

The parties to this action, by and through their respective attorneys, hereby jointly submit, for purposes of this action only, that each of the exhibits listed below are authentic for all purposes in this action:

<u>Tab</u>	<u>Description</u>
81	Deposition Transcript with Exhibits of Richard M. Vannatta taken April 28, 2010

Dated: June 1st, 2010

Joint Exhibits Approved and Respectfully Submitted By:



Bruce L. Ingram (0018008)
(Counsel of Record)
Joseph R. Miller (0068463)
Thomas H. Fusonie (0074201)
Kristi Kress Wilhelmy (0078090)
Martha C. Brewer (0083788)
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
Tel.: (614) 464-6480
Fax: (614) 719-4775
blingram@vorys.com
jrmiller@vorys.com
thfusonie@vorys.com
kkwilhelmy@vorys.com
mcbrewer@vorys.com

Attorneys for Relators

William J. Cole by T+P (0074201) per written authorization

William J. Cole (0067778)
(Counsel of Record)
Mindy Worly (0037395)
Jennifer S.M. Croskey (0072379)
Assistant Attorneys General
30 East Broad Street, 26th Floor
Columbus, Ohio 43215
Tel: (614) 466-2980; Fax: (866) 354-4086
william.cole@ohioattorneygeneral.gov
mindy.worly@ohioattorneygeneral.gov
jennifer.croskey@ohioattorneygeneral.gov

Dale T. Vitale (0021754)
Rachel H. Stelzer (0083124)
Daniel J. Martin (0065249)
Assistant Attorneys General
Environmental Enforcement Section
2045 Morse Road # D-2
Columbus, Ohio 43229
Tel.: (614) 265-6870; Fax: (614) 268-8871
dale.vitale@ohioattorneygeneral.gov
rachel.stelzer@ohioattorneygeneral.gov
daniel.martin@ohioattorneygeneral.gov

Attorneys for Respondents

Tab 81

SUPREME COURT OF OHIO

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State Ex Rel. Wayne T. :
 Doner, et al., :
 Relators, :
 vs. : Case No. 2009-1292
 Sean D. Logan, Director, :
 Ohio Department of Natural :
 Resources, et al., :
 Respondents. :

DEPOSITION

of Richard M. Vannatta, taken before me, Julieanna
 Hennebert, a Notary Public in and for the State of
 Ohio, at the offices of Richard Cordray, Ohio
 Attorney General, 30 East Broad Street, Floor 26,
 Columbus, Ohio, on Wednesday, April 28, 2010, at 4:00
 p.m.

ARMSTRONG & OKEY, INC.
 222 East Town Street, 2nd Floor
 Columbus, Ohio 43215
 (614) 224-9481 - (800) 223-9481
 FAX - (614) 224-5724

1 APPEARANCES:

2 Vorys, Sater, Seymour & Pease, LLP
3 By Mr. Thomas H. Fusonie
4 Ms. Martha C. Brewer
5 52 East Gay Street
6 Columbus, Ohio 43216-1008

7 On behalf of the Relators.

8 Richard Cordray
9 Ohio Attorney General
10 By Mr. William J. Cole
11 Ms. Mindy Worly
12 Assistant Attorneys General
13 Executive Agencies
14 30 East Broad Street, Floor 26
15 Columbus, Ohio 43215

16

17 On behalf of the Respondents.

18 ALSO PRESENT:

19 Mr. Tadd Henson
20 Mr. Jay Dorsey

21

22

23

24

25

Wednesday Afternoon Session,
April 28, 2010.

- - -

STIPULATIONS

It is stipulated by and among counsel for the respective parties that the deposition of Richard M. Vannatta, a witness called by the Respondents under the applicable Rules of Civil Procedure, may be reduced to writing in stenotypy by the Notary, whose notes thereafter may be transcribed out of the presence of the witness; and that proof of the official character and qualification of the Notary is waived.

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EXHIBITS

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1 - Affidavit of R.M. Vannatta	6
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1 RICHARD M. VANNATTA

2 being by me first duly sworn, as hereinafter
3 certified, deposes and says as follows:

4 CROSS-EXAMINATION

5 By Mr. Cole:

6 Q. Mr. Vannatta, my name's William Cole, I'm
7 one of the attorneys representing the Department of
8 Natural Resources in this litigation. I'm going to
9 take your deposition here.

10 I know from personal experience you've
11 been deposed at least once before, I'm sure many
12 times. Just a quick few ground rules. Please give
13 verbal answers to my questions since it's being
14 transcribed. Please wait for me to finish asking the
15 question before you start to answer and I'll do my
16 best not to interrupt you.

17 If you don't understand a question,
18 you're confused, want me to rephrase it, just let me
19 know. And although I don't think we're going to be
20 too long, if you need to take a break, just let me
21 know. Just if a question's pending, just answer
22 that. Fair enough?

23 A. Yep.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 Q. Mr. Vannatta, are you under any

1 medication or do you have any other physical, mental,
2 or other condition that would affect your ability to
3 understand my questions and answer my questions
4 truthfully?

5 A. No.

6 Q. I've handed you exhibit, what I've marked
7 as Exhibit 1. Have you had a chance to look at that?

8 A. Yeah. That should be what mine is.

9 Q. You want to make sure it's not missing
10 anything?

11 A. 9, 10, and then my signature,
12 qualifications, looks about the same, yes, sir.

13 Q. And that is your affidavit and your
14 curriculum vitae?

15 A. Yes.

16 Q. And I see that you signed this on
17 October 21st of 2009. My question is since the
18 signing of that is there anything in that affidavit
19 that may no longer be accurate or that you may need
20 to add information, something that may have happened
21 since then, or is this still pretty accurate?

22 A. I think so, yes.

23 Q. You wouldn't amend or change or take out
24 anything at this point?

25 A. No.

1 Q. What's your formal education?

2 A. I quit high school, joined the Marine
3 Corps. Got out of the Marine Corps. after being shot
4 in Viet Nam. Got a GED. Went to Franklin for about
5 18 months and I just couldn't handle it, too soon out
6 of the service, couldn't handle that.

7 Anyway, during that period I got my real
8 estate license in 1970. I got out and I think I got
9 discharged in summer of '69 so got my GED, started
10 soon thereafter.

11 And then early '69 I got my real estate
12 license, going to school as well as trying to work
13 and make a living and it was a little hard on me
14 right out of the service. I wasn't settled in yet.

15 So I was going to school and while I got
16 my real estate license shortly thereafter I think
17 about 18 months into Franklin after taking a number
18 of economic courses and real estate and stuff I found
19 out that there was education probably more suited to
20 me via the various organizations like the Appraisal
21 Institute, the Ohio Association of Realtors.

22 I took all the -- Ohio State at that time
23 had a course where you took all of the, I forget what
24 they call that, but it was through the Department of
25 Real Estate in 1971 or '2. And you took all the

1 appraisal institute, appraisal courses plus others,
2 that type stuff. So I took those and that study
3 worked better for me.

4 Q. And that's all in your affidavit?

5 A. Yeah. So at that time -- and so I've
6 been doing that and I got thousands of hours now.

7 Q. Okay. All I was curious about was your
8 educational background.

9 A. That was the beginning of it and then
10 continual education for the various designations even
11 as far as USPAP instructor. I just renewed it.
12 Takes quite a bit of study to be able to teach that.

13 I'm one of about 500 now nationally
14 accredited through the Appraisal Foundation to teach
15 USPAP. So I keep adding a little more here and
16 there.

17 Q. And just if you can say what "USPAP,"
18 what does that stand for?

19 A. Uniform Standards of Professional
20 Appraisal Practice.

21 Q. You do not have an undergrad or college
22 degree, do you?

23 A. No.

24 Q. By the way, who actually typed up this
25 affidavit?

1 A. Tom's secretary.

2 Q. Did they send it to you and you looked it
3 over and signed?

4 A. No, actually I was there working on
5 another matter and unrelated and they wanted to know
6 if I could do it. And while we were there I was
7 there like a half a day so in between we made notes
8 together, he took it out and had it typed up, brought
9 it back and I reviewed it and made some corrections
10 and things. The gal made the corrections and that's
11 it.

12 Q. So you don't have any training or
13 education or experience in engineering, do you?

14 A. Well, ask me another question there.
15 What's the -- you're trying to get to the definition
16 of what is an expert in a certain area.

17 Q. Well --

18 A. What's the definition of that.

19 Q. Sir, I just asked you if you had any
20 education or training or experience --

21 A. I'm still asking you that question.

22 Q. Wait, Mr. Vannatta, let me ask the
23 question please.

24 I just want to know if you have any
25 formal education, any formal training --

1 A. Define "formal."

2 Q. Sir, it's going to go a lot quicker if
3 you let me ask the question.

4 A. All right.

5 Q. -- or any experience in engineering,
6 civil --

7 A. I've taken a number of courses through
8 the International Right-of-Way Association that
9 has -- that talks about surveying and general basic
10 methodology of plan reading, that type of stuff.

11 Q. All right.

12 A. So from my understanding of as being an
13 expert witness, I have sufficient training for what I
14 talk about.

15 Q. Okay. Which is valuation, right?

16 A. Valuation.

17 Q. But you're not an engineer.

18 A. No, I'm not an engineer.

19 Q. You're not a licensed engineer.

20 A. No.

21 Q. Do you have any training or formal
22 education in water movement or hydrology or
23 hydraulics?

24 A. That I give you a "no."

25 Q. Okay.

1 A. I stay away from those.

2 Q. Do you have any training in the law?

3 A. No.

4 Q. You're not an attorney.

5 A. No. That's your job too. You can have
6 it.

7 Q. I'm going to ask you a couple questions
8 about your affidavit.

9 A. Yes, sir.

10 Q. Paragraph 3, you talked about going out
11 and inspecting the properties. Had you ever
12 inspected or looked at any of the properties in this
13 case before then?

14 A. Not a specific property. But because we
15 spent, I don't know, my wife and I when I say "we,"
16 we go together. She's an appraiser as well and we
17 take turns making notes and photographs and as we are
18 inspecting the subject properties that we did I think
19 five and then comparable sales, we happened to stay
20 very near the lake.

21 And just out of curiosity, just try to
22 get -- we actually dove around the lake, the north
23 side from east to west and looking at where we could
24 see various, at that time was just our own curiosity,
25 the extent of all the flooding that where we talked

1 to the auditor, we talked to Soil and Water
2 Conservation, I talked to FSA, I always forget what
3 that means, but the farm service guys.

4 And then just various local people about
5 what the extent of the flooding was, which some of it
6 was apparent where there was some buildings still
7 around the lake that looked closed that were open,
8 and so we drove from the lake all the way to Indiana
9 and followed both streams and tried to get the whole
10 scope of what just for that -- those properties that
11 were appraised and the scope of from the outlet or
12 what do you want to call it, the dam, the modified
13 dam where that came out and then its trek to the
14 west.

15 Q. You are the appraiser of record though in
16 the properties that you've identified in paragraph 4,
17 correct?

18 A. Yes.

19 Q. And if I'm not mistaken, those are
20 parcels that ODNR has filed actions based on the post
21 case; is that right?

22 A. Yes. There was I guess a number of years
23 of litigation.

24 Q. Right.

25 A. And the post case I think was the Lee

1 case or whatever you want to call it.

2 Q. First one I believe.

3 A. Yeah.

4 Q. And you have done appraisals on those
5 properties.

6 A. Yes, I have.

7 Q. Have you done full appraisals on any
8 other properties in the vicinity?

9 A. No.

10 Q. Have you ever testified or submitted an
11 affidavit in any other case like this one where it's
12 at the pre-appropriation stage or the mandamus stage?
13 Do you understand what I'm talking about?

14 A. Yeah, I understand. No. Wait a minute.
15 Would the Rex Pipeline stuff sort of follow that
16 category? Because they were never condemned? They
17 were negotiated, threatened condemnation.

18 Q. Tell me briefly about that.

19 A. The Rex Pipeline when they came through,
20 they built from out west all the way, I don't know,
21 somewhere towards the East Coast a new big pipeline
22 gas pipeline, high pressure gas line, and so there
23 was -- we consulted on a number of them and we
24 appraised some of them. And none of them were
25 condemned. But there wasn't a mandamus, that's the

1 difference.

2 Q. You've never filed, until now at least
3 an -- or, you've never submitted or signed an
4 affidavit in a case that's at the mandamus stage,
5 correct?

6 A. No.

7 Q. Then in page 5 you refer to we talked
8 about the spillway a little bit and --

9 A. Page 5?

10 Q. Excuse me, paragraph 5.

11 A. Okay. Losing me there. Okay.

12 Q. You talk about your understanding of what
13 Ohio courts have found. What is your understanding
14 of what ODNR's lake level management programs on the
15 lake here at Grand Lake St. Marys were prior to 1997?

16 A. As I recall -- you're going back a couple
17 years now. And I didn't read -- I read a couple
18 cases that was provided to me. I guess I could have
19 got them publicly but they were provided to me.

20 But there was lengthy discussions in
21 there by both sides of how the dam was configured and
22 how it was a functioning dam where they could monitor
23 the water and cause it to rise within the lake or
24 they could lower it if they chose to at various
25 times.

1 And then in the after -- after it was
2 rebuilt in my general understanding that they now
3 sort of -- it's sort of a fixed deal where water gets
4 to a certain level and they just overflow naturally
5 without any but then they also have a relief, some
6 kind of a relief that if they close to let water out,
7 they could.

8 But my understanding they aren't because
9 they want to keep the water up for boats or
10 something, bigger boats or something like that.
11 That's basically all I know about that.

12 Q. Have you spoken to any of the relators in
13 this case?

14 A. The relators?

15 Q. The landowners who are suing ODNR.

16 A. No. I don't even know who they are.

17 Q. Now you're aware, sir, that in this case
18 there has been no finding judicially or any legal
19 finding that ODNR has taken these properties or even
20 caused the flooding on any of these lands; is that
21 correct?

22 A. Yeah, because of --

23 Q. It's in litigation.

24 A. Yeah.

25 Q. Would you agree that any determination

1 that they are being deprived by ODNR of the economic
2 use of their property, that that would be premature?

3 MR. FUSONIE: Objection.

4 Q. Based on your statement in paragraph 8?

5 A. No, because my statement basically says
6 that we were speaking in generalities. And this
7 should in my opinion that if any of the properties
8 and I would assume they were affected some way, that
9 are in this action, if they are negatively affected,
10 then my statement's correct.

11 Q. So your paragraph then, your statement in
12 paragraph 8 is essentially hypothetical.

13 A. Yeah. I mean it has to be because we
14 don't have a subject.

15 Q. In paragraph 9 you say it is a recognized
16 fact in the appraisal field that increased flooding
17 at a property whether frequency, duration, or scope
18 has a substantial impact on the property's market
19 value.

20 How much of increase in flooding does
21 there have to be to have a substantial impact? Let's
22 start first with frequency.

23 A. Can't quantify that. Because without a
24 specific property and knowing how the water may flow
25 around and the impacts of that and now that you've --

1 like I would suppose on the first five, now that you
2 surveyed them before, it was like so many up here and
3 around here and it was sort of hard.

4 But now that if you continue to survey or
5 if you go with even their little map that they just
6 drew, that you could go out there and eyeball that
7 and try to visualize in your mind, okay, here was the
8 water and what would the impact, and most cases folks
9 had photographs of instances immediately after. So
10 it was pretty apparent. And some maybe not as
11 apparent. So until you have a subject, you really
12 can't say.

13 Q. Let me ask you something. And maybe you
14 can't answer it. Maybe it's like you said.

15 Let's say you had a parcel that was
16 subject to flooding once every 20 years and now
17 because of what the state did it's once every 15
18 years. So that's an increase in the frequency of
19 flooding.

20 Would that be an increase enough to have
21 a substantial impact on market value?

22 A. Well, it's not flooding alone. It's the
23 easement. And what the easement -- it's about
24 rights. And you're taking rights. Where before
25 something may have an occasional hundred year thing

1 and may have a chance one time in every hundred years
2 to flood. And a lot of people would say that's an
3 acceptable risk.

4 But now your easement, because of
5 easement which is different because flooding, general
6 flooding along the river, nominal flooding that may
7 occur, there's no easement, that's just nature and
8 that happens. But now in this instance you're
9 talking out of line and you're taking the rights.
10 Yeah, as in the others

11 Q. If it were found to be so.

12 A. Yeah, if it were found, you're taking a
13 right to flood any time without warning. And so
14 that's a different matter. It's not just confined to
15 the flooding alone.

16 Q. What about would your answer be the same
17 for you say duration and scope that you just can't
18 quantify the increase?

19 A. No, because --

20 Q. No, I'm right or no, I'm wrong?

21 A. No, you can't quantify it. And the
22 reason that is, who can predict how much rain, when
23 the rain is going to come, this and that? That gets
24 hypothetical as well. So that's why it's more a
25 rights issue in my mind.

1 Q. Do you know whether it's an established
2 appraisal fact that any increased flooding
3 substantially impacts market value where the land is
4 already in the flood plane or has a pre-existing
5 history of flooding?

6 MR. FUSONIE: Objection to form.

7 Q. Do you understand my question?

8 A. No. Say it again.

9 Q. Is it -- to your knowledge is it an
10 established fact, because you've testified about a
11 couple, or is it a recognized fact to your knowledge
12 that any increased flooding, any whatsoever,
13 necessarily substantially impacts market value where
14 the parcel, let's say is in a flood plane already?

15 A. If there's a taking, I think it's a
16 different matter. I don't think you can separate the
17 two. So I don't have an answer on that.

18 Q. Well --

19 A. With the taking there is a difference
20 because of the modification to the dam.

21 Q. Taking's a legal determination, right?

22 A. Pardon me?

23 Q. Whether there's a taking, that's legal
24 determination.

25 A. Yeah.

1 Q. You can have market value impacted
2 without taking, right?

3 A. Possibly, yeah.

4 Q. Well, I don't want to know about taking.
5 I'm not asking you to make a legal call. That's what
6 Mr. Fusonie and I are battling over. What I want to
7 know is if the property's already in a flood plane
8 and/or if the property has a history of flooding, if
9 it has any increase in flooding, necessarily diminish
10 the market value substantially?

11 MR. FUSONIE: Objection.

12 A. You have to define "any."

13 Q. So -- so a minimal amount would not
14 necessarily diminish the market value substantially,
15 correct?

16 A. Generally. I think that might be true.

17 Q. You haven't inspected --

18 A. I haven't inspected. You're trying to
19 get specific and you can't get specific.

20 Q. Let me finish. You've driven by, as part
21 of your appraisal of the other parcels you've driven
22 by some of these parcels in this case but you haven't
23 formally inspected them, have you?

24 A. Well, I didn't even know and I still
25 don't know any of those that might be in the case,

1 and all I did again is more of a general scope of
2 what was reported by, like I said, ODNR's soils and
3 water, Mercer soil and water, and just people that we
4 just happened to talk to in the neighborhood how
5 about this, do you recall.

6 And just got general census of what areas
7 may have been affected and what areas weren't.
8 There's some that aren't affected, you know, that are
9 there and some aren't.

10 Q. Let me ask you a related question. Would
11 an increase in flooding, whether in frequency,
12 duration, and/or scope, due to spillway construction
13 and abandonment of lake level practices, management
14 practices, have a lesser impact on market value where
15 the land already has a history of flooding, is
16 already prone to flooding than land that doesn't?

17 A. Again, it's to the degree. My
18 understanding because there's greater volumes that
19 the way this new thing is constructed and the
20 velocity and that's out of statements, I didn't make
21 it up.

22 Velocities of water and stuff like that
23 that it could be more detrimental to any of the
24 properties that are claimed to have been damaged.

25 Q. All right.

1 A. But without looking at each one and
2 trying to identify the particular characteristics,
3 you can't say.

4 Q. So what I've been saying is when you talk
5 about a recognized fact that would be in some cases
6 but not necessarily others.

7 A. Well, yeah. I probably was a little
8 strong there. But generally it's when I think of
9 recognized fact is generally if there's a taking,
10 there's damage.

11 Now it's arguable is it a dollar damage
12 or a ten dollar damage, but there's damage when
13 there's taking because you took something from that
14 property whether it's in fee or some form of easement
15 or whatever. Theoretically isn't a damage.

16 Q. Would the construction, and I'm looking
17 now at paragraph 10 here, again you're talking about
18 a recognized fact. Is the construction of a spillway
19 and abandonment of lake level management practices,
20 is that a recognized fact or is it just your example
21 of an external factor that's a recognized fact in the
22 appraisal field?

23 MR. FUSONIE: Objection as to form.

24 Q. That was a -- do you want me to try to
25 rephrase that one? Do you understand my question?

1 MR. FUSONIE: Same objection.

2 Q. Let me rephrase that.

3 Mr. Vannatta, your paragraph 10 in your
4 affidavit that you signed says it is a recognized
5 fact in the appraisal field that if a property
6 previously had no flooding but external factors to
7 the property now cause frequent and uncontrollable
8 flooding, the market value of the property is
9 substantially destroyed.

10 Now my question is, okay, it's a
11 recognized fact. Then you say your paragraph says
12 such as the construction of the spillway and the
13 abandonment of the prior lake level management
14 practices.

15 All I want to know is is it in your
16 knowledge is it a recognized fact that just external
17 factors that cause that or specifically it's a
18 recognized fact that when you modify a spillway and
19 you abandon prior practices, that's a recognized
20 fact?

21 MR. FUSONIE: Objection; form. And
22 document speaks for itself.

23 Q. I think it's ambiguous, but go ahead.

24 A. Okay. Here's my take on externalities.
25 Externalities cover a lot of things. It could be

1 market conditions in a neighborhood that's external
2 to the property that the property owner has no
3 control over. You got a spillway whether they manage
4 it or not whatever they do. If they took the lake
5 out, who knows. I don't know.

6 But there's a lot of external things that
7 we as appraisers are required to consider as part of
8 our valuation, like growth, those types of things.
9 Those are all externals, right? And that would be
10 beyond the control of the property owner. As far as
11 the appraisal process, that would be a negative
12 externality, needs to be considered in the valuation
13 of a specific property.

14 Q. But that's only if -- but as an appraiser
15 part of your practice is to follow court decisions
16 regardless of whether you personally agree or
17 disagree with them; is that right?

18 A. Well, we're not in court here and I don't
19 have any specific --

20 Q. For example, if an appropriation of
21 property results in circuitry of travel, you as an
22 appraiser might say that property has less value but
23 you know the law says that's non-compensable.

24 MR. FUSONIE: Objection. That's not the
25 law. That's not the law.

1 MR. COLE: Rich Lee B. Jones, I think it
2 is.

3 A. I think I would use a different word, but
4 it would be less desirable. But it probably would be
5 compensable. I don't use that word.

6 Externalities, period. Any competent
7 appraiser needs to look at external forces that are
8 beyond the control.

9 Q. As long as it's legally compensable
10 without getting specifics.

11 A. Well, I don't know. Not necessarily in
12 appraisal practice. For combination. In appraisal
13 practice if there's something external to the
14 property that could cause a negative impact on that
15 property, then you should consider it.

16 And now if you consider it, that doesn't
17 necessarily mean that you're going to value but
18 you're at least going to tell your reader hey, this
19 happens, whoever wrote the report, so they understand
20 you did consider these things.

21 It could be a railroad crossing or a lot
22 of traffic. Some people may like traffic, some
23 people don't have kids don't care. I happen to live
24 in a war zone. But I like where I live and it's
25 convenient.

1 Nobody else would pay near where I got my
2 building because they come and say look there's a
3 shooting down the street. But I can control my
4 perimeter.

5 Q. Okay. And would it affect value if I
6 wanted to sell?

7 A. Absolutely.

8 Q. Do you know of any other cases other than
9 those in Mercer County where there's been an
10 abandonment of a spillway and there's been a
11 modification of a dam and change in lake level
12 management practices?

13 A. No. I haven't been made aware of any.

14 Q. If all other factors are equal, let's say
15 you got two parcels of similar or identical size
16 within the immediate vicinity of each other but one's
17 in a flood plane and one isn't, would the fact that a
18 parcel is located in a flood plane, would it normally
19 have an impact on the market value when compared to a
20 parcel that is not in a flood plane?

21 A. Well, you talking about flood plane or
22 are you talking about this instance now where they
23 modified and you got easements or whatever?

24 Q. No, I'm talking about property in a flood
25 plane. Is that a factor you would consider in

1 valuing a property?

2 A. It would really depend on the specific
3 property where it was, could I get flood insurance,
4 and what might those -- was it really a 500-year
5 flood or a hundred year flood zone. And so those
6 make differences.

7 Q. If a property was in a flood plane and
8 another comparable property nearby was not, and when
9 I say comparable, in all other aspects. Would the
10 fact that the property is in the flood plane, would
11 that ever be -- would you ever look at that as a
12 positive impact on value?

13 A. I don't know. Again, it's specific
14 properties.

15 Q. Could there be a situation were being in
16 a flood plane would be positive? Would it increase
17 the value of the property or make it worth more?

18 A. There are, I suppose there are instances
19 for people who have boats and those kind of things
20 and that's something maybe you got to live with.

21 Q. All right. Otherwise though? I mean
22 generally it would probably be either nothing or
23 negative factor, wouldn't it?

24 MR. FUSONIE: Objection.

25 Q. You can go ahead and answer.

1 A. I don't know. Because without specific
2 properties that's -- there's no carte blanche. And
3 we are not talking about a specific property so the
4 generalities that you're trying to get me to state I
5 don't think are correct. So I'm not going to answer.

6 Q. Have you talked with anyone about doing
7 appraisals on any of these properties, the Doner
8 litigation properties, if the relators prevail in
9 this case?

10 A. No.

11 Q. Would you expect to be appraising any of
12 these properties?

13 A. Well, you'd hope to expect -- no,
14 "expect" is a strong word, no. Because just various
15 things. I could be busy or whatever. And my wife
16 and I are a one-man shop, one man/one woman shop, and
17 we don't try to take on more than we can handle. So
18 it would depend. But I learned a long time ago I
19 don't do anything on an expectation.

20 Q. So you haven't talked with anyone or said
21 you're available or you expect to be able to do any
22 appraisals of these properties should they go to
23 appropriation.

24 A. No. They asked me my opinion because I
25 was there, I'd done the others and I was working on

1 another unrelated matter and could I do this
2 affidavit and we bounced it around and we wrote it.

3 And I think it's correct in general
4 terms. There was no specific properties, there was
5 no discussion do this, get reports. I don't do that.
6 I mean it's just --

7 Q. Okay.

8 A. And good law firms don't do that either.
9 They don't bait you.

10 Q. That's okay, I think you answered my
11 questions.

12 MR. COLE: Thank you Mr. Vannatta, that's
13 all I have.

14 - - -
15 DIRECT EXAMINATION

16 By Mr. Fusonie:

17 Q. Rich, I have just a few questions of
18 clarification.

19 Am I correct that in the appraisal field
20 it's -- a landowner's considered to have a bundle of
21 property rights?

22 A. Correct.

23 Q. And if another landowner is inundating
24 that landowner's property with flood water, are they
25 interfering with that bundle of property rights?

1 A. Yeah. Could be.

2 Q. And if there is a flowage easement
3 whether it's already been established by law or by
4 fact across someone's property, are they interfering
5 with that landowner's bundle of property rights?

6 A. Say that again.

7 Q. If there is a flowage easement across
8 someone's property whether established already by law
9 or in fact, are they interfering with -- is that
10 flowage easement interfering with that landowner's
11 bundle of property rights?

12 A. Yeah.

13 MR. FUSONIE: I don't have anything else.

14 MR. COLE: That's all.

15 MR. FUSONIE: You can review the
16 transcript to correct any errors.

17 THE WITNESS: I'd like to do that.

18 (Signature not waived.)

19 (Deposition concluded at 4:47 p.m.)

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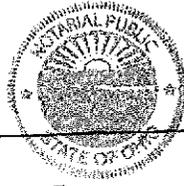
1 State of Ohio :
2 County of Franklin : SS:

3 I, Richard M. Vannatta, do hereby certify that
4 I have read the foregoing transcript of my deposition
5 given on Wednesday, April 28, 2010; that together
6 with the correction page attached hereto noting
7 changes in form or substance, if any, it is true and
8 correct.

Richard M. Vannatta
Richard M. Vannatta

9 I do hereby certify that the foregoing
10 transcript of the deposition of Richard M. Vannatta
11 was submitted to the witness for reading and signing;
12 that after he had stated to the undersigned Notary
13 Public that he had read and examined his deposition,
14 he signed the same in my presence on the 5 day
15 of May, 2010.

Roger D. Lockhart
Notary Public



ROGER D. LOCKHART
Notary Public, State of Ohio
My Commission Expires 4-1-2011

16 My commission expires _____
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CERTIFICATE

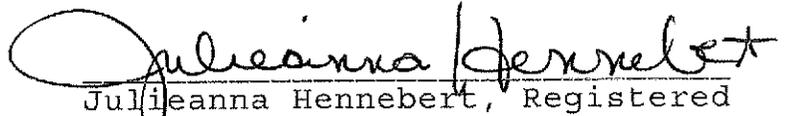
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State of Ohio :
: SS:
County of Franklin :

I, Julieanna Hennebert, Notary Public in and for the State of Ohio, duly commissioned and qualified, certify that the within named Richard M. Vannatta was by me duly sworn to testify to the whole truth in the cause aforesaid; that the testimony was taken down by me in stenotypy in the presence of said witness, afterwards transcribed upon a computer; that the foregoing is a true and correct transcript of the testimony given by said witness taken at the time and place in the foregoing caption specified and completed without adjournment.

I certify that I am not a relative, employee, or attorney of any of the parties hereto, or of any attorney or counsel employed by the parties, or financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Columbus, Ohio, on this 2nd day of May, 2010.



Julieanna Hennebert, Registered Professional Reporter and RMR and Notary Public in and for the State of Ohio.

My commission expires February 19, 2013.

(JUL-1554)

- - -

IN THE SUPREME COURT OF OHIO

STATE EX REL. WAYNE T. DONER,
et al.,

Relators,

v

SEAN D. LOGAN, Director, Ohio
Department of Natural Resources, et al.,

Respondents

Case No. 2009-1292

Original Action in Mandamus

AFFIDAVIT OF RICHARD M. VANNATTA, ASA, GAA, SR/WA

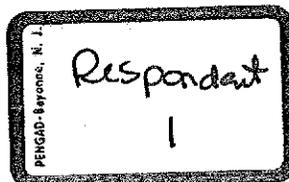
STATE OF OHIO)
) ss
COUNTY OF FRANKLIN)

My name is Richard M Vannatta, ASA, GAA, SR/WA. I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am an appraiser certified by the State of Ohio. A true and accurate copy of a summary of my professional training and experience is attached as Exhibit A.

2 I am the owner of Vannatta Brothers, which is in the business of appraisals of real estate and the sale of real estate and is located in Columbus, Ohio.

3. In February, 2009, I inspected and appraised properties in the vicinity of the Beaver Creek and its tributaries ("Beaver Creek") and the Wabash River and its tributaries from its confluence with the Beaver Creek to the Indiana state line (hereafter referred to as the "Wabash-Mercer County").



DON000717

4. Those properties are owned by Richard and Patricia Baucher, the Minch Family Trust, Terry and Theresa Linn, the Post Family Trust, and the Stephen Zumberge and Virginia Zumberge Trusts.

5. I understand that Ohio courts have found that these properties are subject to severe, frequent and persistent flooding that will inevitably recur as a result of the replacement in 1997 of a 39.4-foot spillway with a 500-foot western spillway ("Spillway") at Grand Lake St. Marys and the decision of the State of Ohio, Department of Natural Resources ("ODNR") to stop lake-level management practices it had prior to 1997.

6. These properties range from one mile to twelve miles downstream of the Spillway.

7. The flooding of these properties has deprived their owners of an economically valuable use of the property, as it has impacted the market value a ready and willing disinterested buyer will pay for the property

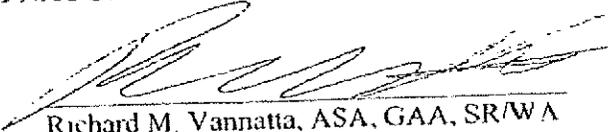
8. Likewise, the owners of any other properties in the vicinity of the Beaver Creek and Wabash-Mercer County that are subject to increased flooding as a result of flooding or increased flooding by the 500-foot spillway and ODNR's failure to exercise the lake-level management practices it had employed prior to 1997 are being deprived of an economically valuable use of their property, as the flooding has impacted the market value a ready and willing disinterested buyer will pay for such property.

9. It is a recognized fact in the appraisal field, that increased flooding of property, whether in frequency, duration, or scope, has a substantial impact on the property's market value.

10. Likewise, it is a recognized fact in the appraisal field that if a property previously had no flooding, but external factors to the property, such as the construction of the Spillway and

the abandonment of prior lake-level management practices, now cause frequent and uncontrollable flooding, the market value of the property is substantially destroyed.

FURTHER AFFIANT SAYETH NAUGHT.


Richard M. Vannatta, ASA, GAA, SR/WA

Sworn to before me and subscribed in my presence this 21st day of October, 2009.


Notary Public



JOSEPH R. MILLER
Attorney at Law
Notary Public, State of Ohio
My Commission Has No Expiration
Section 147.03 R.C.

DON000719

EXHIBIT A
TO
AFFIDAVIT OF
RICHARD M. VANNATTA

DON000720

PART 6 PROFESSIONAL TRAINING AND EXPERIENCE

Richard M. Vannatta, ASA, SRWA

Professional Education: Mr. Vannatta began his professional career in 1970. In following years, he also attended Franklin University School of Business studying real estate law, marketing, and economics. However, determining that there were additional educational opportunities for professional development available through professional organizations that were geared more to his interest of real estate and appraisal. Mr. Vannatta elected to embark on a lifetime of continuing education as evidenced by the list of completed courses below. He has attended more than 40 courses totaling over one thousand classroom hours and has successfully passed the required test for each course. In addition to his extensive course work during the past thirty three years, Mr. Vannatta has attended many seminars on topics such as condemnation, land development, land use planning, ethics, appraisal of real property, machinery and equipment and a host of other real property, appraisal, auction, finance and related topics, totaling approximately nine hundred classroom hours. Mr. Vannatta continues to pursue professional education opportunities.

ASA Accreditation: To qualify for the Accredited Senior Appraiser designation (ASA), an individual must have a minimum of 5 years of full-time equivalent appraisal experience and a college degree or its equivalent. To receive the accreditation, the appraiser must pass intensive written examinations, submit representative appraisal reports for peer review and be screened for his or her ethical behavior. Every accredited appraiser must start his or her ASA membership as a Candidate member. Subsequently, each Candidate must pass ASA's Ethics examination and an examination on the Uniform Standards of Professional Appraisal Practice (USPAP) within a specified period.

Completed Courses from the

American Society of Appraisers:

RP: 205 Urban Case Studies - Part II

RP: 204 Urban Case Studies - Part I

RP: 203 Advanced Income Capitalization

RP: 202 Introduction To Income Capitalization

RP: 201 Appraisal Theory, Principals & Concepts

RP: Going Concern Value & Real Property

RP: Valuation of Conservation Easements, this course was jointly developed by the American Society of Appraisers, the Appraisal Foundation, the American Society of Farm Managers and Rural Appraisers, and the Appraisal Institute, in cooperation with the Land Trust Alliance.

(ASA) Senior Designation

Accredited Senior Appraiser

Real Property Urban

ME: 204 Machinery and Equipment Valuation

ME: 203 Machinery and Equipment Valuation

ME: 202 Machinery and Equipment Valuation

ME: 201 Machinery and Equipment Valuation

ALL: 215 Report Writing

SE: 100 Uniform Standards of Professional Appraisal Practice

Ethics: Professional Appraisal Ethics

(ASA) Senior Designation

Accredited Senior Appraiser

Machinery & Technical Specialties

(MTS)



The SRWA Designation - Senior Member, International Right of Way Association, is the professional designation granted by IRWA to members who have achieved professional status through experience, education, and examination. The SRWA designation requires training and examination in several major right-of-way disciplines. The SRWA designation states, "Mr. Vannatta has more than five years of right-of-way experience, and he has had formal training in a wide variety of right-of-way areas." The SRWA professional may be a specialist in one area such as acquisition, relocation, appraisal, or law, but also must be familiar with the other disciplines associated with the right-of-way profession. The SRWA designation is the only designation reflecting evidence of professional attainment in the right-of-way field.

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PART 6 PROFESSIONAL TRAINING AND EXPERIENCE CONTINUED

The IRWA Certification Program: The purposes of IRWA Certification Program are: 1) to further the effectiveness of the services rendered to the public by the right-of-way profession; and, 2) to achieve the aims and purposes of the Association by providing a means for recognizing those right-of-way practitioners who have attained unquestioned professional status in a single discipline.

Completed Courses from the
International Right of Way Association: (SRWA) Designation #4603
100 Principles of Land Acquisition (RW-AC) Appraisal Certification
101 Principles of Real Estate Acquisition Part 1
101 Principles of Real Estate Acquisition Part 2
103 Ethics
201 Communication in Real Estate Acquisition
214 Skills of Expert Testimony
215 Pipeline Right-of-Way Agent's Development Program
401 Appraisal of Partial Acquisitions
402 Introduction to the Income Approach To Valuation
403 Easement Valuation
802 Legal Aspects of Easements
901 Engineering Plan Development & Application
H005 Reviewing Appraisals in Eminent Domain

Criteria for the General Accredited Appraiser designations (GAA) include Realtor or Institute Affiliate membership in the National Association of Realtors. Applicant must hold a State Certified General Real Estate Appraiser Certificate showing a minimum of 1,000 hours of appraisal experience in addition to the experience required to obtain state certification. Additionally, the applicant must have 60 hours of tested appraisal coursework above the minimum Appraiser Qualification Board's education requirement at the time of certification.

Completed Courses from the
National Association of Realtors Appraisal Section:
Appraisal Report Writing Seminar and Workshop
V: Appraisal Standards, Ethics and USPAP
IV: Cost and Income / Valuation of Partial Interest
III: Sales Comparison Approach
II: Real estate Analysis
I: The Basics of Appraisal

Completed Courses from the
Appraisal Institute:
Condemnation Appraising: Course # 720
Condemnation Appraising: Course # 710
Litigation Appraising: Specialized Topics and Applications
Principles of Income Property Appraising
An Introduction to Appraising Real Property

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PART 6 PROFESSIONAL TRAINING AND EXPERIENCE CONTINUED

The GRI Designation: The Ohio REALTOR Institute (GRI) program was designed to enhance the candidate's knowledge of real estate marketing and teach the skills needed in today's competitive market place. It sets (GRI) members apart from their competition. Experienced real estate practitioners teach proven techniques for attracting new listings, generating sales, working within the law, and enhancing professional image. The program consists of three courses, 30-hours each. The Graduate Realtor Institute (GRI) Designation, is one of the most respected and prestigious professional designations.

Completed Courses from the
Ohio Association of Realtors: (GRI) Designation
Real Estate Sales and Marketing Courses Graduate, Realtor Institute

The Certified Auctioneers Institute (CAI) Designation: The (CAI) designation is awarded by the Auction Marketing Institute whose main function is to provide educational and designation programs for the auction industry. The Certified Auctioneers Institute (CAI) designation was developed for auction firm decision makers. Its focus is on the operation of an auction firm, and it is designed to enhance the member's knowledge of auction marketing and management. The program focus is on skills needed in today's competitive market place and encompasses legal aspects of the auction profession, appraisal of real and personal property, economics, accounting and bankruptcy law. The program spans a two-year period and (totals 92 Hours of tested coursework) it is offered annually at Indiana University in Bloomington Indiana. The (CAI) Designation is one of the most respected and prestigious professional designations in the auction industry.

Completed Courses from the
Auction Marketing Institute: (CAI) Designation
1 Legal, Appraisal, Real Estate at Auction Certified Auctioneers Institute
11 Marketing, Economics, Raw Land Development
111 Ethics, Bankruptcy Law, Equipment Auctions
Accredited Auctioneer of Real Estate Course
Titles:
102 Marketing Real Estate Auctions
201 Finance and Cash Flow Evaluation
202 Advanced Auction Marketing

Completed Courses from the
Ohio Department of Transportation:
Highway Plan Reading

Completed Courses from the
Appraisers Qualifications Board of The Appraisal Foundation
AQB Certified USPAP Instructor Recertification Course January, 2006
AQB Certified USPAP Instructors Course 3/29/04

Recent National Seminars and Conventions:
2008 ASA, International Appraisal Conference
2007 ASA, International Appraisal Conference
2005 Uniform Act Symposium
2005, 2004, 2003 and 2002 International Right of Way Association, International Education Conference
2002 ASA, International Appraisal Conference
2001 National Uniform Act Symposium
Valuation 2000 ASA, International Appraisal Conference

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PART 6 PROFESSIONAL TRAINING AND EXPERIENCE CONTINUED

Professional Memberships:

Mr. Vannatta is a Member of the Columbus Board of Realtors, Ohio Association of Realtors, the National Association of Realtors, and their Appraisal Section. He is also a member of the National Auctioneers Association. He is an accredited Senior Member of the International Right of Way Association and the American Society of Appraisers.

Mr. Vannatta is an active participant in the appraisal community:

He is past Treasurer and Vice President of his ASA Chapter and served two terms as its President. He is a member of the Professional Development Committee of his IRWA local chapter and served as its Vice President and President. He served on a DACUM Panel to design a two-year Real Estate Appraisal, Associate Degree Program at the Center on Education and Training for Employment at the College of Education, The Ohio State University. He now serves on the programs advisory committee and is an adjunct instructor at Columbus State Community College where the appraisal program taught, and he is an IRWA instructor of appraisal courses and a Certified USPAP Instructor.

Professional Experience:

Richard M. Vannatta has been in the real estate business for thirty-three years and the appraisal business for thirty-two years. He started his professional career in 1970 as a licensed real estate sales agent. Early in his career, his interests turned more to investment property, apartments, land, and site development aspects of the real estate business. He began working for a broker that dealt mostly with these types of investors. After several years, he earned his broker's license and shortly thereafter opened his own brokerage and appraisal company. For eight years, he was involved with numerous apartment rehabilitations as well as new construction of apartment, commercial and small warehousing projects. By mid-1978, he began to increase his commercial auction, fixtures, equipment, and appraisal business. From 1980 to 1990, he traveled extensively throughout the Midwest appraising many types of machinery, equipment, fixtures, inventories, and leasehold interest as well as conducting up to 150 auctions per year. By mid-1990, he began to limit the scope of his work in order to concentrate on real estate activities in central Ohio. Since that time, he has focused his professional interest on the appraisal of real estate, machinery, equipment, and small businesses, and has limited his real estate auction and brokerage practice to a small list of clients while maintaining a presence in land speculation with a limited number of investors. His activities in sales, acquisitions and land development has benefited him as an appraiser keeping better informed of buyers and sellers perceptions of market conditions, trends, desires, preferences, and attitudes. Mr. Vannatta devotes 90% of his time to some type of appraisal activity. The nucleus of his appraisal practice is related to various judicial or problem solving issues primarily in the areas of dispute resolution such as bankruptcy, divorce, probate, end-lease negotiations, various taxation matters, and expropriation/condemnation disputes.

The State of Ohio conducts a voluntary program of continuing education for its certificate holders. Certificate holders who meet the minimum standards of this program are issued a certificate of continuation each year. As of this date, Mr. Vannatta has completed the requirements under the continuing education program of the Ohio Department of Commerce, Division of Real Estate. In addition, he has completed the requirements under the continuing education programs of The International Right of Way Association, and the American Society of Appraisers.

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