

IN THE SUPREME COURT OF OHIO

STATE OF OHIO EX REL. DONER, ET AL.,

Case No. 2009-1292

Relators,

v.

JAMES ZEHRINGER, DIRECTOR
OHIO DEPARTMENT OF
NATURAL RESOURCES, ET AL.,

Respondents.

**RESPONDENTS' MEMORANDUM IN OPPOSITION TO RELATORS' MOTION TO
SHOW CAUSE**

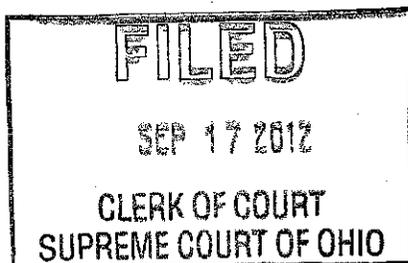
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I. INTRODUCTION

Since this Court's mandate in December of 2011, the Ohio Department of Natural Resources (ODNR) has moved diligently to meet the requirements of that mandate. In preparation for litigation in accordance with the procedures established in Revised Code Chapter 163, ODNR has hired engineers to properly survey each of the over 90 parcels that was allegedly impacted by modification of the Grand Lake St. Marys spillway to determine the extent of the flowage easement necessary with the particularity required for real property recordation and as required by the trial court for the previously-litigated flowage easement appropriation cases in Mercer County. In addition, ODNR has engaged appraisers to quantify the value of the flowage easement and any residual property damage in order to provide the basis for the good faith offer that must be made pursuant to R.C. 163.04(B) 30 days prior to filing each eminent domain action.

At the same time, the State engaged in settlement discussions with the Relators' counsel in an effort to compensate the Relators for the flowage easement on a "global" rather than site-specific basis. At the request of Relators' counsel, the negotiations briefly delayed the preparation and filing of the individual appropriation cases. Unfortunately, the global settlement negotiations proved unsuccessful when, on July 12, 2012, the Relators refused the contingent settlement proposal and made a demand for more money, which, in turn, the State ultimately refused on August 9, 2012. Immediately thereafter, on August 9, the State filed the first of the individual eminent domain cases as required by statute and this Court's mandate.

ODNR has acted with the diligence and good faith required to properly prepare and file the appropriations cases as mandated by this Court, R.C. Chapter 163 and the trial court in which the appropriations cases will be heard. At the same time, ODNR attempted in good faith to avoid the filing of individual cases through negotiations. The fact that these negotiations failed, and the fact that ODNR is now following its statutorily-mandated duties by filing individual appropriations cases, are insufficient to support a conclusion that ODNR is in contempt of this Court's mandate.

II. LEGAL STANDARD

The movant in civil contempt proceedings holds the burden to prove by clear and convincing evidence that the alleged contemnor has violated a court order. *Brown v. Executive 200, Inc.*, 64 Ohio St.2d 250, 416 N.E.2d 610 (1980). Once the movant's burden has been met, the burden then shifts to the alleged contemnor to do one of two things: (1) rebut the initial showing of contempt; or (2) establish an affirmative defense to the charges by a preponderance of the evidence. *Pugh v. Pugh*, 15 Ohio St. 3d 136, 139, 472 N.E.2d 1085 (1984); *Allen v. Allen*, 10th Dist. No. 02AP-768, 2003-Ohio-954, ¶16.

III. FACTS AND ARGUMENT

A. RELATORS HAVE FAILED TO ESTABLISH CONTEMPTUOUS BEHAVIOR BY RESPONDENTS.

Relators' factual allegations amount to little more than this: nine months has elapsed since this Court's mandate and insufficient progress has been made by Respondents. Whether

through ignorance or design, Relators fail to recognize the many steps necessary to effect this Court's mandate and the requirements of R.C. Chapter 163. An evaluation of all the evidence demonstrates that Respondents have been working diligently toward meeting those requirements and that Relators have failed to meet the heavy burden of proof necessary to establish contempt.

1. ODNR has completed significant work towards appropriating the flowage easements and has begun filing cases in the trial court.

ODNR has complied with this Court's order and has made significant progress towards appropriating the required flowage easements. The appropriation process established by the Ohio General Assembly in R.C. Chapter 163 requires the State to follow a carefully mandated process for taking property for a public purpose. Here, the State did not desire to take the property, nor intend a taking, but this Court's order indeed determined the State is obligated to initiate appropriations. *State of Ohio ex rel. Doner, et al. v. Zody*, 130 Ohio St.3d 446, 2011-Ohio-6117. The State acknowledges and accepts that responsibility, but must nonetheless follow the statutory appropriations process.

The Writ of Mandamus left Respondent ODNR with a formidable task. While the Court found that there had been a taking, the Court did not determine the extent of that take. Rather, it expressly ordered that the trial court would have to determine the extent of any taking. *Id.* at ¶ 86. Since the Relators represent over 80 different landowners with over 90 parcels of land throughout Mercer County, an individual determination must be made as to the extent of the taking, if any, on each and every parcel. In addition, the Writ recognized that the State's petitions, because they would be for less than a full fee interest, would have to be in sufficient

detail to permit a determination of the nature, extent, and effect of the taking. *Id.*, citing R.C. 163.05.

While ordering ODNR to initiate proceedings, the Writ did not and could not direct ODNR to ignore the procedures for appropriation of property as established by the General Assembly in R.C. Chapter 163. These procedures set requirements that dictate the actions of a public agency in acquiring property so that the private property owner is protected in the process. In a nutshell, the public agency must identify and appraise the value of any property to be taken, and when that taking is less than a taking in fee simple, the public agency must be careful to take only that property that is needed for the public purpose. After making these determinations, the public agency must give notice of the taking to the property owner and make a good faith offer of the fair value of the property to be taken. R.C. 163.01—163.05.

a. ODNR developed a professional and consistent basis for conducting the more than 90 surveys needed to delineate the extent of the flowage easements, and that survey work is virtually complete.

The many steps necessary to accomplish the appropriations required could not happen overnight. Faced with this Court's mandate and the requirements of R.C. Chapter 163, ODNR is proceeding in a logical, reasonable and responsible fashion to prepare cases for filing in compliance with R.C. Chapter 163 and the requirements of the trial court. ODNR has filed two cases and has taken steps to accelerate the process for completing the surveys and appraisals, and ODNR will continue to file more cases as the necessary survey and appraisal work is completed.

Beginning with the necessary survey work, ODNR developed a survey methodology and sequencing of the project to divide the Beaver Creek corridor into two somewhat more manageable segments, which has generally progressed from near the Indiana border and moved east toward the spillway. Exhibit A, Sneller Affidavit at ¶ 6. Then ODNR surveyors gathered available evidence in preparation of field surveys, and then went into the field to finish the surveys, or hired contract surveyors to complete the work. That survey work was completed on September 14, 2012. Exhibit A, Sneller Affidavit at ¶9.

As noted by this Court duly noted, R.C. 163.05 requires the State to describe the property to be taken in a manner that is readily identifiable. Here, the interest being taken by the State is a flowage easement, and in particular, a flowage easement identifying that area and elevation of land that is covered when water flows from the Grand Lake St. Marys spillway such that it leaves the bounds of the Beaver Creek and floods Relators' parcels.

Although Relators provided rough drawings of the approximate area of flooding on their parcels in their petition for the Writ of Mandamus, this Court found only that a taking occurred, but did not determine the extent of flowage easements alleged to be taken on each of the parcels. Instead, this Court directed that the Mercer County Common Pleas Court should determine that issue. The State, cognizant of the trial court's prior rulings in the previous landowner actions which had already litigated,¹ knew that the trial court had adopted the extent of the take as the height of the 2003 July flood event documented by the Mercer County Engineer. ODNR used

¹ State of Ohio Department of Natural Resources v. Linn, Mercer C.P., Case No. 08-CIV-251 and State of Ohio Department of Natural Resources v. Baucher, Mercer C.P., Case No. 08-CIV-250.

this data from the County Engineer and airborne laser measurements from Ohio's Geographically Referenced Information Program and GPS field measurements. Exhibit A, Sneller Affidavit at ¶ 3. Further, in one of the earlier cases, the trial court held that a survey and metes and bounds legal description must be prepared so that a jury could accurately determine compensation. *State of Ohio Department of Natural Resources v. Baucher*, Mercer C.P., Case No. 08-CIV-250 March 9, 2010 Judgment Entry, attached as Exhibit B.

ODNR survey unit Chief Robert Sneller, who also handled the survey process in the prior trial court cases, adopted the same methodology for describing and defining the flowage easements to be taken in these cases. Capitalizing on some previously developed, limited survey data near some of parcels involved in this case, ODNR survey staff began to gather the detailed data needed to generate flood extent and elevation. Exhibit A, Sneller Affidavit at ¶ 4.

Before conducting any field survey work, ODNR's survey staff began conducting extensive planning, data gathering and calculations. Exhibit A, Sneller Affidavit at ¶ 4. Multiple survey points are calculated, mapped and later verified in the field. ODNR began this process in February 2012 and developed the survey mapping data methodology for the whole project area. Exhibit A, Sneller Affidavit at ¶4. The elevation mapping process is quite complex, using multiple data sources as well as multiple data collection techniques and technologies. Exhibit a, Sneller Affidavit at ¶ 3. This process, consistent with that required by the trial court in the previous cases, but on a much larger scale, required hundreds of hours of work just to develop

the in-house data, which still had to be verified by actual field survey work. Exhibit A, Sneller Affidavit at ¶ 9.

Next, ODNR developed a plan for individual surveys to generate legal descriptions. The project was divided into two Phases so that some parcels could be surveyed and prepared more quickly without waiting for a completion of all surveys. ODNR also developed specifications to present to outside survey firms so that field surveys could be expedited.

Relator Counsel, Joseph Miller, points to the time it has taken ODNR to complete the necessary surveys as an aspect of ODNR's delay in accomplishing the Court's mandate. See Affidavit of Joseph Miller, Exhibit C to Relators' Motion at ¶¶ 3-9. However, as is clear from the evidence above, Mr. Miller does not appreciate the details of the surveying process. ODNR was working diligently to plan and accomplish the surveys in a professional, systematic fashion given the scope of the project and ODNR's knowledge of the detail which would be necessary for the filing of the individual appropriations cases. Relators provide no evidence to the contrary.

To further expedite the survey process, ODNR selected three survey firms already under contract for other state projects and assigned them to the survey work for the Mercer County appropriation cases rather than contending with the normal six-month consultant selection process. Exhibit A, Sneller Affidavit at ¶ 5. ODNR in-house survey staff completed surveys for the Ebbing and Doner parcels, and then assigned additional surveys to the contract survey staff. Exhibit A, Sneller Affidavit at ¶ 6-7. The surveying groups completed 100% of the "Phase 1"

area comprising 20 parcel maps by the end of May, 2012. Exhibit A, Sneller Affidavit at ¶ 6. The survey firms continue to prepare work for "Phase 2" properties, and completed all 44 parcels of the "Phase 2" area by September 14, 2012. Exhibit A, Sneller Affidavit at ¶ 8. Mr. Sneller estimates that 2,500 "man hours" were expended just to complete the survey work generated thus far. Exhibit A, Sneller Affidavit at ¶ 9. This level of effort is consistent with a respondent diligently seeking to meet its duties, and Relators have provided no evidence to the contrary.

b. ODNR retained appraisers to determine the value of the flowage easements on the basis of the surveys.

In addition to creating the need for surveys, R.C. 163.04 requires the State to appraise the parcels involved in an appropriation, provide the appraisal to the owner, and then make a good faith offer to purchase the property at least 30 days before the filing an appropriation action. The appraisal is obviously dependent upon the survey, as the survey defines the area of the flowage easement, and therefore, informs the determination of the value of the good faith offer and the scope of work for the appraiser. Determining the value of the flowage easement requires an assessment of comparable land values in the area, and determining the value of the property before the taking event and comparing that to the value after the taking. The goal is to determine a market-based valuation to justify a good faith offer that fairly compensates the landowner for a flowage which the landowner can accept rather than litigate. R.C. 163.04(A) and (B).

ODNR has limited in-house appraisal expertise, and was required to develop specifications and seek outside appraisers to conduct each of the appraisals. Exhibit C, Baldrige Affidavit at ¶ 4; Exhibit D, Wells Affidavit at ¶ 7. The cost of hiring outside

appraisers required ODNR to obtain approval from the Controlling Board. Exhibit C, Baldrige Affidavit at ¶¶ 5, 6. As established by the Chief of ODNR's Office Real Estate, the process of obtaining qualified appraisers familiar with the area and willing to allocate the time for the work was itself a difficult task. Exhibit C, Baldrige Affidavit at ¶ 4. Originally, ODNR retained two appraisal firms to conduct the valuations. Exhibit D, Wells Affidavit at ¶ 10. Three additional firms have now been retained to accelerate the appraisal process. Exhibit D, Wells Affidavit at ¶ 13.

Additionally, completion of the surveys and the appraisals required site views. While counsel for the State worked diligently with counsel for the Relators to coordinate these site views in a timely manner, scheduling was dependent on several different variables. For the surveys, the site view schedule was dependent on the on-going data analysis, weather conditions and the availability of both the survey crews and the property owners. Exhibit E, Paciorek Affidavit at ¶7. Likewise, the appraisal site views were dependent on the availability of the appraisers, the property owners and counsel for both sides. Exhibit E, Paciorek Affidavit at ¶ 11. Coordinating the schedules of so many parties at times proved difficult, and inevitably caused some delays, especially for the appraisals because Relators demanded that counsel be present with the property owners. Exhibit E, Paciorek Affidavit at ¶ 12.

As the evidence above establishes, the process to develop a comprehensive plan to conduct surveys and to complete appraisals could not be accomplished as instantaneously as Relators insist it should have been. Relators are indeed entitled to compensation; however, the

process to determine fair compensation is detailed by design so that the State can make a reasoned determination of a fair value to offer as that compensation – an offer that makes the landowner whole, but does not squander the taxpayers’ resources through over-compensation. Simply accepting Relators’ imprecise sketches of flood lines, rather than doing surveys, or accepting unsubstantiated assertions of valuation would be a gross abdication of the ODNR’s responsibilities. Instead, ODNR prepared a logical and methodical process that recognized its statutory duties and the requirements of the very court in which the cases would be filed. Consistent with that well-thought out plan, ODNR will continue to gather surveys, prepare and release appraisals, and in turn, will make good faith offers to each Relator.

2. The State of Ohio did not negotiate in bad faith.

a. Early negotiations

Although a global resolution could not be achieved, Relators’ claim that the negotiations were a “ruse” to stave off a contempt filing is not only offensive, it is simply untrue. Soon after the Court’s Writ of Mandamus was issued, the parties began discussions towards a possible global resolution of all the Relators’ claims. On December 14, 2011, Relators’ counsel provided an initial, albeit excessive, demand to ODNR for compensation in excess of \$48 million. Exhibit F, Martin Affidavit, Attachment 1, Letter from Bruce Ingram to William Cole, dated December 14, 2011. The inexplicably high demand caused the Attorney General’s Office to request details regarding the calculation of the amount and to inform counsel that more time would be needed for review and response on December 27, 2011. Exhibit F, Martin Affidavit, Attachment 2, Letter from William Cole to Bruce Ingram. After receiving additional details from Relators’

counsel in a January 3, 2012 reply letter, ODNR and the Attorney General's Office (AGO) developed and received Office of Budget and Management (OBM) approval to convey a counter-offer and, on February 21, 2012, offered \$6.2 million to settle all the claims in this case. Exhibit F, Martin Affidavit, Attachment 4, Letter from Daniel Martin to Bruce Ingram dated February 21, 2012. Relators rejected that counter-offer, and no further global settlement discussions took place from mid-February to early June. Exhibit F, Martin Affidavit, Attachment 5, Letter from Bruce Ingram to Daniel Martin dated February 22, 2012. In the meantime, ODNR began preparing cases for filing. Exhibit G, Damschroder Affidavit at ¶ 7.

As depicted in detail above, ODNR began preparing survey data and contracting with outside vendors so that surveys and legal descriptions could be prepared, and initially engaged two outside independent appraisers to take the surveyed flowage easements and prepare appraisals that would form the basis for the good faith offers required by R.C. 163.04(B). Exhibit A, Sneller Affidavit at ¶ 4 ; Exhibit D, Wells at ¶ 10.

b. Discussions with the Mercer County Common Pleas Court

Early in 2012, attorneys from the Attorney General's office and counsel for the Relators contacted the trial court and established regular preliminary case management conference calls to advise Judge Ingraham of the Mercer County Common Pleas Court about how the cases would be filed, and the status of work on the surveys and appraisals. Exhibit F, Martin Affidavit at ¶ 7. Counsel for the State explained the methodology that ODNR proposed using to prepare cases, and advised that cases would be filed as the surveys and appraisals were completed, but that it

would take an initial investment of time for ODNR to generate the flood elevation data needed for flowage easement surveys. Exhibit F, Martin Affidavit at ¶ 8.

During these pretrial conferences, Relators' counsel began to threaten a contempt filing and asserted that this Court's December 2011 Order required the State to simultaneously and immediately file all the appropriations cases in Mercer County Common Pleas Court. Relators' counsel contended that the State should rely upon the Relators' affidavits and photos submitted before this Court as the sole evidence to determine the extent of the flowage easements. The trial judge did not agree with Relators' counsel, and he reminded them that he had required detailed surveys in the previous cases, and expressed approval for the systematic preparation of the cases for trial as explained by counsel for the State. Exhibit F, Martin Affidavit at ¶ 7, 8. Separately, counsel for the State attempted to explain to Relators' counsel the amount of work needed to prepare the surveys and appraisals, including the need to pursue outside assistance through state contracting procedures; Exhibit F, Martin Affidavit at ¶ 8; Attachments 8, 14, Letters of March 30, 2012 and May 31, 2012 from Daniel Martin to Joseph Miller, and suggested ways that the process could be streamlined if some additional information or factual stipulations could be obtained from the Relators. Exhibit F, Attachment 14, Letter from Dan Martin to Joseph Miller dated May 31, 2012.

c. Resumption of the global settlement negotiations.

On May 16, 2012, ODNR made offers pursuant to R.C. 163.04 for a group of two parcels owned by the Ebbing family (\$492,000.00) and five parcels owned by the Doner family

(\$1,277,300.00). Exhibit F, Martin Affidavit, Attachments 9, 10, Letters from Daniel Martin to Bruce Ingram dated May 16, 2012. The State provided copies of the appraisals, legal descriptions, and survey maps. *Id.* On May 22, Relators' counsel responded with a rejection letter, and demanded \$921,150.00 for the Ebbing property, and \$2,641,493.75 for the Doner property, but provided no conflicting appraisal or other facts to support their demand. Exhibit F, Martin Affidavit, Attachment 11, Letter from Joseph Miller to Daniel Martin dated May 22, 2012. Counsel for the State responded on May 29, seeking additional information to understand the large valuation discrepancy in light of previous trials establishing valuation in Mercer County and suggesting that the State could file these two cases if no settlement could be reached. Exhibit F, Martin Affidavit, Attachment 12, Letter from Daniel Martin to Joseph Miller dated May 29, 2012.

In early June, 2012, Realtors' counsel suggested a "face-to-face" meeting to again discuss a global resolution of the cases. Exhibit G, Damschroder Affidavit at ¶ 8. Counsel from the Attorney General's Office, ODNR in-house counsel, ODNR Director Zehringer and Assistant Director Shimp met with Relators' counsel Joseph Miller and Bruce Ingram on June 12, at ODNR. Both parties discussed the value of reaching an overall global resolution. Assistant Director Shimp explained the difficulty in making a global resolution proposal. He clearly pointed out that any global settlement would have to come via an appropriation by the General Assembly since the amount of money necessary to settle this case was not in ODNR's budget, and may even be difficult to find in the State's budget at that particular time. Exhibit H, Shimp Affidavit at ¶¶ 4-6. Assistant Director Shimp then noted that, because of the amounts of money

being discussed, any agreement reached by the parties would necessarily have to be approved by various senior government officials and, ultimately, the General Assembly through appropriation. *Id.* Counsel with the Attorney General's Office reminded all parties that the Attorney General would also need to approve a final settlement. *Id.*

Although discussing the budgeting process would seem unnecessary, there are very real fiscal issues that had to be considered in settlement discussions of this magnitude. Assistant Director Shimp felt it was important to explain in detail that the existing ODNR budget did not have a line item specifically empowering ODNR to pay Relators' claims. In fact, given the dollar amounts Relators were demanding and the then-current budgetary constraints, it was not certain that there would be funds available in the State budget as a whole to satisfy a potential agreed settlement at that moment. *Id.* Fiscal year budgets had been set months previously and ODNR had no funds within that budget to settle the cases and therefore any agreement reached in that conference room was only a first step to a potential settlement. Many other senior executive officers and legislative leaders would have to approve the result. *Id.*

After these discussions and the assurances from Relators' counsel that they had already explained these requirements to their clients, ODNR General Counsel William Damschroder asked Realtor's counsel to consider whether a proposal of \$5,000.00 per acre for all acreage involved in the case would be a number their clients might consider for a global resolution. Exhibit H, Shimp Affidavit at ¶ 7; Exhibit G, Damschroder Affidavit at ¶ 9.

Relator's counsel expressed interest in exploring that number further with their clients. Exhibit H, Shimp Affidavit at ¶ 7; Exhibit G, Damschroder Affidavit at ¶ 9. Counsel for the State reminded Relator's counsel that two cases (Doner & Ebbing) were prepared for filing and could be filed immediately if counsel was concerned about maintaining progress, and Mr. Ingram and Miller advised that it would be "problematic" to file the cases if the parties were discussing resolution, and to "hold off" on filing. Exhibit H, Shimp Affidavit at ¶ 7; Exhibit G, Damschroder Affidavit at ¶ 9; Exhibit F, Martin Affidavit at ¶ 14. At the June 12 meeting, ODNR also hand-delivered to Relators' counsel copies of completed surveys and legal descriptions for 27 parcels of land contained in "Phase I" of the survey work. Exhibit E, Paciorek Affidavit at ¶ 13. Also on June 12, the Assistant Attorney General Tara Paciorek mailed a letter memorializing the results of the meeting. *Id.* at ¶ 14.

In a June 19, 2012 return correspondence, Relators' counsel rejected any suggestion their clients could accept \$5,000.00 an acre, and stated that the \$5,000 per acre figure would not fairly compensate a small number of purely residential and commercial clients they represented. Counsel instead only slightly revised Relators' December 14, 2011 global settlement figure of \$48 million to a total of \$43,559,769. Exhibit F, Martin Affidavit, Attachment 17, Letter from Bruce Ingram to Daniel Martin dated June 19, 2012. This counter-offer included resolution of claims for an additional client who was not a part of this Mandamus action, and it included property owned by another commercial client known as Case Leasing, which had been previously compensated for damages for flooding in an Ohio Court of Claims case. *Id.* Relators' response went on to categorically rule out the \$5,000 an acre figure discussed at the

June 12 meeting stating, "While we remain committed to working with you to reach a global settlement, we cannot ask our clients to resolve these cases on the basis of \$5,000/acre, which is only 60% of the likely damage to their property's value and, with the passage of time, cannot be reasonably equated to the payments made in the prior settlements. And, again, that \$5,000/acre is only 6.2% above what ODNR's appraiser states must be paid. ***These facts make ODNR's offer-while productive to further discussions-wholly inadequate.***" *Id.* (emphasis added).

This letter also documented the Relators' counsel's recognition of at least the contingent nature of the discussion with respect to appropriations stating, "Also, as this settlement is contingent upon approval by the General Assembly, it is imperative that our clients receive some protection in the form of a penalty for the failure of ultimate approval and payment of this amount by a date certain. We therefore demand payment of \$5,000,000 for failure by ODNR and the State of Ohio to pay the settlement amount by January 15, 2012²." *Id.*

Counsel for ODNR responded on June 22, 2012, expressing disappointment with the Relators' position, noting the limited movement from the initial demand made in December, 2011, and the need to further consult internally before offering a substantive response to the June 19 letter. Exhibit F, Martin Affidavit, Attachment 18, Letter dated June 22, 2012 from Daniel Martin to Bruce Ingram. On June 26, Mr. Ingram responded recognizing the large gap between positions and threatened to pursue contempt proceedings. Exhibit F, Martin Affidavit, Attachment 19, Letter from Bruce Ingram to Daniel Martin dated June 26, 2012.

² Counsel undoubtedly meant January 15, 2013.

On June 29, the State responded to Relators advising that the matter was discussed with management officials and proposed a global settlement of the cases in the *Doner* Mandamus litigation of \$24,205,000. Exhibit F, Martin Affidavit, Attachment 20, Letter from Daniel Martin to Bruce Ingram. This letter also clearly rejects Relators' demand for a "liquidated damages" provisions , and explains, "If your clients agree to this offer, we pledge to promote the settlement and the necessary funding of it with legislative and executive leaders so that the money needed is available as soon as possible. During any interim period, we also pledge to work with you to finalize the language of all easements and releases needed to resolve this matter in total. However, we cannot and will not agree to bind the General Assembly with the punitive measures which you propose." *Id.* Further, the letter clearly articulates ODNR's willingness to undertake filings even while the discussions were underway: "If, for whatever reason, your clients decline this offer, we will file the first two appropriation actions with the Mercer County Common Pleas Court next week. We will then commence gathering the surveys and appraisals to file additional cases as expeditiously as possible." *Id.*

After the June 29 letter, Relators' counsel Bruce Ingram and ODNR General Counsel William Damschroder exchanged e-mails and Mr. Ingram suggested another face-to-face meeting between counsel. Exhibit G, Damschroder Affidavit at ¶ 12, Attachment 1, email string commencing July 5, 2012,, between Bruce Ingram to William Damschroder. That meeting occurred on July 12, 2012. Relators' counsel suggested their clients would likely settle their claims if the State would pay an additional \$2.267 million over the \$24,205,000 suggested by ODNR, plus pay another \$885,000.00 for several commercial or residential parcels. Exhibit G,

Damschroder Affidavit at ¶ 13; Exhibit F, Martin Affidavit at ¶ 18. At the close of the meeting, Mr. Ingram requested that ODNR not reduce its substantive response to writing, but to communicate via phone. Exhibit F, Martin Affidavit at ¶ 18; Exhibit G, Damschroder Affidavit at ¶ 13. Counsel for the State agreed to communicate that position to their respective management and provide a substantive response.

Counsel indeed reported back to ODNR and in turn, ODNR staff and AGO staff briefed senior management as reported in an update letter to Relators' counsel on August 1, 2012. Exhibit G, Damschroder Affidavit at ¶ 14; Exhibit F, Martin Affidavit at ¶ 19, Attachment 22, Letter from Daniel Martin to Bruce Ingram dated August 1, 2012. The letter indicated that a final decision from senior executive officials was pending, and, that consultation with legislative leadership was needed. After further internal discussions, it was decided that ODNR would not accept the Relators' latest demand or entertain further global settlement discussions and would file individual appropriations cases in accordance with the procedures set forth in R.C. Chapter 163. Exhibit G, Damschroder Affidavit at ¶ 14; Exhibit F, Martin Affidavit at ¶ 20; Exhibit H, Shimp Affidavit at ¶ 9.

Consistent with Relators' counsel request to avoid written communication, William Damschroder, Dan Martin, and Assistant Director Shimp held another face-to-face meeting with Relators' counsel on August 9, 2012. Bruce Ingram, Joe Miller, and Fred Mills came to ODNR where they were advised that ODNR's decision was not to accept the Relators' latest demand, not to make another counter-proposal, and to proceed with the appropriation process for the

cases through the Mercer County Common Pleas Court. Exhibit F, Martin Affidavit at ¶ 20; Exhibit H, Shimp Affidavit at ¶ 10; Exhibit G, Damschroder Affidavit at ¶ 15. As was the case with the *Ebbing* and *Doner* cases, and consistent with R.C. 163.04, each Relator would receive a good faith offer at least 30 days prior to the filing the appropriation petition.

There is absolutely no basis for Mr. Ingram's claim that Governor Kasich or any government official said that no amount of money would be offered to Relators. While the representatives of ODNR and the Attorney General did indeed advise Relators' counsel that no global settlement would be further considered at this time, it was also clearly conveyed that the State understood and acknowledged its obligation to compensate the landowners but would do so through the regular statutory appropriation process. Exhibit F, Martin Affidavit at ¶ 20; Exhibit G, Damschroder Affidavit at ¶ 15.

d. Work to prepare individual cases for filing continued during negotiations.

While these discussions occurred, Relators' counsel were fully aware that the State was continuing to do work necessary to prepare for the appropriations. During the time settlement discussions were taking place, counsel for the State and ODNR representatives continued to work with Relators' counsel to coordinate surveys on Relators' property. Exhibit E, Paciorek Affidavit at ¶ 7. In addition, preparations to conduct additional appraisals were ongoing. Exhibit E, Paciorek Affidavit at ¶ 11. Additional appraisal site views and tabletop work was undertaken, but was hampered by scheduling difficulties of both the appraisers and Relators. Exhibit E, Paciorek Affidavit at ¶ 11. ODNR's appraisers desired to talk to the property owners about their

properties, but Relators' counsel insisted on limiting this dialogue and demanding that counsel be present for each visit with the property owner. Nonetheless, AAG Paciorek diligently attempted to make the logistical arrangements demanded by Relators' counsel that would allow field appraisal work to continue. *Id.* at ¶ 7. Notwithstanding these limitations, significant survey work and underlying appraisal work continued through the settlement talks.

e. Relators have failed to show any evidence of bad faith.

The overwhelming evidence contained in the Exhibits attached hereto, and only partially summarized in the past five pages of details, demonstrates without question that ODNR negotiated fully and fairly in an attempt to resolve Relators' claims. The negotiations began almost immediately after this Court's decision and continued until the Relators did not accept the ODNR's contingent settlement proposal of \$24,205,000 and ODNR declined the Relators' counter-offer of \$27,322,146, facts which are conveniently missing from Relators' Motion and supporting evidence.

Relators attempt to impute bad faith to ODNR because they ultimately refused the Relators' demands. There is no basis in fact or law for their position. Like all negotiations, there were settlement proposals, which were later rejected by counter-proposals from both parties. And similar to all negotiations, all of the settlement proposals were contingent upon approvals being obtained by decision-makers, whether those decision-makers be the Relators themselves or senior government officials. Those ground rules were more than adequately discussed by the parties and crystal clear in the minds of counsel and the client representatives. The State's

decision-makers did nothing different than Relators had done in negotiations -- they made a decision not to accept a settlement demand. Exercising the right to refuse an offer is not bad faith, and Relators have failed to establish such bad faith by any standard of proof.

B. RELATORS' REQUESTS FOR RELIEF ARE ILLEGAL, INAPPROPRIATE AND/OR BARRED BY RELATORS' CONDUCT

1. Relators have failed to seek relief pursuant to the proper statute.

Relators have failed to show by clear and convincing evidence that ODNR acted in contempt of this Courts mandate. However, even had they succeeded, the relief requested cannot or should not be granted. Relators sued for and received a peremptory writ pursuant to R.C. Chapter 2731. See Complaint for Writ of Mandamus filed July 17, 2009. That Chapter has specific remedies should there be any failure by a public body to perform any duty enjoined by the writ. R.C. 2731.13. Here, Relators have failed to even cite Chapter 2731, but rather request relief pursuant to Chapter R.C. 2705, the general statute governing contempt of court of any type. Even assuming that Relators had established that ODNR had failed to comply with the Writ, their specified remedy is set forth in R.C. 2731.13, which states:

When a peremptory mandamus has been directed to a public officer, body, or board commanding the performance of a public duty specially enjoined by law, and the court finds that such officer, or a member of such body or board, without just excuse, refused or neglected to perform the duty so enjoined, such court may impose a fine not exceeding five hundred dollars upon such officer or member.

It is axiomatic that a specific statute controls over a general one. “It is a well settled rule of statutory construction that where a statute couched in general terms conflicts with a specific statute on the same subject, the latter must control.” *Humphrys v. Winous Co.*, 165 Ohio St. 45 (1956); *see also Bellian v. Bicron Corp.*, 69 Ohio St. 3d 517, 519 (1994); *State v. Taylor*, 113 Ohio St.3d 297, 300 (2007); *See also* R.C. 1.51. Therefore, had Relators been able to establish that ODNR had failed to comply with the peremptory writ, the appropriate relief would be the fine prescribed by R.C. 2731.13. The relief requested by Relators is neither legal nor appropriate.

2. A civil contemnor must be given an opportunity to purge the contempt.

In cases of civil contempt, the primary purpose of sanctions is remedial or coercive in nature and for the benefit of the complainant. *Brown v. Executive 200, Inc.*, 64 Ohio St.2d 250, 253 (1980) (Any remedy in civil contempt proceedings is designed to be “remedial or coercive and for the benefit of the complainant.”). Contempt is not, however, designed to be punitive. *Id.* at 253-54 (distinguishing between the nature of civil versus criminal contempt). Civil contempt utilizes sanctions to coerce the contemnor to comply with the court’s order and punishments imposed upon a finding of civil contempt must afford the contemnor the opportunity to purge the contempt. *Id.* at 254-255; *See also, Denovchek v. Bd. of Trumbull County Commissioners*, 36 Ohio St.3d 14, 16, 520 N.E.2d 1362 (1988).

In their Motion, Relators ask the Court to impose a fine on ODNR “commensurate with the magnitude of the continuing injustice” and ODNR’s alleged “contemptuous and bad faith

conduct.” Relators’ Motion to Show Cause at p. 3. However, R.C. 2705.05, pursuant to which Relators **did** sue, provides that for a first offense a court may impose “a fine of not more than two hundred fifty dollars, a definite term of imprisonment or not more than thirty days in jail, or both.” R.C. 2705.05(A)(1). However, as noted above, even a sanction that comports with the statutory provision should be imposed conditionally so that any contempt may be purged.

3. The other relief requested by Relators is illegal, inappropriate or both.

Relators also seek an order that ODNR “(4) commence within thirty (30) days all appropriation proceedings to compensate Relators for all property they identified in their sworn testimony before this Court that ODNR has unlawfully possessed; and (5) “deposit at the date of filing of the appropriation proceedings ODNR’s fair market value determination of the just compensation to which Relators are entitled.” Relators’ Motion to Show Cause at p. 3. These remedies are inconsistent with the very statutory process with which this Court had mandated ODNR comply, and they would have this Court amend its mandate, divesting the trial court of the power it is to exercise in the appropriations proceedings. Circumvention of the statutory scheme for appropriations in this manner is contrary to Ohio law. *Cosby v. Cosby*, 96 Ohio St. 3d 228 (2002) (a court may not order a state agency to act in contravention of specific statutory restrictions).

This Court’s mandate specifically contemplated the filing of appropriations cases pursuant to R.C. Chapter 163 ordered that “the extent of the taking will be made by the court presiding over the appropriation proceeding. See R.C. 163.05... .” *Doner* at ¶ 86. As noted

above, R.C. Chapter 163.05 requires the public agency filing an appropriations case identify with sufficient particularity the property to be taken and when that taking, as it is in the Relators' cases, is for less than a fee simple interest, it requires:

In the event of an appropriation of less than the fee of any parcel or of a fee in less than the whole of any parcel of property, the agency shall either make available to the owner or shall file in the office of the county engineer, 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 the petition, **in sufficient detail to permit a determination of the nature, extent, and effect of the taking and improvement.**

R.C. 163.05(G) (emphasis added).

Although it would seem axiomatic that the hand-drawn, hand-colored sketches on reproduced aerial photos would fail to satisfy this provision, that debate is unnecessary. In the previous flowage easement appropriations cases in the same trial court, the issue was specifically litigated and the trial judge has ruled that the phrase "sufficient detail to permit a determination of the nature, extent, and effect of the taking" required a surveyed property description with metes and bounds. *State of Ohio Department of Natural Resources v. Baucher*, Mercer C.P., No. 08-CIV-250, March 9, 2010 Judgment Entry at p.5, 7-9.

Relators now seek to circumvent this Court's mandate, the statutory requirements, and the trial court's ruling in two different ways. First, they seek a filing of all cases within 30 days. As shown by the incredible amount of work necessary to obtain surveys and appraisals to properly comply with R.C. Chapter 163, Relators would have this Court require an impossible act, which, in order to meet the requested time limit, would also require ODNR to violate

Chapter 163's requirements for (1) identifying with sufficient detail the property to be taken, (2) determining the value of that property, (3) giving notice of the appropriation, and (4) making a good faith offer 30 days prior to the filing. Second, the remedy would undo this Court's order that the trial court determine the extent of the taking and have this court, on the basis of drawings that do not meet the necessary detail required by R.C. 163.05, determine the extent of the taking. Both portions of Relators' requested remedy are inappropriate and illegal, even if contempt had been established by clear and convincing evidence.

Relators also seek an order requiring the filing of a deposit representing the fair market value of the property taken at the time of the filing of the cases. Again, to require deposits within 30 days would make this requested relief inappropriate and illegal for all the reasons described immediately above. In addition, such an order would be inappropriate because it would unnecessarily limit ODNR's discretion in filing the appropriations cases.

The Ohio Revised Code provides a process for posting a deposit in advance of an appropriation, but the statute clearly allows this to be a discretionary, and not a mandatory action. This "quick take" mechanism allows an agency to take property before final compensation is fixed.

A public agency, other than an agency appropriating property for the purposes described in division (B)ⁱ of this section, that qualifies pursuant to Section 19 of Article I, Ohio Constitution, may deposit with the court at the time of filing the petition the value of such property appropriated together with the damages, if any, to the residue, as determined by the public agency, and thereupon take possession of and enter upon the property appropriated.

R.C. 163.06(A). Even assuming that there were contemptuous behavior by the State, which, again, Relators have failed to show by clear and convincing evidence, eliminating ODNR's discretion to post deposits would not be appropriate. In these cases, property owners are not being dispossessed of their property. At most, there is occasional, temporary damage to their property for which a flowage easement is necessary.

It is also important to note that ODNR has indeed filed a deposit representing the fair market value of the flowage easement with the trial court prior to the filing of each of the seven cases it has filed as a result of the modification of the Grand Lake St. Marys spillway. However, even were contemptuous behavior shown, there is no basis for any limitation on ODNR's exercise of its statutory discretion.

Should ODNR choose not to post the deposit, Relators are protected against any delay in the payment of the compensation. Relators would, after a verdict is entered, be entitled to interest pursuant to R.C. 163.17 if the compensation award is not paid or deposited within 21 days after entry of the award. This provision protects against further loss to the landowner once proper valuation is determined by the jury. Relators have not established any facts or contemptuous behavior that would justify the Court removing ODNR's discretion to post deposits or not as set forth in the clear statutory language.

4. Relators' counsel actively delayed the appropriation proceedings and cannot now request a finding of contempt for that delay with clean hands.

If there is clear and convincing evidence of anything in this case, ample documentation establishes that Relators' counsel requested that the State delay key aspects of the appropriations

process to serve their own purposes. First, at the June 12, 2012 meeting, counsel for ODNR suggested that the State could and would continue a two track process of global settlement discussions while filing the first two cases and continuing the process. Exhibit F, Martin Affidavit at 14; Exhibit G, Damschroder Affidavit at ¶ 9. However, Relators' counsel asked that the ODNR stand down from filing any cases until Relators requested otherwise. Exhibit F, Martin Affidavit at 14 ; Exhibit G, Damschroder Affidavit at ¶ 9, Exhibit E, Paciorek Affidavit at ¶ 13. This requested course of action was confirmed in writing. Exhibit F, Martin Affidavit, Attachment 16, June 12 letter from Daniel Martin to Bruce Ingram. Relators' counsel made it clear that the filing of any cases would negatively impact their discussions with their clients about a global settlement. In addition, Relators' counsel contacted the counsel for the State by phone and asked that the ODNR "hold-off" releasing any additional final appraisals while discussions were occurring. Exhibit F, Martin Affidavit at ¶ 14. To the extent any delay was incurred as a result of these requests by Relators, they should be estopped from now claiming that ODNR is in contempt for honoring their requests or that the Relators have been harmed or damaged as a result of that delay.

The affirmative defense of estoppel defeats the Relators' Motion to Show Cause. "Equitable estoppel precludes a party from asserting certain facts where the party, by his conduct, has induced another to change his position in good faith reliance upon that conduct." *State ex rel. Cities Service v. Orteca*, 63 Ohio St.2d 295, 299, 409 N.E.2d 1018 (1980). "The purpose of equitable estoppel is to prevent actual or constructive fraud and to promote the ends

of justice." *Ohio State Bd. of Pharmacy v. Frantz*, 51 Ohio St.3d 143, 145, 555 N.E.2d 630 (1990).

Relators induced ODNR to delay filing the appropriation cases, and did so for Relators' own purposes. Having done so, they cannot now backtrack and claim anything to the contrary or any damage because of it. Because the Relators interfered with or were complicit in any delay in the completion of the R.C. Chapter 163 appropriations process, they are therefore estopped to assert contempt or any other damage from or sanction for that delay.

5. An award of attorney fees is not appropriate in this case.

Relators have failed to establish that ODNR is in contempt of this Court's mandate. The weight of evidence establishes that ODNR has diligently followed both the path of gathering the necessary evidence by which these appropriations cases can be filed and has attempted in good faith to settle the cases without need for litigation. Accordingly, the request for attorney fees must fail.

Should the Court find that ODNR has not substantially complied with the commands of the Court's December 1, 2011 Writ, it still should not include an award of attorney fees. An award of attorney fees would be contrary to Ohio's long adherence to the "American rule" with respect to recovery of attorney fees. *Wilborn v. Bank One Corp.*, 121 Ohio St.3d 546, 548 (2009). The "American rule" holds that a prevailing party in a civil action may not recover attorney fees as a part of the cost of litigation. *Id.*, citing *Nottingdale Homeowners' Assn., Inc. v. Darby*, 33 Ohio St.3d 32, 33-34 (1987).

Exceptions to this rule are generally made in instances where a statute or an enforceable contract specifically provides for a losing party to pay the prevailing party's attorney fees, or when the prevailing party demonstrates bad faith on the part of the unsuccessful litigant. *Wilborn at 546, 548*. However, these exceptions do not exist in this case. Therefore, even if Relators had met their burden of proof in establishing contempt, it would remain within the discretion of the Court to award attorney fees, and such an award is not merited in this case where ODNR has been diligently taking steps to accomplish the Court's mandate.

C. A HEARING ON RELATORS' MOTION IS NOT REQUIRED

Relators have filed the instant motion pursuant to S.Ct. Prac.R. 14.4 which specifies the process for the filing of motions and responses. No hearing is provided in that or other rules governing motions practice in the Supreme Court. Moreover, Relators' motion relates to an original action in mandamus that was filed and litigated on the basis of pleadings and without evidentiary hearing. The parties have had ample opportunity to submit evidence in support of their relative positions and have done so. Further hearings should not be required.

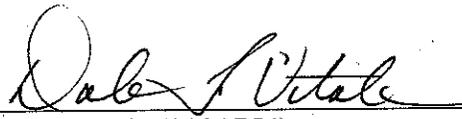
IV. CONCLUSION

Relators' Motion should be denied. ODNR proceeded in good faith to comply with this Court's December, 2011, Writ, and Relators have failed to demonstrate by clear and convincing evidence any conclusion to the contrary. ODNR developed a responsible plan to develop and file the appropriations cases consistent with the requirements of R.C. Chapter 163, and it has

made significant progress in that process. At the same time, ODNR attempted to settle all of the cases on a global basis, but was unable to do so

Relators' anger with these failed negotiations is palpably depicted in this Motion; however, Relators have utterly failed to prove contemptuous behavior by ODNR. The overwhelming evidence shows that ODNR has been following and continues to follow the steps required by law to file the 80 appropriations cases required by the Court's mandate. If there were any delay in this process, it was invited by the Relators during the failed concurrent negotiations and it cannot now be the basis for their claims of contempt.

Respectfully Submitted,



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Attorneys for Respondents

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon:

Bruce L. Ingram

Joseph R. Miller

Thomas H. Fusonie

Martha C. Brewer

Vorys, Sater, Seymour and Pease

52 East Gay Street

Columbus, Ohio 43215

by ordinary mail and electronic mail on this the 17th day of September, 2012.



Dale T. Vitale

STATE OF OHIO)
)SS:
COUNTY OF FRANKLIN)

RE: *Doner et al., v. ODNR, Case No. 2009-1292*

AFFIDAVIT OF ROBERT SNELLER

Now comes Robert Sneller, having been first duly sworn, attests and affirms from his personal knowledge, the following:

1. I, Robert Sneller, am a Professional Surveyor with the Ohio Department of Natural Resources (ODNR), Office of Real Estate. I am the manager of the Survey Section of the Office of Real Estate and I have two full time employees, a Surveyor and a Survey Technician. The ODNR Survey Section is the only group within ODNR that has the duties of boundary surveying of the approximately 600,000 acres of Park-, Forest-, and Wildlife-owned lands. My responsibilities include reviewing real estate issues that involve surveying, conducting surveys for ODNR and contracting with private surveying consultants for surveys that are beyond ODNR's capacity.
2. In 2009 I was involved in conducting surveys and preparing survey plats and legal descriptions for the flowage easements that were to be acquired as part of the *Post* appropriation cases. There were 5 property owners with a total of 17 parcels of which we conducted 13 surveys and described 1,255 easement acres. Since we had never attempted a survey of this complexity, much time was required in planning and research.
3. In the *Post* appropriation cases we were advised by our counsel to base the surveys on the extent of the flooding that occurred along the Beaver Creek and Wabash River in July of 2003 and to use high-water measurements that were taken by the Mercer County Engineer in 2003. Much effort was required to verify the high-water measurement and to ensure that everything was based on the same vertical datum. It was decided that the best approach was to locate the flood contour on the ground by determining the existing ground surface contours by using airborne light detection and ranging ("LIDAR") data from Ohio's Geographically Referenced Information Program (OGRIP), together with field measurements using GPS and conventional instruments. This overall project took approximately a year and half to complete.
4. On February 1, 2012, I attended a meeting with our attorneys from the Ohio Attorney General's Office to discuss how to conduct the necessary survey work to acquire flowage easements for all of the properties associated with the *Doner* cases. The *Doner* cases involved approximately 6 times the amount of parcels and 10 times as many property owners as the *Post* cases. There were several additional meetings where we discussed various methods and procedures concerning the surveys, but it was eventually decided that we would conduct the new surveys in the same manner as the surveys

STATE'S EXHIBIT A

conducted for the *Post* cases. At that time, we began to gather the extensive data necessary to conduct these surveys.

5. At the beginning of February, 2012, my support staff was already busy on other projects and was not immediately available. Because of this and the fact that the scope and time frame of the survey project for the *Doner* cases far exceeded ODNR's in-house capabilities, it was determined that we would have to contract out most of this survey work. Our normal consultant selection process takes about 6 months, but we were fortunate to have 3 survey consultants already under contract. They had been working on survey projects in other parts of the State. We met with each of the 3 consultants in early March to review their capability and availability to work on this project. I provided each of the consultants with a file for each parcel that included an aerial map of the parcel, a copy of the Title Report for the property, and a copy of the Relators' Affidavits describing the extent of the flooding. I also provided them with data from the previous *Post* surveys and explained the methodology developed in those cases that would need to be applied to the *Doner* parcels. We also told the consultants to stop work on their current State projects.

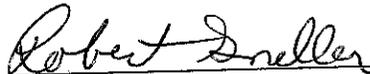
6. Even though these 3 survey consulting firms were already under contract with ODNR, it was necessary to allocate additional funds for this *Doner* case project and to supplement their contracts. The process of obtaining additional funds to supplement these contracts took approximately 3 months to accomplish. During this time, we were able to start the survey work on Phase 1 of the project by using existing funds in their contracts. Phase 1 of the project consisted of all of the parcels in the westerly 4 miles of the project area. We assigned our consultants 20 parcels in this area to evaluate and if necessary conduct surveys. ODNR was able to conduct our own in-house surveys for the *Doner* and *Ebbing* properties which are adjacent to parcels that we surveyed for the *Post* cases. In total, there were 27 parcels in Phase 1 of the project and all surveys were completed by the end of May, 2012.

7. Phase 2 of the project began on June 14, 2012, when I received word that the Supplemental Agreements with our 3 outside survey consultants had been fully executed providing the funds needed to finish to entire project. I again met with all three consultants and outlined the scope of Phase 2. Each consultant was assigned between 16 and 19 parcels of the remaining parcels. The total number of remaining parcels for Phase 2 was 44. All of these parcels appeared to be within the limits of the 2003 flood elevation on the Beaver Creek and the Wabash River. The consultants were instructed to continue using the same methodology that was used in Phase 1. The consultants were advised to commence field work as quickly as possible with the hope that the field work would take place before the corn crop was at full height. This proved to be impossible and as a result most field surveys took place in mid-July when the corn was taller making the survey work more difficult.

8. I received all 44 of the completed Phase 2 surveys by September 14, 2012. There remains 12 outlying parcel and an additional 10 parcels on the Upper Wabash that have not been surveyed because these parcels are located above the flood levels of 2003 as determined by the Mercer County Engineer's measurements. ODNR is prepared to survey these 22 parcels when instructions clarifying the survey approach are forthcoming.

9. As of September 14, 2012, ODNR will have completed work on 68 of the original 91 parcels of land. Approximately 2,500 man-hours by in-house and outside survey crews have been devoted to completing the project since February 2012. Hundreds of these hours were spent just developing the in-house data necessary to complete the field work.

Further Affiant sayeth naught.



Robert Sneller, PS
Survey Manager
Ohio Department of Natural Resources
2045 Morse Road, Building E-2
Columbus, OH 43229

Sworn to and subscribed to me this 17th day of September, 2012.


NOTARY PUBLIC

SEAL

GERALD E. DAILEY, Attorney At Law
NOTARY PUBLIC, STATE OF OHIO
My commission has no expiration date.
Section 147.03 R. C.

IN THE COURT OF COMMON PLEAS OF MERCER COUNTY, OHIO
CIVIL DIVISION

STATE OF OHIO DEPARTMENT OF
NATURAL RESOURCES

Case No. 08-CIV-250

Plaintiff

vs.

RICHARD L. BAUCHER, et al.,

Defendants

FILED

MAR 09 2010

James J. Highley
MERCER CO. CLERK OF COURTS
CELINA, OHIO

JUDGMENT ENTRY - DECISION ON
MOTION OF DEFENDANTS
BAUCHERS TO EXCLUDE NEW
LEGAL DESCRIPTION, SURVEY
MAP AND APPRAISAL OF
PLAINTIFF, OR IN THE
ALTERNATIVE, MOTION TO
DISMISS PETITION AS VOID

This matter is before the court for decision on the motion of defendants Richard L. Baucher and Patricia Baucher to exclude new legal description, survey map, and appraisal of plaintiff, or in the alternative, motion to dismiss petition as void originally filed November 12, 2009, and corrected by motion filed November 13, 2009. Plaintiff filed its memorandum contra to the corrected motion on November 20, 2009, and defendants Bauchers filed their reply in support of their corrected motion on November 30, 2009.

This matter was initiated by the plaintiff's filing of a petition to appropriate easement and to fix compensation on December 10, 2008, in accordance with the decision of this court in case number 01-CIV-091, styled State of Ohio ex rel. Leo Post, et al., vs. Samuel W. Speck, Director of Ohio Department of Natural Resources, which was affirmed by the Court of Appeals for the Third District of the State of Ohio on December 4, 2006. In that matter, the court issued a writ of mandamus compelling the Ohio Department of Natural Resources (ODNR) to initiate appropriation proceedings to compensate certain landowners for the taking of their properties by flooding resulting from a change in the management in the water levels and the construction of a new spillway at Grand Lake St. Marys. Defendants Richard L. Baucher and Patricia Baucher (Bauchers) were among

STATE'S EXHIBIT B

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those property owners in the related matter. Bauchers filed their answer on January 9, 2009, and the parties proceeded with discovery and motion practice.

On July 30, 2009, this court issued its judgment entry assigning the matter for trial by jury commencing November 12, 2009, with two days set aside for same, and ordered the parties to prepare and submit certain trial preparation documents.

During a September 1, 2009, status conference, counsel advised the court of the status of trial preparation, specifically with regard to the issue of the adequacy of the description of the permanent flowage easement plaintiff seeks to have the court order to be conveyed by Bauchers. In this matter, the easement is identified in the petition by the permanent parcel numbers and by the map depicting the properties that are set forth in Exhibit A to the petition. During that conference, ODNR agreed to have undertaken a survey of the area so that an accurate legal description of the flowage easement sought to be conveyed may be presented to the jury for its determination of the value to be paid by ODNR to Bauchers at the jury trial scheduled to commence in November.

At an October 2, 2009, status conference, counsel advised the court that the licensed surveyor of plaintiff had prepared the metes and bounds description of the property at issue in this cause and was in the process of finalizing that description, whereafter, plaintiff intended to amend its complaint to include that description. Counsel further advised the court that ODNR's appraiser was in the process of finalizing his opinion as to the value of the property so that his report could be submitted to counsel the
of October.

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On October 19, 2009, the court conducted a final pretrial during which it addressed certain motions *in limine* filed by Bauchers to which ODNR had responded. In summary, the court memorialized its preliminary ruling in the entry from that final pretrial on October 21, 2009, in which it set forth its conclusion that consistent with the anticipated jury instructions, the jury impaneled to hear the cause and render judgment in the case will be required to determine the value of the take, which generally will be defined as the value of Bauchers' property prior to the take in comparison to the value of that property after the take, those evaluations by definition to include the use of Bauchers' property prior to the take and the use of that property after the take.

Nine days before trial, specifically on November 3, 2009, the court conducted another status conference, during which it acknowledged receipt of a letter from Bauchers' counsel, sent by email prior to the conference in which they set forth Bauchers' objections to the anticipated testimony of the expert of ODNR on the issue of the valuation and heard informal arguments on the issues raised therein. Because of the issue of the appropriate description of the property taken, the value of which is to be determined in this cause by the jury at trial, and in anticipation of the filing of Bauchers' motion to exclude that testimony, the court, without objection from counsel and by their agreement, vacated the jury trial and assigned the anticipated motion for hearing for November 12, 2009. By agreement of counsel, the court heard that motion on November 13, 2009.

At the November 13, 2009, motion hearing, the court admitted specifically and including a topographical map which was attached to Exhibit A of the

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petition; page 2 of the appraisal of the expert of ODNR, James Garrett; a survey map; and page 2 of the re-appraisal by Mr. Garrett. In addition, the court heard the testimony of Robert L. Sneller, the land surveyor for ODNR, during which testimony the court admitted an additional exhibit, being a copy of the metes and bounds description he had prepared consistent with his understanding of the property taken.

In their motion, Bauchers pray that the court exclude as admissible evidence at the jury trial the metes and bounds description prepared by Mr. Sneller and the re-appraisal prepared by Mr. Garrett, or in the alternative, dismiss the petition based upon a finding that the description attached to the petition is inadequate, thereby establishing that the court lacks subject matter jurisdiction to hear the matter.

In its response, ODNR requests the court to allow it to amend the petition to include the new survey and metes and bounds description on the basis that those describe the same flowage easement property which was identified in Exhibit A to the petition but in a much more accurate manner and for which property it was ordered to initiate appraisal proceedings to compensate Bauchers in the earlier mandamus proceedings.

Initially, Bauchers argue that the metes and bounds description and survey dated October 26, 2009, and the re-appraisal based upon that description contradict the original petition to appropriate filed December 10, 2008. They argue that that petition to appropriate "condemned 46 tillable acres on the Bauchers' property for a flood easement." They claim that the evidence ODNR now seeks to admit before the jury supports its claim for a flood easement of only 34 acres of tillable ground according to the new appraisal or

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only 31 acres according to the survey map.

ODNR argues that the metes and bounds description is simply more accurate of the flowage easement based upon the 2003 flood which established the basis for this court's order in the mandamus action that ODNR initiate these proceedings. ODNR claims that the appropriate acreage was originally 43.2, but after removing a triangular parcel located along Bauchers' east property line which no longer belongs to Bauchers, the actual flowage easement area is calculated to be 41.50 acres.

It is unfortunate that either this court or the court of appeals did not require a more accurate description of the property at issue in the mandamus action for it is that property which ODNR has been mandated to acquire through eminent domain proceedings for the flood easement. It is just that concern that caused the court to raise the issue with counsel who agreed with the court that a metes and bounds description would allow the jury to properly establish the value for the flowage easement. A more specific description will allow future owners of the property as well as the State of Ohio and ODNR to identify the boundaries of the easement.

As stated by the Supreme Court of Ohio, the trial court's role in a proceeding "is a critical one that requires vigilance in reviewing state actions for the necessary restraint, including review to ensure...that the state proceeds fairly and effectuates takings without bad faith, pretext, discrimination, or improper purpose." That is so because the Ohio constitution strongly protects individuals' property rights, and when those private property rights are taken by the sovereign state, the court must proceed with

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due concern for those constitutionally protected rights. *Norwood v. Horney* (2006), 110 Ohio St.3d 353, 853 NEdd1115.

Since the property right herein sought to be taken is a flowage easement rather than a fee simple interest in the subject property, R.C. 163.05 requires only "ready identification of the land involved." Specifically, that statute requires that "all petitions to appropriate property contain a description of each parcel of land for interest or right therein sought to be appropriated, such as will permit ready identification of the land involved." The key, then, is that the court focus on whether the petition readily identifies the land involved to the extent that the property owner is not misled and is able to understand what land the state seeks to take, as well as what interest or right therein is sought to be appropriated.

Relevant to this issue is the language of the petition itself. In paragraph 2, it states that "this petition to appropriate a flowage easement is brought by the department pursuant to its authority under R.C. 1501.01 and other provisions of R.C. 163.01 et. seq." There can be no mistake that the petition adequately describes the interest sought to be appropriated by ODNR.

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MAR 09 2010
James J. Hopkins
MERGER CO. CLERK OF COURTS
COLUMBUS, OHIO

The petition goes on to state a reason for its filing of the petition, specifically, the December 14, 2005, order of this court resulting from the flooding caused by changes to the western spillway of Grand Lake St. Marys by ODNR. Although denied by Bauchers, the petition further states that the flooding that occurs does not create a take that justifies an appropriation of anything more than a flowage easement. The description of the property over which the flowage easement is located is identified by permanent parcel numbers and

2011-13 0605

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a map attached as Exhibit A to the petition. Nowhere in the petition is the flowage easement sought to be appropriated in accordance with this court's order in case number 01-CIV-091, which was affirmed by the court of appeals, described to be "46 tillable acres."

Again, it is important that the property owner not be misled as to the property sought to be taken. If, hypothetically, the state desired to take more than what was described in the petition, then in that case, it would be obvious that the additional property above and beyond that which was described in the petition could not be taken and that the court would not have jurisdiction to so order. In this case, the amount of property sought to be taken is equal to or less than that which was sought to be described in the petition. The difference resulted from this court's order that a metes and bounds description be undertaken at the cost of ODNR to assure that the jury and the parties are not misled. That Bauchers claim that the number of acres actually sought to be taken may be less than what they understood the flood easement may require is not justification to now claim that the court does not have jurisdiction to proceed in this matter.

Bauchers claim that ODNR must concede that the property described in Exhibit A is insufficiently described as the property to be taken. In actuality, it appears that the property to be taken based upon the metes and bounds description more sufficiently describes the property over which ODNR has been ordered to seek the flowage easement, the value of which is at issue in this cause. Mr. Sneller testified that the basis of the survey and metes and bounds description is the same as was used by the Mercer County Engineer in the underlying mandamus action, and its elevation is actually thirteen hundredths of a foot above the elevation of the flood as determined by the Mercer County Engineer.

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WELLS, OHIO

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Bauchers argue that "when a petition misleads the landowner as to the description of the property or interest to be taken, the entire eminent domain proceedings are void and the petition must be dismissed." *Trimble Township Waste Water Dist. v. Cominsky* (4th Dist. April 12, 1983), No. CA 1535, 1999 WL 112562. *Madison Cty. Bd. of Commrs. v. Bell* (12th Dist. March 26, 2007), 2007 WL 879827, 2007-Ohio-1373. To allow the state to take more property than what it was ordered to take in the mandamus action would be to permit the state to proceed unfairly and effectuate this taking with bad faith, pretext, and an improper purpose in violation of the mandates of the Ohio Supreme Court. See *Norwood*. This is not what ODNR seeks to do in this case. As stated earlier, a metes and bounds description is not required for an easement sought to be appropriated, and the court specifically finds the description in Exhibit A is sufficient to establish subject matter jurisdiction of the court.

Based upon the foregoing, defendants Bauchers' corrected motion to exclude plaintiff's new legal description, survey map, and appraisal, or, in the alternative, to dismiss petition as void is found to be without good cause and the same is hereby DENIED and OVERRULED.

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MAR 09 2010
James P. Hurd
CLERK OF COURTS
OHIO

R.C. 163.12(C) permits a trial court to amend any defect or error in eminent domain appropriation proceedings. In addition, Civ.R. 15(A) contemplates that leave to amend a complaint "shall be freely given when justice so requires." In this case, it appears that this court should grant ODNR the right to amend its petition to include the more specific and

2011-13 0607

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accurate description of the property it seeks to appropriate for the flowage easement it was ordered to seek in the related matter. To do so will fulfill the requirement of the law that the landowners, in this case, the Bauchers, are not misled in their understanding of the property at issue in this cause to be evaluated by a jury of their peers at the trial in this matter. In the event that Bauchers desire additional time to allow their expert witness, Mr. Richard Vannatta, to prepare his testimony for trial on the issue of the value of the flowage easement, the court will liberally allow Bauchers that opportunity.

ODNR is granted leave until April 1, 2010, to serve and file an amended petition containing the survey and metes and bounds description prepared by its expert, Mr. Sneller.

This matter shall come on for an additional pretrial on April 19, 2010, at 10:00 am at which counsel shall personally appear.

FILED

IT IS SO ORDERED

MAR 09 2010

James J. Highley
MERCER CO. CLERK OF COURTS
BELLEVILLE, OHIO

Jeffrey R. Ingraham
Jeffrey R. Ingraham, Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Judgment Entry on Status Report by Telephone was issued by regular U.S. mail to John P. Bartley, Esq., Rachel H. Stelzer, Esq., Raymond J. Studer, Esq., Robert L. Schlatter, Esq., and Richard J. Makowski, Esq. (Attorneys for Plaintiff), Bruce L. Ingram, Esq., Thomas H. Fusonie, Esq., and Joseph R. Miller, Esq. (Attorneys for Defendants Bauchers), Amy B. Ikerd, Esq. (Attorney for Defendant Mercer Co. Auditor), and David C. DeLong, Esq. (Attorney for Defendant Citizens National Bank), at their respective addresses, on this 10th day of March, 2010. Copy also issued to Kristi Kress Wilhelmy.

Karen Shaner
Karen Shaner, Deputy Clerk

STATE OF OHIO)
COUNTY OF FRANKLIN) SS:

RE: *State ex rel. Doner et al., v. Zehringer*, Case No. 2009-1292

AFFIDAVIT OF PAUL R. BALDRIDGE

Now comes **Paul R. Baldrige**, having been first duly sworn, attests and affirms from his personal knowledge, the following:

1. I am Chief of the Office of Real Estate at the Ohio Department of Natural Resources (ODNR). I am responsible for overseeing the real estate management activities associated with over 535,000 acres of fee ownership property and over 22,000 acres of easement property. These acres are managed to conserve, protect and provide recreational opportunities associated with Ohio's natural resources. The Office of Real Estate performs the services associated with the real property needs of several divisions and offices within ODNR. I previously served as Chief of the Office of Real Estate for approximately 6 years before returning to ODNR on May 7, 2012.

2. Since my return, ODNR has been focused on resolving the issues associated with water management at Grand Lake St. Mary's. This issue is among the highest concerns for ODNR and numerous resources have been dedicated to addressing these issues. In the four months since I have returned to ODNR to serve as Chief, ODNR and the Office of Real Estate in particular has worked aggressively to acquire survey and appraisal information on the private lands that are the subject matter of this lawsuit. Field visits and numerous communications have been made to better understand the impact on these private landowners and the options for an

STATE'S EXHIBIT C

expeditious resolution. In the nearly 30 years of experience I have with ODNR, there has not been an issue into which as much effort, energy and resources has been dedicated.

3. Because of the complexities involved in this matter, ODNR has taken a careful approach to surveying and appraising the subject properties. Gathering survey data was the first step in addressing the issue of flooding. My Survey Administrator, Bob Sneller, has overseen the contracts associated with surveying the subject properties. Three outside survey companies were placed under contract to compile the data. The next step is to have appraisals performed of the subject properties. My Real Estate Administrator, Gene Wells, is overseeing the appraisal contract process. As survey data is completed for a property owner, which may include more than one property, an appraiser will use the survey report as an essential component in performing his/her assessment.

4. Acquiring the services of appraisers in Mercer County has often been a challenge for ODNR due to the unique characteristics and needs associated with the subject properties. In the case of Grand Lake St. Marys property appraisals, there are several factors to be considered. First, these appraisals have the potential to result in a court appearance to explain the appraiser's methodology. This can be a negative factor for some appraisers. Second, appraisers are often reluctant to have their work load monopolized by ODNR. Since appraisers often support multiple clients, they do not want to risk the loss of business from their client base by working exclusively for ODNR. ODNR is not generally considered a part of their client base due to the low and inconsistent volume of business offered to them. Third, ODNR's policy is to use only General Certified Appraisers, which are not always available to perform appraisal requests within a short time frame. This level of certification provides a high assurance of a quality final product. Fourth, appraisers are expected to have a familiarity with the area. Such familiarity can

often be a challenge in rural areas like Mercer County due to the small pool of available General Certified appraisers. Finally, the unique requirements of the Grand Lake St. Marys property appraisals limit the number of appraiser candidates. ODNR searched for appraisers that not only meet the above certification criterion but also have experience in flowage easements, or some similar types of experience involving agricultural appraisals.

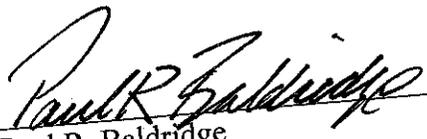
5. The significant financial resources required to perform surveys and appraisals for the subject properties in the Grand Lake St. Marys area were another challenge for my Office and ODNR. Most of the financial resources managed by ODNR exist in funds or accounts that are statutorily restricted to a specific purpose or mission. A vast majority of these funds are not available to perform surveys or appraisals for the Grand Lake St. Marys properties. In addition, no unrestricted account had sufficient unobligated funds to accomplish the surveys and appraisals.

6. In the 2012 – 2013 biennium budget ODNR does not have access to the amount of discretionary funds required to perform all the necessary tasks required by this lawsuit. ODNR must rely on the legislative process with support from the Administration to acquire the funding necessary to address the tasks required by this lawsuit. Currently the Office of Real Estate has prepared a request to use acquisition funds from the Capital Improvement Budget for appraisal contracts associated with the final group of property owners. As with all capital funds, a request to release these monies must be presented to the State Controlling Board. On October 15, 2012, which is the next available opportunity given the Controlling Board's schedule requirements, ODNR will present its request to the State Controlling Board. Following (anticipated) approval by the State Controlling Board, ODNR will execute contracts with the selected appraisers in order to complete appraisal of all of the remaining subject properties at

Grand Lake St. Marys. ODNR is on schedule to complete all of the appraisals by the end of the year, but this deadline may be adjusted slightly contingent upon the progress of our contract appraisers and the coordination requirements imposed by counsel for the Relators.

7. ODNR will continue to explore all options for funding additional costs associated with these and other Grand Lake St. Marys properties as necessary.

Further Affiant sayeth naught.


Paul R. Baldrige
Chief
Office of Real Estate
Ohio Department of Natural Resources
Division of Soil and Water
2045 Morse Road, Building E-2
Columbus, OH 43229

Sworn to and subscribed to me this 17th day of September, 2012.


NOTARY PUBLIC

SEAL

GERALD E. DAILEY, Attorney At Law
NOTARY PUBLIC, STATE OF OHIO
My commission has no expiration date.
Section 147.03 R. C.

STATE OF OHIO)
) SS:
COUNTY OF FRANKLIN)

AFFIDAVIT OF EUGENE WELLS

RE: *State of Ohio ex rel. Doner et al., v. ODNR, Case No. 2009-1292*

I, Gene Wells, employee for the Ohio Department of Natural Resources, being first duly sworn, hereby state that I have personal knowledge of the all the facts contained in this Affidavit, that I am competent to testify to the matters stated herein and that the following is true to the best of my knowledge and belief.

1. I am the Real Estate Administrator within the Office of Real Estate at the Ohio Department of Natural Resources.
2. My duties include overseeing the day-to-day activities of the real estate management and survey activities of the office. This includes but is not limited to the handling of all requests for access or right-of-way across state lands for pipelines, utilities, roadways or other approved uses. It also includes handling other real estate and survey services associated with the real property needs of several divisions and offices within the Department such as leases, licenses, sales, exchanges, acquisitions, legal encroachment identifications, investigation of timber theft and the establishment of boundary lines of the Department.
3. On February 1, 2012, the Office of Real Estate had an internal meeting discussing the steps necessary to go forward with the appropriation proceedings ordered by the Ohio Supreme Court in the referenced case.

STATE'S EXHIBIT D

4. At this meeting, it was determined that the process would begin by having surveys done of all the affected parcels, followed by appraisals to determine the value of the actual flowage easement being taken. We also discussed: 1) which parcel numbers would be surveyed, 2) what elevation of flooding would be surveyed, 3) what methodology would be used to perform the surveys, 4) what data would be necessary to effectuate the surveys, 5) what personnel and monetary resources would be necessary to complete the surveys, and 6) a general timeline for completion of the surveys.
5. Our Office was unable to begin appraisals until the surveys were done, the flowage easements fully identified and the scope of work determined.
6. Our Office received the preliminary surveys for the Doner and Ebbing properties by mid-March, 2012. Our office received the final signed survey documents for these properties on May 8, 2012.
7. During the period of time between receiving the preliminary and final versions of the Doner and Ebbing surveys, our office started the process of selecting qualified appraisers, as the scope and magnitude of the work were beyond the expertise and resources of our Office.
8. The selection of appraisers was made more difficult by the nature of the project and the unique qualifications that it demands. These qualifications included knowledge of the Mercer County market area, experience with agricultural valuation, experience with flowage easements and eminent domain situations and the possession of a general certified appraisal certification.

9. Additionally, during the period of selection, the Office's in-house appraiser resigned. The in-house appraiser's duties generally include interviewing, obtaining pricing, implementing contracts and overseeing the assignments for outside appraisers, as well as reviewing the finished reports.
10. Once the final selection for two appraisal firms was made for the Doner and Ebbing properties, the contracts had to be signed and approved and funding had to be obtained. The contracts for the Doner and Ebbing properties were finalized on April 30, 2012. The final appraisal reports for these properties were received on May 14, 2012.
11. As part of the strategy for completing the approximately 120 necessary surveys and appraisals, our Office separated the project into two phases: the surveys for phase one of the project were completed on May 15, 2012, and the surveys for phase two of the project are scheduled to be completed by September 14, 2012.
12. The remaining appraisals for the properties in phase one are currently under contract. All site views for the properties in phase 1 have been completed.
13. For phase two of the project, the Office is in discussions to engage three more appraisal firms in order to complete the project as quickly as possible. The contracts for those three appraisal firms are currently being negotiated and funding is being obtained.
14. The scope of the survey and appraisal project required by the Supreme Court Order is unprecedented in my 17 years of experience as a real estate professional for the Department. At no time did our Office fail to proceed diligently to complete the remaining tasks necessary to meet the requirements of the Court's order and Ohio's eminent domain statute in preparation of filing the required cases.

AFFIANT SAYETH NAUGHT.

Gene Wells
GENE WELLS

Sworn to before me and subscribed in my presence this 12th
day of September, 2012.

Gerald C. Darley
NOTARY PUBLIC
ATTORNEY-AT-LAW
LIFETIME COMMISSION

STATE OF OHIO)
) SS:
COUNTY OF FRANKLIN)

AFFIDAVIT OF TARA L. PACIOREK

RE: *State ex rel. Doner et al., v. Zehringer*, Case No. 2009-1292

I, Tara Paciorek, employee for the Ohio Attorney General's Office, being first duly sworn, hereby state that I have personal knowledge of the all the facts contained in this Affidavit, that I am competent to testify to the matters stated herein and that the following is true to the best of my knowledge and belief.

1. I am currently an Assistant Attorney General in the Environmental Enforcement Section of the Ohio Attorney General's Office.
2. My duties include participating in litigation involving the Ohio Department of Natural Resources ("ODNR") and the Director of ODNR.
3. I am currently one of the counsel representing ODNR in the appropriation cases resulting from the Ohio Supreme Court's Order in *State ex rel. Doner, et al. v. Zody*.
4. As part of my duties, I and my co-counsel, Gerald Dailey, have been responsible for coordinating the site views for the appraisals and surveys with opposing counsel.
5. Beginning on April 4, 2012, and continuing through August, 2012, I made regular requests for ODNR survey crews to have access to the properties to complete the necessary field work. True copies of my emails with opposing counsel showing these requests are attached hereto as Attachment 1.
6. The field work for phase 1 of the project was conducted on April 10, 2012 and May 9, 2012. The final surveys for phase 1 were completed by the end of May, 2012.
7. At no time was the survey work put on hold or purposely delayed in any way. The site view schedule was based on the on-going in-house data analysis, the forecasted weather conditions, and the availability of both the survey crews and the property owners.

8. Beginning on April 4, 2012 and continuing through August 2012, I made regular requests for ODNR appraisers to have access to the properties that were part of phase 1 of the project.
9. The site view for the Ebbing property was conducted on April 19, 2012 and the site view for the Doner property was conducted on April 27, 2012. ODNR received the final appraisal reports for the Ebbing and Doner properties on May 14, 2012.
10. Final appraisal contracts for the remaining properties in phase 1 were executed on June 12, 2012, after the phase 1 surveys were completed and funds were obtained. The appraisers commenced work once the contracts were executed and funds were encumbered.
11. At no time was the appraisal work put on hold or purposely delayed in any way to impede the appropriation process. The site view schedule for the appraisals was based on the availability of the property owners, the appraisers and counsel for both sides.
12. Counsel for Relators preferred to have counsel present with the property owner at each appraisal site view to monitor and limit the interaction between the appraisers and the property owners. Coordinating everyone's schedules proved to be problematic in the months of July and August and caused a slight delay in the completion of the site views for the remaining properties in phase 1. Notwithstanding these scheduling difficulties, site views for the appraisals for the remaining phase 1 properties occurred on July 30, 2012 and August 15, 2012. True copies of the supporting emails to and from opposing counsel are attached hereto as Attachment 2.
13. Additionally, on June 12, 2012, I was present at a face-to-face meeting with counsel for Relators. Also in attendance were members of ODNR management and several other attorneys from the Ohio Attorney General's Office. At the beginning of that meeting, counsel for the State hand delivered completed surveys and legal descriptions for 27 parcels of property. During the remainder of the meeting the parties discussed the progress of work

being done by ODNR, the possibility of coming to a global resolution and the budgeting difficulties that ODNR would have with such a resolution even if an agreement were reached. It was made clear during this meeting that any global resolution to the case would require a legislative appropriation and therefore any agreed amount would need the approval of the Ohio Attorney General, the Office of Budget and Management (OBM), the Governor, and ultimately the General Assembly. At the end of the meeting, ODNR representatives asked whether Relators would consider an offer of \$5,000.00 an acre for all of the property involved in the case. Counsel for Relators indicated that we were closer to being in the "ball-park" and that they would relay the offer to their clients. In my opinion, it was clear to all parties that the offer was contingent on the approval of the not only the Relators, but also the Ohio Attorney General, OBM, the Governor's Office and the General Assembly. Additionally at the meeting, counsel for Relators specifically asked that the Attorney General's Office refrain from filing the first two appropriation cases even though counsel assured them that the petitions were ready to be filed.

14. On June 12, I sent out a letter on behalf of Assistant Attorney General Dan Martin memorializing the offer made during this meeting. A true copy of that letter is attached hereto as Attachment 3.
15. Since the Ohio Supreme Court's Order of December 1, 2011, ODNR and the Ohio Attorney General's Office have acted diligently and in good faith not only in preparing these appropriation cases for litigation but also in our on-going settlement negotiations with the Relators. At no time have I taken any action, or been instructed to take any action, to delay or hinder the progress of these cases.

Further Affiant sayeth naught.

Tara L. Paciorek

Tara L. Paciorek
Assistant Attorney General, EES/ODNR
2045 Morse Road, Building D-2
Columbus, Ohio 43229

Sworn to and Subscribed before me on this the 17th day of September, 2012.

Gerald E. Dailey
Notary Public

GERALD E. DAILEY, Attorney At Law
NOTARY PUBLIC, STATE OF OHIO
My commission has no expiration date.
Section 147.03 R. C.

Tara Paciorek

From: Tara Paciorek
Sent: Wednesday, April 04, 2012 4:00 PM
To: 'Fusonie, Thomas H.'; Ingram, Bruce L.; Miller, Joseph R.
Cc: Daniel J. Martin
Subject: RE: Doner surveys and appraisals
Attachments: image001.jpg

Tom,

They were planning on measuring parcels 28-010400.000 and 42-014000.0000 for Jerry and Betty. If you need any more information, let me know. Thank you.

Tara L. Paciorek

Assistant Attorney General, EES/ODNR
Ohio Attorney General Mike DeWine
2045 Morse Rd. #D-2
Columbus, Ohio 43229
Tel: (614) 265-6418

From: Fusonie, Thomas H. [mailto:thfusonie@vorys.com]
Sent: Wednesday, April 04, 2012 3:54 PM
To: Tara Paciorek; Ingram, Bruce L.; Miller, Joseph R.
Cc: Daniel J. Martin
Subject: RE: Doner surveys and appraisals

Tara,

We will get back to you soon. In the meantime, could you please identify the parcels of Jerry and Betty Powell that the survey crew plans on being at on April 10? The Powells have multiple farms that they established by uncontroverted evidence have been taken by ODNR.

Thank you.

Tom Fusonie

VORYS
Legal Counsel

Thomas H. Fusonie
Attorney at Law

Vorys, Sater, Seymour and Pease LLP
52 East Gay Street | Columbus, Ohio 43215

Direct: 614.464.8261
Fax: 614.719.4886
Email: thfusonie@vorys.com
www.vorys.com

Attachment 1

From: Tara Paciorek [mailto:tara.paciorek@ohioattorneygeneral.gov]
Sent: Wednesday, April 04, 2012 2:25 PM
To: Ingram, Bruce L.; Miller, Joseph R.; Fusonie, Thomas H.
Cc: Daniel J. Martin
Subject: Doner surveys and appraisals

Bruce,

One of our appraisers, Bruce Dunzweiler, would like to view the Ebbing property for his appraisal. He is available April 17, 19 or 20. He will probably want to talk to the property owner(s) at that time as well. Can you discuss with the Ebbings whether any of those dates work for them.

Also Rolling & Hocevar, Inc., one of our survey crews, would like to start taking some field measurements. They would like access to the properties of Doner, Ebbing, Timothy Knapke, Jerry and Betty Powell and Thomas and Brenda Powell. They will have survey crews in the area on Tuesday, April 10, 2012 starting around 10:00 am. Will this be acceptable to your clients? Please Advise. Thank you.

Tara L. Paciorek

Assistant Attorney General, EES/ODNR
Ohio Attorney General Mike DeWine
2045 Morse Rd. #D-2
Columbus, Ohio 43229
Tel: (614) 265-6418

From the law offices of Vorys, Sater, Seymour and Pease LLP.

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Tara Paciorek

From: Fusonie, Thomas H. <thfusonie@vorys.com>
Sent: Wednesday, April 04, 2012 7:17 PM
To: Tara Paciorek; Ingram, Bruce L.; Miller, Joseph R.
Cc: Daniel J. Martin
Subject: RE: Doner surveys and appraisals

Tara,

We have confirmed that the surveying work on April 10 is acceptable to the Doners, Tim Knapke and the Ebbings. Also, April 19 works for Bruce Dunzweiler to view the Ebbing parcels. We suggest 10:30. Will that work? In addition, please advise us as to which parcel Mr. Dunzweiler would like to view first.

Thanks.

Tom Fusonie

VORYS
Legal Counsel

Thomas H. Fusonie
Attorney at Law

Vorys, Sater, Seymour and Pease LLP
52 East Gay Street | Columbus, Ohio 43215

Direct: 614.464.8261
Fax: 614.719.4886
Email: thfusonie@vorys.com
www.vorys.com

From: Tara Paciorek [<mailto:tara.paciorek@ohioattorneygeneral.gov>]
Sent: Wednesday, April 04, 2012 2:25 PM
To: Ingram, Bruce L.; Miller, Joseph R.; Fusonie, Thomas H.
Cc: Daniel J. Martin
Subject: Doner surveys and appraisals

Bruce,

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Also Rolling & Hocevar, Inc., one of our survey crews, would like to start taking some field measurements. They would like access to the properties of Doner, Ebbing, Timothy Knapke, Jerry and Betty Powell and Thomas and Brenda Powell. They will have survey crews in the area on Tuesday, April 10, 2012 starting around 10:00 am. Will this be acceptable to your clients? Please Advise. Thank you.

Tara L. Paciorek
Assistant Attorney General, EES/ODNR
Ohio Attorney General Mike DeWine

2045 Morse Rd. #D-2
Columbus, Ohio 43229
Tel: (614) 265-6418

From the law offices of Vorys, Sater, Seymour and Pease LLP.

IRS CIRCULAR 230 DISCLOSURE: In order to ensure compliance with requirements imposed by the U.S. Internal Revenue Service, we inform you that any federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of (i) avoiding penalties that may be imposed under the U.S. Internal Revenue Code or (ii) promoting, marketing, or recommending to another person, any transaction or other matter addressed herein.

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Tara Paciorek

From: Tara Paciorek
Sent: Friday, May 04, 2012 10:09 AM
To: 'Fusonie, Thomas H.'
Cc: Brewer, Martha C. (mcbrewer@vorys.com); Daniel J. Martin; Gerald Dailey
Subject: Doner surveys

Tom,

Our survey crews are going to be in the area on May 16 around noon. They would like to survey a number of properties at that time. The parcels they would like to have access to are:

1. Parcel No. 29-003500.0000 owned by Chad M. and Andrea M. Knapke.
2. Parcel No. 29-003600.0000 owned by Chad M. and Andrea M. Knapke.
3. Parcel No. 29-002400.0000 owned by Mark L. Knapke, Trustee.
4. Parcel No. 29-002200.0000 owned by Linda B. Linn et al.
5. Parcel No. 29-003300.0000 owned by William Muhlenlamp.
6. Parcel No. 29-004400.0000 owned by William Muhlenlamp.
7. Parcel No. 29-011400.0000 owned by Opal L. Post.
8. Parcel No. 29-004200.0000 owned by Opal L. Post.

Can you please check with your clients and see if this acceptable. Thank you.

Tara L. Paciorek
Assistant Attorney General, EES/ODNR
Ohio Attorney General Mike DeWine
2045 Morse Rd. #D-2
Columbus, Ohio 43229
Tel: (614) 265-6418

Tara Paciorek

From: Tara Paciorek
Sent: Wednesday, May 09, 2012 10:46 PM
To: Fusonie, Thomas H.
Cc: Brewer, Martha C.; Daniel J. Martin; Gerald Dailey; Ingram, Bruce L.; Miller, Joseph R.
Subject: RE: Doner surveys
Attachments: image001.jpg

Thank you.

Tara

From: Fusonie, Thomas H. [thfusonie@vorys.com]
Sent: Wednesday, May 09, 2012 7:43 PM
To: Tara Paciorek
Cc: Brewer, Martha C.; Daniel J. Martin; Gerald Dailey; Ingram, Bruce L.; Miller, Joseph R.
Subject: RE: Doner surveys

Tara,

ODNR should have all the required information already. Having said that, we're not going to stop ODNR from going ahead and surveying the parcels below on May 16. I can confirm that the surveyors can access the 8 parcels identified in your May 4 email below.

Tom Fusonie

From: Tara Paciorek [mailto:tara.paciorek@ohioattorneygeneral.gov]
Sent: Monday, May 07, 2012 8:48 AM
To: Fusonie, Thomas H.
Cc: Brewer, Martha C.; Daniel J. Martin; Gerald Dailey; Ingram, Bruce L.; Miller, Joseph R.
Subject: RE: Doner surveys

Tom,

While I understand your position that you believe the surveys are unnecessary for the referenced five parcels, our client feels it has a responsibility to act with due diligence and independently verify all information. Can you confirm that May 16 is acceptable for your clients. Thank you.

Tara L. Paciorek

Assistant Attorney General, EES/ODNR
Ohio Attorney General Mike DeWine
2045 Morse Rd. #D-2
Columbus, Ohio 43229
Tel: (614) 265-6418

From: Fusonie, Thomas H. [mailto:thfusonie@vorys.com]
Sent: Friday, May 04, 2012 5:38 PM
To: Tara Paciorek
Cc: Brewer, Martha C.; Daniel J. Martin; Gerald Dailey; Ingram, Bruce L.; Miller, Joseph R.
Subject: RE: Doner surveys

Tara,

As to five of the eight parcels listed below, the uncontroverted evidence in the mandamus action established that ODNR has taken the entire parcel. Those parcels are the 3 Knapke parcels, the 70-acre William Muhlenkamp parcel and the 45-acre Opal Post parcel.

Why is ODNR requesting to access those parcels for surveying?

Thank you.

Tom Fusonie



Thomas H. Fusonie
Attorney at Law

Vorys, Suter, Seymour and Pease LLP
52 East Gay Street | Columbus, Ohio 43215

Direct: 614.464.8261
Fax: 614.719.4836
Email: thfusonie@vorys.com
www.vorys.com

From: Tara Paciorek [<mailto:tara.paciorek@ohioattorneygeneral.gov>]

Sent: Friday, May 04, 2012 10:09 AM

To: Fusonie, Thomas H.

Cc: Brewer, Martha C.; Daniel J. Martin; Gerald Dailey

Subject: Doner surveys

Tom,

Our survey crews are going to be in the area on May 16 around noon. They would like to survey a number of properties at that time. The parcels they would like to have access to are:

1. Parcel No. 29-003500.0000 owned by Chad M. and Andrea M. Knapke.
2. Parcel No. 29-003600.0000 owned by Chad M. and Andrea M. Knapke.
3. Parcel No. 29-002400.0000 owned by Mark L. Knapke, Trustee.
4. Parcel No. 29-002200.0000 owned by Linda B. Linn et al.
5. Parcel No. 29-003300.0000 owned by William Muhlenlamp.
6. Parcel No. 29-004400.0000 owned by William Muhlenlamp.
7. Parcel No. 29-011400.0000 owned by Opal L. Post.
8. Parcel No. 29-004200.0000 owned by Opal L. Post.

Can you please check with your clients and see if this acceptable. Thank you.

Tara L. Paciorek

Assistant Attorney General, EES/ODNR
Ohio Attorney General Mike DeWine
2045 Morse Rd. #D-2
Columbus, Ohio 43229
Tel: (614) 265-6418

Tara Paciorek

From: Tara Paciorek
Sent: Tuesday, May 08, 2012 11:34 AM
To: 'Fusonie, Thomas H.'
Cc: Gerald Dailey; Brewer, Martha C. (mcbrewer@vorys.com)
Subject: Surveys

Tom,

Another one of our survey crews is going to be in the Mercer County area tomorrow between 9:00 and 10:00. They would like access to the following parcels:

Parcel # 28-013400.0000	Karr, Jean A. Trustee & Ransbottom, William J.
Parcel # 28-013500.0000	Karr, Jean A. Trustee & Ransbottom, William J.
Parcel # 28-010900.0000	Sheets, Duane R
Parcel # 28-012900.0000	Sheets, Duane R
Parcel # 28-011100.0000	Sheets, Rodney E
Parcel # 28-011000.0000	Sheets, Rodney E & Linda
Parcel # 28-013800.0000	Thomas, Gale A & Nelda G

I'm sorry about the short notice. Let me know if this is acceptable. Thanks.

Tara L. Paciorek
Assistant Attorney General, EES/ODNR
Ohio Attorney General Mike DeWine
2045 Morse Rd. #D-2
Columbus, Ohio 43229
Tel: (614) 265-6418

Tara Paciorek

From: Tara Paciorek
Sent: Tuesday, May 08, 2012 1:02 PM
To: 'Fusonie, Thomas H.'
Cc: Gerald Dailey; Brewer, Martha C.; Ingram, Bruce L.; Miller, Joseph R.
Subject: RE: Surveys

Thanks Tom,

In case they can't get all the surveys done in one day, can you check about Thursday as well. Thanks.

Tara L. Paciorek

Assistant Attorney General, EES/ODNR
Ohio Attorney General Mike DeWine
2045 Morse Rd. #D-2
Columbus, Ohio 43229
Tel: (614) 265-6418

From: Fusonie, Thomas H. [mailto:thfusonie@vorys.com]
Sent: Tuesday, May 08, 2012 12:58 PM
To: Tara Paciorek
Cc: Gerald Dailey; Brewer, Martha C.; Ingram, Bruce L.; Miller, Joseph R.
Subject: RE: Surveys

Tara,

We're still waiting to hear back from Mr. Ransbottom about the surveying. We'll let you know when we do.

Thanks.

Tom

From: Tara Paciorek [mailto:tara.paciorek@ohioattorneygeneral.gov]
Sent: Tuesday, May 08, 2012 12:53 PM
To: Fusonie, Thomas H.
Cc: Gerald Dailey; Brewer, Martha C.; Ingram, Bruce L.; Miller, Joseph R.
Subject: RE: Surveys

Thanks Tom,

Would Thursday work better for the Ransbottom/Karr parcels?

Tara L. Paciorek

Assistant Attorney General, EES/ODNR
Ohio Attorney General Mike DeWine
2045 Morse Rd. #D-2
Columbus, Ohio 43229
Tel: (614) 265-6418

From: Fusonie, Thomas H. [mailto:thfusonie@vorys.com]
Sent: Tuesday, May 08, 2012 12:40 PM
To: Tara Paciorek
Cc: Gerald Dailey; Brewer, Martha C.; Ingram, Bruce L.; Miller, Joseph R.
Subject: RE: Surveys

Tara,

With the exception of the Ransbottom/Karr parcels, we can confirm that the surveying for tomorrow is acceptable.

Thank you.

Tom Fusonie

From: Tara Paciorek [mailto:tara.paciorek@ohioattorneygeneral.gov]
Sent: Tuesday, May 08, 2012 11:34 AM
To: Fusonie, Thomas H.
Cc: Gerald Dailey; Brewer, Martha C.
Subject: Surveys

Tom,

Another one of our survey crews is going to be in the Mercer County area tomorrow between 9:00 and 10:00. They would like access to the following parcels:

Parcel # 28-013400.0000 Karr, Jean A. Trustee & Ransbottom, William J.
Parcel # 28-013500.0000 Karr, Jean A. Trustee & Ransbottom, William J.
Parcel # 28-010900.0000 Sheets, Duane R
Parcel # 28-012900.0000 Sheets, Duane R
Parcel # 28-011100.0000 Sheets, Rodney E
Parcel # 28-011000.0000 Sheets, Rodney E & Linda
Parcel # 28-013800.0000 Thomas, Gale A & Nelda G

I'm sorry about the short notice. Let me know if this is acceptable. Thanks.

Tara L. Paciorek
Assistant Attorney General, EES/ODNR
Ohio Attorney General Mike DeWine
2045 Morse Rd. #D-2
Columbus, Ohio 43229
Tel: (614) 265-6418

From the law offices of Vorys, Sater, Seymour and Pease LLP.

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Tara Paciorek

From: Gerald Dailey
Sent: Tuesday, July 17, 2012 12:50 PM
To: thfusonie@vorys.com
Cc: Daniel J. Martin; Tara Paciorek
Subject: ODNR Survey Schedule
Attachments: Howerton Engineering Survey Schedule.pdf

Tom, attached is the survey schedule from Howerton Engineering. The surveyors would like to begin their work on July 23.

Let us know if the dates listed in the attached schedule are OK.

Thanks.

Gerald E. "Jed" Dailey

Assistant Attorney General - Environmental Enforcement Section - ODNR
Office of Ohio Attorney General Mike DeWine
Section Number: 614-265-6870
Direct Number: 614-265-6944
Fax Number: 614-268-8871
Gerald.Dailey@OhioAttorneyGeneral.gov
2045 Morse Road, D-2
Columbus, OH 43229-6693
www.ohio.attorneygeneral.gov

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PARCEL DESCRIPTION	PARCEL NUMBER	WEEK	DAY
ROBERT & PATRICIA HIGHLEY 101.0 ACRES	26-041400.0000	1	7/23/2012
GREG & LOIS SIEFRING 54.239 ACRES	26-041500.0000	1	7/24/2012
LAWRENCE & JOYCE DWENGER 40.0 ACRES	26-04120.0100	1	7/24/2012
BAUCHER FARMS, INC. 95.192 ACRES	26-043100.0000	1	7/25/2012
HAROLD EDWARD & MARY GILBERT 39.707 ACRES	26-041200.0000	1	7/25/2012
MARILYN UHLENKAKE 21.61 ACRES	26-042900.0100	1	7/26/2012
JENNIFER ZUMBERGE 2.2 ACRES	26-042800.0000	1	7/26/2012
RITA KAY SUHR 60.0 ACRES	26-004200.0100	2	7/30/2012
RITA KAY SUHR 35.989 ACRES	26-039100.0500	2	7/30/2012
	26-039200.0200		
DAVID & RITA SUHR 51.489 ACRES	26-040900.0000	2	7/30/2012
ROBERT & BONNIE SEARIGHT 5.004 ACRES	26-030700.0000	2	7/31/2012
ROBERT & BONNIE SEARIGHT 4.761 ACRES	26-030700.0300	2	7/31/2012
ROBERT & BONNIE SEARIGHT 69.632 ACRES	26-030700.0200	2	7/31/2012
ROBERT & BONNIE SEARIGHT 8.23 ACRES	26-011900.0000	2	7/31/2012
DAVID & DEBORAH MCDONOUGH 39.0 ACRES	26-038100.0000	2	8/1/2012
DAVID & JOSEPH JOHNSMAN 30.0 ACRES	26-038300.0000	2	8/1/2012
DANIEL JOHNSMAN 25.0 ACRES	26-038300.0200	2	8/2/2012
JOSEPH & DAVID JOHNSMAN 5.001 ACRES	26-029500.0100	2	8/2/2012

Tara Paciorek

From: Gerald Dailey
Sent: Tuesday, August 07, 2012 8:10 AM
To: Fusonie, Thomas H.
Cc: Daniel J. Martin; Tara Paciorek; Sneller, Bob (Bob.Sneller@dnr.state.oh.us)
Subject: RE: ODNR Survey Crew Conducting Surveys on August 7th and 8th
Attachments: image001.jpg

Tom, ODNR's head surveyor Bob Sneller spoke to the surveyors at Howerton and was assured that Howerton did not survey the Ron and Carol Siefring property, Parcel #42-000100.000. Howerton did survey the Robert and Patricia Highley property, Parcel # 26-041400.0000, across the road from Parcel #42-000100.000 and the Greg and Lois Siefring property, Parcel #26-041500.0000.

If Ron and Carol Siefring received a notice on their door from Howerton, it was put there either by mistake or by accident. Howerton took no survey points west of Township Line Rd. where the Ron and Carol Siefring parcel is located.

Sorry for any confusion in this matter. We will continue to provide you with information about the ongoing surveys so that you can notify your clients.

Thanks.

Jed

Gerald E. "Jed" Dailey

Assistant Attorney General - Environmental Enforcement Section - ODNR
Office of Ohio Attorney General Mike DeWine
Section Number: 614-265-6870
Direct Number: 614-265-6944
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www.ohio.attorneygeneral.gov

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From: Fusonie, Thomas H. [mailto:thfusonie@vorys.com]
Sent: Friday, August 03, 2012 2:28 PM
To: Gerald Dailey
Subject: RE: ODNR Survey Crew Conducting Surveys on August 7th and 8th

Thank you.

From: Gerald Dailey [mailto:Gerald.Dailey@ohioattorneygeneral.gov]
Sent: Friday, August 03, 2012 10:59 AM
To: Fusonie, Thomas H.
Cc: Daniel J. Martin; Tara Paciorek; Brewer, Martha C.; Miller, Joseph R.; Ingram, Bruce L.
Subject: RE: ODNR Survey Crew Conducting Surveys on August 7th and 8th

Tom, I mistyped Mark Siefring's parcel number. Mark Siefring's parcel number should be 42-001000.0100 instead of 42-001000.0000.

I will get back to you on the issues of the Howerton survey on July 31 and the double listing of Ron and Carol Siefring's property by Howerton and McCarty Associates. Our survey team is out of the office today.

Thanks.

Jed

Gerald E. "Jed" Dailey

Assistant Attorney General - Environmental Enforcement Section - ODNR

Office of Ohio Attorney General Mike DeWine

Section Number: 614-265-6870

Direct Number: 614-265-6944

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From: Fusonie, Thomas H. [mailto:thfusonie@vorys.com]

Sent: Friday, August 03, 2012 9:27 AM

To: Gerald Dailey

Cc: Daniel J. Martin; Tara Paciorek; Brewer, Martha C.; Miller, Joseph R.; Ingram, Bruce L.

Subject: RE: ODNR Suvrey Crew Conducting Surveys on August 7th and 8th

Jed,

On July 30, 2012, the attached was posted on the door of Ron and Carol Siefring. Howerton then surveyed their property on July 31. Ron and Carol Siefring's property was not on the schedule you previously provided me for survey work that was going to be done over the next two weeks. So, it appears the survey crew went on a property we did not have notice about and, did so, less than 48 hours after posting a notice on the Siefring's door.

I'm bringing this to your attention because I know you will take steps to prevent Howerton (or other survey crews) from violating notice requirements in the future.

In the below schedule, the same parcel is listed twice, once for Jerome and Amy Meyer and once for Mark Siefring. Also, McCarty Associates appears to have the same Ron and Carol Siefring property on its list that Howerton surveyed in violation of statutory notice requirements earlier this week.

Thanks.

Tom



Thomas H. Fusonie
Attorney at Law

Vorys, Sater, Seymour and Pease LLP
52 East Gay Street | Columbus, Ohio 43215

Direct: 614.464.8261
Fax: 614.719.4886
Email: thfusonie@vorys.com
www.vorys.com

From: Gerald Dailey [<mailto:Gerald.Dailey@ohioattorneygeneral.gov>]
Sent: Friday, August 03, 2012 9:12 AM
To: Fusonie, Thomas H.
Cc: Daniel J. Martin; Tara Paciorek
Subject: ODNR Suvrey Crew Conducting Surveys on August 7th and 8th

Tom, McCarty Associates, one of our survey consultants is planning to conduct field surveys for the parcels listed below. The survey crew will be arriving in the Mercer County area mid-morning on Tuesday August 7th and should be concluding their work by the evening of Thursday, August 9th.

Adams, Richard L. & Nancy L.	Parcels 42-003700.0000 and 42-005800.0000
Highley, Robert E. & Patricia L.	Parcels 42-003500.0000 and 42-004500.0000
Kuhn, Darrell Dean	Parcel 42-001200.0000
Kuhn, Marilyn	Parcel 42-000200.0000
Meyer, Jerome & Amy L.	Parcel 42-001000.0000
Powell, Mary Leone et al.	Parcels 42-003400.0000 and 42-003800.0000
Rasawehr, Timothy et al.	Parcel 42-001300.0000
Rose, Carl W. & Lucile M.	Parcel 42-018500.0000
Schroyer, Dorothy K.	Parcel 42-005700.0000
Siefring, Mark	Parcel 42-001000.0000
Siefring, Robert & Carol	Parcel 42-000100.0000
Sutter, Carl A. & Judith A.	Parcel 28-015300.0000
Weisman, Jerry & Vicki	Parcel 42-000300.0000

Gerald E. "Jed" Dailey

Assistant Attorney General - Environmental Enforcement Section - ODNR
Office of Ohio Attorney General Mike DeWine
Section Number: 614-265-6870
Direct Number: 614-265-6944
Fax Number: 614-268-8871
Gerald.Dailey@OhioAttorneyGeneral.gov
2045 Morse Road, D-2

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From the law offices of Vorys, Sater, Seymour and Pease LLP.

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From the law offices of Vorys, Sater, Seymour and Pease LLP.

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Tara Paciorek

From: Tara Paciorek
Sent: Thursday, April 05, 2012 3:22 PM
To: 'Fusonie, Thomas H.'; Ingram, Bruce L.; Miller, Joseph R.
Cc: Daniel J. Martin
Subject: RE: Doner surveys and appraisals
Attachments: image001.jpg

Tom,

10:30 on April 19 will work for Mr. Dunzweiler. I am still waiting to hear which parcel he would like to view first. Once I hear back from him, I will let you know.

Thanks.

Tara L. Paciorek

Assistant Attorney General, EES/ODNR
Ohio Attorney General Mike DeWine
2045 Morse Rd. #D-2
Columbus, Ohio 43229
Tel: (614) 265-6418

From: Fusonie, Thomas H. [mailto:thfusonie@vorys.com]
Sent: Wednesday, April 04, 2012 7:17 PM
To: Tara Paciorek; Ingram, Bruce L.; Miller, Joseph R.
Cc: Daniel J. Martin
Subject: RE: Doner surveys and appraisals

Tara,

We have confirmed that the surveying work on April 10 is acceptable to the Doners, Tim Knapke and the Ebbings. Also, April 19 works for Bruce Dunzweiler to view the Ebbing parcels. We suggest 10:30. Will that work? In addition, please advise us as to which parcel Mr. Dunzweiler would like to view first.

Thanks.

Tom Fusonie

VORYS
Legal Counsel

Thomas H. Fusonie
Attorney at Law

Vorys, Sater, Seymour and Pease LLP
52 East Gay Street | Columbus, Ohio 43215

Direct: 614.464.8261
Fax: 614.719.4886
Email: thfusonie@vorys.com
www.vorys.com

Attachment 2

From: Tara Paciorek [mailto:tara.paciorek@ohioattorneygeneral.gov]
Sent: Wednesday, April 04, 2012 2:25 PM
To: Ingram, Bruce L.; Miller, Joseph R.; Fusonie, Thomas H.
Cc: Daniel J. Martin
Subject: Doner surveys and appraisals

Bruce,

One of our appraisers, Bruce Dunzweiler, would like to view the Ebbing property for his appraisal. He is available April 17, 19 or 20. He will probably want to talk to the property owner(s) at that time as well. Can you discuss with the Ebbings whether any of those dates work for them.

Also Rolling & Hocevar, Inc., one of our survey crews, would like to start taking some field measurements. They would like access to the properties of Doner, Ebbing, Timothy Knapke, Jerry and Betty Powell and Thomas and Brenda Powell. They will have survey crews in the area on Tuesday, April 10, 2012 starting around 10:00 am. Will this be acceptable to your clients? Please Advise. Thank you.

Tara L. Paciorek
Assistant Attorney General, EES/ODNR
Ohio Attorney General Mike DeWine
2045 Morse Rd. #D-2
Columbus, Ohio 43229
Tel: (614) 265-6418

From the law offices of Vorys, Sater, Seymour and Pease LLP.

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Tara Paciorek

From: Tara Paciorek
Sent: Wednesday, April 18, 2012 3:41 PM
To: 'Fusonie, Thomas H.'
Cc: Ingram, Bruce L.; Miller, Joseph R.; Brewer, Martha C.; Gerald Dailey
Subject: RE: Doner surveys and appraisals
Attachments: image001.jpg

Tom,

Our appraiser now has Monday the 23rd available as well if that is any better.

Tara L. Paciorek

Assistant Attorney General, EES/ODNR
Ohio Attorney General Mike DeWine
2045 Morse Rd. #D-2
Columbus, Ohio 43229
Tel: (614) 265-6418

From: Fusonie, Thomas H. [mailto:thfusonie@vorys.com]
Sent: Tuesday, April 17, 2012 11:33 AM
To: Tara Paciorek
Cc: Ingram, Bruce L.; Miller, Joseph R.; Brewer, Martha C.
Subject: RE: Doner surveys and appraisals

Tara,

April 27 may work. I'll let you know. Tomorrow does not. Thanks.

Tom Fusonie

From: Tara Paciorek [mailto:tara.paciorek@ohioattorneygeneral.gov]
Sent: Tuesday, April 17, 2012 11:19 AM
To: Fusonie, Thomas H.
Cc: Ingram, Bruce L.; Miller, Joseph R.; Brewer, Martha C.
Subject: RE: Doner surveys and appraisals

Tom,

Our appraiser is available tomorrow or Friday April 27th. Do either of those days work for your client.

Thanks.

Tara L. Paciorek

Assistant Attorney General, EES/ODNR
Ohio Attorney General Mike DeWine
2045 Morse Rd. #D-2

Columbus, Ohio 43229
Tel: (614) 265-6418

From: Fusonie, Thomas H. [mailto:thfusonie@vorys.com]
Sent: Monday, April 16, 2012 5:54 PM
To: Tara Paciorek
Cc: Ingram, Bruce L.; Miller, Joseph R.; Brewer, Martha C.; Daniel J. Martin; Gerald Dailey
Subject: RE: Doner surveys and appraisals

Tara,

No objection to you or Jed attending on the 19th. April 20 does not work for Doner site view. Please propose alternative dates. Thanks.

Tom Fusonie

From: Tara Paciorek [mailto:tara.paciorek@ohioattorneygeneral.gov]
Sent: Monday, April 16, 2012 12:29 PM
To: Fusonie, Thomas H.
Cc: Ingram, Bruce L.; Miller, Joseph R.; Brewer, Martha C.; Daniel J. Martin; Gerald Dailey
Subject: RE: Doner surveys and appraisals

Thanks Tom,

I've confirmed the time and place with Mr. Dunzweiler, either myself or Jed Dailey plan on accompanying him for the site view. If your client has any objections to this, please let us know.

Also, Tom Horner, our other appraiser would like to view the Doner property this Friday, April 20th around 10:30 to 11:00. Can you please check with your client and advise if this is acceptable. Thanks.

Tara L. Paciorek
Assistant Attorney General, EES/ODNR
Ohio Attorney General Mike DeWine
2045 Morse Rd. #D-2
Columbus, Ohio 43229
Tel: (614) 265-6418

From: Fusonie, Thomas H. [mailto:thfusonie@vorys.com]
Sent: Wednesday, April 11, 2012 10:35 AM
To: Tara Paciorek
Cc: Ingram, Bruce L.; Miller, Joseph R.; Brewer, Martha C.
Subject: RE: Doner surveys and appraisals

Tara,

Thank you for the email. One of us will be present for the site visit. Mr. Dunzweiler is not going to be meeting with the Ebbings prior to the site visit; nor are the Ebbings going to answer questions by Mr. Dunzweiler other than perhaps basic questions like identifying a property boundary line. We'll plan on meeting Mr. Dunzweiler at 10:30 at the Ebbings' 68 acre parcel, which abuts the north side of Monroe Road.

Thanks.

Tom



Thomas H. Fusonie

Attorney at Law

Vorys, Sater, Seymour and Pease LLP
52 East Gay Street | Columbus, Ohio 43215

Direct: 614.464.8261
Fax: 614.719.4886
Email: thfusonie@vorys.com
www.vorys.com

From: Tara Paciorek [<mailto:tara.paciorek@ohioattorneygeneral.gov>]
Sent: Wednesday, April 11, 2012 10:19 AM
To: Fusonie, Thomas H.
Subject: RE: Doner surveys and appraisals

Tom,

Mr. Dunzweiler does not necessarily have a preference for which parcel he would like to view first, but he would like to speak with the owners prior to the site visit. Can you or the Ebbings suggest an easy place for them to meet initially. Also, is someone from your office going to be present?

Thanks.

Tara L. Paciorek

Assistant Attorney General, EES/ODNR
Ohio Attorney General Mike DeWine
2045 Morse Rd. #D-2
Columbus, Ohio 43229
Tel: (614) 265-6418

From: Fusonie, Thomas H. [<mailto:thfusonie@vorys.com>]
Sent: Wednesday, April 04, 2012 7:17 PM
To: Tara Paciorek; Ingram, Bruce L.; Miller, Joseph R.
Cc: Daniel J. Martin
Subject: RE: Doner surveys and appraisals

Tara,

We have confirmed that the surveying work on April 10 is acceptable to the Doners, Tim Knapke and the Ebbings. Also, April 19 works for Bruce Dunzweiler to view the Ebbing parcels. We suggest 10:30. Will that work? In addition, please advise us as to which parcel Mr. Dunzweiler would like to view first.

Thanks.

Tom Fusonie



Thomas H. Fusonie
Attorney at Law

Vorys, Sater, Seymour and Pease LLP
52 East Gay Street | Columbus, Ohio 43215

Direct: 614.464.8261
Fax: 614.719.4886
Email: thfusonie@vorys.com
www.vorys.com

From: Tara Paciorek [<mailto:tara.paciorek@ohioattorneygeneral.gov>]
Sent: Wednesday, April 04, 2012 2:25 PM
To: Ingram, Bruce L.; Miller, Joseph R.; Fusonie, Thomas H.
Cc: Daniel J. Martin
Subject: Doner surveys and appraisals

Bruce,

One of our appraisers, Bruce Dunzweiler, would like to view the Ebbing property for his appraisal. He is available April 17, 19 or 20. He will probably want to talk to the property owner(s) at that time as well. Can you discuss with the Ebbings whether any of those dates work for them.

Also Rolling & Hocevar, Inc., one of our survey crews, would like to start taking some field measurements. They would like access to the properties of Doner, Ebbing, Timothy Knapke, Jerry and Betty Powell and Thomas and Brenda Powell. They will have survey crews in the area on Tuesday, April 10, 2012 starting around 10:00 am. Will this be acceptable to your clients? Please Advise. Thank you.

Tara L. Paciorek

Assistant Attorney General, EES/ODNR
Ohio Attorney General Mike DeWine
2045 Morse Rd. #D-2
Columbus, Ohio 43229
Tel: (614) 265-6418

From the law offices of Vorys, Sater, Seymour and Pease LLP.

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Tara Paciorek

From: Tara Paciorek
Sent: Wednesday, April 25, 2012 8:40 AM
To: 'Fusonie, Thomas H.'
Cc: Brewer, Martha C.; Gerald Dailey
Subject: RE: Doner surveys and appraisals
Attachments: image001.jpg

Thanks.

Jed will be accompanying Tom Horner, just fyi.

Tara L. Paciorek

Assistant Attorney General, EES/ODNR
Ohio Attorney General Mike DeWine
2045 Morse Rd. #D-2
Columbus, Ohio 43229
Tel: (614) 265-6418

From: Fusonie, Thomas H. [mailto:thfusonie@vorys.com]
Sent: Tuesday, April 24, 2012 4:30 PM
To: Tara Paciorek
Cc: Brewer, Martha C.
Subject: RE: Doner surveys and appraisals

Let's meet at 929 Doner Road. Thanks.

From: Tara Paciorek [mailto:tara.paciorek@ohioattorneygeneral.gov]
Sent: Tuesday, April 24, 2012 1:34 PM
To: Fusonie, Thomas H.
Subject: RE: Doner surveys and appraisals

Sorry Tom,

I realized I didn't respond to this. 1:00 works for us. Do you have a preference for where everyone meets? Thanks.

Tara L. Paciorek

Assistant Attorney General, EES/ODNR
Ohio Attorney General Mike DeWine
2045 Morse Rd. #D-2
Columbus, Ohio 43229
Tel: (614) 265-6418

From: Fusonie, Thomas H. [mailto:thfusonie@vorys.com]
Sent: Friday, April 20, 2012 10:00 AM
To: Fusonie, Thomas H.; Tara Paciorek

Cc: Brewer, Martha C.; Gerald Dailey
Subject: RE: Doner surveys and appraisals

Tara,

One correction. April 27 works from about 1:00 on.

Thanks.

Tom

From: Fusonie, Thomas H.
Sent: Thursday, April 19, 2012 7:08 PM
To: 'Tara Paciorek'
Cc: Ingram, Bruce L.; Miller, Joseph R.; Brewer, Martha C.; Gerald Dailey
Subject: RE: Doner surveys and appraisals

Tara,

April 27 works. Thank you.

Tom

From: Tara Paciorek [mailto:tara.paciorek@ohioattorneygeneral.gov]
Sent: Wednesday, April 18, 2012 3:41 PM
To: Fusonie, Thomas H.
Cc: Ingram, Bruce L.; Miller, Joseph R.; Brewer, Martha C.; Gerald Dailey
Subject: RE: Doner surveys and appraisals

Tom,

Our appraiser now has Monday the 23rd available as well if that is any better.

Tara L. Paciorek
Assistant Attorney General, EES/ODNR
Ohio Attorney General Mike DeWine
2045 Morse Rd. #D-2
Columbus, Ohio 43229
Tel: (614) 265-6418

From: Fusonie, Thomas H. [mailto:thfusonie@vorys.com]
Sent: Tuesday, April 17, 2012 11:33 AM
To: Tara Paciorek
Cc: Ingram, Bruce L.; Miller, Joseph R.; Brewer, Martha C.
Subject: RE: Doner surveys and appraisals

Tara,

April 27 may work. I'll let you know. Tomorrow does not. Thanks.

Tom Fusonie

From: Tara Paciorek [mailto:tara.paciorek@ohioattorneygeneral.gov]
Sent: Tuesday, April 17, 2012 11:19 AM
To: Fusonie, Thomas H.
Cc: Ingram, Bruce L.; Miller, Joseph R.; Brewer, Martha C.
Subject: RE: Doner surveys and appraisals

Tom,

Our appraiser is available tomorrow or Friday April 27th. Do either of those days work for your client.

Thanks.

Tara L. Paciorek
Assistant Attorney General, EES/ODNR
Ohio Attorney General Mike DeWine
2045 Morse Rd. #D-2
Columbus, Ohio 43229
Tel: (614) 265-6418

From: Fusonie, Thomas H. [mailto:thfusonie@vorys.com]
Sent: Monday, April 16, 2012 5:54 PM
To: Tara Paciorek
Cc: Ingram, Bruce L.; Miller, Joseph R.; Brewer, Martha C.; Daniel J. Martin; Gerald Dailey
Subject: RE: Doner surveys and appraisals

Tara,

No objection to you or Jed attending on the 19th. April 20 does not work for Doner site view. Please propose alternative dates. Thanks.

Tom Fusonie

From: Tara Paciorek [mailto:tara.paciorek@ohioattorneygeneral.gov]
Sent: Monday, April 16, 2012 12:29 PM
To: Fusonie, Thomas H.
Cc: Ingram, Bruce L.; Miller, Joseph R.; Brewer, Martha C.; Daniel J. Martin; Gerald Dailey
Subject: RE: Doner surveys and appraisals

Thanks Tom,

I've confirmed the time and place with Mr. Dunzweiler, either myself or Jed Dailey plan on accompanying him for the site view. If your client has any objections to this, please let us know.

Also, Tom Horner, our other appraiser would like to view the Doner property this Friday, April 20th around 10:30 to 11:00. Can you please check with your client and advise if this is acceptable. Thanks.

Tara L. Paciorek
Assistant Attorney General, EES/ODNR
Ohio Attorney General Mike DeWine
2045 Morse Rd. #D-2

Columbus, Ohio 43229
Tel: (614) 265-6418

From: Fusonie, Thomas H. [mailto:thfusonie@vorys.com]
Sent: Wednesday, April 11, 2012 10:35 AM
To: Tara Paciorek
Cc: Ingram, Bruce L.; Miller, Joseph R.; Brewer, Martha C.
Subject: RE: Doner surveys and appraisals

Tara,

Thank you for the email. One of us will be present for the site visit. Mr. Dunzweiler is not going to be meeting with the Ebbings prior to the site visit; nor are the Ebbings going to answer questions by Mr. Dunzweiler other than perhaps basic questions like identifying a property boundary line. We'll plan on meeting Mr. Dunzweiler at 10:30 at the Ebbings' 68 acre parcel, which abuts the north side of Monroe Road.

Thanks.

Tom

VORYS
Legal Counsel

Thomas H. Fusonie
Attorney at Law

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52 East Gay Street | Columbus, Ohio 43215

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Fax: 614.719.4886
Email: thfusonie@vorys.com
www.vorys.com

From: Tara Paciorek [mailto:tara.paciorek@ohioattorneygeneral.gov]
Sent: Wednesday, April 11, 2012 10:19 AM
To: Fusonie, Thomas H.
Subject: RE: Doner surveys and appraisals

Tom,

Mr. Dunzweiler does not necessarily have a preference for which parcel he would like to view first, but he would like to speak with the owners prior to the site visit. Can you or the Ebbings suggest an easy place for them to meet initially. Also, is someone from your office going to be present?

Thanks.

Tara L. Paciorek
Assistant Attorney General, EES/ODNR
Ohio Attorney General Mike DeWine
2045 Morse Rd. #D-2
Columbus, Ohio 43229
Tel: (614) 265-6418

From: Fusonie, Thomas H. [mailto:thfusonie@vorys.com]
Sent: Wednesday, April 04, 2012 7:17 PM
To: Tara Paciorek; Ingram, Bruce L.; Miller, Joseph R.
Cc: Daniel J. Martin
Subject: RE: Doner surveys and appraisals

Tara,

We have confirmed that the surveying work on April 10 is acceptable to the Doners, Tim Knapke and the Ebbings. Also, April 19 works for Bruce Dunzweiler to view the Ebbing parcels. We suggest 10:30. Will that work? In addition, please advise us as to which parcel Mr. Dunzweiler would like to view first.

Thanks.

Tom Fusonie



Thomas H. Fusonie
Attorney at Law

Vorys, Sater, Seymour and Pease LLP
52 East Gay Street | Columbus, Ohio 43215

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Fax: 614.719.4886
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Sent: Wednesday, April 04, 2012 2:25 PM
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Cc: Daniel J. Martin
Subject: Doner surveys and appraisals

Bruce,

One of our appraisers, Bruce Dunzweiler, would like to view the Ebbing property for his appraisal. He is available April 17, 19 or 20. He will probably want to talk to the property owner(s) at that time as well. Can you discuss with the Ebbings whether any of those dates work for them.

Also Rolling & Hocevar, Inc., one of our survey crews, would like to start taking some field measurements. They would like access to the properties of Doner, Ebbing, Timothy Knapke, Jerry and Betty Powell and Thomas and Brenda Powell. They will have survey crews in the area on Tuesday, April 10, 2012 starting around 10:00 am. Will this be acceptable to your clients? Please Advise. Thank you.

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Assistant Attorney General, EES/ODNR
Ohio Attorney General Mike DeWine
2045 Morse Rd. #D-2
Columbus, Ohio 43229
Tel: (614) 265-6418

Tara Paciorek

From: Tara Paciorek
Sent: Friday, June 29, 2012 8:43 AM
To: 'Fusonie, Thomas H.'; Brewer, Martha C. (mcbrewer@vorys.com)
Cc: Ingram, Bruce L.; Miller, Joseph R.; Daniel J. Martin; Gerald Dailey
Subject: Appraisal site views

Tom,

Our Appraiser, Bruce Dunzweiler would like to have access to the following properties on July 16 & 17:

Jean Karr and William Ransbottom
Jerry and Betty Powell
Thomas and Brenda Powell
Duane Sheets
Rodney and Linda Sheets
Gale and Nelda Thomas

Can your clients consent to these days? Of course if we are able to reach some resolution before these dates, we will probably not need access; but we do want to continue moving forward until an agreement is reached. Thank you.

Tara L. Paciorek
Assistant Attorney General, EES/ODNR
Ohio Attorney General Mike DeWine
2045 Morse Rd. #D-2
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Tara Paciorek

From: Tara Paciorek
Sent: Thursday, July 12, 2012 1:27 PM
To: 'Fusonie, Thomas H.'; 'Brewer, Martha C. (mcbrewer@vorys.com)'
Cc: 'Ingram, Bruce L.'; 'Miller, Joseph R.'; Daniel J. Martin; Gerald Dailey
Subject: RE: Appraisal site views

Tom,

Have you been able to confirm with your clients whether the below dates are acceptable for Bruce Dunzweiler to view the sites. He was planning on trying to get it all done on the 16th, but would like to reserve the 17th just in case he can't finish in one day.

Additionally, Tom Horner would like to view the following properties on July 23 beginning at 9:30 and, if he needs more than one day, the 24th:

Chad and Andrea Knapke
Mark Knapke
Timothy Knapke
Linda Linn
Opal Post
William Muhlenkamp

Please advise whether these dates are acceptable. Thanks so much!

Tara L. Paciorek

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Ohio Attorney General Mike DeWine
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Columbus, Ohio 43229
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Cc: Ingram, Bruce L.; Miller, Joseph R.; Daniel J. Martin; Gerald Dailey
Subject: Appraisal site views

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Thomas and Brenda Powell
Duane Sheets

Rodney and Linda Sheets
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Assistant Attorney General, EES/ODNR
Ohio Attorney General Mike DeWine
2045 Morse Rd. #D-2
Columbus, Ohio 43229
Tel: (614) 265-6418

Gerald Dailey

From: Fusonie, Thomas H. <thfusonie@vorys.com>
Sent: Wednesday, July 18, 2012 6:01 PM
To: Tara Paciorek
Cc: Gerald Dailey; Ingram, Bruce L.; Miller, Joseph R.; Brewer, Martha C.; Daniel J. Martin
Subject: RE: Appraisal site views

Tara,

July 30 works for the site visits by Bruce Dunzweiler.

Tom Fusonie

From: Tara Paciorek [mailto:tara.paciorek@ohioattorneygeneral.gov]
Sent: Tuesday, July 17, 2012 12:53 PM
To: Fusonie, Thomas H.
Cc: Gerald Dailey; Ingram, Bruce L.; Miller, Joseph R.; Brewer, Martha C.; Daniel J. Martin
Subject: RE: Appraisal site views

Tom,

Yet again, I need to apologize. Bruce Dunzweiler has just informed me that he now needs to testify at a hearing on July 26th, so he will be unavailable to view the properties. He says the 30th and 31st are still open for him if they are acceptable to your clients. I am sorry for the inconvenience. Thanks for your patience.

Tara L. Paciorek
Assistant Attorney General, EES/ODNR
Ohio Attorney General Mike DeWine
2045 Morse Rd. #D-2
Columbus, Ohio 43229
Tel: (614) 265-6418

From: Fusonie, Thomas H. [mailto:thfusonie@vorys.com]
Sent: Monday, July 16, 2012 11:50 AM
To: Tara Paciorek
Cc: Gerald Dailey; Ingram, Bruce L.; Miller, Joseph R.; Brewer, Martha C.; Daniel J. Martin
Subject: RE: Appraisal site views

Tara,

For July 26, Duane Sheets, Gale and Nelda Thomas, and Tom and Brenda Powell are confirmed. The property of Rodney and Linda Sheets can be inspected that day, but only in the morning. I'll let you know soon about Jerry and Betty Powell and Ransbottom/Karr.

Tom Fusonie

From: Tara Paciorek [mailto:tara.paciorek@ohioattorneygeneral.gov]
Sent: Thursday, July 12, 2012 3:49 PM
To: Fusonie, Thomas H.
Cc: Gerald Dailey
Subject: RE: Appraisal site views

Tom,

I apologize, but I just had an email from Bruce Dunzweiler saying July 16 and 17 are no longer going to work for him, but some open dates for him include 7/23, 7/26, 7/30 and 7/31. Obviously the soonest ones would be best for him, but whatever works for your clients' schedules is fine. Again the properties he would like to view are:

Jean Karr and William Ransbottom
Jerry and Betty Powell
Thomas and Brenda Powell
Duane Sheets
Rodney and Linda Sheets
Gale and Nelda Thomas

Let me know. Thanks.

Tara L. Paciorek
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Ohio Attorney General Mike DeWine
2045 Morse Rd. #D-2
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Tel: (614) 265-6418

From: Tara Paciorek
Sent: Thursday, July 12, 2012 1:27 PM
To: 'Fusonie, Thomas H.'; 'Brewer, Martha C. (mcbrewer@vorys.com)'
Cc: 'Ingram, Bruce L.'; 'Miller, Joseph R.'; Daniel J. Martin; Gerald Dailey
Subject: RE: Appraisal site views

Tom,

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Additionally, Tom Horner would like to view the following properties on July 23 beginning at 9:30 and, if he needs more that one day, the 24th:

Chad and Andrea Knapke
Mark Knapke
Timothy Knapke
Linda Linn
Opal Post
William Muhlenkamp

Please advise whether these dates are acceptable. Thanks so much!

Tara L. Paciorek

Assistant Attorney General, EES/ODNR
Ohio Attorney General Mike DeWine
2045 Morse Rd. #D-2
Columbus, Ohio 43229
Tel: (614) 265-6418

From: Tara Paciorek
Sent: Friday, June 29, 2012 8:43 AM
To: 'Fusonie, Thomas H.'; Brewer, Martha C. (mcbrewer@vorys.com)
Cc: Ingram, Bruce L.; Miller, Joseph R.; Daniel J. Martin; Gerald Dailey
Subject: Appraisal site views

Tom,

Our Appraiser, Bruce Dunzweiler would like to have access to the following properties on July 16 & 17:

Jean Karr and William Ransbottom
Jerry and Betty Powell
Thomas and Brenda Powell
Duane Sheets
Rodney and Linda Sheets
Gale and Nelda Thomas

Can your clients consent to these days? Of course if we are able to reach some resolution before these dates, we will probably not need access; but we do want to continue moving forward until an agreement is reached. Thank you.

Tara L. Paciorek

Assistant Attorney General, EES/ODNR
Ohio Attorney General Mike DeWine
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Tara Paciorek

From: Tara Paciorek
Sent: Wednesday, July 18, 2012 1:38 PM
To: 'Fusonie, Thomas H.'
Cc: Gerald Dailey; Ingram, Bruce L.; Miller, Joseph R.; Brewer, Martha C.; Daniel J. Martin
Subject: RE: Appraisal site views
Attachments: image001.jpg

Thanks for getting back to me Tom. I have spoken to Tom Horner, and at this point he doesn't have any other times available before the end of August. Would it be possible to do as many properties as we can on the 23rd and figure out the rest later, or if more owners are available on the 24th, we could do it that day instead. Let us know. Thanks.

Tara L. Paciorek

Assistant Attorney General, EES/ODNR
Ohio Attorney General Mike DeWine
2045 Morse Rd. #D-2
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Tel: (614) 265-6418

From: Fusonie, Thomas H. [mailto:thfusonie@vorys.com]
Sent: Tuesday, July 17, 2012 2:55 PM
To: Tara Paciorek
Cc: Gerald Dailey; Ingram, Bruce L.; Miller, Joseph R.; Brewer, Martha C.; Daniel J. Martin
Subject: RE: Appraisal site views

Tara,

I will find out about July 30 and 31. July 23 does not work for all of the site visits Tom Horner proposes so I ask that he offer several alternative dates.

Tom Fusonie

From: Tara Paciorek [mailto:tara.paciorek@ohioattorneygeneral.gov]
Sent: Tuesday, July 17, 2012 12:53 PM
To: Fusonie, Thomas H.
Cc: Gerald Dailey; Ingram, Bruce L.; Miller, Joseph R.; Brewer, Martha C.; Daniel J. Martin
Subject: RE: Appraisal site views

Tom,

Yet again, I need to apologize. Bruce Dunzweiler has just informed me that he now needs to testify at a hearing on July 26th, so he will be unavailable to view the properties. He says the 30th and 31st are still open for him if they are acceptable to your clients. I am sorry for the inconvenience. Thanks for your patience.

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2045 Morse Rd. #D-2

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Tara,

For July 26, Duane Sheets, Gale and Nelda Thomas, and Tom and Brenda Powell are confirmed. The property of Rodney and Linda Sheets can be inspected that day, but only in the morning. I'll let you know soon about Jerry and Betty Powell and Ransbottom/Karr.

Tom Fusonie



Thomas H. Fusonie
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From: Tara Paciorek [mailto:tara.paciorek@ohioattorneygeneral.gov]
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Cc: Gerald Dailey
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Jean Karr and William Ransbottom
Jerry and Betty Powell
Thomas and Brenda Powell
Duane Sheets
Rodney and Linda Sheets
Gale and Nelda Thomas

Let me know. Thanks.

Tara L. Paciorek
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Ohio Attorney General Mike DeWine

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Cc: Ingram, Bruce L.; Miller, Joseph R.; Daniel J. Martin; Gerald Dailey
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Jerry and Betty Powell
Thomas and Brenda Powell
Duane Sheets

Rodney and Linda Sheets
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Tara Paciorek

From: Tara Paciorek
Sent: Thursday, July 26, 2012 3:23 PM
To: 'Fusonie, Thomas H.'
Cc: 'Miller, Joseph R.'; 'Ingram, Bruce L.'; Daniel J. Martin; Gerald Dailey
Subject: site views on Monday

Tom,

This is Bruce's proposed schedule for Monday:

1. 9am - Jerry & Betty Powell
2. 10am - Thomas & Brenda Powell
3. Noon - Rodney Sheets
4. 2pm - Duane Sheets
5. 4pm - Jean Karr & William Ransbottom
6. 5pm - Thomas & Nelda Gale

He would like to meet at the property on the corner of Minch Rd. and State Route 49. He will be accompanied by John Clayton, one of our attorneys from the Toledo office. Thanks.

Tara L. Paciorek

Assistant Attorney General, EES/ODNR
Ohio Attorney General Mike DeWine
2045 Morse Rd. #D-2
Columbus, Ohio 43229
Tel: (614) 265-6418

Tara Paciorek

From: Tara Paciorek
Sent: Tuesday, August 07, 2012 8:36 AM
To: 'Fusonie, Thomas H.'; Gerald Dailey
Cc: Ingram, Bruce L.; Miller, Joseph R.; Brewer, Martha C.; Daniel J. Martin
Subject: RE: Appraisal site views
Attachments: image001.jpg

Tom,

Tom Horner was just asked to testify on August 14, so that date is no longer available. Thanks.

Tara L. Paciorek

Assistant Attorney General, EES/ODNR
Ohio Attorney General Mike DeWine
2045 Morse Rd. #D-2
Columbus, Ohio 43229
Tel: (614) 265-6418

From: Fusonie, Thomas H. [mailto:thfusonie@vorys.com]
Sent: Thursday, August 02, 2012 3:01 PM
To: Tara Paciorek; Gerald Dailey
Cc: Ingram, Bruce L.; Miller, Joseph R.; Brewer, Martha C.; Daniel J. Martin
Subject: RE: Appraisal site views

Tara,

August 8 will not work. I will get back to you on the rest.

Tom

VORYS

Legal Counsel

Thomas H. Fusonie
Attorney at Law

Vorys, Sater, Seymour and Pease LLP
52 East Gay Street | Columbus, Ohio 43215

Direct: 614.464.8261
Fax: 614.719.4886
Email: thfusonie@vorys.com
www.vorys.com

From: Tara Paciorek [mailto:tara.paciorek@ohioattorneygeneral.gov]
Sent: Monday, July 30, 2012 2:26 PM
To: Gerald Dailey; Fusonie, Thomas H.
Cc: Ingram, Bruce L.; Miller, Joseph R.; Brewer, Martha C.; Daniel J. Martin
Subject: RE: Appraisal site views

Tom,

Tom Horner has provided some additional dates that may work for the site views. August 8, 9, 14 or 15 can work for him. Again, he would like to do all of the site views in one day if possible. Can you please advise whether any of these dates are acceptable? Thank you.

Tara L. Paciorek

Assistant Attorney General, EES/ODNR
Ohio Attorney General Mike DeWine
2045 Morse Rd. #D-2
Columbus, Ohio 43229
Tel: (614) 265-6418

From: Gerald Dailey
Sent: Friday, July 20, 2012 2:10 PM
To: Fusonie, Thomas H.; Tara Paciorek
Cc: Ingram, Bruce L.; Miller, Joseph R.; Brewer, Martha C.; Daniel J. Martin
Subject: RE: Appraisal site views

Tom, I have spoken to Tammy Donaldson in Tom Horner's office about appraising the properties of Tim Knapke and William Muhlenkamp on July 23. Mr. Horner would prefer to postpone the site visits for these two appraisals until such time as the appraisals of other properties can be arranged. The idea is to avoid multiple trips to Mercer County for the site inspections. Tara and I will work with you to schedule the appraisals for the other properties when Mr. Horner gives us some dates to work with.

Gerald E. "Jed" Dailey

Assistant Attorney General - Environmental Enforcement Section - ODNR
Office of Ohio Attorney General Mike DeWine
Section Number: 614-265-6870
Direct Number: 614-265-6944
Fax Number: 614-268-8871
Gerald.Dailey@OhioAttorneyGeneral.gov
2045 Morse Road, D-2
Columbus, OH 43229-6693
www.ohio.attorneygeneral.gov

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From: Fusonie, Thomas H. [<mailto:thfusonie@vorys.com>]
Sent: Friday, July 20, 2012 9:56 AM
To: Tara Paciorek
Cc: Gerald Dailey; Ingram, Bruce L.; Miller, Joseph R.; Brewer, Martha C.; Daniel J. Martin
Subject: RE: Appraisal site views

Tara,

On July 23, Mr. Horner can go unaccompanied by an owner/owner representative onto the property of Tim Knapke and William Muhlenkamp.

Tom Fusonie



Thomas H. Fusonie

Attorney at Law

Vorys, Sater, Seymour and Pease LLP
52 East Gay Street | Columbus, Ohio 43215

Direct: 614.464.8261
Fax: 614.719.4886
Email: thfusonie@vorys.com
www.vorys.com

From: Tara Paciorek [mailto:tara.paciorek@ohioattorneygeneral.gov]
Sent: Wednesday, July 18, 2012 1:38 PM
To: Fusonie, Thomas H.
Cc: Gerald Dailey; Ingram, Bruce L.; Miller, Joseph R.; Brewer, Martha C.; Daniel J. Martin
Subject: RE: Appraisal site views

Thanks for getting back to me Tom. I have spoken to Tom Horner, and at this point he doesn't have any other times available before the end of August. Would it be possible to do as many properties as we can on the 23rd and figure out the rest later, or if more owners are available on the 24th, we could do it that day instead. Let us know. Thanks.

Tara L. Paciorek

Assistant Attorney General, EES/ODNR
Ohio Attorney General Mike DeWine
2045 Morse Rd. #D-2
Columbus, Ohio 43229
Tel: (614) 265-6418

From: Fusonie, Thomas H. [mailto:thfusonie@vorys.com]
Sent: Tuesday, July 17, 2012 2:55 PM
To: Tara Paciorek
Cc: Gerald Dailey; Ingram, Bruce L.; Miller, Joseph R.; Brewer, Martha C.; Daniel J. Martin
Subject: RE: Appraisal site views

Tara,

I will find out about July 30 and 31. July 23 does not work for all of the site visits Tom Horner proposes so I ask that he offer several alternative dates.

Tom Fusonie

From: Tara Paciorek [mailto:tara.paciorek@ohioattorneygeneral.gov]
Sent: Tuesday, July 17, 2012 12:53 PM
To: Fusonie, Thomas H.
Cc: Gerald Dailey; Ingram, Bruce L.; Miller, Joseph R.; Brewer, Martha C.; Daniel J. Martin
Subject: RE: Appraisal site views

Tom,

lele

Yet again, I need to apologize. Bruce Dunzweiler has just informed me that he now needs to testify at a hearing on July 26th, so he will be unavailable to view the properties. He says the 30th and 31st are still open for him if they are acceptable to your clients. I am sorry for the inconvenience. Thanks for your patience.

Tara L. Paciorek

Assistant Attorney General, EES/ODNR
Ohio Attorney General Mike DeWine
2045 Morse Rd. #D-2
Columbus, Ohio 43229
Tel: (614) 265-6418

From: Fusonie, Thomas H. [mailto:thfusonie@vorys.com]
Sent: Monday, July 16, 2012 11:50 AM
To: Tara Paciorek
Cc: Gerald Dailey; Ingram, Bruce L.; Miller, Joseph R.; Brewer, Martha C.; Daniel J. Martin
Subject: RE: Appraisal site views

Tara,

For July 26, Duane Sheets, Gale and Nelda Thomas, and Tom and Brenda Powell are confirmed. The property of Rodney and Linda Sheets can be inspected that day, but only in the morning. I'll let you know soon about Jerry and Betty Powell and Ransbottom/Karr.

Tom Fusonie



Thomas H. Fusonie
Attorney at Law

Vorys, Sater, Seymour and Pease LLP
52 East Gay Street | Columbus, Ohio 43215

Direct: 614.464.8261
Fax: 614.719.4886
Email: thfusonie@vorys.com
www.vorys.com

From: Tara Paciorek [mailto:tara.paciorek@ohioattorneygeneral.gov]
Sent: Thursday, July 12, 2012 3:49 PM
To: Fusonie, Thomas H.
Cc: Gerald Dailey
Subject: RE: Appraisal site views

Tom,

I apologize, but I just had an email from Bruce Dunzweiler saying July 16 and 17 are no longer going to work for him, but some open dates for him include 7/23, 7/26, 7/30 and 7/31. Obviously the soonest ones would be best for him, but whatever works for your clients' schedules is fine. Again the properties he would like to view are:

Jean Karr and William Ransbottom
Jerry and Betty Powell
Thomas and Brenda Powell

Duane Sheets
Rodney and Linda Sheets
Gale and Nelda Thomas

Let me know. Thanks.

Tara L. Paciorek

Assistant Attorney General, EES/ODNR
Ohio Attorney General Mike DeWine
2045 Morse Rd. #D-2
Columbus, Ohio 43229
Tel: (614) 265-6418

From: Tara Paciorek
Sent: Thursday, July 12, 2012 1:27 PM
To: 'Fusonie, Thomas H.'; 'Brewer, Martha C. (mcbrewer@vorys.com)'
Cc: 'Ingram, Bruce L.'; 'Miller, Joseph R.'; Daniel J. Martin; Gerald Dailey
Subject: RE: Appraisal site views

Tom,

Have you been able to confirm with your clients whether the below dates are acceptable for Bruce Dunzweiler to view the sites. He was planning on trying to get it all done on the 16th, but would like to reserve the 17th just in case he can't finish in one day.

Additionally, Tom Horner would like to view the following properties on July 23 beginning at 9:30 and, if he needs more that one day, the 24th:

Chad and Andrea Knapke
Mark Knapke
Timothy Knapke
Linda Linn
Opal Post
William Muhlenkamp

Please advise whether these dates are acceptable. Thanks so much!

Tara L. Paciorek

Assistant Attorney General, EES/ODNR
Ohio Attorney General Mike DeWine
2045 Morse Rd. #D-2
Columbus, Ohio 43229
Tel: (614) 265-6418

From: Tara Paciorek
Sent: Friday, June 29, 2012 8:43 AM
To: 'Fusonie, Thomas H.'; Brewer, Martha C. (mcbrewer@vorys.com)
Cc: Ingram, Bruce L.; Miller, Joseph R.; Daniel J. Martin; Gerald Dailey
Subject: Appraisal site views

Tom,

Our Appraiser, Bruce Dunzweiler would like to have access to the following properties on July 16 & 17:

Jean Karr and William Ransbottom
Jerry and Betty Powell
Thomas and Brenda Powell
Duane Sheets
Rodney and Linda Sheets
Gale and Nelda Thomas

Can your clients consent to these days? Of course if we are able to reach some resolution before these dates, we will probably not need access; but we do want to continue moving forward until an agreement is reached. Thank you.

Tara L. Paciorek
Assistant Attorney General, EES/ODNR
Ohio Attorney General Mike DeWine
2045 Morse Rd. #D-2
Columbus, Ohio 43229
Tel: (614) 265-6418

From the law offices of Vorys, Sater, Seymour and Pease LLP.

IRS CIRCULAR 230 DISCLOSURE: In order to ensure compliance with requirements imposed by the U.S. Internal Revenue Service, we inform you that any federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of (i) avoiding penalties that may be imposed under the U.S. Internal Revenue Code or (ii) promoting, marketing, or recommending to another person, any transaction or other matter addressed herein.

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From the law offices of Vorys, Sater, Seymour and Pease LLP.

IRS CIRCULAR 230 DISCLOSURE: In order to ensure compliance with requirements imposed by the U.S. Internal Revenue Service, we inform you that any federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of (i) avoiding penalties that may be imposed under the U.S. Internal Revenue Code or (ii) promoting, marketing, or recommending to another person, any transaction or other matter addressed herein.

Tara Paciorek

From: Tara Paciorek
Sent: Friday, August 10, 2012 8:50 AM
To: 'Fusonie, Thomas H.'
Subject: RE: Appraisal site views
Attachments: image001.jpg

Thanks Tom.

Tara L. Paciorek

Assistant Attorney General, EES/ODNR
Ohio Attorney General Mike DeWine
2045 Morse Rd. #D-2
Columbus, Ohio 43229
Tel: (614) 265-6418

From: Fusonie, Thomas H. [mailto:thfusonie@vorys.com]
Sent: Thursday, August 09, 2012 4:47 PM
To: Tara Paciorek; Gerald Dailey
Cc: Ingram, Bruce L.; Miller, Joseph R.; Brewer, Martha C.; Daniel J. Martin
Subject: RE: Appraisal site views

Mr. Horner can make his site visits on August 15. He needs to do Mark Knapke's in the morning.

From: Tara Paciorek [mailto:tara.paciorek@ohioattorneygeneral.gov]
Sent: Tuesday, August 07, 2012 8:36 AM
To: Fusonie, Thomas H.; Gerald Dailey
Cc: Ingram, Bruce L.; Miller, Joseph R.; Brewer, Martha C.; Daniel J. Martin
Subject: RE: Appraisal site views

Tom,

Tom Horner was just asked to testify on August 14, so that date is no longer available. Thanks.

Tara L. Paciorek

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Ohio Attorney General Mike DeWine
2045 Morse Rd. #D-2
Columbus, Ohio 43229
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From: Fusonie, Thomas H. [mailto:thfusonie@vorys.com]
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To: Tara Paciorek; Gerald Dailey

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Subject: RE: Appraisal site views

Tara,

August 8 will not work. I will get back to you on the rest.

Tom



Thomas H. Fusonie
Attorney at Law

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52 East Gay Street | Columbus, Ohio 43215

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Email: thfusonie@vorys.com
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From: Tara Paciorek [mailto:tara.paciorek@ohioattorneygeneral.gov]
Sent: Monday, July 30, 2012 2:26 PM
To: Gerald Dailey; Fusonie, Thomas H.
Cc: Ingram, Bruce L.; Miller, Joseph R.; Brewer, Martha C.; Daniel J. Martin
Subject: RE: Appraisal site views

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Assistant Attorney General, EES/ODNR
Ohio Attorney General Mike DeWine
2045 Morse Rd. #D-2
Columbus, Ohio 43229
Tel: (614) 265-6418

From: Gerald Dailey
Sent: Friday, July 20, 2012 2:10 PM
To: Fusonie, Thomas H.; Tara Paciorek
Cc: Ingram, Bruce L.; Miller, Joseph R.; Brewer, Martha C.; Daniel J. Martin
Subject: RE: Appraisal site views

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Gerald E. "Jed" Dailey

Assistant Attorney General - Environmental Enforcement Section - ODNR
Office of Ohio Attorney General Mike DeWine
Section Number: 614-265-6870
Direct Number: 614-265-6944
Fax Number: 614-268-8871
Gerald.Dailey@OhioAttorneyGeneral.gov
2045 Morse Road, D-2
Columbus, OH 43229-6693

www.ohio.attorneygeneral.gov

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Subject: RE: Appraisal site views

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Tom Fusonie



Thomas H. Fusonie
Attorney at Law

Vorys, Sater, Seymour and Pease LLP
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Direct: 614.464.8261
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Email: thfusonie@vorys.com
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From: Tara Paciorek [mailto:tara.paciorek@ohioattorneygeneral.gov]
Sent: Wednesday, July 18, 2012 1:38 PM
To: Fusonie, Thomas H.
Cc: Gerald Dailey; Ingram, Bruce L.; Miller, Joseph R.; Brewer, Martha C.; Daniel J. Martin
Subject: RE: Appraisal site views

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From: Fusonie, Thomas H. [mailto:thfusonie@vorys.com]
Sent: Tuesday, July 17, 2012 2:55 PM
To: Tara Paciorek
Cc: Gerald Dailey; Ingram, Bruce L.; Miller, Joseph R.; Brewer, Martha C.; Daniel J. Martin
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Sent: Tuesday, July 17, 2012 12:53 PM
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Tara L. Paciorek
Assistant Attorney General, EES/ODNR
Ohio Attorney General Mike DeWine
2045 Morse Rd. #D-2
Columbus, Ohio 43229
Tel: (614) 265-6418

From: Fusonie, Thomas H. [mailto:thfusonie@vorys.com]
Sent: Monday, July 16, 2012 11:50 AM
To: Tara Paciorek
Cc: Gerald Dailey; Ingram, Bruce L.; Miller, Joseph R.; Brewer, Martha C.; Daniel J. Martin
Subject: RE: Appraisal site views

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Tom Fusonie

From: Tara Paciorek [mailto:tara.paciorek@ohioattorneygeneral.gov]
Sent: Thursday, July 12, 2012 3:49 PM
To: Fusonie, Thomas H.
Cc: Gerald Dailey
Subject: RE: Appraisal site views

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Jean Karr and William Ransbottom
Jerry and Betty Powell
Thomas and Brenda Powell
Duane Sheets
Rodney and Linda Sheets
Gale and Nelda Thomas

Let me know. Thanks.

Tara L. Paciorek
Assistant Attorney General, EES/ODNR
Ohio Attorney General Mike DeWine
2045 Morse Rd. #D-2
Columbus, Ohio 43229
Tel: (614) 265-6418

From: Tara Paciorek
Sent: Thursday, July 12, 2012 1:27 PM
To: 'Fusonie, Thomas H.'; 'Brewer, Martha C. (mcbrewer@vorys.com)'
Cc: 'Ingram, Bruce L.'; 'Miller, Joseph R.'; Daniel J. Martin; Gerald Dailey
Subject: RE: Appraisal site views

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Mark Knapke
Timothy Knapke
Linda Linn
Opal Post
William Muhlenkamp

Please advise whether these dates are acceptable. Thanks so much!

Tara L. Paciorek

Assistant Attorney General, EES/ODNR
Ohio Attorney General Mike DeWine
2045 Morse Rd. #D-2
Columbus, Ohio 43229
Tel: (614) 265-6418

From: Tara Paciorek
Sent: Friday, June 29, 2012 8:43 AM
To: 'Fusonie, Thomas H.'; Brewer, Martha C. (mcbrewer@vorys.com)
Cc: Ingram, Bruce L.; Miller, Joseph R.; Daniel J. Martin; Gerald Dailey
Subject: Appraisal site views

Tom,

Our Appraiser, Bruce Dunzweiler would like to have access to the following properties on July 16 & 17:

Jean Karr and William Ransbottom
Jerry and Betty Powell
Thomas and Brenda Powell
Duane Sheets
Rodney and Linda Sheets
Gale and Nelda Thomas

Can your clients consent to these days? Of course if we are able to reach some resolution before these dates, we will probably not need access; but we do want to continue moving forward until an agreement is reached. Thank you.

Tara L. Paciorek

Assistant Attorney General, EES/ODNR
Ohio Attorney General Mike DeWine
2045 Morse Rd. #D-2
Columbus, Ohio 43229
Tel: (614) 265-6418

From the law offices of Vorys, Sater, Seymour and Pease LLP.

IRS CIRCULAR 230 DISCLOSURE: In order to ensure compliance

Tara Paciorek

From: Tara Paciorek
Sent: Tuesday, August 14, 2012 5:04 PM
To: Fusonie, Thomas H.; Brewer, Martha C.
Cc: Gerald Dailey
Subject: RE: SITE VIEWS

Thanks Tom.

From: Fusonie, Thomas H. [thfusonie@vorys.com]
Sent: Tuesday, August 14, 2012 4:24 PM
To: Tara Paciorek; Brewer, Martha C.
Cc: Gerald Dailey
Subject: RE: SITE VIEWS

Linda Linn is confirmed for a time TBD after 2:00.

From: Tara Paciorek [mailto:tara.paciorek@ohioattorneygeneral.gov]
Sent: Tuesday, August 14, 2012 2:09 PM
To: Fusonie, Thomas H.; Brewer, Martha C.
Cc: Gerald Dailey
Subject: RE: SITE VIEWS

Thanks Tom,

I'll forward this on.

Tara L. Paciorek

Assistant Attorney General, EES/ODNR
Ohio Attorney General Mike DeWine
2045 Morse Rd. #D-2
Columbus, Ohio 43229
Tel: (614) 265-6418

From: Fusonie, Thomas H. [mailto:thfusonie@vorys.com]
Sent: Tuesday, August 14, 2012 2:08 PM
To: Tara Paciorek; Brewer, Martha C.
Cc: Gerald Dailey
Subject: RE: SITE VIEWS

Tara,

I can confirm the following:

Mark Knapke for 9:00

Chad and Andrea Knapke at 10:15

Tim Knapke at approximately 11:30.

The Post property and Muhlenkamp properties at times in the afternoon TBD. We're trying to confirm Linda Linn for a time in the afternoon.

Tom Fusonie

From: Tara Paciorek [mailto:tara.paciorek@ohioattorneygeneral.gov]
Sent: Monday, August 13, 2012 11:19 AM
To: Fusonie, Thomas H.; Brewer, Martha C.
Cc: Gerald Dailey
Subject: FW: SITE VIEWS

Tom,

This was my response from Tom Horner's office. They thought it might be better for you to come up with the schedule based on what works best for your clients; but if you would rather have them form the schedule, I will let them know.

Also, I have to wait for Dan to get in to sign the corrected version of the petition; but once that happens I will email it to you. Thanks.

Tara L. Paciorek
Assistant Attorney General, EES/ODNR
Ohio Attorney General Mike DeWine
2045 Morse Rd. #D-2
Columbus, Ohio 43229
Tel: (614) 265-6418

From: Tammy Donaldson [mailto:Tammy@ohiorealestate.org]
Sent: Monday, August 13, 2012 9:51 AM
To: Tara Paciorek
Cc: Gerald Dailey
Subject: RE: SITE VIEWS

Tara

All of our properties are vacant, except one, and are in the immediate area of each other. Due to this and everything having to be scheduled through Tom Fusonie, it would probably be best if he decides the time of the inspections. He will be talking to each owner and will know their best times?

For time allowances, we would like to have 45 minutes for each of the five vacant properties (3 Knapke, Muhlenkamp, and Linn) with a 30 minute buffer between each inspection. We think 1½ hours should be good for the Post property as we would like to inspect the home and outbuildings. Any property owners that will not be meeting with us, we can do those last on our own (assuming permission is given), unless the attorneys would still like to inspect those properties with us and want to schedule them.

We would like to start the inspections at 9:00 am.

Tammy

Ohio Real Estate Consultants, Inc.

Tammy L. Donaldson
Vice President – Public Projects
201 Bradenton Avenue
Dublin, Ohio 43017
614-791-0038 ext. 5
614-791-8956 (Fax)

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From: Tara Paciorek [mailto:tara.paciorek@ohioattorneygeneral.gov]
Sent: Friday, August 10, 2012 10:19 AM
To: Tammy Donaldson
Subject: SITE VIEWS

Tammy,

I just spoke with Tom Fusonie from Vorys and he would like to have a schedule of the site views for next Wed. He also would like time for lunch built in to the schedule. Thanks.

Tara L. Paciorek
Assistant Attorney General, EES/ODNR
Ohio Attorney General Mike DeWine
2045 Morse Rd. #D-2
Columbus, Ohio 43229
Tel: (614) 265-6418

From the law offices of Vorys, Sater, Seymour and Pease LLP.

IRS CIRCULAR 230 DISCLOSURE: In order to ensure compliance with requirements imposed by the U.S. Internal Revenue Service, we inform you that any federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of (i) avoiding penalties that may be imposed under the U.S. Internal Revenue Code or (ii) promoting, marketing, or recommending to another person, any transaction or other matter addressed herein.

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From the law offices of Vorys, Sater, Seymour and Pease LLP.

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MIKE DEWINE

★ OHIO ATTORNEY GENERAL ★

Environmental Enforcement - ODNR
Office (614) 265-6870
Fax (614) 268-8871

2045 Morse Road, Building D-2
Columbus, Ohio 43229

www.OhioAttorneyGeneral.gov

June 12, 2012

Bruce Ingram
Joseph Miller
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43215

Subject to Ohio Rule of Evidence 408

Re: State ex rel. Doner, et al., v. Zody

Dear Bruce and Joe:

I am writing to follow-up on the meeting today at ODNR. Thanks for coming out to ODNR and engaging in some frank discussion about our respective positions.

I want to memorialize that as a result of our discussions, ODNR has asked the Relators to consider \$5,000.00 per acre as compensation for flowage easements on their properties and all claims presented in this litigation. This offer is subject to final management approval by ODNR in consultation with the Governor's Office, the Office of Budget and Management and the Ohio Attorney General's Office. As we discussed, this offer would also be dependent upon an appropriation approval by the Ohio General Assembly.

Also during our discussions, you advised that ODNR should temporarily defer a filing of the Doner and Ebbing cases for at least 2 weeks pending on-going settlement discussions. As a practical matter, we will defer additional appraisal work during this period while we continue discussions, but we will continue the process of conducting surveys and preparing legal descriptions. Finally, during today's meeting, we hand-delivered to you, completed legal descriptions and surveys for the 27 parcels contained in "Phase I" of the survey project.

We agreed that we will further evaluate the parcels that involve commercial and residential land uses as presented with your prior correspondence concerning those properties, and you agreed that you would confirm whether the total acreage for all pending and future litigation was 4,834.745 acres or whether there would be additional

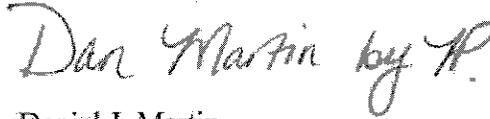
Attachment 3

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acreage on the basis of the commercial/residential property as already submitted or about to be filed.

Please feel free to contact Tara, Jed or me if we can address additional questions or concerns.

Very truly yours,

A handwritten signature in cursive script that reads "Dan Martin by P.". The signature is written in dark ink and is positioned above the typed name.

Daniel J. Martin
Assistant Attorney General

cc: Bill Damschroder
Fred Shimp
Paul Baldrige

STATE OF OHIO)
)ss
COUNTY OF FRANKLIN)

AFFIDAVIT OF DANIEL J. MARTIN

RE: *State ex rel Doner et al., v. Zehringer*, Case No. 2009-1292

I, Daniel J. Martin, employee of the Ohio Attorney General's Office, being first duly sworn, hereby state that I have personal knowledge of the facts contained in this Affidavit, that I am competent to testify to the matters stated herein, and that the following is true to the best of my knowledge and belief.

1. I am currently an Assistant Attorney General for the State of Ohio, and am the Supervising Attorney of the unit of the Environmental Enforcement Section that represents the Ohio Department of Natural Resources ("ODNR").
2. My duties include coordinating and participating in litigation involving ODNR and the Director of ODNR. In conjunction with those responsibilities, I also represent those clients in negotiations pertaining to litigation.
3. Through my employment with the Attorney General's Office, I am familiar with the above referenced case and the resulting appropriation cases that ODNR and the Attorney General's Office are preparing for litigation.
4. Through my duties associated with my employment, I became involved in both settlement discussions and preparation of appropriation actions related to the Court's Writ of Mandamus issued in December of 2011.

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5. After receiving a proposal from Relators' counsel to resolve all the Relator cases for an amount in excess of \$48 million, on December 14, 2011, I became involved in discussion among ODNR, the Attorney General's Office, and staff from the Office of Budget and Management and Governor's legal counsel to review and respond to the proposal. A true copy of Mr. Ingram's letter from my files is attached hereto as Attachment 1. A true copy of a December 27, 2011 response from Assistant Attorney General William Cole from my files is attached hereto as Attachment 2. On January 3, Relators' counsel responded with a letter dated January 3, 2012, a true copy from my files is attached as Attachment 3.
6. After consultation and review from ODNR and my management at the Attorney General's Office, I drafted and sent a response to counsel for the Relators' rejecting their proposal and suggesting a counter-offer of \$6.2 million. A true copy of that letter from my files is attached hereto as Attachment 4. Relators' counsel responded with a rejection and reduced their prior offer by one million dollars in a February 22, 2012 letter, a true copy from my files is attached as Attachment 5.
7. While these initial discussions took place, I participated in a telephone conference with Judge Ingraham from the Mercer County Common Pleas Court, along with other counsel from ODNR and the Attorney General's Office, and Relators' counsel, on January 19, 2012. Additional conferences took place on periodic basis, and as recently as September 10, 2012. Counsel for the parties felt it was useful to engage in preliminary dialogue with the trial court that would handle the cases in advance of making the filings. At that time, I discussed with the Court that while there were settlement discussions towards a global resolution, the State would also be planning

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to conduct surveys and appraisals and would file cases as that work was completed.

I advised that the State was pursuing a phased approach as it was also discussed that it would not be feasible or reasonable to file all the cases for the 80 or more Relators at one time given the State's and trial Court's resources. The trial court indicated the general approach suggested by the State was reasonable.

8. At the February 27, 2012 preliminary conference, I explained to Relators' counsel the methodology and timeline for completing the survey and appraisal work. I also discussed, given the trial court's previous ruling in a related case previously tried in Mercer County, that ODNR planned to be consistent with that prior determination by generating metes and bounds descriptions of flowage easements based on the extent of 2003 flood elevations recorded by the Mercer County Engineer. During the call, Judge Ingraham acknowledged that he did not want a situation similar to that prior matter, which delayed those proceedings because a more accurate description needed to be prepared, and the petition amended. I followed up with a letter to Relators' counsel on March 12, 2012 to memorialize and outline the framework to be employed by ODNR, which would divide the Beaver Creek corridor into "Phase I" and "Phase 2," and involve outside vendors to assist ODNR in completing surveys and appraisals. A true copy of that letter from my files is attached hereto as Attachment 6. Counsel exchanged further letters, including my letter dated March 30, 2012 where I again explain the process ODNR must use to prepare surveys. True copies of those letters from my files are attached hereto as Attachments 7 & 8.
9. By the middle of May 2012, ODNR had obtained completed surveys and appraisals for the Doner and Ebbing properties. Pursuant to R.C. 163.04(B), I prepared and

sent good faith offers to Relators' counsel on May 16, 2012. My office had also provided copies of the surveys, legal descriptions, and detailed appraisal reports.

Attached hereto as Attachments 9 and 10 are true copies from my files of the Ebbing and Doner offer letters.

10. By letter dated May 22, 2012, Relators' counsel rejected the good faith offers and proposed counter-offers roughly double ODNR's appraised value. A true copy of the Relators' letter from my files is attached hereto as Attachment 11. On May 29, 2012 I responded, requesting justification for the discrepancy, and suggesting that ODNR was prepared to file the first two cases if no agreement on these parcels could be made. A true copy of that letter from my files is attached hereto as Attachment 12.
11. On May 25, 2012 I received a letter from Relators' counsel. Attached hereto as Attachment 13 is a true copy of the letter from my files. I responded on May 31 laying out in great detail the work ODNR was doing. A true copy of that letter from my files is attached hereto as Attachment 14.
12. On June 12, 2012, I attended a meeting that had been requested by Relators' counsel. The meeting was held at ODNR's offices and attended by Relators' counsel Bruce Ingram and Joseph Miller, myself and other counsel from the Attorney General's Office, William Damschroder, General Counsel for ODNR, and Director Zehringer and Assistant Director Shimp. I had sent a letter confirming this meeting on June 11, 2012, and a true copy from my files is attached hereto as Attachment 15.
13. At this meeting, the parties discussed the possibility of re-engaging in the global settlement discussions. Assistant Director Shimp explained that the decision to resolve the cases globally would need executive and ultimately legislative approval,

as such a sum of money would necessitate a special appropriation, and was not provided in ODNR's budget. The ODNR staff asked Relators' counsel if \$5,000.00 per acre was a figure that might be accepted as compensation by Relators for all their claims. Assistant Director Shimp emphatically cautioned Relators' counsel that this amount would have to be approved by management at the highest levels, and would be dependent on funding from the General Assembly. Relators' counsel responded that they would discuss the \$5,000 an acre amount with their clients, and asked that I memorialize ODNR's proposal in writing. The letter clearly stated the amount discussed was subject to additional approvals. Attached hereto as Attachment 16 is a true copy from my files of that letter dated June 12, 2012.

14. Near the end of the June 12, meeting, I wanted to be abundantly clear about how Relators' counsel wished to proceed with the Doner and Ebbing cases which were ready for filing. I asked if it might be advisable to continue on a dual track of processing individual cases for filing while potential global settlement talks take place. Relators' counsel requested that the State not file these cases or any other cases, and advised that it would not be beneficial to settlement discussions if cases were being filed. The State agreed to forego any filings at that time while settlement discussions continued. During a subsequent telephone conversation with Relators' counsel Joseph Miller, I was also asked that if ODNR was close to finalizing further appraisals, to please defer releasing those appraisals while a global settlement resolution was being discussed.

15. On June 19, 2012, Relators' counsel responded with a letter flatly rejecting the suggestion that their clients would be fairly compensated at \$5,000.00 an acre,

making a counter-offer roughly valued at over \$8,000 an acre, and making additional demands such as a liquidated penalty clause that would commit the State to paying \$5 million to the Relators if funds for a global settlement were not appropriated. A true copy of that letter from my files is attached hereto as Attachment 17. I responded expressing disappointment in the response and advised that it was under review. A true copy of that letter from my files is attached hereto as Attachment 18. Relators' counsel provided a response by letter dated June 26, 2012, a true copy of that letter from my files is attached hereto as Attachment 19.

16. I responded to Relators' counsel in a letter dated June 29, 2012 with an adjusted proposal of \$24,205,000. My letter rejected the concept of binding the State to a liquidated damages payment, reiterated that funding for such a settlement was dependent on legislative approval, and that if this proposal was agreeable to Relators, ODNR would promote and recommend it. A true copy of this letter from my files is attached hereto as Attachment 20.

17. I did not receive a written response, but was informed by ODNR General Counsel William Damschroder that Relators' counsel contacted him through a mutual e-mail exchange, and requested a face-to-face meeting among counsel. That meeting was held on July 12, 2012.

18. I attended the July 12 meeting with William Damschroder and met with Bruce Ingram, and Joseph Miller at ODNR. At that meeting, counsel for Relators rejected the proposal contained in my June 29, 2012 correspondence, and proposed an offer that would create two different categories of compensation; an agricultural group and

a commercial-residential group. Counsel made a demand of total compensation of \$27,322,146, amounting to roughly \$2.267 million more for agricultural landowners over ODNR's last proposal and an additional \$885,000.00 allocated to commercial/residential Relators. This totaled \$3.15 million more than the State's proposal. Relators' counsel also wanted a commitment that if the surveys completed by ODNR did show a "material difference" over the amount of land individual Relators sought to be taken in their prior affidavits, that they would reserve the right to obtain additional compensation above and beyond the \$27.322 million demand. After communicating their counter-offer, Relators' counsel asked that we contact them with a verbal response and not reduce a substantive response to writing. Mr. Damschroder and I communicated the Relators' position to ODNR and the Attorney General's Office senior management.

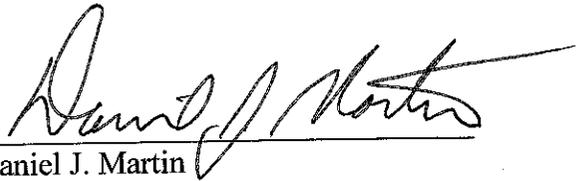
19. I participated in at least one meeting where senior administration staff were briefed on the proposal. I was not involved in further briefings but was subsequently advised by ODNR General Counsel William Damschroder that additional briefings were occurring. On July 30, 2012 counsel for Relators requested an update regarding the internal discussion, a true copy of that letter from my files is attached hereto as Attachment 21. I responded with a on August 1, 2012, and a true copy of that letter from my files is attached hereto as Attachment 22.

20. I was subsequently advised by Mr. Damschroder that ODNR's direction was that Relators' counter-proposal was not acceptable, and that the Relator claims should be handled through the regular statutory process provided under R.C. Chapter 163. A

meeting was arranged for August 9, 2012 at ODNR with Relators' counsel Joseph Miller, Bruce Ingram, and Fred Mills and also attended by Mr. Damschroder and Assistant Director Shimp. At that meeting, on behalf of ODNR, I advised Relators' counsel that their last proposal was rejected, and that we were to proceed with handling the cases through the statutory appropriation process. This would mean Relators would receive individual written good-faith offers based on an appraised value, as required by R.C. 163.04(B). While I communicated the fact that global discussions were not authorized at this time, I never represented that Relators would be denied the offers for compensation provided by the appropriation statute.

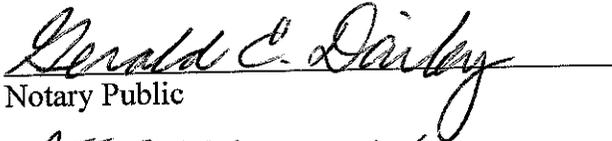
21. Shortly after the meeting, I filed the Ebbing appropriation case and the following week filed the Doner appropriation case. I, and other members of the Attorney General's Office continue to assist ODNR with representation in these two filings, and preparing for the making of additional offers and court filings as appraisals are finalized.
22. During the course of my representation, I have not attempted to mislead Relators' counsel or engage in bad faith negotiation, nor have I been directed or instructed to engage in any such conduct by any other person. My letters to Relators' counsel were drafted and reviewed in consultation with Attorney General's Office management and ODNR. I have not advised ODNR to refuse compliance of the Writ, or to interpose delay.

Further Affiant Sayeth Naught



Daniel J. Martin
Assistant Attorney General
2045 Morse Road, Building D-2
Columbus, Ohio 43229

Sworn to before me and subscribed in my presence this 14th day of September, 2012



Notary Public

ATTORNEY-AT-LAW
LIFETIME COMMISSION



Vorys, Sater, Seymour and Pease LLP
Legal Counsel

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Founded 1909

Bruce L. Ingram
Direct Dial (614) 464-6480
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Email bingram@vorys.com

FOR SETTLEMENT PURPOSES ONLY – NOT ADMISSIBLE AS EVIDENCE

December 14, 2011

VIA E-MAIL AND US MAIL (Bill.Damschroeder@dnr.state.oh.us)

William Damschroeder
Chief Legal Officer
Ohio Department of Natural Resources
2045 Morse Road, Building D
Columbus, OH 43229-6693

Dear Bill:

Following up on the recent decision from the Ohio Supreme Court, we anticipate asking the court to convene a status conference in January to discuss handling the lawsuits that ODNR has been ordered to file in Mercer County to compensate our clients.

As you know, the common pleas court decided important issues in the five cases that have been resolved, including the date of take (determined to be the date of trial). In addition, a comprehensive set of jury instructions were developed over the course of the two trials, the last trial resulting in an award roughly equal to the landowner's appraiser's opinion and several times the State's appraiser's opinion.

Having tried two cases to verdict, and subsequently resolving three remaining cases by settlement, my sense is that both sides have a reasonably firm grip on the results that can be expected if 60+ new cases were tried in Mercer County.

We met with our clients last week to discuss the Ohio Supreme Court decision. Each is eager to have their case heard by a jury in Mercer County. However, we also encouraged them to consider resolving their cases by settlement. After discussion, we received their consent to make an offer of settlement of all relators' cases for a single lump sum, in exchange for a flowage easement on the properties measured by the highest elevation of the 2003 flooding (which was the extent of the flowage easement sought by ODNR in the five resolved cases.)

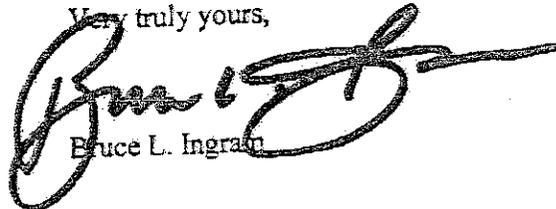
Attachment 1

William Damschroeder
December 14, 2011
Page 2

The lump sum demand is \$48,403,181, which includes compensation for the property taken by the flowage easement, damage to the residue and damage to structures impacted by the flooding. It also includes a component attributable to attorney's fees for all relators based on the recovery of attorneys' fees in the *Linn* case tried earlier this year. In that case, the deposit was 17.5% of the verdict amount. The attorneys' fees component included in the lump sum demand is 25% of the difference between the total amount of damages and 17.5% of that amount. Be advised that we are also going to be filing a request for substantial attorneys' fees incurred in the mandamus action in the Ohio Supreme Court.

Bill, we think the State of Ohio owes it to the landowners of Mercer County to finally put to rest the devastation of fourteen years of flooding by resolving these cases now. Our clients have taken the first step. This offer shall remain open for acceptance by ODNR for fourteen (14) days from today's date. Please advise of your response.

Very truly yours,



Bruce L. Ingram

BLI/mjm

cc: Joseph R. Miller



MIKE DEWINE

★ OHIO ATTORNEY GENERAL ★

Executive Agencies Section
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www.OhioAttorneyGeneral.gov

(via fax and hand delivery)

December 27, 2011

Bruce Ingram, Esq.
Vorys, Sater, Seymour & Pease, LLP
52 E. Gay Street
PO Box 1008
Columbus, OH 43215

Re: *Doner et al. v. Ohio Department of Natural Resources*

Dear Bruce:

The Ohio Department of Natural Resources is in receipt of your settlement offer dated December 14, 2011. Because your settlement demand is for payment of taxpayer dollars, any counteroffer will need to go through the appropriate levels of review. This simply cannot be done in the response time given. Therefore, we will require additional time to respond to your offer. In an effort to accelerate this process, it would be beneficial if you could share with us details of the methodology used to arrive at the \$48,403,181 you have requested.

Once we have the information necessary to make a fair and informed decision and receive the necessary settlement authorizations, we will reply as quickly as we are able. If you have any questions, please contact me.

Sincerely,

Mike DeWine
Ohio Attorney General

William J. Cole
Assistant Attorney General

Attachment 2

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Bruce L. Ingram
Direct Dial (614) 464-6480
Direct Fax (614) 719-4775
Email blingram@vorys.com

FOR SETTLEMENT PURPOSES ONLY – NOT ADMISSIBLE AS EVIDENCE

January 3, 2012

VIA E-MAIL AND US MAIL

William J. Cole
Assistant Attorney General
Office of the Ohio Attorney General
30 East Broad Street, 26th Floor
Columbus, Ohio 43215

Dear Bill:

Thank you for your December 27, 2011 letter concerning our clients' collective settlement demand to ODNR in exchange for a flowage easement on the affected properties measured by the 2003 flooding. I write in response to your request that we provide to you the details of the methodology used to arrive at the amount of our clients' demand, \$48,403,181.

Many of our clients are anxious for their day in court and, with favorable precedent already set on date of take and the jury instructions, we remain confident of the results that could be achieved on their behalf in the Mercer County Court of Common Pleas. Nonetheless, we recognize that if a reasonable amount can be agreed upon a collective settlement would make sense for both sides. Thus, we are providing extensive and specific information in response to your request in accordance with Evid. R. 408 to evaluate the potential for a collective settlement. Please be advised that most, if not all, of our clients are prepared to testify to valuations and amounts of compensation in excess of the numbers enclosed and ODNR's exposure remains even greater than the data I am providing.

Enclosed please find two spreadsheets. These spreadsheets – one for our clients who own agricultural land and one for our clients whose property is used only for residential or business purposes – reflect actual amounts for compensation and damage to the residue for each of our clients and form the basis for our collective, lump sum demand. Specifically, the total amount demanded on behalf of each our clients is based upon the methodology and values previously used by our appraiser in the *Linn* case. In that case, our appraiser valued agricultural

FOR SETTLEMENT PURPOSES ONLY – NOT ADMISSIBLE AS EVIDENCE

William Cole
January 3, 2012
Page 2

land at \$9,400/acre in January, 2011 and testified that agricultural land in Mercer County appreciates 8%/year. As a result, though we already know of higher sales in the market place, we used a baseline value of \$10,000/acre for agricultural land. As our appraiser did in the *Linn* case, for each of our agricultural clients, we calculated that the farmland or structures that flood are devalued by 90% (or \$9,000/acre for land). For land or structures that do not flood but are part of the damaged residue, again, as our appraiser did in the *Linn* case, we devalued that land and those structures by 50% (or \$5,000/acre for land). Consistent with our appraiser's prior approach, we used the Mercer County Auditor's depreciated value for our client's affected structures.

The second spreadsheet for our residential clients reflects valuations of land and dwellings or buildings either from actual sale amounts or the Mercer County Auditor's valuations. For each of these, consistent with the devastating flooding of their homes, we have demanded 90% of their homes' and lands' values, as well as \$20,000 for each client in relocation assistance, consistent with federal and state standards for total takes of family homes or businesses. We have also made a specific demand on behalf of our clients that own a commercial business that is flooded by ODNR based upon sales and income data that would support such an amount under either the comparable sales or income approach to valuation.

As explained in my December 14, 2011 to Bill Damschroder, the lump sum demand also includes a component attributable to attorney's fees based on the recovery of attorneys' fees in the *Linn* case. In that case, the deposit was 17.5% of the verdict amount. Thus, the attorneys' fees component included in the lump sum demand – which totals \$8,135,129.00 – is 25% of the difference between the total amount of damages and 17.5% of that amount. Finally, the settlement demand also includes \$700,000 for attorneys fees incurred in mandamus action. As you can see from our motion, we are actually seeking an award from the Supreme Court of Ohio far in excess of that amount. A collective settlement, if reached, would resolve this issue as well and we would dismiss our motion for attorneys fees.

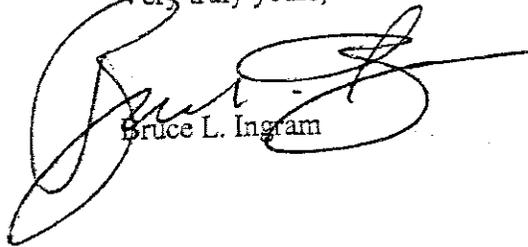
We expect that ODNR's response to our demand will recognize its total exposure in these matters, the *Linn* trial that resulted in an award roughly equal to the landowner's appraiser's opinion and a significant award of attorneys fees, as well as the clear benchmarks set by ODNR in settling three previous cases in the Spring of 2011, of which our current clients are aware. Further, we will only entertain a counter-offer from ODNR that would settle the claims of *all* of our clients, not only some of ODNR's choosing.

FOR SETTLEMENT PURPOSES ONLY - NOT ADMISSIBLE AS EVIDENCE

William Cole
January 3, 2012
Page 3

We continue to believe that the State is best served in finally putting to rest the devastation of fourteen years of flooding by resolving these cases collectively and quickly. Please advise of your response within the next ten days.

Very truly yours,



Bruce L. Ingram

BLI/mjm

cc: William Damschroder
Daniel J. Martin
Joseph R. Miller
Thomas H. Fusonie



MIKE DEWINE

— ★ OHIO ATTORNEY GENERAL ★ —

Environmental Enforcement - ODNR
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(via e-mail and United States Mail)

February 21, 2012

Bruce Ingram, Esq.
Vorys, Sater, Seymour, Pease, LLP
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43215

Re: Doner et al., v. Ohio Department of Natural resources

Offer of Settlement and Compromise, Not Admissible Pursuant to Ohio Rule of Evidence 408

Dear Bruce:

We appreciate the patience of your clients as we have formulated a counter-offer to your letter of December 14, 2012. We have just received full authority to make this offer and the State will be able to pay this amount in full this year.

We propose a single lump sum payment in the amount of \$6,216,059.16 in exchange for a flowage easement over your clients' land which was covered by the 2003 flooding event, and a release of all claims. This amount acknowledges the frequency with which an event of the magnitude of the 2003 event would occur. Further, I would add that while this offer is extended as an attempt to resolve this matter and is made in good faith, it is not intended to serve as a "written good faith offer" as described in R.C. Chapter 163.

Although damage to the residue is a specific per parcel determination made by an appraiser, we are mindful of the fact that the juries in the Baucher and Linn cases awarded an amount for damage to the residue and our calculation includes \$2,953,751.48 for 2,056.93 acres of residue. We used a baseline value of \$1,436 per acre for residue and \$7,121 per acre for the 68 acres of land that experience flooding as a result of modification of the spillway during an event with a recurrence interval of 15 years. Our calculation also acknowledges that we are taking an easement, not a deed, over the land covered by the 2003 event. For that reason and because of the low probability of such an event

Attachment 4

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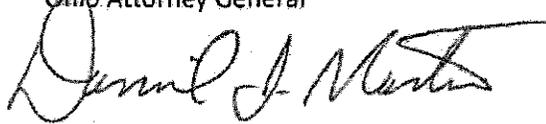
happening again, we propose 10% of our baseline value for compensation for those 2,593.97 acres, or \$1,846,906.64. This means a total of \$5,284,886.12 as compensation and damages for your clients.

While we disagree that you are entitled to any attorney fees at this stage and we are confident that we will be successful in our opposition of your motion, in a good faith effort to settle all claims, our calculation includes an amount to satisfy those claims as well.

I would also note that aside from the issue of fair compensation, Director Zehringer is actively reconsidering the State's recent position with respect to lake level management, and this issue will be thoroughly re-evaluated. We recognize this is also an issue of great concern to many of your clients, and a change in that practice should help minimize the impact of the easement in the future. I would note that the overall evaluation of those practices includes an evaluation of the algae conditions in Grand Lake St. Marys as well as the important consideration of the potential impacts on your clients.

We appreciate your willingness to work towards a resolution that will be beneficial to both parties by avoiding the time and expense of litigating just compensation. This counter offer will remain open until March 9, 2012.

Sincerely,
MIKE DeWINE,
Ohio Attorney General

A handwritten signature in black ink, appearing to read "Daniel J. Martin". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Daniel J. Martin
Assistant Attorney General

VORYS

Vorys, Sater, Seymour and Pease LLP
Legal Counsel

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Email blingram@vorys.com

February 22, 2012

FOR SETTLEMENT PURPOSES ONLY – SUBJECT TO EVID. R. 408

VIA US MAIL AND E-MAIL

Daniel J. Martin
Assistant Attorney General
Office of the Ohio Attorney General
2045 Morse Road, Building D-2
Columbus, Ohio 4229

Re: Doner et al., v. Ohio Department of Natural Resources

Dear Dan:

We are in receipt of your letter of February 21, 2012.

Your recognition of acreage that frequently and severely floods according to the Supreme Court (2661 acres) and the “residue” property damaged by that flooding (2056 acres) is at least very close to the evidence submitted to the Supreme Court. However, ODNR’s gross understatement of the damage to the market value of that land is diametrically opposed to the reaction of Mercer County juries to the evidence presented to them last year, which evidence did not even include the video and photographic evidence of the massive 2011 flooding that drew the attention of the Ohio Supreme Court. To claim that only 68 acres of land floods with a 15 year frequency is truly laughable in the face of eyewitness testimony and documentary evidence of the massive flooding in the years 2003, 2005, 2008 and 2011 and additional flooding in the intervening years. To the extent that this is based on Stantec’s discredited science, we refer you to page 11 of the Supreme Court opinion on that subject.

We also remind you that the offer conveyed in your letter to more than 80 landowners is dwarfed by the compensation, in settlement or in verdicts, actually paid by ODNR to only FIVE similarly situated Mercer County landowners. We can only assume that this

Attachment 5

Columbus | Washington | Cleveland | Cincinnati | Akron | Houston

98

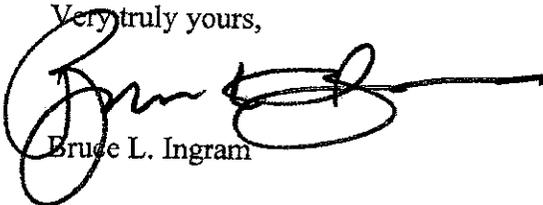
Daniel J. Martin
February 22, 2012
Page 2

settlement offer was based in part upon the input of the lawyers who were not involved in those cases in Mercer County.

While we are tempted to reject this offer without a counter, we also recognize that ODNR worked with us in good faith to resolve the five previous cases. Therefore we counter with a demand of \$47,403.181 which is a \$1.0 M reduction in our previous demand made on December 14, 2011. If ODNR does not respond in good faith with a significant move that recognizes its actual exposure to more than 80 landowners and for their attorneys' fees, we can only conclude that ODNR is not truly interested in settlement and we can declare these negotiations at an end.

This offer is open until the close of business March 1, 2012.

Very truly yours,



Bruce L. Ingram

BLI/nmm



MIKE DEWINE

★ OHIO ATTORNEY GENERAL ★

Bruce Ingram
Vorys, Sater, Seymour & Pease
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008

Environmental Enforcement - ODNR
Office (614) 265-6870
Fax (614) 268-8871

2045 Morse Road, Building D-2
Columbus, Ohio 43229

www.OhioAttorneyGeneral.gov

March 12, 2012

Dear Bruce:

I am writing to memorialize the update we provided regarding the Doner appropriations during our conference call with Judge Ingraham on February 27th, and also to respond to Joseph Miller's recent correspondence. To be clear, there is certainly no "foot dragging" on the part of the State with respect to moving forward with appropriations. While we continue to work towards a settlement, we are also moving on a contemporaneous track to prepare cases for filing to appropriate the flowage easements and pay just compensation to your clients.

I want to reiterate several points. First, the State is relying on the elevation of the July, 2003 flood for determining the extent of the take of the flowage easements. As I am sure you recall, this was the extent of take previously adjudicated in the *Post* series of cases. If there are objections to the use of the 2003 flood elevation level as a basis for extent of the take, we'd like to attempt to resolve those objections now. Obviously you can appreciate the additional costs and delay that would result if the State completes significant amounts of survey work using the 2003 elevation only to have that work disputed and litigated once the first case is filed.

As in the *Post* cases, ODNR is utilizing data and information gathered by the Mercer County Engineer in marking the extent of that flooding, and is developing it further to determine specific flood elevations on individual parcels. As these flood elevations are determined, maps are developed for each affected parcel that show the existing contours of the land as well as the flood elevation line. This process utilizes "Lidar" data from aerial mapping technologies and is being developed prior to physically entering the properties to conduct field surveys. The main purpose of the field surveys is to supplement and confirm the line derived from the "Lidar" data.

As a part of this process, ODNR will also review the affidavits submitted with Relator's Petition and the supplemental affidavits. ODNR's survey staff would also be interested in discussing with individual Relators their opinion and observations when conducting the actual field surveys, if permitted to do so. These discussions will help insure the accuracy of the surveys. As the data is developed, we will be providing notice to counsel of ODNR's intent to enter the property to conduct surveys, and would seek to coordinate access at a time satisfactory to the property owner during regular business hours. The field surveys will be conducted by ODNR survey crews and/or contract survey crews retained to expedite the process.

Attachment 6

From 2003 data available from the Mercer County Engineer, it appears that there are particular parcels that did not experience flooding in 2003, but are nonetheless identified in the petition for mandamus. In addition to Relator affidavits and supporting material, if there is further information that may assist ODNR in defining an area for a flowage easement on these parcels, we would be receptive to receiving and reviewing any such additional information that may exist. As these parcels are identified, we can provide you with a list of the properties and discuss what additional data or information, if any, should be considered in setting a metes and bounds description regarding these easements.

Concerning a specific time frame for conducting field surveys, ODNR is able to start plat map preparation on some parcels sooner than others because some existing data is already available. ODNR can then get survey crews into the field to supplement this process, probably as soon as May. A significant portion of the surveying efforts will take place in the office and are presently underway. In particular, the Doner and Ebbing parcel maps are currently being developed. We will be able to develop a more specific time frame for access to the properties as ODNR generates the mapping data needed for the surveys. The current "ballpark" estimate is that by approximately end of June the overall in-house data will be prepared, with a goal that all surveys be completed by the end of this year, as we discussed with Judge Ingraham.

As discussed in our conversation with Judge Ingraham, we intend to file cases as the surveys are completed and appraisals are prepared. We will comply with the requirements of Ohio Revised Code Chapter 163 by making an offer on specific parcels prior to filing, and if said offer is rejected, promptly file the case and post the requisite deposit with the Mercer County Clerk of Courts. We are not going to file all the cases in bulk at one time; rather, we plan to file them on a rolling basis, and will attempt to include, whenever we can, all the parcels for a particular landowner in a single filing. We are also mindful of Judge Ingraham's desire that the filings be complete and accurate with metes and bounds descriptions of the proposed flowage easements, so as to avoid the need to amend or re-file inadequate pleadings and/or descriptions of the take. If litigation is necessary, there is nothing to prevent the parties from moving forward with a trial schedule as the Court's docket permits while additional cases continue to be prepared and filed, and perhaps settled whether on a case-by-case basis or pursuant to a global settlement.

We remain very open to discussing any of these matters with you and to resolving any issues, including technical issues and procedural issues, as efficiently and as appropriately possible.

Sincerely,



Daniel J. Martin
Assistant Attorney General

Bruce L. Ingram
Direct Dial (614) 464-4480
Facsimile (614) 719-4775
E-Mail - bingram@vorys.com

March 21, 2012

VIA EMAIL AND US MAIL

Daniel Martin, Esq.
Assistant Attorney General
Office of the Ohio Attorney General
2045 Morse Road, Building D-2
Columbus, Ohio 43229

Re: *State ex rel. Doner, et al. v. Zody*, Slip Opinion No. 2011-Ohio-6117

Dear Dan:

We are in receipt of your March 12, 2012 letter.

First, it is now approaching four months since the Supreme Court issued the mandamus order and not a single case has been filed in Mercer County. Nor has there been one surveying crew to our knowledge dispatched to survey any of the land owned by our over 80 clients.

There should be no confusion about the extent of the take for most of our clients. The July, 2003 flood elevation is the extent of the take – given their uncontroverted affidavits and evidence submitted to the Ohio Supreme Court. However, some of our clients had even more acres flood in March, 2011 than in July, 2003. Those clients include: Jerome and Amy Meyer (Parcel Nos. 42-001000.0000, 42-019700.0000 and 42-019800.0000), Carl and Lucille Rose (Parcel No. 42-018500.0000), and Jeff Seifring (as to Parcel Nos. 26-044100.0000, 26-044100.0100, 26-044100.0200 and 26-044100.0300).

In your letter, you state that certain parcels in the petition for mandamus “did not experience flooding in 2003” according to data available from the Mercer County Engineer. The Mercer County Engineer measured flood elevation only at certain locations and did not attempt to determine the extent of flooding on each parcel. Thus, there are parcels for which the Mercer County Engineer’s measurements are inapplicable but which the conclusive evidence established are in fact flooded by ODNR.

Attachment 7

Daniel Martin, Esq.
March 21, 2012
Page Number 2

As to your suggestion that ODNR provide us with a list of properties about which there could be a question as to the extent of the take, we have been and are prepared to discuss those with you and ODNR's survey staff. That should be a very small list. Please furnish this list and we will immediately respond.

In our response, we will be relying primarily on the affidavits of Relators (and their fact witnesses) as to parcels that were subjected to flooding by ODNR or were part of the "larger parcel" subject to flooding. Relators submitted a chart with their Merit Brief detailing the specific parcels that ODNR causes to flood and supplemental evidence regarding the 2011 flooding. ODNR's review of these documents should clarify to ODNR which parcels ODNR floods.

The pace of ODNR's compliance with the Supreme Court order is wholly inadequate given that the flooded acreage figure in your February 21, 2012 letter agrees roughly with our analysis. For some of our clients, ODNR's suggestion that it cannot file appropriation actions without first surveying the July, 2003 flood elevation is groundless delay because the uncontroverted evidence in *Doner v. Zody* established that *all* of certain larger parcels they own flood as a result of ODNR. These clients include:

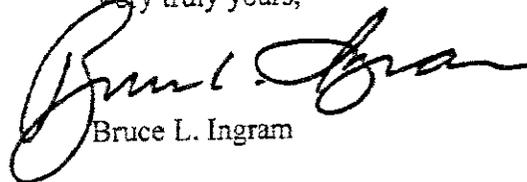
- David Johnsman, Trustee (30.0 acre parcel);
- Chad and Andrea Knapke (their one parcel in our spreadsheet previously provided to you on January 3, 2012);
- Mark Knapke, Trustee (his one parcel in our spreadsheet previously provided); and
- Leone Powell and Larry Pugsley (both parcels in our spreadsheet).

ODNR does not need a metes and bounds description of the flood elevation on these properties and it should have commissioned and obtained appraisals on these properties by now. We remind you that for certain parcels of Terry and Theresa Linn and the Post Family Trust, ODNR floods all of those parcels and ODNR did not do a metes and bounds description of its flowage easement for those parcels. If ODNR fails to file appropriation actions on these parcels by May 11, 2012 (six months after the Supreme Court order) we will take appropriate action in aid of the Supreme Court's mandamus order against ODNR.

Daniel Martin, Esq.
March 21, 2012
Page Number 3

Finally, we believe adequate surveyors are presently available in the state of Ohio to complete the surveying necessary in this case by no later than June 1, 2012. To fail to complete surveying for an entire year after the Supreme Court mandate is contempt. Please give us a schedule of field work for these parcels by March 30, 2012 that is consistent with completing all survey work by June 1, 2012.

Very truly yours,



Bruce L. Ingram

BLI/gjs

cc: William Damschroder, Esq.
Joseph R. Miller, Esq.
Thomas H. Fusonie, Esq. (all via email)



MIKE DEWINE
★ OHIO ATTORNEY GENERAL ★

Environmental Enforcement - ODNR
Office (614) 265-6870
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2045 Morse Road, Building D-2
Columbus, Ohio 43229

www.OhioAttorneyGeneral.gov

March 30, 2012

Bruce L. Ingram
Vorys, Sater, Seymour and Pease LLP
52 East Gay St.
P.O. Box 1008
Columbus, Ohio 43216-1008

Dear Bruce:

We are in receipt of your March 21, 2012 correspondence. I will seek to address the concerns expressed in your letter.

Revised Code Chapter 163 requires that certain tasks be completed as required by that Chapter antecedent to the filing of the petitions. We are proceeding to fulfill those requirements. Further, the Supreme Court clearly declined to address the extent of the take on any of the properties, and specifically directed the parties to the Mercer County Common Pleas Court for that determination. ODNR is working diligently toward those ends.

As you know, we have engaged Judge Ingraham in preliminary planning conferences to discuss a reasonable approach, and we are proceeding accordingly in light of Judge Ingraham's expectation that we avoid the issues that occurred in the *Post* litigation. Namely, those issues included uncertain descriptions of the take requiring amendments to the pleadings and ultimately, delays in the date of trial. Our desire, consistent we believe with yours, is to follow as efficient and expeditious a process as appropriately possible. While we will not commit to the arbitrary deadlines imposed in your letter, we will continue to work in good faith to efficiently carry out the Court's mandate in a reasonable time and, as communicated previously, will endeavor to have the petitions filed in phases as survey and appraisal work is completed.

Second, the in-house data gathering and preliminary plat mapping for the Doner and Ebbing parcels has been completed. I attach with this letter, copies of the preliminary plat maps for the Doner and Ebbing parcels. The legal descriptions for those parcels are nearing completion. It is ODNR's assessment that two of the Doner parcels (# 28-012300.000 & 28-012200.000) will likely not require field surveys given ODNR's assessment that the whole of the parcels would be subject to a flowage easement. ODNR's assessment of the many parcels at issue in this case is on-going. If ODNR's assessment confirms that the parcels you suggest in your letter are in fact subject entirely to a flowage easement, we could evaluate whether a field survey would be necessary for those particular parcels. We believe, with the exception of the Mark Knapke Trustee property, the other parcels you identify are associated with owners that have other parcels that are not wholly subject to the easement.

Attachment 8

105

As we had stated in our calls with Judge Ingraham, we intend, as much as possible, to file a petition covering all properties owned by a particular owner(s) so your clients would not have to respond to multiple petitions and participate in multiple trials. In light of your communication, ODNR will shift attention to those parcels to evaluate whether it is necessary to conduct a field survey to confirm the extent of the easement, and proceed accordingly.

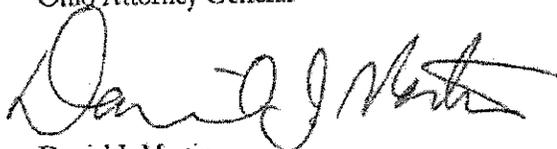
To expedite field surveys, ODNR is contracting with outside vendors to complete this work. Three firms in addition to the ODNR survey crew will be committed to the project. The firms are: Rolling & Hocevar Inc., Howerton Engineering & Surveying PLLC, and McCarty Associates, LLC. ODNR anticipates dividing the project into roughly three segments and engaging all three firms to work in each segment completing field surveys. We will be contacting you so that you may give notice to the owners and help arrange access to the properties.

Further, to complete appraisals needed at the time of filing, ODNR has retained Ohio Real Estate Consultants, Inc., and Erie Coast Appraisal Group Inc. As flowage easement areas are defined, these firms will be conducting the appraisals. As with the surveys, you will be contacted in advance if access to your clients' properties is required.

Lastly, with respect to the properties where 2003 flood data may not show an extent of flooding, we are continuing to evaluate those properties. ODNR will be working on developing a list of those parcels which we will make available for further discussion. The ODNR survey staff asks if they might be able to review color copies of the photographs submitted with the relator affidavits, and whether you would consider allowing them to talk with those relators regarding their knowledge about where flooding occurred on their property. This would assist in evaluating these parcels.

Neither ODNR nor the State of Ohio has refused to initiate the appropriation process or acted in bad faith. We will continue to be transparent as we proceed to comply with the Supreme Court's mandate, and we remain committed to an efficient and reasonable process to present these cases in a manageable fashion to the Mercer County Court for resolution. Again, we believe that it may be appropriate to sit down with you and discuss further thoughts or suggestions you may have with regard to these matters.

Sincerely,
Mike DeWine
Ohio Attorney General



Daniel J. Martin
Assistant Attorney General

POST FAMILY TRUST
80 ACRES
O.R. 5 PG. 441

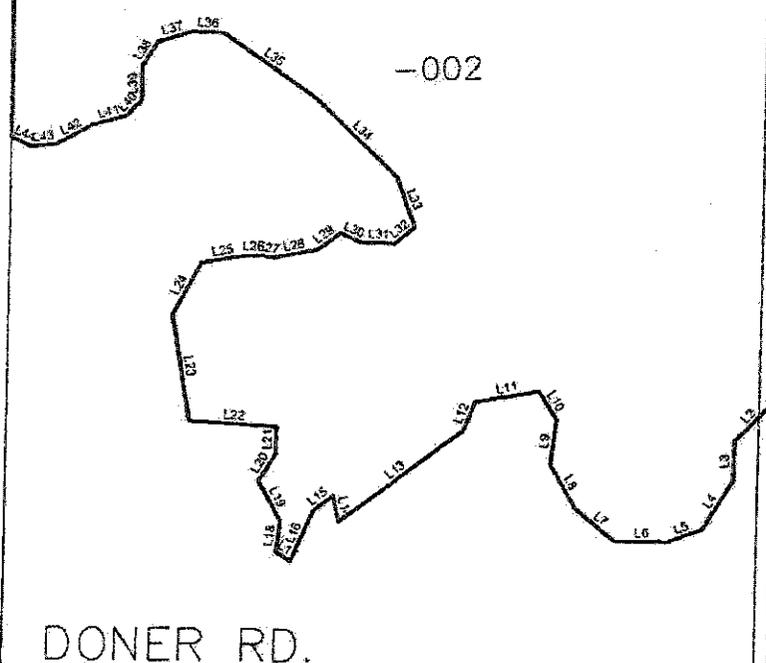
PRELIMINARY

Easement Area #1
72.066 Acres

WAYNE T
DONER
100.00 ACRES
O.R. 204 PG. 806
28-010500.0000

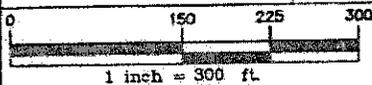
TERRY L. & THERESA R
LINN
102.554 Acres
D.V. 308 PG. 580
D.V. 308 PG. 777

LINN RD.
SANDRA MYERS
96.891 AC., D.V. 179. PG.
1741



DONER RD.

RONALD A &
AMY L
LINN
1.070 ACRES
O.R. 122 PG. 449



Flowage easement on the
Wabash River to an elevation of
322.5 feet, North American
Vertical Datum of 1988

Note: Drawing not based on
GIS data of the Ohio State Plane
Coordinate System, North Zone as the
North American Datum of 1983.
However, horizontal datum is not
indicated on this drawing.



SURVEYOR'S CERTIFICATE:
I, ROBERT L. SNELLER, being duly sworn, depose and say that I am a duly licensed Professional Surveyor in the State of Ohio, and that I am the author of the above described plat, and that the same is a true and correct copy of the original filed with me, and that I am not aware of any other copies of the same.

LINE TABLE			LINE TABLE			LINE TABLE		
LINE	BEARING	LENGTH	LINE	BEARING	LENGTH	LINE	BEARING	LENGTH
L1	300°03'	501'48'31"W	L17	87°14'	825'20'36"W	L33	116°35'	818'22'39"W
L2	157°07'	844'19'12"W	L18	89°08'	806'27'28"W	L34	02°30'	844'31'51"W
L3	82°25'	802'18'10"W	L19	101°32'	822'12'34"W	L35	242°39'	858'03'17"W
L4	128°25'	820'17'37"W	L20	72°42'	842'11'32"E	L36	98°01'	842'03'17"W
L5	76°28'	892'20'44"W	L21	58°18'	805'17'54"E	L37	78°19'	824'08'50"W
L6	114°05'	878'02'22"W	L22	157°53'	844'31'03"W	L38	02°30'	844'31'51"W
L7	112°02'	867'08'57"W	L23	204°31'	807'53'37"W	L39	78°19'	824'08'50"W
L8	113°24'	834'02'14"W	L24	129°28'	828'20'56"E	L40	48°39'	842'03'17"W
L9	103°45'	808'28'11"E	L25	08°05'	844'31'03"W	L41	73°19'	824'08'50"W
L10	75°34'	892'20'44"W	L26	09°01'	844'31'03"W	L42	87°19'	824'08'50"W
L11	128°41'	881'59'43"W	L27	32°16'	876'32'07"E	L43	82°30'	844'31'51"W
L12	79°45'	824'41'09"W	L28	84°33'	844'31'03"W	L44	47°30'	844'31'51"W
L13	038°01'	881'59'43"W	L29	82°13'	854'22'28"E	L45	143°38'	867'40'11"E
L14	08°45'	819'47'49"W	L30	46°19'	863'09'06"E	L46	102°42'	842'03'17"W
L15	53°23'	813'06'42"W	L31	76°20'	844'31'03"W			
L16	123°02'	824'11'32"W	L32	58°03'	852'22'38"E			

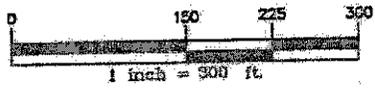


Situated in Liberty Township, Mercer County, State of Ohio,
also being part of Section 33, Township 5, Range 1 East

PREPARED BY:	DATE:
CHECKED BY:	DATE:
APPROVED BY:	DATE:

Wayne T. & Janet K. Doner
Flowage Easement

107



RODNEY E. & LINDA SHEETS
38.73 ACRES
D.V. 24, PG. 849

DUANE R. SHEETS
57.45 ACRES
D.V. 72, PG. 585

Beaver Creek

-004
WAYNE & JANET
DONER
28 ACRES
D.V. 205, PG. 1579

WAYNE & JANET
DONER
70.50 ACRES
D.V. 205, PG. 1579

JONNIE LINN
68.13 ACRES
D.V. 51, PG. 424

-002

Easement Area #3001
66.44 Acres

PRELIMINARY

Easement Area #2
18.67 Acres

WAYNE & JANET
DONER
70.50 ACRES
D.V. 205, PG. 1579
28-012300.0000

WAYNE & JANET
DONER
38.333 ACRES
0433300003
D.V. 242, PG. 348
28-012300.0000

TIMOTHY W. DONER
1.687 ACRES
D.V. 324, PG. 97

MICHAEL E & PATRICIA E.
WAPPELHORST
10 ACRES
D.V. 270, PG. 803

RD.

DONER RD.

LINE TABLE - EASEMENT AREA #2

LINE	LENGTH	BEARING	LINE	LENGTH	BEARING
L101	110.81	S89°11'24"E	L101	21.40	S89°11'24"E
L102	110.82	S89°11'24"E	L102	21.41	S89°11'24"E
L103	202.36	S89°11'24"E	L103	21.42	S89°11'24"E
L104	42.18	S89°11'24"E	L104	21.43	S89°11'24"E
L105	21.44	S89°11'24"E	L105	21.44	S89°11'24"E
L106	21.45	S89°11'24"E	L106	21.45	S89°11'24"E
L107	21.46	S89°11'24"E	L107	21.46	S89°11'24"E
L108	21.47	S89°11'24"E	L108	21.47	S89°11'24"E
L109	21.48	S89°11'24"E	L109	21.48	S89°11'24"E
L110	21.49	S89°11'24"E	L110	21.49	S89°11'24"E
L111	21.50	S89°11'24"E	L111	21.50	S89°11'24"E
L112	21.51	S89°11'24"E	L112	21.51	S89°11'24"E
L113	21.52	S89°11'24"E	L113	21.52	S89°11'24"E
L114	21.53	S89°11'24"E	L114	21.53	S89°11'24"E
L115	21.54	S89°11'24"E	L115	21.54	S89°11'24"E
L116	21.55	S89°11'24"E	L116	21.55	S89°11'24"E
L117	21.56	S89°11'24"E	L117	21.56	S89°11'24"E
L118	21.57	S89°11'24"E	L118	21.57	S89°11'24"E
L119	21.58	S89°11'24"E	L119	21.58	S89°11'24"E
L120	21.59	S89°11'24"E	L120	21.59	S89°11'24"E

Flowage easement on the
Wabash River to an elevation
of 833.5 feet, North American
Vertical Datum of 1988



SURVEYOR'S CERTIFICATE
I, the undersigned, being the duly qualified and licensed Surveyor of the State of Ohio, do hereby certify that the foregoing is a true and correct copy of the original record of the survey and plat on file in my office.

LINE TABLE - EASEMENT AREA #3

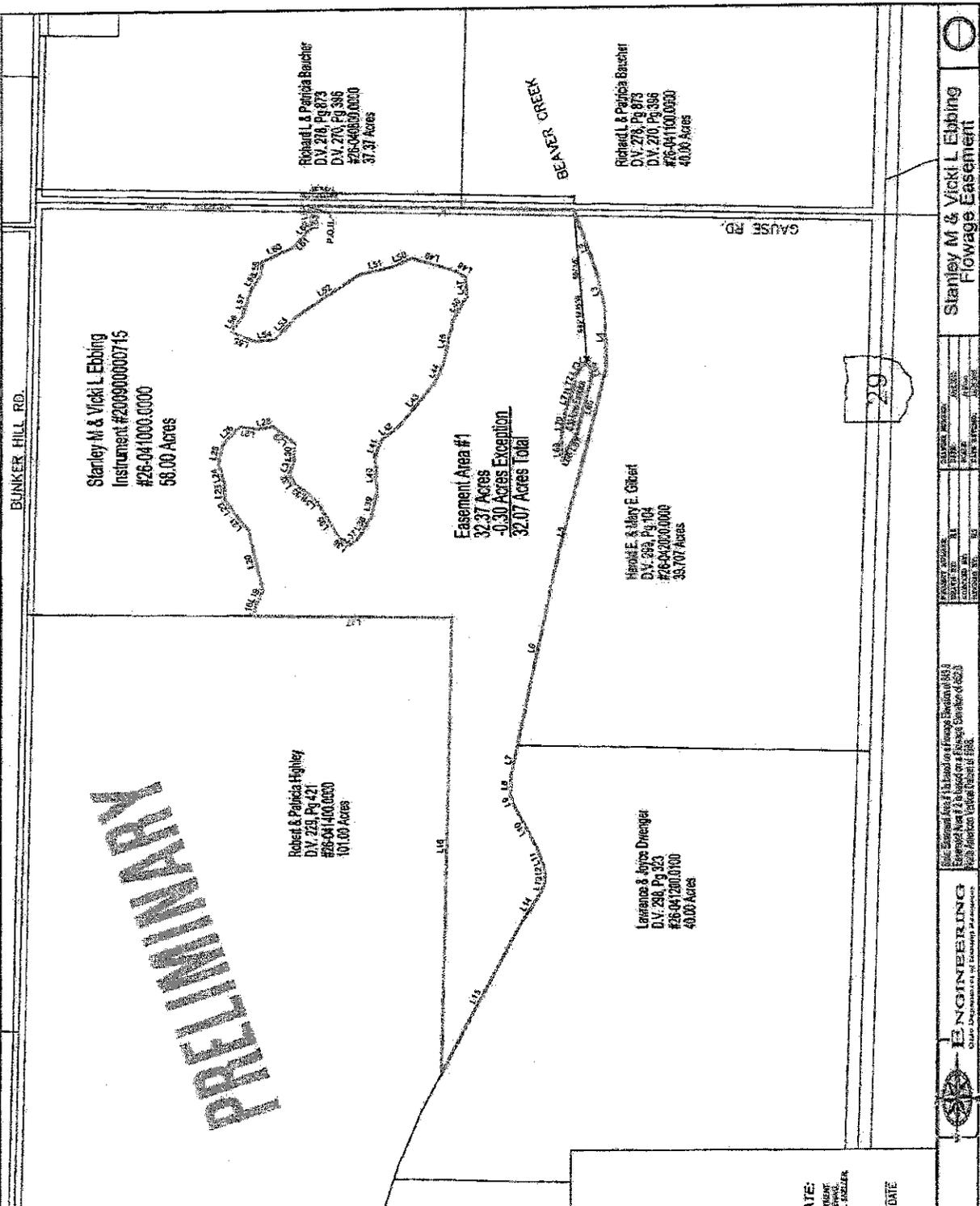
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L121	110.81	S89°11'24"E	L121	21.60	S89°11'24"E
L122	110.82	S89°11'24"E	L122	21.61	S89°11'24"E
L123	202.36	S89°11'24"E	L123	21.62	S89°11'24"E
L124	42.18	S89°11'24"E	L124	21.63	S89°11'24"E
L125	21.44	S89°11'24"E	L125	21.64	S89°11'24"E
L126	21.45	S89°11'24"E	L126	21.65	S89°11'24"E
L127	21.46	S89°11'24"E	L127	21.66	S89°11'24"E
L128	21.47	S89°11'24"E	L128	21.67	S89°11'24"E
L129	21.48	S89°11'24"E	L129	21.68	S89°11'24"E
L130	21.49	S89°11'24"E	L130	21.69	S89°11'24"E
L131	21.50	S89°11'24"E	L131	21.70	S89°11'24"E
L132	21.51	S89°11'24"E	L132	21.71	S89°11'24"E
L133	21.52	S89°11'24"E	L133	21.72	S89°11'24"E
L134	21.53	S89°11'24"E	L134	21.73	S89°11'24"E
L135	21.54	S89°11'24"E	L135	21.74	S89°11'24"E
L136	21.55	S89°11'24"E	L136	21.75	S89°11'24"E
L137	21.56	S89°11'24"E	L137	21.76	S89°11'24"E
L138	21.57	S89°11'24"E	L138	21.77	S89°11'24"E
L139	21.58	S89°11'24"E	L139	21.78	S89°11'24"E
L140	21.59	S89°11'24"E	L140	21.79	S89°11'24"E



Situated in Liberty Township, Mercer County, State of Ohio,
also being part of Section 33, Township 5, Range 1 East

DATE	
BY	
FOR	
BY	
DATE	

Wayne T. & Janet K. Doner
Flowage Easement



LINE	BEARING	DISTANCE	AREA	ACRES
L1	S84°44'10" W	130.00	130.00	1.00
L2	S20°17'57" W	141.11	200.00	1.43
L3	S18°40'18" W	149.33	214.52	1.57
L4	S02°25'41" W	147.85	214.52	1.57
L5	S27°48'19" W	149.33	214.52	1.57
L6	S84°44'10" W	130.00	130.00	1.00
L7	S02°25'41" W	147.85	214.52	1.57
L8	S18°40'18" W	149.33	214.52	1.57
L9	S20°17'57" W	141.11	200.00	1.43
L10	S84°44'10" W	130.00	130.00	1.00
L11	S27°48'19" W	149.33	214.52	1.57
L12	S02°25'41" W	147.85	214.52	1.57
L13	S18°40'18" W	149.33	214.52	1.57
L14	S20°17'57" W	141.11	200.00	1.43
L15	S84°44'10" W	130.00	130.00	1.00
L16	S02°25'41" W	147.85	214.52	1.57
L17	S18°40'18" W	149.33	214.52	1.57
L18	S20°17'57" W	141.11	200.00	1.43
L19	S84°44'10" W	130.00	130.00	1.00
L20	S02°25'41" W	147.85	214.52	1.57
L21	S18°40'18" W	149.33	214.52	1.57
L22	S20°17'57" W	141.11	200.00	1.43
L23	S84°44'10" W	130.00	130.00	1.00
L24	S02°25'41" W	147.85	214.52	1.57
L25	S18°40'18" W	149.33	214.52	1.57
L26	S20°17'57" W	141.11	200.00	1.43
L27	S84°44'10" W	130.00	130.00	1.00
L28	S02°25'41" W	147.85	214.52	1.57
L29	S18°40'18" W	149.33	214.52	1.57
L30	S20°17'57" W	141.11	200.00	1.43
L31	S84°44'10" W	130.00	130.00	1.00
L32	S02°25'41" W	147.85	214.52	1.57
L33	S18°40'18" W	149.33	214.52	1.57
L34	S20°17'57" W	141.11	200.00	1.43
L35	S84°44'10" W	130.00	130.00	1.00
L36	S02°25'41" W	147.85	214.52	1.57
L37	S18°40'18" W	149.33	214.52	1.57
L38	S20°17'57" W	141.11	200.00	1.43
L39	S84°44'10" W	130.00	130.00	1.00

GRAPHIC SCALE
(IN FEET)
1 inch = 300 ft.

SURVEYOR'S CERTIFICATE:
I, the undersigned, being a duly Licensed Surveyor of the State of Ohio, do hereby certify that I am the author of the foregoing plat and that the same is a true and correct representation of the facts and conditions as shown to me by the parties thereto.

ROBERT L. SWELLER
S-6713

Robert L. Sweller, P.S. DATE

LINE	LENGTH	BEARING
L1	185.34	S89°52'30"W
L2	225.12	S89°52'30"W
L3	175.00	S75°16'55"W
L4	185.25	S89°52'30"W
L5	225.12	S89°52'30"W
L6	225.12	S89°52'30"W
L7	185.34	S89°52'30"W
L8	185.34	S89°52'30"W
L9	185.34	S89°52'30"W
L10	185.34	S89°52'30"W
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L98	185.34	S89°52'30"W
L99	185.34	S89°52'30"W
L100	185.34	S89°52'30"W

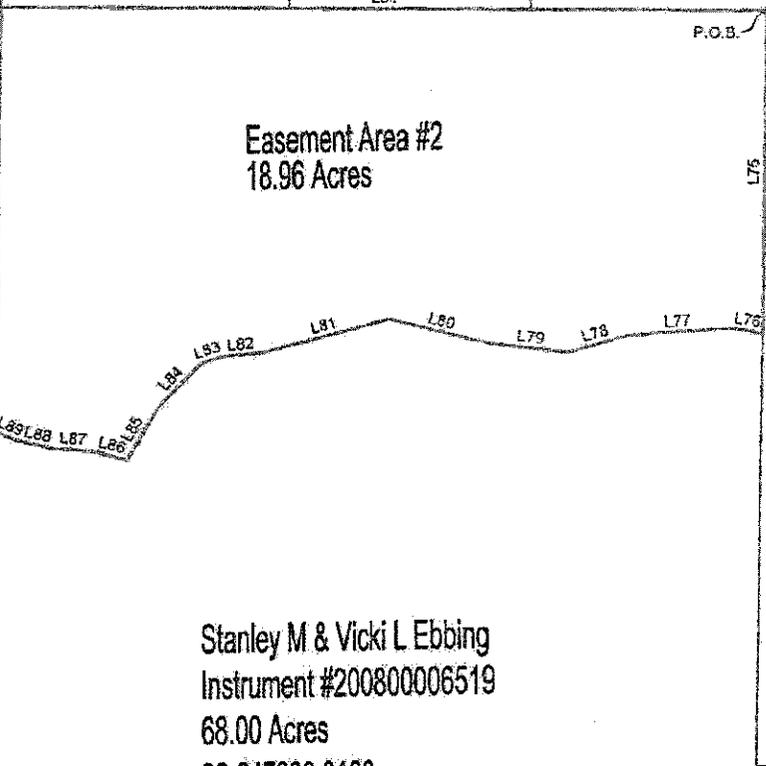
David and Deborah McDonough
39.00 Acres

David and Joseph Johnsman
30.00 Acres

Daniel W Johnsman
25.00 Acres

Marjorie Lehman & Christopher D. York
D.V. 325, Pg. 1035
83.216 Acres

Jerry J. Boyle
O.R. 146, Pg 310
80.00 Acres



Stephen J. & Virginia A. Zumberge
O.R. 45, Pgs. 844 & 847
77.234 Acres

Stanley M & Vicki L Ebbing
Instrument #200800006519
68.00 Acres
26-047200.0100

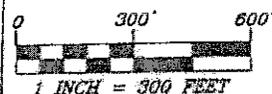
Glenn E. Hyene
D.V. 304, Pg. 724
12.00 Acres

PRELIMINARY

Note: Bearings and Areas are
calculated on the basis of the
assumed magnetic declination of
the survey. The declination is
assumed to be the same as that
shown on the Survey Plat.

SURVEYORS CERTIFICATE
THIS PLAT WAS PREPARED BY THE OBSERVATION
OF NATURAL BOUNDARIES ORIGINALLY SURVEYED
UNDER THE DIRECT SUPERVISION OF ROBERT L. SNELLER,
PROFESSIONAL SURVEYOR IN OHIO.

Robert L. Sneller, P.E.



ENGINEERING
Ohio Department of Mineral Resources

Situated in Liberty Township, Mercer County, State of Ohio,
also being part of Section 33, Township 5, Range 1 East

PREPARED BY	
CHECKED BY	
DATE	
REVISIONS	
DATE	
BY	

Stanley and Vicki Ebbing
Flowage Easement



MIKE DEWINE
— * OHIO ATTORNEY GENERAL * —

Environmental Enforcement - ODNR
Office (614) 265-6870
Fax (614) 268-8871

2045 Morse Road, Building D-2
Columbus, Ohio 43229

www.OhioAttorneyGeneral.gov

NOTICE OF INTENT TO ACQUIRE AND GOOD FAITH OFFER

Bruce Ingram, Esq.
Vorys, Sater, Seymour and Pease LLP
52 East Gay St.
P.O. Box 1008
Columbus, Ohio 43216-1008

May 16, 2012

Dear Bruce:

The Ohio Department of Natural Resources is required to pursue appropriations for a flowage easement over your clients' properties pursuant to the order of the Ohio Supreme Court in *Doner et al., v. Zody*, 2011-Ohio-6117. I am writing to communicate ODNR's intent to initiate appropriations proceedings and to extend an offer of compensation to the following persons that we understand you represent with respect to this matter, and who have an ownership interest in the following parcels:

26-041000.0000-Stanley M. Ebbing & Vicki L. Ebbing
26-047200.0100-Stanley M. Ebbing & Vicki L. Ebbing

The property interest to be acquired is a flowage easement over all or part of the above-referenced parcels. A legal description of the flowage easement(s) to be acquired for each of the parcels is enclosed, and also discussed in the enclosed appraisal report.

The offer for the flowage easements over the above parcels comprising the Ebbing farm is \$492,000.00 (\$220,000.00 for pp#26-041000.0000, and \$272,000.00 for pp#26-047200.0100). The offer is based upon our appraiser's determination of fair market value of the properties as described in the enclosed appraisal. Your clients will have up to thirty (30) days from the date of this offer to accept or reject the offer. We will be willing to discuss the offer with you during this time. Your clients are not required to accept this offer. If you reject the offer or we are unable to come to an agreement, we will exercise our eminent domain authority to appropriate your clients' property, which requires a court procedure. In a court proceeding, your clients may disagree with any of the following: whether the project is necessary, whether the project is a public use, and whether our offer reflects the fair market value of the property. In addition, ODNR would be willing to participate in a mediation process to globally resolve these and the other anticipated appropriations related to this matter, if your clients would be willing to participate in such a process.

Attachment 9

///

HERE IS A BRIEF SUMMARY OF YOUR CLIENTS' OPTIONS AND LEGALLY PROTECTED RIGHTS:

1. By law, ODNR is required to make a good faith effort to purchase a flowage easement across your clients' property.
2. Your clients do not have to accept this offer, and ODNR is not required to agree to your clients' demands.
3. If your clients do not accept this offer, and we cannot come to an agreement on the acquisition of a flowage easement, ODNR has the right to file suit to acquire the easement by eminent domain in Mercer County, the county in which the property is located.
4. Your clients have the right to consult with counsel, a real estate appraiser, or any other person of choice in this matter.
5. Your clients have a right to appeal this decision and may object to this project's public purpose, necessity, or valuation by writing, within ten business days of receiving this notice, to

James Zehringer, Director
Ohio Department of Natural Resources
2045 Morse Rd.
Building D-3
Columbus, Ohio 43229

Governor John Kasich
Care of: Ohio Department Administrative Services
General Services Division
Real Estate Services
4200 Surface Road
Columbus, Ohio 43228-1395

6. We are required by law to provide this written offer and the appraisal on which we base that offer.

If the matter proceeds to a trial, a jury will decide the amount your clients are to be awarded for the property that is taken, for the damage, if any, that is caused by the taking, if applicable, and for other damages permitted by law, which could either exceed or be less than our offer. During the court proceeding, your clients have the right to testify as to the value of their property, and they and ODNR are entitled to present evidence of the fair market value of the flowage easement.

Your clients may employ at their own expense, appraisers and attorneys to represent them at this time or at any time during the proceedings described in this notice.

If we go to court to determine the amount ODNR must pay for the flowage easement(s) and the jury awards an amount that is significantly in excess of a good faith offer, revised offer, or offer made after an exchange of appraisals, as provided by law, your clients may be entitled to recover attorney's fees, costs, and expenses, subject to certain statutory limits.

If we go to court to determine whether the project is necessary for a public use, and the court decides that it is not necessary or not a public use, the judge shall award your clients the full amount of attorney's fees, costs, and expenses.

Your clients also have the right to request the issue of the value of their property be submitted to nonbinding mediation. You must submit your written request for mediation within ten business days after you file an answer to the agency's petition for an appropriation proceeding. If a settlement is not reached at mediation, the matter will proceed to a jury valuation trial.

If you have further questions regarding this matter, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel J. Martin". The signature is fluid and cursive, with a long horizontal stroke at the end.

Daniel J. Martin
Assistant Attorney General



MIKE DEWINE

— * OHIO ATTORNEY GENERAL * —

Environmental Enforcement - ODNR

Office (614) 265-6870

Fax (614) 268-8871

2045 Morse Road, Building D-2
Columbus, Ohio 43229

www.OhioAttorneyGeneral.gov

NOTICE OF INTENT TO ACQUIRE AND GOOD FAITH OFFER

Bruce Ingram, Esq.
Vorys, Sater, Seymour and Pease LLP
52 East Gay St.
P.O. Box 1008
Columbus, Ohio 43216-1008

May 16, 2012

Dear Bruce:

The Ohio Department of Natural Resources is required to pursue appropriations for a flowage easement over your clients' properties pursuant to the order of the Ohio Supreme Court in *Doner et al., v. Zady*, 2011-Ohio-6117. I am writing to communicate ODNR's intent to initiate appropriations proceedings and to extend an offer of compensation to the following persons that we understand you represent with respect to this matter, and who have an ownership interest in the following parcels:

- 28-011300.0000-Wayne T. Doner, Janet K. Doner, David M. Doner
- 28-012300.0000-Wayne T. & Janet K. Doner
- 28-012200.0000-Wayne T. Doner, Janet K. Doner, David M. Doner, Karen S. Doner
- 28-011700.0000-Wayne T. Doner, Janet K. Doner, David M. Doner, Karen S. Doner
- 28-010500.0000-Wayne T. Doner

The property interest to be acquired is a flowage easement over all or part of the above-referenced parcels. A legal description of the flowage easement(s) to be acquired for each of the parcels is enclosed, and also discussed in the enclosed appraisal report.

The offer for the flowage easements over the above parcels comprising the Doner farm is \$1,227,300.00. The offer is based upon our appraiser's determination of fair market value of the properties as described in the enclosed appraisal. Your clients will have up to thirty (30) days from the date of this offer to accept or reject the offer. We will be willing to discuss the offer with you during this time. Your clients are not required to accept this offer. If you reject the offer or we are unable to come to an agreement, we will exercise our eminent domain authority to appropriate your clients' property, which requires a court procedure. In a court proceeding, you may disagree with any of the following: whether the project is necessary, whether the project is a public use, and whether our offer reflects the fair market value of the property. In addition, ODNR would be willing to participate in a mediation

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process to globally resolve these and the other anticipated appropriations related to this matter, if your clients would be willing to participate in such a process.

HERE IS A BRIEF SUMMARY OF YOUR CLIENTS' OPTIONS AND LEGALLY PROTECTED RIGHTS:

1. By law, ODNR is required to make a good faith effort to purchase a flowage easement across your clients' property.
2. Your clients do not have to accept this offer, and ODNR is not required to agree to your demands.
3. If your clients do not accept this offer, and we cannot come to an agreement on the acquisition of a flowage easement, ODNR has the right to file suit to acquire the easement by eminent domain in Mercer County, the county in which the property is located.
4. Your clients have the right to consult with counsel, a real estate appraiser, or any other person of choice in this matter.
5. Your clients have a right to appeal this decision and may object to this project's public purpose, necessity, or valuation by writing, within ten business days of receiving this notice, to

James Zehringer, Director
Ohio Department of Natural Resources
2045 Morse Rd.
Building D-3
Columbus, Ohio 43229

Governor John Kasich
Care of: Ohio Department Administrative Services
General Services Division
Real Estate Services
4200 Surface Road
Columbus, Ohio 43228-1395

6. We are required by law to provide this written offer and the appraisal on which we base that offer.

If the matter proceeds to a trial, a jury will decide the amount your clients are to be awarded for the property that is taken, for the damage, if any, that is caused by the taking, if applicable, and for other damages permitted by law, which could either exceed or be less than our offer. During the court proceeding, your clients have the right to testify as to the value of their properties, and they and ODNR are entitled to present evidence of the fair market value of the flowage easement.

Your clients may employ at their own expense, appraisers and attorneys to represent them at this time or at any time during the proceedings described in this notice.

If we go to court to determine the amount ODNR must pay for the flowage easement(s) and the jury awards an amount that is significantly in excess of a good faith offer, revised offer, or offer made after an exchange of appraisals, as provided by law, your clients may be entitled to recover attorney's fees, costs, and expenses, subject to certain statutory limits.

If we go to court to determine whether the project is necessary for a public use, and the court decides that it is not necessary or not a public use, the judge shall award your clients the full amount of attorney's fees, costs, and expenses.

Your clients also have the right to request the issue of the value of their property be submitted to nonbinding mediation. You must submit your written request for mediation within ten business days after you file an answer to the agency's petition for an appropriation proceeding. If a settlement is not reached at mediation, the matter will proceed to a jury valuation trial.

If you have further questions regarding this matter, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel J. Martin". The signature is fluid and cursive, with the first name being the most prominent.

Daniel J. Martin
Assistant Attorney General

Joseph R. Miller
Direct Dial (614) 464-6233
Direct Fax (614) 719-4630
Email jrmler@vorys.com

FOR SETTLEMENT PURPOSES ONLY – SUBJECT TO RULE 408

May 22, 2012

VIA EMAIL AND US MAIL

Daniel Martin
Assistant Attorney General
Office of the Ohio Attorney General
2045 Morse Road, Building D-2
Columbus Ohio 43229

Re: *Doner and Ebbing Farms*

Dear Dan:

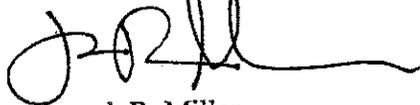
I write in response to your May 16, 2012 letters concerning the Doner and Ebbing Farms, specifically ODNR's offer of compensation for flowage easements over those parcels.

We have discussed the offer to the Doners with them. They reject ODNR's offer. Instead, they demand \$2,641,493.75 to settle this matter. The Doners' settlement demand is open until 5:00 p.m. on May 29, 2012. If ODNR does not accept the settlement demand by that deadline, then it should immediately inform Judge Ingraham that it will be filing the appropriation action as to the Doner farm and file the action.

We have discussed the offer to the Ebbings with them. They reject ODNR's offer. Instead, they demand \$921,150.00 to settle this matter. The Ebbings' settlement demand is open until 5:00 p.m. on May 29, 2012. If ODNR does not accept the settlement demand by that deadline, then it should immediately inform Judge Ingraham that it will be filing the appropriation action as to the Ebbing farm and file the action.

Attachment 11

Very truly yours,

A handwritten signature in black ink, appearing to read 'JRM', with a long horizontal flourish extending to the right.

Joseph R. Miller

JRM/mjm

cc: William Damschroder
Bruce L. Ingram
Thomas H. Fusonie



MIKE DEWINE
— * OHIO ATTORNEY GENERAL * —

Environmental Enforcement - ODNR
Office (614) 265-6870
Fax (614) 268-8871

2045 Morse Road, Building D-2
Columbus, Ohio 43229

www.OhioAttorneyGeneral.gov

May 29, 2012

FOR SETTLEMENT PURPOSES ONLY - SUBJECT TO RULE 408

Joseph R. Miller, Esq.
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
P.O. Box 1008
Columbus, OH 43216-1008

RE: Doner and Ebbing Farms

Dear Joe:

This correspondence is in response to your letter dated May 22, 2012, wherein the Doners demanded \$2,641,493.75 to settle their case and the Ebbings demanded \$921,150 to settle their case.

As you know, these two demands are both substantially higher than ODNR's appraised market values of the properties. In order to evaluate the counteroffers and determine if settlement prior to filing is possible, our client needs to know the underlying basis for the Doners' and Ebbings' demands which almost double ODNR's good faith offers as supported by the surveys and appraisals. Do your clients believe our appraisers missed something in the course of their appraisal work?

Under R.C. 163.04, ODNR can revise its good faith offer if it "becomes aware of conditions indigenous to the property that could not reasonably have been discovered at the time of the initial good faith offer." If the landowners have obtained their own appraisals in support of the demand, it would help us to evaluate the counteroffers if you could share the reports with ODNR. If appraisal reports are not available, we request a written summary that gives a detailed justification for the demands as submitted. Once this information is provided, our client can make an informed decision regarding the counteroffer.

If settlement cannot be reached, we will file these two appropriation actions, pursuant to R.C. Chapter 163. ODNR desires to fairly compensate the Doners and

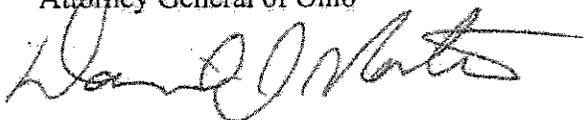
Attachment 12

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Ebbings for the taking of their properties, and looks forward to the exchange of information in order to facilitate settlement.

Very truly yours,

Mike DeWine
Attorney General of Ohio

A handwritten signature in black ink, appearing to read "Daniel J. Martin", written over the typed name below.

Daniel J. Martin
Assistant Attorney General
Environmental Enforcement Section
2045 Morse Road, #D - 2
Columbus, OH 43229
(614) 265-6887

Joseph R. Miller
Direct Dial (614) 464-6233
Direct Fax (614) 719-4630
Email jrmiller@vorys.com

May 25, 2012

VIA EMAIL AND US MAIL

Daniel Martin
Assistant Attorney General
Office of the Ohio Attorney General
2045 Morse Road, Building D-2
Columbus Ohio 43229

Re: *State ex rel. Doner, et al. v. Zody*, Slip Opinion No. 2011-Ohio-6117

Dear Dan:

As you know, the Supreme Court issued the writ of mandamus on December 1, 2011 – nearly six months ago. We are forced yet again to write about how little ODNR has done to comply with that writ.

Writs of mandamus must be complied with swiftly and expeditiously. Yet, ODNR has not acted with any sense of urgency or displayed any belief that it needs to comply swiftly and expeditiously with the Supreme Court's writ.

To date, ODNR has filed *no* appropriation actions, not one. Instead, it has decided that it will survey the properties it has already taken (incredibly, even parcels that flood in their entirety and for which legal descriptions already exist) and obtain appraisals before filing the appropriation actions.

However, ODNR has not even acted swiftly and expeditiously in surveying and obtaining appraisals. It has surveyed, at most, 27 of the 98 parcels of land involved. And despite multiple requests by us for a surveying schedule, you have refused to provide one. Instead, ODNR makes random and erratic requests to enter onto parcels, at times with as little as one day's notice in violation of Ohio Revised Code Section 163.03.

Over the past six months, ODNR has had only *two* appraisals completed covering only 7 of the 98 parcels of land involved. Even worse, it has not scheduled any appraisal inspections over the last month and has not conducted any such inspections for 28 days. It also

Attachment 13

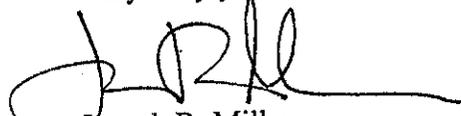
has given no indication as to any schedule for appraisal inspections and the completion of any further appraisals than the two completed.

Nearly six months after the Supreme Court issued the writ of mandamus, roughly two-thirds of our clients are apparently not even on ODNR's radar screen. As for them, ODNR has not even approached or contacted us preliminarily concerning their cases.

ODNR and Director Zehringer are well aware that we represent many elderly families who have suffered ODNR's flooding for more than 14 years now. ODNR has been ordered by the Supreme Court to stop violating our clients' right to fair and just compensation and to do so immediately. Yet, six months have passed and our elderly clients are reminded of their neighbors Jack Minch and Leo Post. Despite prevailing in the *Post* mandamus action in 2005, neither of them lived to see the day that their families obtained fair and just compensation from ODNR for flooding their farms. Our clients are reminded as well of their fellow relator, Marilyn Kuhn, who died before even the vindication of the Supreme Court's decision. ODNR must finally do the right thing for these fine people who never asked for this invasion by ODNR into their lives and land.

As you and the Director are well aware, ODNR has substantially destroyed the value of our clients' farms. Not another of those who have endured ODNR's flooding should be denied the chance to see the day that they are finally awarded fair and just compensation. Sadly, ODNR has left us with no choice but to do all we can on behalf of our clients in aid of the Supreme Court's writ.

Very truly yours,



Joseph R. Miller

JRM/mjm

cc: William Damschroder
Bruce L. Ingram
Thomas H. Fusonie



MIKE DEWINE

— * OHIO ATTORNEY GENERAL * —

Environmental Enforcement - ODNR

Office (614) 265-6870

Fax (614) 268-8871

2045 Morse Road, Building D-2
Columbus, Ohio 43229

www.OhioAttorneyGeneral.gov

Joseph Miller
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008

May 31, 2012

Via Email and US Mail

Re: *State ex rel Doner, et al. v. Zody*

Dear Joe,

We are in receipt of your May 25, 2012 correspondence. First, I acknowledge and recognize the frustration expressed in your letter on behalf of your clients with the appropriation process. I hope we can find ways to shorten the process so your clients can obtain the compensation they are entitled to receive. With that said, I hope that you can appreciate that checks and balances have been put in place by the General Assembly, mainly to protect landowner rights in the appropriation process, and that ODNR is seeking to comply with the mandate of the Ohio Supreme Court while fulfilling its obligations pursuant to R.C. 163. During our calls with Judge Ingraham on January 19, February 27, and May 14, to coordinate in advance the appropriations with the trial court, we have discussed our approach to carrying out the ordered appropriations. I will attempt to address the specific concerns raised in your letter.

The State is not deliberately stalling or attempting to evade its obligations under the writ as suggested in your letter. Director Zehringer lives and farms in the same community as many of your clients in the Celina area, and fully appreciates the significance of this matter to your clients. Director Zehringer and ODNR-the agency he leads- have no intention of purposely delaying the resolution of your clients' rights to fair and just compensation. Director Zehringer fully recognizes the anxiety and apprehension experienced by the relators, and is committed to prioritizing this matter at ODNR.

In addition to the appropriation process underway, ODNR, under Director Zehringer's leadership, has taken action to evaluate the lake level management practices at Grand Lake St. Marys, an issue of direct concern to your clients. Further, in 2011, ODNR ended a long-standing legal dispute with Mercer County regarding participation in the Beaver Creek ditch assessment. The State's withdrawal of its objection to assessment will add additional revenue to the Beaver Creek ditch fund, which the Mercer County Engineer may use to make improvements that will benefit landowners along the creek. The Director and ODNR have actively pursued solutions to mitigate or reduce flooding related issues associated with Beaver Creek that have fueled this litigation.

As to the concerns expressed regarding the need for surveys, you may recall from our calls with Judge Ingraham and in the *Post* cases, the Court feels strongly that accurate legal descriptions are necessary. The survey provides accurate measurements so that the flowage easements may be mapped and analyzed for appraisal purposes and defined for eventual recording. A significant delay was caused in the *Post* and *Minch* cases you reference in your letter, when the Court determined that the descriptions of the take in those petitions for appropriation were insufficient. This ultimately required amending the pleadings and a causing a delay in obtaining trial dates. While additional time has been involved here in the front end of preparing the descriptions for filing, we anticipate the surveys and legal descriptions that are being generated will satisfy the trial court and will allow an expedient trial schedule. The surveys being conducted continue to rely on the 2003 flooding elevations which the trial court has held in prior cases to be the extent of take. We've previously asked for your confirmation and agreement that this is acceptable, but thus far we've not received this confirmation.

Further, with respect to the survey process, 27 different parcels have been surveyed. Yesterday, May 30, I confirmed with ODNR chief surveyor Bob Sneller, that the final maps and descriptions, absent some unexpected event, will be completed by the end of next week. We will forward any of the newly completed maps and legals to you as soon as we receive them from Mr. Sneller.

Beaver Creek, from the spillway to the state line, has been divided into two segments for purposes of the survey effort. As we discussed previously in our calls with Judge Ingraham, existing data generated from surveys around the properties associated with the *Post* cases provided an opportunity to build on that existing information to more quickly begin the process of compiling aerial mapping data that would be used to effectuate the surveys. These surveys are quite complex as they must reflect subtle land elevations to accurately survey and essentially re-create the elevation of the 2003 flood line. Mr. Sneller's plan continues to be to assign survey teams to finish Phase I, which is an approximately four mile segment of properties. He reports that since Phase I of these efforts will be complete by the end of next week, he can start the survey teams to next begin the Phase II area. Phase II is an approximately eight mile segment that will be divided itself into three work areas, with an area assigned to each survey company working for ODNR. A copies of a map which outlines the Phase I and Phase II areas are enclosed with this correspondence.

Mr. Sneller has noted that flowage easements on some parcels may not be able to be surveyed to show extent of flooding based on the Mercer County Engineer's flood level data. Those parcels are

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also reflected on the map. We had discussed that these parcels may involve additional information gathering to ascertain an accurate survey of the 2003 flood level. Generally, these parcels are somewhat removed from the Beaver Creek corridor. Based on Mr. Sneller's assessment to date, these parcels include the following: 42-017300.000 (Baucher Farms Inc.), 26-048600.0000 (Johnsman property), 28-017400.0100 (Kuhn property), 42-019700.0000 & 42-019800.0000 (Meyer properties), 26-044100.000, 26-044100.0100 & 26-044100.0200 (Jeff Siefring properties), and 42-000100.0000 (Robert & Ronald Siefring property). For these parcels, we will need to look to other sources of information to determine the extent of the 2003 flood, so any color photos, video, documents or observations of the relators would be very helpful. We are open to further discussion with you as to how to evaluate extent of take for these parcels.

Concerning the issues you expressed about the timing of the survey field work, there has been no intent to inconvenience your clients or deny them reasonable notice. I spoke with Tara Paciorek in our office who has been helping to arrange the survey access with Tom Fusonie of your office. It is my understanding mutually agreeable times for access have been arranged and until your March 25 letter, no objections expressed with the timing of the access. Revised Code 163.03 provides a statutory right of access for survey and appraisal work with 48 hours advance notice to the property owner. In this case, we thought access was being arranged by agreement between counsel, so that invoking the statutory right of access and notice would not be necessary. We will certainly continue to work with you and your clients to schedule site access for reasonable times that are agreeable to your clients. When survey crews are available we are attempting to efficiently use the mobilized teams to complete the work. If there is a different way you want to arrange property access, we can discuss your ideas.

As to the status of appraisals, you are correct that two appraisals are complete covering seven different parcels, and that offers have been extended to those property owners. R.C. 163 requires we make a good faith effort to negotiate a settlement, and that filing of the action shall be no sooner than thirty (30) days following the date of the offer. We have provided copies of the appraisals, and as communicated in our May 29, 2012 letter, are eager to receive your comments to help us evaluate the appraisals upon which our offers are based. I have discussed your concerns with the status of additional appraisals with ODNR, and it is my understanding that additional work will be able start next week after vendor contracts are finalized. ODNR anticipates that an aggressive delivery date will be negotiated to complete appraisals for the properties surveyed.

The State remains committed to complying with the Supreme Court's Writ of Mandamus. We are open to constructive dialogue to make the process efficient and to minimize inconvenience or delay to your clients, while at the same time, meeting the obligations of R.C. 163, the expectations of the trial court, and state contracting procedures. The State also remains willing to engage in mediation to further discussions of a global settlement, as suggested in our May 16, 2012 offer letters.

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Sincerely,

Mike DeWine
Attorney General of Ohio

A handwritten signature in black ink, appearing to read "Daniel J. Martin". The signature is written in a cursive style with a large initial "D" and "M".

Daniel J. Martin
Assistant Attorney General



MIKE DEWINE

★ OHIO ATTORNEY GENERAL ★

Environmental Enforcement - ODNR

Office (614) 265-6870

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Columbus, Ohio 43229

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June 11, 2012

Bruce Ingram
Vorys, Sater, Seymour and Pease LLP
52 East Gay St.
PO Box 1008
Columbus, Ohio 43216-1008

RE: State ex rel. Doner, et al., v. Zody

Dear Bruce:

Thank you for your correspondence of June 6, 2012. As we discussed last week, ODNR would welcome the opportunity to discuss this matter in person, and I am writing to confirm that we would be able to meet with you and Joe Miller on Tuesday, June 12, at ODNR's offices at 2045 Morse Road. The meeting will be at 10:00 a.m. in "Building E" in the third floor conference room. As we discussed, Director Zehringer and Assistant Director Shimp will be present at the meeting.

We look forward to a dialogue regarding the status of the appropriations process and ways we might find a pathway to an overall resolution. To facilitate open discussion on both sides, I'd ask that our meeting be held pursuant to Ohio Evid. R. 408.

Thanks again for suggesting the meeting, and we look forward to a productive discussion.

Very Truly Yours,

Daniel J. Martin

cc: Bill Damschroder

Attachment 15

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MIKE DEWINE

★ OHIO ATTORNEY GENERAL ★

Environmental Enforcement - ODNR
Office (614) 265-6870
Fax (614) 268-8871

2045 Morse Road, Building D-2
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June 12, 2012

Bruce Ingram
Joseph Miller
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43215

Subject to Ohio Rule of Evidence 408

Re: State ex rel. Doner, et al., v. Zody

Dear Bruce and Joe:

I am writing to follow-up on the meeting today at ODNR. Thanks for coming out to ODNR and engaging in some frank discussion about our respective positions.

I want to memorialize that as a result of our discussions, ODNR has asked the Relators to consider \$5,000.00 per acre as compensation for flowage easements on their properties and all claims presented in this litigation. This offer is subject to final management approval by ODNR in consultation with the Governor's Office, the Office of Budget and Management and the Ohio Attorney General's Office. As we discussed, this offer would also be dependent upon an appropriation approval by the Ohio General Assembly.

Also during our discussions, you advised that ODNR should temporarily defer a filing of the Doner and Ebbing cases for at least 2 weeks pending on-going settlement discussions. As a practical matter, we will defer additional appraisal work during this period while we continue discussions, but we will continue the process of conducting surveys and preparing legal descriptions. Finally, during today's meeting, we hand-delivered to you, completed legal descriptions and surveys for the 27 parcels contained in "Phase I" of the survey project.

We agreed that we will further evaluate the parcels that involve commercial and residential land uses as presented with your prior correspondence concerning those properties, and you agreed that you would confirm whether the total acreage for all pending and future litigation was 4,834.745 acres or whether there would be additional

Attachment 16

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acreage on the basis of the commercial/residential property as already submitted or about to be filed.

Please feel free to contact Tara, Jed or me if we can address additional questions or concerns.

Very truly yours,

Dan Martin by AP

Daniel J. Martin
Assistant Attorney General

cc: Bill Damschroder
Fred Shimp
Paul Baldrige

Bruce L. Ingram
Direct Dial (614) 464-6480
Facsimile (614) 719-4775
E-Mail - blingram@vorys.com

FOR SETTLEMENT PURPOSES ONLY – SUBJECT TO EVID. R. 408

June 19, 2012

VIA EMAIL AND US MAIL

Daniel Martin, Esq.
Assistant Attorney General
Office of the Ohio Attorney General
2045 Morse Road, Building D-2
Columbus, Ohio 43229

Re: *State ex rel. Doner, et al. v. Zody*, Slip Opinion No. 2011-Ohio-6117

Dear Dan:

Thank you for your letter of June 12, 2012 that we received today and ODNR's offer to resolve the claims for compensation of most of our clients. We appreciate the time of Director Zehringer, Assistant Director Shimp, and everyone else at the meeting last week. We believe the dialogue was productive.

As an initial matter, I wish to confirm that the acreage discussed last week – 4,834.745 – does indeed include the properties of all of our agricultural clients. Therefore, as Jed Dailey calculated in our meeting, ODNR's offer of settlement to our agricultural clients of \$24,173,725 is appreciated but, for the reasons set forth below, not adequate to resolve those clients' claims for compensation. We also note that we have yet to receive any offer of settlement for our commercial and residential clients but we understand from your letter that you are still evaluating those cases in order to make an offer to those clients.

As discussed at the June 12, 2012 meeting, we acknowledge that ODNR's offer to our agricultural clients is premised upon the three settlements reached in 2011. Those settlements are relevant benchmarks, but only in context.

The settlements were reached over fourteen months ago. Since such time, Mercer County land values have appreciated an additional 10% or more. By the time any global settlement would be finalized and paid in late 2012 at the earliest, property will have appreciated by 18-20% from early 2011. Moreover, the amount of the settlements in relation to the

Attachment 17

Daniel Martin, Esq.
 June 19, 2012
 Page 2

landowners' appraisal amounts reveals that the state paid as much as nearly 80% of the Vannatta appraisals. The Linn jury verdict was 79% of the Vannatta appraisal.

Most importantly, since those settlements, ODNR has obtained appraisals from Tom Horner and Bruce Dunzweiler that set the floor for compensation to the landowners. Based on these appraisals, the state will (effectively) be required to write a check for in excess of \$22 million to these landowners who will then proceed to compensation trials for more. Specifically, Horner damages agricultural property by \$4212/acre. Horner's before value of \$7776/acre is far lower than the evidence we will present at trial (even he documents several sales in 2011 for over \$9,000/acre). He also damaged structures on the property by 50%. Using the acreage that we discussed at our meeting on Tuesday and the Auditor's appraised values of our clients' structures, Horner's compensation exceeds \$22 million:

Total Acres	Before value per acre	Before total value	After value per acre	After total value	Comp. for Land	Comp. for Structures	Total Compensation
4834.745	\$7776.00	\$37,796,386.75	\$3564.00	\$17,397,068.93	\$20,399,317.82	\$2,364,050.00	\$22,763,367.82

Thus, ODNR's offer of compensation of \$24,173,725 for agricultural land (and presumably structures) barely exceeds the amount ODNR will be required to pay in any event and completely fails to address the exposure of ODNR at the compensation trials.

ODNR's exposure at trial is obviously far greater than \$24 million. Using a conservative value of \$10,000 per acre (which is well supported by Mr. Horner's comparable sales as well as the conclusion by both of ODNR's appraisers that land in Mercer County is appreciating at a rate of 10% annually) and an after value supported previously by Vannatta and now by both Dunzweiler and Horner, results in over \$39 million in compensation for our agricultural clients, or \$8,068 per acre:

Total Acres	Before value per acre	Before total value	After value per acre	After total value	Comp. for Land	Comp. for Structures	Total Compensation
4834.745	\$10,000.00	\$48,347,450.00	\$1,000 (flooded)/ \$5,000 (residue)	\$12,007,321.00	\$36,340,129.00	\$3,051,720.00	\$39,391,849.00

For that matter, ODNR's offer for the agricultural land at issue is not nearly sufficient under ODNR's own premise of using the prior settlement amounts as instructive. As Jed Dailey stated at our meeting last Tuesday, the range of prior settlements reached in 2011 was between \$4,600 per acre (Zumberge) and \$6,085 per acre (Minch). The average per acre value

Daniel Martin, Esq.

June 19, 2012

Page 3

of the three settlements equates to \$5,469 per acre. Again, as ODNR's own appraisers state, farmland in Mercer County is appreciating at least 10% annually and no settlements will be paid until at least late this year. As such, even under ODNR's premise for settlement, any fair offer for our agricultural clients should have been well in excess of \$31 million:

$$\$5,469 \text{ per acre} + 18\% \text{ appreciation} = \$6,453/\text{acre} \times 4834.745 = \$31,198,609.49$$

While we remain committed to working with you to reach a global settlement, we cannot ask our clients to resolve these cases on the basis of \$5000/acre, which is only 60% of the likely damage to their property's value and, with the passage of time, cannot be reasonably equated to the payments made in the prior settlements. And, again, that \$5000/acre is only 6.2% above what ODNR's appraiser states must be paid. These facts make ODNR's offer – while productive to further discussions – wholly inadequate.

Moreover, our commercial and residential clients cannot be ignored. An analysis of compensation owed to those clients – not including our new clients – was provided to Bill Cole on January 3, 2012. With our new clients included, the amount of compensation to which those clients are entitled is as follows:

Land & Buildings Before Value	Land & Buildings After Value	Difference	Relocation Assistance	Total Compensation
\$5,198,700.00	\$1,130,780.00	\$4,067,920.00	\$140,000.00	\$4,207,920.00

Finally, the amounts of \$39,391,849.00 for agricultural land and \$4,207,920.00 for our commercial and residential clients set forth above (which total \$43,599,769.00) do not include ODNR's significant exposure to awards of attorneys fees pursuant to R.C. 163.21. Based upon the floor for agricultural land set forth above and the ceiling of \$43,599,769.00, that total exposure is as follows:

Relators' Calculation of Total Compensation	ODNR's Calculation of Total Compensation	Difference in Total Compensation	Award of Attorneys Fees (.25 x. difference)
\$43,599,769.00	\$22,763,376.82	\$20,836,392.18	\$5,209,098.05

Though ODNR has only offered a small percentage above the state's minimum exposure, we are prepared to make a much larger move. We will forgo in settlement any of the over \$5 million exposure to attorneys fees that ODNR faces in this matter. We therefore demand \$43,559,769 to resolve the claims of all of our clients.

Also, as this settlement is contingent upon approval by the General Assembly, it is imperative that our clients receive some protection in the form of a penalty for the failure of

Daniel Martin, Esq.
June 19, 2012
Page 4

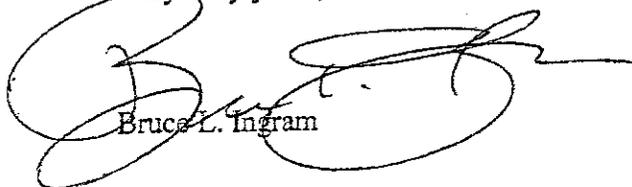
ultimate approval and payment of this amount by a date certain. We therefore demand payment of \$5,000,000 for failure by ODNR and the State of Ohio to pay the settlement amount by January 15, 2012.

As previously discussed, if this matter is not to be presented to the General Assembly until November, ODNR must work to complete all surveys and we will work with ODNR to complete the settlement agreement and all accompanying documents, including executed flowage easements, in the interim. It must be noted that this offer is based upon our clients' statements of acres flooded. If the surveys performed by ODNR differ materially in terms of acres flooded to any our client's detriment, we will expect additional compensation for any such additional acreage.

Dan, we are prepared to meet with our clients as soon as this weekend if satisfactory progress can be made toward an acceptable settlement amount. We therefore would like ODNR's response to this counter-offer no later than the close of business on Thursday, June 21st. If a meeting or a phone call among counsel would expedite these discussions, we can certainly be available.

We look forward to hearing from you as soon as possible.

Very truly yours,



Bruce L. Ingram

BLI/gjs

cc: William Damschroder, Esq.
Joseph R. Miller, Esq.
Thomas H. Fusonie, Esq. (all via email)



MIKE DEWINE
— * OHIO ATTORNEY GENERAL * —

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FOR SETTLEMENT PURPOSES ONLY, SUBJECT TO EVID. R. 408

June 22, 2012

Bruce Ingram, Esq.
Vorys, Sater, Seymour & Pease LLP
52 East Gay St.
P.O. Box 1008
Columbus, Ohio 43215-1008

Re: *State ex rel. Doner, et al., v. Zady*

Dear Bruce:

Thank you for your letter of June 19, 2012. I write with our initial reactions to your letter. Frankly, we are disappointed and somewhat taken aback that such a large gap remains in our respective positions after our discussions last week. ODNR made very significant movement in an effort to proceed quickly to settlement with your clients. Your present response conveys a very different perspective; one that may make filing and litigating these cases the only responsible option for the State.

The \$24,173,725 (\$5,000.00 an acre) number as expressed by the State already exceeds the fair market value established by the most recent appraisals, and incorporates consideration of litigation risk and attorney fee exposure. The comparable sales data provided by the current appraisals fully supports this position. Some particular sales have been identified in excess of \$9,000.00 per acre, but these represent purchases for full fee interests, not flowage easements.

Although we have not fully evaluated the data with regard to non-agricultural properties, suffice it to say that there is insufficient non-agricultural acreage to explain the vast discrepancy between our respective positions.

As we discussed in our meeting last week, it is vital that the State not only compensate your clients, but to do so at an amount and in a manner that is fair to all concerned and objective and defensible. We are hopeful that we can re-focus discussions to numbers supported by the current appraisals and informed by mutual past experience litigating or settling the *Post* cases.

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We are consulting with our client about your June 19 letter. We anticipate being in a position to provide a formal response to your counteroffer in reasonably short order, and we do continue to hope that all parties can work in the spirit of furthering efforts to resolve this matter fully and fairly.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel J. Martin". The signature is fluid and cursive, with a prominent initial "D" and "M".

Daniel J. Martin
Assistant Attorney General

Bruce L. Ingram
Direct Dial (614) 464-6480
Facsimile (614) 719-4775
E-Mail - bingram@vorys.com

FOR SETTLEMENT PURPOSES ONLY – SUBJECT TO EVID. R. 408

June 26, 2012

VIA EMAIL AND US MAIL

Daniel Martin, Esq.
Assistant Attorney General
Office of the Ohio Attorney General
2045 Morse Road, Building D-2
Columbus, Ohio 43229

Re: *State ex rel. Doner, et al. v. Zody*, Slip Opinion No. 2011-Ohio-6117

Dear Dan:

I write to respond to your letter of June 22, 2012 and also to memorialize the conversation we had with you, Bill Darnschroder, Tara Paciorek and Jed Dailey yesterday after the court conference. Bill indicated that ODNR representatives are meeting this Wednesday with representatives from the office of the Governor and of the Office of Budget and Management to discuss ODNR's response to our clients' counter-offer. Bill indicated that we should likely have a response to our clients' counter-offer by the end of the week. Our clients expect ODNR to meet that deadline.

We appreciate that there remains a "large gap" in our respective positions that may require these cases to be tried as opposed to settled. However, we also see considerable agreement that non-flood farm land in Mercer County is extremely valuable and appreciating at a rapid rate and there is substantial damage done to our clients' land by flooding from the spillway. Under these circumstances we are willing to continue this dialogue. As we have expressed before, however, our clients are demanding we take action to hold ODNR in contempt for its delay in complying with the writ of mandamus. Their patience with ODNR is running out.

In addition, in response to your letter of June 22, 2012, we want to make it clear that the counter-offer of settlement of \$43,599,769.00 is not based on "purchases for full easements" rather than flowage easements on our agricultural clients' land. Our clients recognize

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Daniel Martin, Esq.
June 26, 2012
Page Number 2

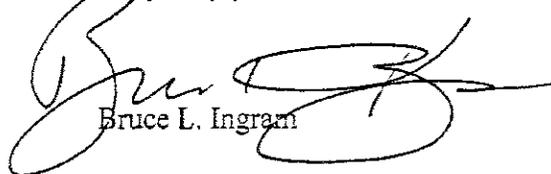
that there is some value in this land after flowage easements are taken. The counter-offer is based upon damage to the land measured by the difference in the before and after value, precisely what Mr. Horner did in his appraisal. The before value, of course, is the value of the land unencumbered by a flowage easement. Your own appraiser, Mr. Horner, documents several such sales well in excess of \$9000 an acre. In our counter-offer, we adjusted the conservative before value for time (with which both Horner and Dunzweiler agree) resulting in a (conservative) before value of \$10,000/acre. Thus, after applying an after value supported by both our appraisers, compensation owed for acquisition of the flowage easements is in excess of \$39 Million. If the demand was based on a fee take rather than a flowage easement, the after value would be zero and compensation for the take for our agricultural clients would be in the neighborhood of \$48 Million. Thus, our demand is based on the damage caused by a flowage easement, not a fee simple take.

I also want to point out that the \$43,599,769.00 counter-offer is for both agricultural properties and non-agricultural properties combined. ODNR's \$24,173,725 offer was for the agricultural land, not for damages to our non-agricultural clients. Our non-agricultural clients have yet to receive a single dollar offer from ODNR. Thus, our agricultural clients' counter to that was \$39,391,849 or \$8,147.65 per acre – not \$9,000 per acre as you suggest.

Should ODNR need further clarification or information prior to Wednesday, please let us know. Our clients will expect ODNR to respond to the counter-offer by the close of business on Friday, June 29, 2012. As such, we will extend the stand down until Monday, July 2, 2012.

We look forward to hearing from you.

Very truly yours,



Bruce L. Ingram

BLI/gjs

cc: William Damschroder, Esq.
Joseph R. Miller, Esq.
Thomas H. Fusonie, Esq. (all via email)

6/29/12



MIKE DEWINE

OHIO ATTORNEY GENERAL

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NOT ADMISSABLE PURSUANT TO OHIO R. EVID. 408

Bruce Ingram, Esq.
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
PO Box 1008
Columbus, Ohio 43216-1008

Dear Bruce:

This letter provides a more detailed response to your letter of June 19, 2012. We appreciate your giving us additional time to let our client discuss this matter internally with appropriate persons from the Office of Management and Budget and the Governor's Office to obtain additional direction.

Based on the appraisals generated thus far, and previously settled or litigated cases and input from the various offices involved, ODNR remains willing to recommend resolution of all your clients' claims, including any damages and attorney fees for the total sum of \$ 24,205,000. This amount is consistent with our previous offer of \$5,000/acre for your agricultural clients in the current Mandamus action, and adds the acreage of the commercial and residential clients in the current Mandamus action, including the Strable property. (We rounded the total acreage up to the next whole number for simplicity in multiplication.) We have not included any amount attributable to Case Leasing who has been previously compensated.

Although the total acreage has been used as a tool for calculation, we offer this sum as a full and complete resolution that can be apportioned among those clients as you and they can agree. This settlement represents a very fair, market-based assessment of flowage easements, and it also fully considers the litigation risks, costs, and attorney fee exposure that you outlined in your letter. We are prepared to address additional clients and properties outside of those in the current Mandamus action after resolution of this case.

As to a liquidated damages provision, the State cannot agree to bind itself to a contingent obligation. The State is already ordered to resolve the intermittent taking of your clients' property one way or another. If your clients agree to this offer, we pledge to promote the settlement and the necessary funding of it with legislative and executive leaders so that the money needed is available as soon as possible. During any interim period, we also pledge to work with you to finalize the language of

Attachment 20

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all easements and releases needed to resolve this matter in total. However, we cannot and will not agree to bind the General Assembly with the punitive provisions which you propose.

If, for whatever reason, your clients decline this offer, we will file the first two appropriation actions with the Mercer County Common Pleas Court next week. We will then commence gathering the surveys and appraisals to file additional cases as expeditiously as possible.

We look forward to your response. Please feel free to contact me if you have questions or concerns.

Sincerely,

Daniel Martin by *JP*

Daniel J. Martin
Assistant Attorney General

cc: Bill Damschroder

Bruce L. Ingram
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Email blingram@vorys.com

SUBJECT TO RULE OF EVIDENCE 408 – FOR SETTLEMENT PURPOSES ONLY

July 30, 2012

VIA EMAIL AND US MAIL

William Damschroeder
Chief Legal Officer
Ohio Department of Natural Resources
2045 Morse Road, Building D
Columbus, OH 43229-6693

Re: *State ex rel. Doner, et al. v. Zody*

Dear Bill:

We met with you and others on June 12, 2012 to discuss settlement at which time the Director indicated that he wanted to resolve this matter. On July 12, Joe Miller and I met with you and Dan Martin to further discuss whether the claims of the realtors could be resolved on a mutually agreeable basis. At that time you told us you believed we would receive a substantive response in very short order.

As of the date of the conference with Judge Ingraham on July 23, we had heard nothing. However, during our pre-arranged phone call at 11:00 on that date, you indicated that meetings were set with state officials that week and at a minimum you would call me with an update by the end of the week. I have not heard from you with either a substantive response nor even the promised update as of this writing.

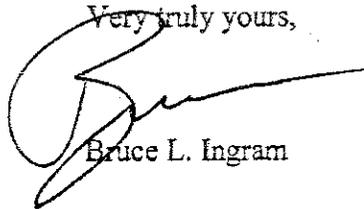
If the State is no longer interested in resolving the claims of our clients on the basis discussed on July 12, then we will proceed with the actions previously outlined to you which jump-started these negotiations.

Attachment 21

William Damschroeder
July 30, 2012
Page 2

I would appreciate a prompt response.

Very truly yours,

A handwritten signature in black ink, appearing to read 'B. Ingram', written over the typed name.

Bruce L. Ingram

BLI/mjm

cc: Daniel J. Martin
Joseph R. Miller
Thomas H. Fusonie



MIKE DEWINE
— * OHIO ATTORNEY GENERAL * —

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SUBJECT TO RULE OF EVIDENCE 408-FOR SETTLEMENT PURPOSES ONLY

August 1, 2012

Bruce Ingram
Vorys, Sater, Seymour and Pease LLP
52 East Gay St.
P.O. Box 1008
Columbus, Ohio 43216-1008

Re: State ex rel Doner, et al. v. Zody

Dear Bruce:

I am writing to respond to your July 30, 2012 correspondence directed to Bill Damschroder. We understand your concerns and do plan to provide a substantive response as discussed in our conversation of July 12, as soon as we are authorized to do so.

On July 31, the substance of your demand was presented to Governor Kasich and Director Keen of the Office of Budget and Management. Significant questions and concerns were generated in that discussion which requires ODNR to provide additional information to the Governor before we can be authorized to provide you a substantive reply. Currently, ODNR is diligently working to provide the information to the Governor and OBM, and to answer any further questions they have so that they can provide us with further direction on the resolution of this case. In addition, since any agreed settlement number would need legislative ratification and appropriation, administration officials want to discuss this matter with legislative leaders to ensure that the necessary support for such an appropriation exists.

We will be able to give you a substantive response after receiving approval from Governor Kasich and his staff. In the meantime, we appreciate your and your clients' patience. We will contact you as we previously discussed as soon as we have the authority to do so.

Sincerely,

Daniel J. Martin
Assistant Attorney General

Attachment 22

STATE OF OHIO)
) SS:
COUNTY OF FRANKLIN)

AFFIDAVIT OF WILLIAM R. DAMSCHRODER

RE: *State ex rel. Doner et al., v. Zehringer*, Case No. 2009-1292

I, William R. Damschroder, employee for the Ohio Department of Natural Resources, being first duly sworn, hereby state that I have personal knowledge of the all the facts contained in this Affidavit, that I am competent to testify to the matters stated herein and that the following is true to the best of my knowledge and belief.

1. I am currently General Counsel for the Ohio Department of Natural Resources (ODNR). I have held this position since January 26, 2011.
2. My duties include responsibility for all legal matters and implementing all legal policy for the Department. I also coordinate with Assistant Attorneys General in all litigation matters facing the Department.
3. Through my employment with the ODNR, I am familiar with the referenced case and the resulting appropriation cases that the Department and the Ohio Attorney General are currently preparing for litigation.
4. In conjunction with the Attorney General's Office and other members of ODNR management, I was involved with settlement and litigation discussions from December 2011 to the present with regard to this case.
5. On December 14, 2011, Relators's counsel sent a letter demanding over \$48 million to globally resolve the case.

6. On January 31, 2012, I met with officials from the Office of Budget and Management (OBM) to provide information and background for the case and to discuss the possibility and availability of funding for a global settlement. On February 13, 2012, I along with counsel from the Attorney General's Office again met with officials from OBM to obtain authority for the Department's counter-offer of \$6.2 million. ODNR ultimately received that authority and conveyed an offer in writing on February 21, 2012
7. By letter dated February 22, 2012, counsel for Relators rejected ODNR's counter-proposal and made a counter-offer of \$47 million to globally resolve the case. After ODNR's rejection of that offer, global settlement discussions temporarily ceased, and ODNR proceeded with the necessary steps to prepare the cases for litigation.
8. I received a request for a meeting to discuss the issues in this case on June 6, 2012 from Mr. Ingram. On June 12, 2012, I attended and participated in a face-to-face meeting with Bruce Ingram and Joe Miller, counsel for Relators, at ODNR. The meeting was also attended by ODNR management and attorneys from the Attorney General's Office. At the outset of that meeting, the parties, starting with Director Zehringer himself, discussed their mutual desires for a potential global settlement. Counsel for the Relators emphasized their clients' reportedly growing impatience and wanted to know if there was any realistic possibility of a global settlement. Assistant Director Shimp explained in great detail why it was difficult for the State to make a global settlement offer, including the fact that money of the nature necessary to accomplish the settlement was not available in the ODNR budget, and may not be available in the State budget as a whole. Assistant Director Shimp went on to point

out that any potential global settlement that could be reached by the people in the room at that time would have to be approved by the senior administration officials, and then ultimately by the General Assembly in the form of a separate appropriation. Counsel for the Relators affirmed that they understood these restrictions and reminded us that their clients, too, would have to approve any possible global settlement agreement.

9. At the end of this meeting, ODNR asked counsel for Relators to consider a proposal in the amount of \$5,000 per acre to constitute a universal settlement for all acreage currently part of this lawsuit. After confirming that both the Relators and the State were in substantial agreement about the total acreage involved, counsel for the Relators reacted favorably to the proposal and wished time to discuss it with their clients. Their positive reaction to the proposal was emphasized by the fact that counsel for the Relators asked the Attorney General's representatives NOT to file any individual appropriations cases while discussions continued. At that time, two cases had already been prepared for filing, and money for such filing was approved by the State Controlling Board.
10. ODNR's proposal was reduced to writing and forwarded to Relators' counsel. On June 19, 2012, Relators' counsel responded by letter, rejecting ODNR's proposal and making a demand in the amount of \$43,559,769 to settle the case. In this same letter they recognized that any settlement was "contingent upon approval by the General Assembly" and asked for an additional, separate \$5,000,000 in liquidated damages if the money for the case was not appropriated "by January 15, 2012" (presumably a typographical error meant to read "2013").

11. In a letter dated June 29, 2012, sent by Assistant Attorney General, Dan Martin, ODNR adjusted its proposal to include a slightly larger number of acres and counsel for Relators was asked to consider \$24,205,000 as a settlement figure if that dollar figure could be obtained through the appropriation process. The letter further stated plainly that the State could not and would not consider any type of liquidated damages payment. Finally, the letter reiterated that approval of a final settlement amount was the province of the General Assembly, but ODNR agreed to promote the settlement, if the parties arrived at an agreed global resolution.
12. Having not yet heard any response from either Mr. Ingram or Mr. Miller, I sent an email on July 5, 2012 to Mr. Ingram offering my condolences on the recent passing of one of his firm's associate attorneys. In responding to my email, Mr. Ingram asked that he and Mr. Miller meet with ODNR again to discuss possible settlement in the *Doner* case. (A true copy of the email is attached hereto.)
13. Assistant Attorney General Dan Martin and I met with Mr. Ingram and Mr. Miller on July 12, 2012. At that meeting Relators' counsel requested that ODNR consider a new settlement demand of \$27,322,146, which represented a payment of \$5,469 for each acre of agricultural land in this litigation, plus a payment of \$885,000 as compensation for the damage to the commercial and residential properties. Mr. Ingram **explicitly** asked Mr. Martin and me to respond to this request orally, rather than responding in writing.
14. After this meeting, ODNR management and the Attorney General's Office relayed the Relators' latest settlement demand to senior administration officials, and provided

appropriate information and briefings. After internal discussions, held on July 30 and on July 31, 2012, the decision was made to reject the Relators' global settlement demand and proceed with filing of individual appropriation cases in the Mercer County Common Pleas Court in accordance with the procedures required by R.C. Chapter 163.

15. Consistent with the wishes of Relators' counsel, ODNR and the Attorney General's Office scheduled a meeting with Mr. Ingram and Mr. Miller for August 9, 2012, to convey the State's answer to the Relators' settlement demand. Relators' counsel was accompanied at the meeting by Frederick Mills, a Partner with the Vorys firm. ODNR was represented by Assistant Attorney General Dan Martin, Assistant Director Fred Shimp, and me. Speaking for the Department, Mr. Martin declined the offer made verbally on July 12, 2012 and expressed that no counter-proposal would be forthcoming. He also stated that State would take steps to immediately file the two appropriations cases that were prepared and ready for the litigation process. The meeting ended at that point.

16. At no time after the Supreme Court's decision was I directed by anyone to engage in any tactic designed to delay action in this case. Relators' counsel, at various times throughout 2012, put pressure on ODNR to accelerate the preparation and filing of cases in Mercer County Common Pleas Court. Accordingly, ODNR took all appropriate steps to prepare to file cases including, but not limited to, determining how surveys would need to be conducted, gathering resources to conduct the surveys and appraisals and hiring the personnel to accomplish them. That process was well underway and continued apace until June 12, 2012, when Relators' counsel asked the

State to refrain from filing any such appropriation cases, and this request to refrain from filing was honored until after the August 9, 2012 meeting.

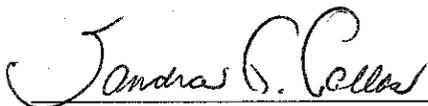
17. At all times throughout settlement proposal negotiations, I was acting in a good faith manner to reach an agreement on a proposal that could then be reviewed for approval by those responsible for making and implementing such a decision, up to and including the Governor and the General Assembly. In addition, I helped insure that ODNR personnel were following the necessary steps to file individual appropriations cases should the global settlement discussions fail. At various times in the settlement negotiations, Relators' counsel were reminded of the fact that ODNR did not have authority to speak for the Governor or the General Assembly, and that any ultimate agreement was contingent upon approval from various senior State executive officials and, ultimately, the General Assembly.

Further Affiant sayeth naught.



William R. Damschroder
General Counsel
Ohio Department of Natural Resources
2045 Morse Road, Building D-3
Columbus, Ohio 43229

Sworn to and subscribed before me on this the 17th day of September, 2012.


Notary Public

Sandra G. Callas
Notary Public, State of Ohio
My Commission Expires 06-06-2017

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From: Ingram, Bruce L. <BLIngram@vorys.com>
Sent: Thursday, July 05, 2012 12:24 PM
To: Damschroder, Bill
Cc: Daniel.Martin@Ohioattorneygeneral.com; Miller, Joseph R.; Fusonie, Thomas H.
Subject: RE: State ex rel. Doner, et al. v. Zody

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Attached please find correspondence from Bruce L. Ingram.

Denise Anthony
Legal Secretary to Bruce L. Ingram
Vorys, Sater, Seymour and Pease LLP
ddanthony@vorys.com

Attachment 1

From the law offices of Vorys, Sater, Seymour and Pease LLP.

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How about Joe and I come up at 2:30?

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That can work for both Dan and me as well.

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Vorys, Sater, Seymour and Pease LLP
ddanthon@vorys.com

From the law offices of Vorys, Sater, Seymour and Pease LLP.

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STATE OF OHIO)
) SS:
COUNTY OF FRANKLIN)

AFFIDAVIT OF FREDERICK M. SHIMP

RE: *State ex rel. Doner et al., v. Zehringer*, Case No. 2009-1292

I, Frederick Shimp, employee for the Ohio Department of Natural Resources, being first duly sworn, hereby state that I have personal knowledge of the all the facts contained in this Affidavit, that I am competent to testify to the matters stated herein and that the following is true to the best of my knowledge and belief.

1. I am currently the Assistant Director for the Ohio Department of Natural Resources (ODNR). I have held this position since November 2011.
2. My duties include executing the policy prerogatives of the Director and the Governor and overseeing the day-to-day operations of the Department.
3. Through my employment with the Ohio Department of Natural Resources, I am familiar with the case of *State of Ohio ex rel. Doner, et al. v. Zody* and the resulting appropriation cases that ODNR and the Ohio Attorney General are currently preparing for litigation.
4. As the Assistant Director of the Department, I am thoroughly familiar with all aspects of the Department's budget. ODNR receives its operating budget through the State's biennial budget process. The current biennial budget, as enacted through Amended Substitute House Bill No. 153 covering fiscal years 2012 and 2013, is in effect until June 30, 2013.
5. The Supreme Court issued its decision in the mandamus action in the *State of Ohio ex rel. Doner, et al. v. Zody* on December 1, 2011, which is five months after the effective date of the new biennial budget. Consequently, no money for the settlement of that case could

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have been contemplated at the time the budget was enacted and there is no specific "line item" in the budget or general funding to pay for the settlement in this matter. The requirements outlined for the use of funds appropriated to ODNR remain in full force and effect until June 30, 2013. ODNR has no other source of discretionary income at its disposal to satisfy a settlement of a case of this magnitude. Furthermore, because ODNR as an agency cannot appropriate money to itself, we are required to follow the constitutionally and legislatively mandated process for budgeting, appropriations, and spending of State funds.

6. On June 12, 2012, I attended a meeting with the Director of ODNR, General Counsel of ODNR, counsel from the Office of the Attorney General and counsel for Relators to discuss a possible global resolution for these appropriation cases. At that meeting, I emphasized that a global settlement in the amounts being discussed would require a separate appropriation from the General Assembly as the amount of money that would be required far exceeded what ODNR had at its disposal within its existing budget. At the outset of the settlement discussions, I made clear that any settlement and resulting necessary appropriation would ultimately need to be approved by state policy makers empowered to appropriate state dollars and authorize spending of those dollars. I also stated that ODNR could not guarantee that any of those reviewing entities would ultimately approve a settlement, as the legislative process is difficult to predict with certainty. I further explained that there are several critical steps that need to be taken before we can determine whether a lump sum payment could be approved, and that this discussion was only the first step in that process. At no point in this meeting did I or anyone else from the State of Ohio say that we were authorized to speak in final terms on behalf of the state policymakers authorized to handle appropriations. Counsel from the

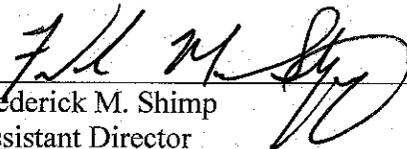
Attorney General's Office also indicated that the Attorney General's approval would be necessary for any final settlement in this case. These required conditions were openly discussed and, in my opinion, clearly understood by everyone in the room. Finally, I described the current legislative schedule for purposes of explaining when a legislative appropriation might be possible.

7. Within that established negotiation framework, ODNR asked counsel for Plaintiffs-Relators if they believed their clients might consider a proposal of a lump sum global settlement that would equate to approximately \$5,000.00 per acre for all of the acreage involved in the case. (Calculated against the total acreage of the Realtors', this contingent settlement proposal would roughly be \$24,173,725.) Relators' counsel responded that they generally agreed with the acreage to be considered and they believed that the proposal was of sufficient value that they wished to consult with their clients before responding. We reiterated our willingness to commence filing the individual appropriations cases in Mercer County which the Attorney General's Office had informed them were ready for filing. Further, the State Controlling Board had already approved the monetary amount. In response, counsel for the Relators asked the State to refrain from filing any cases at that time.
8. Ultimately, counsel for Relators rejected our contingent settlement proposal, initially making a demand of a settlement in the amount of over \$43,599,769. After additional discussions between the parties, counsel for the Relators made a demand of \$5,469 per acre, which amounted to just over \$27 million.
9. After this meeting, ODNR management and the Attorney General's Office discussed the Relators' demand with senior administration officials, and provided information and

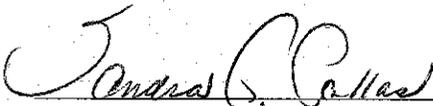
briefings regarding the matter. After internal discussions held on July 30 and on July 31, 2012, the decision was made to reject the Relators' demand and proceed with filing individual appropriation cases in the Mercer County Common Pleas Court consistent with the procedures required by R.C. Chapter 163.

10. Consistent with that direction, on August 9, 2012, I attended a very brief meeting between counsel for the State and Relators' counsel. In that meeting, lead counsel for the State, Assistant Attorney General Dan Martin, informed Relators' counsel that their demand was not accepted, the State's former proposal was not renewed and that the State would not engage in further global settlement discussions at this time, but would continue with the appropriation process as provided by statute.

Further Affiant sayeth naught.


Frederick M. Shimp
Assistant Director
Ohio Department of Natural Resources
2045 Morse Road, Building D-3
Columbus, Ohio 43229

Sworn to and Subscribed before me on this the 17th day of September, 2012.


Notary Public



Sandra G. Callas
Notary Public, State of Ohio
My Commission Expires 06-06-2017