

**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.	:	

**MOTION OF DEFENDANT EICHHORN LIMITED PARTNERSHIP  
TO TAX STATUTORY COSTS TO PLAINTIFF**

Defendant, Eichhorn Limited Partnership (“Eichhorn”), by and through counsel, and, pursuant to R.C. 163.21(C), respectfully moves this Court for an Order taxing statutory costs to Plaintiff in the above-captioned appropriation case. A memorandum in support follows.

Respectfully submitted,

Goldman Braunstein Stahler Kenter LLP

/s/ Aaron E. Kenter

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Attorney for Defendant,

Eichhorn Limited Partnership

## MEMORANDUM IN SUPPORT

Eichhorn is entitled by statute to recover its costs and expenses, including attorneys' and appraiser fees, in the above-captioned appropriation case. R.C. 163.21(C)(2) provides that:

**[T]he court shall enter judgment in favor of the owner for costs and expenses, including attorney's and appraisal fees, that the owner actually incurred only if the property being appropriated is land used for agricultural purposes as defined in section 303.01 or 519.01 of the Revised Code, or the county auditor of the county in which the land is located has determined under section 5713.31 of the Revised Code that the land is "land devoted exclusively to agricultural use" as defined in section 5713.30 of the Revised Code and the final award of compensation is more than one hundred fifty per cent of the agency's good faith offer or a revised offer made by the agency under division (C)(1) or (3) of this section.**

However, regardless of the landowner's actual costs, the award of costs and expenses is limited to "twenty-five per cent of the amount by which the final award of compensation exceeds the agency's initial good faith offer or . . . last written offer made not less than forty-five days before the date initially designated for trial by the court." R.C. 163.21(C)(4).

The date initially set for trial in this matter was September 20, 2022. *See* Scheduling Order, filed December 21, 2021. As of 45 days before September 20, 2022, Plaintiff's last written offer was \$14,870 (which was the amount determined by Plaintiff's appraiser Jeffrey Helbig).

On February 15, 2023, a jury in the above-captioned case returned a verdict for a total award of \$112,472.50. This award is more than 150% of Plaintiff's last-written offer and exceeds Plaintiff's last written offer by \$97,602.50. Further, as demonstrated by the testimony of both side's appraisers and Mr. Eichhorn, and as demonstrated by the appraisal reports admitted into evidence as Exhibit D and Exhibit 4, respectively, the current use of the land appropriated in this case is agricultural. Where, as here, such evidence is already in the record, the Court need

not hold an evidentiary hearing to establish these facts. *See Wray v. Gahm Properties*, 2018-Ohio-50, 103 N.E.3d 148 (4th Dist.). Therefore, Eichhorn is entitled to recover costs and expenses under R.C. 163.21(C).

Twenty-five per cent of the of the amount by which the total award exceeds Plaintiff's last-written offer is \$24,400.62. As Eichhorn's actual costs and expenses authorized to be recovered under R.C. 163.21(C) exceed this figure, the award of costs and expenses is limited to \$24,400.62.

Therefore, Eichhorn respectfully requests that this Court enter judgment awarding costs and expenses in the amount to which it is statutorily entitled of TWENTY-FOUR THOUSAND FOUR HUNDRED DOLLARS AND SIXTY-TWO CENTS (\$24,400.62).

A Proposed Order is attached for the Court's convenience.

Respectfully submitted,

Goldman Braunstein Stahler Kenter LLP

/s/ Aaron E. Kenter

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Eichhorn Limited Partnership

### CERTIFICATE OF SERVICE

I hereby certify that on February 23, 2023, the foregoing was served on the following via electronic mail and/or regular mail:

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	:	
Defendants.	:	

**ORDER TAXING STATUTORY COSTS**

Upon Motion of Defendant, Eichhorn Limited Partnership, for an Order taxing statutory costs to Plaintiff, and for good cause shown, it is hereby:

**ORDERED AND ADJUGED** that Plaintiff shall deposit with the Court the amount of TWENTY-FOUR THOUSAND FOUR HUNDRED DOLLARS AND SIXTY-TWO CENTS (\$24,400.62) as and for an award of costs and expenses payable to Eichhorn Limited Partnership pursuant to R.C. 163.21(C).

**IT IS SO ORDERED.**

**Dated:** \_\_\_\_\_

\_\_\_\_\_  
**JUDGE RICHARD E. BERENS**

Copies to:

All counsel of record.