

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, ex rel.)
GERALD O.E. NICKOLI, et al.,)
)
Relators,)
)
ERIE METROPARKS, et al.,)
)
Respondents.)

CASE NO. 2009-0026
Original Action in Mandamus

MEMORANDUM OF RESPONDENTS IN OPPOSITION TO RELATORS'
MEMORANDUM IN SUPPORT OF COMPLAINT FOR A WRIT OF MANDAMUS

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**MEMORANDUM OF RESPONDENTS IN OPPOSITION TO RELATORS'
MEMORANDUM IN SUPPORT OF COMPLAINT FOR A WRIT OF MANDAMUS**

On the same day Relators filed the Complaint herein, they also filed a Memorandum in Support of Complaint for a Writ of Mandamus ("Relators' Memo in Support of Complaint"). Relators argued in that document that a peremptory writ of mandamus should be issued in this action.

Respondents have filed today a Answer and a Motion for Judgment on the Pleadings, and Respondents hereby incorporate by reference into this Memorandum in Opposition to Relators' Memo in Support of Complaint the contents (including the definitions) of such Answer and such Motion.

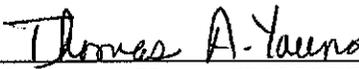
Relators' Memo in Support of Complaint contends that based on Relators' deeds to Relators' Claimed Real Estate, the decisions in the *Key Trust* litigation and this Court's decision in *State ex rel. Coles v. Granville*, 116 Ohio St.3d 231, 2007-Ohio-6057, a peremptory writ of mandamus should issue compelling Respondents to commence appropriation actions with respect to Relators' Claimed Real Estate. The Motion for Judgment on the Pleadings sets forth factual and legal reasons why such writ should not issue.

Respondents respectfully submit that the Motion for Judgment on the Pleadings should be sustained and the Complaint herein dismissed with prejudice. If this Court overrules that Motion, Respondents request that this Court, pursuant to S.Ct.Prac.R. X(6), issue a schedule for the presentation of evidence and submission of briefs on the merits. The factual issues in this action, assuming the Motion for Judgment on the Pleadings is overruled, include without limitation:

- whether Relators' Claimed Real Estate is on the Merry Tract or the Townsend Tract;
- whether the Greenway is located on Relators' Claimed Real Estate;

- the validity of Relators' titles to Relators' Claimed Real Estate;
- the rights of Respondents in Relators' Claimed Real Estate, and whether such rights are superior to Relators' rights, if any, in such Real Estate; and
- the relationship between the Canal Corridor and the Railroad Corridor.

Respectfully submitted,



Thomas A. Young (0023070)

Counsel of Record

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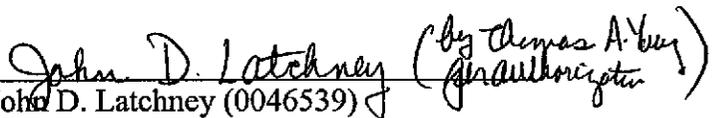
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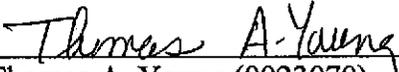
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Attorneys for Respondents Erie MetroParks and
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 10th day of February, 2009, he served a copy of the foregoing "Memorandum of Respondents in Opposition to Relators' Memorandum in Support of Complaint for a Writ of Mandamus" on Bruce L. Ingram, Esq., VORYS, SATER, SEYMOUR & PEASE, 52 East Gay Street, Columbus, Ohio 43216-1008, counsel of record for Relators, by mailing said copy to him via ordinary United States mail, postage prepaid.



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