

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MONROE

WHITMAN FORD,

Plaintiff,

v.

TOWNSHIP OF BEDFORD, a municipal corp.,

Defendant.

Case No. 04-18604-CH
Hon. Joseph A. Costello Jr.

Zora E. Johnson (P45850)
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NEMIER, TOLARI, LANDRY, MAZZEO & JOHNSON
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[Handwritten signatures and stamps]
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MONROE, MICH.

ANSWER TO COMPLAINT

NOW COMES Defendant Township of Bedford, by and through its counsel, NEMIER, TOLARI, LANDRY, MAZZEO & JOHNSON, and in answer to Plaintiff's Complaint, states as follows:

Nature of the Action

1. In answer to Paragraph 1, Defendant admits that Whitman Ford operates an automobile dealership at 7555 Lewis Avenue in Bedford Township, that said dealership is located north of the intersection of Lewis Avenue and Sterns Road, is situated on approximately eight acres of land zoned C-3 and said property has been zoned C-3 since the 1970's. With respect to the remainder of the allegations therein, Defendant is without

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knowledge or information sufficient to form a belief as to the truth of said averments and, therefore, neither admits nor denies same but leaves Plaintiffs to its proofs.

2. In answer to Paragraph 2, Defendant admits that Plaintiff Whitman Ford owns the property in question. With respect to the remainder of the allegations therein, Defendant denies same for the reason that they are untrue.

3. In answer to Paragraph 3, Defendant does not contest Whitman Ford's desire to develop the land. Defendant denies the remainder of the allegations therein for the reason that they are untrue.

4. In answer to Paragraph 4, Defendant denies that C-3 uses are appropriate for the property for the reason that it is untrue. Defendant admits that the property is located along Lewis Avenue which is five lanes, admits that a portion of the property is adjacent to a parcel which is zoned C-3 upon the existing dealership is located, but denies the remainder of the allegations therein for the reason that they are untrue.

5. In answer to Paragraph 5, Defendant admits that in 2003, Whitman Ford submitted two separate rezoning requests for portions of the property. Defendant admits that Whitman Ford sought rezoning from what it characterized as C-2 to C-3, however, denies that major portions of the property were ever zoned C-2 for the reason that same is untrue. Defendant denies the remainder of the allegations therein for the reasons that they are untrue.

6. In answer to Paragraph 6, Defendant denies the averment therein in the manner and form alleged for the reason it is untrue.

7. In answer to Paragraph 7, Defendant denies the averment therein for the reason it is untrue.

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Parties, Jurisdiction and Venue

8. In answer to Paragraph 8, Defendant admits the averment therein.

9. In answer to Paragraph 9, Defendant admits the averment therein.

10. In answer to Paragraph 10, Defendant denies that the amount in controversy exceeds \$25,000.00 for the reason it is untrue. Defendant further denies that injunctive and/or declaratory relief are appropriate. With respect to the remainder of the allegations in Paragraph 10, Defendant admits that jurisdiction is proper in this court.

11. In answer to Paragraph 11, Defendant admits the averment therein.

Commercial Zoning of the Subject Property

12. In answer to Paragraph 12, Defendant admits that the subject matter of this lawsuit is the appropriate 43 acres of vacant land. Defendant denies that the residential subdivision to the west of the property can be categorized as "small" and Defendant denies that all surrounding uses are commercial for the reason that same is untrue.

13. In answer to Paragraph 13, Defendant denies that the entire property was zoned C-2 from 1992 through 2001 for the reason it is untrue.

14. In answer to Paragraph 14, Defendant states that the May 21, 1993 review letter of Wade Trim speaks for itself. Defendant denies that the entirety of said letter is attached as Exhibit E to the Complaint and denies that any statement in said letter constitutes any official zoning designation for the property in question. Defendant denies that said letter is a pronouncement by the Defendant and denies that said letter establishes any specific zoning for the property for the reason it is untrue. With respect to the remainder of the allegations in Paragraph 14, Defendant denies same for the reason that they are untrue.

Existing Zoning Ordinance

15. In answer to Paragraph 15, Defendant admits that the December 3, 1997

Bedford Township Master Plan Map designated the property in question as "non-center commercial." With respect to the remainder of the allegations therein, Defendant is without knowledge or information sufficient to form a belief as to the truth of said averments and, therefore, neither admits nor denies same but leaves Plaintiffs to its proofs.

16. In answer to Paragraph 16, Defendant denies the averment therein in the manner and form alleged for the reason it is untrue.

17. In answer to Paragraph 17, Defendant is without knowledge or information sufficient to form a belief as to the truth of the averment therein and, therefore, neither admits nor denies same but leaves Plaintiffs to its proofs.

Bedford Township's Belated Attempt to Change the Property's Zoning

18. In answer to Paragraph 18, Defendant admits that in the June 6, 2001 letter, Dennis Jenkins, Planning Department Coordinator for Bedford Township, acknowledged that the zoning map shows the property as zoned C-2 and that said zoning map was in error. With respect to the remainder of the allegations therein, Defendant denies same for the reason that they are untrue.

19. In answer to Paragraph 19, Defendant admits that Bedford Township corrected its erroneous designation of C-2 for the property on the Bedford Township Zoning Map. With respect to the remainder of the allegations therein, Defendant denies same for the reason that they are untrue.

The Wal-Mart Proposal

20. In answer to Paragraph 20, Defendant admits that the Plaintiff submitted a proposal for the development of a Wal-Mart store on portions of the property. Defendant denies that the property is located at the exact intersection of Sterns and Lewis Avenue for the reason that it is untrue.

21. In answer to Paragraph 21, Defendant denies that in submitting the Wal-Mart proposal, Whitman Ford relied on prior C-2 zoning designation for the property for the reason it is untrue. Defendant admits that in a letter dated December 20, 2002, Wade Trim referred to the property in question as being zoned C-2 and admits that Wade Trim corrected that statement in a follow up letter. Defendant denies the remainder of the allegations therein for the reason that they are untrue.

22. In answer to Paragraph 22, Defendant admits that in 2003, Wade Trim gave the opinion that the development of a Wal-Mart store would not be appropriate. Defendant denies that the Bedford Township Master Plan strategy is questionable for the reason that it is untrue. Defendant denies the remainder of the allegations therein for the reason that they are untrue.

23. In answer to Paragraph 23, Defendant denies that the appropriateness of the property for a commercial development such as Wal-Mart was ever confirmed for the reason it is untrue. Defendant states that the Downtown Temperance Economic Development Study Report speaks for itself, denies that it has any binding effect, and that such report is not attached as Exhibit I to the Complaint. Defendant denies that one such "strip commercial area" would be the property in question for the reason that it is untrue. With respect to the remainder of the allegations therein, Defendant denies same for the reason that they are untrue.

First Rezoning Request

24. In answer to Paragraph 24, Defendant admits that in early 2003, Whitman Ford submitted a rezoning request for northern portions of the property in question. Defendant denies that said request would have been from C-2 to C-3 for the reason that it is untrue. Defendant admits that certain portions of the property did have frontage along

Lewis Avenue to the north of the existing dealership.

25. In answer to Paragraph 25, Defendant admits that on or about April 18, 2003, Wade Trim provided Bedford Township with its analysis of the Plaintiff's first rezoning request. Defendant denies that said analysis is attached to the Complaint as Exhibit J for the reason that it is untrue. Defendant admits that Wade Trim noted that approximately 15.4 acres of the property were zoned R-2A. Defendant denies that Wade Trim "vetoed for a third time a Whitman Ford proposal for the development of the property" for the reason that it is untrue because Wade Trim does not have veto power over zoning requests. Defendant admits that Wade Trim took the positions, in part, that are set forth in subparagraphs (i) through (iii) in Paragraph 25 of Plaintiff's Complaint.

26. In answer Paragraph 26, Defendant admits that those were the objections by Whitman Ford, however, Defendant denies the validity of said objections for the reason it is untrue.

27. In answer to Paragraph 27, Defendant denies the existence of any substantial evidence as to the meritless nature of any reasons proffered by Wade Trim for the reason it is untrue. Defendant denies the absence of legitimate basis for the planning of the property as set forth in the Bedford Township Master Plan for the reason it is untrue. The designation of the property on the Master Plan speaks for itself. With respect to the remainder of the allegations therein, Defendant denies same for the reason they are untrue.

28. In answer to Paragraph 28, Defendant denies the allegation that it is impossible to reconcile zoning within the Township for the reason it is untrue and denies that there any inconsistency in the zoning within the Township for the reason it is untrue.

29. In answer to Paragraph 29, Defendant denies that the recommendations of

Wade Trim are without merit for the reason it is untrue. Defendant states that the zoning districts map of the Township of Bedford speaks for itself and denies inconsistency when compared with the Plaintiff's parcel for the reason that it is untrue.

30. In answer to Paragraph 30, Defendant denies the allegations therein in the manner and form alleged for the reason that it is untrue.

31. In answer to Paragraph 31, Defendant admits that the Planning Commission recommended the denial of Whitman Ford's rezoning request at a meeting of May 7, 2003. Defendant admits that the basis for the Planning Commission's denial, in part, is set forth in Paragraph 31.

32. In answer to Paragraph 32, Defendant denies the averments therein in the manner and form alleged for the reason they are untrue. Any prior approval of the Plaintiff's rezoning request to expand the dealership to the north and to grant a small expansion of the C-3 zoning to the north was limited to frontage on Lewis Avenue and was far away from any existing residential to the west.

33. In answer to Paragraph 33, Defendant admits that the Township of Trustees denied the rezoning request on June 17, 2003. Defendant denies the remainder of the allegations therein as untrue in the manner and form alleged.

34. In answer to Paragraph 34, Defendant denies the averment therein for the reason it is untrue.

Second Rezoning Request

35. In answer to Paragraph 35, Defendant admits that Whitman Ford subsequently submitted a second rezoning request seeking to rezone to C-3 approximately 20 acres of land to the south and west of its existing dealership. Defendant denies that the property is located exactly at the corner of Sterns and Lewis Avenue for the reason that it

is untrue. Defendant admits that a portion of this land was land previously proposed for the Wal-Mart.

36. In answer to Paragraph 36, Defendant admits that on or about November 5, 2003, Wade Trim submitted its recommendation with respect to the development proposal for the Plaintiff's property. Defendant admits that Paragraph 36 contains in part recommendations by Wade Trim on that date.

37. In answer to Paragraph 37, Defendant denies the averments therein in the manner and form alleged for the reason they are untrue.

38. In answer to Paragraph 38, Defendant denies the averment therein in the manner and form alleged for the reason it is untrue.

39. In answer to Paragraph 39, Defendant denies the averments therein in the manner and form alleged for the reason they are untrue.

40. In answer to Paragraph 40, Defendant denies the averments therein in the manner and form alleged for the reason they are untrue. Defendant denies that there is any inconsistency in the positions that have been taken by Wade Trim. The prior recommendations by Wade Trim with respect to Whitman Ford's earlier rezoning requests and the reasons therefore were stated in the prior reports of Wade Trim and Defendant denies that there was any failure of explanation by Wade Trim with respect to the second rezoning request of the Plaintiff for the reason it is untrue.

41. In answer to Paragraph 41, Defendant denies the averments therein in the manner and form alleged for the reason they are untrue.

42. In answer to Paragraph 42, Defendant admits that the Planning Commission recommended denial of Plaintiff's second rezoning request. With respect to the remainder of the allegations therein, Defendant denies same in the manner and form alleged for the

reason they are untrue.

43. In answer to Paragraph 43, Defendant admits the averment therein.

44. In answer to Paragraph 44, Defendant denies the averment therein for the reason it is untrue.

45. In answer to Paragraph 45, Defendant denies the averment therein for the reason it is untrue.

46. In answer to Paragraph 46, Defendant denies the averment therein for the reason it is untrue.

47. In answer to Paragraph 47, Defendant denies the averment therein for the reason it is untrue.

48. In answer to Paragraph 48, Defendant denies the averment therein for the reason it is untrue.

49. In answer to Paragraph 49, Defendant denies the averment therein for the reason it is untrue.

50. In answer to Paragraph 50, Defendant denies the averment therein for the reason it is untrue.

51. In answer to Paragraph 51, Defendant denies the averment therein for the reason it is untrue.

COUNT I - DECLARATORY RELIEF; VIOLATION OF LAW

52. Defendant hereby incorporates each and every one of its answers above as if stated herein, word for word and paragraph by paragraph.

53. In answer to Paragraph 53, Defendant admits the application of the Michigan Township Zoning Act MCL 125.271 to actions of Bedford Township with respect to rezoning requests.

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54. In answer to Paragraph 54, Defendant denies the averment therein for the reason it is untrue.

55. In answer to Paragraph 55, Defendant denies the averment therein for the reason it is untrue.

56. In answer to Paragraph 56, Defendant denies the averment therein for the reason it is untrue.

57. In answer to Paragraph 57, Defendant denies the averment therein for the reason it is untrue.

58. In answer to Paragraph 58, Defendant denies the averment therein for the reason it is untrue.

COUNT II - VIOLATION OF DUE PROCESS OF LAW

59. Defendant hereby incorporates each and every one of its answers above as if stated herein, word for word and paragraph by paragraph.

60. In answer to Paragraph 60, Defendant denies the averment therein for the reason it is untrue.

61. In answer to Paragraph 61, Defendant denies the averment therein for the reason it is untrue.

62. In answer to Paragraph 62, Defendant denies the averment therein for the reason it is untrue.

63. In answer to Paragraph 63, Defendant denies the averment therein for the reason it is untrue.

64. In answer to Paragraph 64, Defendant denies the averment therein for the reason it is untrue.

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COUNT III - TEMPORARY TAKING

65. Defendant hereby incorporates each and every one of its answers above as if stated herein, word for word and paragraph by paragraph.

66. In answer to Paragraph 66, Defendant denies the averment therein for the reason it is untrue.

67. In answer to Paragraph 67, Defendant denies the averment therein for the reason it is untrue.

68. In answer to Paragraph 68, Defendant denies the averment therein for the reason it is untrue.

69. In answer to Paragraph 69, Defendant denies the averment therein for the reason it is untrue.

70. In answer to Paragraph 70, Defendant denies the averment therein for the reason it is untrue.

71. In answer to Paragraph 71, Defendant denies the averment therein for the reason it is untrue.

COUNT IV - EXCLUSIONARY ZONING

72. Defendant hereby incorporates each and every one of its answers above as if stated herein, word for word and paragraph by paragraph.

73. In answer to Paragraph 73, Defendant denies the averment therein for the reason it is untrue.

74. In answer to Paragraph 74, Defendant denies the averment therein for the reason it is untrue.

75. In answer to Paragraph 75, Defendant denies the averment therein for the reason it is untrue.

76. In answer to Paragraph 76, Defendant denies the averment therein for the reason it is untrue.

77. In answer to Paragraph 77, Defendant denies the averment therein for the reason it is untrue.

COUNT V - EQUAL PROTECTION

78. Defendant hereby incorporates each and every one of its answers above as if stated herein, word for word and paragraph by paragraph.

79. In answer to Paragraph 79, Defendant denies the averment therein for the reason it is untrue.

80. In answer to Paragraph 80, Defendant denies the averment therein for the reason it is untrue.

81. In answer to Paragraph 81, Defendant denies the averment therein for the reason it is untrue.

WHEREFORE, Defendant prays that this Honorable Court enter a judgment of no cause for action in its favor with prejudice, together with an award of costs and attorney fees.

NEMIER, TOLARI, LANDRY, MAZZEO & JOHNSON

By 

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DATED: November 16, 2004