

## GOVERNMENT ORDERED TO FOLLOW LAW AND COMPENSATE LANDOWNERS

### *Landowners Win 10-Year Battle to Regain Their Property.*

WASHINGTON, DC / November 30, 2007 -- The Ohio Supreme Court has ordered a county park board to pay landowners for taking their land for a recreational trail. The decision ends the landowners' ten-year odyssey in state and federal courts and sets a legal precedent for landowners elsewhere.

Erie MetroParks in northeastern Ohio had seized land owned by Mick and Lisa Coles and their neighbors on an abandoned railroad right of way to build a trail along the Huron River. The park board's employees also removed farm equipment and destroyed the Coles' deck in the process.

"This has been a long and exhausting court battle," said Lisa Coles. "At times, the government's power seemed overwhelming, but there was more at stake than our property. It became a matter of principle, which made us all the more determined. The constitutional issues were too important for us to give up."

The Coles' lawyers adopted a rarely used procedure and presented their case directly to the Ohio Supreme Court rather than appealing lower court rulings. They asked the Supreme Court to issue a *writ of mandamus* ordering the park board to follow the law.

The Supreme Court did that. It rejected the park board's arguments that it had won procedural victories in other courts that prevented the Coles from proving they owned the land. The park board said that the issue was *res judicata*, meaning the decision was final even if it was wrong. The Supreme Court disagreed. It ruled that the park board had taken a single sentence in the earlier court decision out of context, explaining, "Res judicata is not a shield to protect the blameworthy."

The Coles' attorney explained that the park board must now pay just compensation to the landowners or be subject to contempt of court. "We hope the park board now will sit down and agree on the amount of compensation that must be paid," said attorney Nels Ackerson. "The park board has to pay for its past use of the land and for its removal and destruction of other property. It can only continue to use the property if it satisfies the laws of eminent domain and also pays just compensation."

Ackerson continued, "Mr. and Mrs. Coles and their neighbors have sacrificed much to preserve the rule of law not just for themselves, but for all of us. When public officials use their awesome power to take private property, the constitution demands that they respect the rights of property owners. The Ohio Supreme Court has vindicated their noble efforts. It's a shame that it took so long, but the Coles' persistence restored their rights and ensured that others can look to the courts to protect the same rights in the future."

The decision is *State ex rel. Coles v. Granville*, Slip Opinion No. 2007-Ohio-6057.

Nels Ackerson heads the firm of Ackerson Kauffman Fex, which has a nationwide law practice based in Washington, DC with an office maintained by Mr. Ackerson in Indiana. The firm has represented clients in property rights and eminent domain litigation in more than 40 states. The firm's website is [www.ackersonlaw.com](http://www.ackersonlaw.com).

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