

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, ex rel.)	CASE NO. 2009-0026
GERALD O.E. NICKOLI, et al.,)	
)	Original Action in Mandamus
Relators,)	
)	
v.)	
)	
ERIE METROPARKS, et al.,)	
)	
Respondents.)	

RESPONDENTS' PRESENTATION OF EVIDENCE

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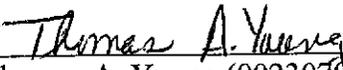
<p>FILED</p> <p>MAY 18 2009</p> <p>CLERK OF COURT SUPREME COURT OF OHIO</p>

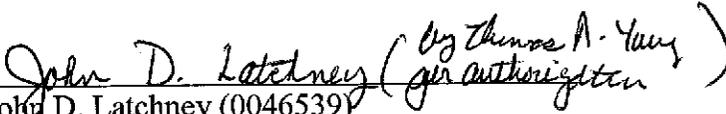
RESPONDENTS' PRESENTATION OF EVIDENCE

Pursuant to S.Ct.Prac.R. X, §7, Respondents, by and through their counsel, hereby submit the attached evidence, which consists of the following exhibits:

EXHIBIT NO.	DESCRIPTION
A	Affidavit of Kyle Johannsen
B	Affidavit of David E. Berckmueller Berckmueller Exhibit 1: A document produced by The Canal Society of Ohio and entitled <i>The Milan Canal</i>
C	Affidavit of Thomas A. Simon Simon Affidavit Exhibit 1: A series of maps, numbered V9/5 through V9/11, each of which is entitled: "Right-Of-Way And Track Map, The Wheeling & Lake Erie Railroad Company, Toledo Division – Huron Branch" and is dated 1918
D	Affidavit of Jonathan R. Granville Granville Exhibit 1: A document dated October 13, 1995 and entitled "Agreement Between The Board Of Park Commissions Of Erie County And The Wheeling & Lake Erie Railway Company" Granville Exhibit 2: A document dated October 13, 1995 and entitled "Option To Acquire Real Estate Interests"
E	Affidavit of Stephen Dice Dice Exhibit 1: A Memo dated November 8, 1995 from Erie MetroParks Dice Exhibit 2: A document dated November 10, 1998 and entitled "Properties Managed By Erie MetroParks"

Respectfully submitted.


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Attorneys for Respondents

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 18th day of May, 2009, he served a copy of the foregoing “Respondents’ Presentation Of Evidence” and the exhibits thereto on Bruce L. Ingram, Esq., VORYS, SATER, SEYMOUR & PEASE, 52 East Gay Street, Columbus, Ohio 43216-1008, counsel of record for Relators, by causing said copy to be hand-delivered to his office.

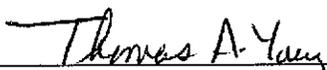

Thomas A. Young (0023070)
Counsel of Record for Respondents

Exhibit A

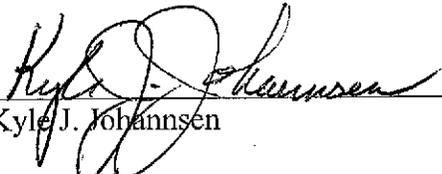
AFFIDAVIT OF KYLE J. JOHANNSEN

STATE OF OHIO)
) SS:
COUNTY OF OTTAWA)

Kyle J. Johannsen, being first duly sworn, states as follows:

1. I have personal knowledge of each and every fact stated herein.
2. At all times relevant hereto, I was and I am an attorney at law, duly licensed to practice law in the State of Ohio. My Ohio Supreme Court Attorney Registration No. is 0046771.
3. I am presently employed as a Supervisor by Hartung Title Agency in Port Clinton, Ohio. My job duties include performing title searches on real estate located in the State of Ohio.
4. I have been searching titles in Ohio since 1983. I estimate that I have done at least several hundred title searches, including title searches for real estate located in Erie County, Ohio.
5. If any real estate in Erie County, Ohio had been conveyed to the Milan Canal Company in the period starting July 12, 1881 and ending October 24, 1904, a record of each such conveyance should have been indexed under the name Milan Canal Company in the grantee deed indices in the Office of the Erie County, Ohio Recorder.
6. Within the last month, I conducted a diligent and thorough search of the grantee deed indices in the Office of the Erie County, Ohio Recorder under the name Milan Canal Company to determine if there were any records of any conveyances of real estate to the Milan Canal Company in the period starting July 12, 1881 and ending October 24, 1904. That search

failed to disclose any records of any conveyances of real estate to the Milan Canal Company in such time period.



Kyle J. Johannsen

Signed and sworn to before me, a notary public in and for the State of Ohio, by Kyle J. Johannsen on the 12th day of May, 2009.



Notary Public



SUZANNE M. ROBERTS
Notary Public - State of Ohio
My Commission Expires 6/26/14

Exhibit B

AFFIDAVIT OF DAVID E. BERCKMUELLER

STATE OF OHIO COUNTY OF ERIE

David E. Berckmueller, being first duly sworn, states as follows:

1. I have personal knowledge of each and every fact stated herein.
2. I am a retired medical doctor who specialized in eye surgery. I am 69 years old.
3. I have lived in Milan, Ohio, which is in Erie County, since 1972.
4. I am familiar with the Huron River Greenway (the "Greenway"), which is a bicycle/hiking trail operated by Erie MetroParks.
5. The Greenway is located in Erie County, Ohio and runs north and northeast from Milan, Ohio to a point which is south of Huron, Ohio, which is in Erie County.
6. When I moved to Milan, Ohio in 1972, I became aware of a Wheeling & Lake Erie railway line (the "Railway Line") which ran from Norwalk, Ohio, in Huron County, to Huron, Ohio and which passed through Milan, Ohio. The Greenway is located on a portion of the Railway Line.
7. The Huron River runs through Milan, Ohio north and northeast to where it empties into Lake Erie in Huron, Ohio. The Railway Line was east of the Huron River.
8. For many years, I have had an interest in the history and location of the Milan Canal. When I use the phrase "Milan Canal" in the Affidavit, I am referring to the entire system described below which was constructed in the 1830s and to the entire system which enabled ships to travel from Milan, Ohio to Lake Erie and from Lake Erie to Milan, Ohio via the Huron River and an artificial waterway.

9. Although I am not a historian by training, I have conducted extensive research into the history and location of the Milan Canal. Such research has included: physically inspecting the areas where the Milan Canal was located; reviewing and inspecting documents which are more than 20 years old, such as atlases and maps found in various governmental offices of Erie County, Ohio, newspaper articles published by newspapers in or around Milan, Ohio, and railroad valuation maps; and reviewing and inspecting documents that are not only more than 20 years old but are also recorded in the Recorder's Office in Erie County, Ohio.

10. As a result of my research into the history and location of the Milan Canal, I have also gained knowledge concerning the location of that portion of the Railway Line on which the Greenway is located.

11. The remaining statements in this Affidavit about the history and location of the Milan Canal and the location of that portion of the Railway Line on which the Greenway is located are based on the research described above, which includes my own personal visual observations.

12. The Milan Canal was constructed sometime in the 1830s and ceased operating sometime in the 1860s.

13. The Milan Canal consisted of two sections: first, an artificial waterway and a towpath immediately adjacent thereto which started at a basin in Milan, Ohio and went approximately three miles north and northeast to where it joined the Huron River (for the remainder of this Affidavit, I will refer to this section of the Milan Canal as the "Milan Canal – Artificial Waterway Section"); and, second, a towpath east of and immediately adjacent to the east bank of the Huron River, from the point where the

Milan Canal – Artificial Waterway Section joined the Huron River to Huron, Ohio (for the remainder of this Affidavit, I will refer to this section of the Milan Canal as the “Milan Canal – Towpath Section”).

14. The Milan Canal – Artificial Waterway Section joined the Huron River by means of a lock. Remnants of this lock are visible even to this day, and I have seen these remnants. The point where the Milan Canal – Artificial Waterway Section joined the Huron River is located slightly north of Mason Road, in Milan Township, Erie County, Ohio, on property which is currently allegedly owned by Weikel Farms, Inc.

15. During the time the Milan Canal operated, when a ship was in the Milan Canal – Towpath Section, it could be towed by people or animals on the towpath.

16. I am aware of an 1881 Lease by which the Milan Canal Company purported to lease to the Wheeling & Lake Erie Railroad Company a 150-foot wide strip of land from Milan, Ohio to Huron, Ohio.

17. That portion of the Railway Line on which the Greenway is now located was in the same location from the early 1880s until sometime in the 1990s, when Erie MetroParks took possession of it.

18. The Huron River, from the point where the Milan Canal - Artificial Waterway Section joined the River to the River’s mouth in Huron, Ohio, consists of a number of curves. The towpath on the Milan Canal – Towpath Section obviously followed those curves. However, the Railway Line north and northeast of the point where the Milan Canal – Artificial Waterway Section joined the Huron River diverged away from the Huron River. That is, much of the Railway Line north and northeast of that point is not on the Milan Canal – Towpath Section. Much of the Railway Line north

and northeast of that point was, based on my observations, more than 150 feet east of the Huron River.

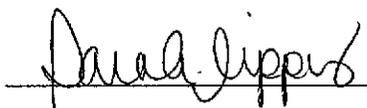
19. Part of the Greenway is located north and northeast of the point where the Milan Canal – Artificial Waterway Section joined the Huron River and part of the Greenway is located south and southwest of that point.

20. In the fall of 2002, The Canal Society of Ohio (the “Society”) sponsored a tour of the Milan Canal area. As part of that tour, the Society produced a paper entitled *The Milan Canal* which discussed the history of the Milan Canal in great detail and which also included a section on the Railway Line. I was a contributor to that paper, a copy of which is attached to this Affidavit, marked as Berckmueller Exhibit 1. I believe the statements contained in that paper are accurate.



David E. Berckmueller

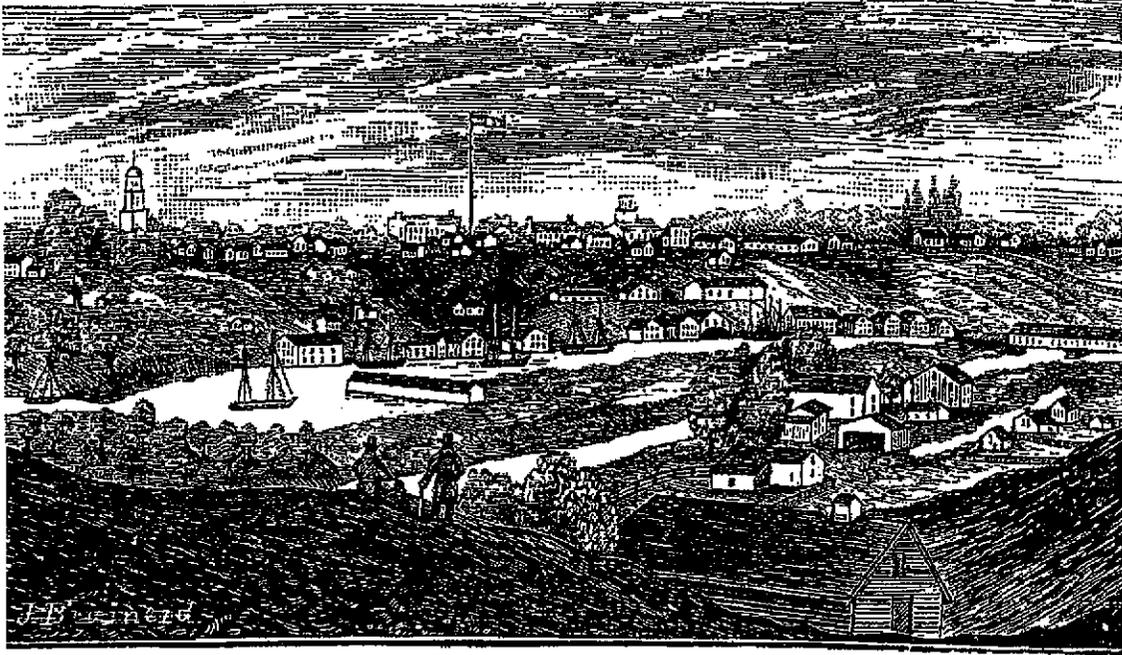
Signed and sworn to before me, a notary public in and for the State of Ohio, by David E. Berckmueller on the 11TH day of May, 2009.



Notary Public

COLUMBUS/1487999 v.01 **SARA A. LIPPUS**
Notary Public, State of Ohio
My Commission Expires
September 11, 2010

The Milan Canal



Drawn by Henry Howe, 1846.

MILAN FROM NEAR THE SANDUSKY CITY ROAD.

The Canal Society of Ohio

Fall Tour 2002

October 11th, 12th and 13th



The Canal Society of Ohio

Fall Tour 2002

Tour Committee Members

Charles and Marilyn Brausch
Carl and Alice Ehmann
Don and Ann Hutzell
John and Mary Lou Wunderle

The Tour Committee gratefully acknowledges the advice and contributions of the following:

David Berckmueller, Milan
Robert Bickley, Milan
Milan Historical Museum
Robert Wikel
Lois Wolf
&
Milan Historical Museum
Rutherford B. Hayes Presidential Center Library

Introduction

The Milan Canal, although only three miles in length, enjoyed remarkable success and as a result the town of Milan became the most important wheat shipping port on the Great Lakes. In its heyday it was second only to Odessa, Russia.

How did a small village over seven miles from Lake Erie become the southernmost port of the Great Lakes and achieve such success? Why not Sandusky, Huron or Vermilion with good harbors on the lake? As we shall see, the answer is complex and interesting.

The need for a route to markets for the north central area of the state clearly was present. Although much of the farm land of Ohio was well served by the existing and emerging canals, a large area of land to the south of Milan had, at best, marginal access to mills and markets. This included the rich agricultural counties of Lorain, Huron, Erie, Crawford, Richland, Knox, Marion, Union and Sandusky.

Canal visionaries were well aware of the fact that only three miles north of their hamlet the Huron River became navigable to the lake for vessels of moderate draft. This had been amply demonstrated by the construction of the schooner Mary Abbott in 1827-28 at Abbott's Landing. She then sailed to New York City via the Huron River, Lake Erie, the Erie Canal and the Hudson River in 1829. The voyage was safe and prosperous. At about the same time The Louisa Jenkins was constructed and plied Lake Erie for many years. (Abbott's Landing was the head of navigation of the Huron River three miles below Milan).

The geology of the region added a third and decisive factor. The Lake Plains, lying between Milan and the shoreline of Lake Erie and representing the bed of a series of ancient lakes preceeding Lake Erie, remained as a lowland that precluded the building of stable roadbeds. At the height of the harvest season, the sand was so wet and heavy as to be virtually impassable to heavy wagons - a condition that persisted into the early twentieth century. In contrast, Milan, on a high ridge with stable clay soil was readily accessible.

Support for a Central Canal linking Sandusky Bay with the Ohio River appeared in 1821 and quickly found vigorous popular support in the region. Eleutheros Cooke, a state legislator from Sandusky, became a vocal advocate for the central route and presented forceful arguments at a state level. However, in 1825 the Canal Commissioners meeting in Wooster selected the Cuyahoga — Tuscarawas route- all but ending canal hopes for Sandusky. Nevertheless, the importance of canals was now clearly perceived by people in the Sandusky region, including the entrepreneurs of Milan.

Today, few physical artifacts of the canal remain. It is the story of Milan and its people that remains colorful and interesting.

Tour Sites

Huron

The current Huron River harbor is a busy recreational and commercial waterway best viewed as the bus crosses over the SR 6 bridge. In canal days there was constant concern over shoaling (the bar) at the river mouth and interruption of trade. The Huron harbor Project of 1824 soon exhausted local funds and federal funds were appropriated to dredge the river. That this continued to be a problem is reflected in a letter from the Milan warehouse of Smith, Hyde and Walker to a customer in May 1843: -there is six and one half to seven feet of water over the bar in the Huron River. We shall expect your vessel immediately . Much later the construction of breakwalls and the utilization of modern dredging, reduced, but did not eliminate the problem.

To the north of the bridge and east of the river is the commercial side of the river including the terminus for the Wheeling and Lake Erie Railroad. Immediately east of the bridge the tour will proceed south following the east bank of the river and the line of the river towpath. To the southeast there is a clearly defined series of gentle, rounded hills. This is the most westerly line of the Appalachian Plateau and led to the Indian name for the Huron river: The Pettquotting or River of the rounded hills

In contrast, the land to the west is the table-like lake plains that extended to The Great Black Swamp of the Toledo region. The Huron River bays are very shallow, but the river remained navigable with channeling and dredging. As the crow flies the distance from Milan to Lake Erie is 7.5 miles, but due to the winding river the distance was over 10 miles by the canal route.

The Canal Terminus

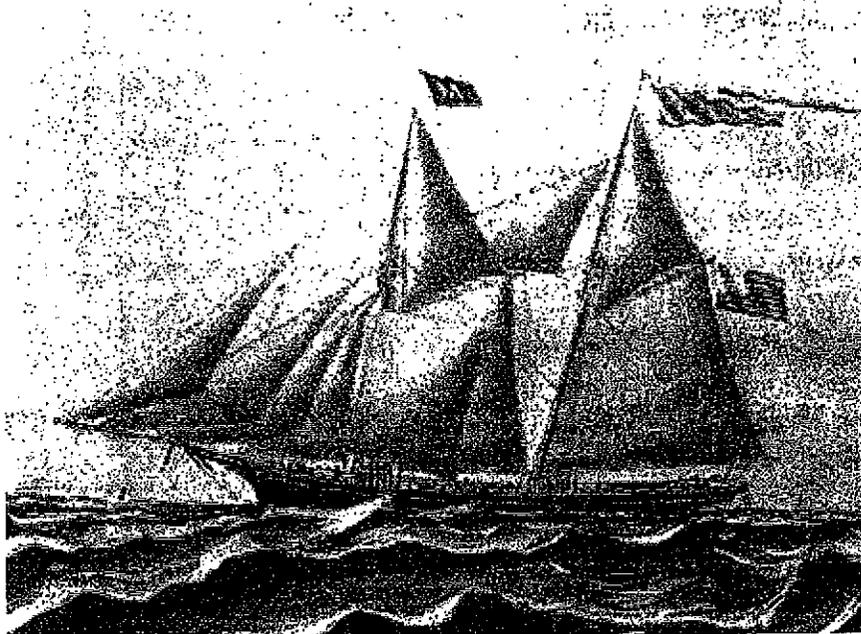
From where the buses are parked on the north side of Mason Road, the Greenway trail follows the course of the abandoned bed of the Wheeling and Lake Erie Railroad. Immediately west of the trail is the canal prism and the remains of the lower lock and the schooner *Idaho*.

The Idaho was built in Milan by A.J. Mowry in 1863. She sailed the lakes for ten years and in the financial panic year of 1873 was brought back to Milan reportedly for refurbishing. In fact, the ship was abandoned at the mouth of the canal just north of the lower lock.

The river fluctuates with the lake level. When the prevailing wind is from a southerly direction the bones of the Idaho can be seen. The remains of the lower lock are also visible. No stonework is to be found.



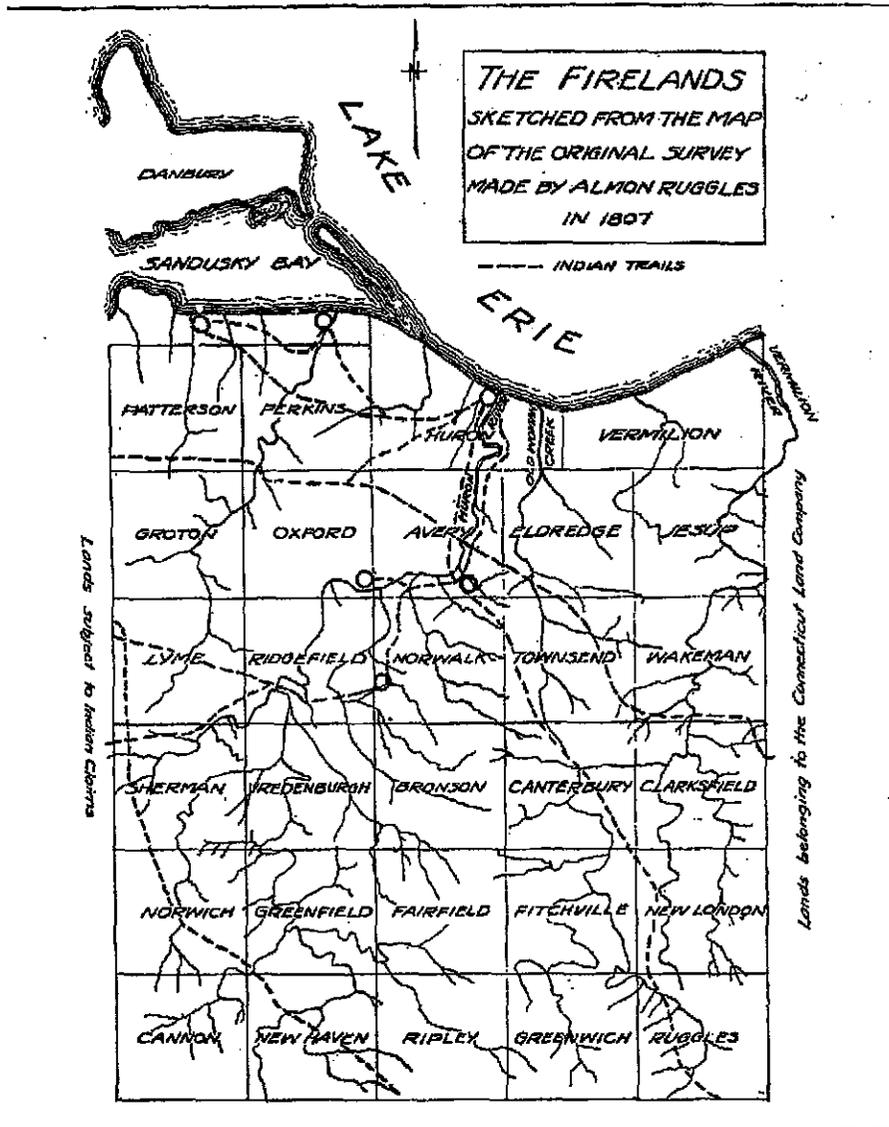
Vestiges of the Idaho as they appeared approximately thirty years ago. This photo was taken sometime after the destructive flood of 1979.



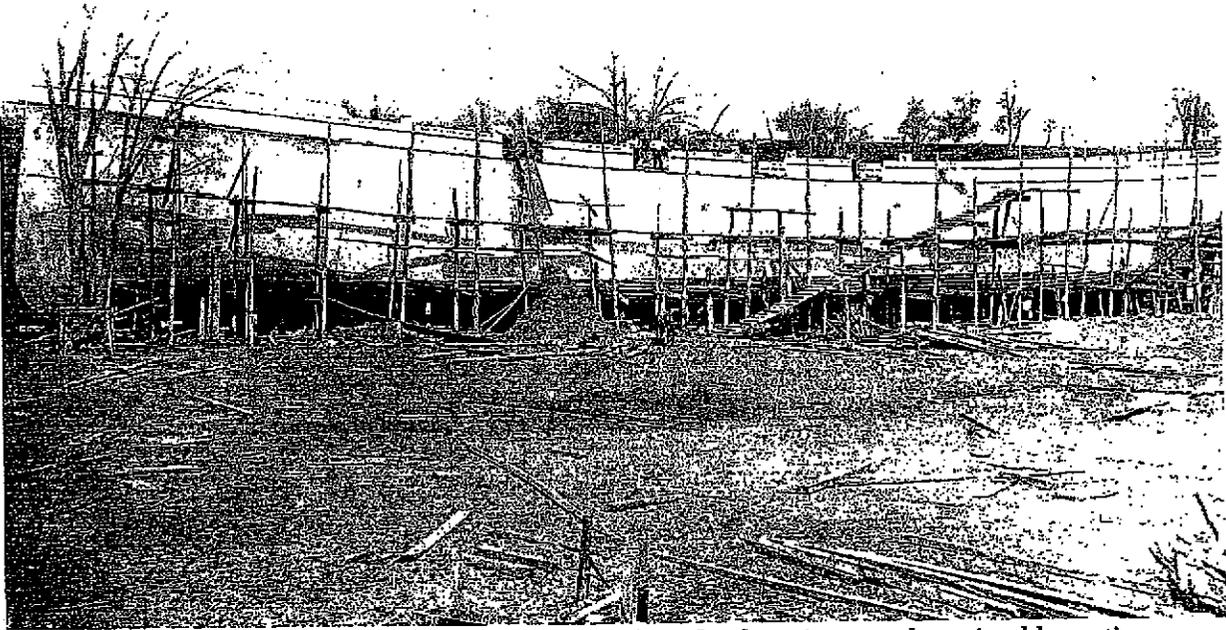
Although no pictures of the Idaho have been found, this is a sister ship built four months after the Idaho. The Idaho was 135 feet in length with a displacement of 350 tons.

Across Milan Road, to the south, is the railroad bed. It may be possible to view a segment of the canal depending on the amount of brush removal. In any case a short segment of the prism is adjacent to the road.

This tour stop is the historic site of Old Avery, the original county seat for the Firelands. At the time this was known as Huron County and later (1838) was divided into Huron and Erie counties.



Almon Ruggles in this early map of the Firelands designated the Indian trails and villages (circles) as noted. Pettquoting is at the southern border of the Avery Township line.

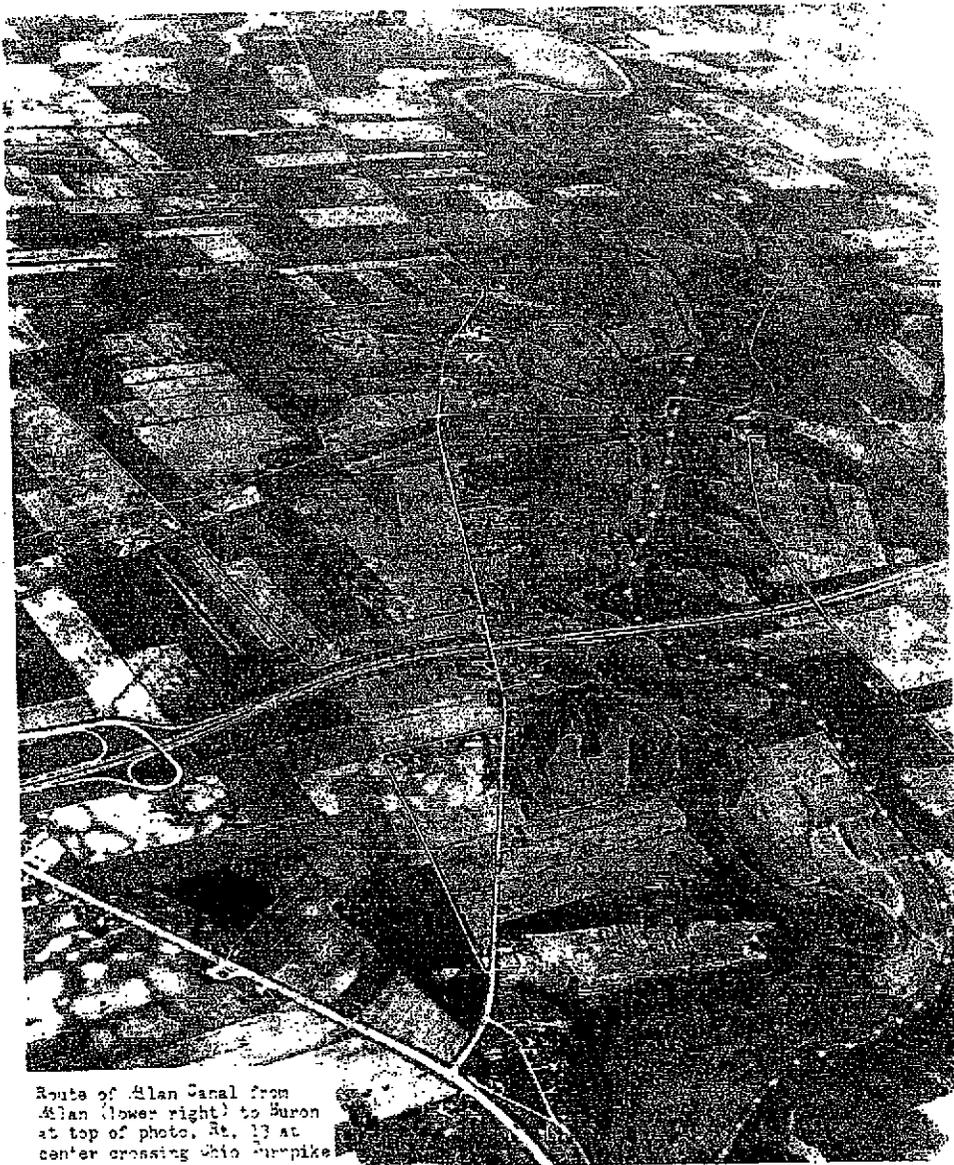


An appreciation of the size of the vessels built in this location may be gained by noting the workmen on deck in the center of the photo. This is the Golden Age under construction on the Valentine Fries shipyard.

Canal Overview

At the present time the Milan Canal can be viewed only from the terminal area and the basin. With the help of aerial photos the three-mile segment between these two points can be better appreciated. Fortunately these photos were taken in the 1960 s before the area became heavily wooded

In the photo below the entire course of the canal may be seen beginning just above the basin area at the lower right and following the line of the railroad to the terminus at the river. This is highlighted by a series of white dots. Beyond the terminus the Huron River continues north with the city of Huron just off the top of the map. The serpentine course of the river is apparent.



Route of Milan Canal from Milan (lower right) to Huron at top of photo. Rt. 13 at center crossing Ohio Turnpike

This photo below shows the basin area and surrounding features. The wooded foreground on the right is the basin with its hockey stick shape. The bed of the abandoned railroad is immediately to the left. In the lower right foreground is the sole remaining warehouse. The bridge to the far left is Rt. 250 and the bridge closer to center is the old Rt. 250, which was destroyed in the flood of 1969. The abutments remain. The area between the river and the rail bed is the old shipbuilding area. An intriguing line in the vegetation pattern may delineate the original basin margin. The original mills were located between the river and old Rt. 250.



Early Milan and Canal Planning

Milan's commerce did not begin with the canal. Like so many villages, commerce actually began with a mill. In 1816 Ebenezer Merry, who founded Milan (Beatty) and recorded its plat in 1817, bought 453 acres and proceeded to build a gristmill and a sawmill. The need for this enterprise was clear- farmers from adjacent Berlin Township, for example, were taking their wheat as far as River Raisin in Michigan for milling! The mill rapidly became prosperous and brought mercantile stores, a blacksmith, tannery, tavern and other businesses to Milan. The proprietors, with the work ethic of New Englanders and the drive of pioneers, grasped the opportunity to build a new and viable town. Clearly, the success of the mill trade contributed to the early success of Milan as recorded in an article from the old Sandusky Clarion of May 5, 1824.

The growth of Milan in the seven years between 1817 and 1824 is best indicated by an item published in the Old Sandusky Clarion of May 5 1824 which says: The Village of Milan now contains 32 houses-two of brick, four merchantile stores, one tavern, two tanneries, three blacksmith shops, two tailors, two cabinet- makers, two cooperages, one gold and silver smith, one potter, one shoemaker, two wagon-makers, one sadler, one lawyer and one doctor. It contains 280 inhabitants, two distilleries, one saw mill, one grist mill and a carding mill.

Within six years of the founding of Milan interested citizens met in the taproom of Fowler's Tavern and agreed to commission a canal feasibility survey. In 1824, the engineers and committee issued the following conclusion:

In conformity with the authority vested in us, and in discharge of the duties required of us, we, the undersigned, on the 12th of April, 1824, proceeded to make the necessary survey of the canal route from the village of Milan to the navigable waters of the Huron River, near the former seat of justice for this county.

The engineers and acting committee, having carefully looked the

ground over which the canal will pass, marked out the route.

At the commencement of this, they find a very convenient situation for the summit-pond, which may be formed by a very small dam across the Huron, which from estimates by actual experience, can be constructed for \$300, with an ample supply of water at all seasons of the year. With this expense, the summit-pond will be perfectly secure from floods.

It is found by actual measurement of the fall of the water the whole distance of the contemplated canal, that it will be seven feet and six inches. The whole ground over which the canal will pass is bottomland, and of the easiest kind of aquateneus earth for excavation. The whole distance is three miles, and entirely of the above description of earth.

From excavations actually made in the same kind of earth, it is found that the excavation may be made at an expense of six (6) cents a square yard, and at this rate a boat navigation of four feet deep and 30 feet in width, may be made at an expenditure of \$1,500 per mile, and consequently the three miles of excavation, may be made for the sum of \$4,500.

Add to this the dam and the excavation of the summit pond, \$300, equals \$4,800. It is believed that two locks will be necessary-one at or near the summit-pond, and one at the entrance of the canal from the river, at an expenditure of \$300 each', to which add the above and we have \$5,400.

Some grubbing of timber and other contingent expenses, say \$400, which added to the above makes \$5,800 2

Encouraged by the canal feasibility study the Milan Canal Company sought a charter, which was granted by the state of Ohio in 1827. This was with the stock offering of \$35,000, (700 shares at \$50.00). The original directors as recorded by Ryan were Ebenezer Merry, Ralph Lockwood, T. Baker and J. Wright. Sufficient funds were difficult to obtain and the company did not enter into a construction contract until 1833. In any case, construction was slow paced and, two years after the financial panic of 1837, the canal was finally completed. In the meantime capitalization had been increased to \$75,000. With the State of Ohio subscribing for \$25,000 and loaning \$15,000. The actual cost of building the canal had been over four times the original estimate.

Construction and Operation of the Canal

The basic facts relating to the construction of the Milan Canal are sparse and fragmented compared to the records of the publicly funded canals of Ohio. For example, documented bids were advertised for the construction of three locks, but no subsequent evidence has supported the existence of more than two locks. Nevertheless, much of this fascinating story can be pieced together.

In order to insure the success of the canal it was imperative to have free access to Lake Erie. Shoaling at the river inlet created a bar that hampered navigation. Huron and Milan jointly addressed this problem.

The Huron Harbor Company was formed by interested citizens of the Huron-Milan area in 1823, to build a harbor at the mouth of the Huron River for safe entrance of vessels from the lake. The work was begun the next year under Charles Wheaton of Milan as superintendent. When he died that fall, Zebulon Stevens of Huron continued the work so long as funds lasted, and the Federal government completed the work a few years later.

From the beginning the canal was planned for sloop navigation. The high masts of these vessels required that the river be kept free of obstructions.

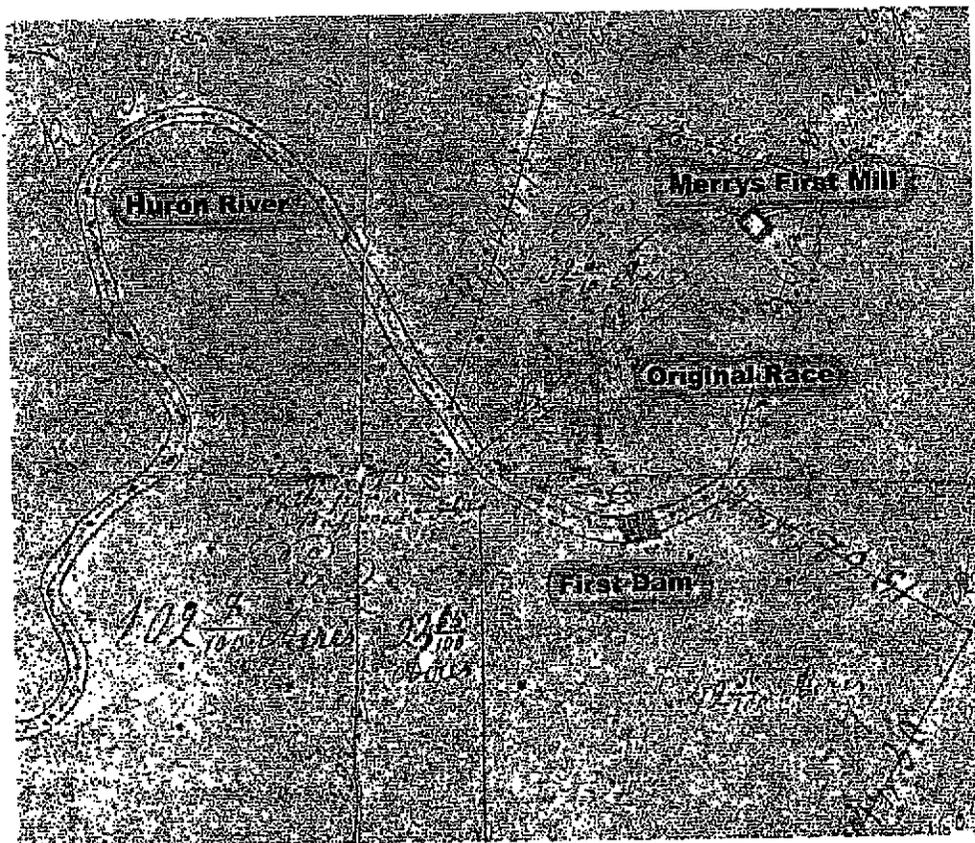
NOTICE:

Is hereby given, that petitions will be presented to the next Legislature of the State of Ohio, for the following purposes, viz: For declaring the Huron River a public highway, from the mouth of said river to the village of Milan, and to prevent any obstruction being put in said river, within said limits. Also, for a Canal for sloop navigation, to be located from the present sloop navigation on the Huron River, to Merry's Mill pond, at the village of Milan, and for legislative aid for constructing the same. Also, for a tow-path to be laid out on either side of the Huron River, from the mouth of said River, to the head of sloop navigation on said River. Milan, October 25th, 1826. 3

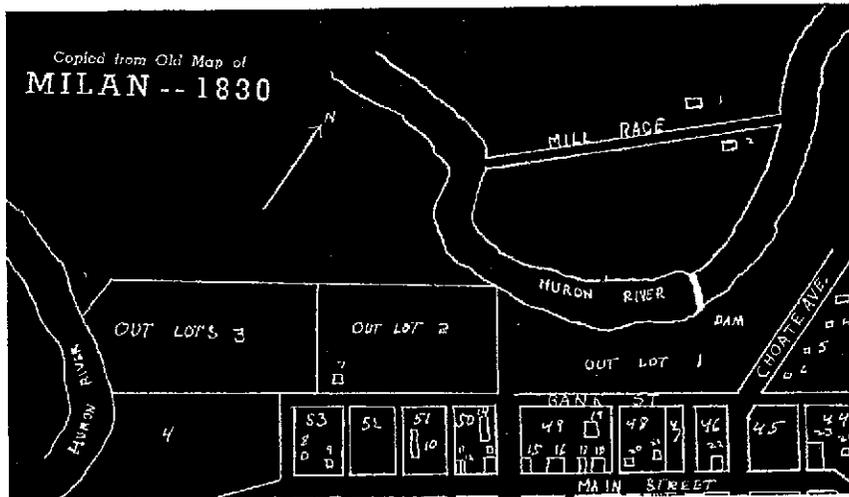
In 1832 the construction of a towpath along the Huron River, and divided into 12 contract segments, was completed from Lake Erie to Abbott s Bridge. Having

demonstrated the feasibility of this crucial river link between Lake Erie and the proposed canal the Milan Canal Company proceeded to let a contract for the canal in October of 1833. This called for a depth of 4 feet and a width of 30 feet. It should be noted that no slope to the walls is specified-probably because of the draft and beam of the vessels.

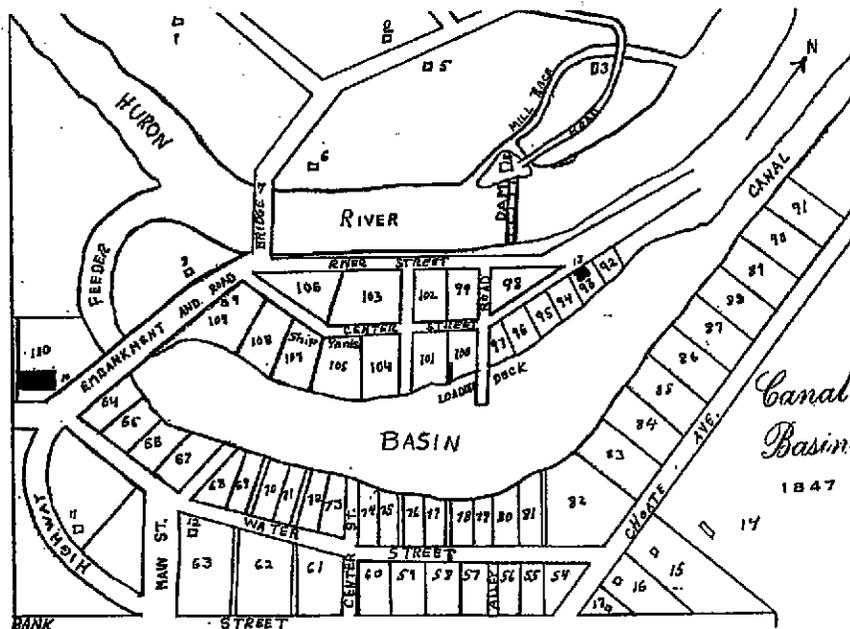
Merry s Mill was important to location of the canal in a direct way. Following the canal feasibility survey, the gentle bend in the Huron River at the foot of the north village hill was targeted as the future canal basin. In order to accomplish this change a new course for the river was routed through Merry s original millrace and a second millrace created. These complex changes are best understood by reviewing the pertinent maps.



This map is taken from an original plat (circa 1818). This and the following map show the original course of the river and the first millrace of Merry s Mill. The bend in the river became the canal basin and the original millrace became the new course of the river. While this map is quite crude it is of historic interest. The content is clarified in the ensuing two maps.

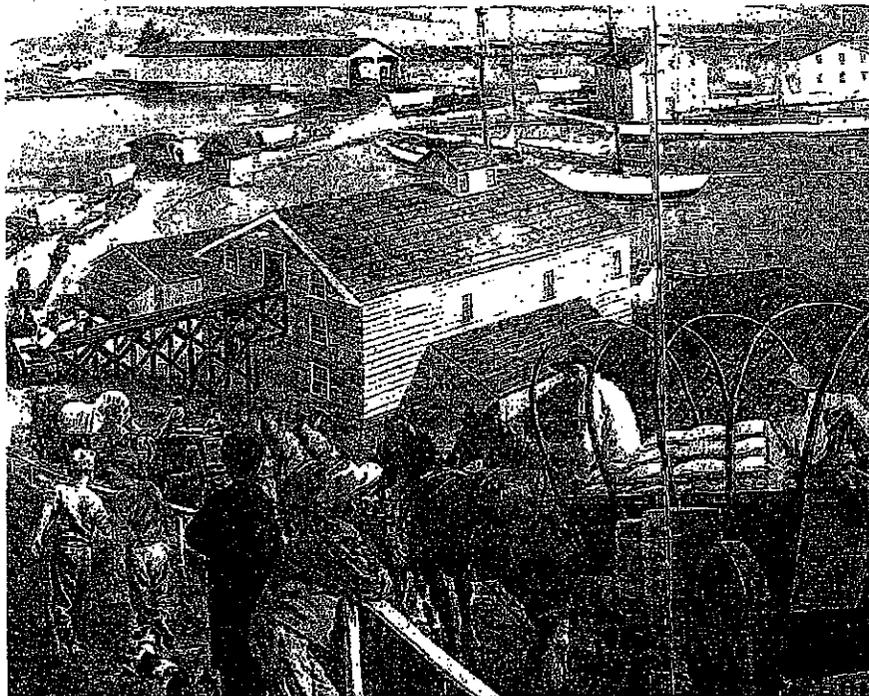


This map, drawn 9 years before the canal became operational shows the original riverbed, which would become the basin. When the mill race became the new river bed the mills had to be relocated from location 1 to 2.



Canal Basin in 1847. This map shows the completed changes that have taken place in the river. It shows the old course of the river, (the basin), the new course of the river, the new dam and the second millrace. Warehouses are located below the basin and the shipbuilding area is above the basin.

The newly created basin, with the shape of a hockey stick, was 1200 feet in length and over 300 feet at its widest point in order to accommodate sailing craft. These vessels were typically 125 feet in length with a beam of 25 feet. Canal boats (lighters) of the type used on the other canals of Ohio were present but not common. Positioned between the basin and the new course of the river was an area containing shipyards and a loading dock.



This painting by Ted Gorka depicts the canal in its heyday. The parade of wagons descended the hill to be unloaded at the warehouses in the foreground or to cross the embankment to the far side of the basin.

The buildings in the background (above and right) are in the shipbuilding area.

In order to assure an adequate water supply for the canal a dam was constructed, downstream of the feeder. The method of more precise water regulation is speculative, but at least two possibilities seem likely: The dam may have had a regulator or the feeder may have had such a device. Available evidence indicates that the dam was a simple wooden structure, suggesting that regulation may have been in the feeder.

A bridge or culvert allowed a road to pass over the feeder and continue to a covered bridge over the revised river course This bridge was built in 1836 from local white oak at a cost of \$75.00. An iron bridge designed by Zenas King replaced the

covered bridge in 1882. The abutments of that bridge are still present although the bridge was destroyed in 1933. Another replacement was also destroyed by flood in 1969. This led to a major rerouting of SR 250 (The major north-south route.) through the Milan area with the highway no longer going through the center of town, but now a bypass to the west.

Byron Kilbourn was hired by the Milan Canal Company in 1833 as the engineer for the project. He was raised on a farm just east of Milan, between Berlin Heights and Berlinville. At the age of 32 he was already experienced in canal construction, having worked directly under Micajah Williams, who along with Alfred Kelley, was an Acting Commissioner of the Ohio Canal System. Upon completion of the Ohio and Erie Canal, Kilbourn located in Milan in October of 1833. According to the ledger of the Milan Canal Company he was to be paid an annual salary of one thousand dollars. He left in April of 1834 having been paid five hundred dollars.

In the meantime, President Andrew Jackson had appointed Micajah Williams Surveyor General of the Northwest Territory. Along with Kilbourn, he invested in lands in Michigan, Illinois and, particularly, Milwaukee. Shortly thereafter, Kilbourn would become the president of a Milwaukee canal company that subsequently failed in the financial panic of 1837. Nevertheless, he became a prominent citizen of the town and later served as its mayor on two separate occasions. There are no other references to further engineering expenses in the ledger of the MCC, even though the canal was not completed for five years.

The celebration of the opening of the canal was colorfully recorded in the Norwalk Reflector:

CELEBRATION

*Of the Completion of the Milan Canal, on
The 4th day of July, 1839*

*A procession of about five hundred persons formed in front of the
Presbyterian Church, and proceeded thence through the town, and
descended the hill to the head of the Canal Basin, where the Schooner
KEWANNEE, Capt. Moran, had just arrived through the Canal under the
salute of cannon, lying along side of the dock. When the procession
arrived at the schooner, Miss Maria Butman, escorted by the Orator of the
day and Reader of the Declaration of Independence, advanced to the*

vessel side and presented Capt. Moran with a Flag and the following address:

Capt. Moran: Sir-I have the honor this day to present you, on behalf of the Ladies of Milan, this Flag. Accept it, Sir, as a testimonial of the high consideration, respect and esteem in which they hold your Class of the American Nation, for their courage, skill and usefulness in navigating the waters. Be assured, Sir, that nothing can be more highly gratifying to us, than to bid you as Commander of this first Schooner that ever visited our town, a hearty welcome.

To which the Captain replied as follows:

Miss Butman: The Flag which you have this day done me the honor to present to my vessel, on behalf of the Ladies of Milan, is accepted in the same kind manner in which it is intended to be given. And the sentiments you are pleased to express of my Class of the American Nation, are received as highly complimentary to the hardy sons of the waters. To receive such a present, from such a source, at this place and on this National day, combine so many gratifying considerations as justly might make men in the highest stations of life proud that such an event had happened in their life time. The Ladies of Milan may be assured that nothing on my part shall remain undone to render myself worthy to command a vessel wearing such unmerited honors.

The captain then run up the flag to his masthead and a procession went onboard the Schooner and canal boat Waterwitch. They both proceeded down through the locks to the lower termination of the canal and thence returned in the same manner accompanied with a band of excellent music, to the dock from which they started. The ladies and gentlemen then disembarked and repaired to the Eagle Tavern, and sat down to an excellent dinner prepared by Messrs. Jennings and Kline to which the guests did ample justice 4

As noted above, there are conflicting reports regarding the number of locks that were actually constructed. The preponderance of evidence points to two locks. One of these was located at the base of Fisk Road and the second at the outlet of the canal into

the Huron River. These were almost surely of wooden construction-no lock stones have ever been described-either during the life of the canal or subsequently. The locks were 110 feet in length and 30 feet in width - considerably larger than the locks of other Ohio canals and, again, reflecting the fact that this canal was primarily built for schooners.

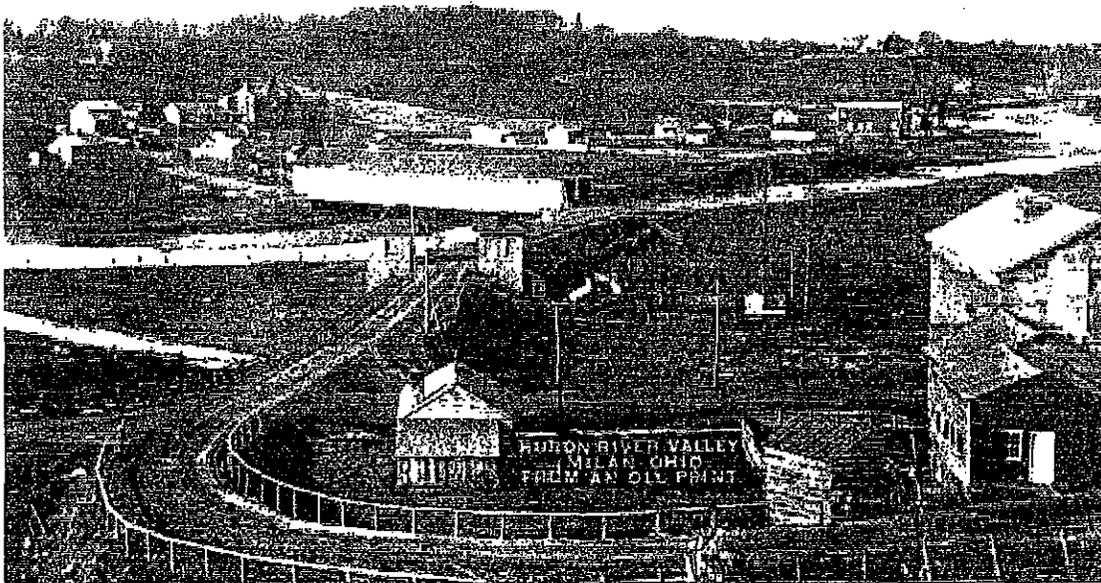
A holding basin immediately above the lower lock is shown on the Nunan map of 1865 although no additional description has been found. A dry dock was constructed at the lower end of the basin. This was connected with Salman Ruggles shipyard.

Masters of vessels both inbound and outbound reported to the Collector's office of the Milan Canal Company, and a manifest was prepared over their sworn signatures listing the goods on board the vessel. Based upon these manifests, tolls were levied and paid, a few of such charges being 25 cents per short ton of general merchandise, 2 cents per barrel of salt, 3/4 cent per bushel of barley, oats, buckwheat, potatoes and apples, 1/2 cent per bushel for pot and pearl ashes, 4 cents per barrel for whiskey, linseed oil, cider, pork, lard, butter, beef and ash; 3 cents per barrel of flour and other produce, 6-1/4 cents per perch of stone, 37-1/2 cents per 1000 feet of lumber, 1/2 cent each for cedar posts, 2 cents per 1000 pine shingles and 13-3/4 cents per ton of coal. Tolls for the first year amounted to \$4,163.10 and the dividends paid over the life of the canal totaled 37-3/4 per cent

The usual charge by vessels for carrying their cargoes to Buffalo was 4 cents and 5 cents a bushel for wheat, 18 cents a barrel for flour and 25 cents to 28 cents a barrel for pork. For wool, a comparatively new article at this port in 1844, the charge was 31 cents a bundle. In 1843, 30,000 pounds had been shipped, and 200,000 pounds were expected in 1844. Wheat to Oswego, New York was 8-1/2 cents a bushel and shipments to New York City \$10 to \$11 per ton.

By 1845 it was apparent that larger vessels (with deeper drafts) were necessary for the canal to remain competitive and profitable. In that year the canal basin and the canal were deepened to 7 feet to accommodate vessels of similar draft. The first leak in the canal occurred in the same year and was repaired in several days.

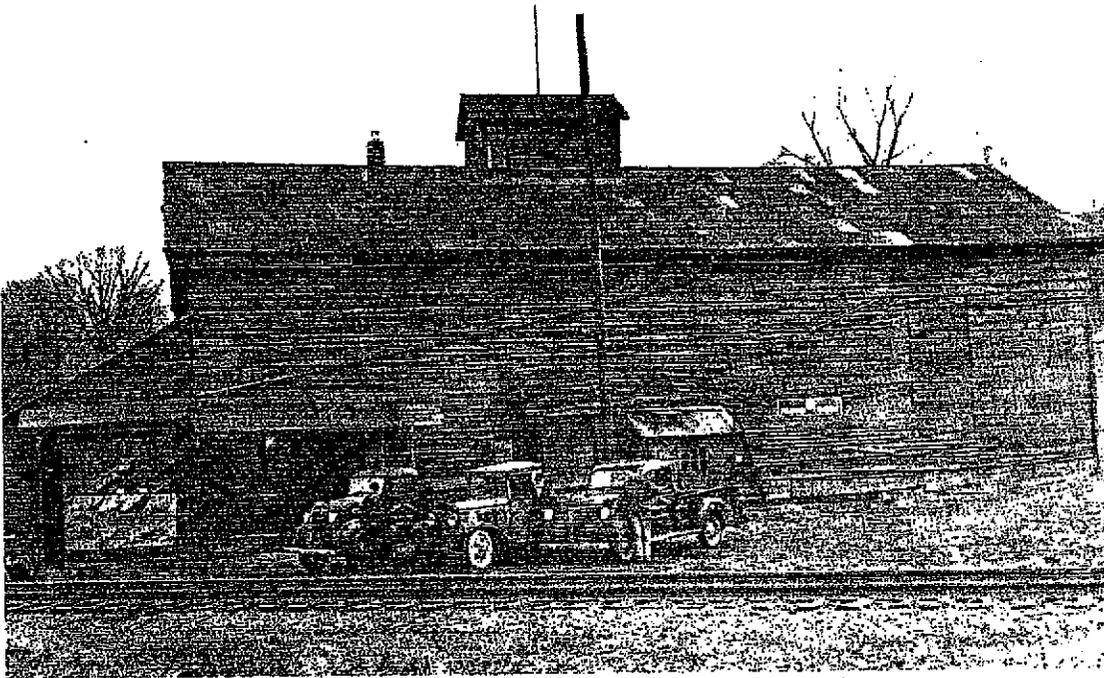
The Milan canal company paid its first dividend of 2.25% in 1841 but over the next ten years there was great variability in payments- ranging from 0% in four separate years, when all profits were plowed back into the canal to a high of 10% in 1849. Over all, from 1841 through 1851 the total dividend return was 37.75%. After 1851 no further dividends were paid, but the prosperity in total that the canal brought to Milan was immeasurable.



This view of the river valley and basin was taken after the basin was drained. The covered bridge also helps date the photo in that it was replaced in 1882 by an iron bridge. The tollhouses can be seen in the center left. The warehouse at center right remains today.



Facing the basin this is the only surviving warehouse as it appeared in 1963. It was then owned by the Bagley Lumber Company. Mr. Robert Bickley owns it currently.



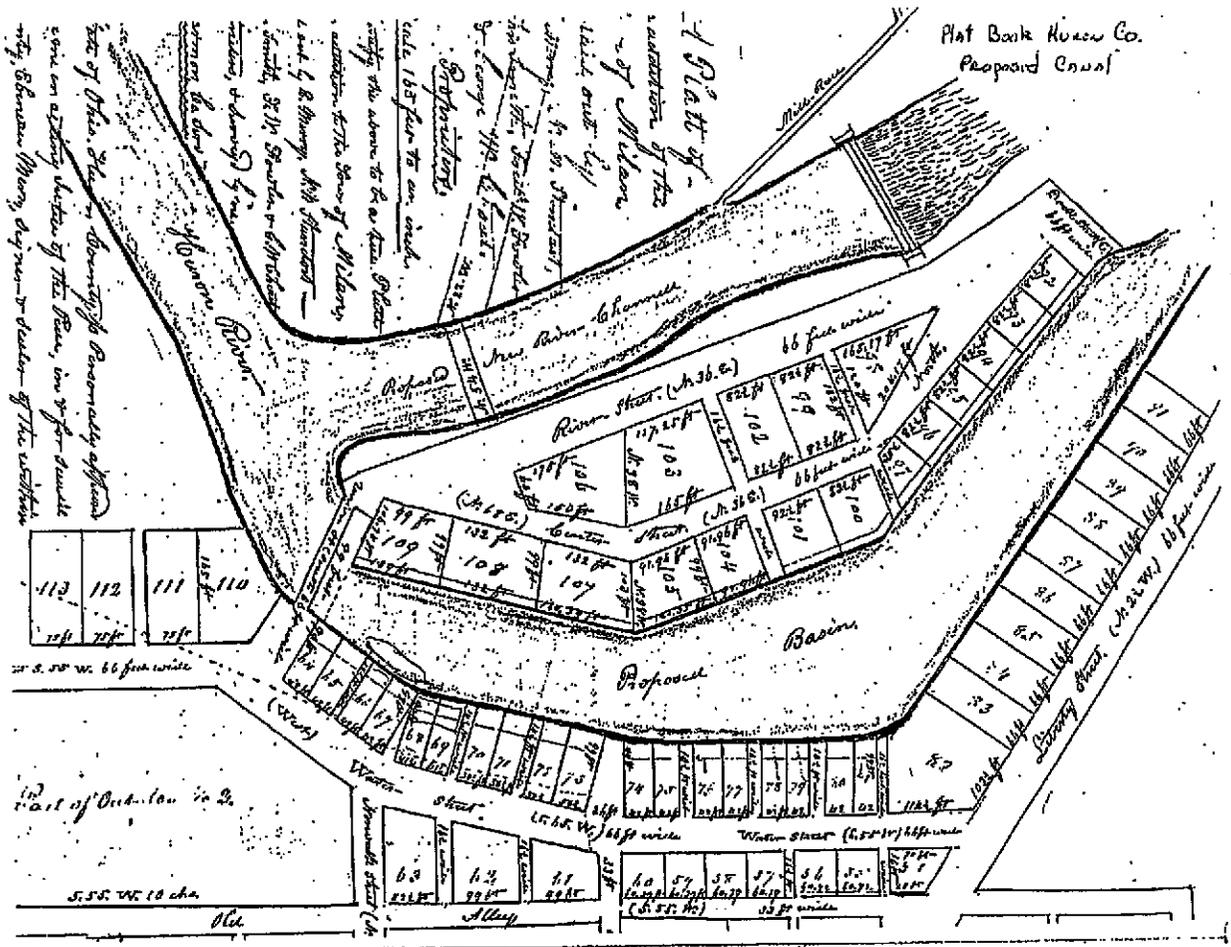
The same warehouse as photographed in 1938. At this time it was nearly 100 years old. The tracks of the Wheeling and Lake Erie railroad are in the foreground.

Shipbuilding

Shipbuilding in Milan was closely tied to canal interests, with several of the people responsible for the building of the canal having a parallel interest in the ship industry. The successes and the failures of the two endeavors virtually mirrored one another.

Prior to the canal's construction the shipyards were located at Abbott's Landing. As noted previously, the demonstration of this location as the head of navigation for the Huron River was crucial to the subsequent planning and success of the canal. Abbott's Landing (Abbotsford) is thought to have been in the location of the Old Mason Road bridge. The exact location of the yard is speculative, but assumed to be adjacent to the immediate area.

This area was the center of shipbuilding from 1827 until 1840 at which time the Milan Basin became the center. Two warehouses, the Lockwood and the Colton structures, were relocated from Abbott's Landing to the canal basin and several more were constructed. The shipbuilding area, located between the northerly margin of the basin and the river, was platted with two major streets, a loading dock and eighteen lots. A levee bordered the riverbank, but subsequent erosion by the river has destroyed this as well as a portion of the old shipyards. A dry-dock was built at the lower end of the basin in 1850.



This Merry and Standart plat shows the proposed shipbuilding area between the basin and the river. The warehouses would occupy the lots below the basin.

The end of cargo shipping for the port of Milan took place at the end of the shipping season of 1864. Shipbuilding, however, continued for an additional four years, when in 1868 a flood destroyed the river dam. Flooding had previously destroyed the locks, which brings-up the interesting question as to how the ships navigated the canal.

Shipbuilding activities were now relocated to the original Abbott's Bridge or Fries Landing, as it was now known, and business apparently remained brisk. Because of the canal and lock dimensions, Milan ships were limited in size—a problem due to the increasing demand for larger ships for the lake-going trade. With the relocation to the river site larger vessels could be launched. In fact, this advantage was pursued and culminated in the building of the Golden Age in 1883—the largest schooner ever built on the Great Lakes. The end of shipbuilding at this site is unclear. Valentine Fries was the

major player and it is said that he retired to his farm several years before his death in 1900. One historian dates the end of shipbuilding as 1884.

Wagons and Roads

Although the topography of the land to the south of Milan was generally favorable, low spots and deep rutting from heavy wagon traffic presented a problem. The solution was the construction of roads made of planks obtained from the abundant timber of northern Ohio and hemlock shipped into Milan via the canal. A charter for the Milan and Richland (County) Plank Road was granted in 1845. Construction was started in 1847 and 5 miles of road completed in one year. By 1851 the planking was completed to Fitchville, a distance of 17 miles. It then continued to Richland County and was known as The Wheat Road which, at the time, was one of the most heavily traveled roads in the state.

A second plank road connected nearby Norwalk to Milan. This was a bit circuitous so as to avoid steep embankments. Wallace White describes a fascinating account of the measures used by these teamsters to bring their wagons to market. Extra teams and switching of teams were frequently needed to keep the wagons, with their 3 tons of grain, on the move.

By the year 1847, a standard order of procedure had crystallized and had received a general tacit acceptance. The older hands, who had made the trip before and who knew how their various capabilities had solved former problems, were given responsibilities in keeping with their abilities. A leader, or captain, was usually in evidence. More likely than not, he owed his position to his proven ability, rather than to any formal vote, or indication of choice. He merely joined as one of the group and a majority of others deferred to him, forcing, by example and weight of numbers, the rest to follow suit. He usually arranged the order of the teams in the line, placing those having the better horses at intervals among the others, so that he had the power of some portion of the good animals at needed points at all times. How this worked will be seen when the method of crossing unbridged streams is described. At the head of a

line was usually a good six-horse team. When this had gotten its wagon across a stream safely, the horses were unhitched and taken back to the next three wagons, usually drawn by four horses which sufficed for pulling the loaded vehicle over average ground. Two horses additional to each of these wagons now gave them six horses each, which enabled them to be drawn across the stream and up the steep bank of the other side.

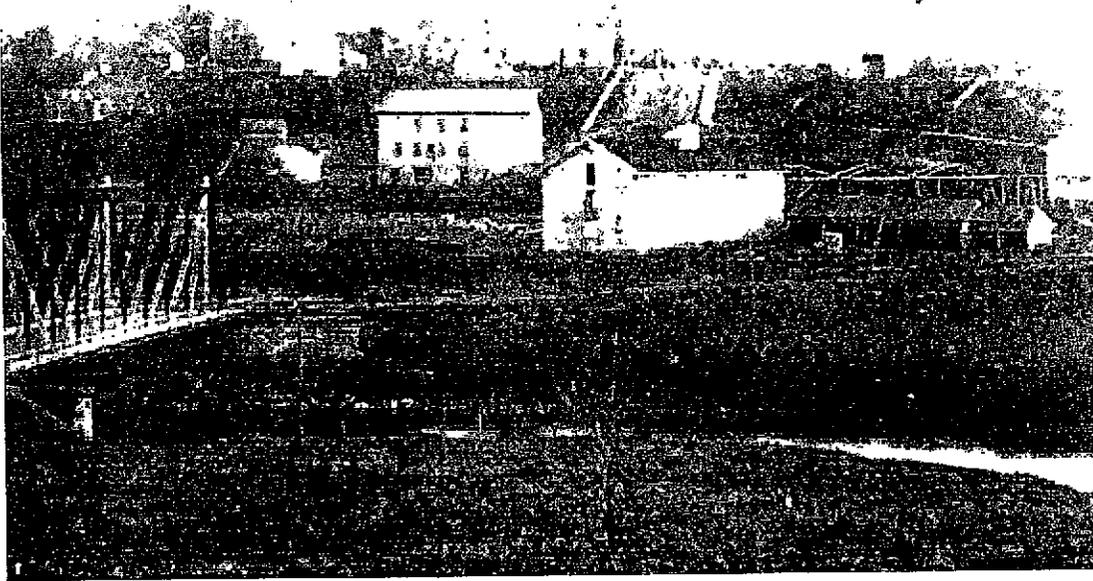
Immediately in back of the fourth wagon was another good six-horse conveyance. It came across under its own power, while the lead team was returned to their proper place at the head of the line. The first four wagons now went forward, while the second six-horse wagon helped three more four-horse wagons across; and so on, until all the group was over safely and plodding again toward Milan. The advantages of the above method are apparent. First, it cut down the number of horses needed to move the entire group of wagons, and second, it accomplished stream crossings or got the group over bad spots in the road much more quickly than as if each wagon had functioned only as an individual unit.

A third plank road extended from Milan to Monroeville to the southwest. The three roads were like the spokes on a wheel- all pointing to the wheat- raising counties in a triangle to the south. Plank roads were toll roads and this was not always graciously accepted by travelers here or in other parts of the state.

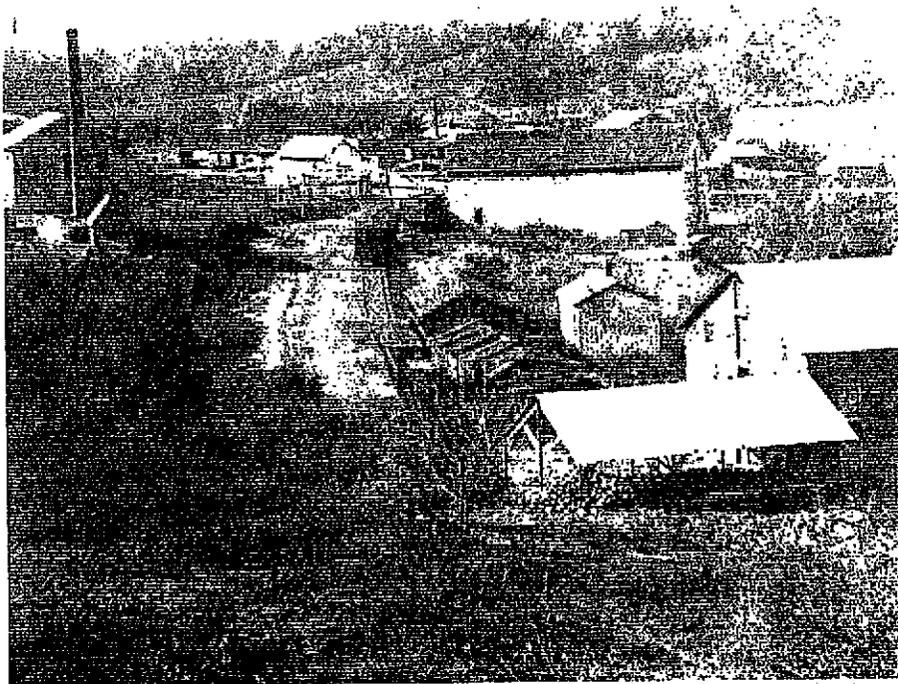
During the harvest season the roads were heavy with traffic. It is said that the Wheat Road was backed up with wagons to The Blue Fly Inn over 6 miles south of Milan. For example, reports indicate 20,000 bushels of grain were received on May 18, 1847 which, incidentally, was the peak year for the Milan Canal. On that date 650 wagons would have been needed to supply the grain. To handle that amount of wagon traffic an efficient and ingenious system was in place, even though all of the details of that system are not known.

In the introduction it was pointed-out that Milan's location on high ground was crucial to its development as a port. This also created a logistical problem in getting the teams and wagons from the village elevation to the basin level. The grade was steep and the height approximately 80 feet a challenge for the best of drivers. The problem was alleviated by a unique system credited to George Lockwood. The wagons descended part

way down the hill and unloaded their grain into small sheds, which were connected to the backside of the warehouses by trestles and cars.



In the above photo the trestle may be seen extending from the shed at far right to the upper level of the warehouse at center. The front of the warehouse faces on the basin.



Another view of the car and trestle system. The trestle may be seen extending from the upper left warehouse to the upper center shed.

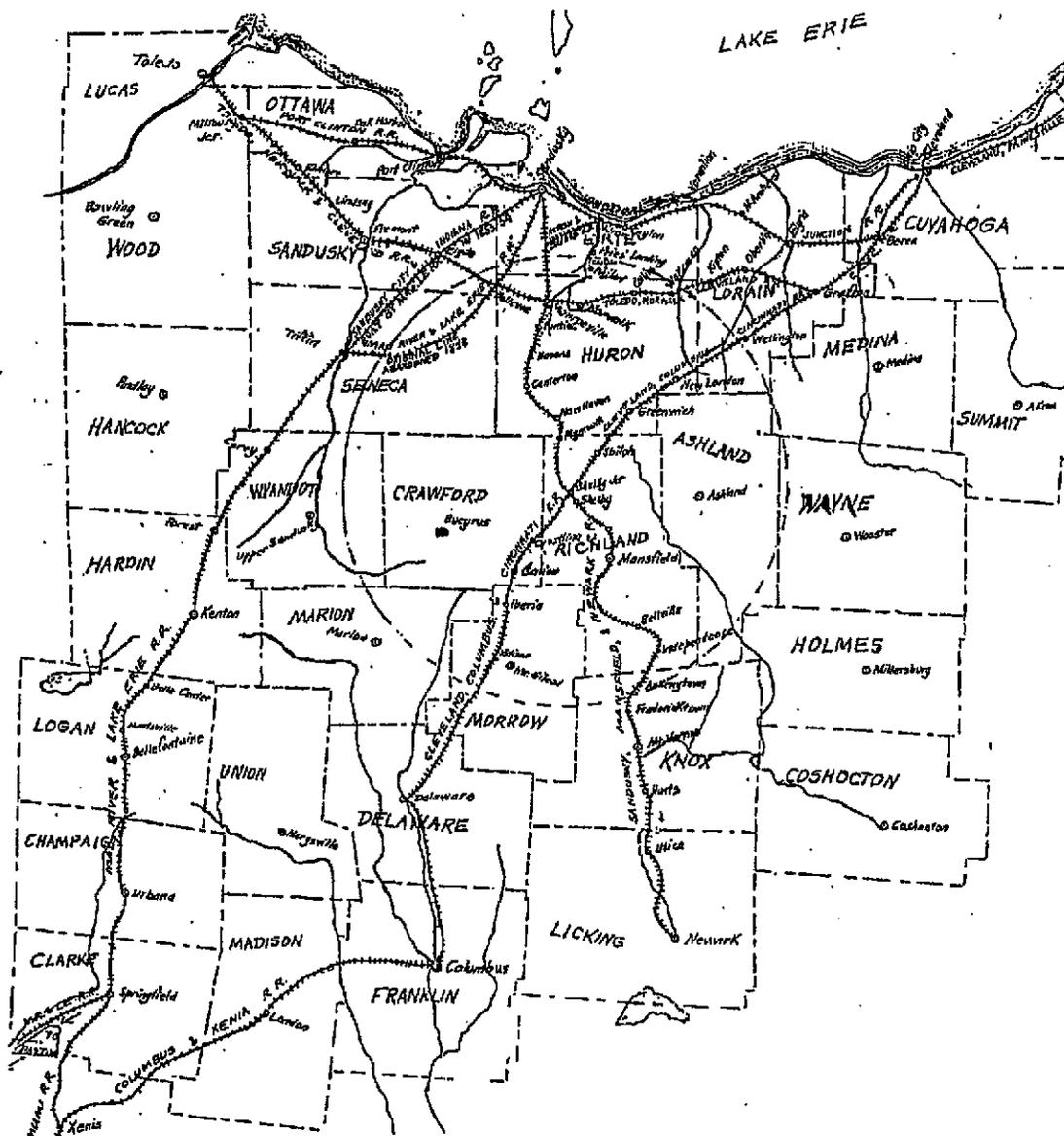
The other innovation was a system of one-way traffic. The wagons entered on Main Street and after unloading departed the basin area by way of Bank Street or Center Street. Not all of the wagons unloaded at the warehouses: some continued across the river to Merry s Mill and to the loading dock on the north side of the basin. It is not surprising that some 14 warehouses were kept busy during harvest times.

The warehouses paid the farmers in cash if so desired. A more common arrangement was partial cash payment and a credit draft (with a discount) that could be used in the local stores, many of whom had financial interests in the warehouses. Shrewd Yankee businessmen prevailed! At this time Milan had 14 general stores, several taverns and 3 distilleries. It is said that every general store had a whiskey barrel in the backroom.

Decline of the Canal

Several factors contributed to the demise of the Milan Canal and, similar to many other Ohio Canals, the emerging railroads played a key role. It would appear as though Milan people may have become overconfident in their mightiest three miles of canal in the nation when they failed to obtain the routing of the Cleveland and Toledo Railroad through their town. The railroad, instead, chose Norwalk four miles to the south and the hinterland farms became that much closer to their buyer. Grain hauling by wagon was slow with four miles representing a half-day of travel with at least two men and a team of four to six horses.

In 1846 the Mansfield and Sandusky Railroad began operating in a north-south direction. Warehouses received grain at Mansfield and Plymouth and shortened the wagon journey (compared to Milan) by over 40 and 15 miles respectively and the price paid for wheat was comparable to the Milan warehouses. This represented heavy competition for Milan, but ultimately more important, it established Sandusky as a grain shipping port. Although 1847 was the banner year for Milan, Sandusky actually shipped more wheat that year. This was a pivotal time for both towns. Now, with an established route to the farmlands and a clearly superior port, Sandusky would become the dominant shipper at the expense of Milan.



This map adapted from Charles Shatzer, (1914) shows the railroads that impacted the Milan Canal. The broken circle indicates the primary counties shipping wheat to Milan. However, trade extended as far south as Champaign and Franklin counties. At ten miles per day this could mean over a week of wagon travel.

In Ohio history, The Mad River and Lake Erie Railroad is well known as the first chartered railroad in the state and, also, as Sandusky's response to its loss of a becoming a canal terminus. However, primarily due to its financial problems and slow development the impact of the railroad upon the Milan Canal was relatively unimportant. It is interesting that the railroad's problems were, in turn, due to the political influence of competitive interests in the Miami and Erie Canal corridor.

No longer could Milan depend upon its unique access to the farming triangle by virtue of the previously impassable sand roads of the coastal area-perhaps the chief reason for the canal's original success.

The increasing demand for larger shipping vessels began to impact Milan's major industry, shipbuilding, in the 1850s and 60s. According to available records twenty ships were built from 1856 to 1860, but declined to seventeen ships from 1861 to 1867. The dimensional constraints of the canal and its locks placed the Milan yards at a clear disadvantage in the race for larger and faster craft. The Merry and Gay Shipyard, the largest builder, had relocated to Sandusky in 1857 and, as noted previously, Valentine Fries relocated to Fries landing and continued to compete with larger ships.

In 1850 the Junction Railroad, running from Cleveland to Sandusky, proposed crossing the Huron River at Huron. The Milan Canal Company resolved to resist this bridge on the basis of the ordinance of 1787 and the chartered rights of the company. They failed to bring suit, however, and the railroad prevailed. The Junction Railroad later became the Sandusky division of the New York Central.

In 1851 Erie County constructed a wagon bridge over the river in Huron. The canal company issued another resolution protesting the construction, but no legal action was taken and the bridge went forward.

The last regular meeting of the directors of the Milan Canal Company was held on September 20, 1865. After this date the meetings were held every three years. On July 21, 1881 the towpaths of the canal were leased to the Wheeling and Lake Erie Railroad for 99 years at fifty dollars per year. This included a strip of land 150 feet wide adjacent to the Wheeling and Lake Erie right-of-way as well as two locks, the basin and the dry dock.

The canal company remained an entity, for the purposes of holding charter privileges, until 1903 when R.M. Lockwood, a descendant of one of the first directors, advised dissolving the company. On March 28, 1906 the Court of Common Pleas of Erie County granted the dissolution.

The Wheeling & Lake Erie Railroad, Huron Branch

The thirteen-mile section between Norwalk, Ohio and Huron, Ohio via Milan, Ohio was the first part actually constructed of a grand plan of the newly chartered

Wheeling & Lake Erie Railroad to build a rail line from the cornfields of Southeastern Ohio to Lake Erie. The super abundance of that quality coal was substantially ignored by the fledgling, east-west rail lines, such as the Pennsylvania Lines, which saw no advantage in Ohio coal over that of western Pennsylvania mines then served by Pennsylvania Lines. North- south Lines to run between the Ohio River and Lake Erie were proposed but most never went beyond the planning stage.

Other factors were present, for example, Massillon, Ohio, situated on the line of the PRR controlled Pittsburgh, Fort Wayne & Chicago Railroad and in the midst of extensive coal fields, was forced to ship most of the local coal by way of the Ohio & Erie Canal. Massillon leaders, incensed at the PRR, met with The Toledo Board of Trade to begin planning a new rail line to connect their cities with Wheeling, West Virginia. Soon other cities along the proposed line became enthusiastically involved but the plan fell apart over a dispute between Toledo and Sandusky.

Mr. Joel Wood was the ticket agent in the mid-nineteenth century for the Cleveland & Pittsburgh (later PRR) Railroad at Martin's Ferry, Ohio and, also, a man with a vision. In 1871 Joel Wood quit his secure job with the railroad to vigorously promote a new railroad that would transport coal from the Ohio fields either to the Ohio River or to Lake Erie for shipment by water. He was successful in that the new Wheeling & Lake Erie Railroad was incorporated on March 10 1871 and less than a month later was chartered by The State of Ohio.

In February of the following year the new railroad contracted with H.B. Willson of New York to build a standard gauge railroad to follow the survey line established by then Chief Engineer, A.K. Robinson, from Martin's Ferry through the coalfields to Massillon and Sandusky. The route selected for the new Wheeling & Lake Erie Railroad included the shortest distance consistent with a maximum grade of fifty feet per mile, still a rugged line for a railroad and one that would require a number of tunnels. All this for the contract price of \$35,000 per mile!

Payment to the contractor would be in stocks and bonds in the amount of \$25,000 per mile with the balance in cash derived from local stock subscriptions. That plan would seem to have required a contractor with truly deep pockets to cover the ongoing expenses. The City of Wheeling, in a singular burst of enthusiasm, already had passed legislation in 1871 to provide assistance to the railroad in the amount of \$300,000, a major sum in those days. The plan proved to be somewhat more propitious than practical

leading to a difficult period!

A Wheeling taxpayer, in March of 1873, obtained an injunction to prevent payment of the city's earlier grant and, further, produced legislation to eliminate the Ordinance of 1871.

Declining economic conditions in 1873 rendered additional fund-raising along the proposed route virtually impossible. Local support was eroded when Sandusky supported a new coal road to Central Ohio and when Toledo, involved with new coal roads to the Hocking Valley, effected a connection with the Fort Wayne Railroad associated with the Pennsylvania. Even Massillon finally got its rail outlet when the Lake Shore & Tuscarawas Valley connected that city with a port site on Lake Erie at the present location of Lorain. These events appeared to leave the Wheeling & Lake Erie Railroad with no possibility for an outlet to Lake Erie. Definitely not a good year for the old W&LE!

Our man with the vision, Mr. Joel Wood, continued to beat the drum for financial help in all of the communities along the proposed route, but with a notable lack of success. At the same time he continued to badger the contractor to perform and tried to negotiate right-of-way agreements with recalcitrant farmers. Eventually Contractor Willson did grade the right-of-way both ways from Navarre and, in 1874 put a fair amount of effort into the southern end of the line toward the Ohio River, but still no track!

The Company was in dire straits by the end of 1875 with the directors fighting among themselves and with Mr. Wood and the contractor at odds with seemingly everyone. A group of directors argued in favor of changing to three foot, narrow gauge as a cost saving measure, claiming that a narrow gauge line could be built for as little as \$2000 per mile. That change, favored by the three towns at the north end of the line, was adopted but only after considerable dissention. Norwalk had lost its extensive railroad facilities when the Cleveland & Toledo Railroad went out of business. Huron was a quiet, fishing village on the wave front and Milan was in decline once wheat shipments were diverted to larger vessels. The Milan Canal, once used to move tremendous quantities of wheat past the marshy land near the lake, now was abandoned and filled with silt and debris. Leaders from these three towns, particularly Norwalk with its experienced work force, were quick to support the narrow gauge idea since it was seen as a way to quickly get commerce rolling by rail through their complexities.

Now known as The Firelands Faction , these fellows under the leadership of a Milan merchant, Frank Lockwood in 1876, had wrested control of the barely surviving Company from Wood and the original directors. The former directors had committed to the use of three foot, narrow gauge for the W&LE in its entirety and that plan, for financial considerations, had to be acceptable to the new management. Wood and the former directors also had acquired a corridor along the towpath of the Milan Canal for the rail line. Lockwood and Contractor Willson come to a reasonable understanding in March 1877 to build the line for \$17,000 in securities plus \$3,000 cash per mile. Creative financing by Willson allowed him to actually start laying track south from Huron following the winter season.

On May 5, 1877 a new locomotive was delivered by the Lake Shore & Michigan Southern Railroad, a new east-west line serving Norwalk, to the W&LE in that town. By May 31, 1877 track was completed from Norwalk to Milan and Willson staged The First Grand Complimentary Stockholders Excursion , a great celebration during which some 4,000 people enjoyed a brief ride seated on flat cars. One month later twelve and one half miles of track from Norwalk to Huron was ready for service, but the railroad, despite an occasional mixed train along the line, subsisted mainly on the proceeds from the Sunday excursions.

Contractor Willson assumed ownership of the insolvent Company in December of 1877 but the following spring the W&LE was forced to file a petition for corporate dissolution. Finally, at the end of 1879, after litigation by stockholders to avoid the Company's debt, the W&LE announced its abandonment and all of the equipment was laid up in Norwalk in the old shop facilities of the long abandoned Cleveland & Toledo Railroad.

Since we are concerned mainly with the Huron Branch, it only need be added that the W&LE Railroad was substantially revived in 1879 when MT. C.R. Griggs of New York agreed to complete the railroad as a standard gauge line. The Huron-Norwalk narrow gauge line was released (gladly, I assume) by Contractor Willson and land was acquired at Huron for new coal loading facilities. Serious construction was started again in 1881, this time with the backing of Jay Gould, who was about consolidating a through line to connect with the Central Railroad of New Jersey. The W&LE finally arrived in Wheeling in 1891!

The new, standard gauge line from Norwalk to Huron deviated from the original

narrow gauge railroad, no longer following the old canal. Docks were built and rebuilt over the years and Huron became an important lake port for the movement of vast quantities of both coal and iron ore. The W&LE went through several corporate identities until it was assimilated into the former Norfolk & Western Railroad, retiring the old flag. Then, in 1990 a totally new and unrelated enterprise also called The Wheeling & Lake Erie Railroad was organized and took over most of the remaining property of the Old W&LE. More recently there has been some disorder along the old Huron Branch in determining who actually owned the old canal property but, fortunately, we do not have to sort that out!



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Photographic Credits:

The historic photos in this guide are from the Milan Historical Museum, the Rutherford B. Hayes Presidential Center Archives and the private collection of Dr. David Berckmueller.

Exhibit C

AFFIDAVIT OF THOMAS A. SIMON

STATE OF South Carolina
COUNTY OF McCormick

Thomas A. Simon, being first duly sworn, states as follows:

1. I have personal knowledge of each and every fact stated herein.
2. At all times relevant hereto, I was and I am a registered professional surveyor in the State of Ohio. My Ohio Registered Professional Surveyor No. is S-7775.
3. I am the owner of Thomas Simon & Associates, Inc., which is a professional land surveying company located at 150 South Olive Street, Elyria, Ohio 44035.
4. I have done surveying work for the Erie MetroParks with respect to the Huron River Greenway (the "Greenway").
5. The Greenway is located in Erie County, Ohio on a former railroad line operated by the Wheeling & Lake Erie Railway Company.
6. Surveyors who are involved in surveying current or prior railroad property often obtain and rely upon railroad right-of-way and track maps to perform surveying work.
7. In doing surveying work for Erie MetroParks with respect to the Greenway, I obtained, reviewed and consulted a series of maps, numbered V9/5 through V9/11, each of which is entitled: "Right-Of-Way and Track Map, The Wheeling & Lake Erie Railway Company, Toledo Divisions - Huron Branch" and which are dated in 1918 (the "Track Maps"). True and genuine copies of the Track Maps are attached hereto, marked as Simon Affidavit Exhibit 1.
8. I have reviewed the 1995 Deed from The Wheeling & Lake Erie Railway Company to Erie MetroParks by which Erie MetroParks obtained title to the property on which the Greenway is located. The description of real estate in that deed refers to a "Valuation Map"

and to "Valuation Station" points; those references are, in my opinion, references to the Track Maps and to survey station information contained thereon. The survey station information on the Track Maps is located on the centerline of the railroad line depicted on such Maps.

9. It is my understanding that the artificial waterway section of the old Milan Canal went north from a basin in Milan, Ohio to a point where it entered the Huron River.

10. I am aware of the property currently owned by Wikel Farms, Ltd. (the "Wikel Farms property") and located immediately north of Mason Road and immediately west of River Road in Milan Township, Erie County, Ohio. It is my understanding that the point where the artificial waterway section of the old Milan Canal entered the Huron River is located on the Wikel Farms property.

11. I have been provided with copies of deeds labeled A-1 through A-12, and it is my understanding that these are references to exhibit numbers for deeds submitted by Relators in the case docketed as *State, ex rel. Nickoli v. Erie MetroParks*, Ohio Supreme Court Case No. 2009-0026. Such deeds purport to convey to Relators property allegedly formerly part of the old Milan Canal.

12. Each of the real estate parcels described in the deeds referred to in the immediately preceding paragraph of this Affidavit and labeled A-2, A-3, A-6 and A-8 is south of the Wikel Farms property. Each of the real estate parcels described in the remaining deeds

referred to in the immediately preceding paragraph of this Affidavit is located north of the Wikel Farms property.



Thomas A. Simon

Signed and sworn to before me, a notary public in and for the State of South Carolina and County of McCormick, by Thomas A. Simon on the 11 day of May, 2009.



Notary Public My Commission Expires
November 21, 2013

COLUMBUS/1488326 v.01

Attachment not scanned

Exhibit D

AFFIDAVIT OF JONATHAN R. GRANVILLE

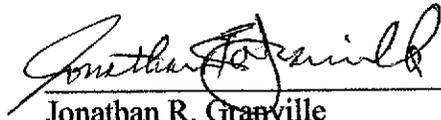
STATE OF OHIO

COUNTY OF BUTLER, SS:

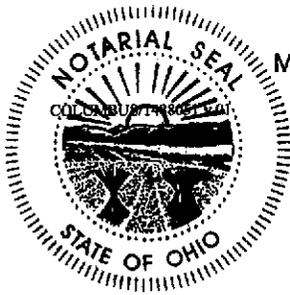
Jonathan R. Granville, being first duly sworn, states as follows:

1. I have personal knowledge of each and every fact stated herein.
2. I am currently Executive Director for the MetroParks of Butler County, Ohio.
3. I was the Director/Secretary for Erie MetroParks from approximately December 1987 to approximately August 2007.
4. Attached hereto, marked as Granville Exhibit 1, is a true and genuine copy of a document entitled "Agreement Between The Board Of Park Commissions Of Erie County And The Wheeling & Lake Erie Railway Company" (the "Use Agreement").
5. Pursuant to authorization from the Board of Commissioners of Erie MetroParks, (the "Erie MetroParks Board" or the "Board"), I signed the Use Agreement on behalf of the Board.
6. At the same time the Wheeling & Lake Erie Railway Company ("W&LE") delivered the executed Use Agreement to the Board, W&LE delivered to the Board an executed "Option To Acquire Real Property Interests" (the "Option"). A true and genuine copy of the Option is attached hereto, marked as Granville Exhibit 2.
7. The Use Agreement and the Option pertain to the same real estate (the "Real Estate").
8. Records maintained by the Board disclose that it eventually paid the monies due to W&LE under the Use Agreement and exercised the right contained in the Option to acquire the Real Estate by quit claim deed.

9. The Huron River Greenway is a hiking/bicycle trail which was constructed and operated by the Erie MetroParks Board on the Real Estate.


Jonathan R. Granville

Signed and sworn to before me, a notary public in and for the State of Ohio, by Jonathan R. Granville on the 11 day of May, 2009.



MICHAEL BROUGHTON
NOTARY PUBLIC
STATE OF OHIO
Comm. Expires
February 09, 2010


Notary Public

76998

244 926

AGREEMENT BETWEEN
THE BOARD OF PARK COMMISSIONERS OF ERIE COUNTY AND
THE WHEELING & LAKE ERIE RAILWAY COMPANY

WHEREAS, the Board of Park Commissioners of the Erie Metro-Parks, a duly organized park district under the laws of the State of Ohio, ("the Board") has previously determined that it is necessary to acquire certain real property interests in Erie County by purchase or condemnation proceedings in order to conserve the natural resources of the Erie Metroparks and Erie County by the creation of parks, parkways and other reservations of lands for the use and benefit and enjoyment of the public; and

WHEREAS, the Wheeling & Lake Erie Railway Company ("Wheeling") for many years has conducted railroad operations in Erie County and acquired various ownership interests and rights of usage in the real property on which it has conducted those operations; and

WHEREAS, the Board desires to acquire a right of usage respecting certain of Wheeling's property in Erie County, Ohio;

NOW THEREFORE, in consideration of the mutual promises and covenants each to the other made, and other good and valuable consideration, the Board and Wheeling do hereby promise, covenant and agree as follows:

SECTION 1 GRANT OF RIGHT OF USAGE

a) Wheeling hereby grants to the Board a permanent right of usage over and across the property described in Exhibit "A" attached hereto (the "Property") for the purpose of use by the public as a linear parkway, such use to include but not be limited to recreational, bicycle and pedestrian use.

b) The right of usage granted to the Board shall be exclusive except for and subject however to a continuing right of Wheeling to install, run and maintain one (1) railway line over the Property; provided however, that Wheeling shall give to the Board not less than ninety (90) days written notice of its intention to install, run and maintain such line.

c) In the event Wheeling exercises its right to install, run and maintain a railway line, Wheeling and the Board mutually agree to cooperate in locating upon the Property the area to be occupied by the railway line as it may affect the Board's right of usage, the intention being that both usages shall be compatible and shall not interfere each with the other. To the extent practicable, the Board shall design and locate its linear park on the western side of the Property (the river side) leaving approximately one-half of the width of the Property for Wheeling's future rail use. However, the Board shall have the preeminent right to use those portions of the Property which will not physically accommodate the dual uses. In that event, the Board shall permit Wheeling, if it so elects, to bear the expense of constructing an alternative route for the linear park over those portions of the Property. After construction of the linear park, Wheeling shall be responsible for any future capital expenses incident to accommodating its future rail use as to those portions of the Property. Notwithstanding the foregoing, so long as Wheeling does not lay trackage and commence to run a railway line on the Property, the Board shall be free to use all or any part of the ballast area of the property for its

linear park. Upon reasonable notice to the Board of Wheeling's intention to commence to run a railway line on the Property, which notice shall also advise the Board as to those parts of the ballast area which Wheeling deems will be needed for active rail use, the Board, shall then design or relocate its linear park so that those parts of the ballast area which are needed by Wheeling will be vacated and relocated at the Board's expense on the western side of the Property (the river side).

d) The Board shall timely make and duly process with the appropriate public authorities application for tax exemption of the Property, or so much thereof as may be eligible for exemption by reason of the Board's usage of the Property. Until such time as Wheeling commences to run a railway line on the Property, and to the extent that the Property remains subject to taxes when due, ~~the~~ the Board shall reimburse Wheeling for such taxes upon submission to it of proof of payment. Thereafter, Wheeling shall pay such taxes and be responsible for payment, without reimbursement, of taxes imposed by reason of Wheeling's use of the Property, and the Board shall be responsible for taxes imposed by reason of the Board's use of the Property and shall reimburse Wheeling accordingly.

e) The parties mutually agree that Wheeling and the Board shall jointly or severally secure and maintain public liability insurance in such amount(s) and for such coverage as shall adequately protect Wheeling and the Board from all claims, lawsuits and damages which may be asserted against either of them as a

result of the use of the Property. The cost of such insurance coverage shall be pro-rated between Wheeling and the Board as they shall mutually agree.

f) Wheeling covenants that it will not, without the prior written consent of the Board, mortgage or otherwise encumber the Property (except for the existing mortgages held by Bank of America National Trust & Savings Association and the Bank of New York) nor convey its right, title and interest in the Property to any person, firm or corporation during the terms of this Agreement, except for a conveyance thereof to the Board or to an affiliated entity of Wheeling. The term "affiliated entity" shall mean for purposes of this Agreement a parent or subsidiary of Wheeling or an entity into which Wheeling is merged or consolidated.

Wheeling further covenants that it shall remove or cause to be removed the Bank of America National Trust & Savings Association and the Bank of New York mortgages upon full payment of the purchase price to Wheeling.

g) After the date of Closing and so long as Wheeling does not operate a line of railway on the Property, utility charges and other expenses pertaining to the Property shall be borne solely by the Board, and any rents, income from leases, licenses, agreements and privileges, if any, shall belong to the Board. Upon activation of the operation of a line of railway by Wheeling, such expenses and income, if any, shall be pro-rated as the parties then agree.

h) The parties mutually agree that all matters in dispute which may arise under the terms of this Section 1 which cannot be

244 930

amicably resolved by the parties shall be submitted to arbitration in accordance with the rules of the American Arbitration Association, and the decision of the arbitrators shall be final and binding. The cost of such arbitration proceedings shall be equally shared by the parties.

SECTION 2 IRREVOCABLE LICENSE

The right of usage granted to the Board by this Agreement shall be deemed to be the grant of a license coupled with an interest and shall be irrevocable until mutually terminated by the parties, or by abandonment by the Board.

SECTION 3 NO REPRESENTATIONS CONCERNING MARKETABILITY OF TITLE OR INTEREST

Wheeling makes no representation concerning the quality of its title to the Property or the rights of usage Wheeling possesses to the whole or any part of the Property. The Board acknowledges that it, its agents and attorneys have had full and complete opportunity to examine and consider the issue of title and rights of usage and are fully informed concerning the same. The Board is acquiring a right of usage in the Property without covenants or warranties of any nature, and except as provided in the last paragraph of Section 1f, subject to any and all existing tenancies, encumbrances, easements, rights, licenses, privileges, agreements, covenants, conditions, restrictions, rights of reentry, possibilities of reverter, existing laws and ordinances, and orders of regulatory agencies. The Board's right of usage shall commence upon Closing "as is" and, without limiting the generality of the foregoing, subject to any state of facts which an accurate survey or prudent

244 - 931

inspection of the Property would disclose. The existence of any facts, conditions, legal limitations or other matters to which the grant of right of usage is subject shall not be asserted by the Board as a breach of contract or, after Closing, as a basis for seeking compensation or other redress from Wheeling. The Board acknowledges that it may be necessary to acquire by purchase or condemnation the interest of other parties in parts of the Property in order to put the Property to its intended use.

SECTION 4 PURCHASE PRICE

The Board shall pay Wheeling as the purchase price for its right of usage Two Hundred Fourteen Thousand Six Hundred and 00/100 Dollars (\$214,600.00) as follows:

- A. Fourteen Thousand Six Hundred Dollars and 00/100 (\$14,600.00 Dollars) at Closing;
- B. One Hundred Thousand Dollars and 00/100 (\$100,000.00 Dollars) on or before November 1, 1995; and
- C. One Hundred Thousand Dollars and 00/100 (\$100,000.00 Dollars) on or before November 1, 1996.

In the event the Board fails to make payment of the purchase price when due, the amount overdue shall bear interest at the rate of 10% per annum. In the event the Board fails to make a payment for more than thirty (30) days Wheeling may seek specific performance of this Agreement, rescission of this Agreement, damages or any other relief at law or equity. In such event, the Board shall be responsible for all of Wheeling's costs and expenses, including

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attorneys fees, incurred and made necessary as a result of the Board's failure to make timely payment of the purchase price.

SECTION 5 CLOSING

Closing shall be held at Wheeling's office in Brewster, Ohio or at such other place as the parties may mutually agree. Closing shall occur on a mutually agreeable date that is no more than thirty (30) days following the approval and execution of this Agreement by all parties. Similarly, the parties shall schedule all other Closings necessary as a result of this Agreement at a mutually convenient place and time.

SECTION 6 NOTICES

All notices, requests, consents, demands, or other communications relating to this Agreement, or required by this Agreement to be given or submitted by one party to the other, shall be sent by United States express or certified mail, or by a private courier service, addressed as set forth below (or to such other address as either of the parties hereto may designate by written notice to the other party). A return receipt shall be conclusive evidence of the fact, date, and time of receipt.

If to Wheeling:

Wheeling & Lake Erie Railway Company
Real Estate Department
100 East First Street
Brewster, OH 44613

If to the Board:

Board of Park Commissioners
of the Erie Metroparks
3910 East Perkins Avenue
Huron, OH 44839

SECTION 7 ENTIRE AGREEMENT

This Agreement sets forth the entire understanding of the parties hereto with respect to the transactions contemplated hereby and may not be amended except by written instrument executed by the parties. Any previous agreements or understandings between the parties regarding the subject matter hereof are merged into and superseded by this Agreement.

SECTION 8 SURVIVAL OF TERMS

All terms, conditions, stipulations, obligations and provisions of this Agreement shall survive Closing and be binding upon and inured to the benefit of, and be enforceable by, the parties.

SECTION 9 ASSIGNMENT

Excepts as otherwise provided herein, neither Wheeling nor the Board shall assign, pledge, encumber, or transfer this Agreement, or any interest herein, without the prior written consent of the other party hereto, which consent shall not be unreasonably withheld.

SECTION 10 GOVERNING LAW

This Agreement and the rights and obligations accruing hereunder shall be construed and enforced in accordance with the laws of the State of Ohio and relevant federal law.

SECTION 11 EXHIBITS

Exhibit A attached to this Agreement is intended to be, and is, specifically made a part of this Agreement.

SECTION 12 WAIVER

No waiver by either party of any failure of, or refusal by, the other party to comply with any obligations under this Agreement shall be deemed a waiver of any other or subsequent or continuing failure or refusal to so comply.

SECTION 13 TIME, TENDER

Time shall be of the essence of this Agreement. Formal tender of deed and purchase money is hereby waived.

SECTION 14 BROKER

The Board and Wheeling each represent to the other that it has not dealt with any broker in connection with the transaction contemplated by this Agreement. Each party shall assume any obligation arising from or in connection with any action by any broker or other party with whom such party may have dealt for a commission or compensation.

SECTION 15 OBLIGATIONS OF SUCCESSORS

This Agreement and the rights and obligations accruing hereunder shall accrue to and be binding upon any successor of the parties.

SECTION 16 INSPECTION OF PROPERTY

It is understood between the parties hereto that the Property has been inspected by the Board or its agents, that the right of usage is being purchased solely in reliance upon such inspection and that there have not been and are no representations or warranties, expressed or implied, with respect to the physical condition of the Property.

SECTION 17 EFFECTIVE DATE

This Agreement shall be effective on the date it is executed by the last party.

SECTION 18 PENDING LITIGATION

The parties shall cooperate with one another to bring to an appropriate conclusion the pending litigation between the parties (Board of Park Commissioners of the Erie Metroparks v. Wheeling & Lake Erie Railway, et al., Case No. 95-CV-099) at the Board's cost and in a manner that effectuates the purposes of this Agreement.

In consideration whereof the parties have executed this Agreement by their duly authorized agents on the dates set forth below.

Signed and acknowledged in the presence of:

William [Signature]
[Signature]

WHEELING & LAKE ERIE RAILWAY COMPANY

By: [Signature]
its Vice President
this 13 day of October, 1995

BOARD OF PARK COMMISSIONERS OF THE ERIE METROPARKS

Joe E. Scherling
Deborah A. Voltz

By: [Signature]
its Director Secretary
this 12 day of October, 1995

STATE OF OHIO
COUNTY OF Stark SS

Personally appeared before me, the undersigned, a Notary Public, in and for said County, and State, R. M. Thompson, known to me to be the VP Marketing / Rep. of WHEELING & LAKE ERIE RAILWAY COMPANY, the corporation which executed the foregoing instrument, and acknowledged that he did sign the foregoing instrument for and on behalf of said corporation, being thereunto duly authorized; that the same is his free act and deed of said corporation.

IN TESTIMONY THEREOF, I have hereunto set my hand and official seal at Bremen, Ohio, this 13th day of October, 1995.

Sheryl L. Durant
NOTARY PUBLIC
Sheryl L. Durant
Notary Public, State of Ohio
My Commission Expires August 29, 1999

STATE OF OHIO
COUNTY OF Fair SS

Personally appeared before me, the undersigned, a Notary Public, in and for said County, and State, Jonathan Granville, known to me to be the Director/Secretary of the ERIE METROPARKS, the park district which executed the foregoing instrument, and acknowledged that he did sign the foregoing instrument for and on behalf of said park district, being thereunto duly authorized; that the same is his free act and deed as such officer and the free act and deed of said park district.

IN TESTIMONY THEREOF, I have hereunto set my hand and official seal at Wesley, Ohio, this 12th day of October, 1995.

Wesley, Ohio
NOTARY PUBLIC my commission expires 08/29/99

This instrument prepared by:
ANDREW J. WARHOLA, ESQ.
WARHOLA, O'TOOLE, LOUGHMAN,
ALDERMAN & STUMPHAUZER
502 Broadway
Lorain, Ohio 44052-0528
(216) 244-1212

and

KEITH A. WILKOWSKI, ESQ.
COOPER, WALINSKI & CRAMER
900 Adams Street
P. O. Box 1568
Toledo, OH 43603-1568
(419) 241-1200

File # 102-12-12-12-12-12

EXHIBIT A

Situated in Erie County, State of Ohio, more particularly described as:

That portion of the Wheeling & Lake Erie Railway Company line of railway in Erie County, Ohio, beginning at a point on said line that is 200 feet southwesterly of the mainline point of switch to the Huron-Shinrock Connector of the Norfolk and Western Railway Company (formerly The New York Chicago and St. Louis Railroad Company, a/k/a Nickel Plate Road) and further identified as Valuation Station 559 + 41.72, Milepost 10.60 on Valuation Map V9/11; thence in a generally southwesterly direction to a point on said railway line that is identified as Valuation Station 232 + 21, Grantor's Milepost 4.40, north of Milan, Ohio.

Excepting therefrom that portion of the said railway line which is situated on property now owned by Howard P. Leber and Sandra J. Leber, more particularly described as follows:

Situated in the 2nd Section of the Township of Milan, commencing in the center of the old State Road on the south line of (what was formerly) Markham's land; running thence N. 35° 50' west. Twelve chains and 55 links to the center of the Milan Canal; thence N. along the center thereof to the center of the Old Huron River bed to the south line of John Curtis' tract; thence S 79° E. 27 chains and 25 links to the center of the highway; thence N. 16-3/4° E. 13 chains and 39 links to the place of beginning, containing 46.75 acres and further described in the Option to Purchase Railway Easement recorded in Book 154, Page 271 of Deeds in the office of the Erie County Recorder.

Said strip of property being approximately 1500 feet in length, more or less.

PRIOR TITLE references for the above-described property recorded in LR2, page 26.

SUBJECT to all laws, ordinances, roads and highways, restrictions, conditions, easements, covenants, agreements, leases, reservations, encroachments, and rights of the public and title defects, whether or not of record, and taxes and assessments after the date hereof.

AND FURTHER SUBJECT to the perpetual easements and other rights and licenses of Norfolk and Western Railway Company, its successors and assigns, to maintain, repair, rebuild, replace and use a bridge or bridges and embankments, tracks and appurtenances of its Buffalo-Chicago line at Norfolk and Western Railway Milepost B-233.57 and subject further to an easement reserved by said Norfolk and Western Railway Company for fiber optic purposes.

AND FURTHER SUBJECT to the reservation of the right of Wheeling to run and maintain a line of railway over said property as described in Section 1(c) of the Agreement Between The Board of Park Commissioners of Erie County and The Wheeling & Lake Erie Railway Company, which Section 1(c) is fully incorporated herein by reference.

<http://www.wheeling.com>

*Enc 58-00
Wheeler, O'Leary
Box 598*

719938
JOHN W. SCHAEFFER
RECORDER
ERIE COUNTY, OHIO
95 OCT 27 PM 1 05
FILED FOR RECORD
OR. BOOK 244 PAGE 938
WCD

MICROFILMED

OPTION TO ACQUIRE REAL PROPERTY INTERESTS

For valuable consideration paid, the receipt whereof is hereby acknowledged, the undersigned WHEELING & LAKE ERIE RAILWAY COMPANY ("Wheeling"), a Delaware corporation, hereby gives and grants to THE BOARD OF PARK COMMISSIONERS OF THE ERIE METROPARKS, whose current address is 3910 East Perkins Avenue, Huron, Ohio 44839 ("Board), its successors and assigns, the exclusive option and privilege of acquiring by quit-claim deed all the right, title and interest which Wheeling may have in the real property comprising a line of railway located in Erie County, State of Ohio (the "Property"), which is more particularly described as set forth on Exhibit A attached hereto, except for and subject to the perpetual easements and other rights and licenses of Norfolk & Western Railway Company, its successors and assigns, to maintain, repair, rebuild, replace and use a bridge or bridges and embankments, tracks and appurtenances of its Buffalo-Chicago line at Norfolk and Western Railway Milepost B-233.57 and subject further to an easement reserved by said Norfolk and Western Railway Company for fiber optic purposes and further, except for and subject to the reservation by Wheeling, its successors and assigns, of the right to install, run and maintain one (1) railway line over the Property as described in Section 1(c) of the Agreement Between The Board of Park Commissioners of Erie County and The Wheeling & Lake Erie Railway Company, which Section 1(c) is fully incorporated herein by reference.

SECTION 1 - CONSIDERATION

The consideration for the conveyance of Wheeling's right, title and interest in the Property shall be One Dollar (\$1.00) together with other valuable consideration heretofore received by Wheeling.

SECTION 2 - PERIOD OF OPTION

This Option may be exercised by the Board at any time after final payment of monies due Wheeling by the Board under that certain Agreement dated October 13, 1995, and prior to October 1, 2000 by written notice to Wheeling.

SECTION 3 - TITLE

If the Option is exercised, Wheeling shall deliver to the Board its quit-claim deed quit-claiming to the Board all its right, title and interest to the property except for and subject to the easements and the reservation set forth in Exhibit A.

SECTION 4 - NO REPRESENTATIONS CONCERNING MARKETABILITY OF TITLE OR INTEREST

Wheeling makes no representation concerning the quality of its title to the Property or the rights of usage Wheeling possesses to the whole or any part of the Property. The Board acknowledges that it, its agents and attorneys have had full and complete opportunity to examine and consider the issue of title and rights of usage and are fully informed concerning the same. The Board is acquiring Wheeling's interest in the Property without covenants or warranties of any nature, free of any mortgage encumbrances, but subject to any and all existing tenancies, encumbrances, easements, rights, licenses, privileges, agreements, covenants, conditions, restric-

tions, rights of reentry, possibilities of reverter, existing laws and ordinances, and orders of regulatory agencies. Possession of the Property shall be surrendered "as is" and, without limiting the generality of the foregoing, subject to any state of facts which an accurate survey or prudent inspection of the Property would disclose. The existence of any facts, conditions, legal limitations or other matters to which the conveyance is subject, and the claims of any third parties to any interest in any part of the Property, shall not be asserted by the Board as a breach of contract or after delivery, as a basis for seeking compensation or other redress from Wheeling.

SECTION 6 - ASSIGNMENT AND SUCCESSION

This Option and the exercise thereof shall bind and inure to the benefit of the successors and assigns of the respective parties.

SECTION 7 - ESCROW OF DEED

Simultaneous with the execution of this Option, Wheeling shall deposit in escrow with Cooper, Walinski & Cramer, Attorneys at Law, 900 Adams Street, P.O. Box 1568, Toledo, Ohio 43603-1568 a quit-claim deed of conveyance by Wheeling to the Board in form and substance as Exhibit ~~A~~ attached hereto. Upon notice to the escrow agent of exercise of the Option by the Board, it shall forthwith deliver the deed to the Board.

SECTION 8 - NON-EXERCISE OF OPTION

If the Board fails to exercise its Option within the time delineated herein, Wheeling shall have no obligation of any kind or

Exhibit E

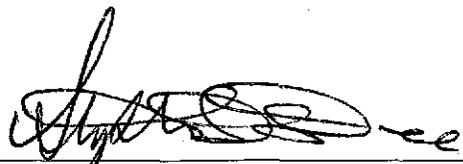
AFFIDAVIT OF STEPHEN DICE

STATE OF OHIO
COUNTY OF ERIE

Stephen Dice, being first duly sworn, states as follows:

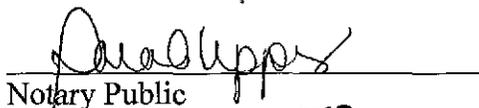
1. I have personal knowledge of each and every fact stated herein.
2. I am the Executive Director/Secretary of Erie MetroParks.
3. The Huron River Greenway (the "Greenway") is a 66-foot wide linear hiking/bicycle trail operated by Erie MetroParks in Erie County, Ohio.
4. The current southern terminus of the Greenway is in Milan, Ohio. The Greenway runs north and northeast from Milan, Ohio to its current northern terminus at the DuPont Marsh Nature Preserve in Huron Township.
5. In my capacity as Executive Director/Secretary of Erie MetroParks, I am familiar with the following documents, each of which is dated October 13, 1995: "Agreement Between The Board Of Park Commissions Of Erie County And The Wheeling & Lake Erie Railway Company" (the "Use Agreement") entered into between the Board of Park Commissioners (the "Board") of Erie MetroParks and the Wheeling & Lake Erie Railway Company ("W&LE"); "Option To Acquire Real Property Interest" (the "Option") granted by W&LE to the Board; and a quit-claim deed (the "Deed") from W&LE to the Board.
6. The Use Agreement, the Option and the Deed all pertain to the same real estate (the "Real Estate") on which a railroad line was previously located.
7. The Greenway is located on the Real Estate.
8. I am the custodian of documents maintained by the Board and by Erie MetroParks which disclose that by the end of 1998, if not earlier, Erie MetroParks had occupied, possessed,

used and exercised exclusive dominion and control over the Real Estate. These documents consist of memoranda and reports which were made at or near the time of the acts and events described therein and which were made by a person with knowledge of such acts and events. It is the regular practice of the Board and Erie MetroParks to make such memoranda and to compile such reports, and such memoranda and such reports are kept by the Board and by Erie MetroParks in the course of their regularly conducted business activity. One such memorandum is a Memo dated November 8, 1995, from Jonathan R. Granville, who was then the Director/Secretary for Erie MetroParks; a true and genuine copy of such Memo is attached hereto as Dice Exhibit 1. One such report is the report entitled "Properties Managed By Erie MetroParks" dated November 10, 1998; a true and genuine copy of such report is attached hereto as Dice Exhibit 2.



Stephen Dice
Executive Director/Secretary
Erie MetroParks

Signed and sworn to before me, a notary public in and for the State of Ohio, by Stephen Dice, Executive Director/Secretary for Erie MetroParks, on the 13 day of May, 2009.



Notary Public

SARA A. LIPPUS
Notary Public, State of Ohio
My Commission Expires
September 11, 2010



Erie MetroParks

3910 East Perkins Avenue
Huron, Ohio 44839
Phone: 419 625-7783
FAX: 419 621-4217

YOUR METROPARKS

Castalia Quarry Reserve
Edison Woods Reserve
Osborn Recreation Area
The Coupling Reserve
James H. McBride Arboretum
Birmingham School Park
Hoffman Forest Reserve
Pelton Park

DIRECTOR - SECRETARY

Jonathan R. Granville

BOARD OF PARK COMMISSIONERS

Frederick H. Deering
Starr Truscott
Kevin J. Zeiher

November 8, 1995

MEMO

To: Erie MetroParks Board of Park Commissioners
Erie MetroParks Staff
Erie MetroParks Volunteers
Selected Local Area Officials
Interested Persons

From: Jonathan R. Granville, Director-Secretary *JRG*

Regarding: Closure of the Huron River Greenway

Until such time as the property can be readied for public use and until further notice, the newly acquired Huron River Greenway linear parkway is hereby declared a **CLOSED AREA** under Erie MetroParks Rules and Regulations Section 12.4. The Greenway is closed to all persons except employees or volunteers or other agents of Erie MetroParks during the performance of their official and assigned duties; law enforcement, fire and/or emergency medical personnel during performance of their official duties; employees or agents of the Wheeling and Lake Erie Railway Co. during the performance of their official duties; adjacent land owners and their agents who are in the process of crossing the parkway to reach their property on the opposite side; those who have secured and carry on their person a copy of written authorization from the Wheeling & Lake Erie Railway Co. to utilize the corridor; and/or others who have secured a written permit from the Director-Secretary of Erie MetroParks to enter and remain on the property.

Closure of Huron River Greenway

November 8, 1995

Page 2 of 2

Following apprehension and conviction, violation of the closure rule may result in a fine of up to \$500 pursuant to ORC Section 1545.99. Except for adjacent landowners as described above law enforcement, fire and/or emergency medical personnel during the performance of their official duties and the employees and/or agents as described above who are also exempt from the regular park curfew regulations (EMP Rule 12.1) all other Erie MetroParks Rules and Regulations are also in effect on the Greenway.

For a summary or a complete list of Erie MetroParks Rules and Regulations or for more information, contact the Ranger Section of Erie MetroParks at 419-625-7783.

For the Huron River Greenway or for any Erie MetroParks managed area; to report a problem or to request emergency assistance, use the information provided below.

To report a/an:

1. Life Threatening Emergency at any time, day or night dial 911 (Erie County Emergency Operator)
2. Ongoing, but Non-Life Threatening Law Enforcement Problem
 - a. Monday through Friday, 8:00 a.m. to 5:00 p.m. - 419-625-7783 (Erie MetroParks Administrative Office)
 - b. All Other Times - 419-625-7951 (Erie County Sheriff's Office Dispatcher)
3. Incident or Complaint regarding a crime NOT in progress or any other matters - 419-625-7783 (Erie MetroParks Administrative Office)

A MetroParks Ranger and/or other law enforcement or emergency services personnel will respond as appropriate to the problem as quickly as possible.

*Properties Managed By Erie MetroParks
Revised 11/10/98*

<i>Park Area</i>	<i>Description</i>	<i>Notes</i>
<u>Birmingham School Park (BSP)</u>		
		<i>Park preliminary master development planning process complete. Diagram available.</i>
<i>Small Playground, Softball Diamond and Parking Lot</i>	<i>3.28 Acres (Donated 1995)</i>	<i>Old school building has been demolished except for the historic front archway which will be converted to a historic marker. Softball diamond and some playground equipment currently exist on the property. Future additional equipment and picnic shelter are planned. New swing set installed in 1997.</i>
		<i>Limited access to surrounding private property natural areas for scheduled programs has been arranged.</i>
<i>Total BSP Acres : 3.28</i>		
<u>Castalia Quarry Reserve (CQR)</u>		
		<i>Park master document plan drawn up in 1989. Plan is 90% unimplemented and is under review for updating in 1999.</i>
<i>Northside Natural Area</i>	<i>42 Acres (Purchased 1987)</i>	<i>Fifty car parking area constructed in 1996. Natural area included wet woodland and dogwood thickets. Much of north side is scheduled for use as a wetlands restoration project area. A seasonal portable restroom is available at this location. No drinking water is presently available on site.</i>
<i>Southside Natural Area</i>	<i>110 Acres (Donated 1987)</i>	<i>Perimeter trails widened and area opened for public hiking in 1991. Mountain biking by special permit authorized in 1990 continues. Natural features include rare and endangered plant life and glacial grooves. Construction of handicapped accessible observation platform located 3/4 of a mile south of Route 101 parking area was completed in spring of 1997. Platform provides a panoramic view of Sandusky Bay and Lake Erie from a height of 195 feet above mean lake and bay level.</i>
<i>Total CQR Acres: 152</i>		
<u>The Coupling Reserve (TCR)</u>		
		<i>Park master development planning process not yet initiated.</i>
<i>Terrace, Slope, Meadow, Woods, Lower Parking Lots and Roadways</i>	<i>20 Acres (Donated 1991)</i>	<i>Approximately 3 acres of roadways, lower parking lots and landing. Approximately 4 acres of meadow, wet woodlot and wooded Huron River bank. First opened to public in 1990, the lower parking lots and landing area was originally rented from the Coupling Family Enrichment Center group. This area also included: a small wetland, sledding slope, grass volleyball court and small meadow. These facilities are open to the general public as posted. A seasonal portable restroom is available in a lower parking area. No drinking water is presently available on site for general public visitor use.</i>
<i>Depot Station House, Train Cars and Upper Parking Lot</i>	<i>.5 Acres (Donated 1992)</i>	<i>Restored train depot building with parking lot, meeting room with capacity of 25 persons, restrooms with shower in each, and small kitchen. Two cabooses are present with one improved for use as a heated bunkhouse. The other is used as a staff office. A box car is present and is also converted to a bunkhouse. Total overnight capacity in train cars is 26. Also located in this section: small maintenance garage building for staff use, and depot picnic area located behind the Station House.</i>
<i>Total TCR Acres: 20.5</i>		

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Park Area	Description	Notes
<u>DuPont Marsh State Nature Preserve (DPM)</u>		
		<i>Property is currently managed by Erie MetroParks under the provisions of a State DNAP Master Plan revised 1994 and a 1996 MetroParks Plan of Operations. Visitors are required to stay on official trails and no hunting, trapping, fishing or picnicking is permitted. Pets and bicycles are not permitted west of the Huron River Greenway trail (the old railroad corridor).</i>
Visitor Entry Area	3 Acres (Leased 1997)	<i>Located in the uplands area east of the old railroad corridor and adjacent to Old River Road, this area is being developed to provide parking and other services for visitors to the Preserve and the Huron River Greenway Trail. Stone parking lot was constructed in 1998 and opened for general public use in 1999. Seasonal portable restroom is present. Water and year-round permanent restroom facilities planned.</i>
Upland Woods and Wetlands Edge	10 Acres (Leased 1997)	<i>Existing unimproved drive and grassy loop trail will be maintained. Future plans call for construction of an elevated observation platform and/or water level bird watching blind on the east edge of the wetlands.</i>
Wetlands and Dikes	90.94 Acres (Leased 1997)	<i>The riverine wetlands which makes up the west side of the property will be left in a natural state with minimal management and visitor impact. Low tree covered earthen dikes which separate most of the wetlands from the Huron River will also remain natural.</i>
Total DPM Acres: 113.94		
<u>Edison Woods Reserve (EWR)</u>		
		<i>Master park development plan and uses currently limited by license contract with owner (FirstEnergy Corp.).</i>
Trails, Trail Head and Parking Areas	Approx. 96 Acres (License to Use 1991)	<i>About 7 miles of public trails planned. Approximately 6 miles now open for hiking, cross country skiing and horseback riding. Acreage estimate includes approximately 11 acres for four small parking lots, trailheads and maintenance areas. Only one gravel parking area is presently open for public use. Short (1 1/2 mile) hiking trail opened to public in spring of 1992. First five miles of trails for hiking and horseback riding opened in spring of 1994. Additional trail construction in 1996-1997 and other ongoing work has resulted in approximately one additional mile of open trail for hiking and riding. Trail drainage work is an ongoing project as area is often very wet.</i>
Natural Area, Cropland and Residential Areas	Approx. 1,300 Acres (License to Use 1991)	<i>Marshy former farm fields, sandstone cliffs and steep hillsides with rare plant life and wet woodlands. Much of the property remains closed to the public under current license agreement which allows public access on specific trail corridors only. Area also includes several active farm fields and residences leased to various persons on the outer perimeter of the property. Future public use of the site is currently in doubt as FirstEnergy Corp. has announced its intention to sell the site and in preparation to do so has shortened the license agreement use period to a month to month contract from an annual agreement. Erie MetroParks is attempting to acquire the site.</i>
Total EWR Acres: 1,396		

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<u>Park Area</u>	<u>Description</u>	<u>Notes</u>
<u>Hoffman Forest Reserve (HFR)</u>		
		Master development planning process in preliminary stages. Opened for scheduled public use in September 1997 and general daily use in 1998.
Woodland and Meadow with Two Small Streams	40.5 Acres (Lease Agreement 1995)	Outdoor environmental education area is open to the public at daily posted times. The Reserve is now available for general public visitation from 8:00 a.m. until dark daily. Undeveloped, limited current park facilities are present, however parking lot and trails are available. Portable toilet present on site during warm seasons. No drinking water is presently available on site.
Total HFR Acres: 40.5		
<u>Huron River Greenway (HRG)</u>		
		Master development planning process in preliminary stages.
Huron to Milan, Former Railroad Corridor and Roadside Lanes	65 Acres (Right of Use Agreement (1995) & Purchase (1998))	Linear park featuring a hiking and bicycling trail constructed primarily on an unused railroad right-of-way on the east bank of the Huron River and the historic Milan Canal and Towpath. Separate paved areas adjacent to existing county or city roadways will be constructed on the north end of the Greenway. Phase One of the Greenway will link Huron and Milan. Later, the project will continue from Milan to Norwalk. The HRG trail will connect to the future North Coast Inland Trail at Norwalk. The HRG trail will run approximately 12.8 miles from the City of Norwalk through the Village of Milan to the City of Huron on Lake Erie when totally complete. Phase One (Huron to Milan) on the old Wheeling & Lake Erie RR bed section of the HRG is presently closed to the public until trail improvements can be made. Land acquisition for parking and small connector parcels is underway. However, much of this section is currently managed as a MetroPark area and is under construction for trail purposes by staff and volunteers. Phase One A of the project in the area of DuPont Marsh is expected to open with a crushed compacted gravel surface in 1999. Construction of two trail bridges between DuPont Marsh and Franklin Flats was completed in 1998. Property for Phase Two (Milan to Norwalk) has been mostly acquired by the City of Norwalk for a public water line. Erie MetroParks intends to work with the city to install and maintain a trail on the same corridor in the future.
Total HRG Acres: 65		
<u>James H. McBride Arboretum (JMA)</u>		
Decorative Area, Woods and North Field	47 Acres (Leased from State/BGSU in 1993)	Lawn area with decorative plantings surrounding Parker Lake; north field (planted to meadow and later native vegetation eco-types); and woods along Sawmill Creek including foot trails.
Eco-Woods Area	9.7 Acres (Leased from State/BGSU in 1993)	Wood lot with surrounding cropland which is planted to meadow and includes a small lawn area including storage shed. Possible future picnic shelter area.
Total JMA Acres: 56.7		

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<u>Park Area</u>	<u>Description</u>	<u>Notes</u>
<u>Osborn Recreation Area (ORA)</u>		
<i>Major revisions and an update to the 1987 master development plan are required.</i>		
<i>Turf and Other Playing Field Areas (Redbud Activity Area, Buckeye Activity Area) Southwoods Natural Area, Osboarn Park Pool</i>	<i>57 Acres (Donated 1987)</i>	<i>Soccer fields #1 - 12, softball diamonds #1 - 2, rugby field, flag football field, open shelters #1 - 3, picnic areas, children's play equipment, tennis-basketball court, Frost Center, Administration Office, garage, maintenance barn/shop, south barn under conversion into Meadowview Pavilion, public gardens, fitness trail, recycling container site and parking lots in lawn and playing field areas. Pool opened in 1988. Southwoods Natural Area has 1/4 mile hiking trail loop through a rolling mostly oak wood lot. Sunshade and tube slide added to the pool area the summer of 1994.</i>
<i>Northwoods Activity Area</i>	<i>14 Acres (Leased 1978)</i>	<i>Includes all areas east of main access roadway and north of Erie County Care Facility. Has picnic areas, parking lots, public restrooms, enclosed shelter (#4), wood lot with 1/8 mile handicapped accessible trail and seasonal accessible play equipment, building 'A' office; Dildine Stream with small pond and small switchgrass prairie meadow.</i>
<i>South Meadow Natural Area</i>	<i>30 Acres (Donated 1987)</i>	<i>Hiking and running trails at south, southwest and old east boundaries of park as well as trails and maintenance driveways through center of area. Most of meadow entered into Federal Conservation Reserve program to be for songbird and wildlife habitat. A 2.2 acre wetland is planned for restoration in this area and additional small wetlands may also be constructed here.</i>
<i>Mid Meadows Natural Area</i>	<i>15 Acres (Informal cooperative mgmt. agreement)</i>	<i>Hiking and running trails and small stream. Meadows placed in Federal Conservation Reserve program to be managed for wildlife habitat.</i>
<i>Nursery and Program Crop Area</i>	<i>4 Acres (Leased 1994)</i>	<i>Cropland being developed into meadow grassland and later for use as a plant nursery and special program cropland. Located south of Hull Road.</i>
<i>Maple Grove Center Area</i>	<i>2.8 Acres (Purchased 1998)</i>	<i>Shaded quiet space accessed from Hull Road and by trail from Osborn Meadows area, this area will be used for special nature programs. A small residential building will be renovated for use as staff offices and later for nature interpretation when a planned "Window on Wildlife" addition is constructed.</i>
<i>Total ORA Acres: 162.8</i>		
<u>Pelton Park (PP)</u>		
<i>Master development planning process not yet initiated.</i>		
<i>Picnic Area, Wetlands, Meadows, Roadway and Parking Lot</i>	<i>5 Acres (Cooperative mgmt. agreement 1989)</i>	<i>Several picnic tables and one grill. Parking lot enlarged in 1990. Small wetlands. A split rail fence constructed in 1997-1998 provided by Perkins Township surrounds this park.</i>
<i>Woodlot and Adjacent Natural Area</i>	<i>15 Acres (Cooperative mgmt. agreement 1989)</i>	<i>Upland oak woods with 1/2 mile hiking trail loop. Small stream and woods exhibit excellent spring wildflowers.</i>
<i>Total PP Acres: 20</i>		
<i>Grand Total for All Park Areas: 2031 Acres</i>		