

319 S. Perry



STATE OF OHIO
OFFICE OF THE ATTORNEY GENERAL
JIM PETRO, ATTORNEY GENERAL

One SeaGate, Ste. 2150
Toledo, OH 43604-1551
Telephone: (419) 245-2550
Facsimile: (419) 245-2520
Direct Dial: (419) 245-2556
www.ag.state.oh.us

March 11, 2004

Joe Kleiner
City of Napoleon
Engineering Department
255 W. Riverview Avenue
Napoleon, Ohio 43545

RE: *Proctor v. Warren, et al.*

Dear Joe:

Further to our discussion this morning, I enclose copies of several documents establishing ODOT's and Napoleon's right to demolish the structure on Parcel 7-WDV.

First, the appropriation petition that ODOT filed on November 14th, and the deposit it paid, entitle ODOT to take Parcel 7-WDV in the name of the City of Napoleon and use it.

Second, and most importantly, the judgment entry filed by the Court on November 20th confirms that ODOT, the City, and its contractors **may remove the structure on or after March 1, 2004.**

Third, the defendants (Linda Warren and Noel's Place) raised some defenses challenging ODOT's authority to take their property. I enclose a copy of a stipulation that was just filed with the Court, in which those defendants now agree that ODOT has the right to take the property.

I expect the defendants to make a settlement demand soon, and I hope we can reach an agreement. If not, the Court will set the case for trial. Either way, we will end up with a recordable judgment entry from the Court conveying the property to the City. In the meantime, however, demolition and project construction may proceed.

If you have any questions, please call me at your convenience at (419) 245-2550.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael L. Stokes".

Michael L. Stokes
Senior Assistant Attorney General
Toledo Regional Office

Encl

RECEIVED

NOV 24 2003

Attorney General
Toledo Regional Office

FILED
HENRY COUNTY
COMMON PLEAS COURT

2003 NOV 20 P 12:11

IN THE COURT OF COMMON PLEAS
HENRY COUNTY, OHIO

Gordon Proctor, Director,
Ohio Department of Transportation

Plaintiff,

v.

Linda Warren, *et al.*,

Defendants.

Case No. 03 CV 186

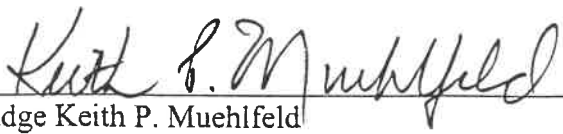
Judge Muchlfield

JUDGMENT ENTRY

This matter came before the Court on plaintiff's motion to require appraisals pursuant to R.C. 163.06(B) and to set a date for removal of the structure on defendant Linda Warren's property. Finding the motion to be well-taken, this Court grants it.

It is therefore ORDERED that plaintiff, defendant Linda Warren, and the Henry County Auditor shall cause a qualified real estate appraiser to appraise the structure on the property being appropriated, photograph all sides of it and compile a complete description of it, and file the completed appraisals, photographs, and descriptions with the Court on or before January 16, 2004.

It is further ORDERED that plaintiff, the City of Napoleon, and their contractors may remove the structure on or after March 1, 2004.



Judge Keith P. Muchlfield



Date

copy

FILED
HENRY COUNTY
COMMON PLEAS COURT
2003 NOV 14 P 3:23
JUDY SCHENBERG
CLERK OF COURTS

IN THE COMMON PLEAS COURT OF HENRY COUNTY, OHIO

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

Plaintiff,

v.

Linda Warren
1006 Michigan Avenue
Napoleon, Ohio 43545

Noel's Place
319 S. Perry Street
Napoleon, Ohio 43545

The Henry County Bank
Legal Department
122 East Washington Street
Napoleon, Ohio 43545

Ida L. Bostelman, or successor
Henry County Auditor
660 N. Perry Street
P.O. Box 546
Napoleon, Ohio 43545

and

CASE NO. *03CV186*

JUDGE

PETITION TO
APPROPRIATE
PROPERTY AND TO
FIX COMPENSATION

Calvin G. Spiess, or successor
Henry County Treasurer
660 N. Perry Street
P.O. Box 546
Napoleon, Ohio 43545

Defendants.

PETITION TO APPROPRIATE PROPERTY AND TO FIX COMPENSATION

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

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

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

4. Attached hereto, as a part of "Exhibit 1," is a copy of the *Findings, Declarations and Resolutions* entered in the Journal of the Director of Transportation, Real Estate Administration Section, wherein the following are disclosed:

- (a) A statement of the purpose of the appropriation.
- (b) The identity of the road to be made, constructed or improved.
- (c) The names and addresses, so far as can be ascertained, of those persons or entities that are the owners, as defined in R.C. 163.01, of the property to be appropriated.
- (d) The description of the property, and the rights, titles, interests, and estates therein, to be appropriated.

- (e) The amount Plaintiff has determined to be the fair market value of the property, and the rights, titles, interests, and estates therein, to be appropriated, together with any damages to the residue thereof.
- (f) The identity of the entities other than the State of Ohio, if any, in the name of which all or a part of the property is being appropriated, all with the prior consent of the legislative or corporate authority of any such entities.

Plaintiff hereby incorporates "Exhibit 1" into this Petition.

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

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

WHEREFORE, Plaintiff prays the Court will:

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

[B] Enter a judgment ordering the conveyance of the title to such property to the State of Ohio and/or to the entities other than the State of Ohio, if any, identified in "Exhibit 1," upon the consideration of the sum of money deposited by Plaintiff with the Clerk of this Court.

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

All in accordance with law.

JIM PETRO
Attorney General of Ohio



MICHAEL L. STOKES (0064792)
Assistant Attorney General
One SeaGate
Suite 2150
Toledo, OH 43604-1551
E-mail: mstokes@ag.state.oh.us
(419) 245-2550 - FAX (419) 245-2520
Attorney for Plaintiff

FINDINGS, DECLARATIONS & RESOLUTIONS

WHEREAS, I find it necessary to make, construct or improve **State Route 108, Section 15.55, Henry County, Ohio;**

WHEREAS, it is necessary for the public convenience and welfare to acquire certain property for highway purposes, namely **Parcel(s) 7-WDV**, which property is more particularly described below; and the names and addresses of the owners of said of property are:

Linda Warren
1006 Michigan Avenue
Napoleon, Ohio 43545

Noel's Place
319 S. Perry Street
Napoleon, Ohio 43545

The Henry County Bank
Legal Department
122 East Washington Street
Napoleon, Ohio 43545
(Volume 221, Page 85, Mortgage recorded Februray 17, 1994,
Henry Co. Records of Mtgs.,
THESE FACTS SHOWN FOR INFORMATION ONLY)

Ida L. Bostelman, or successor
Henry County Auditor
660 N. Perry Street
P.O. Box 546
Napoleon, Ohio 43545

Calvin G. Spiess, or successor
Henry County Treasurer
660 N. Perry Street
P.O. Box 546
Napoleon, Ohio 43545

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

WHEREAS, I have determined that **\$96,000** is the fair market value of the property, and the rights, titles, interests and estates therein, and the structures, if any, situated thereon, to be appropriated, together with any damages to the residue thereof.

BE IT DECLARED AND RESOLVED THAT:

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


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

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

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

See legal descriptions attached hereto as "Exhibit A" and by this reference made a part hereof.

WITNESS my hand and seal given this 7th day of November, 2003,
at Columbus, Franklin County, Ohio.



GORDON PROCTOR
Director,
Ohio Department of Transportation

CERTIFICATE OF AUTHENTICITY

This is to certify that the foregoing constitutes an authentic copy of an entry made on this the
7th day of November, 2003, in Volume 32, Page 196 of the
Real Estate Administration Section of the Journal of the Ohio Director of Transportation, in
attestation of which the Seal of the Ohio Department of Transportation has been affixed hereto.



Sheryl J. Long, Recorder

EXHIBIT A

**PARCEL 7-WDV
HEN-108-15.55
ALL RIGHT, TITLE AND INTEREST IN FEE SIMPLE
IN THE FOLLOWING DESCRIBED PROPERTY
WITHOUT LIMITATION OF EXISTING ACCESS RIGHTS
IN THE NAME, AND FOR THE USE OF THE CITY OF NAPOLEON, OHIO**

Prior Instrument Reference: Volume 260, Page 637, Henry County Recorder's Office.

The above described 0.399 acres, more or less, of which the present road occupies 0.000 acres, more or less, are to be deleted from Henry County Auditor's Permanent Parcel 41-009065.0220.

Owner, for himself and his heirs, executors, administrators, successors and assigns, reserves all existing rights of ingress and egress to and from any residual area.

7-WDV

HEN-108-15.55

LINDA WARREN

**TO THE CITY OF NAPOLEON AND ITS SUCCESSORS AND ASSIGNS, ALL RIGHT,
TITLE AND INTEREST IN FEE SIMPLE, INCLUDING LIMITATION OF ACCESS,
IN THE FOLLOWING DESCRIBED PROPERTY**

A parcel of land being located as Lot 8 in it's entirety, and a portion of the Southeast Corner of Lot 9, in Seth L. Curtis Subdivision of Lots 23 and 24 of John G. Lowes Addition to the City of Napoleon, Henry County, Ohio, and being further described as follows:

Beginning at the Southeast Corner of Lot 8 in Seth L. Curtis Subdivision of Lots 23 and 24 of John G. Lowes Addition to the City of Napoleon, Henry County, Ohio, same being the Grantor's Southeasterly property corner;

thence West along the South line of Lot 8, a distance of 82.5 feet to the Southwest corner of said Lot 8, same being the Grantor's Southwesterly property corner:

thence North along the West line of Lot 8, a distance of 165 feet to the Northwest corner of said Lot 8,;

thence continuing North along the West line of Lot 8 extended and into the Southeasterly quarter of Lot 9, a distance of 28 feet to a point being the Grantor's Northwesterly property corner;

thence East along a line parallel to the North line of Lot 8, a distance of 97.42 feet to a point on the East line of Lot 9, same being the Grantor's Northeasterly property corner;

thence South along the East line of Lot 9, a distance of 28.08 feet to the Southeast corner of Lot 9, same being the Northeast corner of Lot 8;

thence continuing South along the East line of Lot 8, a distance of 165.49 feet to the point of beginning.

Containing 0.399 acres (17362 square feet) of land but subject to all legal highways and easements of public record and of record in respective utility offices.

Grantor claims title by instruments(s) recorded in Volume 260, Page 637, in Volume 242, Page 106, as found in the Henry County Recorder's Office.

The above described area is contained within Henry County Auditor's Permanent Parcel Number 41-009065.0220

This description was prepared and reviewed on April 28, 2003 by Craig Loehrke, Registered Surveyor # 7585

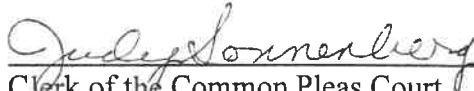
00001

STATE OF OHIO
DEPARTMENT OF TRANSPORTATION

ACKNOWLEDGMENT AND COURT RECEIPT

The undersigned Clerk of the Common Pleas Court of Henry County, Ohio, hereby acknowledges the receipt of the following documents relevant to the appropriation of certain property belonging to **Linda Warren, et al., on State Route 108, Section 15.55, Parcel(s) 7-WDV**, situated within **Henry County, Ohio**; to wit:

- (A) The original and 7 copies of the Ohio Department of Transportation's *Petition To Appropriate Property And To Fix Compensation*;
- (B) The original and two copies of this Acknowledgment and Receipt form.
- (C) A warrant for the sum of **\$96,000**, which is ODOT's deposit for this appropriation case.


Clerk of the Common Pleas Court
Henry County, Ohio

Date: 11-14-03

Case No.: 03CV186

FILED
HENRY COUNTY
COMMON PLEAS COURT
2003 NOV 14 P 3:31
JUDY SOMMERBERG
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
HENRY COUNTY, OHIO

Gordon Proctor, Director,
Ohio Department of Transportation

Plaintiff,

v.

Linda Warren, *et al.*,

Defendants.

Case No. 03 CV 186

**JOINT STIPULATION AND
JUDGMENT ENTRY**

WHEREAS, plaintiff filed this appropriation case on November 14, 2003 against landowner defendants Linda Warren and Noel's Place, the Henry County Bank, and the county Treasurer and Auditor; and

WHEREAS, none of the last three defendants disputed the necessity of this appropriation, but the landowner defendants did, based on their understanding that the appropriation was not for a highway project; and

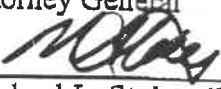
WHEREAS, after reviewing the project plans given to them, landowner defendants Linda Warren and Noel's Place now understand that the appropriation is for a highway project;

NOW, THEREFORE, plaintiff Gordon Proctor, Director, Ohio Department of Transportation and landowner defendants Linda Warren and Noel's Place hereby STIPULATE that

(1) plaintiff has the right to make this appropriation; (2) the parties were unable to agree on compensation; and (3) this appropriation is necessary and for the purpose of making or repairing roads that will be open to the public without charge.

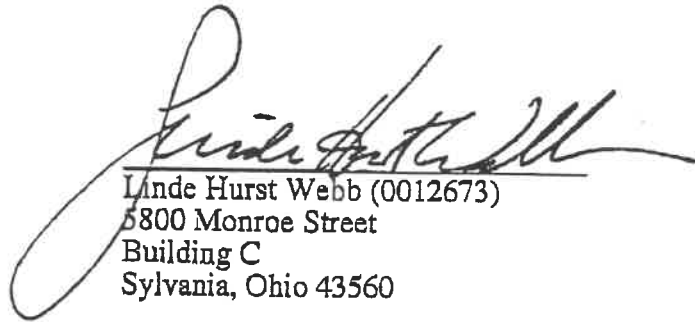
IT IS SO STIPULATED.

JIM PETRO (0022096)
Attorney General



Michael L. Stokes (0064792)
Assistant Attorney General
One SeaGate, Suite 2150
Toledo, Ohio 43604-1551

Attorney for Plaintiff



Linde Hurst Webb (0012673)
5800 Monroe Street
Building C
Sylvania, Ohio 43560

Attorney for Defendants Linda Warren and
Noel's Place

The foregoing joint stipulation having made any hearing under R.C. 163.09(B) unnecessary, the Court hereby **ORDERS** the hearing scheduled for March 17, 2004 at 9:00 a.m. be vacated.

IT IS SO ORDERED.

Judge Keith P. Muehlfeld

Date