercial" (Ex D).

14. Moreover, in a May 21, 1993 review of Whitman Ford's earlier request for a small 2.9 acre expansion of its existing dealership, Township Planning Consultant Wade Trim expressly acknowledged that the Property that is the subject of this lawsuit was zoned "C-2":

**Existing Zoning Ordinance**

The entire 2.9 acre subject property is zoned C-2 Shopping Center Business district, as is the property immediately north and west of the subject property. (Emphasis added).

(Ex. E). This letter not only was sent directly to the Bedford Township public officials, but it was made a part of the official public record. No one ever disputed Wade Trim's official conclusion that the Property was zoned "C-2," and Whitman Ford relied upon this official representation as to the Property's zoning, a representation which was repeated in other documents.

15. In addition, Wade Trim recognized that as of 1993 the Master Planning designation for the Property was "Community Center Commercial." The Bedford Township Master Plan map, adopted on December 3, 1997, continued to designate the Whitman property as being planned for "Non-Center Commercial" uses.

16. Moreover, in the late 1990's, Meijer sought Bedford Township's approval for a store at the intersection of Smith and Secor Roads. The Meijer proposal was denied by Bedford Township, on the ground that the appropriate location for such a use was on Lewis Avenue (where the Whitman Ford Property is located) This constitutes further evidence that commercial zoning is appropriate for the Property.

17. In reliance upon these official government records (as well as verbal representations from numerous local officials), Whitman Ford has considered the Property to be zoned for commercial use since at least 1992. For years, Whitman Ford has marketed the property to third parties for commercial use, and it has pursued several potential commercial ventures on its own. Since at least 1998, signage on the Property has clearly designated it as having "C-2" zoning. (Ex F). At no time before 2001, did Bedford Township, Wade Trim, or anyone else in the community challenge the sign's prominent description of the applicable zoning.

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**Bedford Township's Belated Attempt To Change The Property's Zoning**

18. On June 6, 2001 -- in what would prove to be the first of a series of actions negatively impacting Whitman Ford -- Bedford Township advised that certain portions of the Property allegedly were not zoned "C-2." A June 6, 2001 letter to Whitman Ford from Dennis Jenkins, Coordinator at the Bedford Township Planning Department, acknowledged that the Official Zoning Map designated the entire Property as being zoned "C-2." but stated that: "[a]pparently when the [zoning] map was updated sometime in the 90's an error was made and the area of C-2 zoning was erroneously extended to the entire parcel." (Ex G).

19. In September 2001, Bedford Township amended its Zoning Map to correct this alleged inaccuracy, and to designate certain portions of the Property as being zoned "R-2A-Single Family Residential." The September 2001 amendment of the Zoning Map was not undertaken in a manner consistent with the Township Rural Zoning Act, and it therefore was improper and unlawful. Moreover, Bedford Township is estopped from claiming that portions of the property are zoned "R-2A" when all of the official documents have designated the entire property as being zoned "C-2" for more than a decade.

**The Wal-Mart Proposal**

20. In late 2002, Whitman Ford submitted a proposal for the development of a Wal-Mart Store on approximately 19 acres of the Property, south of the existing dealership. This portion of the Property is located at the intersection of Stems Road and Lewis Avenue, and it has frontage on Stems Road.

21. In submitting the Wal-Mart proposal, Whitman Ford relied in part upon the previously existing "C-2" zoning designation for the Property. In fact, Whitman Ford was not alone in its belief that the entire Property was still zoned "C-2." As late as December, 2002, Bedford Township's own planning consultant, Wade-Trim, continued to hold the belief that the

Property was zoned for commercial use even after: (i) the Zoning Map had been arbitrarily changed to create "R-2A" zones on the Property; and (ii) the Wal-Mart proposal was submitted. In its December 20, 2002 review of the Wal-Mart plan, Wade-Trim stated that: "Currently the site in question is zoned C-2, Shopping Center Business District." (Ex H). Although Wade-Trim revised its analysis in early 2003 to claim that part of the Property actually is zoned "R-2A," its initial assessment of the Property's zoning constitutes further evidence of the general understanding that all of the land was zoned for "C-2" commercial uses.

22. In May 1993, Wade Trim had recommended against Whitman Ford's request for a 2.9 acre expansion of its dealership (although Bedford Township ultimately approved the proposal.) In 2003, Wade Trim continued its attempt to thwart Whitman Ford's effort to develop the Property, taking the position that the development of a Wal-Mart store would not be appropriate. One of the stated reasons for Wade Trim's recommendation was the Bedford Township Master Plan's questionable strategy of "Recogniz[ing] the City of Toledo, Ohio as a business center serving both the local consumer population and subregional market base." This Master Plan initiative is just one more indication of Bedford Township's arbitrary desire to reduce and/or eliminate commercial development within its borders, and specifically on the Property.

23. After learning that Wade Trim was recommending against another of its development proposals, Whitman Ford withdrew its request relative to Wal-Mart. However, the appropriateness of the Property for a commercial development such as Wal-Mart subsequently was confirmed in the July 3, 2003 "Downtown Temperance Economic Development Study" commissioned by the Bedford Township Economic Development Corporation. That study, which was undertaken by an Ann Arbor planning firm, involved lengthy interviews of downtown Temperance business owners and surveys of numerous residents. The purpose of the study was

to determine the types of businesses desired by local residents, and the appropriate location for such uses. With respect to a proposed Wal-Mart, the survey concluded that the appropriate location for such a use would be in the “larger strip commercial areas in the township”:

We recognize that discount stores, such as Wal-Mart, Target and the like, are an important part of the shopping menu for consumers in the Temperance area. However, we feel that given the character and scale of downtown Temperance, it is not the appropriate location for these “big box” establishments. **These large chain stores should be located in larger strip commercial areas in the township and near Toledo.** (Emphasis added).

(Ex I). One such “strip commercial area” in Bedford Township is the Property.

**First Rezoning Request**

24. In early 2003, Whitman Ford decided that further expansion of its dealership is necessary if it is to remain competitive. In March 2003, Whitman Ford therefore submitted a rezoning request to rezone approximately 20.11 acres of vacant land to the north and west of their existing dealership from “C-2” to “C-3.” Approximately 4.71 acres of this Property has frontage along Lewis Avenue, to the north of the existing dealership.

25. On or about April 18, 2003, Wade-Trim provided Bedford Township with its analysis of Whitman Ford’s first rezoning request. After noting that approximately 15.4 acres of the land allegedly was zoned “R-2A,” Wade Trim vetoed for the third time a Whitman Ford proposal for the development of the Property. The same planning consultants who had twice acknowledged the “C-2” zoning of the Property (in 1993 and 2002) now took the position that denial was appropriate based upon the following three reasons:

- (i) The request is not compatible with the Master Plan which recommends the property for Parks and Recreation.
- (ii) The proposed amount of property to be rezoned to C-3 District, and the intensity of uses that would be permitted by right, is not compatible with the existing R2-A residential development to the west.
- (iii). The Applicant has indicated the rezoning request is for the expansion of the existing dealership. We are concerned that the scale of twenty

additional acres of property to expand such a use will be incompatible with the restrictive residential and commercial uses surrounding the site.

(Ex J).

26. In presentations to Bedford Township, Whitman Ford objected to Wade-Trim's characterization of portions of the Property as being zoned "R-2A." Whitman Ford advised Bedford Township that it was estopped from arguing that portions of the Property are zoned "R-2A," inasmuch as the entire Property had been designated for "C-2" zoning for more than a decade.

27. In addition, Whitman Ford also provided Bedford Township with substantial evidence as to the meritless nature of the reasons proffered by Wade Trim in support of the denial. For example, although Wade-Trim claimed the rezoning request was incompatible with the Master Plan's designation of the property for "Parks and Recreation," the 1997 Master Plan designated the Property for "Non-Center Commercial." Although the Master Plan designation apparently was changed to "Parks and Recreation" in the summer of 2002, there has been no change in the character of the surrounding area that would justify such a dramatic and arbitrary change. Moreover, there is absolutely no legitimate basis for planning the Property for "Parks and Recreation," given the fact that: (i) it is located on a five-lane highway; and (ii) it is virtually surrounded by commercial development (including an automobile dealership and a bar). Wade-Trim itself recognized the inherent difficulties with the new Master Plan designation, stating in its April 2003 letter that "recreational development and use of the site may be difficult."

28. In addition, Whitman Ford pointed out that it is impossible to reconcile Wade-Trim's claim that the "intent of the Township was to provide a low-intensity use adjacent to the existing residential to the West under either the Parks and Recreation or the Mixed Residential/Office/Commercial Master Plan alternatives" with the fact that, directly across Lewis

Avenue to the east, the newly-revised Master Plan retains a high-intensity commercial designation immediately adjacent to an existing residential development.

29. Moreover, Wade-Trim's argument that: "[t]he proposed amount of property to be rezoned to C-3 District, and the intensity of uses that would be permitted by right, is not compatible with the existing R2-A residential development to the west," is similarly without merit. Wade Trim fails to recognize, that under the newly-modified Zoning Map, Whitman's "C-3"-zoned land is next to property that is allegedly zoned "R2-A." Moreover, there are "R-2A" zones directly adjacent to large "C-3" zones directly across Lewis Avenue to the east. In fact, Wade Trim contradicts its own position by *recommending* that the 6.51 acres to the north of the dealership be rezoned to "C-3." The net result of such an action would be to place "C-3" zoning directly adjacent to the remaining "R-2A" zone on the Whitman Property. Wade Trim fails to explain why some residential zones require a low intensity buffer between nearby "C-3" areas, while others apparently do not.

30. Moreover, Wade-Trim's argument that "we are concerned that the scale of twenty additional acres of property to expand such a use will be incompatible with the restrictive residential and commercial uses surrounding the site," fails to explain how an expansion of an automobile dealership can be incompatible with the surrounding commercial uses (including an existing automobile dealership.) Moreover, the Wade Trim analysis ignores that fact that, under the current Zoning Map, large "C-3" districts are located directly next to residential areas on the east side of Lewis Avenue. In addition, Bedford Township's architectural, landscape and site lighting ordinances are designed to enhance compatibility of commercial uses with the surrounding area, and should alleviate any concerns about alleged "incompatibility" between "C-3" uses and surrounding uses.

31. The Planning Commission recommended the denial of Whitman Ford's rezoning request in a meeting on May 7, 2003. The basis for the Planning Commission's denial was that the proposed "C-3" zoning would not be compatible with the "R-2A" zoning to the west of the Property (i.e., with the small residential subdivision to the west):

"MR. MICHAEL MINGES:... I move that the request for rezoning as presented be denied, requests as presented, which is the entire whatever acres be.

CHAIRMAN SHAH: Give a rationale.

MR. MICHAEL MINGES: Be denied in that it is contrary to good zoning practice with respect to current R-2 usage – and that some transitional zoning would be more appropriate.

(Ex K).

32. It is clear that the Planning Commission's recommendation of denial was motivated in large part by opposition from residents in the nearby residential subdivision: However, it clearly is improper to base rezoning decisions on the "not-in-my-backyard" mentality of a small percentage of local voters. Moreover, on two occasions in the past (1977 and 1993), Bedford Township has approved requests to allow "C-3" zoning adjacent to residential on the Whitman Ford property itself.

33. The Board of Trustees denied the rezoning request on June 17, 2003. (Ex L). The Board simply relied on the Wade Trim analysis, which consistent with pattern and practice, vetoed the rezoning proposal. These were the same planning consultants who, for more than a decade, had publicly taken the position that the Property was zoned "C-2," a position which cannot possibly be reconciled with the recommendation of denial.

34. Not only was its decision arbitrary, capricious and without legitimate factual basis, the Board failed to properly view the request as being one from "C-2" to "C-3" zoning.

Had the request been properly considered there should have been no question as to the appropriateness and reasonableness of the proposed use.

### **Second Rezoning Request**

35. Whitman Ford subsequently submitted a second rezoning request seeking to rezone to "C-3" the approximately 20 acres of vacant land located directly to the south and west of its existing dealership. This land is located on the high visibility corner of Sterns and Lewis Avenue, and numerous commercial uses are located on the other corners of the same intersection. This is the same land located at the intersection of Lewis Avenue and Sterns Road which previously had been proposed for the Wal-Mart.

36. On or about November 5, 2003, Wade-Trim submitted its fourth recommendation against a development proposal for the Whitman Ford property. Based upon the newly-revised Bedford Township Zoning Map, Wade Trim took the position that: (i) approximately 8.73 acres of the property is currently zoned "R-2A;" and (ii) the remaining 10.53 acres fronting on Lewis Avenue is zoned "C-2." Wade-Trim again gave three reasons for its recommendations for denial:

(i) The request is not compatible with the current Master Plan, which recommends Local Commercial and Mixed Residential/Office/Commercial.

(ii) The proposed amount of property to be rezoned to C-3 District, and the intensity of uses that would be permitted by right, are not compatible with the existing R-2A residential development to the west and other surround (sic) C-2, Local Business District uses.

(iii) The existing C-2 District zoning on site is more compatible with the Master Plan recommendations and the adjacent residential and commercial properties.

37. Again, Whitman Ford demonstrated each of the reasons proffered by Wade-Trim was without merit. First, Wade-Trim's April 2003 analysis of Whitman Ford's first rezoning request indicated that the "request is not compatible with the Master Plan which recommends the property for Parks and Recreation." In its November 5, 2003 analysis, Wade Trim references the

planning designation for the property as being "Mixed Residential/Office/Commercial." It is unclear whether the Master Plan referenced in the November 5, 2003 letter ever was officially adopted. Nevertheless, the 1997 Master Plan called for the designation of the Whitman Property as "Non-Center Commercial." There has been no change in the character of the surrounding area that would justify these dramatic and arbitrary changes in the Master Plan designation. If anything, there has been more commercial development in the area.

38. Moreover, there again is no legitimate basis for planning this property for either "Parks and Recreation" or "Mixed Residential/Office/Commercial, given the fact that the property: (1) is located on a major highway; (ii) is virtually surrounded by commercial development (including an automobile dealership and a bar); and (iii) is located on the corner of a major intersection. All of the other corners of the intersection of Sterns and Lewis Roads have commercial uses located adjacent to residential zoning. Across Lewis Avenue to the east, the Master Plan allows for a high-intensity commercial designation immediately adjacent to an existing residential development. There is no justification for treating the Whitman property differently, by allegedly planning it for a mixed Residential/Office/Commercial use.

39. In addition, Wade-Trim's statement that "[t]he proposed amount of property to be rezoned to C-3 District, and the intensity of uses that would be permitted by right, are not compatible with the existing R-2A residential development to the west and other surround (sic) C-2, Local Business District uses," ignores the fact that, under the current Zoning Map, the portion of the Whitman property that is zoned "C-3" is directly adjacent to property that is allegedly zoned "R2-A." Moreover, there are other "R-2A" zones directly adjacent to large "C-3" zones across Lewis Avenue to the east.

40. In addition, in reviewing Whitman Ford's earlier rezoning request, Wade-Trim had recommended that the 6.51 acre parcel to the north of the dealership be rezoned to C-3. The

net result of such an action would have been to place "C-3" zoning directly adjacent to the remaining "R-2A" zone. Wade-Trim also fails to explain why, in connection with the second rezoning request, it does not similarly recommend that at least the frontage along Lewis Avenue be rezoned to "C-3."

41. Finally, Wade-Trim's statement that "[t]he existing C-2 District zoning on site is more compatible with the Master Plan recommendations and the adjacent residential and commercial properties" ignores the fact that, under the current Zoning Map And Master Plan, large "C-3" districts are located directly next to residential areas in numerous locations in the surrounding area. Moreover, the Whitman Ford dealership property is zoned "C-3" and is adjacent to R-2A properties. In addition, architectural, landscape and site lighting ordinances designed to enhance compatibility of commercial uses with the surrounding area. These ordinances should alleviate any concerns about alleged "incompatibility."

42. Nevertheless, the Planning Commission recommended denial on November 12, 2003. (Ex M). The stated basis for the recommendation was that the request allegedly was incompatible with the current Master Plan. Although Township officials have repeatedly indicated that the Master Plan is simply a guide for development, it has been rigidly applied to any proposal for the development of the Whitman Property. Again, it appears the primary motivation for the recommendation of denial was the opposition from a small group of Bedford Township residents who reside in the nearby residential subdivision.

43. On January 6, 2004, the Board of Trustees voted to deny the request. (Ex N).

44. The denial of Whitman Ford's Rezoning Applications was arbitrary, illegitimate, and/or without substance and factual support.

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45. The denial of Whitman Ford's Rezoning Applications constitutes an arbitrary, capricious and unfounded refusal to permit a legitimate land use on the Property and an unreasonable exercise of the Township's police power.

46. No reasonable governmental interest is advanced by the denials of Whitman Ford's Rezoning Applications.

47. Whitman Ford has been denied any economically viable use of the Property, and the denial of the Rezoning Applications does not substantially advance a legitimate state interest.

48. The denial of Whitman Ford's Rezoning Applications bears no substantial relationship to the public health, safety, morals or general welfare.

49. Contrary to the Board's determination, Whitman Ford's request to develop the Property for commercial uses was and is compatible with neighboring land uses and appropriate for the nature and character of the Property and the surrounding lands.

50. For the reasons described above and in the reports and other information given to the Township during the course of the rezoning proceedings, Whitman Ford's proposed commercial development is an appropriate and reasonable use of the Property.

51. The rezoning requests and development of the Property were prejudged by Wade Trim, the Planning Commission and the Board of Trustees even before the matter came before them for proper consideration. Wade Trim has a history of recommending against any attempts by Whitman Ford to obtain the zoning necessary to develop its property for "C-3" uses, and the elected officials of Bedford Township continue to resist commercial development on the Whitman Property and in the township as a whole. This, combined with Bedford Township's willingness to allow and approve other "C-3" developments adjacent to residentially-zoned properties reflects illegal and improper discrimination in violation of Plaintiff's constitutional rights.

**COUNT I**

**(Declaratory Relief; Violation of Law)**

52. Whitman Ford incorporates by reference as if fully set forth herein, allegations 1 through 44 above.

53. In acting upon Whitman Ford's Rezoning Applications, Bedford Township was subject to the duties, limitations, liabilities, and restrictions imposed by law, including, but not limited to, Michigan's Township Zoning Act, MCL 125.271 et seq.

54. For the reasons described above and in the reports presented to Bedford Township, the decisions on the Rezoning Applications were not based on the requirements and standards of the Zoning Ordinance, and were otherwise without basis and an unreasonable, arbitrary and capricious exercise of the police power and exclusion of legitimate land uses from the Property.

55. Bedford Township is estopped from arguing that the current zoning of the Property is anything other than "C-2."

56. Assuming, arguendo, that portions of the Property are zoned "R-2A", the present alleged zoning of the Property is inappropriate, illegal and unreasonable because it is not economically feasible or reasonable to develop the majority of the Property for residential use considering, among other things: the size and shape of the Property, the location of the Property and the nature of surrounding land uses.

57. Bedford Township denied the rezoning request without reasonable explanation or factual justification, and there is no reasonable basis for maintaining the "C-2" and/or alleged residential zoning of the Property.

58. For the reasons stated in this Complaint, Whitman Ford is entitled to a declaration that the denial of the rezoning request was unreasonable, arbitrary and capricious, and an Order

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enjoining the Township from interfering with the development and use of the Property for "C-3" commercial uses.

**COUNT II**

**(Violation of Due Process of Law)**

59. Whitman Ford incorporates by reference as if fully set forth herein, allegations 1 through 58 above.

60. The denial of Whitman Ford's Rezoning Applications constitutes a purely arbitrary, capricious and unfounded exclusion of a legitimate land use from the Property.

61. The denial of Whitman Ford's Rezoning Applications does not advance a reasonable governmental interest.

62. The denial of Whitman Ford's Rezoning Applications has denied it substantive due process of law, in violation of the Michigan Constitution of 1963.

63. The denial of Whitman Ford's right to substantive due process of law has caused it to sustain loss and damage.

64. The denial of Whitman Ford's right to substantive due process of law has caused it to incur irreparable injury, and threatens Plaintiff with future irreparable injury, for which there is no adequate remedy at law.

**COUNT III**

**(Temporary Taking)**

65. Whitman Ford hereby incorporates paragraphs 1 through 64 of this Complaint, as if set forth herein in full.

66. The denial of Whitman Ford's Rezoning Applications denies it the economically viable use of its land.

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67. The denial of Whitman Ford's Rezoning Applications does not substantially advance a legitimate state interest.

68. The denial of Whitman Ford's Rezoning Applications is clearly arbitrary and unreasonable, and has no substantial relation to the public health, safety, morals or general welfare.

69. The denial of Whitman Ford's Rezoning Applications constitutes a taking of its Property without just compensation, in violation of Article X, § 2 of the Michigan Constitution of 1963.

70. The taking of Whitman Ford's Property without just compensation has caused it to sustain loss and damage.

71. The taking of Whitman Ford's Property without just compensation has caused it to incur irreparable injury and threatens it with future irreparable injury, for which there is no adequate remedy at law.

**COUNT IV**

**(Exclusionary Zoning)**

72. Plaintiff hereby incorporates paragraphs 1 through 64 of this Complaint, as if set forth herein in full.

73. Defendant's Zoning Ordinance and the denial of Whitman Ford's Rezoning Applications, are designed to have and do have the practical effect of excluding additional commercial uses from Bedford Township in general (and from the Property in particular), in violation of constitutional, statutory and common law prohibitions against exclusionary zoning. This is being done to further Bedford Township's illegitimate goal of recognizing "the City of Toledo, Ohio as a business center serving both the local consumer population and subregional market base."

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74. Defendant's Zoning Ordinance and the denial of Whitman Ford's Rezoning Applications, are designed to have and do have the practical effect of excluding commercial uses from Bedford Township in general and from the Property in particular, in violation of constitutional, statutory and common law prohibitions against exclusionary zoning.

76. Bedford Township's exclusionary zoning has caused Whitman Ford to suffer loss and damage.

77. Bedford Township's exclusionary zoning has caused Whitman Ford to incur irreparable injury, and threatens it with future irreparable injury, for which there is no adequate remedy at law.

**COUNT V**  
**(Equal Protection)**

78. Plaintiff incorporates by reference as if fully set forth herein, allegations 1 through 77 above.

79. Although Bedford Township has denied Whitman Ford's Rezoning Applications, it has approved commercial uses adjacent to residential uses elsewhere in the Township.

80. No reasonable factual or other distinction or circumstances exist to treat the Whitman Ford proposals any differently. Moreover, a logical and unbiased analysis of the underlying facts in light of applicable land use and zoning principles, demonstrates that the Whitman Ford Property would be the most logical and appropriate choice for commercial zoning. The majority of the Township Board has apparently concocted a different and/or new interpretation of its ordinances and policies for the sole purpose of preventing Whitman Ford from developing its property for commercial uses.

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81. Defendant's refusal to rezone the Property as requested by Whitman Ford involves the selective and discriminatory enforcement and/or lack thereof of state and local laws, ordinances, plans and procedures in violation of Article I, §2 of the Michigan Constitution.

WHEREFORE, Whitman Ford respectfully demands judgment as follows:

- a. That the Court determine, declare and adjudge that Bedford Township's refusal to rezone the Property constitutes an arbitrary, capricious and unreasonable exclusion of a legitimate land use, and/or bore no reasonable relationship to a legitimate governmental objective.
- b. That the Court determine, declare and adjudge that Bedford Township's actions constitute exclusionary zoning and/or a violation of federal, state and local laws, ordinances and practices and a violation of Whitman Ford's constitutional rights.
- c. That the Court issue an injunction preventing Bedford Township from interfering with Whitman Ford's proposed use of the Property for commercial uses consistent with the proposed rezoning requests.
- d. That the Court award Whitman Ford damages in excess of \$25,000.00.
- e. That the Court award Whitman Ford such further or different relief as may be deemed just or appropriate, including costs and attorney fees.

Respectfully submitted,

DYKEMA GOSSETT PLLC

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