

CLERK OF COURTS  
MAHONING COUNTY, OHIO  
JUL 02 2013  
FILED  
ANTHONY VIVO, CLERK

IN THE COURT OF COMMON PLEAS  
MAHONING COUNTY, OHIO

AQUA INFRASTRUCTURE, LLC  
762 W. Lancaster Ave.  
Bryn Mawr, PA 19010

*Plaintiff*

v.

GLENN CELESTINE  
210 Beachwood  
Youngstown, OH 44505

and

LUCY M. EILAND  
215 Beachwood  
Youngstown, OH 44505

and

PAULETTE S. BROWN  
219 Beachwood  
Youngstown, OH 44505

and

T.J. RODGERS  
226 Beachwood  
Youngstown, OH 44505

and

JASMINE RODGERS  
226 Beachwood  
Youngstown, OH 44505

and

MARJORIE CHAPPELL  
242 Beachwood  
Youngstown, OH 44505

and

SUSIE M. FORD

Case No.: 2013 CV 1797

Judge EVANS

**Complaint for Declaratory Judgment**



253 Beachwood  
Youngstown, OH 44505

and

YOUNGSTOWN CHOICE HOMES  
CORPORATION DBA CHOICE HOMES  
753 Park Ave.  
Youngstown, OH 44510

and

WILLIE A. BAILEY  
202 Beachwood  
Youngstown, OH 44505

and

VERA M. BAILEY  
202 Beachwood  
Youngstown, OH 44505

and

TITAN CONSTRUCTION, INC.  
c/o Bruce Alan Lev, Statutory Agent  
3827 Mahoning Ave.  
Youngstown, OH 44515

and

MARK K. BROWN  
201 Beachwood  
Youngstown, OH 44505

and

D. SCOTT HEINEMAN  
14876 Washington Rd.  
West Burlington, IA 52655

and

KURT F. JOHNSON  
14876 Washington Rd.  
West Burlington, IA 52655

and

BANK OF NEW YORK )  
c/o BAC Tax Services Corporation )  
P.O. Box 10211 )  
Van Nuys, CA 91410-0211 )

and )

RICHARD J. MILES )  
218 Beachwood )  
Youngstown, OH 44505 )

and )

SANDRA J. MILES )  
218 Beachwood )  
Youngstown, OH 44505 )

and )

SHEILA E. TRIPLETT )  
222 Beachwood )  
Youngstown, OH 44505 )

and )

ERNEST B. MCCOLLUM )  
227 Beachwood )  
Youngstown, OH 44505 )

and )

VIRGINIA L. MCCOLLUM )  
227 Beachwood )  
Youngstown, OH 44505 )

and )

MILDRED DELGADO )  
230 Beachwood )  
Youngstown, OH 44505 )

and )

FRANKLIN PIERCE )  
230 Beachwood )  
Youngstown, OH 44505 )

and )

CAROL HERIAN )  
234 Beachwood )  
Youngstown, OH 44505 )

and )

BARRY F. FINLEY )  
238 Beachwood )  
Youngstown, OH 44505 )

and )

JODI AUSTIN BROWN )  
249 Beachwood )  
Youngstown, OH 44505 )

and )

DAVID L. BLACKMON, SR. )  
250 Beachwood )  
Youngstown, OH 44505 )

and )

GLORIA BLACKMON )  
250 Beachwood )  
Youngstown, OH 44505 )

and )

SEAN T. MCKINNEY )  
254 Beachwood )  
Youngstown, OH 44505 )

and )

ISHSHANDU PEAGLER )  
257 Beachwood )  
Youngstown, OH 44505 )

and )

ROCHELLE L. LOCKE )  
260 Beachwood )  
Youngstown, OH 44505 )

and )

SHARON A. FORD )  
261 Beachwood )  
Youngstown, OH 44505 )

and )

SANDRA PEAGLER )  
14 Lakewood Circle )  
Youngstown, OH 44505 )

and )

CAROL J. OLIVER )  
26 Lakewood Circle )  
Youngstown, OH 44505 )

and )

JAY T. ALFORD )  
18 Lakewood Circle )  
Youngstown, OH 44505 )

and )

SHIRLEY C. ALFORD )  
18 Lakewood Circle )  
Youngstown, OH 44505 )

and )

GARY C. BROWN )  
22 Lakewood Circle )  
Youngstown, OH 44505 )

and )

LETANYA R. BROWN )  
22 Lakewood Circle )  
Youngstown, OH 44505 )

and )

ANDREW C. COOKS II )  
30 Lakewood Circle )  
Youngstown, OH 44505 )

and )  
 )  
 JONAI R. COOKS )  
 30 Lakewood Circle )  
 Youngstown, OH 44505 )  
 )  
*Defendants* )

Now comes Plaintiff Aqua Infrastructure, LLC, and, for its *Complaint*, states as follows:

**I. Parties**

1. Aqua Infrastructure, LLC is a Pennsylvania limited liability company registered as a foreign limited liability company with the Ohio secretary of state. It is the successor to the Mahoning Valley Water Company and the Ohio Water Service Company as the owner of real property in Mahoning County. It is also a subsidiary of Aqua America, Inc.

2. The defendants listed below are the owners of record – in their individual, corporate, or fiduciary capacities – of the real property identified below by lot number, street address, and permanent parcel number in the Beachwood Village – Lakeside Estates subdivision:

Lot	Street Address	Owner	Parcel ID
61931	210 Beachwood Drive	Glenn Celestine	532310039000
61918	215 Beachwood Drive	Lucy M. Eiland	532310017000
61917	219 Beachwood Drive	Paulette S. Brown	532310018000
61899	226 Beachwood Drive	T.J. Rodgers & Jasmine Rodgers	532310036000
61903	242 Beachwood Drive	Marjorie Chappell	532310032000
61911	253 Beachwood Drive	Susie M. Ford	532310024000
61914	Beachwood Drive	Choice Homes	532310021000
61929	Beachwood Drive	Willie A. Bailey, Trustee, & Vera M. Bailey, Trustee	532310041000
61907	Beachwood Drive	Titan Construction, Inc.	532310028000
61927	Beachwood Drive	Titan Construction, Inc.	532310008000
61892	Beachwood Drive	Titan Construction, Inc.	532310043000
61916	Beachwood Drive	Choice Homes	532310019000
61930	Beachwood Drive	Choice Homes	532310040000
61926	201 Beachwood	Mark K. Brown	532310009000

	Drive		
61928	202 Beachwood Drive	Willie A. Bailey, Trustee, & Vera M. Bailey, Trustee	532310042000
61925	205 Beachwood Drive	D. Scott Heineman, Trustee, & Kurt F. Johnson, Trustee	532310010000
61924	209 Beachwood Drive	Bank of New York	532310011000
61932	218 Beachwood Drive	Richard J. Miles & Sandra Miles	532310038000
61933	222 Beachwood Drive	Sheila E. Triplett	532310037000
61915	227 Beachwood Drive	Ernest B. McCollum & Virginia M. McCollum	532310020000
61900	230 Beachwood Drive	Mildred Delgado & Franklin Pierce	532310035000
61901	234 Beachwood Drive	Carol Herian	532310034000
61902	238 Beachwood Drive	Barry F. Finley	532310033000
61912	249 Beachwood Drive	Jodi Austin Brown	532310023000
61904	250 Beachwood Drive	David L. Blackmon, Sr. & Gloria Blackmon	532310031000
61906	254 Beachwood Drive	Sean T. McKinney	532310029000
61910	257 Beachwood Drive	Ishshandu Peagler	532310025000
61908	260 Beachwood Drive	Rochelle L. Locke	532310027000
61909	261 Beachwood Drive	Sharon A. Ford	532310026000
61923	14 Lakewood Circle	Sandra Peagler	532310012000
61920	26 Lakewood Circle	Carol J. Oliver	532310015000
61922	18 Lakewood Circle	Jay T. Alford & Shirley C. Alford	532310013000
61921	22 Lakewood Circle	Gary C. Brown, Trustee, & Letanya R. Brown, Trustee	532310014000
61919	30 Lakewood Circle	Andrew C. Cooks II & Jonai R. Cooks	532310016000

A map showing all of the lots in the subdivision that was produced from the ArcGIS system available to the public on the Mahoning County Auditor's is attached hereto as Exhibit A.

3. The subdivision is located south of McKelvey Lake and to the west of Jacobs Road in the City of Youngstown, Mahoning County, Ohio.

## II. Factual Background

**A. Aqua Infrastructure's Property Ownership**

4. Aqua Infrastructure owns various parcels of land that surround the subdivision on its north, west, and south sides.

5. In particular, Aqua Infrastructure, as the successor to Ohio Water, owns a 5.82-acre parcel of real property that is north of the subdivision but south of McKelvey Lake that is identified by the Mahoning County Auditor as permanent parcel number 53231000300P.

6. Ohio Water acquired the Property through a warranty deed dated August 12, 1930 from Joseph R. Jackson, Mary Lorain Jackson, and Sidney D.L. Jackson, Jr. that was recorded with the Mahoning County Recorder on August 20, 1930 in Volume 411, Page 148. A true and accurate copy of this deed is attached hereto as Exhibit B.

**B. Deed Restrictions**

7. In the deed, the Jacksons imposed restrictions on the use of the Property.

8. In particular, the third and fourth paragraphs state that:

The Grantee by the acceptance of this conveyance, hereby grants to and confers upon Grantors only, access by foot to the waters formerly known as Dry Run Lake and now known as McKelvey Lake and the privilege of boating thereon or fishing therefrom, to the same extent as may be now or heretofore granted to or conferred upon any other person or persons, and without cost to said Grantors, but subject to such restrictions and limitations as may be placed upon such other person or persons in the maintenance and operation of said McKelvey Lake as a source of water supply; and further grant to and confers upon Grantors and their tenants, so long as the premises of Grantors lying immediately south of the premises hereby conveyed may be used for farm purposes. The right to take water from said McKelvey Lake for general domestic purposes without cost to said Grantors or their tenants. It is understood, however, that such water is not suitable or fit for drinking purposes and no responsibility shall attach to Grantee in the event that such water be used for drinking purposes by Grantors or their tenants; and Grantors hereby agree to save harmless said Grantee, its successors and assigns, from and against all claims, demands, loss or damage that it or they may incur or sustain by reason of the use of such waters for drinking purposes.

As a part of the consideration for this conveyance the Grantee, for itself and its successors and assigns agrees to use the premises hereby conveyed, including the premises lying between said above described premises and McKelvey Lake for park and/or general water works purposes only; that it will not erect any buildings



thereon except such as may be required and necessary for general water works purposes and then only of a slight appearance and design; that it will not permit the underbrush to accumulate without clearing out the same at least twice a year, nor permit the brush or woods to grow thereon without cutting the same at least twice a year; that it will keep the trees reasonably trimmed and that it will not maintain any barrier thereon save only a substantial wire fence approximately four feet in height.

**C. Aqua Infrastructure's Deep Rights Lease**

9. Aqua Infrastructure has leased the deep rights for oil and gas for the Property.

10. The lease does not permit above-ground activities by the lessee.

11. The lessee has asked Aqua Infrastructure to have the above restrictions as to the Property's use clarified.

12. If these restrictions are not clarified, then the transaction will not close, thereby causing Aqua Infrastructure significant financial loss.

**III. Action for Declaratory Judgment**

13. Aqua Infrastructure incorporates as if fully rewritten all of the foregoing allegations set forth herein.

14. The Ohio Declaratory Judgment Act – and, in particular, R.C. § 2721.03 – grants this Court jurisdiction over this matter.

15. A present controversy exists between the parties as to whether a lease of the Property's deep oil and gas rights violates the restrictive covenants in the deed.

16. The principles of contract interpretation and public policy dictate that the restrictive covenants must be strictly construed against the Defendants, as the parties who are in privity with the original grantors who drafted and would seek to enforce the restrictions in the deed, and strictly construed to limit any restrictions on the Property's use.

17. In construing these restrictions, a fundamental consideration is the parties' intent, which is evidenced by the restriction's terms and the surrounding circumstances – both of the parties and the subject matter – at the time of execution.

18. The parties' intent and any proper construction of restriction is to be based on a reading of the entire deed as a whole.

19. These restrictions do not apply to the lease because the clear intent of the parties to the deed was to preserve for the grantors and their successors a view of McKelvey Lake and not to address deep horizontal drilling rights.

20. The lease does not prohibit the Property's use for park or general water works purposes.

21. The lease does not allow activities that would inhibit the Property's use park or general water works purposes or that would obstruct the view of McKelvey Lake from the subdivision.

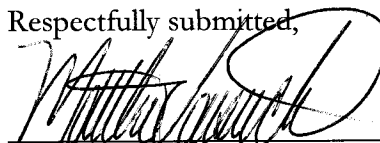
22. In August 1930, the parties to the deed did not consider nor could have considered the concept of developing the deep oil and gas reserves under the Property that is allowed under the lease.

23. The activities proposed to be conducted under the lease are not otherwise restricted.

### III. Prayer for Relief

Wherefore, Aqua Infrastructure requests that this Court grant the following relief: (a) a declaration that the restrictive covenants in the deed do not prohibit the non-surface development of the deep oil and gas reserves under the Property; and (b) such other relief as this Court may deem proper.

Respectfully submitted,



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