

IN THE SUPREME COURT OF OHIO

BOARD OF COMMISSIONERS OF  
HAMILTON COUNTY, OHIO, et al.,

Plaintiffs-Appellants

vs.

OTR, an Ohio General Partnership,  
Nominee for the State Teachers'  
Retirement Board of Ohio

Defendant-Appellee.

CASE NO. 2007-0795

On appeal from the Hamilton County  
Court of Appeals, First Appellate District

Court of Appeals

Case Nos. C-060074, C-060104

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APPELLEE'S RESPONSE TO APPELLANTS'  
MEMORANDUM IN SUPPORT OF JURISDICTION

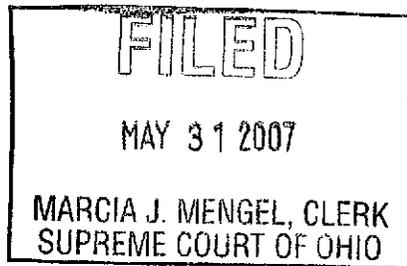
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**EXPLANATION OF WHY THIS CASE IS NOT  
OF PUBLIC OR GREAT GENERAL INTEREST AND  
THERE IS NO SUBSTANTIAL CONSTITUTIONAL QUESTION**

This case is not of public or great general interest, and there is no substantial constitutional question raised by Appellants. The Court of Appeals affirmed the jury verdict of \$3.5 million in compensation and damages in this appropriation case commenced by Appellants. Appellee OTR, nominee for the State Teachers' Retirement Board of Ohio, is the owner of the downtown Cincinnati Class "A" office building known as Atrium Two. The taking was caused by the closure and demolition of the elevated walkway on the south side of the Atrium Two building that had been the main access to the building for over two decades. This elevated walkway provided direct pedestrian access for the general public over Interstate 71 between the City's riverfront and Atrium Two, the largest multi-tenant office building in the Cincinnati central business district. The Court of Appeals held that the trial court correctly instructed the jury in accordance with that Court's decision in a prior appeal, and that the trial court properly admitted evidence relevant to the amount of compensation and the factors affecting the building's value before and after the take.

The Court of Appeals' decision states no new law. It is fully consistent with Ohio Supreme Court cases on the factors to be considered by a jury and on the deference to jury verdicts in eminent domain cases. The \$3.5 million jury verdict was entirely within the range of the evidence in the record, from the County's low appraisal of \$180,000 to the owner's opinion of \$10 million. The particular facts are unique to this case, such that it would have no or little statewide significance. The Court of Appeals rejected assignments of error on exactly the same issues raised in Appellant's Memorandum in Support of Jurisdiction in a thorough and well-

reasoned opinion drawing heavily from the extensive record. Indeed, the Court of Appeals merely applied the law of the case from its earlier decision determining that a take had occurred by the demolition of the connecting elevated walkway, defining the scope of the take, and granting a writ of mandamus requiring the Appellants to initiate this appropriation case.<sup>1</sup> In the decision being appealed, the First District Court of Appeals held that the trial court had admitted evidence and given jury instructions entirely consistent with its prior decision and the law of the case. As this Court declined to accept an appeal from that prior decision,<sup>2</sup> there should be no review of this case.

### **STATEMENT OF THE CASE AND FACTS**<sup>3</sup>

Appellee OTR is an Ohio general partnership and the statutory nominee for the State Teachers' Retirement Board of Ohio. Appellee finances the retirement program for Ohio's public school teachers through investments, including real estate assets. Appellee owns Atrium Two, a Class "A" multi-tenant office building located at the southwest corner of Fourth and Sycamore Streets in downtown Cincinnati, with approximately 650,000 square feet of net rentable space, and an undersized parking garage of only 154 spaces. The City had granted the original developer a variance from its zoning code requirement of about 1 space per 1000 square

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<sup>1</sup> *OTR v. City of Cincinnati*, 2003-Ohio-549, 2003 Ohio App. LEXIS 1479 ("*OTR I*").

<sup>2</sup> *Discretionary appeal not allowed by OTR v. City of Cincinnati*, 99 Ohio St. 3d 1469, 2003-Ohio-3669, 791 N.E.2d 984.

<sup>3</sup>A Memorandum in Support of Jurisdiction does not contain citations to the record since no record is transmitted unless the appeal is accepted. Moreover, transcript citations in Merit Briefs include the references to the required Supplement. Accordingly, Appellee OTR does not emulate Appellants' page references in this Memorandum. Appellee assures the Court that the record amply supports the jury's verdict.

feet because of the access to the publicly owned riverfront parking at the time it was built.

Atrium Two was built as part of the City of Cincinnati's Urban Renewal Plan in the 1970s and 1980s. The Plan's centerpiece was Riverfront Stadium (renamed Cinergy Field in the 1990s), built to house both the Cincinnati Reds and Cincinnati Bengals. It had an integrated 4000 space parking garage and a public plaza at elevation 530', well above the limits of periodic floods of the Ohio River. Pursuant to the plan, the City built an elevated walkway over several city streets and Ft. Washington Way (I-71), directly linking the public stadium plaza and its City-owned public parking to the Atrium Two building. At the City's insistence, Atrium Two was designed and constructed to connect with the elevated walkway, at elevation 530', as its only pedestrian access on the south side of the building, and facing Riverfront Stadium. The City also required a 24 hour, 7 days per week easement through Atrium Two. This public easement allowed the public at-large to traverse the elevated walkway from the riverfront plaza south of the building to Fourth Street in the Central Business District on the north side of the building, as well as to the second level walkway system over Fourth Street to connect with buildings to the north.

The south entrance via the elevated walkway was designed to be as grand as the Fourth Street entrance, taking pedestrians through the public Winter Garden that was also required by the City. The entrance was featured in the building's model and marketing literature because of the superior access it afforded. The plan served the mutual objectives of Atrium Two's developer and the City of Cincinnati by filling the City's riverfront parking spaces with downtown workers during weekdays when not used by baseball and football spectators, by eliminating the necessity for Atrium Two to have a much larger parking garage that the City did

not want for aesthetic and economic reasons, and by linking the riverfront to major downtown office buildings via the rest of the City's elevated walkway system. It created a pedestrian hub that brought some 5,500 pedestrians per day through Atrium Two's lobby to patronize the building's first floor food service, retail and service tenants who were dependent on foot traffic.

Appellant Hamilton County closed the elevated walkway on October 2, 2000. It subsequently demolished the walkway as part of the amendment to the urban renewal plan resulting from voters' November, 1996 approval of public funding for two new stadiums to be undertaken by the County Commissioners. OTR brought an action in the Hamilton County Common Pleas Court against the City of Cincinnati and the Board of Commissioners of Hamilton County to enjoin the closure/demolition, or alternatively, for a writ of mandamus to compel the initiation of appropriation proceedings. The trial court denied both. On March 28, 2003, the First District Court of Appeals reversed, holding that the elevated walkway was a public right-of-way abutting Atrium Two.<sup>4</sup> Although it agreed that OTR had no contractual right to the walkway or the public parking garage at the other end,<sup>5</sup> the Court ruled that Atrium Two had been built in reliance upon the walkway access at the 530' elevation, and that its closure/demolition was a substantial interference with the property's access rights under established Supreme Court precedent.<sup>6</sup> The Court stated:

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<sup>4</sup> *OTR I, supra*, ¶27-41.

<sup>5</sup> *OTR I, supra*, ¶53.

<sup>6</sup> *OTR I, supra*, ¶48, citing *OTR v. Columbus* (1996), 76 Ohio St.3d 203, 207-09, 667 N.E.2d 8, *State ex rel. McKay v. Kauer* (1951), 156 Ohio St. 347, 102 N.E.2d 703; *Lotze v. Cincinnati* (1899), 61 Ohio St. 272, 55 N.E.828.

Moreover, the trial court's conclusion that OTR's access had not been substantially changed because it had access to other public rights of ways is not supported by the law. OTR's access to other abutting streets does not "diminish or negate" the fact that the city and/or county interfered with OTR's right of access to the elevated walkway at the 530-foot level. The Ohio Supreme Court has stated that "the denial of access to one abutting street can still constitute a taking of private property regardless of the fact that there remained alternate means of access to the property in question.

Given that Atrium Two was built in reliance upon access at the 530-foot elevation, access at the 530-foot level no longer exists, and that the city and/or county have made no plans to restore this access, the evidence unambiguously demonstrates that the city and/or county's demolition of the walkway substantially interfered with OTR's right to access at the 530-foot elevation. Consequently, the trial court erred when it refused to issue a writ of mandamus to compel appropriation proceedings for the taking of OTR's right of access to the elevated walkway. (Footnotes deleted.)

*OTR I, supra*, 2003-Ohio-1549 ¶49, 50. The Court of Appeals also remanded the case for a determination of whether the City, the County, or both were responsible for the compensation, and for issuances of a writ of mandamus compelling the initiation of appropriation proceedings. *Id.*, ¶54. This Court then declined review.

Nine months after remand, the City and County agreed to split the compensation equally and jointly filed the appropriation action to compensate OTR for the taking of its property rights, referencing the decision in *OTR I*:

6. [Plaintiffs City and County][ . . . have agreed to act jointly to appropriate the property rights of OTR which were identified by the First Appellate District of Ohio on March 9, 2001 (sic)<sup>7</sup> in Case No. C010658.
7. Defendant OTR holds fee simple title to the property known as Atrium Two which is the property benefitted by the property rights identified by the First Appellate District of Ohio on March 9, 2001 (sic), in Case No. C010658 and subject of the alleged takings.

When the compensation trial commenced in November 2005, the Atrium Two plaza still

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<sup>7</sup> The correct date of this Court's decision was March 28, 2003.

dangled from the south side of the building, more than fifteen feet above the abutting street below, unuseable, and inaccessible from the public right-of-way. It remains so today. Atrium Two's once bustling first floor remained vacant of restaurant and employment service tenants who left over five years ago. The two-week appropriation trial culminated in a verdict for OTR of \$3.5 million, including \$2.5 million "for the property right taken," and \$1 million for the "damages to the building." The City and County appealed.

On March 23, 2007, the Court of Appeals issued another thorough and detailed opinion, again ruling in favor of OTR.<sup>8</sup> In *OTR II*, the Court of Appeals overruled Appellants' five assignments of error. Appellants have recast three of those arguments in their Memorandum in Support of Jurisdiction: Proposition of Law No. 1 (subject matter jurisdiction, formerly First Assignment of Error), Proposition of Law No. 2 (consequential damages jury instruction, formerly the Third Assignment of Error), and Proposition of Law No. 3 (evidentiary issues, formerly the Second Assignment of Error). As explained below, the Court of Appeals correctly determined that the trial court had followed the law of the case from *OTR I*, and did not abuse its discretion concerning the admission of evidence.

### **ARGUMENT IN SUPPORT OF COUNTER-PROPOSITIONS OF LAW**

#### **Appellee's Proposition of Law No I:**

**In an appropriation action, the trial court does not exceed its subject matter jurisdiction when it restrict the jury's valuation to those property rights previously adjudicated by the court of appeals to have been appropriated.**

What Appellants cast as a matter of "subject matter jurisdiction" is actually only an

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<sup>8</sup> *Hamilton County Bd. of County Comm'rs v. OTR* (Hamilton Cty. App.), 2007-Ohio-1317, 2007 Ohio App. LEXIS 1206.

issue of the trial court's decisions on the admissibility of evidence relevant to the fair market value of the Atrium Two building before and after the take. The Court of Appeals concluded that the trial court had thoroughly and repeatedly cautioned the jury throughout the two week trial in accordance with its decision in *OTR I* that OTR had no contractual rights to public parking and was not entitled to any compensation whatsoever for loss of parking.

[I]n its jury instructions, the court stated, "[t]he property right that was taken is the access to the elevated walkway of the public right away at the 530-foot elevation \* \* \* [n]either Hamilton County nor the City of Cincinnati had any obligation at any time to provide the Atrium [Two] building with parking that from time to time existed on Cincinnati's central riverfront. OTR did not have any express contractual right to access to riverfront parking at any time.

*OTR II*, *supra*, ¶17. See also 2007-Ohio-1317, ¶15-16 (preliminary instructions).

Here, as in the Court of Appeals, Appellants improperly and mistakenly attempted to rely on *Proctor v. Thielen* to support their "jurisdictional" argument.<sup>9</sup> *Thielen I* involved a partial taking for road improvements in which the trial court improperly allowed the jury to decide whether there was an additional taking of access rights. The court ruled that whether there was a taking could not be decided by the jury in the compensation trial; rather, the property owner would have to first file a mandamus action to determine if there had been a taking.<sup>10</sup> In the case at bar, OTR had previously filed a mandamus action and had already obtained the judgment of the Court of Appeals in *OTR I* that it was entitled to be compensated for the loss of access at the

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<sup>9</sup> *Proctor v. Thielen*, 2004-Ohio-7281, ¶16 (4<sup>th</sup> Dist. App. 2004) ("*Thielen I*").

<sup>10</sup> The property owner subsequently filed an action seeking a writ of mandamus. In *State ex rel. Thielen v. Proctor* ("*Thielen II*") 2006-Ohio-4596; 2006 Ohio App. LEXIS 4539, the court of appeals reversed a summary judgment for the Ohio Department of Transportation, stating that there was a genuine issue of material fact concerning the extent of interference with access.

530' elevation. The Court of Appeals correctly held that *Theiken* has no applicability to this case:

Contrary to the city and county's assertion, *Theiken* is not factually analogous to the case at bar, and it does not support their argument. OTR had already filed a mandamus action, in which this court determined that the only right that had been appropriated was OTR's right of access at the 530-foot elevation. Unlike *Theiken*, the trial court in this case did not instruct the jury to consider whether additional rights had been appropriated. In fact, the trial court repeatedly instructed the jury that OTR had no right to riverfront parking and was not to be compensated for any such loss.

*OTR II, supra*, 2007-Ohio-1317, ¶15.

Alternatively, Appellants urge in their “jurisdictional” argument that the trial court allowed the jury to compensate OTR for loss of public parking in common with the public. This is simply false. Based on *OTR I, Norwood v. Forest Converting* and *State ex rel Merritt v. Linzell*,<sup>11</sup> the trial court gave numerous instructions on this issue, even to the point of redundancy, admonishing the jury against awarding OTR any compensation for parking.<sup>12</sup> As the

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<sup>11</sup> *Norwood v Forest Converting Co.* (Ham. Cty. App. 1984), 16 Ohio App.3d 411, 476 N.E.2d 695; *State ex rel. Merritt v. Linzell* (1955), 163 Ohio St.97, 126 N.E.2d 53.

<sup>12</sup> In additional to preliminary instructions at several times during the trial, the court gave the following instructions in the charge:

Neither Hamilton County nor the City of Cincinnati had any obligation at any time to provide the Atrium II building with any parking.

Neither Hamilton County nor the City of Cincinnati had any obligation at any time to provide the Atrium II building with parking that from time to time existed on Cincinnati's central riverfront. OTR did not have any express contractual right to access to Riverfront parking at any time.

Atrium II had no specific right to access the central riverfront over Fort Washington Way via the skywalk and Atrium II had no specific right to parking on the Riverfront.

Court of Appeals stated, it had already determined in *OTR I* that Atrium Two had been designed and built in reliance upon access at the 530' elevation to an abutting public right-of-way, that the interference with access was substantial, and that the loss of this access was by definition a property right not in common with the public at-large. OTR's injury as an abutting property owner is different from the general public's. In *OTR I*, the Court found a taking because Atrium Two, and Atrium Two alone, actually abutted the elevated walkway at the 530' elevation, because ~~this elevated walkway was a public right-of-way by common law dedication, and because Atrium Two had been built in reliance upon this access.~~<sup>13</sup>

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Neither Hamilton County nor the City had any obligation to forever leave in place the skywalk over Fort Washington Way and the continued existence of the skywalk at that specific location was solely up to the City and County.

The Atrium II building had no rights to prevent or control in any way Hamilton County and the City of Cincinnati's redevelopment of Cincinnati's Central Riverfront and/or the reconstruction of Fort Washington Way.

Compensation is payment of fair market value of the property right taken. OTR, the owner of the Atrium II building, is not entitled to compensation for any claimed loss of riverfront parking. Further, OTR, the owner of the Atrium II building, is not entitled to compensation for any claimed loss of express contractual right to access to riverfront parking over Fort Washington Way via the skywalk.

You should consider every element that a buyer would consider before making a purchase. You should take into consideration the location, surrounding area, quality and general condition of the premises, the improvements thereon and everything that adds or detracts from the value of the property.

<sup>13</sup> *OTR I, supra*, ¶¶38, 41, 47, 50. This Court also noted, "We are not saying that other portions of the city's skywalk system are automatically public rights-of-way." (Id., ¶38 n. 23).

The jury verdict of \$3.5 million is less than 5% of the building's fair market value and well within the range of testimony by OTR's two independent appraisers and owner representative, who testified that OTR should be awarded \$4.2 million, \$6 million, and \$10 million, respectively, for this loss of essential access. Instead of accepting the jury's judgment from the clear evidence in the extensive record showing the effects to the property from the loss of access, Appellants have tried to convince the appellate courts that the verdict was awarded solely due to the changed access to public parking. This is simply untrue.

In over a week of testimony, eight (8) witnesses for OTR (the original developer, the City's former development director, the building manager, the leasing agent, an employee of a tenant, OTR's asset manager, and two independent MAI appraisers) all testified about numerous issues affecting fair market value before and after the take. Appellants' traffic engineering and urban planning experts supported OTR's position that the south access is a critical component of Atrium Two's design and function. Witnesses testified, for example, to the loss of the primary access to the building, the loss of the building's prior role as a pedestrian hub, the loss of an efficient emergency exit, the elimination of the building's first floor tenants who had been dependent on foot traffic, and the loss of competitive advantage in the market place. Ohio law is clear that when a jury makes its determination of just compensation in an eminent domain case, "each case must be considered in the light of its own facts, and every element that can fairly enter into the question of value . . . should be considered."<sup>14</sup>

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<sup>14</sup> *Sowers v. Schaeffer* (1951), 155 Ohio St. 454, 459, 99 N.E.2d 313; *Cincinnati v. Banks* (Ham. Cty. App. 2001), 143 Ohio App.3d 272, 757 N.E.2d 1205, *Norwood v. Forest Converting Co.* (Ham. Cty. App. 1984), 16 Ohio App.3d 411, 476 N.E.2d 695. See *OJI 301.05(1)* Damages. Fair Market Value.

Appellants make the novel argument that the court of appeals in *OTR II* misinterpreted its own decision in *OTR I*. This is indeed grasping at straws. Both decisions were unanimous. The Court of Appeals correctly ruled that the evidence of the building's characteristics before and after the take was properly admitted for the limited purpose of considering all factors that a prudent businessman would take into consideration as pertinent to fair market value, and that the jury was thoroughly instructed pursuant to the law of the case to award no compensation for loss of parking. Accordingly, Appellants' proposed Proposition of Law No. I sets forth no constitutional issue and no issue of great public interest to warrant review.

**Appellee's Proposition of Law No II:**

**In an appropriation action, the trial court properly declines to instruct the jury that damages suffered by the property owner in common with the public could not be recovered where that instruction, although containing a correct statement of the law, it inapplicable to the facts of the case.**

In the Court of Appeals, Appellants argued that the trial court should have given the "consequential damages" instruction. This instruction in appropriation cases pertains to damages such as circuity of travel and loss of traffic volume in common with the general public. That instruction would have been misleading here because OTR's loss of access to the abutting public right-of-way was not shared with the general public.

The Court of Appeals firmly rejected Appellants' contention, noting that they were attempting to relitigate issues already decided in *OTR I*:

To support their contention that loss of parking and loss of traffic flow were not relevant in a fair-market value calculation, the city and county rely on a series of cases that they argue establish that inconveniences and losses shared with the general public are not compensable. **But the loss suffered by OTR was not**

**shared with the general public. As this court determined in *OTR v. Cincinnati*, Atrium Two was specifically built in reliance upon access at the 530-foot elevation.**

Other downtown buildings with employees who used the elevated walkway to access riverfront parking were not similarly built in reliance upon such access. Because Atrium Two was designed to connect to the walkway at the 530-foot elevation, it was granted a variance from the city to be constructed with a smaller parking garage than required. Thus, the elimination of access at the 530-foot elevation affected Atrium Two more significantly than it affected other downtown buildings.

Further, because Atrium Two was required to grant the city an easement through its lobby, it became a pedestrian hub. **The case law relied upon by OTR regarding loss of traffic flow concerns loss of traffic flow *past* a premise, generally due to the relocation or elimination of a roadway. But OTR experienced a loss of traffic flow *through* its premises. Such a loss was experienced by OTR alone.** "[C]ircuitry of travel to and from real property is not compensable, but circuitry of travel created within the owner's property is compensable." **Accordingly, we conclude that OTR suffered a loss different than that suffered by the general public.** (Emphasis added, footnotes omitted).

Appellants lump into their second proposition of law involving consequential damages with objections to the admission of evidence (Memorandum at 11). Specifically, they complain that appraiser Mr. Raymond Jackson's extensive report included a single page discussing potential solutions to the building's parking deficit. Mr. Jackson did not use this factor in his final analysis, but explained that he thought the building's parking situation would be an issue that any investor would take into consideration. The court of appeals stated:

[A]s we have explained, the trial court repeatedly instructed the jury that OTR had no right to riverfront parking and could not be directly compensated for its loss. We have also already determined that, based on the unique facts associated with the construction of Atrium Two, the availability and cost of public parking was a relevant factor in a fair-market-value analysis. Evidence concerning the cost of parking was properly admitted for this purpose.

The city and county argue the impropriety of appraiser Raymond Jackson's testimony concerning the cost to correct Atrium Two's parking problem. Jackson's testimony was summarized in an exhibit and put on display for the jury. Jackson testified about four potential "parking solutions" for Atrium Two. He opined that Atrium Two could acquire nearby land at a cost of approximately \$ 3.3 million; it could build a parking garage at a cost of approximately \$ 9.6 million; it could purchase an existing parking garage at a cost of approximately \$ 4.4 million; or it could subsidize parking for approximately \$ 1.6 million.

The city and county correctly assert that OTR was not entitled to damages for the cost to cure its parking problem. But Jackson's testimony was not offered as an assertion that OTR should receive compensation for the cost to cure the problem. Jackson stated that he was aware that Atrium Two had no express or contractual right to riverfront parking. Rather, he felt cost-to-cure information would be an important consideration to a willing buyer. In other words, it was a relevant factor in a fair-market-value determination.

*OTR II, supra*, ¶27-32. Appellants ignore the fact that Mr. Jackson's final compensation figure of \$4.2 million was far less than the potential "cures" of up to \$9.6 million which Appellants complain about, showing that neither Mr. Jackson nor the jury used those numbers in awarding compensation. Moreover, the Court held that because Appellants had cross-examined appraiser Fletcher about his "cost to cure" parking analysis after the court had granted their *voir dire* request that he not testify about it, and as Mr. Fletcher had not done so on direct testimony, they waived this objection.<sup>15</sup>

In short, the Court of Appeals' ruling that the consequential damages instruction was not applicable to the facts of this case because OTR's damages were not in common with the public, and its ruling that the trial court did not abuse its discretion in the admission of evidence relating to the fair market value, are consistent with established precedent and do not warrant review.

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<sup>15</sup> *OTR II, supra*, ¶36.

**Appellee's Proposition of Law No III:**

**In an appropriation action, the trial court may properly admit evidence concerning a loss of parking and a loss of traffic flow through the appropriated property as relevant to its fair market value, where such losses are not shared in common with the general public, are unique to the property owner, and would be relevant considerations to an ordinarily prudent businessperson.**

In a reprise of its First and Second Propositions of Law, Appellants ask this Court to accept discretionary review of the trial court's decisions on the admission of evidence. The Court of Appeals found these rulings to be proper exercises of the trial court's discretion and within the law of the case in *OTR I*, as well as consistent with the Ohio Constitution, statutes, and case law involving compensation for property rights taken and damage to the residue.

Appellant complains that the trial court "exceeded its jurisdiction" by admitting evidence about the development history and physical characteristics of the Atrium Two Building. The exercise of discretion in admitting evidence is neither a "jurisdictional" issue nor one of great public interest on such a fact-specific matter. Moreover, the Court of Appeals determined that the trial court's admission of evidence about the City's urban renewal requirements for the construction of Atrium Two was proper for the limited purpose of a fair market value analysis dictated by Ohio law:

We have conducted a detailed review of the record and have determined that the vast majority of evidence regarding parking (other than the cost-to-cure evidence, which we have already discussed) was relevant to a fair-market-value analysis and was not offered as proof that OTR was entitled to direct compensation for loss of parking. In fact, all of OTR's witnesses who provided valuation testimony stated that they were aware that Atrium Two had no right to riverfront parking.

*OTR II, supra*, ¶37.

Appellants' reiteration of the "common to the public argument" fails for the same reason.

*OTR I* held that OTR suffered unique injury, (*OTR I, supra*, ¶47, 50); *OTR II* held that the jury's award of compensation and damages was supported by competent, credible evidence (*OTR II, supra*, ¶63). Hence, there is no issue of statewide significance justifying review.

## CONCLUSION

There is no justifiable reason for the Supreme Court to accept this appeal.

Respectfully submitted,



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**PROOF OF SERVICE**

I hereby certify that a copy of the foregoing "Appellee's Response to Appellants' Memorandum in Support of Jurisdiction" was served by ordinary United States Mail on this 31<sup>st</sup> day of May, 2007, upon Christian J. Schaefer and Mark C. Vollman, Assistant Prosecuting Attorneys and attorneys for Plaintiff-Appellant, Board of County Commissioners of Hamilton County, c/o Hamilton County Prosecutor's Office, Civil Division, 230 E. Ninth Street, Suite 4000, Cincinnati, Ohio 45202, and upon Terrance A. Nestor, Assistant City Solicitor and attorney for Plaintiff-Appellant City of Cincinnati, c/o City Solicitor's Office, 801 Plum Street, Room 214, Cincinnati, Ohio 45202.

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