

**IN THE COMMON PLEAS COURT OF FAIRFIELD COUNTY, OHIO**

Jack Marchbanks, Director	:	CASE NO. 2021 CV 00457
Ohio Department of Transportation	:	
	:	JUDGE RICHARD E. BERENS
Plaintiff	:	
	:	
v.	:	
	:	
Eichhorn Limited Partnership, et al.,	:	
	:	
Defendants.	:	

**DEFENDANT’S FIRST COMBINED DISCOVERY REQUESTS**  
**INCLUDING REQUESTS FOR ADMISSION**

Defendant, Eichhorn Limited Partnership (“Eichhorn”), pursuant to Rules 26, 33, 34, and 36 of the Ohio Rules of Civil Procedure, hereby propound the following Interrogatories, Requests for Admission and Requests for Production of Documents to Plaintiff, Jack Marchbanks, Director, Ohio Department of Transportation (“ODOT”), to be answered in writing and under oath within twenty-eight (28) days of service to Aaron E. Kenter, Esq., Goldman & Braunstein, LLP, 500 S. Front Street, Columbus, Ohio 43215.

NOTICE: Pursuant to Civil Rule 26(E)(3), Eichhorn makes a continuing request for supplementation of ODOT’s responses herein, said request continuing until the final hearing or trial of this matter. ODOT is, therefore, under a legal duty to reasonably supplement its responses to the requests herein should it acquire or learn of additional information after serving its responses hereto.

NOTICE: Pursuant to Civil Rule 36(A)(1), “[e]ach matter of which an admission is requested . . . is admitted unless, within a period [of twenty-eight days] after service of the request, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party’s attorney.”

NOTICE: Pursuant to Civil Rule 37(C)(2), “[i]f a party fails to admit what is requested under Civ. R. 36, and if the requesting party later proves a document to be genuine or the matter true, the requesting party may move that the party who failed to admit pay the reasonable expenses, including attorney’s fees, incurred in making that proof.”

## INSTRUCTIONS

Each of the following requests are continuing in nature requiring supplemental or additional answers in the event ODOT or its attorneys learn of any changed, different or added fact, condition, or circumstance. If information is obtained which would change or enable you to provide an answer to any request in a more complete fashion, it is required that you supplement your answer to that request within thirty (30) days after such information is obtained. If objections are made to any request, please state the basis of such objection.

The knowledge, information, facts or beliefs sought by these requests include the knowledge, information, and facts of ODOT, as well as ODOT's agents and representatives, including its attorneys, unless privileged.

1. For purposes of these requests, the term "document" or "documents" shall be defined in its broadest sense to include any writing of any kind; such as, but not be limited to, any and all handwritten, printed, typed, microfilm, computerized or other graphic matter, e-mails, electronic records, and all tape-recorded materials, videotapes, photographs, and other tangible objects in your possession, custody, or control, whether stored in paper format or as electronically stored information, and whether prepared by you or others unless otherwise specified, including, but not limited to, all originals and non-identical copies of drafts, correspondence, memoranda, records, summaries of personal conversations or interviews, minutes or records of meetings or conferences, accounts, financial data, logs, reports, transcripts, affidavits, press releases, brochures, opinions of consultants, projections, statistical statements, contracts, books, accident reports, drawings, plans, schematics, blueprints,

communications of any nature, and electronic media of any nature. The term “document” or “documents” also includes documents or copies of documents that are not exact duplicates of the original due to notations, alterations, or otherwise.

2. If requested documents are known to ODOT to exist, but are not in ODOT’s possession or control, it is requested that ODOT indicate and identify the name and address of the person(s) who has custody of the requested documents.

3. If any documents existed that would have been responsive to a request herein but have been lost, mutilated or destroyed, so state and identify each such document, the request(s) to which the document would have been responsive, and the date and circumstances under which it was lost, mutilated or destroyed.

4. The terms “possession” and “control” mean ownership, possession, or custody of the document or a copy thereof, or the right to access or secure the document or a copy thereof from any other person, public or private entity having physical or electronic possession thereof.

5. The terms “reflect”, “pertain to” and “refer to” are intended to have the broadest possible scope so that all documents, including drafts, are included if they in any way constitute, pertain to, or mention the indicated subject matter.

6. The term “communication” shall mean any statement or utterance, whether written or oral made by one person to another or in the presence of another, or any document delivered or sent from one person to another, including, but not limited to, letters, notes, text messages, emails, or any other type of writing obtained or transmitted through any mechanism, electronic or written, that is used for transmitting or receiving messages.

7. The term "Subject Property" refers to the real property owned by Eichhorn that is subject to ODOT's appropriation in this lawsuit, and that is described in Exhibit 1 attached to ODOT's Petition to Appropriate Property and to Fix Compensation filed in this matter on October 6, 2021.

8. The terms "Plaintiff," "ODOT," "you," or "your" as used in these requests means ODOT, its employees, agents, members, officers, attorneys and representatives.

9. The term "Lawsuit" refers to the appropriation action filed by ODOT against Eichhorn on or about October 6, 2021.

10. The term "Project" refers to the improvements to State Route 37, Section 6.10, Fairfield County, Ohio that are described in ODOT's Petition to Appropriate and that is the subject of this Lawsuit.

11. The term "Petition" refers to ODOT's Petition to Appropriate that was filed on or about October 6, 2021 to commence this Lawsuit.

12. The term "Individual" refers to any natural or legal person, including business entities, partnerships, trusts, public entities, and agencies.

13. The phrase "Identify the Individual" means provide the individual's full name, title, residential and business addresses, personal and business telephone numbers, email addresses, and a copy of the individual's resume or CV.

14. Wherever used herein, the singular and the plural shall be deemed to include one another; the masculine and the feminine shall be deemed to include one another; the disjunctive ("or") and the conjunctive ("and") shall be deemed to include one another; and, each of the functional words "each", "every", "any" and "all" shall be deemed to include each

of the other functional words.

15. If any document or communication is withheld under a claim of privilege or work product, it is requested that ODOT furnish a list identifying each document for which the privilege is claimed, a statement regarding what the contents of the document or communication relate to (without revealing the privileged information), and sufficient explanation for the basis of the claim of privilege such that the merit of such claim of privilege can be evaluated by Eichhorn.

16. The term "Before Condition" refers to the Subject Property before ODOT took a portion of the Subject Property by appropriation for the Project.

17. The term "After Condition" refers to the Subject Property after ODOT took a portion of the Subject Property by appropriation for the Project.

## REQUESTS

Interrogatory #1: Identify each individual you intend to call as a witness at any hearing or trial in this lawsuit.

**Response:**

Interrogatory #2: Identify each individual you intend to call as an expert witness at any hearing or trial in this lawsuit.

**Response:**

Interrogatory #3: For each individual identified in Interrogatories #1 and #2, state the subject matter upon which each individual is expected to testify.

**Response:**

Interrogatory #4: Identify the individual who is your "head of the acquiring agency" as the term "head of the acquiring agency" is used in R.C. 163.01, *et seq.*

**Response:**

Interrogatory #5: Identify the individual who will serve as your party representative during this lawsuit.

**Response:**

Interrogatory #6: Identify each individual answering or assisting in the answering of the discovery requests contained herein.

**Response:**

Interrogatory #7: Identify each individual that you retained or consulted with as an expert but that you do not intend to call as an expert witness at any hearing or trial of this lawsuit.

**Response:**

Request for Production #1: For each individual identified in Interrogatories #1, #2, #4, #5, #6, and #7, produce a complete and accurate copy of the individual's most recent resume or curriculum vitae (CV).

**Response:**

Request for Production #2: Produce a complete and accurate copy of all appraisals of the Subject Property, or other document valuing the Subject Property such as a value finding or value analysis, that are in your possession, custody, or control.

**Response:**

Request for Production #3: Produce a complete and accurate copy of your engagement agreement with Integra Realty Resources for the provision of an appraisal report concerning the Subject Property.

**Response:**

Request for Production #4: Produce a complete copy of all written instructions or notes that you provided to Integra Realty Resources in connection with their preparation and provision of an appraisal report concerning the Subject Property.

**Response:**

Request for Production #5: Produce a complete copy of the most recent set of project plans for the Project; including, but not limited to, engineering and construction drawings, right-of-way sheets, plan and profile sheets, property map sheets, cross section plans, plans showing sewer and utility locations before and after the Project, the relocation of any and all utilities as a result of the Project, and maintenance of traffic plan sheets.

**Response:**

Request for Production #6: Produce a complete copy of all cost estimates that were prepared in relation to right-of-way acquisition for the Project.

**Response:**

Request for Production #7: Produce a complete copy of all documents referred to, relied upon, or otherwise utilized in the answering the discovery requests contained herein.

**Response:**

Request for Production #8: Produce a complete copy of all documents, demonstratives, photographs, imagery, tangible items, or any other type of evidence that you intend to utilize as an exhibit at any hearing or the trial of this lawsuit.

**Response:**

Respectfully submitted,

**Goldman Braunstein Stahler Kenter LLP**

/s/ Aaron E. Kenter

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Attorneys for Defendant

Eichhorn Limited Partnership

**VERIFICATION**

STATE OF OHIO

COUNTY OF \_\_\_\_\_ SS:

I, \_\_\_\_\_, as authorized representative of ODOT, after being duly placed under oath, sworn, and further advised that my foregoing answers to the above discovery requests are considered as sworn testimony, the same as if I were testifying in a court of competent jurisdiction, do hereby state that the answers to the foregoing discovery requests are true.

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

Sworn to before me, and subscribed in my presence, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

**CERTIFICATE OF SERVICE**

I hereby certify that on June 3, 2022, the foregoing was served on the following via electronic mail or regular mail:

Corinna V. Efke  
Justine A. Allen  
Assistant Attorneys General  
Executive Agencies Section  
Transportation Unit  
30 East Broad Street, 26th Floor  
Columbus, Ohio 43215  
Corinna.Efke@OhioAGO.gov  
Justine.Allen@OhioAGO.gov  
Attorney for Plaintiff

*/s/ Aaron E. Kenter*  
Aaron E. Kenter (0092264)  
Attorney for Defendant  
Eichhorn Limited Partnership