IN THE SUPREME COURT OF OHIO

STATE EX REL. JUNE L. BLANK & ESTATE OF RICHARD L. BLANK	)	**CASE NO. 2007-2217**
Relators	)	**ALTERNATIVE WRIT FOR ORIGINAL ACTION IN MANDAMUS**
vs.	)	
JAMES G. BEASLEY, DIRECTOR OHIO DEPARTMENT OF TRANSPORTATION	)	
Respondent	)	

RELATORS' BRIEF IN SUPPORT OF ALTERNATIVE WRIT FOR ORIGINAL ACTION IN MANDAMUS

FILED
JUN 20 2008
CLERK OF COURT
SUPREME COURT OF OHIO

FRANK R. BODOR (0005387)
157 Porter Street NE
Warren, Ohio 44483
Telephone: (330) 399-2233
Facsimile: (330) 399-5165
Counsel for Relators

L. MARTIN CORDERO (0065509)
Assistant Attorney General
150 E. Gay Street, 17th Floor
Columbus, Ohio 43215-3130
Telephone: (614) 466-5931
Facsimile: (614) 466-1756
Counsel for Respondent

INDEX

INDEX I

TABLE OF AUTHORITIES II

I. PROCEDURAL HISTORY 1

II. STATEMENT OF FACTS 1

- A. INVASION OF RELATORS' PROPERTY OUTSIDE THE LIMITS OF EASEMENTS ACQUIRED BY APPROPRIATION 1
- B. BACKUP OF SEWAGE INTO THE COMMERCIAL RESTAURANT BUILDING AND PERMANENT DAMAGE TO RELATORS' SEWER DRAIN 2
- C. DAMAGES TO COMMERCIAL FLORIST BUILDING OUTSIDE LIMITS OF RESPONDENT ODOT'S RIGHT-OF-WAY 3
- D. PERMANENT DAMAGES TO COMMERCIAL RESTAURANT BUILDING WALLS AND THE BLOCKING OF ACCESS TO THE DELIVERY DOOR OF THE RESTAURANT 4
- E. NEW HIGHWAY DRAINS ARE INADEQUATE TO CARRY SURFACE WATER CAUSING WATER TO RUN INTO THE FRONT DOORS OF THE FLORIST SHOP 5
- F. ACCESS BLOCKED TO DRIVE USED FOR DELIVERIES TO COMMERCIAL FLORIST BUILDING 6
- G. DAMAGE TO SANITARY SEWER LINE OF COMMERCIAL FLORIST BUILDING 6

III. LAW & ARGUMENT 7

CERTIFICATE OF SERVICE 11

APPENDIX

Petition to Appropriate Property and to Fix Compensation ..... A

TABLE OF AUTHORITIES

CASES

Accord J. P. Sand & Gravel Co. v. State (1976), 51 Ohio App.2d 83, 89, 50.0.3d 239, 242, 367 N. E.2d 54, 59 10
Andreo v. Perrysburg (1988) 47 Ohio App.3d 51 10
Board of Commissioners of Portage County v. Gates, 83 Ohio St. 19 9
City of Norwood v. Sheen (1933) 126 Ohio St. 482 9
Lake Erie & Western Road Co. v. Commissioners of Hancock County, 63 Ohio St. 23 9
Livingston Court Apts. v. Columbus (1998) 130 Ohio App.3d 730 10
Lucas v. Carney (1958), 167 Ohio St. 416, 5 O.O.2d 63, 149 N.E.2d 238 9
Mansfield v. Balliett (1902) 65 O.S. 451 10
Mosley v. City of Lorain (1976) 48 Ohio St.2d 334 9
Nacelle Land Mgt. Corp. v. Ohio Dept. of Natural Resources (1989), 65 Ohio App.3d 481, 485-486, 584 N.E.2d 790, 793 10
Sayre v. U.S. (1967) 282 F.Supp. 175 (ND Ohio) 9
State ex rel. Hilltop Basic Resources, Inc. v. Cincinnati, (2008) 110 Ohio St.3d 131 10
State ex rel. Shemo v. Mayfield Hts., (2002) 95 Ohio St.3d 59 10

OTHER AUTHORITIES

Article I §19 of the Ohio Constitution 8, 9, 10
Fifth Amendment of the United States Constitution 10

I. PROCEDURAL HISTORY

Respondent, Ohio Department of Transportation ("ODOT") through its Director, filed an appropriation action against Relators on December 3, 2001 to acquire a temporary easement of varying widths along the frontage of their commercial property. A copy of which is attached as Appendix A. Respondent also acquired a 10' perpetual easement to construct and maintain a main sewer line along the south boundary line of Relators' real estate. [Blank Affidavit p. 1; Exhibit K-p. 40; Appendix A] The Director determined the value to be paid the Relators to be $4,650.

Respondent ODOT took physical possession of the appropriated parcels of land on or about April 29, 2002 in connection with the reconstruction of State Route 5 in the City of Cortland. [Blank Affidavit pp. 1-2] The appropriation case is still pending in Trumbull County Common Pleas Court Case No. 2001-CV-2422 entitled Proctor vs. Blank, et al.

II. STATEMENT OF FACTS

A. Invasion of Relators' Property Outside the Limits of Easements Acquired by Appropriation

Respondent, on or about December 30, 2002, began using the Relators' property outside the limits of the temporary and permanent easements it acquired by appropriation. [Blank Affidavit p. 2; Appendix A] The areas used by Respondent ODOT outside the limits of its right-of-way were parking lots used by tenants of the Relators. [Blank Affidavit p. 2]

The south lot was a finely slagged lot and the contiguous north lot was blacktopped. The combined north and south lots used by Respondent outside the limits of the easements they acquired by appropriation stretched from the temporary easement line of the new highway to the east line of the commercial restaurant building and from the north line of the permanent sewer

easement acquired by Respondent to the south line of the north commercial building used as a florist shop. Respondent ODOT occupied this area continuously from about December 30, 2002 until about June 1, 2003. [Blank Affidavit p. 2]

During that time ODOT used the Relators' property for access to its sewer easement and to park, move or store huge buckets, excavators, backhoes, wheel loader, pick up trucks, 6 axel tandum and tri-axle trucks (many times loaded with dirt, gravel and sand), sweeper, trench boxes and other machinery. [Blank Affidavit pp. 2-3]

Exhibits A-1 through A-28 pp. 7-20, attached to Brian Blank's affidavit, display the heavy machinery that was placed on Relator's parking lots outside the highway and easement limits and also shows the damages caused by Respondent ODOT to the parking areas owned by the Relators. The heavy equipment dragged mud all over the asphalt portion of the parking lot making it difficult to use by patrons. [Lombardi Affidavit pp. 43-44]

The heavy machinery cracked up the blacktopped parking lot and gouged the slag parking lot with ruts, mud and tire tracks. [Blank Affidavit pp. 2-3; Exhibits A-1 through A-28 pp. 7-20]

When Respondent vacated the Relators' parking lot it attempted to rough grade the slagged portion of the lot using large stones instead of fine slag thereby making the lot unsuitable for customer parking. [Blank Affidavit p. 3; Exhibits B-1 through B-12 pp. 21-26; Lombardi Affidavit p. 43] ODOT left the cracked and broken asphalt that was damaged by its heavy equipment without repairing it. [Blank Affidavit p. 3; Exhibits C-1 through C-2 p. 27]

B. Backup Of Sewage Into The Commercial Restaurant Building And Permanent Damage To Relators' Sewer Drain

In the latter part of November or December 2002, after Respondent moved in with equipment to reconstruct the highway in front of the restaurant at Relators' property, there was a backup of sewage in the kitchen and restrooms on the Relators' property. The restaurant owner stated it was so bad that he had to redirect the sewage out the back door of the restaurant so that it would not spread to other areas of the restaurant. [Lombardi Affidavit p. 43; Blank Affidavit p. 2] The sewer line became broken while Respondent ODOT was excavating for the highway. [Blank Affidavit p. 2]

The restaurant owner called a sanitary drain service on four separate occasions that the sewer backed up and ODOT finally had the area dug up at the place where the restaurant line connects with the main sewer. [Lombardi Affidavit p. 43]

It was determined that ODOT had reconnected the sanitary line to the main sewer in such a way that the sewer line was placed up and over a water line so that the sewer line could not allow the sewage to flow to its full capacity at the place where the line reconnects to the main sewer. The problem was not remedied by ODOT and the line requires constant snaking during periods of backup sewage at the restaurant. [Lombardi Affidavit p. 43; Blank Affidavit p. 2]

C. Damages To Commercial Florist Building Outside Limits Of Respondent ODOT's Right-Of-Way

On or about May 30, 2003 Respondent ODOT began digging out the blacktop parking area in front of the Relators' commercial florist building on the north side of the building. The limits of ODOT's construction line were by ODOT's plans to extend only to the concrete sidewalk in front of the building. [Blank Affidavit p. 3; Exhibit K p. 40]

In removing the blacktop in front of the florist shop Respondent crossed over the construction line it was limited to gouging three holes in the sidewalk leaving a ragged edge. It

also hit a building support post that was located on the Relators' sidewalk with its excavating machine knocking it out of alignment. It also caused major cracks in the sidewalk. [Blank Affidavit pp. 3-4; Exhibits E-1 through E-3 pp. 29-30]

Respondent ODOT then attempted to repair the damage by sawing out the concrete in the area of the largest gouge and repouring the cement. It failed to repair the other two gouges. The repoured cement area also appeared as an unsightly patch and the damaged pillar, cracks and gouges in the remaining sidewalk caused by ODOT were left without any attempt to properly repair the damages. [Blank Affidavit p. 4; Exhibits F-1 through F-2 p. 32]

D. Permanent Damages To Commercial Restaurant Building Walls And The Blocking Of Access To The Delivery Door Of The Restaurant

During construction ODOT began digging a sanitary sewer line along the permanent easement taken in its appropriation case. The easement runs parallel along the owners' south line. The easement is approximately 9' from the back wall of the restaurant[1]. ODOT did not take a temporary easement to construct the sewer. ODOT did not stay within the limits of its permanent easement. Its huge excavating equipment weighing approximately 100,000 pounds with a huge steel bucket, traversed over the easement line. For several weeks during construction it blocked the rear entrance to the restaurant building making it impossible to receive bulk deliveries to the building. [Lombardi Affidavit p. 44] ODOT then filled the trench with sand making the driveway to the rear entrance building impossible for use for almost two months. [Blank Affidavit p. 4] Exhibit G, p. 33 is a picture of the hydraulic excavator used to dig the sewer line. The refilled trench was so muddy that delivery trucks could not get to the back door of the restaurant. [Lombardi Affidavit p. 44]

---

[1] The commercial restaurant building was not spotted on ODOT's plan. [Blank Affidavit p. 2; Exhibit K p. 40]

In addition while excavating within 9' of the rear of the restaurant the digging equipment encountered rock and used its huge bucket to pound and break up the rock formation causing enormous shock and vibration to the building to the extent that the back wall of the restaurant building closest to the excavation cracked and bowed out externally causing permanent damage to the building. [Blank Affidavit p. 4; Exhibits H-1 through H-2, p. 34] The vertical crack in the building appeared for the first time after the digging and pounding of rock with the huge excavation bucket only 9' or 10' from the building. [Lombardi Affidavit p. 44] Previously to the digging there were no cracks in the restaurant's back wall. [Lombardi Affidavit p. 44]

E. New Highway Drains Are Inadequate To Carry Surface Water Causing Water To Run Into The Front Doors Of The Florist Shop

Respondent removed existing catch basins in front of the north building (florist shop) of the owners. Respondent's highway design also significantly raised the grade of the highway in front of the building. ODOT eliminated the previous catch basins and lowered the grade around an existing 6" drain in front of the owners' property. The opening of the 6" drain is too small and too high to trap the water from the new side slope and highway causing the water to pond and eventually invade the interior of the florist shop during heavy rains and melting snow. It is inadequate to drain the water in front of the store. Water that runs off the highway and the new slope in front of the building runs into the two front doors of the building causing damage to carpeting, personal property and creating mold.

Previous to the new highway construction the roadway was slightly lower than the building and the water ran away from the building. After construction the highway was raised much higher than the building with a steep side slope directing the highway water and side slope water toward and into the building. As a result during heavy rains the highway and side-slope

water runs down the slope through the front doors and into the interior of the building causing the water to pond, ruining carpeting and impeding the conducting of business in the building. (Blank Affidavit p. 5; Exhibits I-1 through I-7 pp. 35-38)

F. Access Blocked To Drive Used For Deliveries To Commercial Florist Building

On or about May 22, 2003 Respondent poured a cement curb across an access drive on the north side of the Relators' commercial florist shop blocking access to the building used for deliveries. After numerous complaints, registered to Respondent and the City of Cortland, ODOT cut an access through the solid curbing to allow the use of the drive. [Blank Affidavit p. 3; Exhibit D-1 p. 28]

G. Damage to Sanitary Sewer Line of Commercial Florist Building

Respondent ODOT also cracked a clay tile sanitary sewer line on the Relators' property within the temporary easement that ODOT appropriated leading from the florist shop to the main sewer. Instead of properly repairing it they patched over it with a tar like bandage and backfilled ground over the line. [Blank Affidavit p. 5; Exhibit J-1 p. 39]

During the pendency of this litigation Relator Richard L. Blank died after completion of the highway project involving the Relators' property. Relator June Blank was at the property frequently with her husband and son to observe the reconstruction of the highway and its effect on her property. She has personal knowledge of all of the facts and statements set forth in her son Brian Blank's affidavit and swears that those facts and statements are true based upon personal knowledge in viewing the property and witnessing the activity of ODOT during reconstruction of the roadway. She also swears that photographs contained with Brian Blank's

affidavit truly and accurately depicted the real estate and the activity that took place at the time on her property during the highway project. [June Blank Affidavit p. 41]

III. LAW & ARGUMENT

Exhibit K p. 40 of Brian Blank's affidavit shows the plan limits of the easements taken by the State in the pending appropriation case of *Proctor v. Blank, et al. Trumbull County Common Pleas Court Case No. 2001-CV-2422.* A copy of the written legal description of the easements taken is exhibited in Appendix A.

Respondent did not stay within the bounds of the easements it appropriated. Instead it temporarily used Relators' slag and asphalt parking lots moving heavy highway machinery across it.

The slag lot was gouged and treated with large rock like debris. Mud was dragged over onto the asphalt parking lot and the blacktop was left broken and cracked by the use of machinery some of which weighed nearly 100,000 pounds. The bounded area used by Respondent ODOT is defined in Brian Blank's affidavit p. 2; Exhibits A-1 through A-28 pp. 7-20. The type of machinery used at locations outside of the easements appropriated are clearly shown in the pictures. The Relators are entitled to be paid for the temporary use of the parking lots occupied by Respondent between December 30, 2002 until approximately June 1, 2003 as well as damages caused by ODOT's machinery.

Likewise the backup of sewage caused by ODOT breaking the Relators' sewer line to the restaurant and then attempting to repair it by running over water pipes causing a permanent impediment is also an interference with a valuable property right for which the Relators are entitled to compensatory damages.

Damages to the concrete sidewalk and pillar in front of the commercial florist shop and ODOT's attempt to repair it by pouring cement in only a portion of the damaged area has left a permanent damage and devaluation to the building that requires the payment of damages to the residue of the Relators' real estate.

The permanent vertical crack in the back wall of the commercial restaurant building and the bowing out of the wall caused by Respondent using a huge steel bucket to pound on rock to break it into pieces to trench the sewer only 9' from the building is a permanent damage to the residue of the property. In doing so the Relators' tenant was deprived of using the property between the trench and the building to receive delivery supplies due to the machinery being outside the limits of the easement and when the trench was filled with sand the ground was too muddy for use by the Relators in the area outside the easement due to the trespass on their property.

By raising the grade of the existing highway, removing existing catch basins and constructing side slopes diverting water toward the florist shop with inadequate drain, which causes water to run through the front entrance doors of the florist shop is also an interference with the Relators' property rights for which Relators are entitled to compensation.

Respondent ODOT's blocking of access to a drive servicing the florist shop with curbing and then later making a curb cut for the opening deprived the Relators of temporary access to their building for deliveries for which they are entitled to compensation. The cracked sewer tile patched with a tar like tape is also a damage item for which the Relators should be compensated.

The taking of private property rights requires the public agency that confiscates those rights to be governed by Article I §19 of the Ohio Constitution and to follow the proper procedure to compensate the landowner for the property rights taken and the damages caused by

the interference with those rights. This principal is academic and flows directly from the Constitution, which this Court has followed historically beginning with the early 1910 case of Board of Commissioners of Portage County v. Gates, 83 Ohio St. 19. In that case it was made perfectly clear that any actual and material interference with private property by a public agency is a "taking" of property within the meaning of Article I §19 of the Ohio Constitution.

Later in City of Norwood v. Sheen (1933) 126 Ohio St. 482 the Ohio Supreme Court held, as succinctly stated in ¶1 of the syllabus, as follows:

> "1. Any direct encroachment upon land, which subjects it to a public use that excludes or restricts the dominion and control of the owner over it, is a taking of his property, for which he is guaranteed a right of compensation by Section 19 of the Bill of Rights. (Lake Erie & Western Road Co. v. Commissioners of Hancock County, 63 Ohio St. 23 approved and followed.)"

In Sayre v. U.S. (1967) 282 F.Supp. 175 (ND Ohio) the Federal Court cited Norwood, supra, and determined, that without being absolutely taken, a taking of private property occurs where the action by the government involves a direct interference with or disturbance of property rights. The Federal Court determined that any direct encroachment upon land that excludes or restricts the dominion and control of the owner constitutes a taking.

This Court in Mosley v. City of Lorain (1976) 48 Ohio St.2d 334 mandated that a property owner that received damage from flooding or other reasonable foreseeable causes caused by the construction and operation of a municipal storm sewer system was a direct encroachment entitling the owner to compensation under Article I §19 of the Ohio Constitution.

Similarly, Lucas v. Carney (1958), 167 Ohio St. 416, 5 O.O.2d 63, 149 N.E.2d 238, holds that when public improvements increase the flow of surface water onto private property, overflowing and inundating it, a claim of tanto (or partial) appropriation is raised, and the

property owner is entitled to a jury's determination as to compensation due in accordance with constitutional requirements. Accord J. P. Sand & Gravel Co. v. State (1976), 51 Ohio App.2d 83, 89, 50.0.3d 239, 242, 367 N. E.2d 54, 59, and Nacelle Land Mgt. Corp. v. Ohio Dept. of Natural Resources (1989), 65 Ohio App.3d 481, 485-486, 584 N.E.2d 790, 793.

In Livingston Court Apts. v. Columbus (1998) 130 Ohio App.3d 730 the City of Columbus failed to maintain and repair the city sewer system, which caused the owner's basement to flood during heavy rainfall. The Appellate Court granted a writ of mandamus to compel the City to commence appropriation proceedings to compensate the owner for the taking of its property.

Stated more simply any material interference with private property rights constitutes a taking under Ohio law. Andreo v. Perrysburg (1988) 47 Ohio App.3d 51 quoting Mansfield v. Balliett (1902) 65 O.S. 451.

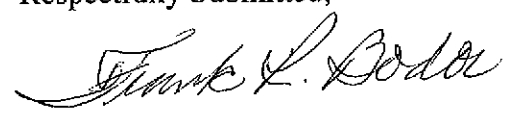
In the recent case of State ex rel. Hilltop Basic Resources, Inc. v. Cincinnati, (2008) 110 Ohio St.3d 131 this Supreme Court quoted State ex rel. Shemo v. Mayfield Hts., (2002) 95 Ohio St.3d 59 at ¶37 pg. 131 of its Hilltop opinion affirming that:

> "Mandamus is the appropriate action to compel public authorities to institute appropriation proceedings where an involuntary taking of private property is alleged."

In summary, the failure of Respondent ODOT to address the material interferences and damages to Relators' property in this case violates Article I §19 of the Ohio Constitution and the Fifth Amendment of the United States Constitution. The facts require a mandate from this Court granting a writ of mandamus to compel Respondent ODOT to institute an appropriation proceeding and consolidate the case with pending *Trumbull County Common Pleas Court Case No. 2001-CV-2422 of Proctor v. Blank, et al.* or to amend its existing appropriation proceeding

in pending *Trumbull County Common Pleas Case No. 2001-CV-2422 of Proctor v. Blank, et al.* to determine the compensation and damages due to Relators for the additional takings outlined by the evidence in this case.

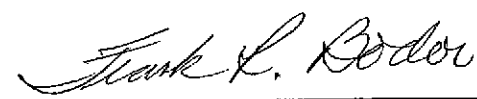
Respectfully Submitted,



FRANK R. BODOR (0005387)
157 Porter Street NE
Warren, Ohio 44483
Telephone: (330) 399-2233
Facsimile: (330) 399-5165
Attorney for Relators

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing BRIEF was submitted this 17th day of June 2008 to L. Martin Cordero & Richard J. Makowski, Associate Assistant Attorney General, Chief Transportation Section, 150 E. Gay Street-17th Floor, Columbus, Ohio 43215-3130 via regular U.S. mail, postage pre-paid.



FRANK R. BODOR (0005387)
Attorney for Relators

IN THE COMMON PLEAS COURT OF TRUMBULL COUNTY, OHIO

Gordon Proctor, Director
Ohio Department of Transportation
1980 West Broad Street
P.O. Box 899
Columbus, Ohio 43216-0899

Plaintiff,

v.

Richard L. Blank
192 S. High Street
Cortland, Ohio 44410-1702

June L. Blank
192 S. High Street
Cortland, Ohio 44410-1702

David A. Hines, or successor
Trumbull County Auditor
160 High Street, NW, 2nd Floor
Warren, Ohio 44481

and

Christ Michelakis, or successor
Trumbull County Treasurer
160 High Street, NW, 2nd Floor
Warren, Ohio 44481

Defendants.

CASE NO. 01 - CU - 2432
JUDGE W. WYATT MCKAY

PETITION TO APPROPRIATE PROPERTY AND TO FIX COMPENSATION

APPENDIX A

PETITION TO APPROPRIATE PROPERTY AND TO FIX COMPENSATION

1. Plaintiff states that he is the Director of the Ohio Department of Transportation; that this action to appropriate property is brought in Plaintiff's official capacity; that Plaintiff is authorized and empowered by Section 19, Article I, Ohio Constitution, R.C. Title 55, and R.C. Chapter 163 to bring this cause of action to appropriate property for a public use; and, that Plaintiff has complied with the requirements of R.C. 163.04.

2. Plaintiff intends to obtain and take possession of and enter upon the property being appropriated for the purposes of making, constructing, or improving a state highway or interstate highway which shall be open to the public, without charge.

3. Plaintiff has been unable to agree with all the owners concerning the property to be appropriated.

4. Attached hereto, as a part of "Exhibit A," is a copy of the *Findings, Declarations and Resolutions* entered in the Journal of the Director of Transportation, Real Estate Administration Section, wherein the following are disclosed:

(a) A statement of the purpose of the appropriation.

(b) The identity of the road to be made, constructed or improved.

(c) The names and addresses, so far as can be ascertained, of those persons or entities that are the owners, as defined in R.C. 163.01, of the property to be appropriated.

(d) The description of the property, and the rights, titles, interests, and estates therein, to be appropriated.

(e) The amount Plaintiff has determined to be the fair market value of the property, and the rights, titles, interests, and estates therein, to be appropriated, together with any damages to the residue thereof.

(f) The identity of the entities other than the State of Ohio, if any, in the name of which all or a part of the property is being appropriated, all with the prior consent of the legislative or corporate authority of any such entities.

Plaintiff hereby incorporates "Exhibit A" into this Petition.

5. Prior to or at the time of filing this Petition, Plaintiff has deposited with the Clerk of this Court a sum of money equal to the amount he determined to be the fair market value of the property, and the rights, titles, interests and estates therein, to be appropriated, and any damages to the residue thereof.

6. Plaintiff has filed with the Trumbull County Engineer a copy of the highway plans for the purpose of making available a description of the nature of the improvement or use which requires the appropriation, including any specifications, elevations, and grade changes already determined at the time of the filing of this petition, in sufficient detail to permit a determination of the nature, extent, and effect of the taking and improvement.

WHEREFORE, Plaintiff prays the Court will:

[A] Find that Plaintiff has complied with R.C. 163.01, *et seq.*, and is entitled to appropriate the subject property.

[B] Enter a judgment ordering the conveyance of the title to such property to the State of Ohio and/or to the entities other than the State of Ohio, if any, identified in "Exhibit A," upon the consideration of the sum of money deposited by Plaintiff with the Clerk of this Court.

[C] Grant Plaintiff all such other relief to which he might be shown to be entitled.

All in accordance with law.

Very truly yours,

BETTY D. MONTGOMERY
Attorney General of Ohio

JOHN C. THORNE, JR. (0020280)
Assistant Attorney General
State Office Building - 11th Floor
615 West Superior Avenue
Cleveland, Ohio 44113-1899
E-mail: jthorne@ag.state.oh.us
(216) 787-3030 - FAX (216) 787-3480
Attorney for Plaintiff

EXHIBIT A

FINDINGS, DECLARATIONS & RESOLUTIONS

WHEREAS, I find it necessary to make, construct or improve **State Route 5, Section 29.611 (18.40), Trumbull County, Ohio;**

WHEREAS, it is necessary for the public convenience and welfare to acquire certain property for highway purposes, namely **Parcel(s) 34-S, and 34-T,** which property is more particularly described below; and, the names and addresses of the owners of said of property are:

Richard L. Blank
192 S. High Street
Cortland, Ohio 44410-1702

June L. Blank
192 S. High Street
Cortland, Ohio 44410-1702

David A. Hines, or successor
Trumbull County Auditor
160 High Street, NW, 2nd Floor
Warren, Ohio 44481

and

Christ Michelakis, or successor
Trumbull County Treasurer
160 High Street, NW, 2nd Floor
Warren, Ohio 44481

WHEREAS, I have been unable to purchase all such property because I have not been able to agree with all the owners thereof; and, it is necessary to acquire such property by appropriation; and,

WHEREAS, I have determined that **$4,650** is the fair market value of the property, and the rights, titles, interests and estates therein, and the structures, if any, situated thereon, to be appropriated, together with any damages to the residue thereof.

BE IT DECLARED AND RESOLVED THAT:

1. I find it necessary to appropriate the hereinafter specifically described property, and rights, titles, interests and estates therein, and the structures, if any, situated thereon, for the purpose of making, constructing or improving the hereinabove mentioned highway which shall be open to the public, without charge.

2. Prior to or at the time of filing an action to appropriate the subject property, and the rights, titles, interests, and estates therein, and the structures, if any, situated thereon, the hereinabove mentioned sum of money shall be deposited with the Clerk of the court in which the action is brought.

3. In accordance with R.C. 163.06(B), it is necessary to forthwith enter upon and occupy said property and/or the struc' es situated thereon.

4. The legal description of the property, and rights, titles, interests and estates therein to be appropriated are:

PARCEL 34-S
TRU-5-29.611 (18.40)
PERPETUAL EASEMENT TO CONSTRUCT AND MAINTAIN A SEWER

A perpetual easement for the construction and maintenance of a sewer in, upon and over the lands hereinafter described. Owner herein retains the right to use said lands for any and all other purposes provided that such use does not interfere with nor impair the exercise of the easement herein granted.

Beginning at a point in the south line of the lands of the Owners and the existing west right of way line of S.R. 5 (High Street), 10.058 meters (33.00 feet) left of centerline of existing right of way and construction S.R. 5 Sta. 30+338.943 and being the TRUE POINT OF BEGINNING of the parcel herein described;

thence N 71°53'00" W along the south line of the lands of the Owners a distance of 63.567 meters (208.55 feet) to a point, 73.508 meters (241.17 feet) left of centerline at Sta. 30+335.099;

thence N 21°35'00" E along the west line of the lands of the Owners a distance of 3.053 meters (10.02 feet) to a point, 73.512 meters (241.18 feet) left of centerline at Sta. 30+338.153;

thence S 71°53'00" E a distance of 63.570 meters (208.56 feet) to a point in the existing west right of way line of S.R. 5 (High Street), 10.058 meters (33.00 feet) left of centerline at Sta. 30+341.997;

thence S 21°31'00" W along the east line of the lands of the Owners a distance of 3.054 meters (10.02 feet) to the TRUE POINT OF BEGINNING and containing 0.0194 hectares (0.048 acres) of land, more or less.

This description was prepared and reviewed on February 11, 2000 by Thomas D. Y. Fok, Registered Surveyor No. S-4896.

This description is based on a survey made under the direction and supervision of Thomas D. Y. Fok, Registered Surveyor No. S-4896 in December, 1999 for the City of Cortland.

The basis of bearings in this description are based on the Ohio Department of Transportation Project Tru-5-18.92.

Prior Instrument Reference: Deed Volume 802, Page 477 in the Records of Trumbull County, Ohio.

The above described area is located in Auditor's Parcel 34-006651.

EXHIBIT A

PARCEL 34-T
TRU-5-29.611 (18.40)
TEMPORARY EASEMENT FOR THE PURPOSE OF PERFORMING THE WORK NECESSARY TO CONSTRUCT A DRIVE AND TO GRADE

Being a parcel of land situated in Trumbull County, Ohio, Bazetta Township, Section 29 Town 5N, Range 3W and lying on the Left side of the centerline of a survey, made for the Department of Transportation and recorded in Image #200007070025022, of the records of Trumbull County and within the following described points in the boundary thereof:

Known as being part of the original Bazetta Township Section 29 and being more particularly described as follows:

Beginning at a point in the north line of the lands of the Owners and the existing west right of way line of S.R. 5 (High Street), 10.058 meters (33.00 feet) left of centerline of existing right of way and construction S.R. 5 Sta. 30+404.956 and being the TRUE POINT OF BEGINNING of the parcel herein described;

thence S 21°35'00" W along the existing west right of way line of S.R. 5 (High Street) a distance of 62.959 meters (206.56 feet) to a point, 10.058 meters (33.00 feet) left of centerline at Sta. 30+341.997;

thence N 71°53'00" W a distance of 5.171 meters (16.97 feet) to a point, 15.219 meters (49.93 feet) left of centerline at Sta. 30+341.684;

thence N 21°35'00" E a distance of 32.109 meters (105.34 feet) to a point, 15.219 meters (49.93 feet) left of centerline at Sta. 30+373.793;

thence S 72°23'19" E a distance of 1.612 meters (5.29 feet) to a point, 13.611 meters (44.66 feet) left of centerline at Sta. 30+373.905;

thence N 17°36'41" E a distance of 30.780 meters (100.98 feet) to a point in the north line of the lands of the Owners, 15.743 meters (51.65 feet) left of centerline at Sta. 30+404.611;

thence S 71°53'00" E along the north line of the lands of the Owners a distance of 5.695 meters (18.69 feet) to the TRUE POINT OF BEGINNING.

It is understood the area of land above described contains 0.0308 hectares (0.076 acres), more or less.

This description was prepared and reviewed on February 3, 2000 by Thomas D. Y. Fok, Registered Surveyor No. S-4896.

This description is based on a survey made under the direction and supervision of Thomas D. Y. Fok, Registered Surveyor No. S-4896 in December, 1999 for the City of Cortland.

The basis of bearings in this description are based on the Ohio Department of Transportation Project Tru-5-18.92.

EXHIBIT A

Prior Instrument Reference: Deed Volume 802, Page 477 in the Records of Trumbull County, Ohio.

The above described area is located in Auditor's Parcel 34-006651.

EXHIBIT A

WITNESS my hand and seal given this 26th day of November, 2001, at Columbus, Franklin County, Ohio.

Gordon Proctor /gjv
GORDON PROCTOR
Director,
Ohio Department of Transportation

CERTIFICATE OF AUTHENTICITY

This is to certify that the foregoing constitutes an authentic copy of an entry made on this the 26th day of November, 2001, in Volume 30, Page 331 of the Real Estate Administration Section of the Journal of the Ohio Director of Transportation; in attestation of which the Seal of the Ohio Department of Transportation has been affixed hereto.

Deborah M. Garrett
Deborah M. Garrett, Recorder