

**Objection to the Issuance of 327 Article 3 Construction Permit Application  
Plans and Specifications for U.S. Highway 6 Sanitary Sewer Relocation  
Permit Approval No. 16219 Portage, Porter County, Indiana  
2004 OEA 1 (03-W-J-3235)**

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**OFFICIAL SHORT CITATION NAME:** When referring to 2004 OEA 1, cite this case as  
*Portage U.S. Highway 6, 2004 OEA 1.*

**TOPICS:**

sewer relocation  
motion to dismiss  
12(B)(6)  
failure to state a claim upon which relief may be granted  
inadequate price paid for square foot of property used for the permitted project  
hedgerow replaced by a privacy fence  
adequate barrier  
inadequate compensation for trees  
construction damage  
avoid business loss  
waiver of sewage connection or tap-in fees  
disturbance of sign rights  
inadequate compensation for loss of business during construction

**PRESIDING JUDGE:**

Daidsen

**PARTY REPRESENTATIVES:**

Permittee: Clyde D. Compton, Esq.  
Petitioner: Timothy and Lisa Bruns, pro se  
IDEM: Nancy A. Holloran, Esq.

**ORDER ISSUED:**

February 25, 2004

**INDEX CATEGORY:**

Water

**FURTHER CASE ACTIVITY:**

[none]

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STATE OF INDIANA	)	BEFORE THE INDIANA OFFICE OF
	)	ENVIRONMENTAL ADJUDICATION
COUNTY OF MARION	)	

IN THE MATTER OF:	)	
	)	
OBJECTION TO THE ISSUANCE OF	)	CAUSE NO. 03-W-J-3235
327 IAC ARTICLE 3 CONSTRUCTION	)	
PERMIT APPLICATION PLANS AND	)	
SPECIFICATIONS FOR U.S. HIGHWAY 6	)	
SANITARY SEWER RELOCATION	)	
PERMIT APPROVAL NO. 16219	)	
PORTAGE, PORTER COUNTY, INDIANA.	)	
Respondent.	)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW and FINAL ORDER GRANTING  
RESPONDENT’S MOTION TO DISMISS PETITION FOR ADMINISTRATIVE  
REVIEW**

Please be notified that Office of Environmental Adjudication (“OEA” or “Court”) Cause No. 03-S-J-3235 is hereby dismissed from the OEA pursuant to the final dismissal of the petitioners for review of this action under Ind Tr. R. 12(b)(6) and 315 IAC 1, for failure to state a claim upon which relief can be granted. The Environmental Law Judge hereby makes the following findings of fact and conclusions of law:

**Findings of Fact**

1. On November 5, 2003, IDEM mailed the Construction Permit (Approval No. 16219), which permit is the subject matter of this case.
2. On November 20, 2003, Timothy R. Bruns and Lisa A. Bruns filed a letter stating their Petition for Administrative Review (“Petition”). In their Petition, Timothy R. Bruns and Lisa A. Bruns (referred to hereafter as Petitioners) stated that “we are not opposed to the construction permit as a whole. We are opposed to the settlement offer to the above mentioned property.”
3. A summary of the contentions stated in Petitioners’ Petition is:
  - a. Inadequate price paid for square foot of property used for the permitted project;
  - b. A disturbed hedgerow should not be replanted, but should be replaced by a privacy fence, as the replanted hedgerow will not survive so as to provide an adequate barrier;
  - c. Inadequate compensation for trees removed from property’s western boundary;
  - d. Settlement should include immediate blacktop repair of construction damage so as to avoid business loss caused by a delay in resurfacing;
  - e. Waiver of sewage connection or tap-in fees;
  - f. Disturbance of sign rights owned by existing property owners;
  - g. Inadequate compensation for loss of business during construction.

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4. On December 2, 2003, the OEA ordered the Petition for Administrative Review set for Prehearing Conference on January 20, 2004.
5. On January 7, 2004, Respondent/Permittee, City of Portage Water Reclamation Board submitted a Motion to Dismiss the Petition for Administrative Review, asserting that Petitioners failed to state a claim for which OEA could grant relief.
6. On January 12, 2004, the OEA ordered Petitioners to submit an amended petition for administrative review by January 20, 2004.
7. The prehearing conference was held as scheduled on January 20, 2004. The OEA's verbal order issued at the prehearing conference (and restated in the OEA's written report and order issued January 20, 2004) allowed Petitioners until January 27, 2004 to submit an amended petition for administrative review, after which time the OEA would issue its ruling based upon the record as of January 27, 2004.
8. No further submissions to the record were made by any party to this matter after the January 20, 2004 prehearing conference.

**Conclusions of Law**

1. The Office of Environmental Adjudication ("OEA") has jurisdiction over the decisions of the Commissioner of the Indiana Department of Environmental Management ("IDEM") and the parties to this controversy pursuant to Ind. Code § 4-21.5-7, et seq.
2. This is a Final Order issued pursuant to Ind. Code § 4-21.4-3-27. Findings of Fact that may be construed as Conclusions of Law and Conclusions of Law that may be construed as Findings of Fact are so deemed.
3. The Petitioners have failed to state any claim upon which relief may be granted by the OEA and their Petition must therefore be dismissed.

**Final Order**

IT IS THEREFORE ORDERED that the Petition for Administrative Review filed by Petitioners Timothy R. Bruns and Lisa Bruns on November 20, 2004 is hereby dismissed for failure to state a claim upon which relief can be granted by the Office of Environmental Adjudication.

You are hereby further notified that pursuant to provisions of Indiana Code § 4-21.5-7.5, the Office of Environmental Adjudication serves as the Ultimate Authority in the administrative review of decisions of the Commissioner of the Indiana Department of Environmental Management. This is a Final Order subject to Judicial Review consistent with applicable provisions of IC 4-21.5. Pursuant to IC 4-21.5-5-5, a Petition for Judicial Review of this Final Order is timely only if it is filed with a civil court of competent jurisdiction within thirty (30) days after the date this notice is served.

**IT IS SO ORDERED this 25th day of February, 2004 in Indianapolis, IN.**

Hon. Mary L. Davidsen  
Chief Environmental Law Judge