



Citizens Advocating Responsible Energy
CARE
Communicator

Volume Two, Number 3

June 29, 2009

Legal team files merit brief detailing claimed OPSB errors

As planned and on schedule, the CARE legal team filed a 169-page merit brief with the Ohio Supreme Court on June 12. It is now available in PDF form for download or reading on your computer screen from the Court's web site, and can be accessed at the following URL: <http://tinyurl.com/CARE-brief>

Jim Galm, president of CARE, asks that all interested persons, "Please read our Merit Brief very carefully. It's probably the most important document that will be filed in our appeal to the Ohio Supreme Court. It shows the level of detail and weeks of work put forth by

What is a 'merit brief'?

Legal briefs are formal legal arguments presented to the Court after it as agreed to take a case.

Merit briefs (or briefs on the merits) refers to briefs on the inherent rights and wrongs of a case, absent any emotional or technical biases

Tom, Julie and the rest of the legal team at Taft Stettinius & Hollister LLP. This brief is a masterpiece that FirstEnergy and the Ohio Power Siting Board will not be able to answer with facts and law."

The "Conclusion" section of the CARE merit brief, summarizing the contentions detailed in the document reads as follows:

The Applicants should not be granted the right to carve a new

ITS A DATE

JULY

2 - CARE Regular Meeting
 4 - Ice Cream at Thompson

AUGUST

6 - CARE Regular Meeting

SEPTEMBER

10 - CARE Regular Meeting
 26 - Clam Bake Fund Raiser

OCTOBER

1 - CARE Regular Meeting
 3 - Pumpkin Festival
 17 - Night at the Races

NOVEMBER

5 - CARE Regular Meeting
 21 - Ethnic Dinner & Shopping Spree raffle drawing

DECEMBER

3 - CARE Regular Meeting

power corridor utilizing hundreds of privately-owned properties unless the Ohio Power Siting Board independently concludes that a Certificate should be issued. Because the Board delegated its decision making responsibility to the ALJ, no such independent determination occurred below. Further, the Order contains no analysis or consideration of the arguments and evidence presented.

Moreover, public proceedings such as these should not countenance the shielding of critical evidence from public view. Applicants have sought a Certificate that would grant them the power of eminent domain. When asking for such authority, the attempt to shield critical

information from public view should not be tolerated. Here, the withholding of information was not only tolerated, it was a rewarded tactic.

The Board's flagrant disregard for the administrative process and the duties imposed by statute should not be allowed, especially where, as here, the rights Ohio citizens to resist the use of eminent domain power by a for-profit company hang in the balance. As this Court noted in *City of Norwood v. Horney*, there is a growing debate about the use of eminent domain to acquire property for private economic interests and the courts therefore have an increasing role "in safeguarding the rights of private property owners who fear that the takings power will be used solely to benefit private interests." 2006-Ohio-3799 at ¶ 136. Because it is entrusted with this constitutionally-required "public need" determination, the Board has just such an obligation. As demonstrated above, the Board did not discharge this obligation with the same respect and due process as would have been accorded CARE by a court of law, and the Board's unlawful delegation, its disregard of relevant evidence, its shielding of important information from the public, and its acquiescence in Applicants' dilatory discovery tactics render the Order unlawful and unreasonable.

Accordingly, this Court should reverse and vacate the Board's November 24, 2008 Order, Opinion and Certificate.

CARE meets at 7:30 p.m. on the first Thursday of every month at the Montville Community Center, next to the Fire Station on Rt. 528, just south of US Rt. 6, Montville. Everyone welcome.

**The next CARE meeting will be Thursday, August 6.
 Find us on the Web at www.caregeauga.org**

CARE CONTACTS

Jim Galm, President jgalm@caregeauga.org 216-346-0782
Mike Youshak, Vice Pres. myoushak@caregeauga.org - 440-636-5294
Secretary: nominations (or volunteers) are open for this position
Pat Jonath, Treasurer pjonath@caregeauga.org - 440 636-5153

Holiday Shopping Spree tickets on sale NOW

This is another great drawing for \$1000, to be awarded at the CARE Ethnic Dinner fundraiser on November 21 (in time for your "day after Thanksgiving" shopping pleasure). You get the cash to spend anywhere you like. Tickets are \$1 each or \$5 for six. Get your tickets from ANY CARE MEMBER!



Citizens Advocating Responsible Energy

CARE

Defense Fund Campaign

Your dollars will fuel the fight to preserve our countryside

CARE FUNDRAISING GOAL:

\$325,000

RESULTS TO DATE

Funding source	Amount	Qty	Funds raised
Diamond Benefactors	\$ 20,000.00		\$
Platinum Benefactors	\$ 10,000.00	2	\$ 20,000.00
Gold Benefactors	\$ 5,000.00	1	\$ 5,000.00
Silver Benefactors	\$ 2,000.00	12	\$ 24,000.00
Bronze Benefactors	\$ 1,000.00	6	\$ 6,000.00
Other donations	\$ 21,176.16		\$ 21,176.16
Large events	\$ 33,821.00	13	\$ 33,821.00
Small events	\$ 28,238.00	12	\$ 28,238.00
CARE Items	\$ 4,507.00		\$ 4,507.00
From operating funds	\$ 18,770.00		\$ 18,770.00
Total funds raised			\$ 161,512.16
Surplus (deficit)			\$ (163,487.84)

CARE DONOR RECOGNITION

DONOR LEVEL	MINIMUM DONATION	BENEFACTOR GOAL
DIAMOND	\$20,000	3
PLATINUM	\$10,000	6
GOLD	\$ 5,000	10
SILVER	\$ 2,000	16
BRONZE	\$ 1,000	20

CARE DONOR HONOR ROLL

DONOR LEVEL	NAME
DIAMOND	
PLATINUM	Layer Zero Power Systems, Inc. Anonymous (1)
GOLD	Jim Galm
SILVER	Pat Jonath Randy Bennett Brian Ross Cyrene Zion Don Hibler Rocco & Mary DiFranco Ed & Sharon Blankenship Anonymous (5)
BRONZE	Dan & Diane Worthington Garey Chalmers & Mary Bennett Anonymous (4)

**CARE warns landowners
It's NOT Over !
Do not sign !**

Under the law, FirstEnergy representatives are permitted to enter properties along the approved route to conduct survey operations, but, even if the Ohio Supreme Court should rule against CARE, no actual construction work can proceed until the company has acquired easements from property owners.

Jim Galm, CARE's president, is reminding members and residents along the OPSB-approved route: "It's very important to keep our eyes on the ball at this point. FE will be trying to persuade us that the process is over and that signing the easement contract is our only option. Bullroar. The certificate of environmental compatibility and public need that PUCO granted to FE is presently under litigation in the Supreme Court of the State of Ohio, thanks to the undying perseverance of CARE members and the incomparable professional service and support that we have received from our legal team and their law firm, Taft, Stettinius and Hollister.

Make no mistake friends and neighbors. It's not over."

Meanwhile, CARE members are focusing on the main task at hand, raising funds to strengthen the Defense Fund and cover the considerable legal expense of last year's efforts to defeat the OPSB application as well as the cost of the current appeal to Ohio's high court. On the horizon are the following events:

July 4 - Ice Cream at Thompson.

August 6 - CARE Regular Meeting; all interested persons welcome.

September 10 - CARE Regular Meeting; all interested persons welcome.

September 26 - Clam Bake Fund Raiser.

October 1 - CARE Regular Meeting; all interested persons welcome.

October 3 - Pumpkin Festival.

October 17 - Night at the Races*

November 5 - CARE Regular Meeting; all interested persons welcome.

November 21 - CARE Ethic Dinner fundraiser. The drawing for the \$1000 Holiday Shopping Spree Cash raffle will be held during the dinner. Tickets are \$1.00 each, or six for \$5.00; available now from any CARE member.

December 3 - CARE Regular Meeting; all interested persons welcome.

More information is available on the CARE website at: www.caregauga.org.



CARE Clam Bake and Steak Roast

This fall, CARE will again host a DiFranco clam bake and steak roast fundraiser on Saturday, Sept. 26, 2009, at the Montville Community Center. Pre-sale only.

Tickets available now! Call Pat Jonath, CARE treasurer, at (440) 636-5153