

ORIGINAL

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.)	

STIPULATIONS – VOLUME 1
(Exhibits SE-1 through SE-35)

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CLERK OF COURT
SUPREME COURT OF OHIO

STIPULATIONS

I. EXHIBITS

The parties to this action, by and through their respective attorneys, hereby stipulate, for purposes of this action only, that each of the exhibits listed below is authentic and fully admissible for all purposes in this action:

A. Documents Recorded In The Recorder's Office, Erie County, Ohio

EXHIBIT	RECORDATION INFORMATION	DESCRIPTION
SE-1	Deed Volume 10, page 25	Deed dated April 21, 1838 from Ebeneser Merry to the Milan Canal Company (typed version)
SE-2	Deed Volume 10, page 23	Deed dated May 10, 1838 from Kneeland Townsend to the Milan Canal Company (typed version)
SE-3	Lease Records Volume 2, pages 26-28	Lease dated July 12, 1881 between the Milan Canal Company, as lessor, and the Wheeling & Lake Erie Railroad Company, an Ohio corporation, as lessee
SE-4	Deed Volume 78, pages 239-241	Deed dated October 24, 1904 from Ralph M. Lockwood, Receiver for the Milan Canal Company, to Stephen A. Lockwood
SE-5	Deed Volume 80, page 453	Deed dated October 8, 1906 from Stephen A. and Libby E. Lockwood, husband and wife, to Emma L. Lockwood
SE-6	Lease Records Volume 17, pages 307-310	Assignment of Lease dated October 21, 1953 between Julius B. Amber, Executor of the Estate of Verna Lockwood Williams, deceased, as assignor, to Julius B. Amber, Testamentary Trustee under the Will of Verna Lockwood Williams, deceased, as assignee
SE-7	Deed Volume 547, pages 366-376	Certificate of Merger dated September 16, 1988 between Norfolk and Western Railway Company ("N&W") and Wheeling & Lake Erie Railway Company, an Ohio corporation, and Agreement and Plan of Merger dated June 1, 1988 between the same two companies

SE-8	Deed Volume 564, pages 1-4 and 190-196	Deed dated May 8, 1990 from N&W to Wheeling & Lake Erie Railway Company, a Delaware corporation (“W&LE-Delaware”), and Erie County, Ohio real estate portion of such deed
SE-9	Deed Volume 244, pages 926-938	Agreement dated October 13, 1995 between the Board of Park Commissioners of Erie MetroParks (“Erie MetroParks”) and W&LE-Delaware
SE-10	Official Records Volume 398, pages 51-54	Deed dated October 13, 1995 from W&LE-Delaware to Erie MetroParks
SE-11	RN200004166	Deed dated February 24, 2000 from Key Trust Company of Ohio, N.A., Trustee of the Testamentary Trust of Verna Lockwood Williams (“Key Trust”) to Relators Richard and Carol Rinella, husband and wife
SE-12	RN200005173	Deed dated April 11, 2000 from Key Trust to Buffalo Prairie, Ltd. (“Buffalo Prairie”)
SE-13	RN200005182	Deed dated April 26, 2000 from Buffalo Prairie to Relator Rita M. Beverick
SE-14	RN200005179	Deed dated April 26, 2000 from Buffalo Prairie to Relators Patricia A. Charville, Trustee U/A Patricia A. Charville, dated September 28, 1994 as to an undivided ½ interest and Patricia A. Charville, Mark R. Charville and David A. Charville as Successor Trustees U/A Leon R. Charville dated September 28, 1994 as to an undivided ½ interest
SE-15	RN200005180	Deed dated April 26, 2000 from Buffalo Prairie to Relator Douglas Hildebrand
SE-16	RN200005183	Deed dated April 26, 2000 from Buffalo Prairie to Relators Dale A. and Ellen H. Hohler, husband and wife
SE-17	RN200005186	Deed dated April 26, 2000 from Buffalo Prairie to Relator Theresa R. Johnston
SE-18	RN200005176	Deed dated April 26, 2000 from Buffalo Prairie to Relators John F. Landoll and/or Virginia A. Landoll U/A John F. Landoll and/or Virginia A. Landoll, Co-

Trustees Landoll Family Revocable Living Trust
dated July 24, 1998

SE-19	RN200005189	Deed dated April 26, 2000 from Buffalo Prairie to Relator Michael P. Meyer
	RN200005190	Deed dated April 26, 2000 from Buffalo Prairie to Alice F. Fowler
SE-20	RN200005177	Deed dated April 26, 2000 from Buffalo Prairie to Relators Gerald O.E. Nickoli and Robin L.B. Nickoli, as Custodian for Autumn M. Nicoli and Jared J. B. Nickoli under the Ohio Transfers to Minors Act
SE-21	RN200005193	Deed dated April 26, 2000 from Buffalo Prairie to Relators Billy R. and Donna J. Rasnick, husband and wife
SE-22	RN200005194	Deed dated April 26, 2000 from Buffalo Prairie to Relator Maria Sperling
SE-23	RN200005188	Deed dated April 26, 2000 from Buffalo Prairie to Relators Gary R. and Virginia M. Steiner, husband and wife

B. Documents From *In The Matter Of The Application For The Dissolution Of The Milan Canal Company, Erie County, Ohio Court Of Common Pleas Case No. 9702*

EXHIBIT	DATE	DESCRIPTION
SE-24	January 7, 1904	Petition (page 6 missing)
SE-25	July 27, 1904	Journal Entry ordering sale of real estate

C. Documents From *Board Of Park Commissioners, Erie MetroParks v. Key Trust Company of Ohio, N.A., Trustee of the Testamentary Trust of Verna Lockwood Williams, et al., Originally Docketed As Erie County, Ohio Court Of Common Pleas Case No. 99-CV-442*

EXHIBIT	DATE	DESCRIPTION
SE-26	July 14, 2000	Amended Complaint
SE-27	July 14, 2000	Erie MetroParks' Combined Motion for Temporary

Restraining Order and Preliminary Injunction and Memorandum in Support Thereof

SE-28	July 14, 2000	Temporary Restraining Order
SE-29	August 8, 2000	Answer to Amended Complaint and Counterclaim
SE-30	August 11, 2000	Erie MetroParks' Reply to Defendants' Counterclaim
SE-31	November 7, 2000	First Trial Court Decision
SE-32	September 14, 2001	First Appellate Decision (Court of Appeals for Erie County, Ohio Case No. E-00-068, <i>Erie MetroParks Bd. of Park Commrs. v. Key Trust Co.</i> , 2001-Ohio-2888)
SE-33	February 22, 2002	Second Trial Court Decision
SE-34	September 13, 2002	Second Appellate Court Decision (Court of Appeals for Erie County, Ohio Case Nos. E-02-009 and E-02-011, <i>Erie Cty. MetroParks Bd. of Park Commrs. v. Key Trust Co. of Ohio</i> , 2002-Ohio-4827)

D. Documents From *State of Ohio, ex rel. Edward M. Coles, et al. v. Jonathan Granville, et al.* Ohio Supreme Case No. 2006-1259

EXHIBIT	DATE	DESCRIPTION
SE-35	June 29, 2006	Complaint and Relators' Memorandum in Support of the Complaint for Writ of Mandamus
SE-36	July 24, 2006	Respondents' Answer
SE-37	March 23, 2007	Relators' Reply Memorandum in Support of the Complaint for Writ of Mandamus
SE-38	June 11, 2007	Relators' Motion to Take Judicial Notice
SE-39	June 21, 2007	Brief of Relators in Support of Writ of Mandamus
SE-40	July 11, 2007	Respondents' Memorandum in Opposition to Writ of Mandamus
SE-41	July 18, 2007	Relators' Reply Brief

SE-42	July 18, 2007	Relators' Supplemental Presentation of Evidence
SE-43	November 20, 2007	Decision (116 Ohio St. 3d 231, 2007-Ohio-6057)
SE-44	November 30, 2007	Respondents' Motion for Reconsideration
SE-45	December 7, 2007	Relators' Memorandum in Opposition to Motion for Reconsideration
SE-46	January 23, 2008	Reconsideration Entry

E. Miscellaneous

EXHIBIT	DESCRIPTION
SE-47	25 Ohio Law 94-99 ("An Act to incorporate the Milan Canal Company")
SE-48	Rule G 859, Frames 1431-1434, Records of Incorporation and Miscellaneous Filings, Ohio Secretary of State's Office

II. FACTS

The parties to this action, by and through their respective attorneys, hereby stipulate, for purposes of this action only, that the Wheeling & Lake Erie Railroad Company was incorporated

as an Ohio for profit corporation on or about April 6, 1871, and that on or about June 25, 1896 it changed its name to the Wheeling & Lake Erie Railway Company.

Stipulations Approved and Respectfully Submitted By:

Bruce L. Ingram (by Thomas A. Young as authorized)

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Attorney of Record for Respondents

Exhibit SE - 1

An instrument executed by Ebeneser Merry dated April 21, 1838, received for record October 29, 1852 and recorded in Volume 10 of Deeds, Page 25, provides as follows:

"Know all men by these presents that I Ebeneser Merry of Milan Township, County of Huron and State of Ohio, in consideration that the Milan Canal Company have built a Dam in pursuance of a Contract made January 1st 1834 across the New Channel of the Huron River and further agree to keep said Dam and its Britments in Good repair and rebuild the same when necessary - I do hereby Give Grant and release and forever Quit Claim unto said Milan Canal Company all my rights to occupy the Milan Canal Basin as described in the Addition to the Town Plat of Milan recorded on Huron County Records Vol. 10, Page 41 & 42, also the Right to the first use of the Water to be taken from the Pond at the head of the Canal Basin to be used for the purpose of Navigating said Canal agreeable to the provisions of the Charter of the Milan Canal Company - Also to use said Water to supply a Dry Dock but for no other purpose whatever - and I do further agree and hereby convey unto said Company the following described tract for the use of a Dry Dock bounded as follows - Beginning at the Northeast corner of In Lot Ninety Two in the addition of the Milan Town Plat - Thence N. 33° East 2 Chains 9 Links to a stake. Thence South 9° W. 3 Chains to a stake. Thence N. 25° W. 2 Chains 30 Links to a stake thence S. 18° W. 6 Chains 82 Links to a stake. Thence Easterly 2 Chains to a stake. Thence South 1 Chain to the place of commencement. Containing One Acre and 51/100 of an acre be the same more or less - Also I do further release said Canal Company from all Claim I might have against said Company for damage by flooding my land or in constructing Canal Dam Britments and Culverts or such other works as are necessary to convey the water from said Pond or Dam to the Canal Basin and to Repair or Rebuild the same - also to Repair or Rebuild the said Milan Dam and Britments - The above Granted rights and privileges are Granted & conveyed unto said Milan Canal Company on the following conditions that said Company shall keep said Dam and Britments in good repair and rebuild the same when necessary. Also to keep the said Dam and Gates in such repair at the First Lock or Lock No. 1 that there will be no unnecessary waste of Water or Leakage - also as a further condition that if said Company shall neglect or refuse to keep in repair said Dam or Britments said Merry his heirs or assigns shall have a right to rebuild or make all necessary repairs and charge the same to said Company and shall have a right to shut the Water from said Canal until said Company shall pay said Merry his heirs or assigns the amount so expended with interest thereon. Also if said Company shall neglect to pay the expense of repairing or rebuilding as above stated or neglect to use the canal for navigating for the term of one year as described in the Charter of said Company then and in that case all the Rights and privileges granted in this instrument shall be null and void so far as respects said Milan Canal Company and all the rights and privileges which are Granted in the above to said Milan Canal Company shall vest in the Town Council of Milan and their successors in office so long as they shall abide by and perform the conditions above expressed but should said Town Council or their successors in office refuse or neglect to fulfill the conditions above stipulated for the term of two years then and in that case all privileges above granted are to cease and determine and revert back to myself my heirs or assigns forever."

Exhibit SE - 2

An instrument executed by Kneeland Townsend May 10, 1838, received for record May 29, 1852 and recorded in Volume 10 of Deeds page 23, provides as follows:

"Know All Men by these presents that I, Kneeland Townsend of Milan, Huron County, Ohio, in consideration of benefits which I may receive in consequence of the location and construction of the Milan Canal across my lands, and also in consideration of Three Hundred and Sixty-three Dollars to me in hand paid by a receipt from the Milan Canal Company for the ballance of my subscription of ten shares of the capital stock of said company, I have and do hereby agree to release said Company from any and all damages which I may have sustained in consequence of said Company having located and constructed said canal over, through or across my lands, and also for digging the soil or cutting or taking my timber for the construction of said canal or locks thereon. I do also hereby give and release to said Company for the use of said canal and so long only as the same shall be actually used as a means of transportation for commercial purposes the following described piece of land, to-wit: On the westerly or tow path side of said canal a piece commencing at a point on said canal where the top water line of said canal strikes said tow path bank and forty feet southerly from the hollow coin part of the westerly upper crib of Lock number one of said canal, being on my land; thence northerly to a like point in said canal forty feet northerly from the hollow coin point of the westerly lower crib of said Lock No. one and to extend back westerly one hundred feet deep or wide, which said piece of land is intended for the purposes of a Lock House and other necessary appendages of said canal. Also a like piece of land on the heel path side of said canal except that this last piece is to extend back from the face wall of the heel path side of said lock only fifty feet for the convenience of ballance beams and other necessary appendages of said canal. The angles of said pieces are to be right angles and the rear lines to be parallel with face walls of said lock. And I do hereby also release to said Company the right to turn into said canal and use so much of the water on my land as may be necessary for the use of said canal and also a tremble way around said lock. And I do hereby further release to said company the right of flowing the land easterly of the tow path on the upper level of said canal to the high bank to the height of nine and one-half feet above the bottom level of said upper level of said canal, and also to in like manner flow on the long level northerly of said lock, nine feet and one-half foot above the top of the lower meter side of said lock. But it is hereby agreed by said Company that the flow of water arising from the Village creek shall be drawn off by a culvert or otherwise within one year from the time said land may be used as such for commercial purposes. And the said Townsend further agrees that said Company may construct a water waste to the canal on his land and also construct culverts to drain the land if said Company thinks proper, and to do all such work as may be necessary to keep said canal in repair. But his grant is not to be construed as extending to the right of soil but barely to the right of way for the purpose aforesaid and only so long as said canal shall be used for commercial purposes. And it is hereby understood that said Company shall remove all their timber off the lands of said Townsend within six months from the date hereof."

Exhibit SE - 3

and enjoy as in his first and former estates and thereupon his lease and everything therein contained on the said Lessee behalf to be done and performed shall cease terminate and be utterly void and said Lessee for his Executors administrators and assigns Covenant and agree with said lessor his heirs and assigns as follows that is to say that said Lessee will pay said rents in manner aforesaid except said premises shall be destroyed or rendered untenable by fire or unavoidable accident that he will not do or suffer any act therein that he will not assign this lease or underlet said premises without the written consent of said lessor and that at the end of said term he will deliver up said premises in as good order and condition as they now are or may be put by said Lessee reasonable use and ordinary wear and tear thereof and damage by fire and unavoidable casualty accepted and said Lessee for himself heirs Executors administrators and assigns Covenant and agree with the said lessor his Executors and Administrators that said Lessee paying the rents and observing and keeping the covenants of this lease on his part to be kept shall lawfully peaceably and quietly hold occupy and enjoy said premises during said term without any let hindrance ejection or molestation by said lessor or his heirs or any person or persons lawfully claiming under them in witness whereof the said parties have hereunto set their hands and seals on the day and year first above written signed sealed and acknowledged in presence of the

E. M. Colver & J. D. Smith
 Geo. H. Morgan Seal
 The State of Ohio Be it Remembered that on the 23rd day of Down
 Erie County ss I her in the year of our Lord One Thousand Eight
 Hundred and Eighty... before me the subscriber a Notary Public
 personally came George H. Morgan the party named in the foregoing
 lease and acknowledged the signing and sealing thereof to be his
 voluntary act and deed for the uses and purposes therein mentioned
 in testimony whereof I have hereunto subscribed my name and affixed
 my Official seal on the day and year aforesaid

Received July 30th 1881 Recorded August 5th 1881
 James Flynn Recorder

The Milan Canal Co

Whereas in or about the month of April A.D. 1877 the Directors of the Milan Canal Company of Milan Erie County Ohio gave the Consent and Authority of said Canal Company to the Wheeling and Lake Erie Rail Road Company to locate its Rail Road upon and to occupy for the purpose of constructing and operating its said Rail Road through the following described Real Estate owned by said Milan Canal Company

105-61-11-1881

thereof owned by said Milan Canal Company within the bounds of a Strip of
 land One Hundred and Fifty feet (150) in width commencing at the South-
 ern End of the Canal Basin of said Milan Canal Company near the intersec-
 tion of Avame 2d Union Streets in the Village of Milan in said Erie County and
 running thereon a westerly direction to the mouth of the Huron River
 in the Village of Huron in said Erie County and which Strip of land is bound-
 ed on the west by a line distant 65 feet from and running north
 parallel with the central line of the Rail Road of the Wheeling and Lake Erie
 Rail Road Company as now surveyed located and being constructed
 between said Village of Milan and Huron and which said Strip of land
 is bounded on the east by a line distant One Hundred (100) feet from and
 running north parallel with the said central line of said Rail Road the East
 and West lines of said Strip of land being One Hundred and Fifty (150)
 feet apart and running north parallel with each other & with the central
 line of said Rail Road from the said place of beginning to the said
 mouth of Huron River also all of the so called Dry Dock and all of the
 said Canal Basin and all of the upper and lower Docks of said Canal
 with all the grounds and Privileges connected therewith in addition to what
 is included in the said Strip of land above described the said Dry Dock
 containing about 1/2 acre and the said Canal Basin containing about
 5 1/2 acres of land be the same now or here and there as the Wheeling
 and Lake Erie Rail Road Company is or about said mouth of April 1877
 did so enter upon and occupy said Real Estate and right of way and con-
 veyed it, said line of Rail Road there and ever since then has been and
 now is the exclusive and undisputed possession thereof under license and
 Authority of said Directors of the Milan Canal Company and under their promise
 and agreement to lease or convey said Right of way and Real Estate
 to the said Rail Road Company in due form of law. Now therefore Quiet
 the Milan Canal Company by its legally Authorized Directors in consid-
 eration of the Benefits to said Canal Company from the construction and
 maintenance of the said line of Rail Road with its embankments
 and other Works in protecting the Property of said Canal Company and
 the adjacent lands which said Canal Company is under legal obligation
 to protect against Damages caused by the overflow of the water of said
 Huron River and for the further consideration herein stated do hereby
 lease, demise and fully let unto the Wheeling and Lake Erie Rail Road
 Company its successors and assigns all the Real Estate and right of way
 herein above described and being all the same owned by the said
 Canal Company. I have and do hold said Real Estate and
 right of way unto the Wheeling and Lake Erie Rail Road
 Company its successors and assigns for the use and purpose
 of said Rail Road Company and its successors and assigns
 on the 15th day of April 1877.

of hereof owned by said Milan Canal Company within the bounds of a strip of
 land one hundred and fifty feet (150) in width commencing at the south
 end of the Canal Basin of said Milan Canal Company near the intersec-
 tion of Duane St. Union Street in the Village of Milan in said Erie County with
 and running thence in a northerly direction to the mouth of the Huron River
 in the Village of Huron in said Erie County and which strip of land is bound-
 ed on the west by a line distant fifty (50) feet from and running north
 parallel with the central line of the Rail Road of the Wheeling and Lake Erie
 Rail Road Company as now surveyed located and being constructed
 between said Village of Milan and Huron and which said strip of land
 is bounded on the east by a line distant one hundred (100) feet from and
 running north parallel with the said central line of said Rail Road the East
 and West lines of said strip of land being one hundred and fifty (150)
 feet apart and running north parallel with each other with the central
 line of said Rail Road from the said place of beginning to the said
 mouth of Huron River also all of the so called Dry Dock and all of the
 said Canal Basin and all of the upper and lower Docks of said Canal
 with all the grounds and Privileges connected therewith in addition to what
 is included in the said strip of land above described the said Dry Dock
 containing about 1/2 acre and the said Canal Basin containing about
 1/2 acre of land in the same more or less and whereas the Wheeling
 and Lake Erie Railroad Company in or about said month of April 1887
 did so enter upon and occupy said Real Estate and right of way and const-
 ructed its said line of Rail Road thereon and ever since then has been and
 now is the Exclusive and undisputed possession thereof under license and
 Authority of said Directors of the Milan Canal Company and under their power
 and agreement to lease or convey said Right of way and Real Estate
 to the said Rail Road Company in due form of law now therefor in dis-
 cretion of the Benefits to said Canal Company from the construction and
 maintenance of the said line of Rail Road with its embankments
 and other works in protecting the Property of said Canal Company and
 the adjacent farms which said Canal Company is under legal obligation
 to protect against Damages caused by the overflow of the waters of said
 Huron River and for the further considerations hereinafter stated do hereby
 lease demise and fully let unto the Wheeling and Lake Erie Rail Road
 Company its successors and assigns all the Real Estate and right of way
 herein above described and being all the same owned by the said
 Canal Company to have and to hold said Real Estate and
 right of way to said Lessee the Wheeling and Lake Erie Railroad
 Company its successors and assigns for the uses and purposes
 of said Rail Road Company and its rights of way for its
 said Rail Road for the term of thirty nine (39) years commencing
 on the 12 day of July A. D. 1887 and ending on the 12 day of July A. D.
 1926 with the usual covenants to the said Wheeling and Lake Erie Rail
 Road Company its successors and assigns of renewal of their lease forever
 upon the same terms herein expressed with all the Privileges and appurtenances
 thereat second and the said Lessee the Wheeling and Lake Erie

Rail Road Company in consideration of the premises do hereby for it self
its Successors and assigns Covenant and agree with the said Lessee of the
Milan Canal Company that the Rail Road and embankments of said
Rail Road Company shall be kept in good order and repair during the
term of this lease inevitable accident from storm floods and otherwise
Excepted and that no waite shall be made or suffered on the said property
herein leased while in possession of said Lessee its Successors and
assigns and that there shall be paid to the said Lessee the Milan
Canal Company by the said Lessee the Wheeling and Lake Erie Rail Road
Company its Successors and assigns at the end of each year from and after
the said 12th day of July 1881 during the term of this lease the sum of \$50
fifty Dollars as the annual rental of said Property so leased and
demised herein and on the failure of said Lessee its Successors and
assigns to so maintain and that said Rail Road for Public transportation
and travel and on the abandonment thereof for Rail way purposes or
on the failure for six months to pay said Annual Rental of \$50
fifty Dollars to the said Lessee after the same become due and pay
abide thereon hereunto shall become void and the said Real Estate shall
revert to the said Lessee the Milan Canal Company and the said
Lessee its Successors and assigns shall thereupon quietly yield to said
Lessee the premises thereof in Witness whereof the said parties have
hereunto set their names and seals at Milan Ohio on this 12th day of
July A.D. 1881

The Milan Canal Company
By John S. Norton
Francis J. Lookwood
John Butman
David J. Wilcoxson
Darius Gray President

(seal)
(seal)
(seal)
(seal)
(seal)
(seal)
Directors
of said
Milan Canal
Company

The Wheeling and Lake Erie Rail Road Company
By its President W. A. Madsen

The foregoing Lease was on this 12th day of July 1881 signed sealed
acknowledged & delivered in presence of
William O. Lookwood Martin Hester

The State of Ohio Before me a Notary Public within and for said County
Erie County ss I personally appeared the above named John S. Norton
Francis J. Lookwood John Butman David J. Wilcoxson & Darius
Gray as Directors of the said Lessee the Milan Canal Company and each
acknowledged the foregoing Lease to be the deed of said Milan Canal Company
for the uses and purposes therein expressed and that the signing and sealing
thereof is their official act and deed as said Directors for and in
behalf of said Canal Company on this 12th day of July A.D. 1881
Martin Hester Notary Public

Received Aug 9th 1881 Recorded Aug 10th 1881
L. S. M. Rowd.

Exhibit SE - 4

Ralph M. Lockwood, Receiver

To,

Stephen A. Lockwood

(No. 157)

RECEIVER'S DEED

Know all men by these presents, That whereas, Ralph M. Lockwood, Maltby Smith and H. L. Wilson, a majority of the Board of Directors of the Milan Canal Company, a corporation, on the seventh day of January, A. D. 1904, filed a petition in the Court of Common Pleas of Erie County, Ohio, praying for the dissolution of said corporation, being cause number 9702.

And whereas, on the 28th day of March, A. D. 1904, such proceedings were had by and before said court that the said corporation was dissolved by order of the court and the said Ralph M. Lockwood was appointed by said court receiver of the estate and effects of the corporation, so dissolved,

and said receiver thereupon gave bond in accordance with the order of the court.

And whereas, on the 27th day of July, A. D. 1904, such further proceedings were had by and before said court that Ralph M. Lockwood, as receiver as aforesaid, was ordered by said court to sell at public sale to the highest bidder according to law for not less than two-thirds the appraised value thereof, the real estate of said corporation theretofore dissolved, being the real estate described in the petition in said cause, which said real estate is described as follows:-

Situate in the Townships of Milan and Huron, in said County of Erie, and State of Ohio, being all the land with all the rights and appurtenances thereof, owned by said Milan Canal Company, within the bounds of a strip of land one hundred and fifty feet in width, commencing at the easterly end of the canal basin of said Milan Canal Company, near the intersection of Main and Union streets, in the Village of Milan, in said Erie County, Ohio, and running thence in a northerly direction to the mouth of the Huron River, in the Village of Huron, in said Erie County, and which strip of land is bounded on the west by a line distant fifty feet from and running north parallel with the central line of the railroad of the Wheeling and Lake Erie Railroad Company, as surveyed, located ^{and} in the process of construction on July 12th, A. D. 1881, between said Villages of Milan and Huron, and which said strip of land is bounded on the east by a line distant one hundred feet from and running north parallel with the said central line of said railroad, as surveyed, located and being constructed as aforesaid, the east and west lines of said strip of land being one hundred and fifty feet apart and running north parallel with each other and with the central line of said railroad, as surveyed, located and being constructed as aforesaid, from the said place of beginning to the said mouth of Huron River. Also all of the so-called Dry Dock and all of the said Canal Basin and all of the Upper and Lower Locks of said canal, with all the grounds and privileges connected therewith in addition to what is included in the said strip of land above described, the said dry dock containing about one and 1/2 acres, and the said Canal Basin containing about five and 45/100 acres of land, be the same more or less. The said real estate is subject to a lease to the Wheeling and Lake Erie Railroad Company for a term of 99 years commencing on the 12th day of July, A. D. 1881, and ending on the 12th day of July, A. D., 1980, at an annual rental of Fifty Dollars per year, renewable forever.

And whereas, the said Ralph M. Lockwood as receiver as aforesaid, sold said premises to Stephen A. Lockwood for the sum of Five Hundred and Thirty-four Dollars (\$534.00) (this sum being more than two-thirds of the appraised value thereof), on the 19th day of September, A. D. 1904, and the said Stephen A. Lockwood having complied with the terms of such sale and such sale having been made in all respects according to law, the same was afterwards, to-wit, on the first day of October, A. D. 1904, approved and confirmed by said court and the said Ralph M. Lockwood, as such receiver, was ordered to execute and deliver to said purchaser a proper deed for said real estate according to law, all of which will more fully appear by the records of said court, to which reference is hereby made.

Now, therefore, I, the said Ralph M. Lockwood, as receiver as aforesaid, in consideration of the premises, and by virtue of the powers in me vested by law, and under the order of the court aforesaid, do hereby give, grant, bargain, sell and convey unto the said Stephen A. Lockwood, his heirs and assigns forever, the real estate aforesaid, with all the appurtenances thereunto belonging.

To have and to hold the said real estate unto the said Stephen A. Lockwood, his heirs and assigns forever.

In testimony whereof, I, as receiver as aforesaid, hereunto set my hand and seal this 24th day of October, A. D. 1904.

Signed, sealed and delivered in

the presence of-

C. E. Gove

Ralph M. Lockwood (Seal)

F. C. Smith

as receiver as aforesaid.

The State of Ohio, Erie County, ss.

Before me, a Justice of the Peace in and for said county, personally appeared the above named Ralph M. Lockwood, who acknowledged that he did sign and seal the foregoing deed as receiver as aforesaid, and that the same was his free act and deed for the purposes aforesaid.

In testimony whereof, I hereunto set my hand and official seal, at Milan, Ohio, this 24th day of October, A. D. 1904.

C. E. Gove

Justice of Peace

Received February 16th (1-15 P.M.) 1905

Recorded February 27th, 1905.

J. D. P. Pessier Recorder
By *F. C. Smith* Deputy

Exhibit SE - 5

Stephen A. and Libby E. Lockwood to Emerald Lockwood

WARRANTY DEED.

Know all Men by these Presents: That I, Stephen A. Lockwood of Milan, Erie County Ohio, the grantor

for and in consideration of the sum of One Thousand Dollars paid by Emerald Lockwood of said place the receipt whereof is hereby acknowledged, do hereby Grant, Bargain, Sell and Convey to the said Emerald Lockwood, Recd. heirs and assigns forever,

The following described real estate, to-wit: The Townships of Milan and Sharon, in said county of Erie State of Ohio being set apart with all the rights and appurtenances thereof owned by said Milan Canal Company within the bounds of said Milan Canal Company, more the incorporation of Milan and Sharon Streets in the Village of Milan, in said Erie County, Ohio and running therein in a westerly direction to the mouth of the Sharon River in the Village of Sharon, in said Erie County, and which said place is bounded on the west by a line marked fifty feet from and running north generally with the central line of the said road of the Shelling and Lake Erie Rail Road Company, as aforesaid, located and in the process of construction on July 1st A.D. 1851, between said Village of Milan and Sharon and which said strips of land is bounded on the east by a line distant four hundred feet from said running north generally with the said central line of said road and on the south and west by the said central line of said road being more fully described and set apart and running north generally with each other and with the central line of said road as aforesaid, located and being constructed as aforesaid, from the 1st day of beginning to the said date of Sharon River Ohio A.D. 1851, the said road and all of the land and privileges connected therewith in association therewith is included in the said strip of land above described and the said strip containing about one and one half (1 1/2) acres, and the said Canal Basin containing about five and forty hundredths (5 40/100) acres of land to the same more or less. The said road is subject to a lease to the Shelling and Lake Erie Rail Road Company for a term of 40 years commencing on the 1st day of July, 1851, and ending on the 1st day of July, A.D. 1951 and the annual rental of fifty dollars and other reasonable terms.

and all the Estate, Title and Interest of the said Stephen A. Lockwood either in Law or in Equity, of, in and to the said premises together with all the privileges and appurtenances to the same belonging, and all the rents, issues and profits thereof; To have and to hold the same to the only proper use of the said Emerald Lockwood, her heirs and assigns forever, and the said Stephen A. Lockwood, her heirs, executors and administrators, do hereby Covenant with the said Emerald Lockwood, her heirs and assigns, that she, the true and lawful owner of the said premises, and her full power to convey the same that the title, so conveyed, is Clear, Free and Unincumbered, and further, that she will defend the same against all claims, or claims, of all persons whatsoever, except the claims of the Shelling and Lake Erie Rail Road Company.

In Witness Whereof, the said Stephen A. Lockwood and Libby E. Lockwood his wife, who does hereby declare all her right and expectancy of dower in said premises, have hereunto set their hands, this 8th day of Oct. In the year of our Lord one thousand nine hundred and six (1906)

SIGNED AND ACKNOWLEDGED IN PRESENCE OF US:
John Mott
Fred A. Roberts
Stephen A. Lockwood
Libby E. Lockwood

THE STATE OF OHIO, COUNTY OF ERIE, ss.
Be it Remembered, That on the 8th day of Oct. in the year of our Lord one thousand nine hundred and six (1906) before me, the subscriber, a Notary Public in and for said County, personally came Stephen A. Lockwood and Libby E. Lockwood, husband and wife the grantors in the foregoing Deed, and acknowledged the giving thereof to be their voluntary act, for the uses and purposes therein mentioned.
In Testimony Whereof, I have hereunto subscribed my name, and affixed my official seal, on the day and year last aforesaid.
Received for Record July 2nd 1907, at 9:15 o'clock A.M.
Recorded July 9th 1907
Fred A. Roberts Notary Public.
F. Ulrich Notary Public.
M. Longphine Notary Public.



Exhibit SE - 6

131595

ASSIGNMENT OF LEASE

VOL. 017 PAGE 307

KNOW ALL MEN BY THESE PRESENTS, that whereas, on the 28th day of August, 1950, Julius B. Amber was duly appointed and qualified as Executor of the Estate of Verna Lockwood Williams, deceased, late of Erie County, Ohio, by the Probate Court of said County in Case No. 0504 and afterwards, to-wit, on the 24th day of May, 1951, said Julius B. Amber was duly appointed and qualified as Testamentary Trustee under the Will of Verna Lockwood Williams, deceased, by the Probate Court of said County in Case No. 03662, and that said Julius B. Amber, as Executor, filed his application on the 19th day of March, 1953, in the Probate Court of Erie County, praying the Court for an order distributing in kind the assets of the Estate of said Verna Lockwood Williams, deceased, among which assets is a 99 year lease more fully described hereinafter.

And, whereas, afterwards on the 19th day of March, 1953, said application for distribution in kind came on to be heard, and the Court ordered that said Julius B. Amber, Executor, transfer in kind, unto Julius B. Amber as Testamentary Trustee:

Therefore, I, Julius B. Amber, Executor of the Estate of Verna Lockwood Williams, deceased, do hereby sell, assign, transfer and set over unto the said Julius B. Amber, Testamentary Trustee under the Will of Verna Lockwood Williams, deceased, the following certain instrument of lease bearing date of the 12th day of July, 1881, and recorded in Volume 2, pages 26-28 inclusive of lease records of Erie County, Ohio, executed and delivered by The Milan Canal Company, as Lessor, to The Wheeling and Lake Erie Railroad Company as Lessee, and all the estate, title and interest in and to the same.

THE MILAN CANAL COMPANY TO
THE WHEELING AND LAKE ERIE RAILROAD COMPANY

Whereas in or about the month of April A.D. 1877 the Directors of the Milan Canal Company of Milan, Erie County, Ohio, gave the consent and authority of said Canal Company, to the Wheeling and Lake Erie Rail Road Company to locate its Rail Road upon and to occupy for the purpose of constructing and operating its said Rail Road thereon the following described real estate owned by said Milan Canal Company situated in the township of Milan and March in said County of Erie and State of Ohio, being all the land

with all the rights and appurtenances thereof owned by said Milan Canal Company within the bounds of a strip of land One Hundred and Fifty feet (150) in width commencing at the Southerly end of the Canal Basin of said Milan Canal Company near the intersection of Maine and Union Streets in the Village of Milan in said Erie County Ohio and running thence in a Northerly direction to the mouth of the Huron River in the Village of Huron in said Erie County and which strip of land is bounded on the West by a line distant Fifty (50) feet from and running North parallel with the Central line of the Rail Road of the Wheeling and Lake Erie Rail Road Company as now surveyed located and being constructed between said Villages of Milan and Huron; and which said strip of land is bounded on the East by a line distant One Hundred (100) feet from and running North parallel with the said Central line of said Rail Road; the East and West lines of said strip of land being One Hundred and Fifty (150) feet apart and running North parallel with each other and with the Central line of said Rail Road from the said place of beginning to the said mouth of Huron River also all of the so called Dry Dock and all of the said Canal Basin and all of the Upper and lower Docks of said Canal with all the grounds and privileges connected therewith in addition to what is included in the said strip of land above described the said Dry Dock containing about 1 1/2 acres and the said Canal Basin containing about 5 15/100 acres of land be the same more or less and whereas the Wheeling and Lake Erie Rail Road Company in or about said month of April 1877 did so enter upon and occupy said real estate and right of way and constructed its said line of Rail Road thereon and ever since then has been and now is the exclusive and undisputed possession thereof under license and authority of said Directors of the Milan Canal Company and under their promise and agreement to lease or convey said right of way and real estate to the said Rail Road Company in due form of law now therefore First The Milan Canal Company by its legally authorized Directors in consideration of the benefits to said Canal Company from the construction and maintenance of the said line of Rail Road with its embankments and other works in protecting the property of said Canal Company and the adjacent farm which said Canal Company is under legal obligations to protect against damages caused by the overflow of the waters of said Huron River and for the further considerations hereinafter dated does hereby lease demise and fully let unto the Wheeling and Lake Erie Rail Road Company its successors and assigns all the real estate and right of way herein above described and being all the same owned by the said Canal Company to have and to hold said real estate and right of way to the said Lessee. The Wheeling and Lake Erie Railroad Company its successors and assigns for the uses and purposes of said Rail Road Company and its rights of way for its said Rail Road for the term of Ninety Nine (99) years commencing on the 12th day of July A.D. 1881 and ending on the 12th day of July A.D. 1980 with the right and privilege to the said Wheeling and Lake Erie Rail Road Company its successors and assigns of renewal of their lease forever upon the same terms herein expressed with all the privileges and appurtenances thereof Second and the said Lessee the Wheeling and Lake Erie Rail Road Company in consideration of the premises does hereby for itself its successors and assigns covenant and agree with the said Lessor The Milan Canal Company that the Rail Road and embankments of said Rail Road Company shall be kept in good order and repair during the term of this lease inevitable accident from storm floods and otherwise excepted and that no waste shall be made or suffered on the said property herein leased while in possession of said Lessee its successors and assigns and that there shall be paid to the said Lessor the Milan Canal Company by the said Lessee the Wheeling and Lake Erie Rail Road Company its successors and assigns at the end of each year from and after the said 12th day of July 1881 during the term of this lease the sum of (50) fifty Dollars as the annual rental of said property so leased and demised herein and in the failure of said Lessee its successors and assigns to so maintain and operate said Rail Road for public transportation and travel and on the abandonment thereof for railway purposes or on the failure for Six months to pay said annual rental of (\$50) Fifty Dollars to the said Lessor after the same become due and payable these presents shall become

void and the said real estate shall revert to the said Lessor the Milan Canal Company and the said Lessee its successors and assigns shall thereupon quietly yield to said lessor the premises thereof in Witness Whereof the said parties have hereunto set their names and seals at Milan Ohio on this 12th day of July A.D. 1881.

The Milan Canal Company (Seal) }
By John G. Norton (Seal) } Directors
Francis G. Lockwood (Seal) } Of said
John Butman (Seal) } Milan Canal
David J. Wilcoxson (Seal) } Company
Darwin Fay, President (Seal) }

The Waecling and Lake Erie Rail Road Company
By its President W. A. Mack

The Foregoing Lease was on this 12th day of July 1881 signed Sealed acknowledged and delivered in presence of
William E. Lockwood Martin Harter

The State of Ohio) Before me a Notary Public within and for said County
Eric County ss) personally appeared, the above named John G. Norton
Francis G. Lockwood, John Butman, David J. Wilcoxson and Darwin Fay as
Directors of the said Lessor The Milan Canal Company and as such acknowledged
the foregoing Lease to be the Deed of said Milan Canal Company for the uses
and purposes therein expressed and that the signing and Sealing thereof is
their Official act and deed as said Directors for and in behalf of said Canal
Company on this 12th day of July A.D. 1881.

(Seal) Martin Harter Notary Public

Received Aug. 9th 1881 Recorded Aug. 10th 1881.

Joe Flynn Recorder

TO HAVE AND TO HOLD THE SAID from the 21st day of October, 1953, for
and during the residue of the term of said lease, subject however, to all the
conditions, covenants, agreements, provisions, terms and rents in said lease
contained; that by virtue of the order of the Probate Court of Erie County,
Ohio, made on the 19th day of March, 1953, said Julius B. Amber, Executor, has
good right to assign the same, and that Julius B. Amber, the Testamentary
Trustee, accepts the assignment of this lease and agrees to keep and perform
all the covenants, terms, and agreements of said lease on the part of said
Trustee, to be kept and performed after said date.

IN WITNESS WHEREOF, the said Julius B. Amber, Executor of the Estate
of Verna Lockwood Williams, deceased, and Julius B. Amber, Testamentary Trustee
under the Will of Verna Lockwood Williams, deceased, have hereunto set their
hands this 21st day of October, 1953.

Signed and acknowledged
in the presence of

Marian Clark
Ann Moody

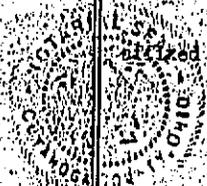
Julius B. Amber, Executor
Julius B. Amber, Executor
Julius B. Amber, Trustee
Julius B. Amber, Trustee

STATE OF OHIO }
COUNTY OF CUYAHOGA } SS.

BEFORE ME a Notary Public in and for said County, personally appeared the above named Julius B. Amber, Executor of the Last Will and Testament of Verna Lockwood Williams, deceased, and Testamentary Trustee, under the Will of Verna Lockwood Williams, deceased, in both capacities, who acknowledged that he did sign the foregoing instrument; that the same is his free act and deed as such Executor and Trustee, and for the uses and purposes therein set forth.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal at Cleveland, Ohio, this 21st day of October, 1953.

Merrion Clark
Notary Public MERRION CLARK



131595

FILED
1953 OCT 22 PM 1 04
CARL W. STEIN
RECORDER
CUYAHOGA COUNTY OHIO

2nd, 1953 at 1:04 PM
28th, 1953 in
Page 307-310 incl.
Recorder
SIGNMENT OF DEASE

1300

Julius B. Amber, Executor,
Floor, Hotel Allerton
Cleveland 14, Ohio
Present 1-1073

Exhibit SE - 7

0382572

CERTIFICATE OF MERGER

The undersigned, John R. Turbyfill and Mahlon D. Edwards, Vice President-Finance and Corporate Secretary, respectively, of Wheeling and Lake Erie Railway Company, an Ohio corporation ("Wheeling"), and Joseph R. Weikirk and Mahlon D. Edwards, Vice President-Administration and Corporate Secretary, respectively, of Norfolk and Western Railway Company, a Virginia corporation ("NW"), do hereby certify that:

- (a) The Agreement and Plan of Merger (the "Agreement") dated as of June 1, 1988, between Wheeling and NW, to which this Certificate of Merger is attached was duly approved by resolution of the Board of Directors of Wheeling by unanimous written action dated June 23, 1988 in lieu of a meeting in accordance with Sections 1701.79(D) and 1701.54 of the Ohio Revised Code and was duly executed by a Vice President of Wheeling.
- (b) The Agreement was duly adopted and approved at a special meeting of the shareholders of Wheeling held on September 16, 1988, by the affirmative vote of the holders of shares of Wheeling entitling them to exercise at least two-thirds of the voting power of Wheeling and by the affirmative vote of the holders of each class of shares of Wheeling entitling them to exercise at least two-thirds of the voting power of such class, in accordance with Section 1701.79(D) of the Ohio Revised Code.
- (c) The Agreement was duly adopted by resolution of the Board of Directors of NW by unanimous written action dated June 23, 1988 in lieu of a meeting in accordance with Sections 13.1-716 and 13.1-685 of the Code of Virginia and was duly executed by a Vice President of NW.

(d) The Agreement was duly approved by Norfolk Southern Corporation, as sole shareholder of NW, by unanimous written consent dated June 24, 1988, in lieu of a meeting in accordance with Sections 13.1-718 and 13.1-657 of the Code of Virginia.

IN WITNESS WHEREOF, the undersigned have duly executed this Certificate of Merger as of the 16th day of September, 1988.

THE WHEELING AND LAKE ERIE RAILWAY COMPANY

NORFOLK AND WESTERN RAILWAY COMPANY

By John R. Turbyfill
John R. Turbyfill
Vice President-Finance

By Joseph R. Neikirk
Joseph R. Neikirk
Vice President-Administration

and Mahlon D. Edwards
Mahlon D. Edwards
Corporate Secretary

and Mahlon D. Edwards
Mahlon D. Edwards
Corporate Secretary

AGREEMENT AND PLAN OF MERGER

Vol. 547 No. 368

THIS AGREEMENT AND PLAN OF MERGER ("Agreement"), dated as of June 1, 1988, between NORFOLK AND WESTERN RAILWAY COMPANY, a Virginia corporation ("NW"), and THE WHEELING AND LAKE ERIE RAILWAY COMPANY, an Ohio corporation ("W&LE"),

WITNESSETH:

WHEREAS, the authorized capital stock of W&LE as of the date of this Agreement consists of 116,093 shares of Prior Lien Stock, par value \$100 per share, all of which are issued and outstanding ("Prior Lien Stock"), and 339,585 shares of Common Stock, par value \$100 per share, all of which are issued and outstanding ("Common Stock"), such shares of Prior Lien Stock and Common Stock being collectively referred to herein as the "Shares";

WHEREAS, as of the date of this Agreement NW owns 115,867 shares (or approximately 99.8%) of the Prior Lien Stock and 302,625 shares (or approximately 89.1%) of the Common Stock;

WHEREAS, this Agreement has been approved by the Board of Directors of W&LE and adopted by the Board of Directors of NW;

WHEREAS, this Agreement is intended to constitute a Plan of Reorganization pursuant to Section 368 of the Internal Revenue Code of 1986.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, NW and W&LE (the "Constituent Corporations") hereby agree as follows:

1. The Merger

(a) Subject to the terms and conditions contained in this Agreement, at the Effective Time (as hereinafter defined), W&LE shall be merged with and into NW (the "Merger") in accordance with Sections 4967.02, 4967.04 and 1701.79 of the Ohio Revised Code, and Section 13.1-722 of the Code of Virginia, the separate existence of W&LE shall cease, and NW shall continue as the surviving corporation under the laws of the Commonwealth of Virginia ("Surviving Corporation"). The name of the Surviving Corporation shall be Norfolk and Western Railway Company. The principal office of the Surviving Corporation shall be located in Norfolk, Virginia.

(b) The Merger shall be effective upon the later of: (i) the filing with the Secretary of State of the State of Ohio of a properly executed certificate of merger complying with Section 1701.81 of the Ohio Revised Code, and (ii) the issuance by the State Corporation Commission of Virginia of a certificate of merger pursuant to Section 13.1-720 of the Code of Virginia (the "Effective Time"). At the Effective Time, the Merger shall have the effect stated in Section 1701.82 of the Ohio Revised Code and Section 13.1-721 of the Code of Virginia.

2. Conversion of Shares

(a) At the Effective Time, each then outstanding share of Prior Lien Stock not owned by NW, Norfolk Southern Corporation ("NS") or any other direct or indirect subsidiary of NS (except Dissenting Shares, as hereinafter defined) shall be cancelled and retired and be converted into the right to receive in cash \$100 per share (the "Prior Lien Merger Price"), all without interest from the Effective Time.

(b) At the Effective Time, each then outstanding share of Common Stock not owned by NW, NS or any other direct or indirect subsidiary of NS (except Dissenting Shares) shall be cancelled and retired and be converted into the right to receive in cash \$110 per share (the "Common Merger Price"), all without interest from the Effective Time.

(c) At the Effective Time, each then outstanding share of Prior Lien Stock and each then outstanding share of Common Stock owned by NW, NS or any other direct or indirect subsidiary of NS, and any shares of Prior Lien Stock and Common Stock held by W&LE as treasury shares, shall be cancelled and retired, and no payment shall be made with respect thereto.

(d) Each share of stock of NW outstanding immediately prior to the Effective Time shall remain outstanding after the Effective Time as an identical share of NW, and no shares, securities or obligations convertible into shares of NW shall be issued or delivered as a result of the Merger.

3. Payment for Shares

NW shall act as Paying Agent hereunder with respect to the Merger (the "Paying Agent"). Each holder of a certificate or certificates which prior to the Effective Time represented Shares (other than NW, NS or any other direct or indirect subsidiary of NS) shall be entitled to receive, upon surrender to the Paying Agent of the certificate or certificates for cancellation and subject to any required withholding of taxes, the aggregate amount of cash into which the Shares previously represented by such certificate or certificates shall have been converted in the Merger. Until surrendered to the Paying Agent, each certificate which immediately prior to the Effective Time represented outstanding Shares (other than Dissenting Shares and Shares owned by NW, NS or any other direct or indirect subsidiary of NS) shall be deemed for all corporate purposes to evidence only the right to receive upon such surrender the aggregate amount of cash into which the Shares represented thereby shall have been converted, subject to any required withholding of taxes. No interest

shall be paid on the cash payable upon the surrender of the certificate or certificates. Notwithstanding the foregoing, neither the Paying Agent nor any party hereto shall be liable to a holder of Shares for any cash or interest thereon delivered to a public official pursuant to applicable abandoned property laws. Promptly after the Effective Time, the Paying Agent shall mail to each record holder of certificates which immediately prior to the Effective Time represented Shares a form of letter of transmittal and instructions for use thereof in surrendering such certificates and receiving the Prior Lien Merger Price or the Common Merger Price for each Share previously represented thereby.

4. Closing of W&LE's Transfer Books.

At the Effective Time, the stock transfer books of W&LE shall be closed and no transfer of Shares shall thereafter be made. If, after the Effective Time, certificates formerly representing Shares are presented to the Surviving Corporation, they shall be cancelled, retired and exchanged for cash as provided in Section 3, subject to applicable law in the case of Dissenting Shares.

5. Articles of Incorporation and Bylaws; Officers and Directors

The Merger will not effect any changes in the terms or provisions of the Articles of Incorporation or Bylaws of NW. The provisions of the Articles of Incorporation and the Bylaws of NW in effect immediately prior to the Effective Time shall be the provisions of the Articles of Incorporation and the Bylaws of the Surviving Corporation. The officers and directors of NW holding office immediately prior to the Effective Time shall be the officers and directors of the Surviving Corporation and they shall serve until the next annual meeting of the stockholders of the Surviving Corporation or until their successors are duly appointed or elected.

6. Dissenter's Rights

Notwithstanding anything in this Agreement to the contrary, any Shares which are issued and outstanding prior to the Effective Time and which are held of record by persons who were holders of record as of the date fixed for the determination of stockholders entitled to notice of the meeting of stockholders at which this Agreement shall be proposed for adoption in accordance with Section 12 who shall not have voted such Shares in favor of the adoption of the Merger, and who deliver a written demand for the payment of the fair cash value of such Shares in the manner provided in Section 1701.85 of the

Ohio Revised Code ("Dissenting Shares") shall not be converted as described in Section 2 hereof but shall become the right to receive payment of the fair cash value of such shares in accordance with the provisions of Section 1701.85 of the Ohio Revised Code; provided, however, that (i) any holder of Dissenting Shares shall subsequently withdraw such holder's demand for payment of the fair cash value of such Shares (with the consent of the Surviving Corporation by its directors), (ii) if any holder fails to comply with such Section 1701.85 (unless the Surviving Corporation by its directors waives such failure), (iii) if W&LE abandons or is finally enjoined or prevented from carrying out, or the stockholders rescind their adoption of, this Agreement, or (iv) if the Surviving Corporation and any holder of Dissenting Shares shall not have come to an agreement as to the fair cash value of such holder's Dissenting Shares, and neither such holder of Dissenting Shares nor the Surviving Corporation has filed or joined in a complaint demanding a determination of the value of all Dissenting Shares within the period provided in Section 1701.85 of the Ohio Revised Code, the right and obligation of such holder or holders (as the case may be) to receive such fair cash value shall terminate, and such Shares shall thereupon be deemed to have been extinguished and to have been converted, as of the Effective Time, into the right to receive the consideration specified in Section 2(a) or 2(b), whichever is applicable, without interest. Persons who have perfected statutory rights with respect to Dissenting Shares as aforesaid shall not be paid by the Surviving Corporation as provided in this Agreement and shall have only such rights as are provided by Section 1701.85 of the Ohio Revised Code with respect to such Shares.

7. Conditions to the Merger

The obligations of NW and the obligations of W&LE under this Agreement are subject to and shall be conditioned upon the satisfaction, or waiver in accordance with Section 9 (in whole or in part) in writing, of each of the following conditions:

- (i) The Merger and all other transactions contemplated in connection therewith shall, to the extent required by law, have been duly approved and adopted prior to the Effective Time by the stockholders entitled to vote thereon of NW and W&LE;
- (ii) NW and W&LE shall have obtained any necessary approval and authority (without unusual conditions) of the Interstate Commerce Commission ("ICC") and any other regulatory agency having jurisdiction, or shall have obtained, or shall have complied with such

requirements as necessary to avail themselves of any, exemption from regulation by the ICC and any other regulatory agency having jurisdiction. Each of such approvals and authorities shall remain in full force and effect at the Effective Time and such approvals and authorities, and the transactions contemplated hereby, shall not have been contested by any Federal or State governmental agency by formal proceeding; and

(iii) Neither NW nor W&LE shall be subject to any order, decree or injunction of a court or agency of competent jurisdiction which enjoins or prohibits the consummation of the Merger.

8. Termination

Anything in this Agreement to the contrary notwithstanding, this Agreement may be terminated and the Merger provided for herein may be abandoned (notwithstanding any stockholder approval) any time prior to the Effective Time (i) by mutual agreement of NW and W&LE evidenced by resolutions of the Boards of Directors of NW and W&LE, or (ii) at the option of the Board of Directors of W&LE if, in its reasonable judgment, there has been any change or development that materially affects the determination by such Board that the Prior Lien Merger Price or the Common Merger Price is fair to the stockholders of W&LE.

9. Modification of Agreement; Waiver

This Agreement may, subject to applicable law, be amended by action of the Boards of Directors of NW and W&LE, and any provision of this Agreement may be waived at any time by the party which is, or whose stockholders are, entitled to the benefits thereof, except that no amendment shall be made after the adoption of this Agreement by the stockholders of W&LE which would alter or change the Prior Lien Merger Price or the Common Merger Price without appropriate approval of the stockholders of NW and W&LE. Except with respect to the consideration payable pursuant to Article 2, a condition imposed on the Merger by the ICC or other regulatory agency having jurisdiction and not rejected by the Board of Directors of NW or W&LE shall not be deemed a modification of this Agreement and shall not require further approval of the stockholders of NW and W&LE, except as may be required by law.

10. Consent to Service; Statutory Agent

The Surviving Corporation consents to be sued and served with process in the State of Ohio and irrevocably appoints the Secretary of State of Ohio as its agent to accept

service of process in any proceeding in the State of Ohio to enforce against the Surviving Corporation any obligation of W&LE or to enforce the rights of holders of Dissenting Shares. The address to which a copy of such process shall be mailed by the Secretary of State of the State of Ohio is One Commercial Place, Norfolk, Virginia 23510-2191, Attention: Vice President--Law.

11. Counterparts

This Agreement may be signed in one or more counterparts, each of which shall be deemed an original.

12. Stockholders' Meeting of W&LE

W&LE shall take all action necessary in accordance with applicable law and its Articles of Incorporation and Code of Regulations to convene a meeting of its stockholders for the purpose of adopting this Agreement. Such meeting will be held on a date mutually agreed upon by NW and W&LE, but in all events as soon as reasonably practicable. W&LE will submit to its stockholders proxy or other materials containing such information regarding this Agreement and the transactions herein contemplated as is required to be set forth under Section 14 of the Securities Exchange Act of 1934, as amended ("1934 Act") and the rules and regulations promulgated and the forms prescribed by the Securities and Exchange Commission thereunder. W&LE will, at the meeting of its stockholders duly called in accordance with the provisions of its Code of Regulations and the Ohio Revised Code, present this Agreement for adoption by its stockholders in accordance with applicable requirements of law, including the 1934 Act, and will use its best efforts to obtain a favorable vote of the holders of Shares entitled to vote for the adoption of this Agreement as may be required by applicable law.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed on its behalf and its corporate seal to be hereunto affixed by its officer thereunto duly authorized as of the day and year first written above.

NORFOLK AND WESTERN RAILWAY COMPANY

By: [Signature]
Vice President-Finance

THE WHEELING AND LAKE ERIE RAILWAY COMPANY

By: [Signature]
Vice President-Finance

THE WHEELING AND LAKE ERIE RAILWAY COMPANY
 AFFIDAVIT IN LIEU OF DISSOLUTION
 RELEASES FROM VARIOUS
 GOVERNMENTAL AUTHORITIES (SECTION 1701.86(H)(6)
 OF THE OHIO REVISED CODE)

The undersigned, being duly sworn, declares that on the dates indicated below each of the named governmental authorities was advised in writing by The Wheeling and Lake Erie Railway Company ("Corporation") of the scheduled date of filing of a Certificate of Merger providing for the merger of the Corporation with and into Norfolk and Western Railway Company, a Virginia corporation, and of the acknowledgment by the Corporation of the applicability of the provisions of Section 1701.95 of the Ohio Revised Code.

AUTHORITY	DATE NOTIFIED
1. Ohio Department of Taxation Dissolution Section Box 2476 Columbus, OH 43216	September 8, 1988
2. County Treasurers of the Counties of Belmont, Carroll, Coshocton, Cuyahoga, Erie, Geauga, Harrison, Holmes, Huron, Jefferson, Lorain, Lucas, Medina, Muskingum, Ottawa, Portage, Sandusky, Stark, Summit, Tuscarawas, and Wayne	September 8, 1988 (September 9, 1988 as to Huron County)
3. Ohio Bureau of Employment Services Status and Liability Section 145 South Front Street Columbus, OH 43215	September 8, 1988
4. Ohio Bureau of Workers' Compensation 246 North High Street Columbus, OH 43215	September 8, 1988

Malcolm W. Edwards, Jr.
 Corporate Secretary

Sworn to before me and subscribed in my presence this 12th day of September, 1988.

Gloria J. Whitson
 Notary Public

JULY 16, 1980

Commission expires

[Seal]

AFFIDAVIT OF PERSONAL PROPERTY

STATE OF VIRGINIA)
) :ss
CITY OF NORFOLK.)

Mahlon D. Edwards, being first duly sworn, deposes and says that he is the Corporate Secretary of The Wheeling and Lake Erie Railway Company (the "Corporation"); that this affidavit is made in compliance with Section 1701.86 of the Ohio Revised Code; that said Corporation has personal property in and pays personal property taxes to Belmont, Carroll, Coshocton, Cuyahoga, Erie, Geauga, Harrison, Holmes, Huron, Jefferson, Lorain, Lucas, Medina, Muskingum, Ottawa, Portage, Sandusky, Stark, Summit, Tuscarawas, and Wayne Counties; and that the net assets of said Corporation are sufficient to pay all personal property taxes accrued to date.

Mahlon D. Edwards
Corporate Secretary

Sworn to me and subscribed in my presence this 13th day of August, 1988.

David L. Whitson
Notary Public

Commission expires JULY 16, 1990

[Seal]

UNITED STATES OF AMERICA,
STATE OF OHIO,
OFFICE OF THE SECRETARY OF STATE.



I, SHERROD BROWN,
Secretary of State of the State of Ohio, do hereby certify that the foregoing is an ex-
emplified copy, carefully compared by me with the original record now in my official
custody as Secretary of State, and found to be true and correct, of the
Certificate of AGREEMENT OF MERGER of THE WHEELING AND LAKE ERIE RAILWAY COMPANY,
an Ohio Corporation, Charter No. 47885, merging into: NORFOLK AND WESTERN
RAILWAY COMPANY, survivor of said merger, an unqualified Virginia Corporation,
was

filed in this office on the 16th day of September A.D. 1988
and recorded on (X) Roll (XXXXXX) 6468, Frame (XXXX) 0214 of
the Records of Incorporations.

James W. Schaeffer
Oct. 4, 1988

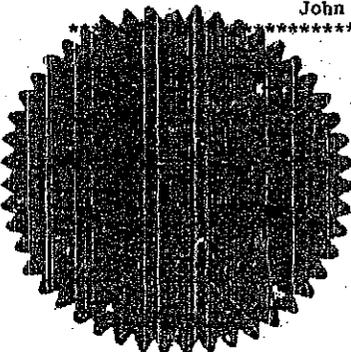
Received October 4th, 1988 at 10:59 A.M.
Recorded October 5th, 1988 in Erie County Deed
Records, Vol. 547, Pages 366-376 inc.
John W. Schaeffer, Recorder.

88 OCT -4 10:59
JOHN W. SCHAEFFER
RECORDER
ERIE COUNTY, OHIO

FILED

0382072

*Emy Robinson, Clerks & Records
25.00 Paid*



WITNESS my hand and official seal at
Columbus, Ohio, this 23rd day
of September A.D. 19 88.

Sherrod Brown

SHERROD BROWN
Secretary of State

MICROFILMED
ESC 3004

Exhibit SE - 8

0402761

Erie

County Counterpart of 18 Counterparts

Vol 564 No 01

QUITCLAIM DEED

NORFOLK AND WESTERN RAILWAY COMPANY, a Virginia corporation, Grantor, for valuable consideration paid, grants to WHEELING & LAKE ERIE RAILWAY COMPANY, a Delaware corporation, Grantee, whose tax-mailing address is 100 First Street, Brewster, Ohio 44613, the REAL PROPERTY, comprising those lines of railway located in Huron County, Lorain County, Medina County, Wayne County, Stark County, Tuscarawas County, Carroll County, Harrison County, Jefferson County, Belmont County, Cuyahoga County, Summit County, Portage County, Wyandot County, Crawford County, Richland County, Erie County, and Geauga County, State of Ohio, more particularly described on Exhibits A through R, attached hereto and made a part hereof, hereinafter "Property."

PRIOR TITLE references for the above-described property are contained within Exhibits A-1 through R-1, attached hereto and made a part hereof.

REFERENCE is also made to those deeds described in Exhibits A-1 through R-1 for the purpose of better determining the location and dimensions of the Property, with the legal descriptions contained in such deeds being incorporated herein by reference.

REFERENCE is also made to those railway valuation maps referred to in Exhibits A through R and in Exhibits A-1 through R-1. Said valuation maps are not required to determine the location of the above-described lines of railway, but may serve the purpose of providing clarification in the future. Prints of said valuation maps shall be kept on file with a copy of this deed in the Archives of Wheeling & Lake Erie Railway Company in Pittsburgh, Pennsylvania.

TOGETHER with, in "as is, where is" condition and without any express or implied representation or warranty as to merchantability, habitability, condition or fitness for any purpose, all of Grantor's right, title, and interest in the road bed, ballast, main track, sidings, connecting and industrial tracks, depots, yards, storage and parking areas, culverts, bridges, tunnels, buildings, structures, communication and signal facilities, fixtures, and all other railway appurtenances located upon or being appurtenant to and extending from the Property.

EXPRESSLY EXCEPTED from the Property conveyed by this deed is any property to which title is vested in Virginia Holding Corporation, a Virginia

corporation; Virginia Holding Corporation being the successor in interest to AC&Y Terminal Properties Company, Wandle Company, Nickle Plate Development, Inc., Nickle Plate Properties Company, Inc., and Pocahontas Land Corporation. If any property owned by Virginia Holding Corporation has been erroneously included in this instrument, such inclusion is a nullity and no conveyance of such property shall be considered made.

EXCEPTING any and all track material, track equipment, locomotives and other rolling stock not affixed to the Property.

SUBJECT TO ad valorem taxes for the year 1990.

SUBJECT FURTHER 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 .

RESERVING unto Grantor, its successors and assigns, a perpetual easement or right of way to install, construct, operate, maintain, repair, renew, replace, and remove a fiber optical communication system over, under, through, and across the Property; provided, however, that Grantee will have the right to use for its internal railroad communication purposes one hundred (100) voice channels of the portion of any such fiber optical communications system that is placed on the Property, with Grantee to bear the cost of equipment and facilities required to allow its use of such channels and with Grantee's access to such channels to be on reasonable terms, conditions, and notice. Said easement includes among other things the right to install, construct, operate, maintain, repair, renew, replace, and remove fiber optical cable, associated electronics, computer shelters, terminal facilities, connection boxes and pull boxes, and related facilities; the right to install power supply facilities; the right to attach the fiber optical cable and related facilities to existing bridges and to install it in existing tunnels; and the right of ingress and egress for access purposes. Grantor's exercising such easement will not require payments to Grantee and will be exercised in a manner which does not interfere with the rail operations of Grantee or the ability of Grantee to grant other such easements. Grantor shall notify Grantee before entry upon Grantee's property. If said easement is not used within twenty (20) years of the date of this deed, said easement will be deemed abandoned.

IN WITNESS WHEREOF, Norfolk and Western Railway Company has caused its corporate name to be subscribed hereto by R.E.L. deButts, its Vice President, and Dezora M. Martin, its Assistant Secretary, respectively, thereunto duly authorized by resolution of its board of directors, this 8th day of MAY, 1990.

Signed and acknowledged in the presence of:

NORFOLK AND WESTERN RAILWAY COMPANY,
By

H. Burchette
Witness:

R.E.L. deButts
Vice President

ATTEST:

J.A. Hogans
Witness

Dezora M. Martin
Assistant Secretary



This instrument prepared by:

Bruce A. Dean
Attorney at Law
Norfolk Southern Corporation
185 Spring Street, S.W.
Atlanta, Georgia 30303

BAD:1bh
80664-Pt. 2
5-3-90

COMMONWEALTH OF VIRGINIA
CITY OF NORFOLK

BE IT REMEMBERED, That on this 8th day of May, 1990,
before me, the subscriber, a Notary Public in and for said
Commonwealth, personally came, R. E. L. de Butts, Vice President,
and Dezora M. Martin, Assistant Secretary, of the Norfolk and Western
Railway Company, the Grantor in the foregoing Deed, and acknowledged the
signing thereof to be their and its voluntary act and deed, pursuant to
authority of its board of directors.

IN TESTIMONY THEREOF, I have hereunto subscribed my name and affixed
my seal on this day and year aforesaid.

My Commission Expires December 22, 1991

T. D. Bruce

T. D. BRUCE
NOTARY PUBLIC
COMMONWEALTH OF VIRGINIA



EXHIBIT Q

ERIE COUNTY

I

That portion of the Norfolk and Western Railway Company (formerly The Wheeling and Lake Erie Railway Company) line of railway running between Huron Junction, Ohio and Huron, Ohio, also known as the Huron Branch, comprising of railway right of way, main tracks and other appurtenant railway facilities lying and being in Erie County, Ohio and being more particularly described as follows:

Beginning at the common line of Erie and Huron Counties, being the southern lines of Parcels 3 and 4, V9/4, being Valuation Station 176+42 on The Wheeling and Lake Erie Railway Company Valuation Map V9/4 and including only Parcels 3 through 14 on Valuation Map V9/4, and continuing in a northeasterly direction for a distance of 38,299.72 feet to a point being 200 feet southwesterly of the mainline point of switch to the Huron-Shinrock Connector of Norfolk and Western Railway Company (formerly The New York, Chicago and St. Louis Railroad Company, a/k/a Nickle Plate Road), being further identified as Valuation Station 559+41.72 on Valuation Map V9/11 and including only Parcels 1 and 2 and that portion of Parcel 3 lying southwesterly of said Valuation Station 559+41.72 and outside the right of way of the Huron-Shinrock Connection Track (50 feet each side of the centerline of said Track) on Valuation Map V9/11 and including all railway parcels on Valuation Maps V9/5 through V9/10.

JAMES W. McKEEN
ERIE COUNTY AUDITOR
COURT HOUSE
SANDUSKY, OHIO 44870

Vol. 564 PAGE 101

MAY 25, 1990

NORFOLK & WESTERN RAILWAY COMPANY

TO

WHEELING & LAKE ERIE RAILWAY COMPANY

DESCRIPTION:

MILAN TOWNSHIP; MILAN VILLAGE; HURON TOWNSHIP, ERIE COUNTY, OHIO.

RIGHT-OF-WAY - HURON/ERIE COUNTY LINE TO RAILROAD INTERSECTING
POINT SOUTH OF JEFFRIES ROAD.

PAGE 17 - MILAN TWP., SECTION 4, OUTLOT 4	-	1660 FEET
" 17 - " " " 4, " 3	-	1530 "
" 17 - " " " 4, " 2	-	1140 "
PAGE 18 - MILAN VILLAGE, SECTION 4, N.E. PART	-	2140 "
PAGE 19 - MILAN VILLAGE, SECTION 4, N.E. PART	-	2030 "
PAGE 17-B-MILAN TWP., SECTION 4, SUBLOT 36	-	1650 "
" 17-B- " " , " 4, " 35	-	249 "
" 17-B- " " , " 4, " 34	-	354 "
" 17-B- " " , " 4, " 33	-	248 "
PAGE 15 - MILAN TWP., SECTION 4, SUBLOT 6	-	4010 "

PAGE 3	- MILAN TWP., SECTION 1, SUBLLOT 9	1620 FEET
" 3	- " " " 1, " 10	1620 "
" 3	- " " " 1, " 11	1030 "
PAGE 6	- MILAN TWP., SECTION 1, K. TOWNSEND TRACT	5120 "
" 6	- " " " 1, WARD TRACT	2150 "
PAGE 7	- MILAN TWP., SECTION 2, ABBOT TRACT	2380 "
" 8	- " " " 2, " "	3100 "
" 8	- " " " 2, FORBES TRACT	3200 "
PAGE 5	- HURON TWP., SECTION 1, OUTLOTS 4,5,6	<u>3750</u>
	GRAND TOTAL LINEAL FEET	38,981 ⁺

EXHIBIT Q-1

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ERIE COUNTY

W&LE Valuation Map V9/4

<u>PARCEL</u>	<u>DATE</u>	<u>GRANTOR</u>	<u>DEED BOOK/PAGE</u>
3	Apr. 18, 1883	John McCoy	95/356
3	Sep. 24, 1912	L. A. Hoffman	95/548
3	Nov. 5, 1912	C. C. Needham	97/287
4	Sep. 24, 1912	L. A. Hoffman	95/548
5	Apr. 30, 1883	Joseph Brell	95/356
6	Apr. 30, 1883	John Beckley	95/357
7	Apr. 18, 1883	Mary A. Christopher	95/358
8	Mar. 28, 1883	F. G. Lockwood et al.	95/359
8	Apr. 6, 1883	E. S. Marvin	95/355
9	Apr. 18, 1883	Phebe J. Rice	95/360
10	Mar. 28, 1883	F. G. Lockwood et al.	95/359
10	Apr. 6, 1883	E. S. Marvin	95/355
11	None	None	None
12	Jun. 20, 1881	John McCoy	45/126
12	Dec. 14, 1882	C. R. Griggs	45/625
12	Apr. 25, 1883	C. K. Garrison	45/625
13	Jun. 8, 1883	John McCoy	95/361
14	May 24, 1883	Mary A. Tennyson	95/362

W&LE Valuation Map V9/5

<u>PARCEL</u>	<u>DATE</u>	<u>GRANTOR</u>	<u>DEED BOOK/PAGE</u>
1	May 24, 1883	Mary A. Tennyson	95/362
2	Apr. 18, 1883	Timothy McQuaid	95/363
3	Sep. 25, 1882	Martin Harter	45/127
4	Mar. 11, 1881	Sarah Fowler	None
5	Sep. 7, 1877	Village of Milan	OR 2/22
6	Aug. 6, 1874	Ansel Page	None
7	May 3, 1882	Henry Kelley	45/187
8	None	None	None
9	Jun. 8, 1883	J. C. Lockwood	95/364
10	Mar. 28, 1883	F. G. Lockwood	95/359
10	Apr. 6, 1883	E. S. Marvin	95/355
11	None	None	None
12	Jun. 8, 1883	J. C. Lockwood	95/364
13	None	None	None
14	Jul. 12, 1881	Milan Canal Co.	LR 2/26
15	Jul. 15, 1944	J. O. Guthrie et ux.	178/337
16,17,18	May 1, 1957	Frank Bagley	280/30
14	Jan. 8, 1980	Society National	Doc. No. 52300

W&LE Valuation Map V9/6

<u>PARCEL</u>	<u>DATE</u>	<u>GRANTOR</u>	<u>DEED BOOK/PAGE</u>
11	Jul. 12, 1881	Milan Canal Co.	LR2/26

W&LE Valuation Map V9/7

<u>PARCEL</u>	<u>DATE</u>	<u>GRANTOR</u>	<u>DEED BOOK/PAGE</u>
1	Jul. 12, 1881	Milan Canal Co.	LR 2/26
2	Apr. 11, 1883	George Edgar	None
3	Jul. 12, 1881	Milan Canal Co.	LR 2/26
1, 3	Jan. 8, 1980	Society Natl Bnk Cleveland	Doc. No. 52300

W&LE Valuation Map V9/8

<u>PARCEL</u>	<u>DATE</u>	<u>GRANTOR</u>	<u>DEED BOOK/PAGE</u>
1	Jul. 12, 1881	Milan Canal Co.	LR 2/26
2	None	None	None
3	Mar. 7, 1881	J. G. Balcom	45/126
4, 5	Feb. 9, 1881	Wm. Sands	45/118
6	None	None	None

W&LE Valuation Map V9/9

<u>PARCEL</u>	<u>DATE</u>	<u>GRANTOR</u>	<u>DEED BOOK/PAGE</u>
1	None	None	None
2	Dec. 2, 1881	Oscar Meeker	45/130
3	None	None	None
4	Apr. 17, 1877	Samuel Shaffer	45/117
5	Feb. 3, 1881	Wade Wood	45/120

W&LE Valuation Map V9/10

<u>PARCEL</u>	<u>DATE</u>	<u>GRANTOR</u>	<u>DEED BOOK/PAGE</u>
1	Feb. 3, 1881	Wade Wood	45/120
2	Feb. 3, 1881	Dewitt Wood	45/119
3	" "	Wade Dewitt Wood	45/120
4	Jul. 14, 1883	John W. Wickham, Jr.	95/365
5	" "	Thomas Sprowl	95/366
6	Jun. 8, 1881	Wm. A. Doughty	45/129

W&LE Valuation Map V9/11

<u>PARCEL</u>	<u>DATE</u>	<u>GRANTOR</u>	<u>DEED BOOK/PAGE</u>
1	Jun. 8, 1881	Wm. A. Doughty	45/129
2	Jun. 14, 1881	D. B. Smith	45/125
3	Jun. 21, 1881	Sarah Newton	45/122

EXHIBIT R

VOL 564 PAGE 195

GEAUGA COUNTY

I

That portion of the Norfolk and Western Railway Company (formerly The Wheeling and Lake Erie Railway Company) line of railway running between Falls Junction, Ohio and Chagrin Falls, Ohio, also known as the Chagrin Falls Branch, comprising of railway right of way, main tracks and other appurtenant railway facilities lying and being in Geauga County, Ohio and being more particularly described as follows:

Beginning at the common line of Geauga and Cuyahoga Counties, being the western line of Parcel 3, V3/7, being Valuation Station 351+06.3 on The Wheeling and Lake Erie Railway Company Valuation Map V3/7 and including only Parcels 3 and 4 on Valuation Map V3/7, and continuing in a northeasterly direction for a distance of 5,245.2 feet to the common line of Geauga and Cuyahoga Counties, being the northern line of Parcel 2, V3/8, being Valuation Station 403+51.5 on Valuation Map V3/8 and including only Parcels 1 and 2 on Valuation Map V3/8.

EXHIBIT R-1

GEAUGA COUNTY

W&L Valuation Map V3/7

PARCEL	DATE	GRANTOR	DEED BOOK/PAGE
3	May 27, 1882	Almon Holbrook	87/352
4	None	None	None
4	Apr. 13, 1979	Geauga County Brd. Comm.	Resol. # 79-57

W&L Valuation Map V3/8

PARCEL	DATE	GRANTOR	DEED BOOK/PAGE
1	None	None	None
1	Apr. 13, 1979	Geauga County Brd. Comm.	Resol. # 79-57
2	Oct. 27, 1882	Painesville & Hudson RR	87/586

This conveyance has been examined and the grantor has complied with sections 310.202 and 322.02 of the revised code.

FEE \$ 10.00
 EXEMPT _____
 R.E. TRANSFER \$ 10.00

JAMES W. McKEEN
 COUNTY AUDITOR

TRANSFER
 MAY 28 1990
James W. McKeen
 FEE 9.60 ✓

0102764

FILED

90 MAY 30 48:29

JOHN W. SCHAEFFER
 RECORDER
 ERIE COUNTY, OHIO

 Received May 30th, 1990 at
 8:29 A.M. Recorded May 31st,
 1990 in Erie County Deed
 Records, Vol. 564 Page 01-196
 incl.
 John W. Schaeffer, Recorder.

Mul. Encl. 398.08 Paid
State Title Services, Inc.
1327 H Street
Suite 300
Lincoln, Nebraska 68508

Exhibit SE - 9

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 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

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:

[Signature]
[Signature]

WHEELING & LAKE ERIE
RAILWAY COMPANY

BY: *[Signature]*
its *[Signature]*
this 13 day of
October, 1995

BOARD OF PARK COMMISSIONERS
OF THE ERIE METROPARKS

[Signature]
Deborah A. Voltz

BY: *[Signature]*
its Director-Secretary
this 12th day of October, 1995

STATE OF OHIO
SS
COUNTY OF Stark

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 UP Marketing / Public 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 Brunswick, 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
SS
COUNTY OF Fair

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 Stark, Ohio, this 13th day of October, 1995.

Wm. L. ...
NOTARY PUBLIC my commission expires 08/29/99

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

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

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.westlaw.com

*Enc 58.00
Wheeling, OH
Box 598*

710938
JOHN W. SCHAEFFER
RECORDER
ERIE COUNTY, OHIO
95 OCT 27 PM 1 05
FILED FOR RECORD
ON PAGE 926-938
O.R. BOOK 244

MICROFILMED

Exhibit SE - 10

RN : 189128 OR 158/ 51
ERIE COUNTY OHIO RECORDER
JOHN W. SCHAEFFER 4P
RECORDING FEE: 22.00
CTR Rec. Date 06/01/98 Time: 14:28

QUIT-CLAIM DEED WITH OPTION

WHEELING & LAKE ERIE RAILWAY COMPANY, a Delaware corporation,
Grantor, for valuable consideration paid, grants to THE BOARD OF
PARK COMMISSIONERS OF THE ERIE METROPARKS, whose current address is
3910 East Perkins Avenue, Huron, Ohio 44839, the real property
comprising a line of railway located 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.

mail
Rita Behm
502 Broadway
Aurora, OH 44052

MICROFILMED

Exhibit SE - 10

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 license 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 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.

IN WITNESS WHEREOF, Wheeling & Lake Erie Railway Company has caused its corporate name to be subscribed hereto by Reginald M. Thompson, its Vice President Marketing/Real Estate, and William A. Callison, its Vice President - Law / Secretary, as duly authorized by its Board of Directors.

Signed and acknowledged
in the presence of:

William A. Callison

WHEELING & LAKE ERIE
RAILWAY COMPANY

By: Reginald M. Thompson



ERIC COUNTY OHIO RECORDER
RN 122128 OR 358/ 53

Its Vice President Marketing/Real Estate
this 13th day of October, 1995

STATE OF OHIO
COUNTY OF Stark }

ERIE COUNTY OHIO RECORDED
RN 122126 OR 398/ 54

SS

Personally appeared before me, the undersigned, a Notary Public, in and for said County and State, R. M. Thompson, and U. P. Threlkeld, known to me to be the U. P. Threlkeld Real Estate and U. P. Threlkeld, respectively, of WHEELING & LAKE ERIE RAILWAY COMPANY, the corporation which executed the foregoing instrument; and acknowledged that they did sign the foregoing instrument for and on behalf of said corporation, being thereunto duly authorized; that the same was their free act and deed as such officers and the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at Columbus, 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, 1998

Transfer
June 1, 1998
Paul A. Strickland
Fee 3.00

APPROVED as per Erie County Requirements
And Sections 4733-37 thru 4733-37-07 of the Ohio
Administrative Code only, No Field Verifications
or Accuracy made.

David Williams
Erie County Engineer 5/20/98
Date: _____

This conveyance has been examined
and the grantor has complied with
sections 510-202 and 322.02 of the
revised code.
FEE \$ _____
EXEMPT _____
R.E. TRANSFER \$ _____
COUNTY AUDITOR

APPROVED as per Erie County Requirements
And Sections 4733-37 thru 4733-37-07 of the Ohio
Administrative Code only, No Field Verifications
for Accuracy made.

5/20/98
Erie County Engineer
Date: _____
- 4 -

EX-10771 4/2/95

Exhibit SE - 11

KNOW ALL PERSONS BY THESE PRESENTS

THAT Key Trust Company of Ohio, N.A. Trustee of the Testamentary Trust of Verna Lockwood Williams, the grantor, who claims title by or through instrument, recorded in Volume 80 , Page 453 , County Recorder's Office, Erie County Probate Court Nos. 3147 and 8504 and Leases Volume 17 Page 307 for the consideration of ten dollars (\$10.00) received to full satisfaction of the Grantees, Richard Rinella and Carol Rinella, husband and wife , whose TAX MAILING ADDRESS will be 9903 F River Road, Huron OH 44839

has **GIVEN, GRANTED, REMISED, RELEASED AND FOREVER QUIT-CLAIMED** and does by these presents absolutely give, grant, remise, release and forever quit-claim unto the said grantees Richard Rinella and Carol Rinella, husband and wife, their heirs and assigns forever, all such right and title as Key Trust Company of Ohio, N.A. Trustee of the Testamentary Trust of Verna Lockwood Williams, the said grantor, has or ought to have in and to the following described piece or parcel of land, situated in the Township of Milan, County of Erie and State of Ohio:

Section 2; J. Forbes Tract and being more definitely described as follows:

Commencing at a railroad spike, set, marking the intersection of the centerline of Franklin Flats Road 30ft (Riverview Drive) with the centerline of the Wheeling & Lake Erie Railroad (100ft); Thence South 08° 02' 58" West along the centerline of said railroad a distance of 325.65 feet to a point of curve; Thence southwesterly continuing along the centerline of said railroad, along an arc of a curve to the right, having a radius of 1772.04 feet, a delta of 02° 25' 3 5", a chord bearing South 09° 15' 46" West, a chord distance of 75.04 feet, an arc length of 75.05 feet to its intersection with the westerly extension of the northerly line of a parcel owned by Richard and Carol Rinella (DV 536 PG 97), and the point of beginning;

- (1) Thence South 54° 28' 00" East along said extension a distance of 109.75 feet to a point on the easterly line of the Old Milan Canal;
- (2) Thence southwesterly along said easterly line, along an arc of a curve to the right, having a radius of 1872.04 feet, a delta of 03° 29' 02", a chord bearing South 13° 38' 26" West, a chord distance of 113.81 feet, an arc length of 113.83 feet to a point on the southerly line of said Rinella parcel;
- (3) Thence North 60° 48' 00" West along the westerly extension of the South line of Rinella a distance of 154.88 feet to a point on the westerly line of the Old Milan Canal;
- (4) Thence northeasterly along said westerly right-of-way line, along an arc of a curve to the left, having a radius of 1722.04 feet, a delta of 04° 27' 02", a chord bearing North 11° 55' 25" East, a chord distance of 133.90 feet, an arc length of 133.93 feet to its intersection with the westerly extension of the northerly line of said Rinella parcel;
- (5) Thence South 54° 28' 00" East along said extension a distance of 55.37 feet to the point of beginning, containing 0.4262 acre, more or less, but being subject to all legal highways, easements and restrictions of record.

RN 200004166 Page 1 of 4
ERIE COUNTY OHIO RECORDER 4P
John W. Schaeffer 22 00
RECORDING FEE:

EXHIBIT
A-12

MICROFILMED

Exhibit SE - 11

The above description was prepared from an actual survey by Daniel E. Hartung Jr., Professional Surveyor No. 5667 in July 1999. The bearings were assumed only for the purpose of indicating angles.

TO HAVE AND TO HOLD the premises aforesaid, with the appurtenances thereunto belonging to the said Grantees Richard Rinella and Carol Rinella, husband and wife, their heirs and assigns, so that neither the said grantor Key Trust Company of Ohio, National Association, Trustee of the Testamentary Trust of Verna Lockwood Williams, nor their heirs, nor any other persons claiming title through or under them, shall or will hereafter claim or demand any right or title to the premises, or any part thereof; but they and every one of them shall by these presents be excluded and forever barred.

IN WITNESS WHEREOF, I have hereunto set my hand, this 24th day of February, in the year of our Lord two thousand.

Signed and acknowledged in presence of:

KEY TRUST COMPANY OF OHIO,
NATIONAL ASSOCIATION

[Signature]
[Signature]

[Signature]
Lee Matia, Assistant Vice President

STATE OF OHIO)

) ss.

CUYAHOGA COUNTY)

Before me, a Notary Public in and for said County and State, personally appeared the above named Lee Matia, Assistant Vice President of Key Trust Company of Ohio, National Association, Trustee of the Testamentary Trust of Verna Lockwood Williams, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed.

IN TESTIMONY WHEREOF I have hereunto set my hand and official seal at Cleveland, Ohio, this 24th day of February, 2000.

[Signature]
Notary Public

This instrument prepared by: *Carpenter, Paffenbarger & Meyerhoefer, Norwalk, Ohio*
Paul F. Meyerhoefer, Attorney at Law
LINDA G. MANDRYK
Notary Public, State of Ohio, Cuy. Cty.
My Commission Expires June 11, 2000

This conveyance has been examined and the grantor has complied with sections 310.202 and 322.02 of the Revised Code.
FEES: \$ _____
EXEMPT: \$ _____
R.E. TRANSFER: \$ _____
JUDE T. HAMMOND
Eric County Auditor
by [Signature]

April 4, 2000
[Signature]
TRANSFER NOT NECESSARY

MILAN CANAL ACROSS RINELLA PARCEL

Being situated in the State of Ohio, County of Erie, Milan Township, Section 2, J. Forbes Tract and being more definitely described as follows:

Commencing at a railroad spike, set, marking the intersection of the centerline of Franklin Flats Road 30ft (Riverview Drive) with the centerline of the Wheeling & Lake Erie Railroad (100ft); Thence South 08°02'58" West along the centerline of said railroad a distance of 325.65 feet to a point of curve; Thence southwesterly continuing along the centerline of said railroad, along an arc of a curve to the right, having a radius of 1772.04 feet, a delta of 02°25'35", a chord bearing South 09°15'46" West, a chord distance of 75.04 feet, an arc length of 75.05 feet to its intersection with the westerly extension of the northerly line of a parcel owned by Richard & Carol Rinella (DV. 536 PG 97), and the point of beginning;

(1) Thence South 54°28'00" East along said extension a distance of 109.75 feet to a point on the easterly line the Old Milan Canal;

(2) Thence southwesterly along said easterly line, along an arc of a curve to the right, having a radius of 1872.04 feet, a delta of 03°29'02", a chord bearing South 13°38'26" West, a chord distance of 113.81 feet, an arc length of 113.83 feet to a point on the southerly line of said Rinella parcel;

(3) Thence North 60°48'00" West along the westerly extension of the South line of Rinella a distance of 154.88 feet to a point on the westerly line of the Old Milan Canal;

(4) Thence northeasterly along said westerly right-of-way line, along an arc of a curve to the left, having a radius of 1722.04 feet, a delta of 04°27'22", a chord bearing North 11°55'25" East, a chord distance of 133.90 feet, an arc length of 133.93 feet to its intersection with the westerly extension of the northerly line of said Rinella parcel;

(5) Thence South 54°28'00" East along said extension a distance of 55.37 feet to the point of beginning, containing 0.4262 acre, more or less, but being subject to all legal highways, easements and restrictions of record.

The above description was prepared from an actual survey by Daniel E. Hartung Jr., Professional Surveyor No. 5667 in July 1999. The bearings were assumed only for the purpose of indicating angles.



Daniel E. Hartung Jr.
Daniel E. Hartung Jr., P.E., P.S.

APPROVED as per Erie County Ordinance
And Sections 4733-37 thru 4733-37-07 of the Ohio
Administrative Code only, No Field Verifications
for Accuracy made.

David Williams
Erie County Engineer

3/1/00

Exhibit SE - 12

QUIT CLAIM DEED

Key Trust Company of Ohio, National Association, a national banking organization formed under the laws of the United States, as Trustee of the Verna Lockwood Williams Trust, for valuable consideration paid, the receipt of which is hereby acknowledged, grants to Buffalo Prairie, Ltd., an Ohio limited liability company, whose tax mailing address is P.O. Box 449, Milan, Ohio 44846, the following REAL PROPERTY: Situated in the County of Erie, in the State of Ohio, and in the Townships of Milan and Huron:

All of the right, title and interest Grantor holds in the property of the former Milan Canal Company, including but not limited to the canal basin, locks, dry dock and tow path, and further described in the attached Exhibit A, which is incorporated as part of this deed.

Subject to easements, conditions, legal highways, restrictions of record and the lien of unpaid real estate taxes.

Prior Deed Reference: Vol. 78 Page 239

Signed and acknowledged as to grantor's signature in the presence of:

[Signature]
Witness

William M. Wright
Please print name legibly

[Signature]
Witness

Michael J. Thacker
Please print name legibly

Lee A. Matia
Key Trust Company of Ohio, National Association

By: Lee A. Matia
Its: Asst Vice President

RN 200005173 Page 1 of 5
ERIE COUNTY OHIO RECORDER
John W. Schaeffer 5P
RECORDING FEE: 26.00
TLF Date 04/27/2000 Time 10:40:29

STATE OF OHIO,
COUNTY OF CUYAHOGA, ss:

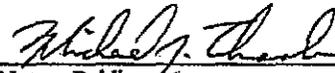
On April 11, 2000, before me, the undersigned, a Notary Public in and for the said state, personally appeared Lee A. Matia, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as the Assistant Vice President of Key Trust Company of Ohio, National Association, a national

woc
D. Jeffery Rengel, Atty

MICROFILMED ✓

banking organization formed under the laws of the United States, and acknowledged to me that he is authorized to execute this instrument on behalf of said corporation.

Witness my hand and official seal.



Notary Public

MICHAEL J. THACKER, Attorney at Law
Notary Public, State of Ohio
My Commission has no expiration date
Section 147.03 ORC

This instrument was prepared by Peggy Kirk Hall, Attorney at Law, Wright & Logan, Co., L.P.A.,
4266 Tuller Road, Suite 101, Dublin, Ohio 43017.

After recording, return to: Buffalo Prairie, Ltd., P.O. Box 449, Milan, OH 44846

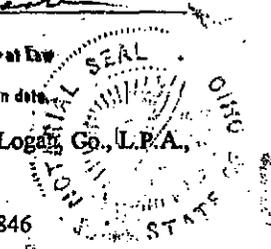


EXHIBIT A

Situate in the Townships of Milan and Huron, in said County of Erie and State of Ohio, being all the land with all the rights and appurtenances thereof, owned by said Milan Canal Company, within the bounds of a strip of land one hundred and fifty feet in width, commencing at the Southerly end of the canal basin of said Milan Canal Company, near the intersection of Main and Union Street, in the Village of Milan, in said Erie County, Ohio, and running thence in a Northerly direction to the mouth of the Huron River, in the Village of Huron in said Erie County, and which strip of land is bounded on the West by a line distance fifty feet from and running North parallel with the central line of the railroad of the Wheeling and Lake Erie Railroad Company, as surveyed, located and in the process of construction on July 12th, A.D. 1881, between said Villages of Milan and Huron, and which said strip of land is bounded on the East by a line distant One Hundred feet from and running North parallel with the said central line of said railroad as surveyed, located and being constructed as aforesaid, the East and West lines of said strip of land being one hundred and fifty feet apart and running North parallel with each other and with the central line of said railroad as surveyed, located and being constructed as aforesaid from the said place of beginning to the said mouth of Huron River. Also all of the so-called Dry Dock and all of the said canal Basin and all of the Upper and Lower Locks of said canal, with all the grounds and privileges connected therewith in addition to what is included in the said strip of land above described, the said Dry dock containing about one and 1/2 acres, and the Canal Basin containing about Five and 45/100 acres of land be the same more or less.

TRANSFER NOT NECESSARY

April 27, 2000

Jude T. Hammond

B

This conveyance has been examined and the grantor has complied with sections 310-202 and 322.02 of the Revised Code.
FEE: \$ <u>185.70</u>
EXEMPT: \$ _____
R.E. TRANSFER: \$ <u>557.10</u>
JUDE T. HAMMOND Erie County Auditor
by _____

Ralph M. Lockwood, Receiver

To

Stephen A. Lock

(No. 157)

ERIE COUNTY OHIO RECORDER

RECEIVER'S DEED

BN 200005173

Page 4 of 4

ERIE COUNTY OHIO RECORDER
BN 200005173
Page 4 of 4

Know all men by these presents, That whereas, Ralph M. Lockwood, Maltby Smith and H. L. W
a majority of the Board of Directors of the Milan Canal Company, a corporation, on the seventh
of January, A. D. 1904, filed a petition in the Court of Common Pleas of Erie County, Ohio, pr
for the dissolution of said corporation, being cause number 9702.

And whereas, on the 28th day of March, A. D. 1904, such proceedings were had by and befor
court that the said corporation was dissolved by order of the court and the said Ralph M. Lock
was appointed by said court receiver of the estate and effects of the corporation, so dissolve

and said receiver thereupon gave bond in accordance with the order of the court.

And whereas, on the 27th day of July, A. D. 1904, such further proceedings were had by and
before said court that Ralph M. Lockwood, as receiver as aforesaid, was ordered by said court to
sell at public sale to the highest bidder according to law for not less than two-thirds the ap-
praised value thereof, the real estate of said corporation theretofore dissolved, being the real
estate described in the petition in said cause, which said real estate is described as follows:-

Situate in the Townships of Milan and Huron, in said County of Erie, and State of Ohio, be-
ing all the land with all the rights and appurtenances thereof, owned by said Milan Canal Com-
pany, within the bounds of a strip of land one hundred and fifty feet in width, commencing at
the southerly end of the canal basin of said Milan Canal Company, near the intersection of Main
and Union streets, in the Village of Milan, in said Erie County, Ohio, and running thence in a
northerly direction to the mouth of the Huron River, in the Village of Huron, in said Erie
County, and which strip of land is bounded on the west by a line distant fifty feet from and run-
ning north parallel with the central line of the railroad of the Wheeling and Lake Erie Railroad
Company, as surveyed, located in the process of construction on July 12th, A. D. 1881, between
said Villages of Milan and Huron, and which said strip of land is bounded on the east by a line
distant one hundred feet from and running north parallel with the said central line of said rail-
road, as surveyed, located and being constructed as aforesaid, the east and west lines of said
strip of land being one hundred and fifty feet apart and running north parallel with each other
and with the central line of said railroad, as surveyed, located and being constructed as aforesaid,
from the said place of beginning to the said mouth of Huron River. Also all of the so-
called Dry Dock and all of the said Canal Basin and all of the Upper and Lower Locks of said

canal, with all the grounds and privileges connected therewith in addition to what is included in
the said strip of land above described, the said dry dock containing about one and 1/2 acres, and
the said Canal Basin containing about five and 45/100 acres of land, be the same more or less.

The said real estate is subject to a lease to the Wheeling and Lake Erie Railroad Company for a
term of 99 years commencing on the 12th day of July, A. D. 1881, and ending on the 12th day of
July, A. D. 1980, at an annual rental of Fifty Dollars per year.

Legibility Poor On
Original Instrument
Erie County Recorder

July, A. D., 1930, at an annual rental of Fifty Dollars per year, renewable forever.
And whereas, the said Ralph M. Lockwood as receiver as aforesaid, sold said premises to Stephen A. Lockwood for the sum of Five Hundred and Thirty-four Dollars. (\$534.00) (this sum being more than two-thirds of the appraised value thereof), on the 19th day of September, A. D. 1904, and the said Stephen A. Lockwood having complied with the terms of such sale and such sale having been made in all respects according to law, the same was, afterwards, to-wit, on the first day of October, A. D. 1904, approved and confirmed by said court and the said Ralph M. Lockwood, as such receiver, was ordered to execute and deliver to said purchaser a proper deed for said real estate according to law, all of which will more fully appear by the records of said court, to which reference is hereby made.

Now, therefore, I, the said Ralph M. Lockwood, as receiver as aforesaid, in consideration of the premises, and by virtue of the powers in me vested by law, and under the order of the court aforesaid, do hereby give, grant, bargain, sell and convey unto the said Stephen A. Lockwood, his heirs and assigns forever, the real estate aforesaid, with all the appurtenances thereto thereto belonging.

Deed Vol 78 2

To have and to hold the said real estate unto the said Stephen A. Lockwood, his heirs and assigns forever.

In testimony whereof, I, as receiver as aforesaid, hereunto set my hand and seal this 24th day of October, A. D. 1904.

Signed, sealed and delivered in

the presence of-

C. E. Gove

F. C. Smith

Ralph M. Lockwood (Seal)
as receiver as aforesaid.

The State of Ohio, Erie County, ss.

Before me, a Justice of the Peace in and for said county, personally appeared the above named Ralph M. Lockwood, who acknowledged that he did sign and seal the foregoing deed as receiver as aforesaid, and that the same was his free act and deed for the purposes aforesaid.

In testimony whereof, I hereunto set my hand and official seal, at Milan, Ohio, this 24th day of October, A. D. 1904.

C. E. Gove
Justice of Peace

Received February 16th (1-15 P.M.) 1905

Recorded February 27th, 1905.

J. J. P. Cassin Recorder.
By Francis H. Cassin Deputy

Legibility Poor On
Original Instrument
Erie County Recorder

Exhibit SE - 13

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Sandusky, Ohio the 26 day of APRIL, 2000.

David W. Moffie
NOTARY PUBLIC

DAVID W. MOFFIE
NOTARY PUBLIC, STATE OF OHIO
My Commission Expires Sept. 17, 2001

This Instrument Prepared By:
Jeffrey P. Laycock, Esq.
FREEMAN, LAYCOCK & MCDANIEL
54 East Main Street
Norwalk, Ohio 44857

TRANSFER NOT NECESSARY.

April 27, 2000

Jude T. Hammond

This conveyance has been examined and the grantor has complied with sections 310-202 and 322.02 of the Revised Code.
FEE: \$ 4.40
EXEMPT: \$ _____
R.E. TRANSFER: \$ 13.20
JUDE T. HAMMOND
Eric County Auditor
by _____

Parcel 4
Rita Beverick

Daniel E. Hartung Jr.
3/11/06

Being situated in the State of Ohio, County of Erie, Milan Township, Section 2, Abbott Tract and being more definitely described as follows:

Commencing at the intersection of the centerline of River Road with the South line of the Abbott Tract; Thence North $47^{\circ}43'13''$ East along the centerline of River Road a distance of 244.52 feet to a point; Thence North $52^{\circ}25'13''$ East continuing along the centerline of River Road a distance of 295.48 feet to the southeasterly corner of a parcel owned by Edwin & Lisa Coles (DV 519 PG 775); Thence northerly along the easterly line of Coles by the following courses and distances: North $36^{\circ}13'47''$ West, 313.83 feet; Thence North $02^{\circ}00'13''$ East, 340.00 feet; Thence North $87^{\circ}59'47''$ West, 200.00 feet; Thence North $49^{\circ}59'47''$ West, 52.33 feet to a point on the easterly line of the Old Milan Canal, said point being the point of beginning;

(1) Thence North $49^{\circ}59'47''$ West continuing along the easterly line of Coles a distance of 150.08 feet to a point on the westerly line of the Old Milan Canal;

(2) Thence northerly along said westerly line, along an arc of a curve to the right, having a radius of 1004.93 feet, a delta of $23^{\circ}32'59''$, a chord bearing North $50^{\circ}00'54''$ East, a chord distance of 410.15 feet, an arc length of 413.05 feet to a point;

(3) Thence North $61^{\circ}47'24''$ East continuing along said westerly line a distance of 121.10 feet to a point on the westerly line of a parcel owned by Dale Hohler 9DV. 570 PG 571;

(4) Thence South $02^{\circ}00'13''$ West along the westerly line of Hohler a distance of 173.58 feet to a point on the easterly line of the Old Milan Canal;

(5) Thence South $61^{\circ}47'24''$ West along said easterly line a distance of 33.75 feet to a point;

(6) Thence southerly continuing along said easterly line, along an arc of a curve to the left, having a radius of 854.93 feet, a delta of $23^{\circ}51'33''$, a chord bearing South $49^{\circ}51'37''$ West, a chord distance of 353.45 feet, an arc length of 356.01 feet to the point of beginning, containing 1.5908 acre, more or less, but being subject to all legal highways, easements and restrictions of record.

The above description was prepared by Daniel E. Hartung Jr., Professional Surveyor No. 5667 in January 2000, taken from existing deed records and track right-of-way maps and does not indicate an actual survey made by me. The bearings were assumed only for the purpose of indicating angles.



Daniel E. Hartung Jr.
Daniel E. Hartung Jr., PE, PS

Exhibit SE - 14

1/17/00
1/17/00
1/17/00

Quit-Claim Deed

RN 200005173, Page _____

KNOW ALL MEN BY THESE PRESENTS THAT Buffalo Prairie, Ltd., the Grantor, claiming title by or through instrument recorded in Volume _____, Erie County Recorder's Office, for valuable consideration thereunto given, and for the sum of Ten and 00/100 Dollars (\$10.00) received to its full satisfaction of Patricia A. Charville, Trustee U/A Patricia A. Charville, dated September 28, 1994 as to an undivided 1/4 interest and Patricia A. Charville, Mark R. Charville and David A. Charville as Successor Trustees U/A Leon R. Charville dated September 28, 1994 as to an undivided 1/4 interest, the Grantees, whose tax mailing address will be 11616 River Road, Milan, Ohio 44839 does:

GIVE, GRANT, BARGAIN, REMISE, RELEASE AND FOREVER QUIT-CLAIM unto the said Grantees, their successors and assigns, all right, title and interest as said Grantor has in and to the following described premises, situated in the Township of Milan, County of Erie, and State of Ohio:

See Exhibit "A", attached hereto and made a part hereof.

Permanent Parcel No(s): _____

So long as, until, and upon express condition that said property not be sold, transferred, or otherwise conveyed to Erie Metroparks, its successors and assigns. Grantees covenant and agree that this express condition runs with the land, otherwise to revert to grantor, its successors and assigns.

EXCEPT: Zoning ordinances, easements, reservations, conditions and restrictions of record, if any, and real estate taxes and assessments, general and special, which are a lien at the time of transfer, which Grantees assume and agree to pay, so long as said condition and reversion as set forth herein do not occur.

TO HAVE AND TO HOLD the above premises, with the appurtenances thereunto belonging, unto the said Grantees, and their separate heirs and assigns forever.

IN WITNESS WHEREOF, the Grantor has hereunto set its hand the 26th day of April, 2000.

SIGNED AND ACKNOWLEDGED
IN THE PRESENCE OF

BUFFALO PRAIRIE, LTD.

Lance Warner
Stuart Nichol

By: Lisa A. Coles
Lisa A. Coles, President
By: Edwin M. Coles
Edwin M. Coles, Secretary

STATE OF OHIO)
) ss.
ERIE COUNTY)

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-named Lisa A. Coles, President, and Edwin M. Coles, Secretary, on behalf of Buffalo Prairie, Ltd., an Ohio limited liability company.

FREEMAN, LAYCOCK & MCDANIEL
ATTORNEYS AT LAW
54 EAST MAIN STREET
NORWALK, OHIO 44867

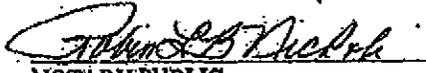
MICROFILMED

RN 200005173
ERIE COUNTY URTU RECORDER
John W. Schaeffer
RECORDING FEE
TLP Date 04/27/2000 Time 10:55:07

EXHIBIT
A-2

Exhibit SE - 14

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Sandusky, Ohio the 26th day of April, 2000.


NOTARY PUBLIC

ROBIN L. NICKOLI
NOTARY PUBLIC, STATE OF OHIO
My Commission Expires Aug. 17, 2003

This Instrument Prepared By:
Jeffrey P. Laycock, Esq.
FREEMAN, LAYCOCK & MCDANIEL
54 East Main Street
Norwalk, Ohio 44857

This commission has been examined and the grantor has complied with Sections 310-202 and 322.07 of the Revised Code. FEES: <u>21.70</u> COMMITTEE: R/L TRANSFER: \$ <u>65.10</u> JUDE T. HAMMOND Erie County Auditor by: _____
--

TRANSFER NOT NECESSARY

April 27, 2000

Jude T. Hammond

ERIE COUNTY OHIO RECORDER
RN 200005179 Page 2 of 4

EXHIBIT

A

Patricia Charville

Being situated in the State of Ohio, County of Erie, Milan Township, Section 2, Ward Tract and K. Townsend Tract and being more definitely described as follows:

Commencing at the intersection of the centerline of the NYC & ST. LOUIS Railroad with the centerline of the Wheeling & Lake Erie Railroad;

(1) Thence North $89^{\circ}40'20''$ East along the centerline of the NYC & ST. Louis Railroad a distance of 135.63 feet to a point on the easterly line of the Old Milan Canal;

(2) Thence South $42^{\circ}10'20''$ West along the easterly line of the Old Milan Canal a distance of 1203.79 feet to a point;

(3) Thence southerly continuing along said easterly line, along an arc of a curve to the right, having a radius of 2009.87 feet, a delta of $09^{\circ}05'00''$, a chord bearing South $46^{\circ}42'50''$ West, a chord distance of 318.30 feet, an arc length of 318.63 feet to a point;

(4) Thence South $51^{\circ}16'02''$ West continuing along said easterly line a distance of 178.24 feet to a point;

(5) Thence southerly continuing along said easterly line, along an arc of a curve to the left, having a radius of 1332.40 feet, a delta of $13^{\circ}39'00''$, a chord bearing South $44^{\circ}26'32''$ West, a chord distance of 315.68 feet, an arc length of 317.43 feet to a point;

(6) Thence South $37^{\circ}37'02''$ West continuing along said easterly line a distance of 148.22 feet to a point;

(7) Thence southerly continuing along said easterly line, along an arc of a curve to the right, having a radius of 3919.73 feet, a delta of $02^{\circ}34'42''$, a chord bearing South $38^{\circ}54'23''$ West, a chord distance of 176.37 feet, an arc length of 176.38 feet to a point on the North line of a parcel owned by Howard & Sandra Leber (DV 537 PG 61);

(8) Thence North $53^{\circ}03'58''$ West along the North line of Leber a distance of 150.25 feet to a point on the westerly line of the Old Milan Canal;

(9) Thence northerly along the westerly line of the Old Milan Canal, along an arc of a curve to the left, having a radius of 3769.73 feet, a delta of $02^{\circ}42'29''$, a chord bearing North $38^{\circ}58'17''$ East, a chord distance of 178.16 feet, an arc length of 178.18 feet to a point;

(10) Thence North $37^{\circ}37'02''$ East continuing along said westerly line a distance of 148.22 feet to a point;

(11) Thence northerly continuing along said westerly line, along an arc of a curve to the right, having a radius of 1482.40 feet, a delta of $13^{\circ}39'00''$, a chord bearing North $44^{\circ}26'32''$ East, a chord distance of 352.33 feet, an arc length of 353.16 feet to a point;

ERIE COUNTY OHIO RECORDER
 RN 200005179 Page 4 of 4

(12) Thence North 51°16'02" East continuing along said westerly line a distance of 178.24 feet to a point;

(13) Thence northerly continuing along said westerly line, along an arc of a curve to the left, having a radius of 1859.87 feet, a delta of 09°05'00", a chord bearing North 46°42'50" East, a chord distance of 294.54 feet, an arc length of 294.85 feet to a point;

(14) Thence North 42°10'20" East continuing along said westerly line a distance of 1066.34 feet to a point on the centerline of the NYC & ST. Louis Railroad;

(15) Thence North 89°40'20" East along said centerline a distance of 67.82 feet to the point of beginning, containing 7.8569 acres, more or less, of which 6.9577 acres are in the Ward Tract and 0.8992 acre is in the K. Townsend Tract but being subject to all legal highways, easements and restrictions of record.

The above description was prepared by Daniel E. Hartung Jr., Prof. Surveyor No. 5667 in January 2000, taken from existing deed records and track maps and does not indicate an actual survey made by me. The bearings were assumed only for the purpose of indicating angles.

Daniel E. Hartung Jr.
 Daniel E. Hartung Jr., PE, PS

APPROVED as per Erie County Requirements
 And Sections 4733-37 thru 4733-37-07 of the Ohio
 Administrative Code only. No Field Verifications
 for Accuracy made.

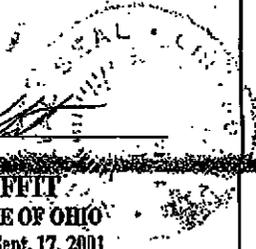
Daniel Williams
 Erie County Engineer
 Date: 3/11/00



Exhibit SE - 15

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Sandusky, Ohio the 26 day of APRIL, 2000.

David W. Moffitt
NOTARY PUBLIC



This Instrument Prepared By:
Jeffrey P. Laycock, Esq.
FREEMAN, LAYCOCK & MCDANIEL
54 East Main Street
Norwalk, Ohio 44857

DAVID W. MOFFITT
NOTARY PUBLIC, STATE OF OHIO
My Commission Expires Sept. 17, 2001

TRANSFER NOT NECESSARY.

April 27, 2000

Jude T. Hammond

3

This conveyance has been examined and the grantor has complied with sections 310-202 and 322.02 of the Revised Code.
FEE: \$ 8.10
EXEMPT: \$ _____
R.J. TRANSFER: \$ 25.20
JUDE T. HAMMOND
Eric County Auditor
by _____



Doug Hildebrand

Being situated in the State of Ohio, County of Erie, Milan Township, Section No. 2, Ward Tract and being more definitely described as follows:

Commencing at the intersection of the centerline of Mason Road with the centerline of the Wheeling & Lake Erie Railroad;

- (1) Thence South 48°40'10" East along the centerline of Mason Road a distance of 100.01 feet to a point on the easterly line of the Old Milan Canal;
- (2) Thence South 42°10'20" West along the easterly line of the Old Milan Canal a distance of 810.12 feet to the centerline of the New York Central & St. Louis Railroad;
- (3) Thence South 89°40'20" West along said centerline a distance of 203.46 feet to a point on the westerly line of the Old Milan Canal;
- (4) Thence North 42°10'20" East continuing along said westerly line a distance of 945.37 feet to a point on the centerline of Mason Road;
- (5) Thence South 48°40'10" East along said centerline a distance of 50.01 feet to the point of beginning, containing 3.0226 acres, more or less, but being subject to all legal highways, easements and restrictions of record.

The above description was prepared by Daniel E. Hartung Jr., Professional Surveyor No. 5667 in January 2000, taken from existing deed records and track right-of-way maps and does not indicate an actual survey made by me. The bearings were assumed only for the purpose of indicating angles.

Daniel E. Hartung Jr.
Daniel E. Hartung Jr., P.E./P.S.

APPROVED as per Erie County Requirements
And Sections 4733-37 thru 4733-37-07 of the Ohio
Administrative Code only. No Field Verifications
for Accuracy made.

David Williams
Erie County Engineer
Date: 3/16/00



Exhibit SE - 16

W.P.U.
Affery Ring

Quit-Claim Deed

KNOW ALL MEN BY THESE PRESENTS THAT Buffalo Prairie, Ltd., the Grantor, claiming title by or through instrument recorded in Volume RN 200005193, Page _____, Erie County Recorder's Office, for valuable consideration thereunto given, and for the sum of Ten and 00/100 Dollars (\$10.00) received to its full satisfaction of Dale A. Hohler and Ellen H. Hohler, husband and wife, the Grantees, whose tax mailing address will be 10607 River Road, Huron, Ohio 44839, does:

GIVE, GRANT, BARGAIN, REMISE, RELEASE AND FOREVER QUIT-CLAIM unto the said Grantees, their heirs and assigns, all right, title and interest as said Grantor has in and to the following described premises, situated in the Township of Milan, County of Erie, and State of Ohio:

See Exhibit "A", attached hereto and made a part hereof.

Permanent Parcel No(s): _____

So long as, until, and upon express condition that said property not be sold, transferred, or otherwise conveyed to Erie Metroparks, its successors and assigns. Grantees covenant and agree that this express condition runs with the land, otherwise to revert to grantor, its successors and assigns.

EXCEPT: Zoning ordinances, easements, reservations, conditions and restrictions of record, if any, and real estate taxes and assessments, general and special, which are a lien at the time of transfer, which Grantees assume and agree to pay, so long as said condition and reversion as set forth herein do not occur.

TO HAVE AND TO HOLD the above premises, with the appurtenances thereunto belonging, unto the said Grantees, and their separate heirs and assigns forever.

IN WITNESS WHEREOF, the Grantor has hereunto set its hand the 26 day of April, 2000.

SIGNED AND ACKNOWLEDGED
IN THE PRESENCE OF:

BUFFALO PRAIRIE, LTD.

Gail M. Gray

By: Lisa A. Coles
Lisa A. Coles, President

Richard H. Johnson
Richard H. Johnson

By: Edwin M. Coles
Edwin M. Coles, Secretary

STATE OF OHIO)
ERIE COUNTY) ss.
Huron

RN 200005193 Page 1 of 3
ERIE COUNTY OHIO RECORDER
John W. Schaeffer 3P
RECORDING FEE: 18.00
TLF Date: 04/27/2000 Time 10:56:00

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-named Lisa A. Coles, President, and Edwin M. Coles, Secretary, on behalf of Buffalo Prairie, Ltd., an Ohio limited liability company.

FREEMAN, LAYCOCK & MCDANIEL
ATTORNEYS AT LAW
84 EAST MAIN STREET
NORWALK, OHIO 44087

MICROFILMED

Exhibit SE - 16



IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Sandusky, Ohio the 26 day of APRIL, 2000.

David W. Moffitt
NOTARY PUBLIC
DAVID W. MOFFITT
NOTARY PUBLIC, STATE OF OHIO
My Commission Expires Sept. 17, 2001.

This Instrument Prepared By:
Jeffrey P. Laycock, Esq.
FREEMAN, LAYCOCK & MCDANIEL
54 East Main Street
Norwalk, Ohio 44857

TRANSFER NOT NECESSARY
April 27, 2000
Jude T. Hammond

This conveyance has been examined and the grantor has complied with sections 310-202 and 322.02 of the Revised Code.
FEE: \$ 1.20
EXEMPT: \$ _____
R.E. TRANSFER: \$ 3.60
JUDE T. HAMMOND
Eric County Auditor
by _____



Parcel 5
Dale Hohler

Being situated in the State of Ohio, County of Erie, Milan Township, Section 2, Abbott Tract and being more definitely described as follows:

ERIE COUNTY OHIO RECORDER

Commencing at the intersection of the centerline of River Road with the South line of the Abbott Tract; Thence North 47°43'13" East along the centerline of River Road a distance of 244.52 feet to a point; Thence North 52°25'13" East continuing along the centerline of River Road a distance of 345.48 feet to the southeasterly corner of a parcel owned by James & Rita Beverick (DV 484 PG 704); Thence northerly along the easterly line of Beverick by the following courses and distances: North 36°13'47" West, 295.31 feet; Thence North 02°00'13" East, 609.05 feet to a point on the easterly line of the Old Milan Canal, said point being the point of beginning;

- (1) Thence North 02°00'13" East continuing along the easterly line of Beverick a distance of 173.58 feet to a point on the westerly line of the Old Milan Canal;
- (2) Thence North 61°47'24" East along said westerly line a distance of 141.24 feet to a point on the westerly line of a parcel owned by Russell & Mary Conway (BV 135 PG 532);
- (3) Thence South 11°47'13" West along the westerly line of Conway a distance of 132.95 feet to a point;
- (4) Thence South 02°00'13" West continuing along the said westerly line a distance of 55.72 feet to a point on the easterly line of the Old Milan Canal;
- (5) Thence South 61°47'24" West along said easterly line a distance of 115.10 feet to the point of beginning, containing 0.4269 acre, more or less, but being subject to all legal highways, easements and restrictions of record.

The above description was prepared by Daniel E. Hartung Jr., Professional Surveyor No. 5667 in January 2000 taken from existing deed records and track right-of-way maps and does not indicate an actual survey made by me. The bearings were assumed only for the purpose of indicating angles.

Daniel E. Hartung Jr.
Daniel E. Hartung Jr., P.E., P.S.

APPROVED as per Erie County Requirements
And Sections 4733-37 thru 4733-37-07 of the Ohio
Administrative Code only, No Field Verifications
for Accuracy made.

Daniel Williams
Erie County Engineer.. 3/16/00
Date: _____



Exhibit SE - 17

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Sandusky, Ohio the 26 day of April, 2000.


NOTARY PUBLIC
DAVID W. MOFFITT
NOTARY PUBLIC, STATE OF OHIO
My Commission Expires Sept. 17, 2001

This Instrument Prepared By:
Jeffrey P. Laycock, Esq.
FREEMAN, LAYCOCK & MCDANIEL
54 East Main Street
Norwalk, Ohio 44857

TRANSFER NOT NECESSARY
April 27, 2000
Jude T. Hammond

This conveyance has been examined and the grantor has complied with sections 310-202 and 322.02 of the Revised Code.	
FEE: \$	<u>3.70</u>
EXEMPT: \$	_____
R.E. TRANSFER: \$	<u>11.10</u>
JUDE T. HAMMOND Erie County Auditor	
by	_____

Parcel 8

Albert & Theresa Johnston

Daniel E. Hartung Jr.
Erie County Engineer
of Erie, Milan Township, 3/11/00

Being situated in the State of Ohio, County of Erie, Milan Township,
Section 2, Abbott Tract and being more definitely described as
follows:

Commencing at the intersection of the centerline of River Road with
the South line of the Abbott Tract; Thence North 47°43'13" East
along the centerline of River Road a distance of 244.52 feet to a
point; Thence North 52°25'13" East continuing along the centerline
of River Road a distance of 528.67 feet to a point; Thence North 53°
46'13" East continuing along the centerline of River Road a distance
of 681.86 feet to the southeasterly corner of a parcel owned by
Alan & Nancy Anderson (BV 439 PG 638); Thence northerly along
the easterly line of Anderson by the following courses and distances:
North 29°22'47" West, 293.10 feet; Thence North 12°14'47" West,
416.81 feet to a point on the easterly line of the Old Milan Canal,
said point being the point of beginning;

(1) Thence North 12°14'47" West continuing along the easterly line
of Anderson a distance of 42.62 feet to a point;

(2) Thence North 05°39'47" West continuing along the easterly line
of Anderson a distance of 118.05 feet to a point on the westerly
line of the Old Milan Canal;

(3) Thence North 61°47'24" East along said westerly line a distance
of 216.34 feet to a point on the westerly line of a parcel owned by
River Bend Development (DV 519 PG 775);

(4) Thence South 09°35'47" East along the westerly line of River
Bend parcel a distance of 117.98 feet to a point;

(5) Thence South 09°02'47" East continuing along said westerly line
a distance of 40.44 feet to a point on the easterly line of the Old
Milan Canal;

(6) Thence South 61°47'24" West along said right-of-way line a
distance of 222.40 feet to the point of beginning, containing 0.7626
acre, more or less, but being subject to all legal highways, easements
and restrictions of record.

The above description was prepared by Daniel E. Hartung Jr.,
Professional Surveyor No. 5667 in January 2000, taken from existing
deed records and track right-of-way maps and does not indicate an
actual survey made by me. The bearings were assumed only for the
purpose of indicating angles.



Daniel E. Hartung Jr.
Daniel E. Hartung Jr., PE, PS



APPROVED as per Erie County Requirements
And Sections 4733-37 thru 4733-37-07 of the Ohio
Administrative Code only. No Field Verifications
for Accuracy made.

Parcel 9
River Bend Development

Erie County Engineer

Being situated in the State of Ohio, County of Erie, Milan Township,
Section 2, Abbott Tract and being more definitely described as
follows:

Commencing at the intersection of the centerline of River Road with
the South line of the Abbott Tract; Thence North $47^{\circ}43'13''$ East
along the centerline of River Road a distance of 244.52 feet to a
point; Thence North $52^{\circ}25'13''$ East continuing along the centerline
of River Road a distance of 528.67 feet to a point; Thence North 53°
 $46'13''$ East continuing along the centerline of River Road a distance
of 741.86 feet to the southeasterly corner of a parcel owned by
Albert & Theresa Johnston (DV 491 PG 73; Thence northerly along
the easterly line of Johnston by the following courses and distances:
North $29^{\circ}22'47''$ West, 293.10 feet; Thence North $53^{\circ}46'13''$ East,
150.00 feet; Thence North $09^{\circ}02'47''$ West, 393.23 feet to a point on
the easterly line of the Old Milan Canal, said point being the point
of beginning;

- (1) Thence North $09^{\circ}02'47''$ West continuing along the easterly line
of Johnston, a distance of 40.44 feet to a point;
- (2) Thence North $09^{\circ}35'47''$ West continuing along the easterly line
of Johnston a distance of 117.98 feet to a point on the westerly line
of the Old Milan Canal;
- (3) Thence North $61^{\circ}47'24''$ East along said westerly line a distance of
162.68 feet to a point on the westerly line of a parcel
owned by Eliot F. Fischer & Kimberly Reid-Fischer (BV 443 PG 23);
- (4) Thence South $09^{\circ}35'47''$ East along the westerly line of Fischer
parcel a distance of 89.06 feet to a point;
- (5) Thence South $02^{\circ}31'13''$ West continuing along said westerly line
a distance of 76.32 feet to a point on the easterly line of the Old
Milan Canal;
- (6) Thence South $61^{\circ}47'24''$ West along said easterly line a distance
of 146.18 feet to the point of beginning, containing 0.5477 acre, more
or less, but being subject to all legal highways, easements and
restrictions of record.

The above description was prepared by Daniel E. Hartung Jr.,
Professional Surveyor No. 5667 in January 2000, taken from existing
deed records and track right-of-way maps and does not indicate an
actual survey made by me. The bearings were assumed only for the
purpose of indicating angles.



Daniel E. Hartung Jr.
Daniel E. Hartung Jr., PE, PS

EXHIBIT A

Exhibit SE - 18

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Sandusky, Ohio the 26 day of April, 2000.

David W. Moffitt
NOTARY PUBLIC
DAVID W. MOFFITT
NOTARY PUBLIC, STATE OF OHIO
My Commission Expires Sept. 17, 2001

This Instrument Prepared By:
Jeffrey P. Laycock, Esq.
FREEMAN, LAYCOCK & MCDANIEL
54 East Main Street
Norwalk, Ohio 44857

TRANSFER NOT NECESSARY

April 27, 2000

Jude T. Hammond
JT

This conveyance has been examined and the grantor has complied with sections 310-202 and 322.02 of the Revised Code
FEE: \$ 6.20
EXEMPT: \$ 0.00
R.E. TRANSFER: \$ 0.00
JUDE T. HAMMOND
Eric County Auditor
by _____

Landoll Parcel

✓ m-3

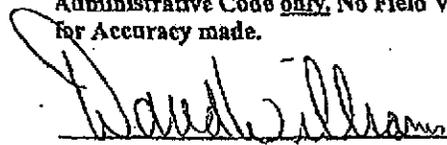
Being situated in the State of Ohio, County of Erie, Milan Township, Section 1, Sublot No. 10 and being more definitely described as follows:

Commencing at the intersection of the South line of Sublot 10, with the centerline of the Wheeling & Lake Erie Railroad;

- (1) Thence South 89°47'40" West along the North line of a parcel owned by Warren Jones (DV 308 PG 247), said line also being the South line of Sublot 10 a distance of 52.01 feet to a point on the westerly line of the Old Milan Canal;
- (2) Thence North 15°47'40" East along the westerly line of said Canal a distance of 648.03 feet to a point on the South line of a parcel owned by Gerald & Robin Nickoli (BV 153 PG 60);
- (3) Thence North 88°15'00" East along the South line of said Nickoli parcel a distance of 157.32 feet to a point on the easterly line of the Old Milan Canal;
- (4) Thence South 15°47'40" West along said easterly line a distance of 652.44 feet to a point on the South line of Sublot 10;
- (5) Thence South 89°47'40" West along the South line of Sublot 10 a distance of 104.03 feet to the point of beginning, containing 2.2391 acres, more or less, but being subject to all legal highways, easements and restrictions of record.

The above description was prepared by Daniel E. Hartung Jr., Professional Surveyor No. 5667 in February 2000, taken from existing deed records and track right-of-way maps and does not indicate an actual survey made by me. The bearings were assumed only for the purpose of indicating angles.

APPROVED as per Erie County Requirements And Sections 4733-37 thru 4733-37-07 of the Ohio Administrative Code only, No Field Verifications for Accuracy made.


 Erie County Engineer
 Date: 3/16/02

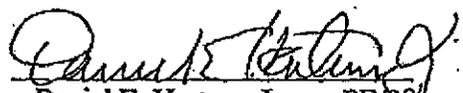

 Daniel E. Hartung Jr. PE/PS



Exhibit SE - 19

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Sandusky, Ohio the 26 day of APRIL, 2000.

David W. Moffitt
NOTARY PUBLIC

DAVID W. MOFFITT
NOTARY PUBLIC, STATE OF OHIO
My Commission Expires Sept. 17, 2001.

This Instrument Prepared By:
Jeffrey P. Laycock, Esq.
FREEMAN, LAYCOCK & MCDANIEL
54 East Main Street
Norwalk, Ohio 44857

TRANSFER NOT NECESSARY

April 27, 2000

Jude T. Hammond

This conveyance has been examined
and the grantor has complied with
sections 310-202 and 322.02 of the
Revised Code
FER: \$ 4.50
EXEMPT: \$ _____
R.E. TRANSFER: \$ 13.50
JUDE T. HAMMOND
Erie County Auditor
by _____

Parcel 20
Mike Meyer

Being situated in the State of Ohio, County of Erie, Milan Township, Section 2, J. Forbes Tract and being more definitely described as follows:

Commencing at the intersection of the centerline of River Road with the South line of the J. Forbes Tract; Thence North $32^{\circ}53'47''$ East along the centerline of River Road a distance of 715.90 feet to the northeasterly corner of a parcel owned by Charles & Betty Hahn (DV 517 PG 536); Thence North $54^{\circ}51'13''$ West along the northerly line of Hahn a distance of 287.05 feet to a point on the easterly line of the Old Milan Canal, said point being the point of beginning;

(1) Thence North $54^{\circ}51'13''$ West along the northerly line of HAHN a distance of 150.20 feet to a point on the westerly line of the Old Milan Canal;

(2) Thence northerly along said westerly line, along an arc of a curve to the left, having a radius of 3133.10 feet, a delta of $04^{\circ}17'46''$, a chord bearing North $35^{\circ}59'57''$ East, a chord distance of 234.87 feet, an arc length of 234.93 feet to a point on the southerly line of a parcel owned by Alice Fowler (DV 464 PG 202);

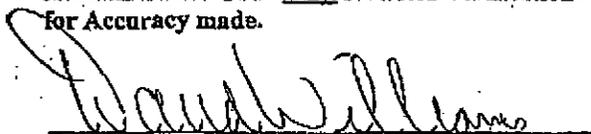
(3) Thence South $55^{\circ}26'13''$ East along the southerly line of Fowler a distance of 150.01 feet to a point on the easterly line of the Old Milan Canal;

(4) Thence southerly along said easterly line, along an arc of a curve to the right, having a radius of 3283.10 feet, a delta of $04^{\circ}07'35''$, a chord bearing South $35^{\circ}56'49''$ West, a chord distance of 236.40 feet, an arc length of 236.45 feet to the point of beginning, containing 0.8116 acre, more or less, but being subject to all legal highways, easements and restrictions of record.

The above description was prepared by Daniel E. Hartung Jr., Professional Surveyor No. 5667 in January 2000 taken from existing deed records and track right-of-way maps and does not indicate an actual survey made by me. The bearings were assumed only for the purpose of indicating angles.


Daniel E. Hartung Jr., PE/PS

APPROVED as per Erie County Requirements
And Sections 4733-37 thru 4733-37-07 of the Ohio
Administrative Code only. No Field Verifications
for Accuracy made.


Erie County Engineer

Date: 3/2/00



Parcel 19
Charles & Betty Hahn

Being situated in the State of Ohio, County of Erie, Milan Township, Section 2, J. Forbes Tract and being more definitely described as follows:

Commencing at the intersection of the centerline of River Road with the South line of the J. Forbes Tract; Thence North $32^{\circ}53'47''$ East along the centerline of River Road a distance of 615.90 feet to the northeasterly corner of a parcel owned by Henry Seibert (DV 403 PG 805); Thence North $54^{\circ}51'13''$ West along the northerly line of Seibert a distance of 297.51 feet to a point on the easterly line of the Old Milan Canal, said point being the point of beginning;

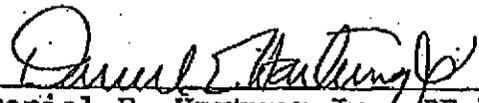
(1) Thence North $54^{\circ}51'13''$ West along the northerly line of SEIBERT a distance of 150.51 feet to a point on the westerly line of the Old Milan Canal;

(2) Thence northerly along said westerly line, along an arc of a curve to the left, having a radius of 3133.10 feet, a delta of $01^{\circ}49'54''$, a chord bearing North $39^{\circ}03'47''$ East, a chord distance of 100.16 feet, an arc length of 100.16 feet to a point on the southerly line of a parcel owned by Mike Meyer (BV 080 PG. 648);

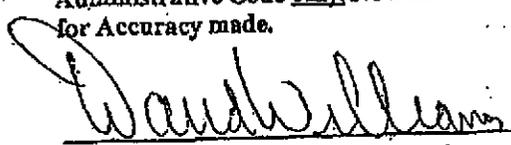
(3) Thence South $54^{\circ}51'13''$ East along the southerly line of Meyer a distance of 150.20 feet to a point on the easterly line of the Old Milan Canal;

(4) Thence southerly along said easterly line, along an arc of a curve to the right, having a radius of 3283.10 feet, a delta of $01^{\circ}44'51''$, a chord bearing South $38^{\circ}53'02''$ West, a chord distance of 100.14 feet, an arc length of 100.14 feet to the point of beginning containing 0.3449 acre, more or less, but being subject to all legal highways, easements and restrictions of record.

The above description was prepared by Daniel E. Hartung Jr., Professional Surveyor No. 5667 in January 2000 taken from existing deed records and track right-of-way maps and does not indicate an actual survey made by me. The bearings were assumed only for the purpose of indicating angles.


Daniel E. Hartung Jr., PE, PS

APPROVED as per Erie County Requirements
And Sections 4733-37 thru 4733-37-07 of the Ohio
Administrative Code only. No Field Verifications
for Accuracy made.


Erie County Engineer

Date: 3/24/00



Parcel 18
Henry Seibert

Being situated in the State of Ohio, County of Erie, Milan Township, Section 2, J. Forbes Tract and being more definitely described as follows:

Commencing at the intersection of the centerline of River Road with the South line of the J. Forbes Tract; Thence North $32^{\circ}53'47''$ East along the centerline of River Road a distance of 481.90 feet to the northeasterly corner of a parcel owned by Gary & Virginia Steiner (DV 505 PG 80); Thence North $54^{\circ}51'13''$ West along the northerly line of Steiner a distance of 316.33 feet to a point on the easterly line of the Old Milan Canal, said point being the point of beginning;

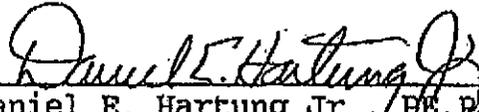
(1) Thence North $54^{\circ}51'13''$ West along the northerly line of Steiner a distance of 151.17 feet to a point on the westerly line of the Old Milan Canal;

(2) Thence northerly along said right-of-way line, along an arc of a curve to the left, having a radius of 3133.10 feet, a delta of $02^{\circ}27'45''$, a chord bearing North $41^{\circ}12'37''$ East, a chord distance of 134.65 feet, an arc length of 134.66 feet to a point on the southerly line of a parcel owned by Charles & Betty Hahn (DV 517 PG 536);

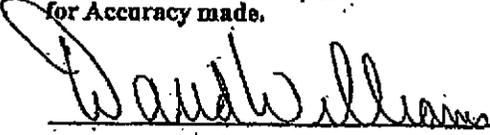
(3) Thence South $54^{\circ}51'13''$ East along the southerly line of Hahn a distance of 150.51 feet to a point on the easterly line of the Old Milan Canal;

(4) Thence southerly along said easterly line, along an arc of a curve to the right, having a radius of 3283.10 feet, a delta of $02^{\circ}20'56''$, a chord bearing South $40^{\circ}55'55''$ West, a chord distance of 134.58 feet, an arc length of 134.59 feet to the point of beginning, containing 0.4636 acre, more or less, but being subject to all legal highways, easements and restrictions of record.

The above description was prepared by Daniel E. Hartung Jr., Professional Surveyor No. 5667 in January 2000 taken from existing deed records and track right-of-way maps and does not indicate an actual survey made by me. The bearings were assumed only for the purpose of indicating angles.


Daniel E. Hartung Jr., PE, PS

APPROVED as per Erie County Requirements
And Sections 4733-37 thru 4733-37-07 of the Ohio
Administrative Code only, No Field Verifications
for Accuracy made.


Erie County Engineer

Date: 3/16/00



IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Sandusky, Ohio the 26 day of April, 2000.

David W. Moffitt
NOTARY PUBLIC

DAVID W. MOFFITT
NOTARY PUBLIC, STATE OF OHIO
My Commission Expires Sept. 17, 2001

This Instrument Prepared By:
Jeffrey P. Laycock, Esq.
FREEMAN, LAYCOCK & MCDANIEL
54 East Main Street
Norwalk, Ohio 44857

This conveyance has been examined and the grantor has complied with sections 510-202 and 322.02 of the Revised Code.
FEES \$ 7.00
EXEMPT \$ _____
R.E. TRANSFER \$ 3.00
JUDE T. HAMMOND
Erie County Auditor
by _____

TRANSFER NOT NECESSARY

April 27, 2000

Jude T. Hammond, Jr.

ERIE COUNTY OHIO RECORDER
RN 200005190 Page 2 of 3

Parcel 21
Alice Fowler

Daniel E. Hartung Jr.

Being situated in the State of Ohio, County of ~~Cuyahoga~~ Franklin Township 372100
Section 2, J. Forbes Tract and being more ~~definitely~~ definitely described as follows:

Commencing at the intersection of the centerline of River Road with the South line of the J. Forbes Tract; Thence North 32°53'47" East along the centerline of River Road a distance of 955.25 feet to the northeasterly corner of a parcel owned by Mike Meyer (BV 080 PG 648); Thence North 55°26'13" West along the northerly line of Meyer a distance of 166.07 feet to the Southeast corner of Sublot 11 in Clarence & Minnie Bailey's Subdivision No. 2 (PV 16 PG 1); Thence North 55°26'13" West along the southerly line of said Sublot 11 a distance of 108.30 feet to a point on the easterly line of the Old Milan Canal, said point being the point of beginning;

(1) Thence North 55°26'13" West along the southerly line of said Sublot 11 a distance of 150.01 feet to a point on the westerly line of the Old Milan Canal;

(2) Thence northerly along said westerly line, along an arc of a curve to the left, having a radius of 3133.10 feet, a delta of 01°39'40", a chord bearing North 33°01'14" East, a chord distance of 90.83 feet, an arc length of 90.83 feet to a point;

(3) Thence northerly continuing along said westerly line, along an arc of a curve to the left, having a radius of 1722.04 feet, a delta of 00°47'02", a chord bearing North 31°47'53" East, a chord distance of 23.56 feet, an arc length of 23.56 feet to a point on the northerly line of Sublot 11 in said Bailey's Subdivision;

(4) Thence South 57°06'13" East along the northerly line of Sublot 11 a distance of 150.05 feet to a point on the easterly line of the Old Milan Canal;

(5) Thence southerly along said easterly line, along an arc of a curve to the right, having a radius of 1872.04 feet, a delta of 00°39'53", a chord bearing South 31°51'28" West, a chord distance of 21.71 feet, an arc length of 21.72 feet to a point;

(6) Thence southerly continuing along said easterly line, along an arc of a curve to the right, having a radius of 3283.10 feet, a delta of 01°41'37", a chord bearing South 33°02'13" West, a chord distance of 97.04 feet, an arc length of 97.05 feet to the point of beginning, containing 0.4014 acre, more or less, but being subject to all legal highways, easements and restrictions of record.

The above description was prepared by Daniel E. Hartung Jr., Professional Surveyor No. 5667 in January 2000 taken from existing deed records and track right-of-way maps and does not indicate an actual survey made by me. The bearings were assumed only for the purpose of indicating angles.



Daniel E. Hartung Jr.
Daniel E. Hartung Jr., PE, PS

Exhibit SE - 20

W.P.C.
D. Jeffery Rengel, Clerk

QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS that Buffalo Prairie, Ltd., an Ohio limited liability company, as Grantor and for valuable consideration paid, do grant, bargain and convey to Gerold O. E. Nickoli and Robin L. B. Nickoli, as custodian for Autumn M. Nickoli and Jared J. B. Nickoli under the Ohio Transfers to Minors Act, as Grantees, and whose tax mailing address shall be 12501 River Road, Milan Ohio, 44846 the following described premises:

See Exhibit "A", attached hereto and made a part hereof.

Prior title recorded in Volume RN200005173 page of Erie County, Ohio Deed Records.

So long as, until, and upon express condition that said property not be sold, transferred, or otherwise conveyed to Erie Metroparks, its successors and assigns. Grantees covenant and agree that this express condition runs with the land, otherwise to revert to grantor, its successors and assigns.

Except: zoning ordinances, easements, reservations, conditions and restrictions of record, if any, and real estate taxes and assessments, general and special, which are a lien at the time of transfer, which Grantees assume and agree to pay.

To have and to hold said premises with all privileges and appurtenances thereunto belonging, to the said Grantees, and their heirs and assigns forever, so long as said condition and reversion as set forth herein do not occur.

Witness my hand this 26 day of April, 2000.

RN 200005177 PAGE 1 of 3
ERIE COUNTY OHIO RECORDER
John W. Schaeffer 3P
RECORDING FEE: 18.00
TLF Date 04/27/2000 Time 10:48:59

WITNESSES:

Lisa M. Gray

Lisa A. Coles
Lisa A. Coles, President

Richard H. Johnson
Richard H. Johnson

Edwin M. Coles
Edwin M. Coles, Secretary

STATE OF OHIO)
)ss:
COUNTY OF ERIE (Huron)

BEFORE ME, a Notary Public in and for the State of Ohio, did personally appear the above named Lisa A. Coles, President, and Edwin M. Coles, Secretary, on behalf of Buffalo Prairie, Ltd., an Ohio limited liability company, who did swear and state that they did sign the foregoing instrument on the 26 day of April, 2000.

David W. Moffett
NOTARY PUBLIC
DAVID W. MOFFETT
NOTARY PUBLIC, STATE OF OHIO
My Commission Expires Sept. 17, 2001

my commission expires:

DEED PREPARED WITHOUT BENEFIT OF SURVEY; PREPARED USING LEGAL DESCRIPTION GIVEN BY TITLE COMPANY.

This instrument prepared by:
D. Jeffery Rengel
421 Jackson Street
Sandusky, Ohio 44870
419-627-0400

TRANSFER NOT NECESSARY

April 27, 2000
Jude T. Hammond

This conveyance has been examined and the grantor has complied with sections 310.202 and 322.02 of the Revised Code.
FEE: \$ 22.30
EXEMPT: \$
R.E. TRANSFER: 166.90
JUDITH T. HAMMOND
Erie County Auditor
by _____

EXHIBIT
A-8

MICROFILMED

Exhibit SE - 20

Milan Canal Parcel across Nickoli Property

Being situated in the State of Ohio, County of Erie, Milan Township, Section 1, Sublots 10 & 11 and being more definitely described as follows:

Commencing at the intersection of the centerline of River Road with the North line of Section 1; Thence South $89^{\circ}13'00''$ West along the North line of Section 1 a distance of 1744.69 feet to its intersection with the East line of the Old Milan Canal and the point of beginning;

(1) Thence southeasterly along said East line, along an arc of a curve to the left, having a radius of 860.00 feet, a delta of $10^{\circ}20'36''$, a chord bearing South $43^{\circ}02'02''$ East, a chord distance of 155.04 feet, an arc length of 155.25 feet to a point;

(2) Thence South $48^{\circ}12'20''$ East continuing along said East line a distance of 250.40 feet to a point;

(3) Thence southeasterly along said East line, along an arc of a curve to the right, having a radius of 1060.00 feet, a delta of $64^{\circ}00'00''$, a chord bearing South $16^{\circ}12'20''$ East, a chord distance of 1123.43 feet, an arc length of 1184.03 feet to a point;

(4) Thence South $15^{\circ}47'40''$ West continuing along said East line a distance of 750.17 feet to a point on the North line of a parcel owned by John & Virginia Landoll (DV 386 PG 27);

(5) Thence South $88^{\circ}15'00''$ West along the North line of Landoll, a distance of 157.30 feet to a point on the West line of the Old Milan Canal;

(6) Thence North $15^{\circ}47'40''$ East along said West line a distance of 797.57 feet to a point;

(7) Thence northwesterly along said West line, along an arc of a curve to the left, having a radius of 910.00 feet, a delta of $64^{\circ}00'00''$, a chord bearing North $16^{\circ}12'20''$ West, a chord distance of 964.45 feet, an arc length of 1016.48 feet to a point;

(8) Thence North $48^{\circ}12'20''$ West continuing along said West line a distance of 250.40 feet to a point;

(9) Thence northwesterly along said West line, along an arc of a curve to the right, having a radius of 1010.00 feet, a delta of $16^{\circ}32'04''$, a chord bearing North $39^{\circ}56'18''$ West, a chord distance of 290.46 feet, an arc length of 291.47 feet to a point on the North line of Section 1;

(10) Thence North 89°13'00" East along the North line of Section 1 a distance of 180.63 feet to the point of beginning, containing 8.0865 acres, more or less, of which 3.5800 acres are in Sublot 10 and 4.5065 acres are in Sublot 11, but being subject to all legal highways, easements and restrictions of record.

The above description was prepared from an actual survey by Daniel E. Hartung Jr., Professional Surveyor No. 5667 in October 1984. The bearings were assumed only for the purpose of indicating angles.


Daniel E. Hartung Jr., P.S., P.S.

APPROVED as per Erie County Requirements
And Sections 4733-37 thru 4733-37-07 of the Ohio
Administrative Code only. No Field Verifications
for Accuracy made.

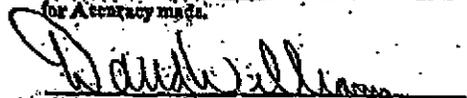

Erie County Engineer
Date: 3/24/00



Exhibit SE - 21

work
afford
Rangel, etc.

Quit-Claim Deed

F

KNOW ALL MEN BY THESE PRESENTS THAT Buffalo Prairie, Ltd., the Grantor, claiming title by or through instrument recorded in Volume Revised 5173, Page _____, Erie County Recorder's Office, for valuable consideration thereunto given, and for the sum of Ten and 00/100 Dollars (\$10.00) received to its full satisfaction of Billy R. Rasnick and Donna J. Rasnick, husband and wife, the Grantees, whose tax mailing address will be 9903-D River Road, Huron, Ohio 44839, does:

GIVE, GRANT, BARGAIN, REMISE, RELEASE AND FOREVER QUIT-CLAIM unto the said Grantees, their heirs and assigns, all right, title and interest as said Grantor has in and to the following described premises, situated in the Township of Milan, County of Erie, and State of Ohio:

See Exhibit "A", attached hereto and made a part hereof.

Permanent Parcel No(s): _____

So long as, until, and upon express condition that said property not be sold, transferred, or otherwise conveyed to Erie Metroparks, its successors and assigns. Grantees covenant and agree that this express condition runs with the land, otherwise to revert to grantor, its successors and assigns.

EXCEPT: Zoning ordinances, easements, reservations, conditions and restrictions of record, if any, and real estate taxes and assessments, general and special, which are a lien at the time of transfer, which Grantees assume and agree to pay, so long as said condition and reversion as set forth herein do not occur.

TO HAVE AND TO HOLD the above premises, with the appurtenances thereunto belonging, unto the said Grantees, and their separate heirs and assigns forever.

IN WITNESS WHEREOF, the Grantor has hereunto set its hand the 26 day of APRIL, 2000.

SIGNED AND ACKNOWLEDGED
IN THE PRESENCE OF:

BUFFALO PRAIRIE, LTD.

Gail M. Gray

By: Lisa A. Coles
Lisa A. Coles, President

Richard H. Johnson
RICHARD H. JOHNSON

By: Edwin M. Coles
Edwin M. Coles, Secretary

STATE OF OHIO)
ERIE COUNTY) ss.
Huron

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-named Lisa A. Coles, President, and Edwin M. Coles, Secretary, on behalf of Buffalo Prairie, Ltd., an Ohio limited liability company.

FREEMAN, LAYCOCK & MCDANIEL
ATTORNEYS AT LAW
84 EAST MAIN STREET
NORWALK, OHIO 44857

MICROFILMED

RN 200005193 Date 1 of 3
ERIE COUNTY OHIO RECORDER
John W. Schaeffer
RECORDING FEE: 18.00
TLF Date 04/27/2000 Time 11:05:28

EXHIBIT
A-9

Exhibit SE - 21

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Sandusky, Ohio the 26 day of April, 2000.


NOTARY PUBLIC

DAVID W. MOFFITT
NOTARY PUBLIC, STATE OF OHIO
My Commission Expires Sept. 17, 2001

This Instrument Prepared By:
Jeffrey P. Laycock, Esq.
FREEMAN, LAYCOCK & MCDANIEL
54 East Main Street
Norwalk, Ohio 44857

1/10/00
TRANSFER NOT NECESSARY
April 27, 2000

Jude T. Hammond

This conveyance has been examined
and the grantor has complied with
sections 310-202 and 322.02 of the
Revised Code
FEE: \$ 1.00
EXEMPT: \$ _____
R.E. TRANSFER: \$ 3.00
JUDE T. HAMMOND
Erie County Auditor
by _____

Parcel 24
Billy & Donna Rasnick



ERIE COUNTY OHIO RECORDER Page 3 of 7
RN 200005193

Being situated in the State of Ohio, County of Erie, Milan Township, Section 2, J. Forbes Tract and being more definitely described as follows:

Commencing at the intersection of the centerline of River Road with the South line of the J. Forbes Tract; Thence North 32°53'47" East along the centerline of River Road a distance of 955.25 feet to the northeasterly corner of a parcel owned by Mike Meyer (BV 080 PG 648); Thence North 55°26'13" West along the northerly line of Meyer a distance of 166.07 feet to a point marking the Southeast corner of Sublot 11 in Clarence & Minnie Bailey's Subdivision No. 2 (PV 16 PG 1); Thence North 32°53'47" East along the easterly line of said Sublots 11, 12, 13 & 14 a distance of 301.90 feet to the Northeast corner of said Sublot 14; Thence North 57°06'13" West along the North line of Sublot 14 a distance of 121.42 feet to a point on the easterly line of the Old Milan Canal, said point being the point of beginning;

(1) Thence North 57°06'13" West along the northerly line of Sublot 14 a distance of 151.19 feet to a point on the westerly line of the Old Milan Canal;

(2) Thence northerly along said westerly line, along an arc of a curve to the left, having a radius of 1722.04 feet, a delta of 02°01'07", a chord bearing North 24°23'11" East, a chord distance of 60.67 feet, an arc length of 60.67 feet to a point on the North line of Sublot 15 in said Bailey Subdivision;

(3) Thence South 57°06'13" East along the northerly line of Sublot 15 a distance of 151.92 feet to a point on the easterly line of the Old Milan Canal;

(4) Thence southerly along said easterly line, along an arc of a curve to the right, having a radius of 1872.04 feet, a delta of 01°51'13", a chord bearing South 25°04'23 West, a chord distance of 60.56 feet, an arc length of 60.56 feet to the point of beginning, containing 0.2087 acre, more or less, but being subject to all legal highways, easements and restrictions of record.

The above description was prepared by Daniel E. Hartung Jr., Professional Surveyor No. 5667 in January 2000 taken from existing deed records and track right-of-way maps and does not indicate an actual survey made by me. The bearings were assumed only for the purpose of indicating angles.



Daniel E. Hartung Jr.
Daniel E. Hartung Jr., PE/PS

APPROVED as per Erie County Requirements
And Sections 4733-37 thru 4733-37-07 of the Ohio
Administrative Code only. No Field Verifications
for Accuracy made.

David Williams
Erie County Engineer
Date: 3/16/00

Exhibit SE - 22

Quit-Claim Deed

KNOW ALL MEN BY THESE PRESENTS THAT Buffalo Prairie, Ltd., the Grantor, claiming title by or through instrument recorded in Volume RN20005173, Page _____, Erie County Recorder's Office, for valuable consideration thereunto given, and for the sum of Ten and 00/100 Dollars (\$10.00) received to its full satisfaction of Maria Sperling, the Grantee, whose tax mailing address will be 9903-E River Road, Huron, Ohio 44839 does:

GIVE, GRANT, BARGAIN, REMISE, RELEASE AND FOREVER QUIT-CLAIM unto the said Grantee, her heirs and assigns, all right, title and interest as said Grantor has in and to the following described premises, situated in the Township of Milan, County of Erie, and State of Ohio:

See Exhibit "A", attached hereto and made a part hereof.

Permanent Parcel No(s): _____

So long as, until, and upon express condition that said property not be sold, transferred, or otherwise conveyed to Erie Metroparks, its successors and assigns. Grantee covenants and agrees that this express condition runs with the land, otherwise to revert to grantor, its successors and assigns.

EXCEPT: Zoning ordinances, easements, reservations, conditions and restrictions of record, if any, and real estate taxes and assessments, general and special, which are a lien at the time of transfer, which Grantee assumes and agrees to pay.

TO HAVE AND TO HOLD the above premises, with the appurtenances thereunto belonging, unto the said Grantee, and her separate heirs and assigns forever, so long as said condition and reversion as set forth herein do not occur.

IN WITNESS WHEREOF, the Grantor has hereunto set its hand the 26 day of April, 2000.

SIGNED AND ACKNOWLEDGED IN THE PRESENCE OF:

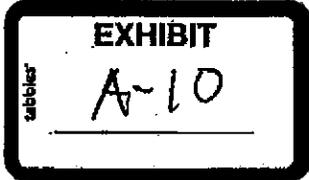
BUFFALO PRAIRIE, LTD.

Maile M. Gray

By: Lisa A. Coles
Lisa A. Coles, President

Richard H. Johnson
Richard H. Johnson

By: Edwin M. Coles
Edwin M. Coles, Secretary



IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Sandusky, Ohio the 26 day of April, 2000.

David W. Moritt
NOTARY PUBLIC

DAVID W. MORITT
NOTARY PUBLIC, STATE OF OHIO
My Commission Expires Sept. 17, 2001

This Instrument Prepared By:
Jeffrey P. Laycock, Esq.
FREEMAN, LAYCOCK & MCDANIEL
54 East Main Street
Norwalk, Ohio 44857

This conveyance has been examined and the grantor has complied with sections 310-202 and 322.02 of the Revised Code.
FEE: \$ 1.00
EXEMPT: \$ _____
R.E. TRANSFER: \$ 3.00
JUDE T. HAMMOND
Erie County Auditor
by _____

TRANSFER NOT NECESSARY

April 27, 2000

Jude T. Hammond

Exhibit SE - 23

copy by [unclear]

Quit-Claim Deed

KNOW ALL MEN BY THESE PRESENTS THAT Buffalo Prairie, Ltd., the Grantor, claiming title by or through instrument recorded in Volume PN 20005173, Page _____, Erie County Recorder's Office, for valuable consideration thereunto given, and for the sum of Ten and 00/100 Dollars (\$10.00) received to its full satisfaction of Gary R. Steiner and Virginia M. Steiner, husband and wife, the Grantees, whose tax mailing address will be 403 Tecumseh Place, Huron, Ohio 44839 does:

GIVE, GRANT, BARGAIN, REMISE, RELEASE AND FOREVER QUIT-CLAIM unto the said Grantees, their heirs and assigns, all right, title and interest as said Grantor has in and to the following described premises, situated in the Township of Milan, County of Erie, and State of Ohio:

See Exhibit "A", attached hereto and made a part hereof.

Permanent Parcel No(s): _____

So long as, until, and upon express condition that said property not be sold, transferred, or otherwise conveyed to Erie Metroparks, its successors and assigns. Grantees covenant and agree that this express condition runs with the land, otherwise to revert to grantor, its successors and assigns.

EXCEPT: Zoning ordinances, easements, reservations, conditions and restrictions of record, if any, and real estate taxes and assessments, general and special, which are a lien at the time of transfer, which Grantees assume and agree to pay, so long as said condition and reversion as set forth herein do not occur.

TO HAVE AND TO HOLD the above premises, with the appurtenances thereunto belonging, unto the said Grantees, and their separate heirs and assigns forever.

IN WITNESS WHEREOF, the Grantor has hereunto set its hand the 26 day of APRIL, 2000.

SIGNED AND ACKNOWLEDGED
IN THE PRESENCE OF:

BUFFALO PRAIRIE, LTD.

Neil M. [unclear]

By: Lisa A. Coles
Lisa A. Coles, President

Richard H. Johnson
Richard H. Johnson

By: [unclear]
Edwin M. Coles, Secretary

STATE OF OHIO)
ERIE COUNTY) ss.
Huron

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-named Lisa A. Coles, President, and Edwin M. Coles, Secretary, on behalf of Buffalo Prairie, Ltd., an Ohio limited liability company.

FREEMAN, LAYCOCK & MCDANIEL
ATTORNEYS AT LAW
54 EAST MAIN STREET
NORWALK, OHIO 44887

MICROFILMED

PN 20005188 Page 1 of 9
Erie County Ohio Recorder
John W. Schaeffer 9P
RECORDING FEE: 42.00
TLF Date 04/27/2000 Time 11:02:52

EXHIBIT
tabler
A-11

Exhibit SE - 23

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Sandusky, Ohio the 26 day of April, 2000.

David W. Moffitt
NOTARY PUBLIC

DAVID W. MOFFITT
NOTARY PUBLIC, STATE OF OHIO
My Commission Expires Sept. 17, 2001

This Instrument Prepared By:
Jeffrey P. Laycock, Esq.
FREEMAN, LAYCOCK & MCDANIEL
54 East Main Street
Norwalk, Ohio 44857

TRANSFER NOT NECESSARY
April 27, 2000
Jude T. Hammond

This conveyance has been examined and the grantor has complied with sections 310-202 and 322.02 of the Revised Code.
FEE \$ 16.80
EXEMPT \$ _____
R.E. TRANSFER \$ 50.40
JUDE T. HAMMOND
Erie County Auditor
by _____

ERIE COUNTY OHIO RECORDER
RN 20005188 Page 2 of 9

"EXHIBIT A"

Parcel 11
Jerry & Carole Nottke

Being situated in the State of Ohio, County of Erie, Milan Township, Section 2, Abbott Tract and being more definitely described as follows:

COLE COUNTY DATA

Commencing at the intersection of the centerline of River Road with the South line of the Abbott Tract; Thence North 47°43'13" East along the centerline of River Road a distance of 244.52 feet to a point; Thence North 52°25'13" East continuing along the centerline of River Road a distance of 528.67 feet to a point; Thence North 53°46'13" East continuing along the centerline of River Road a distance of 1360.82 feet to the southeasterly corner of a parcel owned by Eliot F. Fischer & Kimberly Reid-Fischer (BV 443 PG 23); Thence northerly along the easterly line of Fischer by the following courses and distances: North 65°34'47" West, 198.20 feet; Thence North 24°42'47" West, 155.60 feet; Thence North 48°26'47" West, 217.20 feet; Thence North 02°31'13" East, 95.90 feet to a point on the easterly line of the Old Milan Canal, said point being the point of beginning;

- (1) Thence North 02°31'13" East continuing along the easterly line of Fischer a distance of 174.50 feet to a point on the westerly line of the Old Milan Canal;
- (2) Thence North 61°47'24" East along said westerly line a distance of 294.92 feet to a point on the westerly line of a parcel owned by Gilbert & Nancy Hoffman (DV 547 PG 834);
- (3) Thence South 36°13'47" East along the westerly line of Hoffman a distance of 151.48 feet to a point on the easterly line of the Old Milan Canal;
- (4) Thence South 61°47'24" West along said easterly line a distance of 405.23 feet to the point of beginning, containing 1.2055, more or less, but being subject to all legal highways, easements and restrictions of record.

The above description was prepared by Daniel E. Hartung Jr., Professional Surveyor No. 5667 in January 2000, taken from existing deed records and track right-of-way maps and does not indicate an actual survey made by me. The bearings were assumed only for the purpose of indicating angles.



Daniel E. Hartung Jr.
Daniel E. Hartung Jr., PE, PS

APPROVED as per Ohio County Requirements
And Sections 4733-37 thru 4733-37-07 of the Ohio
Administrative Code only. No Field Verifications
for Accuracy made.

David Williams
Erie County Engineer
Date: 3/16/00

APPROVED as per Erie County Requirements
And Sections 4733-37 thru 4733-37-07 of the Ohio
Administrative Code only, No Field Verifications
for Accuracy made.

Paul Williams
Erie County Engineer 3/16/00

Parcel 12
Gilbert & Nancy Hoffman

Being situated in the State of Ohio, County Erie, Milan Township,
Section 2, Abbott Tract and being more definitely described as
follows:

Commencing at the intersection of the centerline of River Road with
the South line of the Abbott Tract; Thence North 47°43'13" East
along the centerline of River Road a distance of 244.52 feet to a
point; Thence North 52°25'13" East continuing along the centerline
of River Road a distance of 528.67 feet to a point; Thence North 53°
46'13" East continuing along the centerline of River Road a distance
of 1710.07 feet to the southeasterly corner of a parcel owned by
Jerry & Carole Nottke (DV 547 PG 822); Thence North 36°13'47" West
along the easterly line of Nottke a distance of 555.77 feet to a point
on the easterly line of the Old Milan Canal, said point being the
point of beginning;

(1) Thence North 36°13'47" West along the northerly extension of
easterly line of Nottke a distance of 151.48 feet to a point on the
westerly line of the Old Milan Canal;

(2) Thence North 61°47'24" East along said westerly line a
distance of 183.54 feet to its intersection with the northerly
extension of the westerly line of a parcel owned by Larry & Carmel
Hoffman (DV 547 PG 838);

(3) Thence South 36°13'47" East along said extension a distance of
151.48 feet to a point on the easterly line of the Old Milan Canal;

(4) Thence southerly along said easterly line, along an arc of a
curve to the right, having a radius of 2964.80 feet, a delta of
00°00'47", a chord bearing South 61°47'00" West, a chord distance of
0.68 feet, and arc length of 0.68 feet to a point;

(5) Thence South 61°47'24" West continuing along said easterly line a
distance of 182.86 feet to the point of beginning, containing 0.6320
acre, more or less, but being subject to all legal highways, easements
and restrictions of record.

The above description was prepared by Daniel E. Hartung Jr.,
Professional Surveyor No. 5667 in January 2000, taken from existing
deed records and track right-of-way maps and does not indicate an
actual survey made by me. The bearings were assumed only for the
purpose of indicating angles.



Daniel E. Hartung Jr.
Daniel E. Hartung Jr., P.S., P.S.

ERIE COUNTY OHIO RECORDER

Parcel 13
Larry & Carmel Hoffman

Daniel E. Hartung Jr.
Erie County Engineer 3/2/00

ERIE COUNTY OHIO RECORDER
Page 5 of 9
RN 200005188

Being situated in the State of Ohio, County of Erie, Milan Township,
Section 2, Abbott Tract and being more definitely described as
follows:

Commencing at the intersection of the centerline of River Road with
the South line of the Abbott Tract; Thence North 47°43'13" East
along the centerline of River Road a distance of 244.52 feet to a
point; Thence North 52°25'13" East continuing along the centerline
of River Road a distance of 528.67 feet to a point; Thence North 53°
46'13" East continuing along the centerline of River Road a distance
of 2041.82 feet to the southeasterly corner of a parcel owned by
Gilbert & Nancy Hoffman (DV 547 PG 834); Thence northerly along the
easterly line of Hoffman by the following courses and distances:
North 36°13'47" West, 150.00 feet; Thence South 53°46'13" West,
150.00 feet; Thence North 36°13'47" West, 380.16 feet to a point on
the easterly line of the Old Milan Canal, said point being the point
of beginning;

(1) Thence North 36°13'47" West along the northerly extension of
the easterly line of Hoffman a distance of 151.48 feet to a point on
the westerly line of the Old Milan Canal;

(2) Thence North 61°47'24" East along said westerly line a distance
of 20.45 feet to a point;

(3) Thence northeasterly continuing along said westerly line,
along an arc of a curve to the left, having a radius of 2814.80 feet,
a delta of 05°43'12", a chord bearing North 58°55'48" East, a chord
distance of 280.89 feet, an arc length of 281.01 feet to its
intersection with the northerly extension of the westerly line of a
parcel owned by Gilbert Hoffman, etal (DV 247 PG 640);

(4) Thence South 36°13'47" East along said extension a distance of
150.12 feet to a point on the easterly line of the Old Milan Canal;

(5) Thence southerly along said easterly line, along an arc of a
curve to the right, having a radius of 2964.80 feet, a delta of
05°49'23", a chord bearing South 58°51'55" West, a chord distance of
301.19 feet, an arc length of 301.32 feet to the point of beginning,
containing 1.0379, more or less, but being subject to all legal
highways, easements and restrictions of record.

The above description was prepared by Daniel E. Hartung Jr.,
Professional Surveyor No. 5667 in January 2000, taken from existing
deed records and track right-of-way maps and does not indicate an
actual survey made by me. The bearings were assumed only for the
purpose of indicating angles.



Daniel E. Hartung Jr.
Daniel E. Hartung Jr., PE/PS

Parcel 14
Gilbert Hoffman, Etal

Being situated in the State of Ohio, County of Erie, Milan Township, Section 2, Abbott Tract and being more definitely described as follows:

Commencing at the intersection of the centerline of River Road with the South line of the Abbott Tract; Thence North $47^{\circ}43'13''$ East along the centerline of River Road a distance of 244.52 feet to a point; Thence North $52^{\circ}25'13''$ East continuing along the centerline of River Road a distance of 528.67 feet to a point; Thence North $53^{\circ}46'13''$ East continuing along the centerline of River Road a distance of 2191.82 feet to the southeasterly corner of a parcel owned by Larry & Carmen Hoffman (DV 547 PG 838; Thence North $36^{\circ}13'47''$ West along the easterly line of Hoffman a distance of 503.41 feet to a point on the easterly line of the Old Milan Canal, said point being the point of beginning;

(1) Thence North $36^{\circ}13'47''$ West along the northerly extension of the easterly line of Hoffman a distance of 150.12 feet to a point on the westerly line of the Old Milan Canal;

(2) Thence northeasterly along said westerly line, along an arc of a curve to the left, having a radius of 2814.80 feet, a delta of $01^{\circ}04'48''$, a chord bearing North $55^{\circ}31'48''$ East, a chord distance of 53.06 feet, an arc length of 53.06 feet to a point;

(3) Thence North $54^{\circ}59'24''$ East continuing along said westerly line a distance of 536.77 feet to a point;

(4) Thence northeasterly continuing along said westerly line, along an arc of a curve to the left, having a radius of 1382.40 feet, a delta of $08^{\circ}41'06''$, a chord bearing North $50^{\circ}38'51''$ East, a chord distance of 209.34 feet, an arc length of 209.54 feet to a point on the westerly line of the J. Forbes Tract;

(5) Thence South $02^{\circ}43'13''$ East along the West line of J. Forbes Tract a distance of 170.70 feet to a point on the easterly line of the Old Milan Canal;

(6) Thence South $71^{\circ}15'13''$ East along said easterly line a distance of 19.94 feet to a point;

(7) Thence southwesterly continuing along said easterly line, along an arc of a curve to the left, having a radius of 1532.40 feet, a delta of $04^{\circ}50'31''$, a chord bearing South $52^{\circ}34'09''$ West, a chord distance of 129.46 feet, an arc length of 129.50 feet to a point;

(8) Thence South $54^{\circ}59'24''$ West continuing along said easterly line a distance of 536.77 feet to a point;

Parcel 15
Thomas Mormino

Being situated in the State of Ohio, County of Erie, Milan Township, Section 2, J. Forbes Tract and being more definitely described as follows:

Commencing at the intersection of the centerline of River Road with the South line of the J. Forbes Tract; Thence North $32^{\circ}53'47''$ East along the centerline of River Road a distance of 306.90 feet to the northeasterly corner of a parcel owned by Gilbert Hoffman (Bv247 PG 640); Thence North $54^{\circ}51'13''$ West along the northerly line of Hoffman a distance of 154.00 feet to a point; Thence North $71^{\circ}15'13''$ West continuing along said northerly line a distance of 222.68 feet to a point on the easterly line of the Old Milan Canal, said point being the point of beginning;

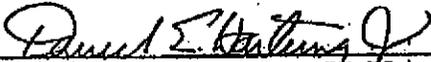
(1) Thence North $71^{\circ}15'13''$ West continuing along the northerly line of Hoffman a distance of 19.94 feet to a point on the easterly line of the Abbott Tract;

(2) Thence North $02^{\circ}43'13''$ West along said easterly line a distance of 95.58 feet to its intersection with the southerly line of a parcel owned by Violet Mormino (DV 483 PG 383);

(3) Thence South $54^{\circ}51'13''$ East along said southerly line of Mormino a distance of 94.77 feet to a point on the easterly line of the Old Milan Canal;

(4) Thence southerly along said right-of-way line, along an arc of a curve to the right, having a radius of 1532.40 feet, a delta of $02^{\circ}41'13''$, a chord bearing South $48^{\circ}48'17''$ West, a chord distance of 71.86 feet, an arc length of 71.86 feet to the point of beginning, containing 0.0967 acre, more or less, but being subject to all legal highways, easements and restrictions of record.

The above description was prepared by Daniel E. Hartung Jr., Professional Surveyor No. 5667 in January 2000 taken from existing deed records and track right-of-way maps and does not indicate an actual survey made by me. The bearings were assumed only for the purpose of indicating angles.


Daniel E. Hartung Jr., P.S.

APPROVED as per Erie County Requirements
And Sections 4733-37 thru 4733-37-07 of the Ohio
Administrative Code only. No Field Verifications
for Accuracy made.

Erie County Engineer

Date: _____



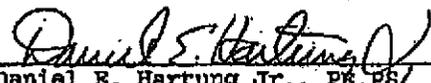
ERIE COUNTY OHIO RECORDER
Page 7 of 9
RN 200005166

Being situated in the State of Ohio, County of Erie, Milan Township, Section 2, J. Forbes Tract and being more definitely described as follows:

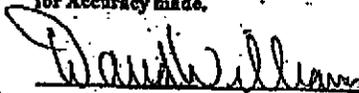
Commencing at the intersection of the centerline of River Road with the South line of the J. Forbes Tract; Thence North $32^{\circ}53'47''$ East along the centerline of River Road a distance of 326.90 feet to the northeasterly corner of a parcel owned by Thomas Mormino (DV 472 PG 726); Thence North $54^{\circ}51'13''$ West along the northerly line of Mormino a distance of 154.00 feet to a point; Thence North $60^{\circ}50'15''$ West continuing along said northerly line a distance of 125.00 feet to a point; Thence North $54^{\circ}51'13''$ West continuing along said northerly line a distance of 71.55 feet to a point on the easterly line of the Old Milan Canal, said point being the point of beginning;

- (1) Thence North $54^{\circ}51'13''$ West continuing along the northerly line of Mormino a distance of 94.77 feet to a point on the easterly line of the Abbott Tract;
- (2) Thence North $02^{\circ}43'13''$ West along said easterly line a distance of 67.14 feet to its intersection with the southerly line of a parcel owned by Gary & Virginia Steiner (DV 505 PG 80);
- (3) Thence South $54^{\circ}51'13''$ East along said southerly line of Steiner a distance of 146.57 feet to a point on the easterly line of the Old Milan Canal;
- (4) Thence southerly along said right-of-way line, along an arc of a curve to the right, having a radius of 1532.40 feet, a delta of $02^{\circ}01'15''$, a chord bearing South $46^{\circ}27'02''$ West, a chord distance of 54.05 feet, an arc length of 54.05 feet to the point of beginning, containing 0.1470 acre, more or less, but being subject to all legal highways, easements and restrictions of record.

The above description was prepared by Daniel E. Hartung Jr., Professional Surveyor No. 5667 in January 2000 taken from existing deed records and track right-of-way maps and does not indicate an actual survey made by me. The bearings were assumed only for the purpose of indicating angles.


Daniel E. Hartung Jr., PE, PS

APPROVED as per Erie County Requirements
And Sections 4733-37 thru 4733-37-07 of the Ohio
Administrative Code with No Field Verifications
for Accuracy made.


Erie County Engineer
Date: 3/16/00



Parcel 17

Gary & Virginia Steiner

Being situated in the State of Ohio, County of Erie, Milan Township, Section 2, J. Forbes Tract and being more definitely described as follows:

Commencing at the intersection of the centerline of River Road with the South line of the J. Forbes Tract; Thence North 32°53'47" East along the centerline of River Road a distance of 366.90 feet to the northeasterly corner of a parcel owned by Violet Mormino (DV 483 PG 383); Thence North 54°51'13" West along the northerly line of Mormino a distance of 337.70 feet to a point on the easterly line of the Old Milan Canal, said point being the point of beginning;

(1) Thence North 54°51'13" West along the northerly line of Mormino a distance of 146.57 feet to a point on the easterly line of the Abbott Tract;

(2) Thence North 02°43'13" West along said easterly line a distance of 7.98 feet to a point on the westerly line of the Old Milan Canal;

(3) Thence northerly along said westerly line, along an arc of a curve to the left, having a radius of 1382.40 feet, a delta of 03°18'54", a chord bearing North 44°38'51" East, a chord distance of 79.97 feet, an arc length of 79.98 feet to a point;

(4) Thence continuing northerly along said westerly line, along an arc of a curve to the left, having a radius of 3133.10 feet, a delta of 00°32'55", a chord bearing North 42°42'57" East, a chord distance of 30.00 feet, an arc length of 30.00 feet to its intersection with the southerly line of a parcel owned by Henry Seibert (DV 403 PG 805);

(5) Thence South 54°51'13" East along the southerly line of Seibert a distance of 151.17 feet to a point on the easterly line of the Old Milan Canal;

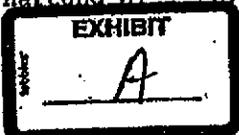
(6) Thence southerly along said easterly line, along an arc of a curve to the right, having a radius of 3283.10 feet, a delta of 00°53'01", a chord bearing South 42°32'54" West, a chord distance of 50.63 feet, an arc length of 50.63 feet to a point;

(7) Thence southerly continuing along said easterly line, along an arc of a curve to the right, having a radius of 1532.40 feet, a delta of 02°27'00", a chord bearing South 44°12'54" West, a chord distance of 65.52 feet, an arc length of 65.53 feet to the point of beginning, containing 0.3999 acre, more or less, but being subject to all legal highways, easements and restrictions of record.

The above description was prepared by Daniel E. Hartung Jr., Professional Surveyor No. 5667 in January 2000 taken from existing deed records and track right-of-way maps and does not indicate an actual survey made by me. The bearings were assumed only for the purpose of indicating angles.



Daniel E. Hartung Jr.
Daniel E. Hartung Jr. P.E. P.S.



APPROVED as per Erie County requirements
And Sections 4753-37 thru 4753-41 of the Ohio
Administrative Code only. No Field Verification
for Accuracy made.
Daniel E. Hartung Jr.
Erie County Engineer
Date: 3/16/00

ERIE COUNTY OHIO RECORDER

Exhibit SE - 24

IN THE COURT OF COMMON PLEAS, OF ERIE COUNTY, OHIO.

In the Matter of the Application
for the Dissolution of the Milan Canal
Company, a Corporation.

#

PETITION.

the petitioners
Now come, Ralph M. Lockwood, Maltby Smith and H. L. Wilson, a majority
of the directors of the Milan Canal Company, and allege:

That the Milan Canal Company is a corporation duly organized by an act
of the general assembly of the State of Ohio, passed January 24th, 1827.

That the petitioners deem it beneficial to the interests of the stock-
holders that the said corporation be dissolved.

That the original objects of the corporation have been entirely aban-
doned.

The real and personal estate of said corporation is as follows:

The following described real estate owned by the said Milan Canal
Company, situate in the Townships of Milan and Huron, in said County of
Erie and State of Ohio, being all the land with all the rights, and ap-
ourtenances thereof, owned by said Milan Canal Company, within the bounds
of a strip of land one hundred and fifty feet in width, commencing at
the southerly end of the canal basin of said Milan Canal Company, near
the intersection of Main and Union Streets, in the Village of Milan, in
said Erie County, Ohio, and running thence in a northerly direction to
the mouth of the Huron River, in the Village of Huron in said Erie County,
and which strip of land is bounded on the west by a line distant fifty
feet from and running north parallel with the central line of the rail-
road of the Wheeling and Lake Erie Railroad Company, as surveyed, located and
construction on July 12th, A. D. 1881,
in the process of ~~being~~ between said Villages of Milan and Huron, and
which said strip of land is bounded on the East by a line distant One
Hundred feet from and running north parallel with the said central line
as surveyed, located and being constructed as aforesaid,
of said railroad, the east and west lines of said strip of land being
one hundred and fifty feet apart and running north parallel with each

as surveyed, located and being constructed as aforesaid other and with the central line of said railroad from the said place of beginning to the said mouth of Huron River. Also all of the so-called Dry Dock and all of the said Canal Basin and all of the Upper and Lower Locks of said canal, with all the grounds and privileges connected therewith in addition to what is included in the said strip of land above described, the said dry dock containing about one and 1/2 acres, and the said Canal Basin containing about Five and 45/100 acres of land be the same more or less. ---The said real estate is subject to a lease to the Wheeling and Lake Erie Railroad Company for a term of 99 years commencing on the 12th day of July, A. D. 1881, and ending on the 12th day of July, A. D. 1980, at an annual rental of Fifty Dollars per year, renewable forever.

The personal property of said corporation consists of the sum of \$1006 ¹⁷/₁₀₀ now in the hands of the treasurer of said corporation, the said Ralph M. Lockwood.

The books of the said corporation are as follows:

One ledger, one stock ledger, one treasurer's account book, one stock book and record of the proceedings of the directors and stockholders.

SCHEDULE B.

The following is a full true and just account of the capital stock:

Names of Stockholders.	Residence.	No. Shares.	Amount paid.	Amount due.
E. Andrews (Estate of)		36.4646	In full.	None.
Simon Ammaerman	Unknown	1.50	In full.	None.
Daniel Brightman	Unknown.	1.50	In full.	None.
William Baker.	Unknown.	1.50	In full.	None.
Thos. J. Butman (Estate of)		9.1094	In full.	None.
Evelin Bates.	Unknown	2.5728	In full.	None.
Caroline Butman (Estate of)		10.587	In full.	None.
Myron Butman (Estate of)		.7104	In full.	None.
Caroline Butman, 2d (New Caroline Cromwell, Tacoma, Washington)		4.2348	In full.	None.
George Bridge	Unknown.	4.711	In full.	None.
Charles B. Choate (Estate of).		.5	In full.	None.

Names of Stockholders.	Residence.	No. Shares.	Amount paid.	Amount due.
Lyman Cooke & Co.	Unknown.	1.5168	In full.	None.
Ira Coon	Unknown.	.5666	In full.	None.
David M. Catlin	Unknown.	.8	In full.	None.
Delazon Dimon (Estate of)		.4282	In full.	None.
Sarah Demund (Estate of)		.94	In full.	None.
Alfred Edwards & Co.	Unknown.	4.463	In full.	None.
Frederick W. Fowler (Estate of)		75.	In full.	None.
Lyman Fay, Jr., (Estate of)		1.5	In full.	None.
Lyman Fay (Estate of)		9.326	In full.	None.
R. Fitch & Co.,	Unknown.	6.	In full.	None.
Robert M. Gordon (Estate of)		2.758	In full.	None.
E. H. Gibbs & Co.	(Firm dissolved.) (Gibbs deceased.)	3.	In full.	None.
G. R. Gaston (Estate of)		1.4952	In full.	None.
D. & T. Hamilton (Estate of each)		43.9608	In full.	None.
Warren Hawley (Estate of)		1.5	In full.	None.
Martin Hester (Estate of)		1.5	In full.	None.
Thomas Hamilton (Estate of)		163.0892	In full.	None.
Noah Hill (Estate of)		3.	In full.	None.
Nathan Harris	Unknown.	1.5	In full.	None.
Walter Hoyt	Unknown.	1.5	In full.	None.
Mary E. Hamilton (Estate of)		6.5	In full.	None.
Sarah O. Hamilton (Estate of)		13.5	In full.	None.
Daniel Hamilton (Estate of)		52.5654	In full.	None.
John Hamilton (Estate of)		76.	In full.	None.
Amos B. Harris (Estate of)		6.615	\$290.33.	\$40.42
I. Harmon & Co.	(Formerly Buffalo. Now unknown)	7.2	In full.	None.
Isaac Hogle	Unknown.	1.5	In full.	None.
Calvin W. Howe & Co.	Unknown.	9.376	In full.	None.
P. R. Hopkins (Estate of)		4.271	In full.	None.
Nathan Jenkins (Estate of)		7.037	In full.	None.
Epaphroditus Isham	Unknown.	1.5	In full.	None.

4.

Names of Stockholders.	Residence.	No. Shares.	Amount paid.	Amount due.
Caleb Keith.	Unknown.	3.	In full.	None.
Mrs. C. Knowlton (Estate of)		3.60	In full.	None.
Benjamin Lee. (Estate of)		1.5	In full.	None.
Henry Lockwood (Estate of)		1.5	\$25.00	\$50.00
George Lockwood (Estate of)		131.6292	\$8548.80	\$40.42
James C. Lockwood (Estate of)		55.5952	In full.	None. x
W. E. Lockwood (Estate of)		1.709	In full.	None.
Francis G. Lockwood (Estate of)		168.1	In full.	None. ?
Stephen A. Lockwood (Estate of)		5.25	In full.	None.
Ralph Lockwood (Estate of)		3.	In full.	None.
Sarah Lockwood	Milan, O.	2.6318	In full.	None. x
Amelia Lockwood (Estate of)		4.1874	In full.	None.
Ralph M. Lockwood	Milan, O.	1.	In full.	None.
Benjamin Mingus (Estate of)		1.5	In full.	None.
A. & J.S. McClure (Estate of each)		31.3318	In full.	None.
Ebenezer Merry (Estate of)		1.5	In full.	None.
Charles H. Mitchell	Unknown.	3.4292	In full.	None.
Elizabeth Marvin (Estate of)		3.	In full.	None.
David Mills	Unknown.	1,694	In full.	None.
Charlotte Merry (Executrix)	Deceased.	7.5	In full.	None.
John G. Norton	Toledo, O.	1.	In full.	None.
John G. Palmer	Unknown.	1.5	In full.	None.
Francis Potter (Estate of)		3.3848	In full.	None.
John J. Penfield (Estate of)		1.	In full.	None.
Martin L. Ruggles (Estate of)		1.5	In full.	None.
M. T. Rodman (Estate of)		1.	In full.	None.
Whitney Squier (Estate of)		4.5	In full.	None.
E. B. Simmons	Unknown.	1.5	In full.	None.
Harlow E. Simmons	Unknown.	1.5	In full.	None.
Esther L. Saunders (Estate of)		6.	In full.	None.
John Smith (Estate of)		5.1438	In full.	None.

Names of Stockholders.	Residence.	No. Shares.	Amount paid.	Amount due.
Ezra Smith (Estate of)		3.	In full.	None.
Charles Standart, Agent. (Deceased)		30.7358	In full.	None.
Charles Standart (Estate of)		15.	In full.	None.
D. A. Stevens (Estate of)		.4888	In full.	None.
Mary E. Smith	Beloit, Wis.	.3816	In full.	None.
John W. Sisty	Milan, O.	1.3884	In full.	None.
John Stevens (Estate of)		8.9134	In full.	None.
Leonard Seekinger	Unknown.	.88	In full.	None.
Spang & Co.	Unknown.	5.25	In full.	None.
J. D. Smith (Estate of)		85.8	In full.	None.
Horace Stoddard (Estate of)		5.3283	In full.	None.
Maltby Smith	Beloit, Wis.	1.	In full.	None.
Town of Milan		161.8162	In full.	None.
O. G. Tillinghast	Berlin Heights, O.	1.5.	In full.	None.
Kneeland Townsend (Estate of)		3.6134	In full.	None.
William Tillinghast	Unknown.	1.135	In full.	None.
Daniel W. Warren	Unknown.	1.5	In full.	None.
James R. Wilcoxson	Unknown.	2.2428	In full.	None.
Mrs. C. Wheat	Unknown.	.744	In full.	None.
Wm. A. White	Unknown.	4.7548	In full.	None.
S. I. Worcester	Unknown.	1.6458	In full.	None.
Margaret Watson	Unknown	60.	In full.	None.
Wm. Winslow (Estate of)		1.	In full.	None.
H. L. Wilson	Milan, O.	1.	In full.	None.
David J. Wilcoxson (Estate of)		1.	In full.	None.
Total number of shares,-----		1434.0826		

The foregoing list of stockholders is made up from the books of the said corporation and no assignments of stock have been recognized which do not appear upon said books.

The State of Ohio, Erie County, ss.

Maltby Smith, being first duly sworn, says that he is one of the petitioners herein and that the facts stated in said application, and the accounts, inventories, and statements contained therein, are just and true, so far as he knows, or has the means of knowing.

Maltby Smith

Sworn to before me and subscribed in my presence by the said Maltby Smith this 29th day of December, A. D. 1903.

Edgar J. Greene

NOTARY PUBLIC, ROCK COUNTY, WIS.
MY COMMISSION EXPIRES DECEMBER 20, 1904

Notary fees paid by R M Lockwood

97-0-2

COSEY, LEEAS-GOING

The Matter of

Application for the

Resolution of the Board of Directors

Company, a Corporation

Petition for Dissolution



APR 25

ROYA, LEWIS & BROWN

Attorney for Petitioners

Exhibit SE - 25

IN THE COURT OF COMMON PLEAS OF ERIE COUNTY, OHIO.

In the Matter of the Application } Journal Entry.
for the dissolution of the Milan } July 27th, 1904.
Canal Company, a corporation, } Journal 31, Page ____.

The inventory of real and personal property of the Milan Canal Company heretofore dissolved, together with the appraisement thereof by the appraisers heretofore appointed herein, under oath, having been returned, the court being fully advised in the premises, finds said inventory and appraisement in all respects in conformity to law and hereby approves and confirms the same.

And thereupon this cause came on to be heard on the application of the receiver herein for an order to sell the real estate described in the petition, said real estate being described as follows, to wit: Situate in the townships of Milan and Huron, in said County of Erie, and State of Ohio, being all the land with all the rights and appurtenances thereof, owned by said Milan Canal Company, within the bounds of a strip of land one hundred and fifty feet in width, commencing at the southerly end of the canal basin of said Milan Canal Company, near the intersection of Main and Union Streets, in the Village of Milan, in said Erie County, Ohio, and running thence in a northerly direction to the mouth of the Huron River, in the Village of Huron, in said Erie County, and which strip of land is bounded on the west by a line distant fifty feet from and running north parallel with the central line of the railroad of the Wheeling and Lake Erie Railroad

Company, as surveyed, located and in the process of construction on July 12th, ^{a. O.} 1881, between said Villages of Milan and Huron, and which said strip of land is bounded on the east by a line distant one hundred feet from and running north parallel with the said central line of said railroad, as surveyed, located and being constructed as aforesaid, the east and west lines of said strip of land being one hundred and fifty feet apart and running north parallel with each other and with the central line of said railroad, as surveyed, located and being constructed as aforesaid, from the said place of beginning to the said mouth of Huron River. Also all of the so-called Dry Dock and all of the said canal basin and all of the Upper and Lower Locks of said canal, with all the grounds and privileges connected therewith in addition to what is included in said strip of land above described, the said dry dock containing about one and $1/2$ acres, and the said Canal Basin containing about five and $45/100$ acres of land be the same more or less. The said real estate is subject to a lease to the Wheeling and Lake Erie Railroad Company for a term of 99 years commencing on the 12th day of July, A. D. 1881, and ending on the 12th day of July, A. D. 1980, at an annual rental of fifty dollars per year, renewable forever.

And the Court being fully advised in the premises, finds that it is necessary for the receiver herein to sell said real estate, and it is ordered that said receiver shall advertise and sell said real estate at public sale at the east door of the Court House, in the City of Sandusky, County of Erie and State of Ohio on the nineteenth day of September, A. D. 1904, at two o'clock P. M. for cash and shall give due

notice of the time and place of said sale by advertisement in a newspaper of general circulation in said county for four consecutive weeks and said real estate shall not be sold for less than two-thirds the appraised value, the appraised value being eight hundred dollars.

Said receiver shall make due return of said sale.

Exhibit SE - 26

FILED COURT
COMMON PLEAS, OHIO
ERIE COUNTY, OHIO
00 JUL 14 PM 5:00
BARBARA J. JOHNSON
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
ERIE COUNTY, OHIO

BOARD OF PARK COMMISSIONERS,
ERIE METROPARKS
3910 E. Perkins Avenue
Huron, Ohio 44839,

CASE NO. 99-CV-442
JUDGE ANN B. MASCHARI

Plaintiff

-vs-

**AMENDED COMPLAINT FOR
DECLARATORY RELIEF**

KEY TRUST COMPANY OF OHIO, N.A.,
TRUSTEE OF THE TESTAMENTARY
TRUST OF VERNA LOCKWOOD
WILLIAMS
c/o Lee A. Matia, Assistant Vice President
& Trust Manager, Trust Real Estate Dept.
127 Public Square
Cleveland, Ohio 44114-1306

and

BUFFALO PRAIRIE, LTD.
c/o D. Jeffery Rengel
421 Jackson Street
Sandusky, Ohio 44870

and

Vincent R. Otrusina
10719 River Road
Huron, Ohio 44839

and

Dale A. Hohler
10607 River Road
Huron, Ohio 44839

✓ John F. Landoll and/or
Virginia A. Landoll U/A
Co-Trustees Landoll Family Trust
Dated July 24, 1998
12515 River Road
Milan, Ohio 44846

and

✓ Warren R. Jones
12819 River Road
Milan, Ohio 44846

and

✓ Robert C. Bickley
58 Edison Drive
Milan, Ohio 44846

and

Theresa R. Johnston
10501 River Road
Huron, Ohio 44839

and

Eliot F. Fischer
10405 River Road
Huron, Ohio 44839

and

Kim Reid-Fischer
10405 River Road
Huron, Ohio 44839

and

Gary R. Steiner
403 Tecumseh Place
Huron, Ohio 44839

and

Virginia M. Steiner
403 Tecumseh Place
Huron, Ohio 44839

and

Michael P. Meyer
10719 River Road
Huron, Ohio 44839

and

Alice F. Fowler
9903-A River Road
Huron, Ohio 44839

and

Thomas S. Jordan
17841 S. Avon Belden Road
Grafton, Ohio 44044

and

Marsha A. Jordan
17841 S. Avon Belden Road
Grafton, Ohio 44044

and

John J. Joyce
2292 Ogontz Avenue
Lakewood, Ohio 44107

and

Christine Joyce
2292 Ogontz Avenue
Lakewood, Ohio 44107

and

Billy R. Rasnick
9903-D River Road
Huron, Ohio 44839

and

Donna J. Rasnick
9903-D River Road
Huron, Ohio 44839

and

Maria Sperling
9903-E River Road
Huron, Ohio 44839

and

Joseph Jirousek
12700 Reindeer Avenue
Garfield Heights, Ohio 44125

and

Patricia Jirousek
12700 Reindeer Avenue
Garfield Heights, Ohio 44125

and

Richard Rinella
9903-F River Road
Huron, Ohio 44839

and

Carol Rinella
9903-F River Road
Huron, Ohio 44839

and

Huron Lime Company
100 Meeker Street
P.O. Box 451
Huron, Ohio 44839

and

Edwin Coles
10709 River Road
Huron, Ohio 44839

and

Lisa Coles
10709 River Road
Huron, Ohio 44839,

Defendants

For its Amended Complaint, Plaintiff, Board of Park Commissioners, Erie MetroParks (the "Park District"), states as follows:

1. Pursuant to a lease dated July 12, 1881, filed for record August 9, 1881, and recorded in Volume 2, Pages 26, 27 & 28 of Erie County Lease Records (the "Lease"), The Milan Canal Company ("Milan Canal") leased to The Wheeling and Lake Erie Railroad Company ("Wheeling Railroad"), certain real property more particularly described in the Lease (the "Property"). The term of the Lease is 99 years, renewable forever. The annual rent under the Lease is \$50.00. A copy of the Lease is attached as Exhibit A hereto and made a part hereof.

2. The Lease was renewed in 1979 by Wheeling Railroad for an additional term of 99 years.

3. Wheeling Railroad was merged into Norfolk and Western Railway Company ("N & W") in 1988.

4. In 1990, N & W quit-claimed its interest as lessee under the Lease to The Wheeling and Lake Erie Railway Company ("Wheeling Railway"), reserving, however, certain fiber optic easements.¹

5. The rights of Wheeling Railway under the Lease as lessee of the Property and Wheeling Railway's interest in other property were subsequently conveyed to the Park District by a deed filed for record on June 1, 1998 and recorded in Erie Official Records Book 398, Page 51. In the deed, Wheeling Railway reserved the right to run and maintain a railway line over the Property.

6. Since acquiring their leasehold interests in the Property, Wheeling Railway and subsequently the Park District made continuous use of the Property, including the maintenance thereon of ties, bridges, culverts and hundreds of tons of ballast.

7. Until they received an exemption, the Wheeling Railway and subsequently the Park District paid all real estate taxes attributable to the Property.

8. Upon information and belief, certain assets of Milan Canal, including the lessor's interest in the Lease and fee simple title to the Property (subject, however, to the Lease and to the lessee's rights thereunder) were acquired by Defendant Key Trust Company of Ohio, N.A., Trustee of the Testamentary Trust of Verna Lockwood Williams ("Key Trust").

¹ Wheeling Railway is not the same entity as Wheeling Railroad.

9. All or a portion of the Lessor's interest in the Lease and fee simple title to the Property (subject, however, to the Lease and to the lessee's rights thereunder) may have been transferred by Key Trust to Defendant Buffalo Prairie, Ltd. ("Buffalo Prairie").

10. All or a portion of the Lessor's interest in the Lease and fee simple title to the Property (subject, however, to the Lease and to the lessee's rights thereunder) may have been transferred by Buffalo Prairie to one or more of Defendants Vincent R. Otrusina, Dale A. Hohler, Ellen H. Hohler, Rita M. Beverick, Patricia A. Charville, Trustee U/A Patricia A. Charville Trust Dated September 28, 1994, Dorcas P. Gastier, Gerald O.E. Nickoli and Robin L. B. Nickoli, as custodians for Autumn M. Nickoli and Jared J.B. Nickoli under the Ohio Transfers to Minors Act, Douglas Hildenbrand, John F. Landoll and/or Virginia A. Landoll U/A Co-Trustees Landoll Family Trust Dated July 24, 1998, Warren R. Jones, Robert C. Bickley, Teresa R. Johnston, Eliot F. Fischer, Kim Reid-Fischer, Gary R. Steiner, Virginia M. Steiner, Michael P. Meyer, Alice F. Fowler, Thomas S. Jordan, Marsha A. Jordan, John J. Joyce, Christine Joyce, Billy R. Rasnick, Donna J. Rasnick, Maria Sperling, Joseph Jirousek, Patricia Jirousek, Richard Rinella, Carol Rinella, Huron Lime Company, Edwin Coles or Lisa Coles.

11. The Park District is in the process of improving the Property for use as a recreational trail for the transportation of persons and property.

12. When Wheeling Railway acquired its interest in the Lease from N & W, there was confusion as to who was to continue making the rent payments under the Lease, and as a result Wheeling Railway neglected to make the rent payments under the Lease.

13. Wheeling Railway did not receive any notice from the lessor under the Lease that it was in default in its payment of rent.

14. When Wheeling Railway, as transferee of the lessee's rights under the Lease, discovered that rent under the Lease had not been paid, it attempted to determine from Society Bank, predecessor to Key Trust, who was responsible for collecting such rent. However, it received no adequate response. On or about September 29, 1995, Wheeling Railway sent to Society Bank Wheeling Railway's check (the "Wheeling Check") in the amount of \$300.00 for rent for the years 1990 through 1995.

15. The Wheeling Check was not returned to Wheeling Railway by Society Bank.

16. When the Park District purchased the lessee's interest under the Lease from Wheeling Railway, Wheeling Railway neglected to advise the Park District of the tardy rent payments.

17. For over one hundred years prior to 1990, rent under the Lease had been timely paid. The Park District is ready, willing and able to make all payments required under the Lease, including any delinquent rental payments.

18. On September 14, 1999, the Park District mailed to Key Trust a check in the amount of \$550.00, representing the rent payable under the Lease through the year 2000 (the "Park District Check").

19. Disputes have arisen between the Park District and Defendants as to the interpretation of various provisions of the Lease relating to the permitted use of the Property.

20. On September 27, 1999, counsel for Key Trust transmitted to the Park District a letter stating that the Park District Check would be returned and that the Lease had terminated, a copy of which letter is attached as Exhibit B hereto and made a part hereof.

21. Under principals of law and equity the Lease is in full force and effect.

22. Permitting the lessor to terminate the Lease would result in a forfeiture, which the law abhors, and work a substantial injustice upon the Park District.

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

- (a) That a declaratory judgment be entered in favor of Plaintiff declaring that:
 - (i) The Lease is in full force and effect;
 - (ii) Plaintiff is the holder of all of the lessee's rights under the Lease;
 - (iii) Plaintiff is the lessee of the Property pursuant to the Lease;
 - (iv) Any rights of Defendants in or to the Property are subject to the rights of Plaintiff as lessee of the Property;
 - (v) Plaintiff is entitled to sole and exclusive occupancy of the Property; and
 - (vi) The Lease permits Plaintiff to improve and use the Property as a recreational trail.
- (b) Costs of this action.
- (c) Such further relief to which Plaintiff may be entitled.

Respectfully submitted,
BAUMGARTNER & O'TOOLE
Legal Professional Association

By: 

Abraham Lieberman (#0014295)

Dennis M. O'Toole (0003274)

Attorneys for Plaintiff,

Board of Park Commissioners, Erie MetroParks
582 N. Leavitt Road
Amherst, Ohio 44001-1131
Phone: (440) 244-1212

CERTIFICATE OF SERVICE

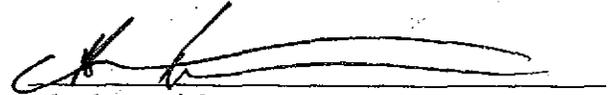
This is to certify that a copy of the foregoing Amended Complaint for Declaratory Relief has been sent by ordinary U.S. mail, postage pre-paid, this 14th day of July, 2000, to Randal L. Strickler, Attorney for Defendant, Key Trust Company of Ohio, N.A., Trustee, etc., 16 West Church Street, P.O. Box 543, Milan, Ohio 44846; J. Anthony Logan, Attorney for Buffalo Prairie, Ltd., assignee of Defendant, Key Trust Company of Ohio, N.A., Trustee, etc., Wright & Logan Co., L.P.A., 4266 Tuller Road, Suite 101, Dublin, Ohio 43017; and to D. Jeffery Rengel, Attorney for Buffalo Prairie, Ltd., assignee of Defendant, Key Trust Company of Ohio, N.A., Trustee, etc., 421 Jackson Street, Sandusky, Ohio 44870.


Abraham Lieberman
Attorney for Plaintiff, Board of Park
Commissioners, Erie MetroParks

TO THE CLERK:

Please serve the summons and a copy of the Amended Complaint for Declaratory Relief upon Defendants Vincent R. Otrusina, Dale A. Hohler, Ellen H. Hohler, Rita M. Beverick, Patricia A. Charville, Trustee U/A Patricia A. Charville Trust Dated September 28, 1994, Dorcas P. Gastier, Gerald O.E. Nickoli and Robin L. B. Nickoli, as custodians for Autumn M. Nickoli and Jared J.B. Nickoli under the Ohio Transfers to Minors Act, Douglas Hildenbrand, John F. Landoll and/or Virginia A. Landoll U/A Co-Trustees Landoll Family Trust Dated July 24, 1998, Warren R. Jones, Robert C. Bickley, Teresa R. Johnston, Eliot F. Fischer, Kim Reid-Fischer, Gary R. Steiner, Virginia M. Steiner, Michael P. Meyer, Alice F. Fowler, Thomas S. Jordan, Marsha A. Jordan, John J. Joyce,

Christine Joyce, Billy R. Rasnick, Donna J. Rasnick, Maria Sperling, Joseph Jirousek, Patricia Jirousek, Richard Rinella, Carol Rinella, Huron Lime Company, Edwin Coles and Lisa Coles., by certified mail, return receipt requested, at the addresses shown in the caption.



Abraham Lieberman
Attorney for Plaintiff, Board of Park
Commissioners, Erie MetroParks

July 14, 2000
G:\Wotas17\17064\declarcomplaint2.wpd

whereof owned by said Milan Canal Company within the bounds of a strip of land One Hundred and Fifty feet (150) in width commencing at the south-
 erty End of the Canal Basin of said Milan Canal Company near the intersec-
 tion of Swaine & Union Streets in the Village of Milan in said Erie County and
 and running thence in a northerly direction to the mouth of the Huron River
 in the Village of Huron in said Erie County and which strip of land is bounded
 on the west by a line distant Fifty (50) feet from and running north
 parallel with the central line of the Rail Road of the Wheeling and Lake Erie
 Rail Road Company as now surveyed located and being constructed
 between said Village of Milan and Huron and which said strip of land
 is bounded on the east by a line distant One Hundred (100) feet from and
 running north parallel with the said central line of said Rail Road the East
 and West lines of said strip of land being One Hundred and Fifty (150)
 feet apart and running north parallel with each other with the central
 line of said Rail Road from the said place of beginning to the said
 mouth of Huron River also all of the so called Dry Dock and all of the
 said Canal Basin and all of the upper and lower Docks of said Canal
 with all the grounds and privileges connected therewith in addition to what
 is included in the said strip of land above described the said Dry Dock
 containing about 1/2 acre and the said Canal Basin containing about
 1/2 acre of land in the same more or less and whereas the Wheeling
 and Lake Erie Rail Road Company in or about said month of April, 1877
 did so enter upon and occupy said Real Estate and right of way and con-
 structed the said line of Rail Road there and ever since then have been and
 now is the Exclusive and undisputed possession thereof under license and
 Authority of said Directors of the Milan Canal Company and under their promise
 and agreement to lease or convey said right of way and Real Estate
 to the said Rail Road Company in due form of law now therefore in
 The Milan Canal Company by its Legally Authorized Directors in consid-
 eration of the Benefits to said Canal Company from the construction and
 maintenance of the said line of Rail Road with its embankments
 and other works in protecting the Property of said Canal Company and
 the adjacent farm which said Canal Company is under legal obligation
 to protect against Damages caused by the overflow of the water of said
 Huron River and for the further considerations hereinafter stated does hereby
 lease demise and fully let unto the Wheeling and Lake Erie Rail Road
 Company its successors and assigns all the Real Estate and right of way
 herein above described and being all the same owned by the said
 Canal Company and have and to hold said Real Estate and
 right of way to said Lessee the Wheeling and Lake Erie Rail Road
 Company its successors and assigns for the term and purposes
 of said Rail Road Company and its rights of way for its
 said Rail Road for the term of fully Nine (9) years commencing
 on the 12 day of July A. D. 1881 and ending on the 12 day of July A. D.
 1890 with the usual covenants to the said Wheeling and Lake Erie Rail
 Road Company its successors and assigns of renewal of their lease for
 upon the same terms herein expressed with all the privileges and appurtenances
 thereto appertaining and their heirs, assigns, executors, administrators and assigns

Sheriff of said Erie County within the bounds of a Strip of
 Land One Hundred and Fifty feet (150) in width commencing at the south-
 ern End of the Canal Bank of said Milan Canal Company near the intersec-
 tion of Crane St. Union Street in the Village of Milan in said Erie County and
 running thence in a westerly Direction to the mouth of the Huron River
 in the Village of Huron in said Erie County and which Strip of Land is bound-
 ed on the west by a line distant Eighty (80) feet from and running north
 parallel with the central line of the Rail Road of the Wheeling and Lake Erie
 Rail Road Company as now surveyed located and being constructed
 between said Villages of Milan and Huron and which said Strip of Land
 is bounded on the east by a line distant One Hundred (100) feet from and
 running north parallel with the said central line of said Rail Road the East
 and West lines of said Strip of Land being One Hundred and Fifty (150)
 feet apart and running North parallel with each other with the central
 line of said Rail Road from the said place of beginning to the said
 mouth of Huron River also all of the so called Dry Dock and all of the
 said Canal Basin and all of the upper and lower Docks of said Canal
 with all the grounds and Privileges connected therewith in addition to what
 is included in the said Strip of Land above described the said Dry Dock
 containing about 1 1/2 acres and the said Canal Basin containing about
 8 1/2 acres of Land to be the same now or here and it here as the Wheeling
 and Lake Erie Rail Road Company in or about said month of April, 1877
 did so enter upon and occupy said Real Estate and right of way and con-
 veyed the said line of Rail Road therein and ever since then have been and
 now is the Exclusive and undisputed possession thereof under License and
 Authority of said Director of the Milan Canal Company and under their promise
 and agreement to lease or convey said Right of way and Real Estate
 to the said Rail Road Company in due form of law. Now therefore First
 The Milan Canal Company by its Legally Authorized Director in consid-
 eration of the Benefits to said Canal Company from the construction and
 maintenance of the said line of Rail Road with its embankments
 and other works in protecting the property of said Canal Company and
 the adjacent farms which said Canal Company is under legal obligation
 to protect against Damages caused by the overflow of the water of said
 Huron River and for the further considerations hereinafter dated do hereby
 lease demise and full let unto the Wheeling and Lake Erie Rail Road
 Company its executors and assigns all the Real Estate and right of way
 herein above described and being all the same owned by the said
 Canal Company. I have and to hold said Real Estate and
 right of way unto said Lessee the Wheeling and Lake Erie Rail Road
 Company its executors and assigns for the use and purposes therein
 expressed of said Rail Road Company and its assigns for the term of years
 therein expressed and for the term of what shall be hereinafter
 expressed.

Rail Road Company in consideration of the premises do hereby for it self its successors and assigns covenant and agree with the said Lessee the Milan Canal Company that the Rail Road and embankments of said Rail Road Company shall be kept in good order and repair during the term of this lease inevitable accidents from storm floods and otherwise excepted and that no waite shall be made or suffered on the said property herein leased while in possession of said Lessee its successors and assigns and that there shall be paid to the said Lessor the Milan Canal Company by the said Lessee the Wheeling and Lake Erie Rail Road Company its successors and assigns at the end of each year from and after the said 12th day of July 1881 during the term of this lease the sum of Fifty Dollars as the annual rental of said Property so leased and demised herein and on the failure of said Lessee its successors and assigns to so maintain and keep said Rail Road for Public transportation and travel and on the abandonment thereof for Railway purposes or on the failure for six months to pay said Annual Rental of Fifty Dollars to the said Lessor after the same become due and payable thereunto shall become void and the said Real Estate shall revert to the said Lessor the Milan Canal Company and the said Lessee its successors and assigns shall thereupon quietly yield to said Lessor the premises thereof in Witness whereof the said parties have hereunto set their names and seals at Milan Ohio on this 12 day of July A. D. 1881

The Milan Canal Company (seal)
 By John S. Norton (seal)
 Francis F. Lockwood (seal)
 John Butman (seal)
 David J. Wilcoxson (seal)
 Darius Jay President (seal)
 Directors of said Milan Canal Company

The Wheeling and Lake Erie Rail Road Company
 By its President W. A. Mack

The foregoing Lease was on this 12th day of July 1881 signed sealed acknowledged & delivered in presence of William O. Lockwood Martin Hartel

The State of Ohio Before me a Notary Public within and for said County of Erie County ss I personally appeared the above named John S. Norton Francis F. Lockwood John Butman David J. Wilcoxson & Darius Jay as Directors of the said Lessee the Milan Canal Company and as such acknowledged the foregoing Lease to be the deed of said Milan Canal Company for the uses and purposes therein expressed and that the signing and sealing thereof is their Official act and deed on said date for and in behalf of said Canal Company on this 12th day of July A. D. 1881
 Wm O. Lockwood Notary Public

Received Aug 9th 1881 Recorded Aug 10th 1881
 L. S. & Co. Notary

RANDAL L. STRICKLER CO., L.P.A.

16 WEST CHURCH STREET • P.O. Box 543 • MILAN, OHIO 44846-0543
(419) 499-4605 • FAX: (419) 499-4606

RANDAL L. STRICKLER

September 27, 1999

Mr. Jonathan R. Granville, Director-Secretary
Erie MetroParks
3910 East Perkins Avenue
Huron, OH 44839

Sent via facsimile and Regular U.S. Mail

Dear Mr. Granville:

As you know, the undersigned represents Key Trust Company, N.A. as Trustee of the Verna Lockwood Williams Trust. Please be advised that Key Trust has been made aware that agents, employees, and/or representatives of the Erie County MetroParks have been trespassing on the property known as the Milan Canal. As you also know, as evidenced by your board tendering a check to Key Trust relative to the rent for the lease between the Wheeling and Lake Erie Railroad and the Milan Canal Company, Key Trust is the successor in interest to the assets of the Milan Canal Company, including but not limited to the real estate upon which your agents, employees, and/or representatives have been trespassing on. Therefore, since you recognize the ownership interest of Key Trust, your trespass can only be considered as intentional.

Please be further advised that it is the position of Key Trust that the lease covenants have been broken, and that the lease between the Wheeling and Lake Erie Railroad, and its successors in interest, and the Milan Canal Company and its successors in interest is null and void. As such, Mike Thacker of Key Trust will be returning the above referenced check to you under separate cover.

Furthermore, it is the understanding of Key Trust that the Erie County MetroParks has accepted the bid of Dale Close and Sons to begin construction of a bike path and/or walking path relative to the Huron River Greenway Project, part of which runs along the Milan Canal property. Please allow this letter to serve as notice to the Erie County MetroParks that Key Trust is asserting its ownership interest in the Milan Canal property. Therefore, Key Trust demands that you cease and desist any and all activities on the Milan Canal property immediately. In the event that you fail to cease these activities, Key Trust will have no other option but to pursue each and every legal remedy available to it to eject you from the property and enjoin you from trespassing, constructing, or the making of any improvement upon the Milan Canal property, as well as seeking damages for your unauthorized trespass upon Key Trust's real estate.

EXHIBIT B

If you wish to discuss this matter further, please do not hesitate to contact the undersigned directly. Thank you for your anticipated cooperation in this matter.

Sincerely,

RANDAL L. STRICKLER CO., L.P.A.

A handwritten signature in black ink, appearing to read 'RLS' followed by a stylized flourish.

Randal L. Strickler
Attorney and Counselor at Law

RLS/dc

cc: Kevin J. Zeiher, Member, Erie County MetroParks Board
Frederick H. Deering, Member, Erie County MetroParks Board
Starr Truscott, Member, Erie County MetroParks Board
The Honorable Judge Beverly McGookey, Erie County Probate Court
Dennis O'Toole, Esq.
Abraham Lieberman, Esq.
Dale Close And Sons
Michael J. Thacker, Esq.

Exhibit SE - 27

FILED
COMMON PLEAS COURT
ERIE COUNTY, OHIO
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BARBARA J. JOHNSON
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
ERIE COUNTY, OHIO

BOARD OF PARK COMMISSIONERS,	:	CASE NO. 99-CV-442
ERIE METROPARKS,	:	
	:	JUDGE ANN B. MASCHARI
Plaintiff	:	
	:	
-vs-	:	PLAINTIFF'S COMBINED MOTION
	:	FOR TEMPORARY RESTRAINING
KEY TRUST COMPANY OF OHIO, N.A.,	:	ORDER AND PRELIMINARY
TRUSTEE OF THE TESTAMENTARY	:	INJUNCTION
TRUST OF VERNA LOCKWOOD	:	
WILLIAMS, et al.,	:	
	:	
Defendants	:	

Pursuant to Rule 65 of the Ohio Rules of Civil Procedure, Plaintiff, Board of Park Commissioners, Erie MetroParks, hereby respectfully moves for orders from this Court granting Plaintiff a Temporary Restraining Order and a Preliminary Injunction against the Defendants (including the Defendants to be added as new parties to this action by the Motion for Leave to File Amended Complaint *Instante* being filed concurrently herewith), collectively, and each of them individually, enjoining Defendants (and anyone acting on their behalf, in association with them or in concert with them) from directly or indirectly: (1) damaging or altering any portion of the property (the "Property") that is covered or alleged to be covered by the lease that is the subject of this action or any improvements thereon; (2) posting, placing or maintaining signs, barriers, barricades, obstructions, equipment or personal property of any kind on the Property; (3) interfering with the use of the Property by Plaintiff or Plaintiff's employees or authorized representatives; (4) interfering with

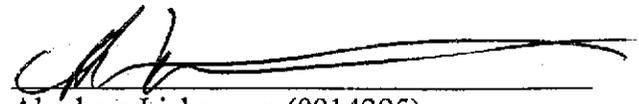
persons using those portions of the Property that Plaintiff opens or has opened to public use. Plaintiff also respectfully requests an Order from this Court requiring Defendants to immediately remove all signs, barriers, barricades, obstructions, equipment and personal property posted or placed upon the Property by Defendants or anyone acting on their behalf, in association with them or in concert with them.

The Temporary Restraining Order and a Preliminary Injunction are necessary to preserve the status quo among the parties pending a decision by this Court on the merits, in order to prevent damage to the Property, and in order to prevent injury to persons. The reasons for this Motion are more fully set forth in the Memorandum in Support of this Motion, which is being filed contemporaneously herewith and is expressly incorporated herein by this reference.

Respectfully submitted,

BAUMGARTNER & O'TOOLE
LEGAL PROFESSIONAL ASSOCIATION

By:



Abraham Lieberman (0014295)
Dennis M. O'Toole (0003274)
Attorneys for Plaintiff, Board of Park
Commissioners, Erie MetroParks
582 North Leavitt Road
Amherst, Ohio 44001-1131
Ph. (440) 244-1212

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Plaintiff's Combined Motion for Temporary Restraining Order and Preliminary Injunction has been sent by ordinary U.S. mail, postage pre-paid, this 14th day of July, 2000, to Randal L. Strickler, Attorney for Defendant, Key Trust Company of Ohio, N.A., Trustee, etc., 16 West Church Street, P.O. Box 543, Milan, Ohio 44846; J. Anthony Logan, Attorney for Buffalo Prairie, Ltd., assignee of Defendant, Key Trust Company of Ohio, N.A., Trustee, etc., Wright & Logan Co., L.P.A., 4266 Tuller Road, Suite 101, Dublin, Ohio 43017; and to D. Jeffery Rengel, Attorney for Buffalo Prairie, Ltd., assignee of Defendant, Key Trust Company of Ohio, N.A., Trustee, etc., 421 Jackson Street, Sandusky, Ohio 44870.



Abraham Lieberman
Attorney for Plaintiff, Board of Park
Commissioners, Erie MetroParks

July 14, 2000
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IN THE COURT OF COMMON PLEAS
ERIE COUNTY, OHIO

BOARD OF PARK COMMISSIONERS,	:	CASE NO. 99-CV-442
ERIE METROPARKS,	:	
	:	JUDGE ANN B. MASCHARI
Plaintiff	:	
	:	
-vs-	:	PLAINTIFF'S MEMORANDUM
	:	IN SUPPORT OF COMBINED
KEY TRUST COMPANY OF OHIO, N.A.,	:	MOTION FOR TEMPORARY
TRUSTEE OF THE TESTAMENTARY	:	RESTRAINING ORDER AND
TRUST OF VERNA LOCKWOOD	:	PRELIMINARY INJUNCTION
WILLIAMS, et al.,	:	
	:	
Defendants	:	

Plaintiff, Board of Park Commissioners, Erie MetroParks, submits this Memorandum in Support of its combined Motion for Temporary Restraining Order and Preliminary Injunction during the pendency of this action against Defendants Key Trust Company of Ohio, N.A., Trustee of the Testamentary Trust of Verna Lockwood Williams, Buffalo Prairie, Ltd., the alleged assignee and real party in interest for Key Trust Company of Ohio, N.A., Trustee of the Testamentary Trust of Verna Lockwood Williams, and the new party defendants sought to be added by the Motion for Leave to File Amended Complaint *Instante* being filed concurrently herewith: Vincent R. Otrusina, Dale A. Hohler, Ellen H. Hohler, Rita M. Beverick, Patricia A. Charville, Trustee U/A Patricia A. Charville Trust Dated September 28, 1994, Dorcas P. Gastier, Gerald O.E. Nickoli and Robin L. B. Nickoli, as custodians for Autumn M. Nickoli and Jared J.B. Nickoli under the Ohio Transfers to Minors Act, Douglas Hildenbrand, John F. Landoll and/or Virginia A. Landoll U/A Co-Trustees Landoll Family

Trust Dated July 24, 1998, Warren R. Jones, Robert C. Bickley, Theresa R. Johnston, Eliot F. Fischer, Kim Reid-Fischer, Gary R. Steiner, Virginia M. Steiner, Michael P. Meyer, Alice F. Fowler, Thomas S. Jordan, Marsha A. Jordan, John J. Joyce, Christine Joyce, Billy R. Rasnick, Donna J. Rasnick, Maria Sperling, Joseph Jirousek, Patricia Jirousek, Richard Rinella, Carol Rinella, Huron Lime Company, Edwin Coles and Lisa Coles.

I. STATEMENT OF THE CASE

The subject of this action is a lease dated July 12, 1881, for a term of ninety-nine (99) years, renewable forever (the "Lease"). The Lease covers at least portions of a strip of land formerly used for train transportation, and which is now in the process of being improved as a parkway for transportation by pedestrians and vehicular traffic and other park purposes (the portions which are subject to the Lease being hereinafter referred to as the "Property"). Plaintiff is the current holder of the tenant's rights under the Lease, and Defendants claim some right to the Property that is subject to the Lease.

Plaintiff filed a Complaint in this case seeking a declaration from this Court that, among other things, the Lease is in full force and effect and that Plaintiff is entitled to sole and exclusive occupancy of the Property.

Recently, some or all of the Defendants or persons acting at their direction and control have taken actions to interfere with the Park District's possession of the Property and the public's use of those portions of the Property that have been opened to the public. Recently, such actions have included posting "keep out" signs on the Property, erecting barriers, barricades and obstructions on the bike trail, interfering with Plaintiff's contractor working on the site, verbally assaulting trail users

and, on July 12, 2000, assaulting one of the Plaintiff's rangers who was in the process of patrolling the Property (Affidavit of Park Ranger Robert Davis, attached hereto).

As is evidenced from the Affidavit of Robert Davis, there is a real danger that, if this Court does not grant the Temporary Restraining Order and Preliminary Injunction sought, the Property may be damaged and/or the Park District's employees and members of the public may be injured.

II. ARGUMENT

A preliminary injunction is designed to preserve "the court's ability to grant effective, meaningful relief after a determination of the merits." *Gobel v. Laing* (1976), 12 Ohio App.2d 93, 94; *City of Cleveland v. Div. 268 of Amalgamated Assn. of Street Electric Railway & Motor Coach Employees of America* (1948), 84 Ohio App. 43, 46 (purpose of a preliminary and temporary injunction or restraining order is to preserve the status quo of the parties and their rights pending final adjudication of the cause upon the merits).

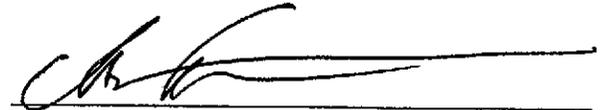
In the instant case, a temporary restraining order and a preliminary injunction are absolutely essential to preserve the status quo among the parties and to preserve the Court's ability to provide a meaningful remedy. Defendants have interfered with the rights of Plaintiff and the public to use the Property and have recently threatened violence (Affidavit of Ranger Robert Davis). There is every indication that the actions of the Defendants will escalate resulting in damage to the Property and/or injury to persons. Defendants, on the other hand, will sustain absolutely no harm or inconvenience by the granting of requested injunctive relief. If the Court determines that the Lease has terminated, Plaintiff will vacate the Leased Property or acquire it by appropriation.

Accordingly, the Temporary Restraining Order and Preliminary Injunction requested by Plaintiff's Motion are absolutely essential to preserve the status quo between the parties and to prevent irreparable harm.

Respectfully submitted,

BAUMGARTNER & O'TOOLE
LEGAL PROFESSIONAL ASSOCIATION

By:



Abraham Lieberman (0014295)

Dennis M. O'Toole (0003274)

Attorneys for Plaintiff, Board of Park

Commissioners, Erie MetroParks

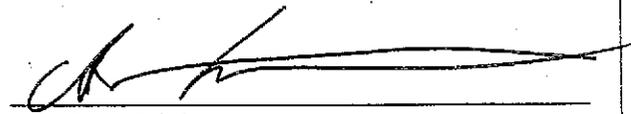
582 North Leavitt Road

Amherst, Ohio 44001-1131

Ph. (440) 244-1212

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Plaintiff's Memorandum of Law in Support of Combined Motion for Temporary Restraining Order and Preliminary Injunction has been sent by ordinary U.S. mail, postage pre-paid, this 14th day of July, 2000, to Randal L. Strickler, Attorney for Defendant, Key Trust Company of Ohio, N.A., Trustee, etc., 16 West Church Street, P.O. Box 543, Milan, Ohio 44846; J. Anthony Logan, Attorney for Buffalo Prairie, Ltd., assignee of Defendant, Key Trust Company of Ohio, N.A., Trustee, etc., Wright & Logan Co., L.P.A., 4266 Tuller Road, Suite 101, Dublin, Ohio 43017; and to D. Jeffery Rengel, Attorney for Buffalo Prairie, Ltd., assignee of Defendant, Key Trust Company of Ohio, N.A., Trustee, etc., 421 Jackson Street, Sandusky, Ohio 44870.



Abraham Lieberman
Attorney for Plaintiff, Board of Park
Commissioners, Erie MetroParks

July 14, 2000
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STATE OF OHIO)
)
COUNTY OF)

SS: **AFFIDAVIT OF ROBERT J. DAVIS**

I, Robert J. Davis, the undersigned, being first duly sworn, depose and state as follows:

1. My name is Robert J. Davis and I am employed by Erie MetroParks as a Park Ranger.
2. On or about 10:10 p.m. on July 12, 2000 while closing gates on Erie MetroParks Huron River Greenways I saw no trespassing signs in the middle of the greenway near the Dupont March exit to the trail. At the entrance to the camp ground I saw more signs and 3 or 4 people with vehicles blocking the trail. As I exited my cruiser to close the gates the subjects began yelling and approached threatening to call the sheriff to evict me from the property. As I proceeded with my closing duties one female demanded I leave and wanted my identification card. She then grabbed at my duty belt in the area of the revolver and was pushed away. She then opened the passenger side door of the cruiser and grabbed items from the front seat and said she had the right to do anything she wanted. She was advised that was government property and to return it which she did reluctantly. I had to lock the cruiser with the keys in the ignition to keep her from re-entering, which cut off communication to the sheriff's office for help. Subjects then left after more threats of calling the sheriff. I advised them that they should call the sheriff's office to make them feel better about the situation. I then called Neil Hemminger from the camp ground nearby to bring keys to get in to cruiser. He arrived at approximately 10:48 p.m. I ~~looked~~^{unlocked} cruiser and left the scene.
3. On March 10, 2000, myself, accompanied by two other park rangers made an examination of part of the park trail adjacent to premises owned by Vincent Otrusina. In the center of the trail premises we observed that a large hole had been dug, approximately six feet deep and ten feet wide,

with the soil placed to the west, east and south which effectively blocked the trail so no vehicles could get through. We then viewed that part of the trail adjacent to premises owned by Edwin and Lisa Coles and observed a large backhoe parked in the center of the trail, which also made the trail impassible.

4. Further affiant sayeth naught.



Robert J. Davis

Sworn to before me and subscribed in my presence this 14th day of July, 2000.



Notary Public

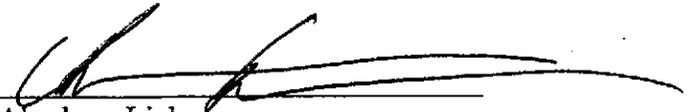
July 14, 2000
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ABRAHAM LIEBERMAN, Attorney At Law
Notary Public - State of Ohio
My commission has no expiration date.
Section 147.03 R.C.

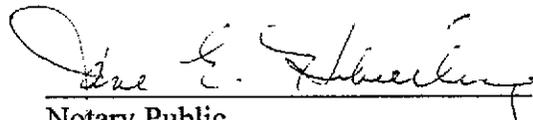
3. It is my understanding that D. Jeffery Rengel represents, not only Buffalo Prairie, Ltd., but also all of the additional Defendants, based upon complaints in forcible entry and detainer Mr. Rengel filed on their behalf with the Huron Municipal Court and the Erie County Court.

4. On July 14, 2000, at 11:35 a.m., I spoke by telephone with Randal Strickler, counsel to Key Trust Company of Ohio, N.A., Trustee of the Testamentary Trust of Verna Lockwood Williams. I informed Mr. Strickler that I intended to file a Motion for Temporary Restraining Order and Preliminary Injunction against Key Trust Company of Ohio, N.A., Trustee of the Testamentary Trust of Verna Lockwood Williams, Buffalo Prairie, Ltd. and various property owners.

5. Further Affiant sayeth naught.


Abraham Lieberman

Sworn to before me and subscribed in my presence this 14th day of July, 2000.


Notary Public

JANE E. HEBERLING
Notary Public, State of Ohio
My Commission Expires November 18, 2004

July 14, 2000
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Exhibit SE - 28

FILED - COURT
 COMMON PLEAS, OHIO
 ERIE COUNTY, OHIO
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 BARBARA J. JOHNSON
 CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
 ERIE COUNTY, OHIO

BOARD OF PARK COMMISSIONERS,	:	CASE NO. 99-CV-442
ERIE METROPARKS,	:	
	:	JUDGE
Plaintiff	:	
	:	
-vs-	:	TEMPORARY RESTRAINING ORDER
	:	
KEY TRUST COMPANY OF OHIO, N.A.,	:	
TRUSTEE OF THE TESTAMENTARY	:	
TRUST OF VERNA LOCKWOOD	:	
WILLIAMS, et al.,	:	
	:	
Defendants	:	

For good cause shown, Plaintiff's Motion for Temporary Restraining Order is hereby granted.
 leave to file Amended Complaint for Declaratory Relief is hereby granted.

IT IS THEREFORE ORDERED that commencing with the filing hereof and for fourteen (14) days hereafter, or until further order of this Court, or by consent of the parties, Defendants and their agents, servants, employees, attorneys and those persons acting on their behalf, in association with them or in concert with them who receive actual notice of this Order, whether by personal service or otherwise, be and are hereby restrained and enjoined from directly or indirectly: (1) damaging or altering any portion of the property (the "Property") that is covered or alleged to be covered by the lease that is the subject of this action or any improvements thereon; (2) posting, placing or maintaining signs, barriers, barricades, obstructions, equipment or personal property of any kind on the Property; (3) interfering with the use of the Property by Plaintiff or Plaintiff's employees or

authorized representatives; (4) interfering with persons using those portions of the Property that Plaintiff opens or has opened to public use.

IT IS FURTHER ORDERED that Defendants remove all signs, barriers, barricades, obstructions, equipment and personal property posted or placed upon the Property by Defendants or anyone acting on their behalf, in association with them or in concert with them.

IT IS FURTHER ORDERED that Plaintiff's Motion for a Preliminary Injunction is set for hearing at 9:00 o'clock a.m. on July 25, 2000.

Because Plaintiff is a political subdivision, no security is required.

IT IS FURTHER ORDERED that copies of this Order be immediately served upon Defendants by the Sheriff or by Plaintiff's counsel or his designee pursuant to the Rules of Civil Procedure, or by any other manner permitted by law. Plaintiffs are restrained from any use of the property until after July 25, 2000 at 9:00 a.m. * At which time
IT IS SO ORDERED. Court shall conduct a hearing.

Date: _____, 2000

Joseph E. Cirigliano
Judge *by Hon. B. Mascher*

July 14, 2000
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*Provided, however, Plaintiff may continue to allow the public to use those portions of the property that have heretofore been opened to public use, such use to be in accordance with Park Regulations.

Exhibit SE - 29

IN THE COMMON PLEAS COURT
OF ERIE COUNTY, OHIO

AUG 9 2000

Board of Park Commissioners,
Erie Metroparks,

Plaintiff

-v-

Key Trust Company of Ohio, NA
Trustee of the Testamentary
Trust of Verna Lockwood
Williams, et.al.,

Defendants

Case#99-V-442

Judge J. Cirigliano

ANSWER TO AMENDED COMPLAINT
AND COUNTERCLAIM

(Jury Demand Endorsed Hereon)

D. Jeffery Rengel (#0029069)

Thomas R. Lucas (#0071916)

421 Jackson Street

Sandusky, Ohio 44870

419-627-0400

J. Anthony Logan

Peggy Kirk Hall

WRIGHT & LOGAN CO., L.P.A.

4266 Tuller Road, Suite 101

Dublin, Ohio 43017

(614) 791-9112

Now come Defendants, Key Trust Company of Ohio, N.A., Trustee of the Testamentary Trust of Verna Lockwood Williams (hereinafter "Key Trust"), Buffalo Prairie, Ltd., Vincent R. Otrusina, Dale A. Hohler, Ellen H. Hohler, Rita M. Beverick, Patricia A. Charville, Trustee U/A/ Patricia A. Charville Trust, Dorcas P. Gastier, Gerald O.E. Nickoli and Robin L.B. Nickoli as custodians for Autumn M. Nickoli and Jared J.B. Nickoli, Douglas Hildenbrand, John F. Landoll and/or Virginia A. Landoll U.A. Co-trustees of Landoll Family Trust, Warren R. Jones, Robert C. Bickley, Theresa R. Johnston, Eliot F. Fischer, Kim Reid-Fischer, Gary R. Steiner, Virginia M. Steiner, Michael P. Meyer, Alice F. Fowler, Thomas S. Jordan, Marsha A. Jordan, John J. Joyce, Christine Joyce, Billy R. Rasnick, Donna J. Rasnick, Maria Sperling, Joseph Jirousek, Patricia Jirousek, Richard Rinella, Carol Rinella, Huron Lime Company, Edwin Coles and Lisa Coles by and through counsel, and make this their Answer to the Amended Complaint of Plaintiff and Counterclaim against Plaintiff.

1. Defendants admit the allegations contained in Paragraphs 1, 2, 9, 10 and 19 of Plaintiff's Amended Complaint.

2. Defendants deny the allegations contained in Paragraphs 3, 4, 5, 7, 14, 15, 16, 17, 18, 20 and 22 of Plaintiff's Amended Complaint for want of knowledge sufficient to form a belief as to the truth or falsity thereof

3. Defendants deny the allegations contained in Paragraphs 6, 11 and 21 of Plaintiff's Amended Complaint.

4. Defendants specifically deny the allegation in Paragraph 8 of Plaintiff's Amended Complaint that their title to the real property at issue is subject to the Lease between the Wheeling and Lake Erie Railroad and the Milan Canal Company and to the lessee's rights thereunder, since by virtue of the express language of the lease, the lease is null and void. However, Defendants admit that they are the successor in interest to the assets of the Milan Canal Company and as such, they hold fee simple title to the subject real property. Furthermore, Defendants deny the remaining allegations contained in Paragraph 8 of Plaintiff's Amended Complaint.

5. Defendants deny for want of knowledge sufficient to form a belief as to the truth or falsity thereof the allegations contained in Paragraph 10 of Plaintiff's Amended Complaint except as to admit that they have not received timely rent payments under the terms of the lease from either N&W or Wheeling Railway for many years.

6. Defendants deny for want of knowledge sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 11 of Plaintiff's Amended Complaint. Furthermore, Defendants states that the express terms of the lease do not require that any notice be given to lessee in the event of default, the lease merely states:

... that there shall be paid to the said Lessor the Milan Canal Company by the said Lessee the Wheeling and Lake Erie Railroad Company, its successors and assigns at the end of each year from and after the said 12th day of July 1881, during the term of this lease the sum of (\$50) Fifty Dollars as the annual rental of said Property so leased and demised herein and on the failure of said Lessee it successors and assigns to so maintain and operate said railroad for public transportation and travel and on the abandonment thereof for railway purposes or on the failure for six months to pay said annual rental of (\$50) Fifty Dollars to the said Lessor after the same became due and payable these presents shall become Void and the Said Real Estate shall revert to the said Lessor the Milan Canal Company and the said lessee its successors and assigns shall thereupon quietly yeild (sic) to said lessor the premises thereof..

Wherefore, defendants pray for judgment in their favor and against plaintiffs finding the lease is null and void and that defendants are entitled to present possession of said subject real property.

FIRST DEFENSE

7. Plaintiff's Amended Complaint is barred by the doctrine of *res judicata*, these issues and matters having been raised, or having a right to be raised, in the cases of *Buffalo Prairie, Ltd. et. al. v. Erie Metroparks, et. al.*, Huron Municipal Court, case#00-CVG-119-A-L and Erie County Court, case#00-CVF-00041 A-S and the validity of the subject lease having already been decided by a court of competent jurisdiction.

SECOND DEFENSE

8. Plaintiff's Amended Complaint for declaration of lease validity is barred by the applicable statute of limitations.

THIRD DEFENSE

9. Plaintiff's Amended Complaint fails to state a claim upon which relief may be granted.

FOURTH DEFENSE

10. The Plaintiff's claims are barred by the doctrine of bar, laches, estoppel and waiver. Therefore, Plaintiff's Amended Complaint should be dismissed.

FIFTH DEFENSE

11. There has been a mis-joinder or non-joinder of parties in this action. Therefore, Plaintiff's Amended Complaint should be dismissed.

SIXTH DEFENSE

12. Plaintiff has failed to join indispensable parties pursuant to Rules 19 and 19.1 of the Ohio Rules of Civil Procedure and has further failed to plead his responses for nonjoinder, and therefore, Plaintiff's Amended Complaint should be dismissed.

SEVENTH DEFENSE

13. Plaintiff has failed to join parties needed for just adjudication and in whose absence complete relief cannot be accorded among the parties hereto. Therefore, Plaintiff's Amended Complaint should be dismissed.

EIGHTH DEFENSE

14. Plaintiff's action is barred by operation of the doctrine of unclean hands. Therefore, Plaintiff's Amended Complaint should be dismissed.

NINETH DEFENSE

15. Plaintiff's claims must fail for lack of contractual agreement between the parties. Therefore, Plaintiff's Amended Complaint should be dismissed.

TENTH DEFENSE

16. Plaintiff has no standing by virtue of its status as "trespasser" since Plaintiff's

grantor, Wheeling and Lake Erie Railway Co., had a mere license which terminated upon said grantor's failure to use said subject real property for railroad purposes. Therefore, Plaintiff's Amended Complaint should be dismissed.

ELEVENTH DEFENSE

17. Plaintiff is barred from the relief it seeks herein because the events necessary to extinguish Plaintiff's interest in the real property at issue have occurred, to wit, the failure to make timely rent payments under the lease; failure to maintain in good order and repair the said Railroad with its embankments and other works in protecting the property of said Canal Company and the adjacent farm against damages caused by the overflow of waters; failure to utilize the property for the uses and purposes of said Railroad; commission of waste; and, abandonment for railway purposes. Therefore, Plaintiff's Amended Complaint should be dismissed.

TWELVETH DEFENSE

18. Plaintiff is barred from the relief it seeks herein by the provisions of the Ohio Marketable Title Act. Therefore, Plaintiff's Amended Complaint should be dismissed.

THIRTEENTH DEFENSE

19. Plaintiff is barred from the relief it seeks herein by the acts of Plaintiff and its predecessors in title to the real property at issue. Therefore, Plaintiff's Amended Complaint should be dismissed.

FOURTEENTH DEFENSE

20. Plaintiff is barred from the relief it seeks herein by the express language contained in the lease which has caused the lease to be terminated. Therefore, Plaintiff's Amended Complaint should be dismissed.

FIFTEENTH DEFENSE

21. Plaintiff's Complaint violates the provisions and requirements of Ohio Civil Rule 11 entitling defendant to sanctions against plaintiff's attorney.

SIXTEENTH DEFENSE

22. Plaintiff's Complaint represents frivolous conduct pursuant to the provisions of Ohio Revised Code §2323.51

SEVENTEENTH DEFENSE

23. This answering defendant further reserves the right to later assert additional affirmative defenses which discovery undertaken in the case deem to be appropriate herein.

COUNTERCLAIM

FIRST CAUSE OF ACTION

24. Defendant-Counterclaimants incorporate all of the allegations, averments, admissions and denials as set forth in the Amended Answer of Defendant-Counterclaimants as a factual basis for the within Counterclaim as if fully rewritten herein.

25. The July 12, 1881, Lease which is the subject of this action contains the following provisions:

In consideration of the benefits to said Canal Company from the construction and maintainence of the said line of Rail Road with its embankments and other works in protecting the property of said Canal Company and the adjacent farm which said Canal Company is under legal obligations to protect against damages caused by the overflow of the waters of said Huron River.

The Wheeling and Lake Erie Railroad Company its successors and assigns for the uses and purposes of said Rail Road Company and its rights of way for its said Rail Road.

Second, and the said Lessee the Wheeling and Lake Erie Rail Road Company in consideration of the premises does hereby for itself its successors and assigns covenant and agree with the said Lessor The Milan Canal Company **that the Rail Road and embankments of said Rail Road Company shall be kept in good order and repair during the term of this lease...**

... that there shall be paid to the said Lessor the Milan Canal Company by the said Lessee the Wheeling and Lake Erie Railroad Company, its successors and assigns at the end of each year from and after the said 12th day of July 1881, during the term of this lease the sum of (50) Fifty Dollars as the annual rental of said Property so leased and demised herein **and on the failure of said Lessee it successors and assigns to so maintain and operate said railroad for public transportation and travel and on the abandonment thereof for railway purposes or on the failure for six months to pay said annual rental of (\$50) Fifty Dollars to the said Lessor after the same became due and payable these presents shall become Void and the Said Real Estate shall revert to the said Lessor the Milan Canal Company and the said lessee its successors and assigns shall thereupon quietly yeild (sic) to said lessor the premises thereof. . (emphasis added.)**

26. The railroad tracks, ties and portions of the ballast along the aforementioned railroad line located upon Defendant-Counterclaimant's property were removed sometime between 1992 and 1994.

27. The above terms and conditions of license under Lease of 1881 have been breached causing the lease/license to terminate and the property at issue to revert back to the fee simple owner. Defendant-Counterclaimants, by its express terms: "on the failure of said Lessee its successors and assigns **to so maintain and operate said railroad** for public transportation and travel **and on the abandonment thereof for railway purposes** ... these presents shall become Void and the Said Real Estate **shall revert** to the said Lessor the Milan Canal Company and the said lessee its successors and assigns shall thereupon quietly yeild (sic) to said lessor the premises thereof (emphasis added.)

28. Defendant-Counterclaimants suffered damages by plaintiff's breach of the lease agreement, including but not limited to suffering waste upon and alteration of said property.

29. Said acts and omissions of plaintiff, by and through its agents and employees, were undertaken with such an element of intentionalness and/or conscious disregard for the rights and safety of defendants such that punitive damages are awardable.

WHEREFORE, Defendant-Counterclaimants respectfully pray that they be granted the following relief by judgment:

A. Compensation for the waste to defendants property caused by the actions of plaintiff and its agents and employees acting on its behalf and/or at its direction and/or while such property was under plaintiff's actual or constructive control. Such waste includes both diminution and alteration of said property. Defendants seek recovery for the costs of repair and replacement of original condition including removal of railroad remnants; and

B. Damages for the fair market value of the loss of use of said property by defendants from 1990 to the present; and,

C. A declaration that the subject 1881 Lease has been terminated by breach of the following conditions of lease as expressly set forth in said Lease: (1) the failure of Plaintiff to pay the annual rent in a timely manner; (2) the failure of Plaintiff to construct and maintain embankments and other works in protecting the property; (3) failure to utilize the property for "the uses and purposes of said Rail Road Company and its rights of way for its said Rail Road"; (4) failure to keep "the Rail Road and embankments of said Rail Road Company ... in good order and repair during the term of this lease"; (5) "that no waiste [sic] shall be made or suffered on the said property herein leased while in possession of said Lessee"; and (6) "abandonment thereof for railway purposes".

D. Alternatively, should this Court decide that prior court decisions have not resolved the issue, a declaration that any and all rights of plaintiff to present possession of the real property at issue have been terminated by the expiration of the Lease:

E. An Order requiring plaintiff to cease and desist any and all activities upon defendants' real estate;

F. An Order stating that defendants are entitled to the sole and exclusive occupancy of the real estate at issue:

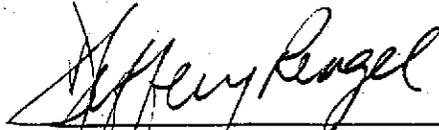
G. An Order requiring plaintiff to repair and/or replace the property into its original condition prior to the use of plaintiff and its predecessors-in-interest including removal of remnants of railroad and plaintiff's operations:

H. An award of punitive damages as well as defendants's attorneys fees;

I. Costs of the within cause of action; and

J. Such other and further relief which this Honorable Court deems fair and equitable to which defendants may be entitled.

Respectfully submitted:



D. Jeffery Rengel (#0029069)
Thomas R. Lucas (#0071916)
421 Jackson Street
Sandusky, Ohio 44870
419-627-0400

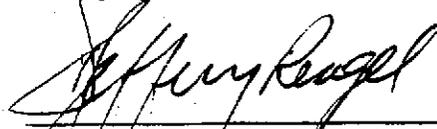
-and-

J. Anthony Logan
Peggy Kirk Hall
WRIGHT & LOGAN CO., L.P.A.
4266 Tuller Road, Suite 101
Dublin, Ohio 43017
(614) 791-9112

Attorneys for Defendants

JURY DEMAND

Defendants hereby request a trial by jury on all issues triable to a jury.



D. Jeffery Rengel (#0029069)
Thomas R. Lucas (#0071916)

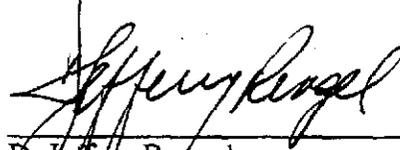
-and-

J. Anthony Logan
Peggy Kirk Hall

Attorneys for Defendants

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Amended Answer and Counterclaim was delivered by placing the same in ordinary U.S. mail, postage paid, to Abraham Lieberman, Esq., at Baumgartner & O'Toole, 582 North Leavitt Road, Amherst, OH 44001, this 8th day of August, 2000.



D. Jeffrey Rengel
RENGEL LAW OFFICE
421 Jackson Street
Sandusky, Ohio 44870
(419) 627-0400

Exhibit SE - 30

RECEIVED

AUG 14 2000

IN THE COURT OF COMMON PLEAS ERIE METROPARKS
ERIE COUNTY, OHIO

BOARD OF PARK COMMISSIONERS,
ERIE METROPARKS

Plaintiff

-vs-

KEY TRUST COMPANY OF OHIO, N.A.,
TRUSTEE OF THE TESTAMENTARY
TRUST OF VERNA LOCKWOOD
WILLIAMS, ET AL.

Defendants

CASE NO. 99-CV-442

JUDGE JOSEPH E. CIRIGLIANO

**PLAINTIFF'S REPLY TO
DEFENDANTS' COUNTERCLAIM**

Plaintiff, Board of Park Commissioners, Erie MetroParks, for its Reply to the Counterclaim of Defendants, Key Trust Company of Ohio, N.A., Trustee of the Testamentary Trust of Verna Lockwood Williams ("Key Trust"), Buffalo Prairie, Ltd. ("Buffalo"), Vincent R. Otrusina, Dale A. Hohler, Ellen H. Hohler, Rita M. Beverick, Patricia A. Charville, Trustee U/A/Patricia A. Charville Trust, Dorcas P. Gastier, Gerald O. E. Nickoli and Robin L. B. Nickoli as custodians for Autumn M. Nickoli and Jared J. B. Nickoli, Douglas Hildenbrand, John F. Landoll and/or Virginia A. Landoll U.A. Co-trustees of Landoll Family Trust, Warren R. Jones, Robert C. Bickley, Theresa R. Johnston, Eliot F. Fischer, Kim Reid-Fischer, Gary R. Steiner, Virginia M. Steiner, Michael P. Meyer, Alice F. Fowler, Thomas S. Jordan, Marsha A. Jordan, John J. Joyce, Christine Joyce, Billy R. Rasnick, Donna J. Rasnick, Maria Sperling, Joseph Jirousek, Patricia Jirousek, Richard Rinella, Carol Rinella, Huron Lime Company, Edwin Coles and Lisa Coles, states as follows:

24. In response to Paragraph 24 of the Counterclaim, Plaintiff incorporates all of the allegations, averments, and denials contained in Plaintiff's Amended Complaint, and further states that no additional response is required. To the extent an additional response to Paragraph 24 is required, Plaintiff denies the allegations of Paragraph 24 of the Counterclaim.

25. Plaintiff denies the allegations of Paragraph 25 of the Counterclaim. Replying further, Plaintiff states that the Lease speaks for itself, and that Defendants have misquoted the provisions of the Lease.

26. Plaintiff denies the allegations of Paragraph 26 of the Counterclaim. Replying further, Plaintiff states that it is unclear from Defendants' allegation what portion of the railroad line Defendant-Counterclaimant claims title to and which Defendant-Counterclaimant is making such claim.

27. Plaintiff denies the allegations of Paragraph 27 of the Counterclaim.

28. Plaintiff denies the allegations of Paragraph 28 of the Counterclaim.

29. Plaintiff denies the allegations of Paragraph 29 of the Counterclaim.

30. Plaintiff denies all other allegations of the Counterclaim not specifically admitted herein.

FIRST AFFIRMATIVE DEFENSE

31. The Lease is still in full force and effect and, by the terms thereof, Plaintiff, as the lessee thereunder, has the sole and exclusive right to possession and use of the property covered by the Lease.

SECOND AFFIRMATIVE DEFENSE

32. Defendants are not entitled to terminate the Lease or Plaintiff's rights thereunder, because Defendants failed to demand payment of the rent and performance of the Lease obligations. *Eichenlaub v. Neil* (1895), 10 OCC 427, 6 OCD 567, 3 O Dec 365, *aff'd* 56 OS 782; *Smith v. Whitbeck* (1862), 13 Ohio st. 471; *Hulett v. Fairbanks* (1883), 40 Ohio St. 233.

THIRD AFFIRMATIVE DEFENSE

33. Defendants' Counterclaim fails to state a claim upon which relief may be granted.

FOURTH AFFIRMATIVE DEFENSE

34. Defendants are barred from the relief they seek by the doctrines of waiver, estoppel and laches.

FIFTH AFFIRMATIVE DEFENSE

35. Defendants are barred from the relief they seek by the doctrine of unclean hands.

SIXTH AFFIRMATIVE DEFENSE

36. Plaintiff has the right to possess substantial portions of the land formerly actively used by The Wheeling and Lake Erie Railway Company for train traffic, not through the Lease, but through title that Erie MetroParks acquired by way of a deed from The Wheeling and Lake Erie Railway Company filed for record on June 1, 1998 and recorded in Erie Official Records Book 398, Page 51 (the "Deed").

SEVENTH AFFIRMATIVE DEFENSE

37. Plaintiff has the right to possess substantial portions of the land formerly actively used by The Wheeling and Lake Erie Railway Company for train traffic, not through the Lease, but through easements acquired by way of the Deed.

EIGHTH AFFIRMATIVE DEFENSE

38. Plaintiff has the right to possess substantial portions of the land formerly actively used by The Wheeling and Lake Erie Railway Company for train traffic, not through the Lease, but as the result of the initiation by Erie MetroParks of a "quick take" action in the Erie County Court of Common Pleas styled Board of Park Commissioners, *Erie MetroParks v. Wikel Farms Ltd., et al.*, Erie County Court of Common Pleas Case No. 99CV140.

NINTH AFFIRMATIVE DEFENSE

39. Plaintiff remains ready, willing and able to pay all rent that may be due and owing, and in fact has tendered such rent.

TENTH AFFIRMATIVE DEFENSE

40. Equitable principles preclude Defendants from obtaining the relief requested.

ELEVENTH AFFIRMATIVE DEFENSE

41. Plaintiff reserves the right to later assert additional affirmative defenses to the Counterclaim should it be discovered that such defenses are appropriate.

Respectfully submitted,

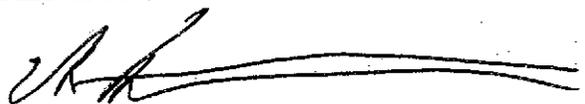
BAUMGARTNER & O'TOOLE
LEGAL PROFESSIONAL ASSOCIATION

By: 

Abraham Lieberman (0014295)
Dennis M. O'Toole (0003274)
Attorneys for Plaintiff, Board of Park
Commissioners, Erie MetroParks
502 Broadway
Lorain, Ohio 44052
Ph. (440) 244-1212

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Plaintiff's Reply to Defendants' Counterclaim has been sent by ordinary U.S. mail, postage pre-paid, this 11th day of August, 2000, to D. Jeffery Rengel and Thomas R. Lucas, Attorneys for Defendants, 421 Jackson Street, Sandusky, Ohio 44870; and to J. Anthony Logan and Peggy Kirk Hall at Wright & Logan Co., L.P.A., Attorneys for Defendants, 4266 Tuller Road, Suite 101, Dublin, Ohio 43017.



Abraham Lieberman
Attorney for Plaintiff, Board of Park
Commissioners, Erie MetroParks

August 10, 2000
G:\Wolas17\17064\reply2-countclaim.wpd

Exhibit SE - 31

ORIGINAL

IN THE COMMON PLEAS COURT OF ERIE COUNTY, OHIO

**Board of Park Commissioners,
Erie Metroparks,**

Plaintiff,

-vs-

**Key Trust Company of Ohio, NA
Trustee of the Testamentary
Trust of Verna Lockwood
Williams, et. al.,**

Defendants.

Case No. 99CV442

Judge Joseph Cirigliano

Judgment Entry

FILED COURT
COMMON PLEAS, OHIO
ERIE COUNTY, OHIO
NOV 10 - 7 PM 3:51
BARBARA J. JOHNSON
CLERK OF COURTS

--oOo--

This case was tried to the Court on August 23 and 24, 2000. One issue before the Court is the validity of a lease ("Lease") originally entered into by the predecessors-in-interest to the parties herein, the owner/lessor, Milan Canal Company and the lessee Wheeling & Lake Erie Railroad Company ("Wheeling Railroad"). The second issue before the Court is whether Plaintiff has acquired any ownership interest in the property at issue by virtue of a quitclaim deed from the Wheeling Railroad. The third issue the Court has been asked to decide is whether Plaintiff has gained any interest in the property at issue by adverse possession. The fourth issue the Court has been asked to decide is the extent of the property covered by the Lease.

Findings of Fact

The Lease was originally signed on July 12, 1881, and is recorded with the Erie County Recorder's Office, and entered into evidence by stipulation. Pursuant to the Lease, the Milan Canal Company leased to the Wheeling Railroad certain land (the "Leased Property"), which is described in the attached Exhibit A. The term of the Lease is 99 years, renewable forever, and the annual rent is Fifty Dollars (\$50.00). The Lease further requires that the lessee, its successors, and assigns, maintain and operate a railroad for public transportation and travel. Upon the abandonment of the Leased Property for railway purposes, or upon the failure for six months to pay the stated annual rental of fifty dollars (\$50.00) to the lessor after the same became due and payable, the Lease becomes void and the real estate reverts to the lessor. The Lease was renewed for its second 99-year term in 1980.

The Leased Property was ultimately conveyed to Key Trust Company of Ohio, NA, Trustee of the Testamentary Trust of Verna Lockwood Williams ("Key Trust"). It is undisputed that the Railroad failed to pay annual rental for the Leased Property after 1989 until a check for \$300.00 was transmitted to Key Trust, Trustee for Verna Lockwood Trust, in September 1995. The payment was rejected.

By 1988, the Norfolk and Southern Railway Company, predecessor in interest to the Wheeling Railroad, filed an abandonment of service application before the Interstate Commerce Commission with respect to the Leased Property, which was granted. Thereafter, the Railroad

removed railroad tracks and ballast from the Leased Premises, making the property unfit for the purpose of operating a railway. In October 1995, the Wheeling Railroad transferred its interest in the Leased Property to Plaintiff by quitclaim deed, which was recorded on June 1, 1998.

In the year 2000, Defendant Key Trust, transferred all of its right, title, and interest as successor-in-interest to the original lessor, to the remaining Defendants.

Having assessed the credibility of the witnesses who testified at trial and the reliability of the documents submitted into evidence, the Court finds that the Milan Canal Company, the predecessor in title to Defendant Key Trust Company of Ohio, NA, Trustee ("Key Trust"), acquired its real property interests to construct the canal (the "Milan Canal Property") solely by way of two instruments and no others:

(a) A conveyance from Kneeland Townsend dated May 10, 1838, recorded May 29, 1852, in Volume 10 of Deeds, Page 23 of Erie County Records (the "Townsend Conveyance"); and

(b) A conveyance from Ebeneser Merry dated April 21, 1838, recorded October 29, 1852, in Volume 10 of Deeds, Page 25 of Erie County Records (the "Merry Conveyance").

The Milan Canal Property consisted of a roughly three mile long corridor of property the northern terminus being known as Lock No. 1, which was located where the Milan Canal joined the Huron River on property now owned by Wikel Farms, Ltd., just north of Mason Road, in

Section 2, Milan Township, Erie County, Ohio. Neither Kneeland Townsend nor Ebeneser Merry conveyed to the Milan Canal Company any interest in real property north of Lock No. 1.

The only lands owned by the Milan Canal Company at the time the Lease was executed lay within the boundaries of the Kneeland Townsend property and the Ebeneser Merry property, neither of which lay north of Lock No. 1.

Conclusions of Law

It is axiomatic that a seller cannot transfer any greater interest in land than that which the seller possesses. In the instant case, the Wheeling Railroad had a leasehold interest in the property at issue, which is evidenced by Exhibit A. The Court hereby finds the lease, which was entered into by Wheeling Railroad and Key Trust, was a valid lease. The Court finds that the Lease was materially breached by the Wheeling Railroad for the nonpayment of rent for a period of more than six months, and because the property was abandoned for the purpose of operating a railroad. The lease, thereby, became void by its clear terms. The Court finds that there was no evidence presented by either party to show that the parties to the Lease did not intend an ordinary and common meaning to be given to the words contained therein, or that there was any mistake by either party in entering into the Lease. See Hinman v. Barnes 146 Ohio St. 497 (1946); and Greenfield v. Aetna Cas. Co., 75 Ohio App. 122 (1944).

Further, the Court finds that the Lease, which was for a term of 99 years and renewable forever, did not confer a fee simple estate under Ohio law to the Wheeling Railroad because it was aware that its interest could be forfeited to the lessor upon its breach of the lease covenants.

Therefore, the fee simple remains in the lessor, its heirs, devisees, or assigns. See Rawson v. Brown 104 Ohio State 548 (1922); and Quill v. R.A. Investment Corporation 124 Ohio App.3d 653 (1997).

Finally, the Court finds that the Plaintiff has not met its burden to establish any interest in the property at issue by adverse possession. To prevail on a claim for adverse possession a claimant must establish by a preponderance of the evidence that his possession of the land was open, notorious, exclusive, adverse, hostile, and continuous for more than twenty-one years. See Coleman v. Penndel Co. 123 Ohio App.3d 125 (1997); Demmitt v. McMillan (1984), 16 Ohio App.3d 138. The use is not adverse if it is either by permission, or accommodation for the owner Hindall v. Martinez (1990), 69 Ohio App.3d 580.

In the instant case, it is undisputed that the lessee and its successors maintained railroad operations and train traffic and paid rent while maintaining the Leased Property from the inception of the Lease until sometime in the 1980's, and then filed for abandonment of service in 1988. The Railroad and its predecessors-in-interest did not hold the Leased Property adverse to the lessor's interests until, at the latest, 1989, when it stopped paying rent.

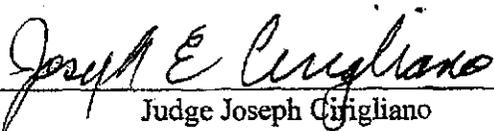
The Court finds that it was not until sometime after the Plaintiff acquired its quitclaim deed from the Wheeling Railroad in October 1999, that Plaintiff entered the Leased Premises adversely to the lessor, its successors, and assigns-in-interest. The Court finds that the Railroad

was in active operations, paying rent, and otherwise complying with the Lease terms as late as 1986, or later, which was well within the last twenty-one years.

The description of the Leased Property in the Lease unambiguously describes it as consisting of all lands then owned by the Milan Canal Company within a 150 foot wide corridor from approximately the intersection of Maine and Union Streets in the Village of Milan northerly to the north of the mouth of the Huron River. The only lands owned by the Milan Canal Company at the time the Lease was executed lay within the boundaries of the Kneeland Townsend property and the Ebeneser Merry property, neither of which lay north of Lock No. 1. Therefore, the Leased Property extends from the southern terminus of the old Milan Canal at or near the southerly end of the Milan Canal basin in the Village of Milan to its northerly terminus at the Huron River at the former location of Lock No. 1 on premises now owned by Wikel Farms, Ltd. immediately north of Mason Road in Section 2, Milan Township, Erie County.

Judgment in favor of Defendants and against Plaintiff, except as to the issue of the extent of the property covered by the Lease.

IT IS SO ORDERED.



Judge Joseph Cifigliano

cc: Abraham Lieberman
Dennis O'Toole Peggy Kirk
Randall Strickler Anthony Logan
Darrel Bilancini Jeffrey Rengel

EXHIBIT A

All those lands within a one hundred fifty (150) foot wide corridor conveyed to the Milan Canal Company by Kneeland Townsend and Ebeneser Merry by instruments dated May 10, 1838 and April 21, 1838, respectively, and recorded, respectively on May 29, 1852, in Volume 10 of Deeds, Page 23 of Erie County Records and October 29, 1852, in Volume 10 of Deeds, Page 25 of Erie County Records, which lands have a northerly boundary at Lock No. 1 of the old Milan Canal, which lock was located immediately north of Mason Road on lands now owned by Wikel Farms, Ltd. at or near the intersection of the Milan Canal with the Huron River, and extending southerly to the Canal's turning basin in the City of Milan, Ohio.

Exhibit SE - 32

FILED
COURT OF APPEALS
ERIE COUNTY, OHIO
2001 SEP 14 AM 8:55
BARBARA J. JOHNSON
CLERK OF COURTS

IN THE COURT OF APPEALS OF ERIE COUNTY

Board of Park
Commissioners, Erie
Metroparks

Court of Appeals No. E-00-068

Trial Court No. 99CV442

Appellee/
Cross-Appellant

v.

Key Trust Company of
Ohio, NA Trustee of the
Testamentary Trust of
Verna Lockwood Williams,
et al.

DECISION AND JUDGMENT ENTRY

Appellants/
Cross-Appellees

Decided: SEP 14 2001

* * * * *

Abraham Lieberman and Dennis M. O'Toole,
for appellee/cross-appellant.

D. Jeffery Rengel, Thomas R. Lucas,
Anthony Logan and Peggy Kirk Hall,
for appellants/cross-appellees.

* * * * *

SHERCK, J. This is an appeal from a declaratory
judgment issued by the Erie County Court of Common Pleas in a

J 21/714
9/14/01
C.A.

property dispute. Because the trial court's determination concerning the scope of the lease in question was proper, we affirm that portion of the court's decision. However, with respect to the court's determination that a prior breach of the terms of the lease rendered it void, we reverse.

In 1827, the Ohio General Assembly chartered the Milan Canal Company to construct and operate a canal from Milan, Ohio, to Lake Erie. In due course, the canal company acquired land and dug a canal between Milan and "Lock 1," located where the navigable portion of the Huron River intersected the canal.

In 1881, the Milan Canal Company leased a one hundred fifty foot wide corridor through its property to the Wheeling and Lake Erie Rail Road Company, upon which to construct and operate a railroad. The lease was for ninety-nine years, renewable "forever." The lease required an annual rental fee of \$50 and also provided that,

"*** on the failure of said Lessee *** to so maintain and operate said Rail Road for public transportation and travel and on the abandonment thereof for railway purposes or on the failure for Six months to pay said annual rental of (\$50) Fifty Dollars to the said Lessor after the same became due and payable these presents shall become void and the said real estate shall revert to the said Lessor the Milan Canal Company ***."

It is undisputed that during the next one hundred years the railroad, in one corporate guise or another,¹ maintained and

operated a line on the leased corridor. In 1979, the railroad's lease was renewed for another ninety-nine years. In 1995, the Wheeling and Lake Erie Railway Company sold the lease to appellee/cross-appellant, Board of Commissioners, Erie Metroparks ("appellee"). Appellee intended to convert the property to a recreational hiking/bicycling trail.

In 1904, the Milan Canal Company was dissolved and its assets purchased by Stephen Lockwood. Stephen Lockwood's interests in the property eventually devolved to the testamentary trust of Verna Lockwood Williams and its trustee, Key Trust Company of Ohio. Following the purchase of the railroad's lease interest by appellee, a dispute arose between the trust and appellee concerning the continued validity of the lease.

On September 30, 1999, appellee initiated a declaratory judgment action against the Lockwood Williams trust. Appellee sought a declaration that the 1881 lease remains in effect, that the property may be properly used for a recreational trail, and that the scope of the lease be determined. The trust answered appellee's complaint, denying the validity of the lease and counterclaiming for a quiet title.

During the pendency of this case, the Lockwood Williams trust sold its interest in the disputed land to appellant/cross-appellee Buffalo Prairie, Ltd. Buffalo Prairie, in turn, began

to convey portions of the land at issue to adjacent property owners. With this development, appellee amended its complaint to include not only the Lockwood Williams trust, but Buffalo Prairie and thirty-two named adjacent property owners ("appellants").²

This matter then proceeded to a bench trial. At the trial, appellants presented evidence that at the time appellee acquired its interest in the property, the railroad had been several years delinquent in paying its rent. Appellants also presented evidence that rail traffic on the line had ceased in the mid-1980s and that the track and the railroad infrastructure had been allowed to deteriorate since then. Indeed, the railroad had years previously filed a notice of route abandonment with the former Interstate Commerce Commission. Appellants argued that this behavior constituted a failure to maintain the property, an abandonment of the property for "railway purposes" and a default in rent. Appellants asserted that such multiple breaches of the lease caused the lease to become "void". The real estate should, therefore, "revert" to appellants as successors of the Milan Canal Company.

Appellee responded with testimony that both the railroad and appellee attempted to remedy the rent default, but that the Lockwood Williams trust had rejected the tender. As far as abandonment was concerned, appellee pointed out that "abandonment" is governed by Ohio property law, not federal

transportation policy. Moreover, it was undisputed that neither the trust, nor anyone else, had made a demand for rent or performance of any other term of the lease. Appellee argued that under the common law of leases, such a demand is essential before any default may be declared.

Alternatively, appellee argued that even if it was determined that the 1881 lease was void, not all of the appellants were entitled to a quiet title. This is so, according to appellee, because the Milan Canal Company did not have clear title to the full length of the canal. The 1881 lease described a one hundred fifty foot corridor along the full length of the canal, but conveyed only that portion "owned by said Milan Canal Company." At trial, evidence showed that, in the disputed area, the canal company was deeded land only from Kneeland Townsend and Ebeneser Merry. Since the canal company could lease to the railroad only so much as it owned, appellants asserted that the land at issue should be confined to that portion once owned by Townsend and Merry -- a section of land substantially less than which appellants claim.

At the conclusion of the trial, the court found that the railroad had materially breached the terms of the lease by failing to promptly pay rent and that it had abandoned the property for purposes of operating a railroad. By the court's

interpretation, the lease then became void on its own terms. Consequently, the railroad's conveyance to appellee was ineffective.

Concerning the scope of the lease, the court found that the canal company obtained land only from Townsend and Merry and, consequently, set the boundaries of the land derived from the canal company as extending from the canal basin in Milan to "Lock 1" where the canal joins the Huron River.

From this judgment, appellants now bring this appeal, setting forth the following six assignments of error:

"I. THE TRIAL COURT ERRED WHEN IT ALLOWED EVIDENCE REFUTING LESSOR-APPELLANTS' TITLE TO THE LEASED PROPERTY IN A DECLARATORY JUDGMENT ACTION SEEKING TO DETERMINE LEASE VALIDITY.

"II. THE TRIAL COURT ABUSED ITS DISCRETION IN ALLOWING APPELLEE TO TRY CLAIMS NOT RAISED IN ITS AMENDED COMPLAINT OVER APPELLANTS' OBJECTIONS.

"III. THE TRIAL COURT ERRED IN REFORMING THE LEASE PROPERTY DESCRIPTION WHERE INTENT OF THE PARTIES IS PRESUMED TO RESIDE IN THE LEASE LANGUAGE AND THE COURT FOUND THE LEASE UNAMBIGUOUS.

"IV. THE TRIAL COURT CORRECTLY DECIDED THAT THE LEASE WAS BREACHED BEFORE ASSIGNMENT OF LESSEE'S INTEREST TO PLAINTIFF-APPELLEE RESULTING IN REVERSION TO LESSOR-APPELLANT BUT ERRED WHEN IT THEN REFORMED THE LEASED PROPERTY WITHOUT CLEAR AND CONVINCING EVIDENCE OF INTENT AND MUTUAL MISTAKE OF FACT BY BOTH ORIGINAL SIGNATORIES TO THE LEASE.

"V. THE TRIAL COURT ERRED, AS A MATTER OF LAW, WHEN IT REFORMED THE LEASED PROPERTY WITHOUT EVIDENCE OF THE ORIGINAL PARTIES'

CONDUCT, COURSE OF DEALINGS BETWEEN THEM AND METHOD OF HANDLING THE TRANSACTION IN QUESTION.

"VI. THE JUDGMENT OF THE TRIAL COURT REGARDING THE PROPERTY DESCRIPTION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

Appellees cross-appeal with the following seven assignments of error:

"I. THE TRIAL COURT COMMITTED PREJUDICIAL ERROR IN FAILING TO RULE THAT THE DEFENDANTS ACQUIRED NO INTEREST IN THE PARKWAY FROM KEY TRUST.

"II. THE TRIAL COURT COMMITTED PREJUDICIAL ERROR IN FAILING TO RULE THAT NONE OF THE PARKWAY CONSTITUTES LEASED PROPERTY.

"III. THE TRIAL COURT COMMITTED PREJUDICIAL ERROR IN HOLDING THAT THE LEASE AT ISSUE HAD TERMINATED BECAUSE THE LEASED PROPERTY WAS NOT BEING USED FOR THE PURPOSES REQUIRED BY THE LEASE.

"IV. THE TRIAL COURT COMMITTED PREJUDICIAL ERROR BY FAILING TO ADEQUATELY CONSIDER PRINCIPLES OF EQUITY IN ITS DETERMINATION THAT THE LEASE AT ISSUE HAD TERMINATED.

"V. THE TRIAL COURT COMMITTED PREJUDICIAL ERROR BY FAILING TO ADEQUATELY CONSIDER THE DOCTRINES OF ESTOPPEL AND WAIVER IN ITS DETERMINATION THAT THE LEASE AT ISSUE HAD TERMINATED.

"VI. BECAUSE THE LESSORS UNDER THE LEASE HAD NOT DEMANDED PAYMENT OF THE RENT, THE TRIAL COURT COMMITTED PREJUDICIAL ERROR IN ITS DETERMINATION THAT THE LEASE AT ISSUE HAD TERMINATED.

"VII. BECAUSE THE LESSORS UNDER THE LEASE HAD NOT DEMANDED PERFORMANCE OF THE LEASE OBLIGATIONS, THE TRIAL COURT COMMITTED

PREJUDICIAL ERROR IN ITS DETERMINATION THAT
THE LEASE AT ISSUE HAD TERMINATED."

I

All of appellants' assignments of error ultimately attack the trial court's decision limiting the leased property to Milan Canal Company lands obtained from Ebeneser Merry and Kneeland Townsend. None of these assignments of error are well-taken.

In their third, fourth and fifth assignments of error, appellants claim that the trial court, for various reasons, erred in reforming the lease agreement. The assignments are fallacious in their premise. Reformation of a contract is an equitable remedy whereby a court modifies an instrument which, due to a mutual mistake of the original parties, does not reflect the intent of those parties. Mason v. Swartz (1991), 76 Ohio App.3d 43, 50, citing Greenfield v. Aetna Casualty (1944), 75 Ohio App. 122, 128.

Although the metes and bounds description contained in the 1881 lease describes a one hundred fifty foot corridor for the full length of the canal, the lease limits the conveyance to property "owned by" the canal company. The trial record shows that the Milan Canal Company acquired property only from Townsend and Merry. The trial court ruled that this property alone was the subject of the lease. Consequently, the court never modified

the 1881 lease. Since there was no reformation of the lease, appellants' arguments concerning an improper reformation of the contract are without merit. Accordingly, appellants' Assignments of Error Nos. III, IV and V are not well-taken.

The same holds true for appellants' manifest weight argument contained in their sixth assignment of error. The only competent, credible evidence presented at trial was that the canal company obtained property solely from Townsend and Merry. On such evidence, we cannot say that the trial court's decision to limit the lease to such property was unsupported by the evidence. See Vogel v. Wells (1991), 57 Ohio St.3d 91, 96. Accordingly, appellants' sixth assignment of error is not well-taken.

With respect to appellants' first and second assignments of error, appellants maintain that the trial court should not have permitted appellee's attack on their title since the complaint contained no notice of a claim against appellants' title. Again, appellants mischaracterize the proceedings. Appellee asked for a declaration of rights under the 1881 lease. The lease limited its conveyance to property owned by the canal company. Thus, a determination of what property the canal company owned was in order. The exercise was not an attack on appellants' title; rather, it was necessary to determine the

scope of the lease. Accordingly, appellants' first and second assignments of error are not well-taken.

II

By way of seven cross-assignments of error, appellee contends that, for one reason or another, the trial court erred when it concluded that the railroad breached the 1881 lease, causing the interest conveyed therein to revert to appellants' predecessor in interest.

The trial court concluded that the railroad breached the lease in two ways: (1) "nonpayment of rent for a period of more than six months," and (2) "because the property was abandoned for the purpose of operating a railroad."

It is axiomatic in Ohio jurisprudence that the law abhors a forfeiture. Wheatstone Ceramics Corp. v. Turner (1986), 32 Ohio App.3d 21, 23, citing Ensel v. Lumber Ins. Co. of New York (1913), 88 Ohio St. 269, 281. With this axiom in mind, we must examine whether circumstances exist which would warrant the forfeiture of the property rights conveyed in this century old document.

A. Failure to Pay Rent

At trial, it was undisputed that, at some point between 1979 and 1995, the railroad failed to render to the Lockwood Williams trust the annual \$50 rent payment provided for in the 1881 lease. The evidence at trial would also suggest that at

some point, without any demand from the trust, the railroad discovered its omission and attempted to bring its payments current. It was undisputed that, after the lease was transferred to appellee, appellee sent a check to the trust to cure any arrearage. The trust, however, rejected the tender.

In its sixth assignment of error, appellee contends that the trust's failure to demand the rent payment negates its ability (or its successor's ability) to declare a forfeiture. Moreover, according to appellee, both the railroad and appellee stood ready and able to cure any default had the trust made such a demand.

Appellants respond that the railroad knew it had not paid its rent and this was sufficient notice. Moreover, according to appellants, by the clear terms of the 1881 lease agreement, the contract became automatically void on the failure of the railroad to pay its annual rent more than six months beyond its due date.

Contracts incorporate the law applicable at the time of their creation. 11 Williston on Contracts (1999) 203, Section 30.19. The common law of Ohio at the time the 1881 lease was executed was stated in paragraph one of the syllabus of Smith v. Whitbeck (1862), 13 Ohio St. 471, which provided that:

"In order to show a forfeiture of an unexpired term of a leasehold estate, for nonpayment of rent, the lessor must prove demand of payment of the lessee when due."³

The 1881 lease contained no express waiver of this common law requirement, and the evidence was unrefuted that no demand was made in this instance. Since no forfeiture may be had absent demand, the railroad's lapse in its annual rent payment does not constitute an irreparable breach of the lease. Accordingly, appellee's sixth assignment of error is well-taken.

B. Abandonment

In its seventh assignment of error, appellee argues that with respect to a forfeiture on other lease conditions, there should also be imposed a requirement of a demand for performance prior to a breach declaration.

Although there is some authority in support of imposing such a requirement, see 1 Restatement of Law, *infra*, at 495-501, Section 13.1 and comment h, appellee directs us to no Ohio authority which expressly imposes such a requirement. Therefore, we will examine the merits of the purported nonmonetary breach.

The lease provision at issue provides that on the failure of the lessee to, "*** maintain and operate said Rail Road for public transportation and travel and on the abandonment thereof for railway purposes ***" the lease shall become void. For a breach of these provisions to occur, the lessee must have (1) ceased the maintenance and operation of the property for public transportation and travel, and (2) abandoned its use for "railway purposes."

We are persuaded by the reasoning expressed in Rieger v. Penn Central Corp. (May 21, 1985), Greene App. No. 85-CA-11, unreported, on both issues. Although Rieger dealt with the transfer of a prescriptive easement of a railroad right-of-way to the state for a recreational trail, its logic is applicable to this lease. To us, it is reasonable and, indeed, Rieger holds that the transformation of a railroad right-of-way to a recreational trail is an equivalent and permissible use of such property. Both serve a public purpose related to public transportation and travel. Id., citing Minnesota Dept. of Wildlife v. State of Minnesota (Minn. 1983), 329 N.W.2d 543, 546-547, certiorari denied (1983), 463 U.S. 1209. Consequently, the proposed use of this property is consistent with the original lease. Moreover, we cannot say that the transitional period between the two uses is so great as to constitute a failure to "maintain and operate" such property for such uses so as to be deemed a breach. This is especially so absent a demand from the lessor for performance.

With respect to the abandonment of the property for railroad purposes, again we turn to Rieger which, citing Schneck v. Cleveland, Cincinnati, Chicago and St. Louis Railway Co. (1919), 11 Ohio App. 164, 167, holds that to constitute abandonment of a railroad right-of-way there must be a "*** nonuser together with an intention to abandon." The intent

portion must be shown by unequivocal and decisive acts indicative of abandonment. Id.; see, also, Roby v. New York Central (1894), 142 N.Y. 176, 181.

In this case, the trial court appears to have found dispositive the fact that the railroad filed a notice of "abandonment" with the former Interstate Commerce Commission. We disagree with this interpretation. While such a regulatory filing may constitute evidence of an intent to abandon for state property law purposes, it is only evidence. Contradictory to this filing was the undisputed evidence that when Norfolk Southern transferred this spur to Wheeling and Lake Erie, Norfolk Southern reserved a portion of the corridor for the future installation of fiber-optic cable. Moreover, Wheeling's grant to appellee reserves a future right to construct and operate another rail line in the corridor. Both of these acts constitute "railway purposes," and both indicate an intention to pursue future use of the property for such purposes. Far from the "unequivocal and decisive" acts indicative of abandonment necessary to prove an intent to abandon, these reservations are antithetical to such an intent.

Since there has been no demonstrated breach of the "purposes" provision of the lease, the trial court erred in determining that the lease at issue was invalid. Accordingly,

appellee's first, second and third assignments of error are well-taken. Assignments of Error Nos. IV, V and VII are moot.

On consideration whereof, the judgment of the Erie County Court of Common Pleas is reversed, in part. This matter is remanded to said court for further proceedings consistent with this decision. Costs to appellants.

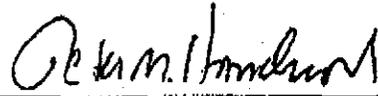
JUDGMENT AFFIRMED, IN PART,
AND REVERSED IN PART.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4, amended 1/1/98.

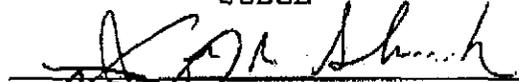
Peter M. Handwork, J.

James R. Sherck, J.

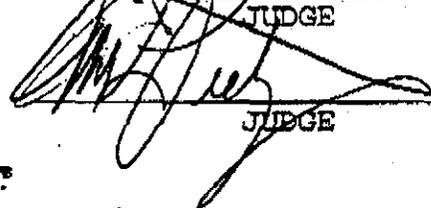
Mark L. Pietrykowski, P.J.
CONCUR.



JUDGE



JUDGE



JUDGE

HEREBY CERTIFY THIS TO BE
A TRUE COPY OF THE ORIGINAL
FILED IN THIS OFFICE.

BARBARA J. JOHNSON, CLERK OF COURTS
Erie County, Ohio

By Betty A. Martin

¹The Wheeling and Lake Erie Rail Road Company was eventually absorbed by the Norfolk and Western Rail Company which was merged into the Norfolk Southern Company. In 1990, the Norfolk Southern assigned its interest in the lease at issue to the Wheeling and Lake Erie Railway Company.

²At the same time, Buffalo Prairie initiated a forcible entry and detainer action against appellee in the Erie County Court. The county court, however, dismissed the matter and deferred to this case to determine the proper title to the disputed land.

³The 1979 lease renewal did not change the terms of the agreement. The "demand" requirement is in conformity with the

common law of most other states, see Bates & Springer Inc. v. Nay (Cuyahoga App.1963), 91 Ohio Law Abs. 425, citing 31 A.L.R.2d 376, and remains today in Ohio landlord tenant relations that are not superseded by statute. Id. See, also, 1 Restatement of the Law 2d, Property (1977) 384, Section 12.1(2) (b).

Exhibit SE - 33

COPY

MAR 05 2002

ORIGINAL

IN THE COMMON PLEAS COURT OF ERIE COUNTY, OHIO

BOARD OF PARK COMMISSIONERS,
ERIE METROPARKS,

Plaintiff

-vs-

KEY TRUST COMPANY OF OHIO, NA
TRUSTEE OF THE TESTAMENTARY
TRUST OF VERNA LOCKWOOD
WILLIAMS, et. al.,

Defendants

CASE NO. 99 CV 442

Judge Joseph E. Cirigliano

JUDGMENT ENTRY

FILED
COMMON PLEAS COURT
ERIE COUNTY, OHIO
2002 FEB 22 PM 1 42
BARBARA J. JOHNSON
CLERK OF COURTS

This matter is before the Court on remand by the Erie County Court of Appeals (Court of Appeals Case No. E-00-068), a discretionary appeal to the Ohio Supreme Court not having been allowed (Supreme Court Case No. 01-1927).

Two issues were presented for decision. The first issue was the continuing validity of a lease (the "Lease") originally entered into between the predecessors-in-interest to the parties herein, the Milan Canal Company, as lessor, and the Wheeling & Lake Erie Railroad Company ("Wheeling Railroad"), as lessee. The second issue was the extent of the property covered by the Lease.

J433/941

3/01/02

Findings of Fact

The Lease, originally signed on July 12, 1881, and recorded in Volume 2, Pages 26, 27 and 18 of Erie County Lease Records, was entered into evidence by stipulation. Pursuant to the Lease, the Milan Canal Company leased to Wheeling Railroad certain land (the "Leased Property"), which is described in the attached Exhibit A. The term of the Lease is 99 years, renewable forever, and the annual rent is Fifty Dollars (\$50.00). The Lease requires the Leased Property to be used "for public transportation and travel." The Lease further provides that the Leased Property is to revert to the lessor "on the failure of said lessees to so maintain and operate said Railroad for public transportation and travel and on the abandonment thereof for railway purposes, or on the failure of for six months to pay said annual rent" However, the Lease does not contain an express waiver of the common law requirement that the lessor demand payment of rent before declaring a forfeiture of the Lease. The Lease was renewed for its second 99-year term in 1979.

In 1904, the Milan Canal Company was dissolved and its assets purchased by Stephen Lockwood. Stephen Lockwood's interest in the Lease and the Leased Property eventually devolved to Key Trust Company of Ohio, NA, Trustee of the Testamentary Trust of Verna Lockwood Williams ("Key Trust").

Wheeling and Lake Erie Railway Company ("Wheeling Railway") acquired Norfolk Southern's interest in the rail corridor, and, in October, 1995, Wheeling Railway transferred its interest in the Leased Property to Plaintiff by quit-claim deed, which was recorded on June 1, 1998.

In the year 2000, during the pendency of this case, Defendant Key Trust, transferred all of its right, title, and interest as successor-in-interest to the original lessor, to the remaining Defendants.

Train service on the Leased Property was discontinued not later than 1986 and perhaps as early as 1982. In 1988, Norfolk and Western Railway Company ("N&W"), predecessor to Norfolk Southern Corporation ("Norfolk Southern"), filed a Notice of Exemption with the Interstate Commerce Commission for permission to discontinue train service along an 8.3 mile corridor including the Leased Property. Such permission was granted.

It is undisputed that the lessee failed to pay annual rental for the Leased Property after 1989, until a check for \$300.00 was transmitted to Key Trust in September 1995. The payment was rejected. It is also undisputed that no demand for rent was ever made by the lessor.

Having assessed the credibility of the witnesses who testified at trial and the reliability of the documents submitted into evidence, the Court finds that the Milan Canal Company, the predecessor in title to Defendant Key Trust, acquired its real property interests to construct the canal (the "Milan Canal Property") solely by way of two instruments and no others:

- (a) A conveyance from Kneeland Townsend dated May 10, 1838, recorded May 29, 1852, in Volume 10 of Deeds, Page 23 of Erie County Records (the "Townsend Conveyance"); and

(b) A conveyance from Ebeneser Merry dated April 21, 1838, recorded October 29, 1852, in Volume 10 of Deeds, Page 25 of Erie County Records (the "Merry Conveyance").

The Milan Canal Property consisted of a roughly three mile long corridor of property the northern terminus being known as Lock No. 1, which was located where the Milan Canal joined the Huron River on property now owned by Wikel Farms, Ltd., just north of Mason Road, in Section 2, Milan Township, Erie County, Ohio. Neither Kneeland Townsend nor Ebeneser Merry conveyed to the Milan Canal Company any interest in real property north of Lock No. 1.

The only lands owned by the Milan Canal Company at the time the Lease was executed lay within the boundaries of the Kneeland Townsend property and the Ebeneser Merry property, neither of which lay north of Lock No. 1.

Conclusions of Law

It is axiomatic that a seller cannot transfer any greater interest in land than that which the seller possesses. In the instant case, Wheeling Railroad had a leasehold interest in the Leased Property, which is evidenced by Exhibit A. The Court hereby finds the Lease was a valid lease. Further, the Court finds that the Lease, which was for a term of 99 years and renewable forever, did not confer a fee simple estate under Ohio law to the Wheeling Railroad, because it was aware that its interest could be forfeited to the lessor upon its breach of the lease covenants. Therefore, the fee

simple remains in the lessor, its heirs, devisees, or assigns. See Rawson v. Brown (1922), 104 Ohio St. 548; and Quill v. R.A. Investment Corporation (1997), 124 Ohio App.3d 653.

The description of the Leased Property in the Lease unambiguously describes it as consisting of all lands then owned by the Milan Canal Company within a 150 foot wide corridor from approximately the intersection of Maine and Union Streets in the Village of Milan northerly to the north of the mouth of the Huron River. The only lands owned by the Milan Canal Company at the time the Lease was executed lay within the boundaries of the Kneeland Townsend property and the Ebeneser Merry property, neither of which lay north of Lock No. 1. Therefore, the Leased Property extends from the southern terminus of the old Milan Canal at or near the southerly end of the Milan Canal basin in the Village of Milan to its northerly terminus at the Huron River at the former location of Lock No. 1 on premises now owned by Wikel Farms, Ltd. immediately north of Mason Road in Section 2, Milan Township, Erie County.

It is axiomatic in Ohio jurisprudence that the law abhors a forfeiture. Wheatstone Ceramics Corp. v. Turner (1986), 32 Ohio App.3d 21, 23, citing Ensel v. Lumber Ins. Co. of New York (1913), 88 Ohio St. 269, 281.

Contracts incorporate the law applicable at the time of their creation. 11 Williston on Contracts (1999), 203, Section 30.19. The common law of Ohio at the time the Lease was executed required that, in order to show a forfeiture of a leasehold estate, the lessor had to prove that a demand for payment of rent had been made when due. Smith v. Whitbeck (1862), 13 Ohio St. 471. The

Lease contained no express waiver of this common law requirement, and the evidence was unrefuted that no demand for payment of rent had been made. Since no forfeiture may be had absent demand, the lapse in annual rent payments does not constitute an irreparable breach of the Lease.

The Lease requires the Leased property to be used "for public transportation and travel," and further provides that the Leased Property is to revert to the lessor "on the failure of said lessees to so maintain and operate said Railroad for public transportation and travel and on the abandonment thereof for railway purposes." The transformation of a railroad right-of-way to a recreational trail is a permissible use of such property. Rieger v. Penn Central Corp. (May 21, 1985), Greene App. No. 85-CA-11, unreported. Both serve a public purpose related to public transportation and travel. Id., citing Minnesota Dept. of Wildlife v. State of Minnesota (Minn. 1983), 329 N.W.2d 543, 546-547, certiorari denied (1983), 463 U.S. 1209. Consequently, the proposed use of the Leased Property is consistent with the requirements of the Lease. Furthermore, the transitional period between the uses is not so great as to constitute a failure to "maintain and operate" the Leased Property for such uses so as to constitute a breach of the Lease. This is especially so absent a demand from the lessor for performance.

To constitute abandonment of a railroad right-of-way, there must be a "nonuser together with an intention to abandon." Rieger, supra, citing Schenck v. Cleveland, Cincinnati, Chicago and St. Louis Railway Co. (1919), 11 Ohio App. 164, 167. The intention must be shown by unequivocal and decisive acts indicative of abandonment. Id.; see, also, Roby v. New York Central (1984), 142 N.Y. 176, 181. The filing of a Notice of Exemption with the Interstate Commerce Commission for

permission to discontinue train service was evidence, but not conclusive. Contradictory to the filing was undisputed evidence that when Norfolk Southern transferred this spur to Wheeling Railway, Norfolk Southern reserved a portion of the corridor for the future installation of fiber-optic cable. Moreover, Wheeling Railway's grant to Plaintiff reserves a future right to construct and operate another rail line in the corridor. Both of these acts constitute "railway purposes," and both indicate an intention to pursue future use of the property for such purposes. Far from the "unequivocal and decisive" acts indicative of abandonment necessary to prove an intent to abandon, these reservations are antithetical to such an intent.

The Court therefore rules that:

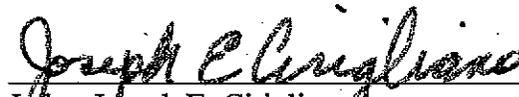
1. The extent of the Leased Property is as set forth in Exhibit A hereto.
2. The lessees have not abandoned the Leased Property.
3. The Lease is still in full force and effect and encumbers the Leased Property.
4. Plaintiff is the current lessee and the holder of the lessee's rights under the Lease.
5. Plaintiff is entitled to the sole occupancy and use of the Leased Property.
6. Any rights of Defendants in the Leased Property are subject to the rights of Plaintiff as lessee of the Leased Property.
7. The Lease permits the Plaintiff to improve and use the Leased Property as a parkway and/or recreational trail and purposes incidental and/or related thereto.

8. There is currently outstanding the sum of Six Hundred Fifty Dollars (\$650.00) as delinquent rent under the Lease. Plaintiff has deposited with the clerk of courts the sum of One Thousand Dollars (\$1,000.00), representing thirteen years' past due rent and future rent for seven years. Such deposit shall be released to Defendants upon motion of Defendants advising the Court to whom such rent is to be paid. Defendants shall keep Plaintiff advised in writing as to where future installments of rent are to be directed. If Defendants do not timely notify Plaintiff to whom future rent is to be paid and the address at which rent is to be paid, then Plaintiff may deposit future rent with the Clerk of Courts, until further notice.
9. Only those Defendants who hold an interest in the Leased Property are entitled to any portion of the rent under the Lease or to the benefit of any of the rights of the lessor under the Lease.

Judgment on Plaintiff's Complaint and on Defendants' Counterclaim is rendered in favor of Plaintiff and against Defendants.

Costs to Defendants.

IT IS SO ORDERED.



Judge Joseph E. Cirigliano

cc: Abraham Lieberman
Dennis O'Toole Peggy Kirk
Randall Strickler Anthony Logan
Darrel Bilancini Jeffrey Rengel

EXHIBIT A

All those lands within a one hundred fifty (150) foot wide corridor conveyed to the Milan Canal Company by Kneeland Townsend and Ebeneser Merry by instruments dated May 10, 1838 and April 21, 1838, respectively, and recorded, respectively on May 29, 1852, in Volume 10 of Deeds, Page 23 of Erie County Records and October 29, 1852, in Volume 10 of Deeds, Page 25 of Erie County Records, which lands have a northerly boundary at Lock No. 1 of the old Milan Canal, which lock was located immediately north of Mason Road on lands now owned by Wikel Farms, Ltd. at or near the intersection of the Milan Canal with the Huron River, and extending southerly to the Canal's turning basin in the City of Milan, Ohio.

January 28, 2002
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Exhibit SE - 34

FILED
COURT OF APPEALS
ERIE COUNTY, OHIO
2002 SEP 13 AM 8:41
BARBARA J. JOHNSON
CLERK OF COURTS

IN THE COURT OF APPEALS OF OHIO --
SIXTH APPELLATE DISTRICT
ERIE COUNTY

Board of Park Commissioners, Court of Appeals Nos. E-02-009
Erie Metroparks E-02-011

Appellee. Trial Court No. 99-CV-442

v.

Key Trust Company of
Ohio, etc., et al.

Defendants

and

Buffalo Prairie, Ltd.,
et al.

DECISION AND JUDGMENT ENTRY

Appellants

Decided: SEP 13 2002

* * * * *

Abraham Lieberman and Dennis M. O'Toole,
for appellee.

Anthony Logan, D. Jeffery Rengel and Thomas R.
Lucas, for appellants Buffalo Prairie, Ltd.,
et al.; Charles J. Pawlukiewicz, for appellant
Wikel Farms, Ltd.

* * * * *

J 22/519
9-13-02
C.A.

KNEPPER, J.

This is a consolidated appeal from two judgments of the Erie County Court of Common Pleas in a property dispute. The first judgment, entered February 21, 2002, denied the motion to intervene filed by appellant Wikel Farms, Ltd. The second judgment appealed from, entered March 1, 2002 upon remand from this court, determined the validity of the lease in question. On March 29, 2002, this court sua sponte ordered that the two appeals be consolidated under E-02-009. For the reasons that follow, this court affirms the judgments of the trial court.

Appellants Buffalo Prairie, Ltd., et al. set forth the following assignments of error:

"1. The trial court's Entry establishing the description of the leased property is directly contrary to this Court's decision in Board of Commissioners v. Key Trust 135 Ohio App.3d 787.

"2. The trial court abused its discretion by adopting findings of fact which did not address the issues raised in Defendants' Answer and Counterclaim."

Appellant Wikel Farms, Ltd. sets forth the following assignment of error:

"The trial court erred and abused its discretion by denying the renewed motion of Wikel Farms, Ltd. to intervene."

The background necessary for a thorough understanding of this appeal is as follows. In 1827, the Ohio General Assembly

chartered the Milan Canal Company to construct and operate a canal from Milan, Ohio, to Lake Erie. The canal company acquired land from Ebeneser Merry and Kneeland Townsend and dug a canal between Milan and "Lock 1," located where the navigable portion of the Huron River intersected the canal.

In 1881, the Milan Canal Company leased a 150-foot wide corridor through its property to the Wheeling and Lake Erie Rail Road Company. The lease was for 99 years, renewable "forever," and called for an annual rent of \$50. The lease also provided that "on the failure of said Lessee *** to so maintain and operate said Rail Road for public transportation and travel and on the abandonment thereof for railway purposes or on the failure for Six months to pay said annual rental of (\$50) Fifty dollars to the said Lessor after the same became due and payable these presents shall become void and the said real estate shall revert to the said Lessor the Milan Canal Company ***."

It is undisputed that during the next 100 years, the railroad and its successor railroad companies maintained and operated a line on the leased corridor.¹ In 1979, the lease was renewed for another 99 years. In October 1995, the Wheeling and Lake Erie Railway Company transferred its interest in the leased

¹The Wheeling and Lake Erie Rail Road Company was eventually absorbed by the Norfolk and Western Rail Company, which was merged into the Norfolk Southern Company. In 1990, the Norfolk Southern assigned its interest in the lease at issue to the Wheeling and Lake Erie Railway Company.

property to appellee Board of Commissioners, Erie Metroparks ("Metroparks"), which intended to convert the property to a recreational hiking and bicycling trail.

In 1904, the Milan Canal Company was dissolved and its assets purchased by Stephen Lockwood. Lockwood's interest in the property eventually devolved to the testamentary trust of Verna Lockwood Williams and its trustee, Key Trust Company of Ohio. Following the purchase of the railroad's lease interest by Metroparks, a dispute arose between the trust and Metroparks concerning the continuing validity of the lease.

On September 30, 1999, Metroparks initiated a declaratory judgment action against the Williams trust. Metroparks sought a declaration that the 1881 lease remains in effect, that the property may be properly used for a recreational trail, and that the scope of the lease be determined. In its answer to the complaint, the trust denied the validity of the lease and counterclaimed for a quiet title.

During the pendency of the case in the trial court, the Williams trust sold its interest in the disputed land to appellant Buffalo Prairie, Ltd. Metroparks subsequently amended its complaint to include Buffalo Prairie and 32 named adjacent property owners to whom Buffalo Prairie had conveyed portions of the land at issue.

It is undisputed that at the time Metroparks acquired its interest in the property in October 1995, the railroad from which it had purchased the lease had fallen several years behind in paying the rent. In September 1995, the railroad tendered a check for \$300 to Key Trust, but the payment was rejected. It was also undisputed that the trust never made a demand for the unpaid rent.

The matter proceeded to a bench trial, at the conclusion of which the court found that the railroad had materially breached the terms of the lease by failing to promptly pay the rent and that it had abandoned the property for purposes of operating a railroad, thereby rendering the lease void on its own terms. As a result, the railroad's conveyance to Metroparks was ineffective, the trial court held. As to the scope of the lease, the trial court found that the land subject to the lease consisted only of those parcels of land between the canal basin in Milan and the point where the canal joins the Huron River that had been conveyed by landowners Ebeneser Merry and Kneeland Townsend.

From this judgment, Buffalo Prairie, the lessor, and other landowners filed an appeal and Erie Metroparks, the lessee, filed a cross-appeal. *Erie Metroparks Bd. of Commrs. v. Key Trust Co. of Ohio, N.A., et al.* (2001), 145 Ohio App.3d 782. Buffalo Prairie's assignments of error attacked the trial court's

judgment limiting the leased property only to Milan Canal Company lands obtained from Ebeneser Merry and Kneeland Townsend, claiming that the trial court improperly reformed the lease agreement. This court held that the trial court had not modified the 1881 lease and that the lower court's finding that the lease was limited to property obtained solely from Merry and Townsend was supported by the evidence. By way of its cross-appeal, Erie Metroparks contended that the trial court erred when it concluded that the railroad had breached the 1881 lease due to abandonment and nonpayment of rent. As to those arguments, this court found that the trial court had erred by determining that the lease was invalid since, absent any demand by the trust, the railroad's lapse in its rent payment did not constitute an irreparable breach of the lease. Accordingly, this court reversed the trial court's judgment finding that the lease was invalid and remanded the case for further proceedings. This court let stand the trial court's finding as to the scope of the leased property.

In its February 22, 2002 judgment entry on remand, the trial court ruled that the railroad had not abandoned the leased property and that the lease Metroparks purchased from the railroad is still in full force and effect. Although the issue was not before the trial court on remand, the court also made a finding as to the boundaries of the leased property. In so doing, the trial court found that the land owned by the Milan

Canal Company at the time the lease was executed "lay within the boundaries of the Kneeland Townsend property and the Ebeneser Merry property."

In their first assignment of error, appellants Buffalo Prairie, et al. assert that the trial court's judgment entry on remand setting forth the boundaries of the leased property is directly contrary to that court's own finding in its original decision filed on November 7, 2000 and this court's September 14, 2001 decision on the first appeal. Appellants assert that this court and the trial court both found that the only two tracts of land subject to the Milan Canal lease, and therefore subject to the leasehold interests of Erie Metroparks, were two non-contiguous tracts conveyed by Ebeneser Merry and Kneeland Townsend. They further assert, however, that the trial court's judgment entry on remand erroneously describes the land subject to the lease to include a two-mile corridor that the courts previously have determined is not part of the leasehold.

This court has carefully examined the trial court's November 7, 2000 judgment entry, our own decision of September 14, 2001, and the trial court's February 22, 2002 judgment entry on remand. Despite appellants' assertion that the trial court's entry on remand was contrary to our September 2001 decision, we find that the descriptions of the leased property are identical in both of the trial court's entries.

Significantly, both entries define the property as encompassing only land previously owned by Merry and Townsend. As this court explained in its September 14, 2001 decision: "Although the metes and bounds description contained in the 1881 lease describes a one-hundred-fifty-foot corridor for the full length of the canal, the lease limits the conveyance to property 'owned by' the canal company. The trial record shows that the Milan Canal Company acquired property only from Townsend and Merry. The trial court ruled that *this property alone* was the subject of the lease. Consequently, the court never modified the 1881 lease. Since there was no reformation of the lease, appellants' arguments concerning an improper reformation of the contract are without merit. *** [Emphasis added.]

"*** The only competent, credible evidence presented at trial was that the canal company obtained property solely from Townsend and Merry. On such evidence, we cannot say that the trial court's decision to limit the lease to such property was unsupported by the evidence. ***" *Erie Metroparks Bd. of Commrs. v. Key Trust Co. of Ohio, N.A., supra*, at 787-788.

Thus, this court affirmed the trial court's original determination that the leased property included only land obtained from Townsend and Merry. On remand, for reasons not apparent to this court, the trial court revisited the issue of the scope of the leased property. This was unnecessary since we

had left undisturbed that portion of the November 2000 entry and remanded the case solely on the issue of the validity of the lease.

It has been emphasized in all three judgment entries that the leased property encompassed only land obtained from Townsend and Merry. There is no discrepancy as to that issue and the trial court's February 22, 2002 judgment entry did not contradict that finding as set forth in either of the two prior judgments.

Accordingly, appellant's first assignment of error is not well-taken.

In their second assignment of error, appellants assert that the trial court abused its discretion by adopting findings of fact on remand which did not address the issue of Metroparks' prior claim of adverse possession. In its November 7, 2000 decision, the trial court found that Metroparks did not acquire title to the leased property by adverse possession because it did not begin to occupy the property adversely until it went into default for nonpayment of rent in 1995. Since this court then found that the original lease was still in effect, the issue of adverse possession was irrelevant on remand, and there was no reason for the trial court to address the matter in its February 2, 2002 judgment entry. This argument is therefore without merit.

Appellants also argue that the trial court improperly authorized appellee to pay the rent to the clerk of courts until further notice. Appellants, however, misrepresent the trial court's order. In its February 22, 2002 judgment entry, the trial court stated that appellee had deposited with the clerk of courts the sum of \$1,000, representing 13 years' past due rent plus future rent for seven years. The trial court ordered that the deposit should be released to the trust upon the trust's motion advising the court as to whom such rent is to be paid. Further, the trial court instructed appellants to keep appellee advised as to where future rent payments should be directed, and then ordered that if the trust did not notify Metroparks as to where to send the payments and to whom they should be directed, Metroparks should deposit future payments with the clerk of courts until further notice. This is a reasonable and appropriate order in light of the facts and the trial court did not err by so ordering. This argument is without merit.

Based on the foregoing, appellants' second assignment of error is not well-taken.

Finally, we must consider the appeal from the trial court's denial of the motion to intervene filed by Wikel Farms, Ltd. Wikel Farms, Ltd. contends that the tract of land it owns at the northern end of the canal is not included in the property covered

by the lease and it sought to intervene for the sole purpose of contesting the northern boundary of the leased property.

Wikel Farms originally filed a motion to intervene on March 15, 2000, several months after Metroparks initiated its declaratory judgment action. The motion was not ruled on by the trial court prior to its November 7, 2000 decision. Wikel Farms renewed its motion to intervene on February 12, 2002, after this court's decision on the first appeal and while the case was pending in the trial court on remand. On February 21, 2002, the trial court summarily denied the motion to intervene.

A trial court's decision on a motion to intervene is reviewed pursuant to an abuse of discretion standard. *Peterman v. Pataskata* (1997), 122 Ohio App.3d 758. Abuse of discretion connotes more than an error of law or judgment; it implies that the trial court's decision was unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1984), 5 Ohio St.3d 217, 219. In this case, appellant Wikel Farms wishes to intervene in order to contest one of the boundaries of the leased property. By the time Wikel Farms filed its renewed motion to intervene, however, the trial court's determination as to the scope of the leased property had been affirmed by this court. Accordingly, the trial court's judgment entry denying the motion to intervene was not unreasonable, arbitrary or unconscionable and therefore not an abuse of discretion.

Based on the foregoing, this court finds the sole assignment of error of appellant Wikel Farms, Ltd. not well-taken.

Upon consideration whereof, the judgments of the Erie County Court of Common Pleas are affirmed. Costs of this appeal are assessed to appellants equally.

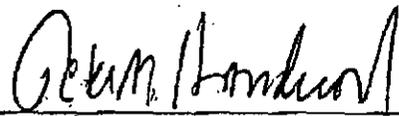
JUDGMENTS AFFIRMED.

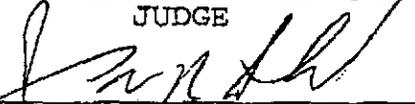
A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4, amended 1/1/98.

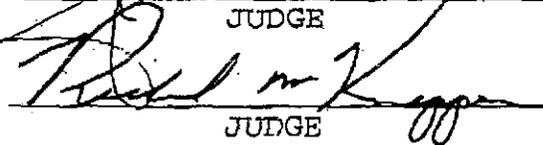
Peter M. Handwork, J.

James R. Sherck, J.

Richard W. Knepper, J.
CONCUR.



JUDGE


JUDGE


JUDGE

Exhibit SE - 35

IN THE SUPREME COURT OF OHIO ON COMPUTER-ALM

STATE OF OHIO, ex rel
EDWIN M. COLES
10709 River Road
Huron, Ohio 44839

and

LISA COLES
10709 River Road
Huron, Ohio 44839

and

BUFFALO PRAIRIE, LTD.
10709 River Road
Huron, Ohio 44839

and

ISOLATED VENTURES, LTD.
10709 River Road
Huron, Ohio 44839

and

LINDA MOIR (as Executrix of the Estate of
of Vincent P. Otrusina, deceased)
1401 Cleveland Road
Sandusky, Ohio 44870

and

ROBERT C. BICKLEY
58 S. Edison Drive
Milan, Ohio 44846

and

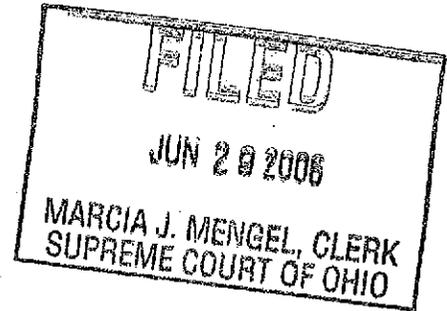
WARREN R. JONES
12819 River Road
Milan, OH 44846

Relators,

06-1259

Original Action in Mandamus

Case No:



v.

JONATHAN GRANVILLE
In his individual capacity and as
Director-Secretary of Erie MetroParks
3910 East Perkins Avenue
Huron, Ohio 44839

and

BOARD OF PARK COMMISSIONERS,
ERIE METROPARKS
3910 East Perkins Avenue
Huron, Ohio 44839

Respondents.

**RELATORS' MEMORANDUM IN SUPPORT OF
COMPLAINT FOR A WRIT OF MANDAMUS**

J. Anthony Logan (007257) (Counsel of Record)
BROOKS & LOGAN CO., LPA
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Columbus, OH 43220
Tel: (614) 457-1010
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secretarybwl@ameritech.net

Nels Ackerson (pending *pro hac vice*)
ACKERSON KAUFFMAN FEX, PC
1250 H Street, NW, Suite 850
Washington, DC 20005
Tel: (202) 833-8833
Fax: (202) 833-8831
nels@ackersonlaw.com

COUNSEL FOR RELATORS

COMPLAINT FOR WRIT OF MANDMUS

1. Under Ohio Rev. Code § 163.01 *et seq.*, Ohio Const. Art. I, § 19, and United States Const. Amend. 5, Relators bring this mandamus action to compel Respondents to commence an appropriation proceeding, and to provide Relators with the opportunity for a jury trial, within which the Relator may obtain compensation for Respondents' taking of their property, as well as an opportunity to challenge directly Respondents' authority to appropriate property under applicable law. *In the alternative*, Relators request that the Court issue a writ of mandamus compelling Respondents to return the seized property at issue to the Relators on the ground that Respondents lack the statutory authority to appropriate property, and therefore, their occupation of the property is unlawful and cannot be cured by an appropriation action.

JURISDICTION

2. This Court has jurisdiction over this original action under Ohio Const. Art. IV, § 2 and Ohio Rev. Code § 2731.01 *et seq.*

PARTIES

3. Relators Edwin and Lisa Coles, Buffalo Prairie, Ltd., Isolated Ventures, Ltd., Robert C. Bickley, and Warren (Bob) Jones are landowners who reside or have their principal place of business in Erie County, Ohio. Relator Linda Moir serves as executrix of the estate of Vincent P. Otrusina, who resided in Erie County, Ohio before his death.
4. Relators own certain property, which Respondents Jonathan P. Granville and Board of Park commissioners, Erie MetroParks occupy, use, possess, and otherwise control. Relators also own certain personal property, which Respondents confiscated, damaged, and destroyed when taking Relators' land.

5. Relator Buffalo Prairie, Ltd. is a limited liability company in good standing with the Ohio Secretary of State's office.
6. Relator Isolated Ventures, Ltd. is a limited liability company in good standing with the Ohio Secretary of State's office.
7. Respondent Jonathan P. Granville is the Directory/Secretary of the Erie MetroParks, a governmental entity.
8. Respondent Board of Park Commissioners, Erie MetroParks ("MetroParks") is a park district organized and duly created under Ohio Revised Code § 1545.01 *et seq.* on May 31, 1968 as an independent Park District in Erie County, Ohio. It consists of three (3) appointed commissioners, and was created after April 16, 1920.
9. Ohio Revised Code § 1545.11 restricts the eminent domain power of the State to park districts created prior to April 16, 1920. Accordingly, MetroParks lacks the power of eminent domain under applicable Ohio law.

PROPERTY AT ISSUE

10. Relators own the property in Erie County, Ohio, as identified below.

- a. **Coles, Buffalo Prairie, Ltd., and Isolated Ventures, Ltd:**

- (1) Property South of Mason Road.**

Being situated in the State of Ohio, County of Erie, Milan Township, Section 1, Part of Sublots 6 & 9, and being more definitely described as follows:

Beginning at a 1/2" iron pin, set, marking the intersection of the West line of Section 1 with the centerline of the original Wheeling & Lake Erie Railroad;

- (1) Thence North 04°32'08" West along the West line of Section 1, a distance of 50.96 feet to a point on the westerly line of the Old Milan Canal;

- (2) Thence northeasterly along the westerly line of the Old Milan Canal, along an arc of a curve to the left having a radius of 1382.68 feet, a delta of $06^{\circ}08'39''$, a chord bearing of North $71^{\circ}01'38''$ East, a chord distance of 148.20 feet, and an arc length of 148.27 feet to a point;
- (3) Thence North $67^{\circ}57'18''$ East continuing along the westerly line of the Old Milan Canal a distance of 196.28 feet to a point;
- (4) Thence northeasterly continuing along the westerly line of the Old Milan Canal, along an arc of a curve to the left having a radius of 1731.45 feet, a delta of $53^{\circ}38'00''$, a chord bearing of North $41^{\circ}08'18''$ East. A chord distance of 1562.24 feet, and an arc length of 1620.77 feet to a point on the southerly line of a parcel owned by William Mironick (RN200108239);
- (5) Thence North $14^{\circ}19'18''$ East continuing along the westerly line of the Old Milan Canal, a distance of 299.38 feet to a point on the southerly line of a parcel owned by Warren R. Jones (DV 308 PG 24);
- (6) Thence North $87^{\circ}23'32''$ East along the southerly line of said Jones parcel a distance of 156.79 feet to a point on the easterly line of the Old Milan canal;
- (7) Thence South $14^{\circ}19'18''$ West along the easterly line of the Old Milan Canal, a distance of 345.04 feet to a point;
- (8) Thence southwesterly along the easterly line of the Old Milan Canal, along an arc of a curve to the right having a radius of 1881.45 feet, a delta of $53^{\circ}38'00''$, a chord bearing of South $41^{\circ}08'18''$ West, a chord distance of 1697.58 feet, and an arc length of 1761.18 feet to a point;
- (9) Thence South $67^{\circ}57'18''$ West continuing along the easterly line of the Old Milan Canal, a distance of 196.28 feet to a point;
- (10) Thence southwesterly continuing along the easterly line of the Old Milan Canal, along an arc of a curve to the right having a radius of 1532.68 feet, a delta of $07^{\circ}16'09''$, a chord bearing of South $71^{\circ}35'24''$ West, a chord distance of 194.32 feet, and an arc length of 194.45 feet to a point on the West line of Section 1;
- (11) Thence North $04^{\circ}32'08''$ West along the West line of Section 1, a distance of 101.74 feet to the point of beginning, containing 8.2028 acres, more or less, of which 4.1014 acres are in Sublot 6, and 4.1014 acres are in Sublot 9, but being subject to all legal highways, easements and restrictions of record.

(2) Residence north of Mason Road.

Being situated in the State of Ohio, County of Erie, Milan Township, Section 2, Abbot Tract and being more definitely described as follows:

Beginning at a railroad spike, found, marking the intersection of the centerline of River Road with the South line of the Abbott Tract; Thence North $49^{\circ}29'47''$ West along the southerly line of the Abbott Tract, the same being the northerly line of a parcel owned by Vincent Otrusina (BV 027 PG 974), a distance of 513.38 feet to a point; Thence North $40^{\circ}30'13''$ East continuing along said Otrusina parcel a distance of 223.64 feet to a point; thence North $49^{\circ}29'47''$ West continuing along the northerly line of Otrusina parcel a distance of 27.32 feet to its intersection with the easterly line of the Old Milan Canal, said point being the PRINCIPAL PLACE OF BEGINNING;

(1) Thence North $49^{\circ}29'47''$ west continuing along the northerly line of said Otrusina parcel, a distance of 152.02 feet to the westerly line of the Old Milan Canal;

(2) Thence northeasterly along the westerly line of the Old Milan Canal, along an arc of curve to the left, having a radius of 904.93 feet, a delta of $03^{\circ}41'21''$, a chord bearing of North $28^{\circ}34'06''$ East, a chord distance of 58.26 feet, an arc length of 58.27 feet to a point;

(3) Thence North $26^{\circ}43'24''$ East continuing along the westerly line of the Old Milan Canal, a distance of 138.74 feet to a point;

(4) Thence northeasterly continuing along the westerly line of the Old Milan Canal, along an arc of a curve to the right having a radius of 1663.97 feet, a delta of $11^{\circ}18'00''$ a chord bearing of North $31^{\circ}22'24''$ East, a chord distance of 327.64 feet, an arc length of 328.17 feet to a point;

(5) Thence northeasterly continuing along the westerly line of the Old Milan Canal, along an arc of a curve to the right having a radius of 1004.93 feet, a delta of $00^{\circ}13'01''$, a chord bearing of North $38^{\circ}07'54''$ East, a chord distance of 3.80 feet, an arc length of 3.80 feet to a point on the southerly line of a parcel owned by James and Rita Beverick (DV 484 PG 704);

(6) Thence South $49^{\circ}59'47''$ East along the southerly line of Beverick a distance of 150.08 feet to a point on the easterly line of the Old Milan Canal;

(7) Thence southwesterly along the easterly line of the Old Milan Canal, along an arc of a curve to the left having a radius of 1513.97 feet, a delta of $11^{\circ}14'51''$ a chord bearing of South $32^{\circ}20'50''$ West, a chord distance of 296.73 feet, an arc length of 297.20 feet to a point;

(8) Thence South $26^{\circ}43'24''$ West continuing along the easterly line of the Old Milan Canal a distance of 138.74 feet to a point;

(9) Thence southwesterly continuing along the Easterly line of the Old Milan Canal, along an arc of a curve to the right, having a radius of 1054.93 feet, a delta of $05^{\circ}08'10''$, a chord bearing of South $29^{\circ}17'30''$ West, a chord distance of 94.53 feet, an arc length of 94.56 feet, to the PRINCIPAL PLACE OF BEGINNING, containing 1.8242 acres, more or less, but being subject to all legal highways, easements and restrictions of record.

The above description was prepared from an actual survey by Daniel E. Hartung Jr., Professional Surveyor No. 5667 in March 1998. The bearings were assumed only for the purpose of indicating angles.

b. **Otrusina:**

Being situated in the State of Ohio, County of Erie, Milan Township, Section 2, Abbott Tract and being more definitely described as follows:

Commencing at the intersection of the centerline of River Road with the South line of the Abbott Tract; Thence North $49^{\circ}29'47''$ West along the South line of the Abbott Tract a distance of 531.68 feet to a point on the easterly line of the old Milan Canal, said point being the point of beginning;

(1) Thence North $49^{\circ}29'47''$ West continuing along the South line of the Abbott Tract a distance of 150.31 feet to a point on the westerly line of the old Milan Canal;

(2) Thence northerly along said westerly line, along an arc of a curve to the left, having a radius of 904.93 feet, a delta of $14^{\circ}03'56''$, a chord bearing North $37^{\circ}26'45''$ East, a chord distance of 221.59 feet, an arc length of 222.15 feet to a point on the southwesterly line of a parcel owned by Edwin and Lisa Coles (DV 519 PG 775);

(3) Thence South $49^{\circ}29'47''$ East along the southwesterly line of Coles a distance of 152.04 feet to a point on the easterly line of the Old Milan Canal;

(4) Thence southerly along said easterly line, along an arc of a curve to the right, having a radius of 1054.93 feet, a delta of $12^{\circ}03'11''$, a chord bearing South $37^{\circ}53'10''$ West, a chord distance of 221.51 feet, an arc length of 221.92 feet to the point of beginning, containing 0.7645 acre, more or less, but being subject to all legal highways, easements and restrictions of record.

c. **Bickley:**

Parcel No. 2: Being all that part of the canal basin lying south and west of the following boundaries, to wit: Beginning at the northeast corner of Water Lot Number Seventy-one (71) in the addition heretofore described Parcel One hereof; Thence running northerly on the same course as the east line of said Lot, to the center of the Wheeling and Lake Erie Railroad track as now located and constructed; Thence westerly along the center of said railroad track to the westerly terminus of said canal basin but excepting and reserving therefrom so much as was heretofore quit-claimed to the Wheeling and Lake Erie Railroad Company.

Parcel No. 3: Being Lots Number Seventy-two (72), Seventy-three (73), Seventy-six (76) and Seventy-seven (77) of the Town Plat of Milan, Ohio located on the North side of Water Street.

And also the following described property:

Being situated in the State of Ohio, County of Erie, Village of Milan and being more definitely described as follows:

Commencing at the intersection of the centerline of the Wheeling & Lake Erie Railroad with the easterly right-of-way line of Union Street;

(1) Thence North $50^{\circ}11'07''$ East along the centerline of the Wheeling & Lake Erie Railroad a distance of 395.00 feet to its intersection with the northerly extension of the East line of Sublot 71 on Water Street in the Old Town Plat of Milan;

(2) Thence South $19^{\circ}48'53''$ East along said extension a distance of 106.42 feet to a point on the easterly line of the Old Milan Canal;

(3) Thence South $50^{\circ}11'07''$ West along said easterly line a distance of 343.46 feet to a point on the northerly right-of-way line of Water Street in the Old Town Plat of Milan;

(4) Thence North $84^{\circ}48'53''$ West along said northerly line a distance of 81.42 feet to its intersection with the easterly right-of-way line of Union Street;

(5) Thence North 05°11'07 East along said easterly line a distance of 60.00 feet to the point of beginning, containing 0.9037 acre, more or less, but being subject to all legal highways, easements and restrictions of record.

Prior deed reference: Erie County, Ohio Records RN 200005174

d. **Jones:**

Being situated in the State of Ohio, County of Erie, Milan Township, Section 1, Sublot No. 9 and being more definitely described as follows:

Commencing at the intersection of the North line of Sublot 9, with the centerline of the Wheeling & Lake Erie Railroad;

(1) Thence North 89°47'40" East along the North line of Sublot 9 a distance of 104.03 feet to a point on the easterly line of the Old Milan Canal;

(2) Thence South 15°47'40" West along the easterly line of the Old Milan Canal, a distance of 626.74 feet to a point on the North line of a parcel owned by Edwin and Lisa Coles (BV 338 PG 701);

(3) Thence South 88°51'54" West along the North line of said Coles a distance of 156.79 feet to a point on the westerly line of said Canal;

(4) Thence North 15°47'40" East along the westerly line of said Canal a distance of 629.39 feet to a point on the South line of a parcel owned by John and Virginia Landoll (BV 421 PG 56);

(5) Thence North 89°47'40" East along the South line of said Landoll a distance of 52.01 feet to the point of beginning, containing 2.1627 acres, more or less, but being subject to all legal highways, easements and restrictions of record.

Prior deed reference: Erie County, Ohio Records RN 200005175

STATEMENT OF FACTS

11. Portions of Relators' property described above are beneath or adjacent to a former canal corridor of the Milan Canal Company ("Canal Company"). The Canal Company was chartered by the State of Ohio in 1827 to construct and operate a canal from Milan, Ohio to Lake Erie. The property extends about 6.5 miles in length.

12. The Canal Company acquired portions of the canal corridor from Ebeneser Merry and Kneeland Townsend ("the Merry and Townsend Tracts"). Both the Merry and Townsend Tracts lie *south* of Mason Road, Milan Township, Erie County, Ohio. *See* Exs. 1-2.
13. In 1881, the Milan Canal Company leased a 150-foot-wide right of way through the canal corridor (the "Railroad Lease") to the Wheeling and Lake Erie Railway Company ("Railway"), which the Norfolk and Western Rail Company absorbed. The Norfolk and Western Rail Company later merged with Norfolk Southern Company ("Norfolk").
14. The Railroad Lease was for 99 years. In 1979, the Railroad Lease was renewed for another 99 years.
15. In 1904, the Milan Canal Company was dissolved and Stephen Lockwood purchased its assets. Stephen Lockwood's interest in the property eventually devolved to the testamentary trust of Verna Lockwood Williams and its trustee, Key Trust Company of Ohio ("Key Trust").
16. Between 1999 and 2000, Key Trust deeded all its interests in any and all Canal Company property to Relators Coles and Buffalo Prairie, Ltd., respectively, reserving no interest in the Railway or Norfolk or any other party to install and maintain fiber optic transmission wires or to reenter any Canal property for any purpose. *See* Exs. 3-4. In turn, Relators Coles conveyed portions of the land to Relator Isolated Ventures, Ltd., and Relator Buffalo Prairie conveyed portions of the land to adjacent property owners including the other Relators. *See* Exs. 5-8.
17. In 1988, Norfolk filed an application with the Interstate Commerce Commission to abandon rail service over the corridor.

18. Between 1985 and 1992, the Railway or Norfolk ceased rail service over the corridor, removed all salvageable materials, and discontinued maintaining and policing the corridor.
19. On or about October 13, 1995, Norfolk quitclaimed its interests in the Railway's lease to Respondent MetroParks for using the railroad right of way as a trail.
20. Respondent MetroParks legal counsel, Baumgartner & O'Toole, prepared the quitclaim deed and its attachments.
21. The quitclaim deed arose out of a 1995 "usage" "license" agreement between Respondent MetroParks and the Railway, which stated that "[t]he Board [of Park Commissioners] is acquiring a right of usage in the Property without covenants or warranties of any nature..." and "subject to any and all existing tenancies, encumbrances, easements, rights, licenses, privileges, agreements, covenants, conditions, restrictions, rights of reentry, possibilities of reverter, ...".
22. The 1995 usage license agreement also stated, "[t]he Board [of Park Commissioners] 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."
23. Based on the aforementioned quitclaim deed and usage license agreement, Respondent MetroParks attempted to take possession over the entire former railroad corridor from the Village of Milan, Ohio to the City of Huron, Ohio, including property owned by Relators.
24. In July, 2000, MetroParks commenced an action in Erie County Court of Common Pleas against Key Trust and several other landowners who claimed title as adjacent and underlying owners and as grantees from the Milan Canal Company's successors

("landowners"). MetroParks sought a declaratory judgment against the landowners that the Railroad Lease remained valid and was properly assigned to MetroParks in 1995. *See* Ex. 9. Among the landowner defendants in the *Key Trust* litigation were each of the Relators in this mandamus petition.

25. At the conclusion of a bench trial, the trial court ruled, inter alia, that the Railroad Lease applied only to those portions of the canal corridor that the Canal Company owned in fee as of the time of the Railroad Lease, and that the record showed only that the Canal Company owned the property within the Merry and Townsend Tracts. Accordingly, the trial court found that that the railroad's quitclaim of rights in the Railroad Lease to MetroParks transferred only rights within the Merry and Townsend Tracts. *See* Ex. 10. As a result of this finding, the landowners' property within the former canal right of way that was not within the boundaries of the Merry or Townsend Tracts was not subject to the Railroad Lease.
26. On appeal, the Court of Appeals for the Sixth District in Ohio reversed some parts of the trial court judgment, but affirmed the trial court's conclusion that the Railroad Lease applied only to land within the Merry and Townsend Tracts.
27. On remand, the trial court entered judgment, limiting the Railroad Lease to only the Merry and Townsend Tracts.

The only lands owned by the Milan Canal Company at the time the Lease was executed lay within the boundaries of the Kneeland Townsend property and the Ebenezer Merry property

See Ex. 11 at 4.

28. On appeal after remand, the court of appeals in *Key Trust II* declared that the trial court's judgment entry was consistent with the *Key Trust I* in that it limited the scope of the Railroad Lease to the land within the Merry and Townsend Tracts. *See* Ex. 12.

The court of appeals declined to describe more specifically the boundaries of the Merry and Townsend Tracts.

29. The Merry and Townsend Tracts, as described in those deeds and as proven by Respondent MetroParks at trial in the 2000 litigation, are not contiguous and constitute only a small fraction of the land now being wrongfully claimed and occupied by Respondent MetroParks.
30. The Merry and Townsend Tracts are not in the chain of titles of Relators' properties. No property records reflect that Relators' properties lie within the area known as the "Merry" and "Townsend" Tracts of Milan Township, Erie County, Ohio. Therefore, Relator's properties do not fall within the scope of the 1881 Railway Lease under the court of appeals determination.
31. Nevertheless, Respondent MetroParks has occupied the property of each of the Relators and has used that property for the construction of a recreational trail without the consent of the Relators.
32. Further, Respondent MetroParks had destroyed improvements and seized personal property on Relators' property. For example, on July 2, 2002, Respondent MetroParks, directly or through paid agents and employees armed with firearms, intentionally or recklessly entered the property of Relators Coles' (described at paragraph 10.(a)(2) herein), and Otrusina's (described at paragraph 10.(b) herein), which lies essentially in the middle of an unused area of the corridor and substantially away from any public access road or trailhead, and began destroying personal property of those relators with chainsaws, sledgehammers, and other devices, forcibly removing a backyard deck and stairs, which the Coles and Otrusina had built.

33. Thereafter, on July 8, 2002, while the court of appeals was hearing oral argument on the lease case, Respondent MetroParks' employees armed with firearms again intentionally and recklessly entered premises as set forth at paragraph 10.(a)(2) herein and forcibly removed a tractor owned by Relators Coles. Respondents confiscated the tractor and relocated it to premises unknown although they later returned it.
34. Respondents MetroParks and Granville, directly as a representative of a governmental entity or through paid agents and employees, intentionally or recklessly entered property described at paragraph 10.(a)(2) herein, on the aforesaid dates, and attempted to, and did, exercise dominion and control over, and confiscated, damaged, and destroyed personal property to the exclusion of Relators Coles and Otrusina, the true and lawful owners thereof.
35. Respondent MetroParks refused to, and did not surrender, the confiscated tractor to Relators Coles unless the Coles and others agreed not to enter the corridor, either north or south of Mason Road, except for a three (3) hour period, once a week, for inspection purposes only.
36. On July 22, 2002, when Realtors Coles went to obtain his confiscated tractor from Respondent MetroParks, Coles was told by Respondent Granville, Respondent MetroParks director, in reference to the destroyed deck and stairs, "we just wanted to get your attention. We'll come back out and put it back."
37. On October 15, 2002, Respondent MetroParks, through its commissioner, Kevin Zeiher, an attorney licensed to practice in Ohio, mailed a letter to all property owners of the disputed property from Mason Road south into the Village of Milan, Ohio, giving his legal opinions of the state of the litigation between the parties, his interpretation of various court decisions; his opinion that "all parties to the case who

purchased property south of Mason Road through Buffalo Prairie, Ltd or the Williams Trust received that property subject to an existing lease”; and encouraging property owners to take action to collect a portion of annual \$50 rent on deposit with the Erie County Clerk of Courts, thereby affecting their legal position and rights regarding the disputed property.

38. Respondents Granville and MetroParks have never replaced the personal property of Relators, which Respondents confiscated, damaged and destroyed, or compensated Relators for the confiscation and destruction of, and the damage to the property.
39. Respondents presently exercise dominion and control over Relators’ lands as described in paragraph 10 herein and deny Relators access to their own lands, to which Respondent MetroParks has no legal rights.
40. Respondents’ confiscation, destruction, seizure, use and possession of Relators’ property constitute unconstitutional takings. As a result, Respondents have invaded Relators’ fundamental property rights and caused Relators to suffer substantial property damages and incurred attorney fees and other costs in response to Respondents’ wrongful action.
41. Under Ohio Rev. Code § 163.01 *et seq.*, Ohio Const. Art. I, § 19, and United States Const. Amend. 5, Respondents have a clear legal duty to initiate appropriation proceedings for the purposes of compensating Relators for property rights taken from them.
42. Respondents Granville and MetroParks show no intention to fulfill their statutory duty to commence an appropriation proceeding to acquire Relators’ private property.

43. Ohio law does not recognize an inverse condemnation action, which a landowner can initiate in order to obtain compensation for a taking of his property. Thus, Relators have no adequate remedy in the ordinary course of the law.

WHEREFORE, Relators request relief from this Court as follows:

- (1) Issue a Writ of Mandamus ordering Respondents to commence an appropriation proceeding under Ohio Rev. Code § 163.01 *et seq.* and to provide Relators with the opportunity for a jury trial, within which the issues of damages and compensation for Respondents' unconstitutional taking of Relators' property may be adjudicated and in which Relators can challenge directly Respondents' authority to appropriate property under applicable law;
- (2) Issue an Alternative Writ pursuant to S.Ct. Prac. R. X, Section 6, requiring Respondents to show cause why the requested Writ of Mandamus should not issue; and
- (3) Issue such further relief as necessary and appropriate.

COMPLAINT IN THE ALTERNATIVE

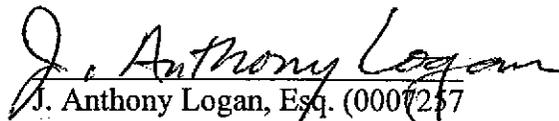
1. Relators adopt the allegations of paragraphs 1 through 40 above, as though fully rewritten herein.
2. MetroParks has occupied and taken Relators' property for public use without the consent of Relators.
3. Respondent's actions are unauthorized by law, as MetroParks is not statutorily empowered, under Ohio Revised Code § 1545.11, to exercise the power of eminent domain, because MetroParks is a park district created after April 16, 1920.
4. MetroParks' acts have caused, and will continue to cause, substantial irreparable harm to Relators for which there is no adequate remedy at law.

5. Relators are entitled to a Writ of Mandamus ordering Respondent to cease occupation of Relators' land and to prevent Respondent from filing an eminent domain action not authorized by applicable statute.

WHEREFORE, Relators request relief from this Court as follows:

- (1) Issue a Writ of Mandamus ordering MetroParks, its Members, Officers and Directors, to relinquish Relators' property previously seized and occupied by MetroParks and to direct that MetroParks shall not file an eminent domain action to appropriate such Relators' property;
- (2) Issue an Alternative Writ pursuant to S.Ct. Prac. R. X, Section 6, requiring Respondents to show cause why the requested Writ of Mandamus should not issue; and
- (3) Issue such further relief as necessary and appropriate.

Respectfully submitted,


J. Anthony Logan, Esq. (0007257)

BROOKS & LOGAN Co., LPA
5025 Arlington Centre Blvd., Suite 350
Columbus, OH 43220
Telephone: (614) 457-1010
Facsimile: (614) 457-1018

Of Counsel:

Nels Ackerson (pending *pro hac vice*)
ACKERSON KAUFFMAN FEX, PC
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Washington, DC 20005
Telephone: (202) 833-8833
Facsimile: (202) 833-8831
nels@ackersonlaw.com

Counsel for Relators

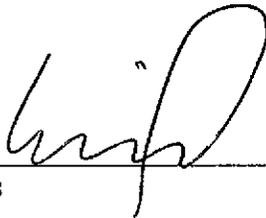
AFFIDAVIT

STATE OF OHIO }
 }
 } SS:
COUNTY OF ERIE }

The undersigned, being first duly sworn, testifies based on personal knowledge as follows:

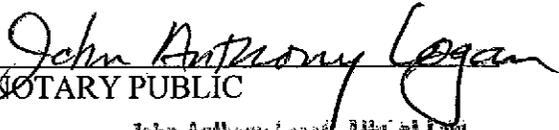
1. My name is Edwin Coles, and I am the owner of real estate described in the within Complaint.
2. I have reviewed the Complaint and the facts relating to my real estate and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



Edwin Coles

Sworn to before me and subscribed in my presence this 27th day of June, 2006.



NOTARY PUBLIC
John Anthony Logan, Atty. at Law
Notary Public for State of Ohio
My Commission has no expiration date

AFFIDAVIT

STATE OF OHIO }
 }
COUNTY OF ERIE } SS:

The undersigned, being first duly sworn, testifies based on personal knowledge as follows:

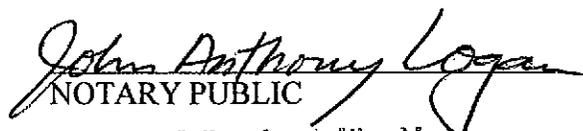
1. My name is Lisa Coles, and I am the owner of real estate described in the within Complaint.
2. I have reviewed the Complaint and the facts relating to my real estate and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



Lisa Coles

Sworn to before me and subscribed in my presence this 27 day of June, 2006.


NOTARY PUBLIC

John Anthony Logan, Atty. at Law
A Notary Public for State of Ohio
My Commission has no expiration date

AFFIDAVIT

STATE OF OHIO }
 }
 } SS:
COUNTY OF ERIE }

The undersigned, being first duly sworn, testifies based on personal knowledge as follows:

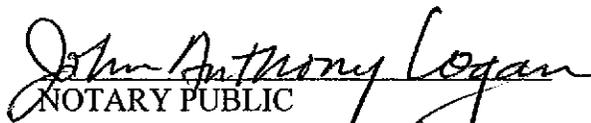
1. My name is Edwin Coles, and I am the President of Buffalo Prairie, Ltd., and an owner of real estate described in the within Complaint.
2. I have reviewed the Complaint and the facts relating to my real estate and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



Edwin Coles, President
Buffalo Prairie, Ltd.

Sworn to before me and subscribed in my presence this 27th day of June, 2006.


NOTARY PUBLIC

John Anthony Logan, Atty. at Law
Notary Public for State of Ohio
My Commission has no expiration date

AFFIDAVIT

STATE OF OHIO }
 }
 } ss:
COUNTY OF ERIE }

The undersigned, being first duly sworn, testifies based on personal knowledge as follows:

1. My name is Edwin Coles, and I am the President of Isolated Ventures, LTD., and an Owner of real estate described in the within Complaint.
2. I have reviewed the Complaint and the facts relating to my real estate and swear That those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



Edwin Coles, President
Isolated Ventures, LTD

Sworn to before me and subscribed in my presence this 27th day of June, 2006.



NOTARY PUBLIC
John Anthony Logan, Attorney at Law
Notary Public for State of Ohio
My Commission has no expiration date

AFFIDAVIT

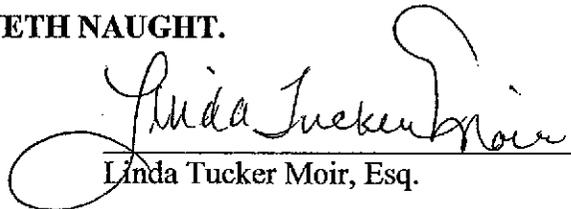
STATE OF OHIO }
 }
 } ss:
COUNTY OF ERIE }

The undersigned, being first duly sworn according to law, states as follows:

1. My name is Linda Tucker Moir, Esq., and I am the Personal Representative (Executrix) and Attorney for the Estate of Vincent Otrusina, which Estate is the owner of real estate described in the within Complaint.

2. I have reviewed the Complaint and the facts relating to my real estate and swear that those facts are true and accurate, to the best of my knowledge and belief.

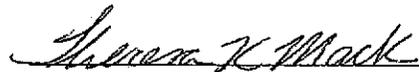
FURTHER AFFIANT SAYETH NAUGHT.



Linda Tucker Moir, Esq.

Sworn to before me and subscribed in my presence this 27th day of June, 2006.

Theresa K. Mack
Notary Public
State of Ohio
My Commission exp: 1-8-2011



NOTARY PUBLIC

AFFIDAVIT

STATE OF OHIO }
 }
 } SS:
COUNTY OF ERIE }

The undersigned, being first duly sworn, testifies based n personal knowledge as follows:

1. My name is Robert C. Bickley, and I am the owner of real estate described in the within Complaint.
2. I have reviewed the Complaint and the facts relating to my real estate and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



Robert C. Bickley

Sworn to before me and subscribed in my presence this 27th day of June, 2006.



NOTARY PUBLIC

John Anthony Logan, Atty. at Law
Notary Pubile for State of Ohio
My Commission has no expiration date

AFFIDAVIT

STATE OF OHIO }
 }
 } SS:
COUNTY OF ERIE }

The undersigned, being first duly sworn, testifies based on personal knowledge as follows:

1. My name is Warren Jones, and I am the owner of real estate described in the within Complaint.
2. I have reviewed the Complaint and the facts relating to my real estate and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.

Warren R Jones

Warren Jones

Sworn to before me and subscribed in my presence this 27th day of June, 2006.

John Anthony Logan

NOTARY PUBLIC

John Anthony Logan, Esq. of Law
Notary Public for State of Ohio
My Commission Expires 06/30/2008

IN THE SUPREME COURT OF OHIO

EDWIN M. COLES, et al, :
 :
 Plaintiff/Relators, :
 :
 v. : Case No.
 :
 JONATHAN GRANVILLE, et al, : Judge
 :
 Defendant/Respondents. :

**RELATORS' MEMORANDUM IN SUPPORT OF
THE COMPLAINT FOR WRIT OF MANDAMUS**

Relators seek a Writ of Mandamus, compelling Respondent, Erie MetroParks ("MetroParks"), to commence an appropriation proceeding to compensate Realtors for the physical seizure and occupation of land owned by Relators (the "Relators' Segments"). In the alternative, Relators seek a writ of mandamus compelling MetroParks to return the seized property to Relators on the ground that MetroParks lacks the statutory power of eminent domain under applicable law, and thus its seizure of the Relators' property is unlawful.

STATEMENT OF THE CASE

The Relators' Segments comprise most of the land in a 6.5 mile strip or corridor that is being used as a public hiking and biking trail. The Relators' unencumbered ownership of their respective Segments was established in prior litigation between Respondent and Relators in the "Key Trust Litigation."¹ However, notwithstanding that judgment, MetroParks occupied the Relators' Segments, without any prior or subsequent judicial proceeding, and without compensating Relators for their taken property.

¹ See *Erie MetroParks Board of Comm'rs v. Key Trust Co. of Ohio, N.A.* (2001), 145 Ohio App.3d 782; *Board of Park Comm'rs v. Key Trust Co. of Ohio* (Ohio App. 2002), 2002 WL 31054032 (collectively *Key Trust* litigation, and separately *Key Trust I* and *Key Trust II*, respectively).

To obtain compensation, Realtors commenced a federal litigation in the United States District Court.² MetroParks moved to dismiss that case, arguing, *inter alia*, that the compensation claim was unripe because Relators had not followed the Ohio state mandamus procedure to compel the state officials to commence an appropriation proceeding.³ The District Court agreed with MetroParks that a state court mandamus petition was the appropriate procedure to obtain compensation, and accordingly dismissed the federal complaint as unripe.⁴

Realtors appealed to the Sixth Circuit. On appeal, Relators argued under *Kruse v. Village of Chagrin Falls, Ohio* (6th Cir. 1996), 74 F.3d 694, *cert. denied*, 519 U.S. 818, it was not necessary to pursue a state mandamus action in Ohio to maintain a federal takings claim where the state has engaged in a physical taking of property. Ex. 13 at 25-30. MetroParks countered that mandamus was a recognized remedy to compel the state officials to commence an appropriation proceeding. Ex. 14.

The Sixth Circuit affirmed the dismissal.⁵ The court determined that in the decade since the *Kruse* decision, the Ohio courts have repeatedly recognized use of mandamus to obtain compensation for takings, including physical takings of property. *Coles v. Granville*, slip op. at 9, 2006 WL 1375103. In light of the developments in Ohio law, the Six Circuit concluded that Relators' federal compensation action was not ripe, and instructed Relators to return to state court to apply for mandamus as required by the recent Ohio decisions. *Id.* at 10-11.

Relators promptly followed with the instant Mandamus petition.

² *Coles v. Granville* (N.D. Ohio), No. 3:03 CV 7595.

³ See MetroParks' Motion to Dismiss at 6:
Under Ohio law, mandamus is the appropriate action to compel public authorities to institute appropriation proceedings where an involuntary taking of private property is alleged. *State ex rel. Preschool Dev., Ltd. v. City of Springboro* (2003), 99 Ohio St.3d 347.

⁴ *Coles v. Granville* (N.D. Ohio 2005), slip op. at 3, 2005 WL 139137. (Ex. 15).

⁵ *Coles v. Granville* (6th Cir. 2006), slip op., 2006 WL 1375103. (Ex. 16).

STATEMENT OF FACTS

A. The *Key Trust* Litigation and History of the 6.5 Mile Strip of Land

1. Right-of-Way Ownership History

The Milan Canal. In 1827, the state of Ohio chartered the Milan Canal Company to construct and operate a canal from Milan, Ohio to the mouth of the Huron River in Huron, Ohio, totaling approximately 6.5 miles in length. See *Key Trust I*, 145 Ohio App.3d at 784. Portions of the canal corridor were acquired by deeds from two landowners named Ebeneser Merry and Kneeland Townsend (the “Merry and Townsend Tracts”). (Ex. 10).

The Railroad Lease. After the Milan Canal Company ceased operation in 1881, it entered into a 99-year lease with the Wheeling and Erie Railroad, purportedly transferring authority to operate a railroad over property owned by the Milan Canal Company.⁶ In 1980, the Wheeling and Lake Erie Rail Road Company renewed its lease for a second term of 99 years.⁷

Relators’ Property. In 1904, the Milan Canal Company was dissolved, and its assets were purchased by Stephen Lockwood. Stephen Lockwood’s interests eventually devolved to the Testamentary Trust of Verna Lockwood Williams and its Trustee, Key Trust Company of Ohio. See *Erie MetroParks Board of Comm’rs*, 145 Ohio App.3d 782, 784 (“*Key Trust P*”).

Between 1999 and 2000, Key Trust deeded all its interests in any and all Canal Company property to Relators Coles and Buffalo Prairie, Ltd., respectively, reserving no interest in the Railway or Norfolk or any other party to install and maintain fiber optic transmission wires or to reenter any Canal property for any purpose. In turn, Relator Coles conveyed portions of the land

⁶ The lease is summarized in pertinent part in *Key Trust I*. 145 Ohio App.3d at 784.

⁷ The Wheeling and Lake Erie Rail Road Company, the original leaseholder, was absorbed by the Norfolk and Western Rail Company, which in turn became the Norfolk Southern Company after merging with other railroads. In 1990, Norfolk Southern assigned its interest in the lease at issue to its subsidiary, the Wheeling and Lake Erie Railway Company—not to be confused with the earlier Wheeling and Lake Erie Rail Road Company. *Key Trust I*, 145 Ohio App.3d at 784 n.1.

to Isolated Ventures, Ltd., and Plaintiff Buffalo Prairie conveyed portions of the land to adjacent property owners including the other Relators.⁸

The Relators' Segments are *not* within the land conveyed to the Milan Canal Company by the Merry and Townsend deeds. (Exs. 3-8).

The Railroad's Quitclaim to MetroParks. In the 1980s, railroad operations ceased over the corridor, and annual lease payments ceased. See *Key Trust I*, 145 Ohio App.3d at 784. In 1988, Norfolk Southern Company (successor to the Wheeling and Lake Erie Rail Road Company) filed an application with the Interstate Commerce Commission to abandon rail service over the corridor. (Ex. 10 at 2-3). The railroad began removing rails and ties, ceased maintaining the right of way, and allowed the property to deteriorate. *Id.*

In 1995, many years after the railroad operations ceased over the corridor, the railroad quitclaimed and assigned its interests in the Railroad Lease to MetroParks for use as a trail (purportedly reserving for the railroad the right to use the corridor for underground fiber optic facilities). *Key Trust I*, 145 Ohio App.3d at 784. Owners of the land underlying the proposed trail objected to the creation of the trail, claiming the railroad use had been abandoned and the Railroad Lease had been breached and terminated prior to the conveyance to MetroParks, leaving full rights of occupancy and use to the owners of the underlying fee. *Id.*

2. Scope of the Railroad Lease in the *Key Trust* Decisions

The Court of Common Pleas Judgment. In July, 2000, MetroParks commenced an action in Erie County Court of Common Pleas against Key Trust and several other landowners who claimed title as adjacent and underlying owners and as grantees from the Milan Canal Company's successors ("landowners"). MetroParks sought a declaratory judgment against the

⁸ Even before the transfers from Buffalo Prairie, Ltd., the adjacent landowners were presumptive owners of the land underlying the right of way under the presumption in Ohio law that adjacent landowners own to the midline of transportation rights of way. See *Greensberg v. L.I. Snodgrass Co.* (1954), 61 Ohio St. 351; *Paine v. Consumers' Forwarding & Storage Co.* (6th Cir. 1895), 71 F. 626.

landowners that the Railroad Lease remained valid and was properly assigned to MetroParks in 1995. (Ex. 9). Among the landowner defendants in the *Key Trust* litigation were each of the Relators in this mandamus petition.

At the conclusion of a bench trial, the trial court ruled in favor of the landowners on several points. Relevant to this mandamus petition, the trial court found that the railroad's quitclaim of rights in the Railroad Lease to MetroParks transferred only rights within the Merry and Townsend Tracts. *Id.* The trial court began its conclusion of law: "It is axiomatic that a seller cannot transfer any greater interest in land than that which the seller possesses." *Id.* at 4. With respect to scope of the Railroad Lease, the court found that the only lands owned by the Milan Canal Company at the time the Lease was executed lay within the boundaries of the Kneeland Townsend and Ebeneser Merry property. *Id.* Accordingly, property within the former canal right of way that was not within the boundaries of the Merry or Townsend properties were not subject to the Railroad Lease.

The trial court described the Merry and Townsend tracts as follows:

The Milan Canal Property consisted of a roughly three mile long corridor of property the northern terminus being known as Lock No. 1, which was located where the Milan Canal joined the Huron River on property now owned by Wikel Farms, Ltd., just north of Mason Road, in Section 2, Milan Township, Erie County, Ohio. *Neither Kneeland Townsend nor Ebeneser Merry conveyed to the Milan Canal Company any interest in real property north of Lock No. 1.*

Id. at 3-4.⁹

⁹ The trial court also reached conclusions of law that were reversed on appeal which are not relevant to Relators' claims in this mandamus petition, including conclusions that the railroad had materially breached the terms of the lease by failing to pay the annual rent and that it had abandoned the property for purposes of operating a railroad. Consequently, the court ruled, the Railroad Lease had terminated and the railroad's purported conveyance to MetroParks was ineffective. (Ex. 9).

The First Appeal to the Ohio Court of Appeals (Key Trust I). On appeal, the Ohio Court of Appeals affirmed in part and remanded in part.¹⁰ The appellate court reversed the conclusions that the Railroad Lease had been breached by the railroad's actions prior to the quitclaim transfer to MetroParks and remanded the case to the trial court for entry of judgment in favor of MetroParks on that issue. *Key Trust I*, 145 Ohio App.3d at 787-89.

The appellate court, however, affirmed the conclusion that the Railroad Lease applied only to land within the Merry and Townsend Tracts, explaining in the first paragraph of the opinion, "[b]ecause the trial court's determination concerning the scope of the lease in question was proper, we affirm that portion of the court's decision." *Key Trust I*, 145 Ohio App.3d at 783. Further, the court of appeals explained its decision as follows:

Although the metes and bounds description contained in the 1881 lease describes a one-hundred-fifty-foot corridor for the full length of the canal, the lease limits the conveyance to property "owned by" the canal company. *The trial record shows that the Milan Canal Company acquired property only from Townsend and Merry. The trial court ruled that this property alone was the subject of the lease. . . .*

. . . . The only competent, credible evidence presented at trial was that the canal company obtained property solely from Townsend and Merry. On such evidence, we cannot say that the trial court's decision to limit the lease to such property was unsupported by the evidence.

Id. at 787-88 (emphasis added).

The Court of Common Pleas' Decision on Remand. On remand, as mandated by the court of appeals, the trial court entered judgment for MetroParks on the validity of the Railroad Lease and reiterated the limited scope of the Railroad Lease, explaining its finding as follows:

The only lands owned by the Milan Canal Company at the time the Lease was executed lay within the boundaries of the Kneeland Townsend property and the Ebenezer Merry property

(Ex. 11 at 4).

¹⁰ *Key Trust I* (2001), 145 Ohio App.3d 783.

The trial court further implicitly acknowledged that some of the landowner-defendants in the state case hold land that is not within the boundaries of the Merry or Townsend tracts and are, therefore, not entitled to rent (and their land is not affected by the Lease), while others hold lands within the Merry or Townsend tracts and, therefore, remain as the lessors to the Railroad Lease. The February 22, 2002 judgment stated: "Only those Defendants who hold an interest in the Leased Property are entitled to any portion of the rent under the Lease or to benefit of any of the rights of the lessor under the Lease." (Ex. 11 at 8).

The Second Appeal to the Ohio Court of Appeals (Key Trust II). The judgment on remand was appealed by the landowners, who argued that the judgment should have identified more specific boundaries of the Merry and Townsend Tracts vis-à-vis the locations of the lands owned by the other landowners.

The court of appeals in *Key Trust II* declared that the trial court's judgment entry was consistent with the *Key Trust I* in that it limited the scope of the Railroad Lease to the land within the Merry and Townsend Tracts.¹¹ The court of appeals declined to describe more specifically the boundaries of the Merry and Townsend Tracts, explaining:

In its February 22, 2002 judgment entry on remand, the trial court ruled that the railroad had not abandoned the leased property and that the lease MetroParks purchased from the railroad is still in full force and effect. Although the issue was not before the trial court on remand, the court also made a finding as to the boundaries of the leased property. *In so doing, the trial court found that the land owned by the Milan Canal Company at the time the lease was executed "lay within the boundaries of the Kneeland Townsend property and the Ebeneser Merry property."*

* * *

This court has carefully examined the trial court's November 7, 2000 judgment entry, our own decision of September 14, 2001, and the trial court's February 22, 2002 judgment entry on remand. Despite appellants' assertion that the trial court's entry on remand was contrary to our September 2001 decision, we find that the descriptions of the leased property are identical in both of the trial court's entries. . . . *Significantly, both entries define the property as encompassing only land previously owned by Merry and Townsend.*

¹¹ *Key Trust II*, slip op., 2002 WL 31054032.

2002 WL 31054032 at *3 (emphasis added).

B. The Relators' Property Is Outside of the Scope of the Railroad Lease, as Adjudicated in the *Key Trust* Litigation.

Relators here consist of only six of the thirty-two landowners in the Key Trust litigation – those landowners whose properties lie outside of the Merry and Townsend tracts, and thus are not encumbered by the Railroad Lease. Relators have submitted deeds and affidavits establishing that their properties are *not* within the boundaries of the Merry and Townsend tracts.

Relators are not seeking to relitigate the trial court's judgment; rather they are seeking to enforce the limits to the Railroad Lease twice declared by the trial court, and twice affirmed by the Court of Appeals

C. MetroParks' Refusal To Abide By *Key Trust* Decisions.

Notwithstanding the *Key Trust* decisions, MetroParks and its agents have continued to occupy Relators' property, have destroyed fixtures on the property, have confiscated Relators' farm equipment, have slandered Relators' title, and have retaliated against Relators for asserting their rights to the property.

Specifically, agents of MetroParks entered lands belonging to Relators Coles and Otrusina – laying well North of Mason Road -- and destroyed personal property in order to clear the land. MetroParks' agents removed and demolished backyard decks and stairs on both the Relators Coles' and the Relators Otrusina's properties. Agents of MetroParks entered the Coles' land and forcibly removed and retained control of a tractor owned by the Coles, only returning it when the Coles agreed to stay out of the corridor except during a three-hour period once a week for inspection purposes. MetroParks has not compensated the Coles for the loss of the use of the tractor, nor has it replaced the decks and stairs of the Coles' and the Otrusinas' property, nor has it ceased exercising dominion and control over the Coles' and the Otrusinas' land.

In addition, MetroParks has extended the recreational trail on property south of Mason

Road that was not within the specific limits of the Merry and Townsend Tracts, and thus not encumbered by the Railroad Lease.¹²

The construction of the recreational trail over Relators' property, and MetroParks continued occupation of the property for use as a recreational trail has deprived Relators of their use of their property, and constitutes a taking of their property for public use.

D. MetroParks Has Failed To Compensate Relators For The Property Taken.

MetroParks has not commenced any appropriation action to compensate the Relators for the property taken outside of the Railroad Lease in constructing the recreational trail. Nor has MetroParks offered any payment to Relators for the value of the property.

SUMMARY OF ARGUMENT

Because the Key Trust litigation established that the Railroad Lease is limited to only the Merry and Townsend Tracts, MetroParks' must exercise eminent domain power to seize Relators' property for creation of the recreational trail beyond the limits of the Railroad Lease. To remedy the continuing unlawful occupation of their property, Relators seek two alternative forms of redress from this Court.

Mandamus for appropriation action. Relators' property taken for the trail is not within the Merry and Townsend Tracts, and thus is not encumbered by the Railroad Lease. Accordingly, if MetroParks has the authority to use eminent domain to seize Relators' property, then MetroParks has failed to conform to its statutory duty to commence an appropriation

¹² The Railroad Lease does not cover all of the corridor properties south of Mason Road. The evidence introduced in the trial court regarding the Merry and Townsend deeds demonstrates that the Merry and Townsend tracts are not contiguous. (Exs. 1-2). The state trial court made no findings that the tracts were contiguous, but rather merely described the tracts generally as lying between the terminus of the old canal in Milan and old "Lock No. 1." The appellate court, which also had the trial evidence before it, recognized the landowner-defendants' contention that the Merry and Townsend parcels were not contiguous (*Key Trust II*, 2002 WL 31054032, slip op. at *3), and did not contradict that factual assertion. Thus, no court made any finding on the issue of contiguity of the Merry and Townsend tracts.

proceeding to compensate Realtors for the property taken. A writ of mandamus is the appropriate remedy under Ohio law to compel the MetroParks to perform its statutory duty of bringing an appropriation action.

To the extent that there are contested facts concerning the scope of the Merry and Townsend tracts as against the Relators' property, the Court should issue an alternative writ of mandamus setting the matter for the submission of evidence and briefs pursuant to S. Ct. Prac. R. X, Section 6. MetroParks, however, is precluded by the *Key Trust* judgment from contending that the scope of the Railroad Lease extended beyond the metes and bounds of the Merry and Townsend properties.

Mandamus for return of Relators' property. In the alternative, the Court should grant a writ of mandamus compelling MetroParks to return Relators' property because MetroParks lacks the statutory authority to exercise any eminent domain authority under applicable law. Under O.R.C. § 1545.11, only park districts created prior to April 16, 1920, may appropriate land through eminent domain. MetroParks was created after that statutory cut-off, and thus cannot seize land for its public purposes. Accordingly, the Court should issue a writ of mandamus directing MetroParks comply with O.R.C. § 1545.11, and return Relator' property to them. This relief would then permit Relators to bring actions in trespass and slander of title for the resulting damages cause by the past unlawful occupation.

ARGUMENT

I. RELATORS ARE ENTITLED TO A WRIT OF MANDAMUS REQUIRING METROPARKS TO COMMENCE AN APPROPRIATION PROCEEDING TO COMPENSATE REALTORS FOR THE PROPERTY TAKEN.

A. Metroparks Has A Clear Duty To Commence An Appropriation Proceeding To Compensate Relators For The Property Taken For The Recreational Trail.

The United States and Ohio Constitutions guarantee that private property shall not be taken for public use without just compensation. United States Constitution, Amend. V and

Amend. XIV; Ohio Constitution, Article I, Section 19. Physical occupation of land by state agencies for public use constitutes a taking of property for which compensation must be provided. *See State ex rel. Elsass v. Shelby City, Board of Comm'rs* (2001), 92 Ohio St.3d 529.

The construction of a recreational trail over property owned by Relators constitutes a physical invasion of their property and a taking of private property for public use. *See Masley v. Lorain* (1976), 48 Ohio St.2d 334, 336:

Any direct encroachment upon land, which subjects it to a public use that excludes or restricts the dominion and control of the owner over it, is a "taking" in the constitutional sense.

The Ohio Revised Code requires public officials to bring an appropriation action prior to taking any private property. O.R.C. §§ 163.01-163.62. MetroParks failed to comply with this statutory duty when it seized and occupied Relators' property without just compensation.

B. A Writ of Mandamus Is Appropriate To Require MetroParks to Commence an Appropriation Proceeding.

The Writ of Mandamus is available in Ohio to compel a state official to perform an action which the law specifically enjoins as a duty resulting from his office. O.R.C. § 2737.01. Because Ohio does not provide a direct "inverse condemnation" action brought by a landowner to obtain compensation for a taking of his property, a property owner's remedy for the taking of his property for public use is to petition for a writ of mandamus to compel the public officials to institute appropriation proceedings. The purpose of the writ in such a case is to compel the government official to comply with his statutory duty to bring appropriation proceedings whenever a taking occurs. *See, e.g., BSW Development Group v. City of Dayton* (1998), 83 Ohio St.3d 338; *Sekermestrovich v. City of Akron* (2001), 90 Ohio St.3d 536; *Elsass v. Shelby County Bd. of Comm'rs* (2001), 92 Ohio St.3d 529; *Preschool Dev. Ltd. v. City of Springboro* (2003), 99 Ohio St.3d 347; *Duncan v. City of Mentor City Council* (2005), 105 Ohio St.3d 372.

MetroParks, having successfully opposed Relators' taking claims in federal court on the ground that mandamus is available in Ohio courts to require MetroParks to commence appropriation proceedings, is now judicially estopped from contesting that mandamus is the appropriate remedy available to Relators. *See Mentor v. CSX Transp., Inc.* (Ohio App 2005), slip op. at 10, 2005 WL 1538236.

C. Relators Have A Clear Legal Right To Mandamus Relief.

The courts in the *Key Trust* litigation limited the scope of the Railroad Lease to the land within the Merry and Townsend Tracts. Relators are not seeking to overturn or undermine or relitigate that judgment. The Merry and Townsend deeds are a matter of record, as are the metes and bounds of the deeds establishing the Relators' property. These documents can be laid against each other to determine precisely what property of Relators has been taken by MetroParks for its recreational trail which lay outside of the scope of the Railroad Lease as determined in the *Key Trust* judgment.

Because Relators' property has been seized and occupied by MetroParks for completion of the recreational trail beyond the boundaries of the Merry and Townsend tracts, Relators have an absolute right to just compensation under the United States and Ohio Constitution, and MetroParks has a clear statutory duty to commence an appropriation proceeding to provide such compensation.

D. To The Extent That There Are Contested Facts Concerning The Scope Of The Merry And Townsend Tracts As Against The Relators' Property, The Court Should Issue An Alternative Writ Of Mandamus.

Relators' right to mandamus is clear based on their deeds and the *Key Trust* judgment limiting the Railroad Lease to only the Merry and Townsend Tracts. MetroParks is precluded by the *Key Trust* judgment from contending that the scope of the Railroad Lease extended beyond the metes and bounds of the Merry and Townsend properties. However, to the extent that MetroParks asserts that the Merry and Townsend Tracts cover property claimed by Relators, and

if the Court is unable to resolve that dispute from the face of the deeds themselves, the contested facts concerning the scope of the Merry and Townsend tracts should be decided by issuing an alternative writ of mandamus.

S. Ct. Prac. R. X, Section 6 provides in pertinent part:

When an alternative writ is issued, the Supreme Court will issue a schedule for the presentation of evidence and the filing and service of briefs or other pleadings.

The Court has issued alternative writs for the submission of evidence and briefs in proceedings where there is a disputed question of fact whether a taking has occurred. Thus, for example, in *State ex rel. Sekermestrovich v. City of Akron* (2000), 88 Ohio St.3d 1483, the Relator contended that the construction of road improvements encroached upon his property, and sought mandamus to compel an appropriation proceeding. The state denied the encroachment. The Court granted an alternative writ, and ordered the parties to file evidence and briefs on the factual dispute of whether or not there was an encroachment.

II. IN THE ALTERNATIVE, RELATORS ARE ENTITLED TO A WRIT OF MANDAMUS REQUIRING METROPARKS TO RETURN RELATORS' PROPERTY.

In the alternative, the Court should issue a writ of mandamus requiring MetroParks to return Relators' property because MetroParks lacks the statutory authority to exercise the state's power of eminent domain.

A. MetroParks Does Not Have Statutory Takings Authority.

O.R.C. §1545.11 sets forth the power of park districts, such as MetroParks to acquire land through condemnation. It states in pertinent part as follows:

In case of appropriation, the proceeding shall be instituted in the name of the Board and shall be conducted in the manner provided in §163.01, §163.22, inclusive, of the Revised Code...*This section applies to districts created prior to April 16, 1920.* (Emphasis supplied).

The plain wording of the statute cited above indicates that the powers of eminent domain apply *only* to park districts created prior to April 16, 1920. Ohio Jurisprudence 3rd, the pre-eminent encyclopedia of Ohio law, confirms that only park districts created prior to April 16, 1920, may appropriate land through eminent domain:

Although a Board of Park Commissioners of a park district within a county does not have a dominant right of eminent domain, as a statute permits the acquisition of municipally owned and controlled land only by agreement, a district created prior to April 16, 1920, is authorized by statute to acquire lands either within or without the park district...by appropriation,...

72 O Jur.3d 19 (emphasis supplied).

In Ohio, courts have long held that enactments which confer power to governmental entities to exercise the right of eminent domain are to be strictly construed for the landowner and against the government. As stated in *Courier v. Marietta & Cincinnati Railroad Co.* (1860), 11 Ohio St. 228, 231:

There is no rule more familiar or better settled than this: that grants of corporate power, being in derogation of common right, are to be strictly construed; and this is especially the case where the power claimed is a delegation of the right of eminent domain—one of the highest powers of sovereignty that came into the state itself, and interfering most seriously, and often vexatiously, with the ordinary rights of property.

See also Moorhead v. Little Miami Railroad Co., (1840), 17 Ohio 340, 351, in which the Court said:

The general rule requiring grants of this nature to be strictly construed is, in our opinion, the only safe one, and should be adhered to with unyielding tenacity...It is the duty of the Court in such a case to keep them strictly within their granted powers, and, if the necessity of the case requires an enlarged power, to force them to seek it at the hands of the legislature.

Id. at 353.

Furthermore, simply “reading” into the statute eminent domain powers for park districts created after 1920 would result in a substantial injustice. Park Commissioners, unlike County

Commissioners, are appointed—not elected—to their government posts. The courts would be investing condemnation authority in government officials who are not subject to oversight or removal by the electorate.

Accordingly, actions by MetroParks to occupy Relators' property for a recreational trail exceeds the statutory authority granted to MetroParks.

B. A Writ Of Mandamus Is Warranted To Require Metroparks To Return Relators' Property Because It Lacks Authority To Exercise Eminent Domain.

Mandamus is appropriate as a means of instructing a state official to act in accordance with a statutory limit. Summarizing the case law, the court in *State ex rel. Dayton Law Library Ass'n v. White* (2005), 163 Ohio App.3d 118, stated:

"Where a public officer misconstrues a statute about which there may be an honest difference of opinion, a proceeding in mandamus is an appropriate remedy to compel him to act in accordance with the required construction. *State ex rel. Atty. Gen. v. Hoglan* (1901), 64 Ohio St. 532, 60 N.E. 627; *State ex rel. Melvin v. Sweeney* (1950), 154 Ohio St. 223, 226, 43 O.O. 36, 94 N.E.2d 785.

Id. at 128 n.14.

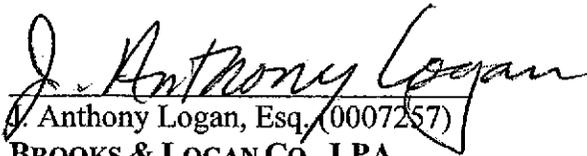
CONCLUSION

For the foregoing reasons, the Court should issue a Writ of Mandamus to Respondent MetroParks, requiring the commencement of a proceeding to compensate Relators for their property taken by MetroParks. To the extent that there is a factual dispute concerning the scope of the Merry and Townsend Tracts, Relators respectfully request that the Court issue an alternative writ.

In the alternative, the Court should grant Relators' alternative remedy, and issue a Writ of Prohibition enjoining MetroParks from engaging from further occupation, and permitting Relators to bring actions in trespass and slander of title for the resulting damages cause by the past unlawful occupation.

Dated: June 28, 2006

Respectfully submitted,



J. Anthony Logan, Esq. (0007257)

BROOKS & LOGAN CO., LPA

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Columbus, Ohio 43220

Telephone: (614) 457-1010

Facsimile: (614) 457-1018

Counsel for Relators-Appellants

**Index of Documents Included in the Relators' Complaint for Writ of Mandamus
and the Relators' Memorandum in Support of the Complaint for Writ of
Mandamus**

Relators' Exhibit Number	Description of Exhibit
1	Deed from Ebeneser Merry to Milan Canal Company. (Dated 04/21/1838).
2	Deed from Kneeland Townsend to Milan Canal Company. (Dated 10/29/1832).
3	Deed from Key Trust Company of Ohio, National Association, Trustee of the Testamentary Trust of Verna Lockwood Williams to Edwin M. Coles and Lisa A. Coles. (Dated 09/08/1999).
4	Deed from Key Trust Company of Ohio, National Association, Trustee of the Testamentary Trust of Verna Lockwood Williams to Buffalo Prairie, Ltd. (Dated 04/11/2000).
5	Deed from Edwin M. Coles and Lisa A. Coles to Isolated Ventures, Ltd. (Dated 10/14/2002).
6	Deed from Buffalo Prairie, Ltd. to Vincent R. Otrusina. (Dated 04/26/2000).

**Index of Documents Included in the Relators' Complaint for Writ of Mandamus
and the Relators' Memorandum in Support of the Complaint for Writ of
Mandamus (Cont'd)**

7	Deed from Buffalo Prairie, Ltd. to Robert C. Bickley. (Dated 04/26/2000).
8	Deed from Buffalo Prairie, Ltd. to Warren R. Jones. (Dated 04/26/2000).
9	Amended Complaint MetroParks filed in <i>Board of Park Com'rs v. Key Trust Co.</i> (Dated 07/14/00).
10	Judgment Entry of the Common Please Court in <i>Board of Park Com'rs v. Key Trust Co.</i> (Dated 11/07/2000).
11	Judgment Entry the Common Please Court in <i>Board of Park Com'rs v. Key Trust Co.</i> (Dated 02/22/2002).
12	Opinion of the Ohio Court of Appeals on Appeal after Remand in <i>Board of Park Com'rs v. Key Trust Co.</i> , 2002 WL 31054032 (Ohio App. Sept. 13, 2002).
13	Excerpt from the Brief of Appellants, Edwin Coles, Lisa Coles, Buffalo Prairie, Ltd., Vincent Otrusina, Robert Bickley, Warren Jones and Wikel Farms, Ltd., for the Court of Appeals for the Sixth Circuit in <i>Coles v. Granville.</i> (Dated 08/04/05).
14	Excerpt from the Brief of Appellees, Jonathan Granville and Board of Park Commissioners, Erie MetroParks, for the Court of Appeals for the Sixth Circuit in <i>Coles v. Granville.</i> (Dated 08/08/05).

**Index of Documents Included in the Relators' Complaint for Writ of Mandamus
and the Relators' Memorandum in Support of the Complaint for Writ of
Mandamus (Cont'd)**

15	Order of the United States District Court in <i>Coles v. Granville</i> . (Dated 01/24/2005).
16	Opinion of the United States Court of Appeals for the Sixth Circuit in <i>Coles v. Granville</i> . (Dated 05/22/2006).

EXHIBIT 1

Blanche Merry To Miles Canal Company
Volume 10 Page 23

Know all men by these presents that I Blanche Merry of Miles Township County of Huron and State of Ohio in consideration that the Miles Canal Company have built a dam in pursuance of a contract made January 1, 1834, across the new channel of the Huron River and further agree to keep said dam and buttments in good repair and rebuild the same when necessary I do hereby give, grant, release and forever quit claim unto said Miles Canal Company

All my rights to occupy the Miles Canal Basin as described in the address to the Town Plat of Miles Recorded in Huron County Records Volume 10, Pages 41 and 42. Also, the right to the first use of the water to be taken from its pond at the head of the Canal Basin to be used for the purpose of irrigating said Canal tract up to the privilage of the owner of the Miles Canal Company. Also, to use said Water to supply a dry dock but for no other purpose whatever and I do further agree and bind my company unto said Company the following described tract for the use of a dry dock bounded as follows: Beginning at the North East corner of Lot Ninety two in the village of the Miles Town Plat, Thence, North 33 degrees East 2 chains 9 links to a stake, Thence, South 9 degrees West 3 chains to a stake, Thence, North 28 degrees West 2 chains 30 links to a stake, Thence, South 31 degrees West 6 chains 23 links to a stake, Thence, Easterly 3 chains to a stake, Thence, South 1 chain to the place of commencement containing one (1) acre and fifty one hundredths (51/100) of an acre be the same more or less. Also I do further release said Canal Company from all claims I might have against said Company for damage by flooding my land or in extinguishing Canal Dam buttments and advants at work other works as may be necessary to carry the waters from said pond or dam to the Canal Basin and to repair or rebuild the same. Also to repair or rebuild the said Mill Dam and buttments. The above granted rights and privilage are granted and conveyed unto said Miles Canal Company on the following conditions that said company shall keep said dam and buttments in good repair and rebuild the same when necessary also to keep said dam and buttments to the best of their ability and to the best of their power. Also to repair or rebuild the said Mill Dam and buttments. The above granted rights and privilage are granted and conveyed unto said Miles Canal Company on the following conditions that if said Company shall neglect or refuse to keep in repair said dam or buttments and Merry his heirs or assigns shall have a right to rebuild or to make all necessary repairs and change the same to said Company and shall have a right to take the water from said Canal and said Company shall pay the said Merry his heirs or assigns the amount so expended with the interest thereon. Also if said Company shall neglect to pay the expense of repairing or rebuilding as above stated or neglect to see the Canal for navigation for One year the term of One year as described in the Charter of said Company then said in that case all the rights and privilage granted in this instrument shall be null and void by the request and petition of said Miles Canal Company and the Town Council of Miles and their successors in office so long as they shall abide by and perform the conditions above expressed, but should said Town Council or their successors in office refuse or neglect to fulfill the conditions above stipulated for the term of Two years then said in that case all privilage above granted are to cease and determine and revert back to myself, my heirs or assigns forever. Given under my hand and seal the 21st day of April A.D. 1838

of Blanche Merry

Signed Sealed Acknowledged and delivered in presence of

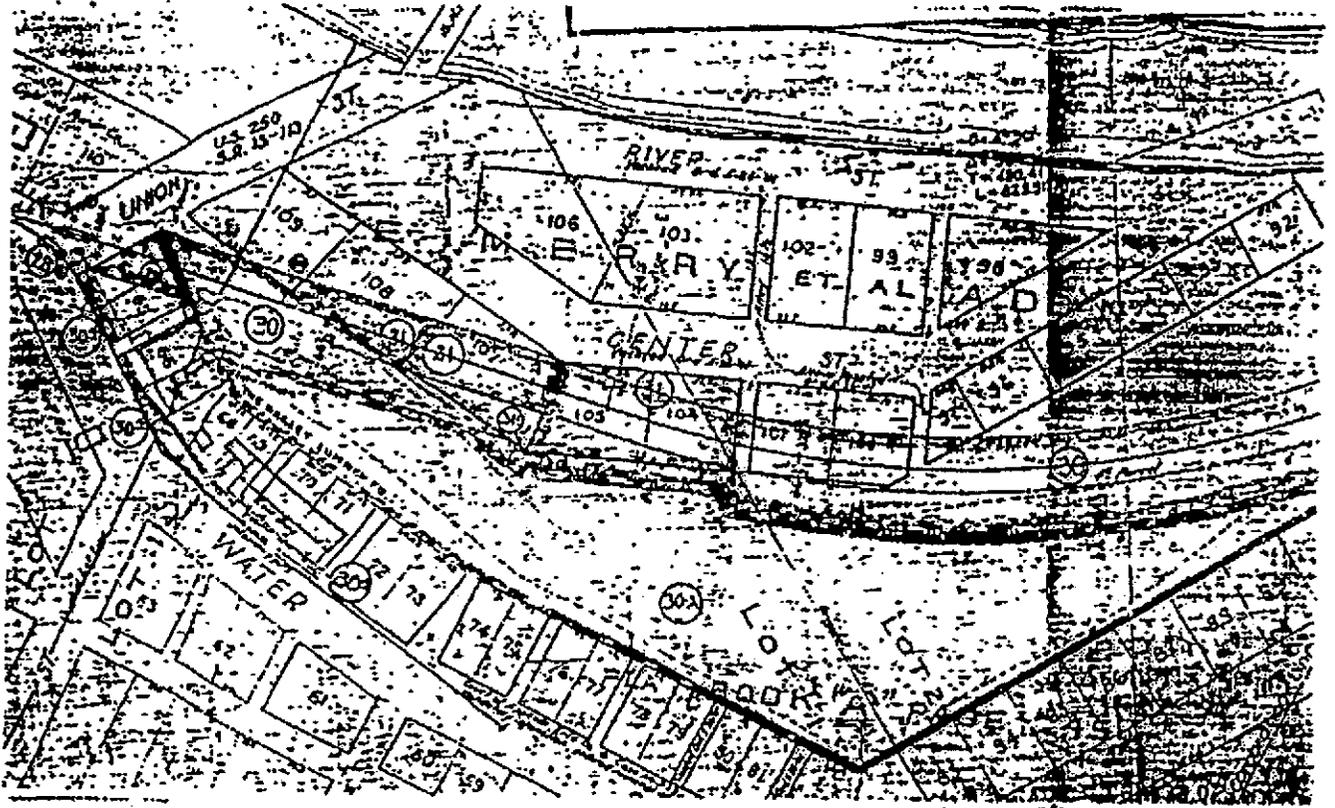
of Hiram McMillan
of W. S. Rice

State of Ohio, Huron County I Be it known that on the 21st day of April A.D. 1838 Personally came before the subscriber a Justice of the Peace in and for said County Blanche Merry the signer and number of the above instrument and acknowledged the same to be his act and deed for the uses and purposes therein expressed

Given under my hand at Miles April 21st 1838

of Wm S Rice J P
Received and Recorded October 29, 1852
Chas. Weber Recorder





APX 67

EXHIBIT 2

KNOW ALL MEN BY THESE PRESENTS THAT I KNEELAND TOWNSEND OF MILAN HURON COUNTY OHIO IN CONSIDERATION OF BENEFITS WHICH I MAY RECEIVE AS CONSEQUENCE OF THE LOCATION AND (CONSTRUCTION) OF THE MILAN CANAL ACROSS MY LANDS AND ALSO IN CONSIDERATION OF THREE HUNDRED AND SIXTY THREE DOLLARS TO ME IN HAND PAID BY A RECEIPT FROM THE MILAN CANAL COMPANY FOR THE BALANCE OF MY SUBSCRIPTION OF TEN SHARES OF THE CAPITAL STOCK OF SAID COMPANY. I HAVE AND DO HEREBY AGREE TO RELEASE SAID COMPANY FROM ANY AND ALL DAMAGES WHICH I MAY HAVE SUSTAINED IN CONSEQUENCE OF SAID COMPANY HAVING LOCATED AND CONSTRUCTED SAID CANAL OVER THROUGH OR ACROSS MY LANDS AND ALSO FOR DIGGING THE SOIL ABUTTING OR TAKING ANY TIMBER FOR THE CONSTRUCTION OF SAID CANAL OR LOCKS THEREON. I DO ALSO HEREBY GIVE AND RELEASE TO SAID COMPANY FOR THE USE OF SAID CANAL AND SO LONG ONLY AS THE SAME SHALL ACTUALLY USED AS A MEANS OF TRANSPORTATION FOR COMMERCIAL PURPOSES THE FOLLOWING THE DESCRIBED PIECES OF LAND TO WIT* ON THE WESTERLY ON TOWPATH SIDE OF SAID CANAL A PIECE COMMENCING AT A POINT ON SAID CANAL WHERE THE TOP WATER LINE OF SAID CANAL STRIKES SAID TOWPATH BANK AND FORTY FEET SOUTHERLY FROM THE HOLLOW COIN PART OF THE WESTERLY UPPER CRIB OF LOCK NUMBER ONE OF SAID CANAL BEING ON MY LAND THENCE NORTHERLY TO A LINE POINT IN SAID CANAL FORTY FEET NORTHERLY FROM THE HOLLOW COIN POINT OF THE WESTERLY LOWER CRIB OF SAID LOCK NUMBER ONE AND TO EXTEND BACK WESTERLY ONE HUNDRED FEET DEEP OR WIDE WHICH SAID PIECE OF LAND IS INTENDED FOR THE PURPOSES OF A LOCK HOUSE AND OTHER NECESSARY APPENDAGES OF SAID CANAL ALSO A LIKE PIECE OF LAND ON THE HEEL PATH SIDES OF SAID CANAL EXCEPT THAT THIS LOCK PIECE IS TO EXTEND BACK FROM THE FACE WALL OF THE HEEL PATH SIDES OF SAID CANAL LOCK ONLY FIFTY FEET FOR THE CONVENIENCE OF BALLANCE BEAMS AND OTHER NECESSARY APPENDAGES OF SAID CANAL. THE ANGLES OF SAID PIECES ARE TO BE RIGHT ANGLES AND THE REAR LINES TO BE PARALLEL WITH FACE WALLS OF SAID LOCK- AND I DO HEREBY ALSO RELEASE TO SAID COMPANY THE RIGHT TO TURN INTO SAID CANAL AND USE SO MUCH OF THE WATER ON MY LAND AS MAY BE NECESSARY FOR THE USE OF SAID CANAL AND ALSO A TREMBLE WAY AROUND SAID LOCK- AND I DO HEREBY FURTHER RELEASE TO SAID COMPANY THE RIGHTS OF FLOODING THE LAND EASTERLY OF THE TOWPATH ON THE UPPER LEVEL OF SAID CANAL TO THE HIGH BANK TO THE HEIGHT OF NINE AND ONE HALF FEET ABOVE THE BOTTOM LEVEL OF SAID UPPER LEVEL OF SAID CANAL AND ALSO TO IN LIKE MANNER FLOW ON THE LONG LEVEL NORTHERLY OF SAID LOCK NINE FEET AND ONE HALF FOOT ABOVE THE TOP OF THE LOWER METER SIDE OF SAID LOCK- BUT IT IS HEREBY AGREED BY SAID COMPANY THAT THE FLOW OF WATER ARISING FROM THE VILLAGE CREEK SHALL BE DRAWN OFF BY A CULVERT OR OTHERWISE WITHIN ONE YEAR FROM THE TIME SAID CANAL MAY BE USED AS



SUCH FOR COMMERCIAL PURPOSES AND THE SAID TOWNSEND FURTHER AGREES THAT SAID COMPANY MAY CONSTRUCT A WATER WASE TO THE CANAL ON HIS LAND AND ALSO CONSTRUCT CULVERTS TO DRAIN THE LAND IF SAID COMPANY THINKS PROPER- AND TO DO A ALL SUCH WORK AS MAY BE NECESSARY TO KEEP SAID CANAL IN REPAIR- BUT HIS GRANT IS NOT TO BE CONSTRUED AS EXTENDING TO THE RIGHTS OF SOIL BUT BARELY TO THE RIGHTS OF WAY FOR THE PURPOSES AFORESAID AND ONLY SO LONG AS SAID CANAL SHALL BE USED FOR COMMERCIAL PURPOSES- AND IT IS HEREBY UNDERSTOOD THAT SAID COMPANY SHALL REMOVE ALL THEIR TIMBER OFF THE LANDS OF SAID TOWNSEND WITHIN SIX MONTHS FROM THE DATE HEREOF.

IN WITNESS WHEREOF THE PARTIES HAVE HEREUNTO SET THEIR HANDS AND THE SAID TOWNSEND HIS SEAL THIS TENTH DAY OF MAY 1838 AND THE SAID COMPANY ITS SEAL

NOTE THE WORDS "ALL" "AS EXTENDING" INTERLINED BEFORE SIGNING (SEAL IS HERE) MILAN CANAL CO PR GEO. LOCKWOOD AGENT AS AUTHORISED ON THE RECORD OF SAID COMPANY MARCH 24, 1848

IT IS UNDERSTOOD BY THE GRANT TO THE COMPANY ABOVE THAT SAID TOWNSEND GRANTS THE EXCLUSIVE USE TO SAID CANAL COMPANY FOR THE PURPOSE AUTHORIZED BY THE ACT INCORPORATING THE MILAN CANAL COMPANY OF THE LAND FOR A TOW PATH OF TEN FEET WIDE ON THE TOP (FIVE FEET ON EACH SIDE OF THE LINE SURVEYED RECORDED & PLATTED ON THE RECORD BOOK OF SAID COMPANY) WITH SLOPES OF BANKS OF TOWPATH AND CANAL OF ONE AND THREE FOURTHS FEET HORIZONTAL ON THE BASE TO ONE FOOT PERPENDICULAR RISE AND THE RIGHT OF WIDTH OF CANAL BOTTOM AS PRESENT BOTTOMS ON EACH LEVEL OF ONE HUNDRED FEET FROM WHERE THE INNER SLOPE OF TOWPATH BENCH STRIKES SAID BOTTOM. AND ALSO THAT NO BRIDGES OR OTHER OBSTRUCTIONS WHATSOEVER ARE TO BE MADE ON THE CANAL ON SAID LAND THAT WILL IN THE LEAST DELAY OR OBSTRUCT THE RAPID MOVEMENT OF VESSELS & OTHER WATER CRAFT ALSO THE RIGHTS OF MAKING TOWPATHS TO THE HIGHEST OF TWO FEET ABOVE THE HIGHEST FRESHETS OF THE HURON RIVER

K. TOWNSEND

GEO. LOCKWOOD AGREED AS ABOVE

RECEIVED AND RECORDED OCT 29TH 1832 _____ RECORDER

[The following text is mirrored and appears to be bleed-through from the reverse side of the page. It is largely illegible due to the quality of the scan and the angle of the text.]

[A large section of the text is crossed out with a large 'X' mark.]

[The text continues with several lines of cursive handwriting, including what appears to be a signature and a date.]

EXHIBIT 3

(11) Thence North $04^{\circ} 32' 08''$ West along the West line of Section 1, a distance of 101.74 feet to the point of beginning, containing 8.2028 acres, more or less, of which 4.1014 acres are in Sublot 6, and 4.1014 acres are in Sublot 9, but being subject to all legal highways, easements and restrictions of record.

The above description was prepared from an actual survey by Daniel E. Hartung Jr., Professional Surveyor No. 5667 in March 1998. The bearings were assumed only for the purpose of indicating angles.

PARCEL #2: (House Lot/Milan Canal Parcel)

Being situated in the State of Ohio, County of Erie, Milan Township, Section 2, Abbott Tract and being more definitely described as follows:

Beginning at a railroad spike; found, marking the intersection of the centerline of River Road with the South line of the Abbott Tract; Thence North $49^{\circ} 29' 47''$ West along the southerly line of the Abbott Tract, the same being the northerly line of a parcel owned by Vincent Otrusina (BV 027 PG,974), a distance of 513.38 feet to a point; Thence North $40^{\circ} 30' 13''$ East continuing along said Otrusina parcel a distance of 223.64 feet to a point; Thence North $49^{\circ} 29' 47''$ West continuing along the northerly line of Otrusina parcel a distance of 27.32 feet to its intersection with the easterly line of the Old Milan Canal, said point being the PRINCIPAL PLACE OF BEGINNING;

(1) Thence North $49^{\circ} 29' 47''$ west continuing along the northerly line of said Otrusina parcel, a distance of 152.02 feet to the westerly line of the Old Milan Canal;

(2) Thence northeasterly along the westerly line of the Old Milan Canal, along an arc of curve to the left, having a radius of 904.93 feet, a delta of $03^{\circ} 41' 21''$, a chord bearing of North $28^{\circ} 34' 06''$ East, a chord distance of 58.26 feet, an arc length of 58.27 feet to a point;

(3) Thence North $26^{\circ} 43' 24''$ East continuing along the westerly line of the Old Milan Canal, a distance of 138.74 feet to a point;

(4) Thence northeasterly continuing along the westerly line of the Old Milan Canal, along an arc of a curve to the right having a radius of 1663.97 feet, a delta of $11^{\circ} 18' 00''$, a chord bearing of North $31^{\circ} 22' 24''$ East, a chord distance of 327.64 feet, an arc length of 328.17 feet to a point;

(5) Thence northeasterly continuing along the westerly line of the Old Milan Canal, along an arc of a curve to the right having a radius of 1004.93 feet, a delta of $00^{\circ} 13' 01''$, a chord bearing of North $38^{\circ} 07' 54''$ East, a chord distance of 3.80 feet, an arc length of 3.80 feet to a point on the southerly line of a parcel owned by James and Rita Beverick (DV 484 PG 704);

(6) Thence South $49^{\circ} 59' 47''$ East along the southerly line of Beverick a distance of 150.08 feet to a point on the easterly line of the Old Milan Canal;

(7) Thence southwesterly along the easterly line of the Old Milan Canal, along an arc of a curve to the left having a radius of 1513.97 feet a delta of $11^{\circ} 14' 51''$, a chord bearing of South $32^{\circ} 20' 50''$ West, a chord distance of 296.73 feet; an arc length of 297.20 feet to a point;

(8) Thence South $26^{\circ} 43' 24''$ West continuing along the easterly line of the Old Milan Canal a distance of 138.74 feet to a point;

(9) Thence southwesterly continuing along the easterly line of the old Milan Canal, along an arc of a curve to the right, having a radius of 1054.93 feet; a delta of $05^{\circ} 08' 10''$, a chord bearing of South $29^{\circ} 17' 30''$ West, a chord distance of 94.53 feet, an arc length of 94.56 feet, to the PRINCIPAL PLACE OF BEGINNING, containing 1.8242 acres, more or less, but being subject to all legal highways, easements and restrictions of record.

The above description was prepared from an actual survey by Daniel E. Hartung Jr., Professional Surveyor No. 5667 in March 1998. The bearings were assumed only for the purpose of indicating angles.

EXCEPT: Zoning ordinances, easements, reservations, conditions and restrictions of record, if any, and real estate taxes and assessments, general and special, which are a lien at the time of transfer, which Grantees assume and agree to pay.

TO HAVE AND TO HOLD the above premises, with the appurtenances thereunto belonging, unto the said Grantees, and their separate heirs and assigns forever.

IN WITNESS WHEREOF, the Grantor has hereunto set its hand the 8th day of September, 1999

SIGNED AND ACKNOWLEDGED
IN THE PRESENCE OF:

KEY TRUST COMPANY OF OHIO, N.A.,
TRUSTEE OF THE TESTAMENTARY
TRUST OF VERA LOCKWOOD
WILLIAMS

Michael J. Thacker
Michael J. Thacker
Katherine L. Stadul
Katherine L. Stadul
Michael J. Thacker
Michael J. Thacker
Katherine L. Stadul
Katherine L. Stadul

By: Robert E. Morrison
By: William M. Wright

STATE OF OHIO)
) SS
Cuyahoga COUNTY)

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-named Robert E. Morrison and William M. Wright on behalf of Key Trust Company of Ohio, N.A., Trustee of the Testamentary Trust of Verna Lockwood Williams.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Cleveland, Ohio the 8th day of September, 1999.

Katherine L. Stadul
NOTARY PUBLIC

STATE OF OHIO)
) SS
_____ COUNTY)

KATHERINE L. STADUL, Notary Public
State of Ohio, Cuyahoga County
Commission expires Oct. 17, 1999

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-named _____ on behalf of Key Trust Company of Ohio, N.A., Trustee of the Testamentary Trust of Verna Lockwood Williams.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at _____, Ohio the _____ day of _____, 1999.

NOTARY PUBLIC

This Instrument Prepared By:
H. Frank McDaniel, Esq.
Freeman, Laycock & McDaniel
54 East Main Street

EXHIBIT 4

QUIT CLAIM DEED

Key Trust Company of Ohio, National Association, a national banking organization formed under the laws of the United States, as Trustee of the Verna Lockwood Williams Trust, for valuable consideration paid, the receipt of which is hereby acknowledged, grants to Buffalo Prairie, Ltd., an Ohio limited liability company, whose tax mailing address is P.O. Box 449, Milan, Ohio 44846, the following REAL PROPERTY: Situated in the County of Erie, in the State of Ohio, and in the Townships of Milan and Huron:

All of the right, title and interest Grantor holds in the property of the former Milan Canal Company, including but not limited to the canal basin, locks, dry dock and tow path, and further described in the attached Exhibit A, which is incorporated as part of this deed.

Subject to easements, conditions, legal highways, restrictions of record and the lien of unpaid real estate taxes.

Prior Deed Reference: Vol. 78 Page 239

Signed and acknowledged as to grantor's signature in the presence of:

[Signature]
Witness

William M. Wright
Please print name legibly

[Signature]
Witness

Michael J. Thacker
Please print name legibly

Lee A. Matia *ms*

Key Trust Company of Ohio, National Association

By: Lee A. Matia
Its: Asst Vice President

RN 200005173 Page 1 of 5
ERIE COUNTY OHIO RECORDER
John W. Schaeffer 5P
RECORDING FEE: 26.00
TLF Date 04/27/2000 Time 10:40:29

STATE OF OHIO,
COUNTY OF CUYAHOGA, ss:

On April 11, 2000, before me, the undersigned, a Notary Public in and for the said state, personally appeared Lee A. Matia, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as the Assistant Vice President of Key Trust Company of Ohio, National Association, a national

wok
D. Jeffery Rengel, Atty

banking organization formed under the laws of the United States, and acknowledged to me that he is authorized to execute this instrument on behalf of said corporation.

Witness my hand and official seal.



Notary Public

MICHAEL J. THACKER, Attorney at Law
Notary Public, State of Ohio
My Commission has no expiration date.
Section 147.03 ORC

This instrument was prepared by Peggy Kirk Hall, Attorney at Law, Wright & Logan, Co., L.P.A., 4266 Tuller Road, Suite 101, Dublin, Ohio 43017.

After recording, return to: Buffalo Prairie, Ltd., P.O. Box 449, Milan, OH 44846

ERIE COUNTY OHIO RECORDER
RN 200005173 Page 2 of 5

EXHIBIT A

Situate in the Townships of Milan and Huron, in said County of Erie and State of Ohio, being all the land with all the rights and appurtenances thereof, owned by said Milan Canal Company, within the bounds of a strip of land one hundred and fifty feet in width, commencing at the Southerly end of the canal basin of said Milan Canal Company, near the intersection of Main and Union Street, in the Village of Milan, in said Erie County, Ohio, and running thence in a Northerly direction to the mouth of the Huron River, in the Village of Huron in said Erie County, and which strip of land is bounded on the West by a line distance fifty feet from and running North parallel with the central line of the railroad of the Wheeling and Lake Erie Railroad Company, as surveyed, located and in the process of construction on July 12th, A.D. 1881, between said Villages of Milan and Huron, and which said strip of land is bounded on the East by a line distant One Hundred feet from and running North parallel with the said central line of said railroad as surveyed, located and being constructed as aforesaid, the East and West lines of said strip of land being one hundred and fifty feet apart and running North parallel with each other and with the central line of said railroad as surveyed, located and being constructed as aforesaid from the said place of beginning to the said mouth of Huron River. Also all of the so-called Dry Dock and all of the said canal Basin and all of the Upper and Lower Locks of said canal, with all the grounds and privileges connected therewith in addition to what is included in the said strip of land above described, the said Dry dock containing about one and 1/2 acres, and the Canal Basin containing about Five and 45/100 acres of land be the same more or less.

TRANSFER NOT NECESSARY

April 27, 2000

J. T. Hammond

J

This conveyance has been examined and the grantor has complied with sections 310-202 and 322.02 of the Revised Code.
FEE: \$ <u>185.70</u>
EXEMPT: \$ <u> </u>
R.E. TRANSFER: \$ <u>557.00</u>
JUDE T. HAMMOND Erie County Auditor
by _____

EXHIBIT 5

Hall
Edwin Coles
10709 River
Huron 44839

2002-010-111

RN # is wrong

Quit-Claim Deed

S/Be

KNOW ALL MEN BY THESE PRESENTS THAT Edwin M. Coles and Lisa A. Coles, husband and wife, the Grantors, claiming title by or through instrument recorded in RN 9915271, Erie County Recorder's Office, for valuable consideration thereunto given, and for the sum of Ten and 00/100 Dollars (\$10.00) received in satisfaction of Isolated Ventures, Ltd., an Ohio limited liability company, of whose tax mailing address will be 3619 St. Rte. 113 E., Milan, Erie Co., Ohio:

RN 9918748
12/15/99

GIVE, GRANT, BARGAIN, REMISE, RELEASE AND FOREVER CLAIM unto the said Grantee, its successors and assigns, all right, title and interest said Grantors have in and to the following described premises, situated in the Township of Milan, County of Erie, and State of Ohio:

(Key trust to Cole)
This wrong # was also used in Isolated Ventures

SEE EXHIBIT "A", ATTACHED HERETO AND MADE A PART HEREOF.

Permanent Parcel No(s): _____

So long as, until, and upon express condition that said property not be sold, transferred, or otherwise conveyed to Erie Metroparks, its successors and assigns. Grantee covenants and agrees that this express condition runs with the land, otherwise to revert to grantor, its successors and assigns.

EXCEPT: Easements, restrictions, leases, and rights of way of record, and except taxes and assessments now a lien on the premises which Grantee assumes and agrees to pay.

TO HAVE AND TO HOLD the above premises, with the appurtenances thereunto belonging, unto the said Grantee, and its successors and assigns forever.

AND FOR VALUABLE CONSIDERATION, Edwin M. Coles, whose wife is Lisa A. Coles, and Lisa A. Coles, whose husband is Edwin M. Coles, do hereby remise, release and forever quit-claim unto the said Grantee, its successors and assigns, all their right and expectancy of Dower in the above-described premises.

IN WITNESS WHEREOF, the Grantors have hereunto set their hands the 14th day of October, 2002.

Richard H. Jones
Lisa M. Coles

GRANTORS:
[Signature]
EDWIN M. COLES
[Signature]
LISA A. COLES

STATE OF OHIO)
HURON COUNTY) ss.

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-named Edwin M. Coles and Lisa A. Coles, husband and wife, who acknowledged that they did sign this Quit-Claim Deed and the same is their free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Norwalk, Ohio the 15th day of October, 2002.

[Signature]
NOTARY PUBLIC

This Instrument Prepared By:
Jeffrey P. Laycock, Esq.
FREEMAN, LAYCOCK & MCDANIEL
54 East Main Street
Norwalk, Ohio 44857
(419) 668-4896

CYNTHIA A. PIFER
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES OCT 3, 2003

20021719
FREEMAN, LAYCOCK & MCDANIEL Page 1 of 2
ATTORNEYS AT LAW, ERIE COUNTY OHIO RECORDER 2P
Fish Fraley 14.00
54 EAST MAIN STREET RECORDING FEE: 14.00
NORWALK, OHIO 44857 Date 10/21/2002 Time 11:32:36

SP-DELM
W... LLC

MICROFILMED
SCANNED

EXHIBIT "A"

Edwin & Lisa Coles Farm Property
Milan Canal Parcel

Being situated in the State of Ohio, County of Erie, Milan Township, Section 1, Part of Sublots 6 & 9, and being more definitely described as follows:

Beginning at a 1/2" iron pin, set, marking the intesection of the West line of Section 1 with the centerline of the Original Wheeling & Lake Erie Railroad;

- (1) Thence North 04°30'55" West along the West line of Section 1, a distance of 50.96 feet to a point on the westerly line of the Old Milan Canal;
- (2) Thence northeasterly along the westerly line of the Old Milan Canal, along an arc of a curve to the left having a radius of 1382.68 feet, a delta of 06°08'35", a chord bearing of North 71°01'35" East, a chord distance of 148.17 feet, and an arc length of 148.25 feet to a point;
- (3) Thence North 67°57'18" East continuing along the westerly line of the Old Milan Canal a distance of 196.28 feet to a point;
- (4) Thence northeasterly continuing along the westerly of the Old Milan Canal, along an arc of a curve to the left having a radius of 1731.45 feet, a delta of 47°58'49", a chord bearing of North 43°57'54" East, a chord distance of 1407.94 feet, and an arc length of 1449.94 feet to a point on the southerly line of a parcel owned by William Mironick (RN 200108239);
- (5) Thence North 87°23'32" East along the southerly line of said Mironick parcel a distance of 89.54 feet to a point;
- (6) Thence South 53°05'04" East continuing along the southerly line of Mironick a distance of 70.33 feet to a point on the easterly line of the Old Milan Canal;
- (7) Thence southwesterly along the easterly line of the Old Milan Canal along an arc of a curve to the right having a radius of 1881.45 feet, a Delta of 48°24'12", a chord bearing of South 43°45'12" West, a chord distance of 1542.60 feet, and an arc length of 1589.44 feet to a point;
- (8) Thence South 67°57'18" West continuing along the easterly line of the Old Milan Canal, a distance of 196.28 feet to a point;
- (9) Thence southwesterly continuing along the easterly line of the Old Milan Canal, along an arc of a curve to the right having a radius of 1532.68 feet, a delta of 07°16'13", a chord bearing of South 71°35'24" West, a chord distance of 194.35 feet, and an arc length of 194.48 feet to a point on the West line of Section 1;
- (10) Thence North 04°30'55" West along the West line of Section 1, a distance of 101.75 feet to the point of beginning, containing 6.5454 acres, more or less, of which 4.1014 acres are in Sublot 6, and 2.4440 acres are in Sublot 9, but being subject to all legal highways, easements and restrictions of record.

The above description was prepared from and actual survey by Daniel E. Hartung Jr., Professional Surveyor No. 5667 in March 1998. The bearings were assumed only for the purpose of indicating angles.

This conveyance has been examined and the grantor has complied with Sections 310-202 and 322.02 of the Revised Code.

FEES: \$ _____

REMP: \$ _____

T. E. TRANSFER: \$ _____

JOE Y. HAMMOND
Erie County Auditor

Daniel E. Hartung Jr.
Daniel E. Hartung Jr., PE/PS
October 21, 2002
Joe T. Hammond
ERIE COUNTY AUDITOR
Joe 504 460

APPROVED as per Erie County Requirements And Sections 4733-37 thru 4733-37-07 of the Ohio Administrative Code only. No Field Verifications for Accuracy made.

Jim Faith
Erie County Engineer
Date: 10.21.02



ERIE COUNTY OHIO RECORDER
Page 2 of 2
RN 200217719

EXHIBIT 6

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Sandusky, Ohio the 26 day of April, 2000.

David W. Moffitt
NOTARY PUBLIC

DAVID W. MOFFITT
NOTARY PUBLIC, STATE OF OHIO
My Commission Expires Sept. 17, 2001

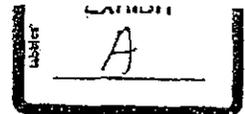
This Instrument Prepared By:
Jeffrey P. Laycock, Esq.
FREEMAN, LAYCOCK & MCDANIEL
54 East Main Street
Norwalk, Ohio 44857

This conveyance has been examined and the grantor has complied with sections 719-202 and 332.02 of the Revised Code
FEE: \$ 6.10
EXEMPT: \$ _____
R.E. TRANSFER: \$ 6.30
JUDE T. HAMMOND
Erie County Auditor
by _____

April 27, 2000
Jude T. Hammond *J*

ERIE COUNTY OHIO RECORDER
RN 200005161 Page 2 of 3

Parcel 2
Vincent Otrusina



Being situated in the State of Ohio, County of Erie, Milan Township, Section 2, Abbott Tract and being more definitely described as follows:

Commencing at the intersection of the centerline of River Road with the South line of the Abbott Tract; Thence North 49°29'47" West along the South line of the Abbott Tract a distance of 531.68 feet to a point on the easterly line of the Old Milan Canal, said point being the point of beginning:

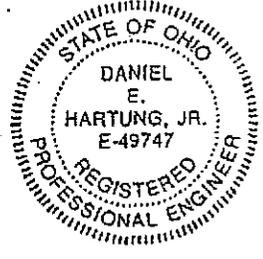
- (1) Thence North 49°29'47" West continuing along the South line of the Abbott Tract a distance of 150.31 feet to a point on the westerly line of the Old Milan Canal;
- (2) Thence northerly along said westerly line, along an arc of a curve to the left, having a radius of 904.93 feet, a delta of 14° 03'56", a chord bearing North 37°26'45" East, a chord distance of 221.59 feet, an arc length of 222.15 feet to a point on the south-westerly line of a parcel owned by Edwin & Lisa Coles (DV 519 PG 775);
- (3) Thence South 49°29'47" East along the southwesterly line of Coles a distance of 152.04 feet to a point on the easterly line of the Old Milan Canal;
- (4) Thence southerly along said easterly line, along an arc of a curve to the right, having a radius of 1054.93 feet, a delta of 12°03' 11", a chord bearing South 37°53'10" West, a chord distance of 221.51 feet, an arc length of 221.92 feet to the point of beginning, containing 0.7645 acre, more or less, but being subject to all legal highways, easements and restrictions of record.

The above description was prepared by Daniel E. Hartung Jr., Professional Surveyor No. 5667 in January 2000, taken from existing deed records and track right-of-way maps and does not indicate an actual survey made by me. The bearings were assumed only for the purpose of indicating angles.

Daniel E. Hartung Jr.
Daniel E. Hartung Jr., PE/PS

APPROVED as per Erie County Requirements
And Sections 4733-37 thru 4733-37-07 of the Ohio
Administrative Code only. No Field Verifications
for Accuracy made.

David Williams
Erie County Engineer 3/11/00



ERIE COUNTY OHIO RECORDER

EXHIBIT 7

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Sandusky, Ohio the 26 day of April, 2000.

David W. Moffitt
NOTARY PUBLIC

DAVID W. MOFFITT
NOTARY PUBLIC, STATE OF OHIO
My Commission Expires Sept. 17, 2001

This Instrument Prepared By:
Jeffrey P. Laycock, Esq.
FREEMAN, LAYCOCK & MCDANIEL
54 East Main Street
Norwalk, Ohio 44857

This conveyance has been examined and the grantor has complied with sections 310.202 and 322.02 of the Revised Code.
FFTS: \$ 2.50
EXEMPT: \$ 2
R.E. TRANSFER: \$ 7.50
JUDET HAMMOND
Erie County Auditor
By _____

RECORD NOT NECESSARY
April 27, 2000
J. T. Hammond
J

ERIE COUNTY OHIO RECORDER
RN 200005174 Page 2 of 3

Robert Bickley

EXHIBIT
A

Being situated in the State of Ohio, County of Erie, Village of Milan and being more definitely described as follows:

Commencing at the intersection of the centerline of the Wheeling & Lake Erie Railroad with the easterly right-of-way line of Union Street;

- (1) Thence North $50^{\circ}11'07''$ East along the centerline of the Wheeling & Lake Erie Railroad a distance of 395.00 feet to its intersection with the northerly extension of the East line of Sublot 71 on Water Street in the Old Town Plat of Milan;
- (2) Thence South $19^{\circ}48'53''$ East along said extension a distance of 106.42 feet to a point on the easterly line of the Old Milan Canal;
- (3) Thence South $50^{\circ}11'07''$ West along said easterly line a distance of 343.46 feet to a point on the northerly right-of-way line of Water Street in the Old Town Plat of Milan;
- (4) Thence North $84^{\circ}48'53''$ West along said northerly line a distance of 81.42 feet to its intersection with the easterly right-of-way line of Union Street;
- (5) Thence North $05^{\circ}11'07''$ East along said easterly line a distance of 60.00 feet to the point of beginning, containing 0.9037 acre, more or less, but being subject to all legal highways, easements and restrictions of record.

The above description was prepared by Daniel E. Hartung Jr., Professional No. 5667 in February 2000, taken from existing deed records and track right-of-way maps and does not indicated an actual survey made by me. The bearings were assumed only for the purpose of indicating angles.

Daniel E. Hartung Jr.
Daniel E. Hartung Jr., P.E., P.S.

APPROVED as per Erie County Requirements
And Sections 4733-37 thru 4733-37-07 of the Ohio
Administrative Code only. No Field Verifications
for Accuracy made.

Daniel Williams
Erie County Engineer
Date: 3/16/00



ERIE COUNTY OHIO RECORDER
Page 3 of 3
BN 200005174

EXHIBIT 8

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Sandusky, Ohio the 26 day of April, 2000.

David W. Moffitt
NOTARY PUBLIC

This Instrument Prepared By:
Jeffrey P. Laycock, Esq.
FREEMAN, LAYCOCK & MCDANIEL
54 East Main Street
Norwalk, Ohio 44857

DAVID W. MOFFITT
NOTARY PUBLIC, STATE OF OHIO
My Commission Expires Sept. 17, 2001

ERIE COUNTY OHIO RECORDER
RH 200005175 Page 2 of 3

TRANSFER NOT NECESSARY
April 27, 2000
Jude T. Hammond

This conveyance has been examined and the grantor has complied with sections 310-202 and 312.03 of the Revised Code.
FEE: \$ 6.00
EXEMPT: \$ X
R.E. TRANSFER: \$ 13.00
JUDE T. HAMMOND
Erie County Auditor
by _____



Jones Parcel

Being situated in the State of Ohio, County of Erie, Milan Township, Section 1, Sublot No. 9 and being more definitely described as follows:

Commencing at the intersection of the North line of Sublot 9, with the centerline of the Wheeling & Lake Erie Railroad;

(1) Thence North 89°47'40" East along the North line of Sublot 9 a distance of 104.03 feet to a point on the easterly line of the Old Milan Canal;

(2) Thence South 15°47'40" West along the easterly line of the Old Milan Canal, a distance of 626.74 feet to a point on the North line of a parcel owned by Edwin & Lisa Coles (BV 338 PG 701);

(3) Thence South 88°51'54" West along the North line of said Coles a distance of 156.79 feet to a point on the westerly line of said Canal;

(4) Thence North 15°47'40" East along the westerly line of said Canal a distance of 629.39 feet to a point on the South line of a parcel owned by John & Virginia Landoll (BV 421 PG 56);

(5) Thence North 89°47'40" East along the South line of said Landoll a distance of 52.01 feet to the point of beginning, containing 2.1627 acres, more or less, but being subject to all legal highways, easements and restrictions of record.

The above description was prepared by Daniel E. Hartung Jr., Professional Surveyor No. 5667 in February 2000, taken from existing deed records and track right-of-way maps and does not indicate an actual survey made by me. The bearings were assumed only for the purpose of indicating angles.

Daniel E. Hartung Jr.
Daniel E. Hartung Jr. PE, PS

APPROVED as per Erie County Requirements
And Sections 4733-37 thru 4733-37-07 of the Ohio
Administrative Code only, No Field Verifications
for Accuracy made.

David Williams
Erie County Engineer
Date: 3/11/00



ERIE COUNTY OHIO RECORDER
Page 3 of 3
RN 200005175

EXHIBIT 9

and

Ellen H. Hohler
10607 River Road
Huron, Ohio 44839

and

Rita M. Beverick
10619 River Road
Huron, Ohio 44839

and

Patricia A. Charville, Trustee
U/A Patricia A. Charville Trust
Dated September 28, 1994
11615 River Road
Milan, Ohio 44846

and

Dorcas P. Gastier
12015 River Road
Huron, Ohio 44839

and

Gerald O.E. Nickoli
Robin L. B. Nickoli, as custodians for
Autumn M. Nickoli and
Jared J.B. Nickoli under the
Ohio Transfers to Minors Act
12501 River Road
Milan, Ohio 44846

and

Douglas Hildenbrand
1610 Campbell Street
Sandusky, Ohio 44870

and

John F. Landoll and/or
Virginia A. Landoll U/A
Co-Trustees Landoll Family Trust
Dated July 24, 1998
12515 River Road
Milan, Ohio 44846

and

Warren R. Jones
12819 River Road
Milan, Ohio 44846

and

Robert C. Bickley
58 Edison Drive
Milan, Ohio 44846

and

Theresa R. Johnston
10501 River Road
Huron, Ohio 44839

and

Elliot F. Fischer
10405 River Road
Huron, Ohio 44839

and

Kim Reid-Fischer
10405 River Road
Huron, Ohio 44839

and

Gary R. Steiner
403 Tecumseh Place
Huron, Ohio 44839

and

Virginia M. Steiner
403 Tecumseh Place
Huron, Ohio 44839

and

Michael P. Meyer
10719 River Road
Huron, Ohio 44839

and

Alice F. Fowler
9903-A River Road
Huron, Ohio 44839

and

Thomas S. Jordan
17841 S. Avon Belden Road
Grafton, Ohio 44044

and

Marsha A. Jordan
17841 S. Avon Belden Road
Grafton, Ohio 44044

and

John J. Joyce
2292 Ogontz Avenue
Lakewood, Ohio 44107

and

Christine Joyce
2292 Ogontz Avenue
Lakewood, Ohio 44107

and

Billy R. Rasnick
9903-D River Road
Huron, Ohio 44839

and

Donna J. Rasnick
9903-D River Road
Huron, Ohio 44839

and

Maria Sperling
9903-E River Road
Huron, Ohio 44839

and

Joseph Jirousek
12700 Reindeer Avenue
Garfield Heights, Ohio 44125

and

Patricia Jirousek
12700 Reindeer Avenue
Garfield Heights, Ohio 44125

and

Richard Rinella
9903-F River Road
Huron, Ohio 44839

and

Carol Rinella
9903-F River Road
Huron, Ohio 44839

and

Huron Lime Company
100 Mecker Street
P.O. Box 451
Huron, Ohio 44839

and

Edwin Coles
10709 River Road
Huron, Ohio 44839

and

Lisa Coles
10709 River Road
Huron, Ohio 44839,

Defendants

For its Amended Complaint, Plaintiff, Board of Park Commissioners, Erie MetroParks (the "Park District"), states as follows:

1. Pursuant to a lease dated July 12, 1881, filed for record August 9, 1881, and recorded in Volume 2, Pages 26, 27 & 28 of Erie County Lease Records (the "Lease"), The Milan Canal Company ("Milan Canal") leased to The Wheeling and Lake Erie Railroad Company ("Wheeling Railroad"), certain real property more particularly described in the Lease (the "Property"). The term of the Lease is 99 years, renewable forever. The annual rent under the Lease is \$50.00. A copy of the Lease is attached as Exhibit A hereto and made a part hereof.

2. The Lease was renewed in 1979 by Wheeling Railroad for an additional term of 99 years.

3. Wheeling Railroad was merged into Norfolk and Western Railway Company ("N & W") in 1988.

4. In 1990, N & W quit-claimed its interest as lessee under the Lease to The Wheeling and Lake Erie Railway Company ("Wheeling Railway"), reserving, however, certain fiber optic easements.¹

5. The rights of Wheeling Railway under the Lease as lessee of the Property and Wheeling Railway's interest in other property were subsequently conveyed to the Park District by a deed filed for record on June 1, 1998 and recorded in Erie Official Records Book 398, Page 51. In the deed, Wheeling Railway reserved the right to run and maintain a railway line over the Property.

6. Since acquiring their leasehold interests in the Property, Wheeling Railway and subsequently the Park District made continuous use of the Property, including the maintenance thereon of ties, bridges, culverts and hundreds of tons of ballast.

7. Until they received an exemption, the Wheeling Railway and subsequently the Park District paid all real estate taxes attributable to the Property.

8. Upon information and belief, certain assets of Milan Canal, including the lessor's interest in the Lease and fee simple title to the Property (subject, however, to the Lease and to the lessee's rights thereunder) were acquired by Defendant Key Trust Company of Ohio, N.A., Trustee of the Testamentary Trust of Verna Lockwood Williams ("Key Trust").

¹ Wheeling Railway is not the same entity as Wheeling Railroad.

9. All or a portion of the Lessor's interest in the Lease and fee simple title to the Property (subject, however, to the Lease and to the lessee's rights thereunder) may have been transferred by Key Trust to Defendant Buffalo Prairie, Ltd. ("Buffalo Prairie").

10. All or a portion of the Lessor's interest in the Lease and fee simple title to the Property (subject, however, to the Lease and to the lessee's rights thereunder) may have been transferred by Buffalo Prairie to one or more of Defendants Vincent R. Otrusina, Dale A. Hohler, Ellen H. Hohler, Rita M. Beverick, Patricia A. Charville, Trustee U/A Patricia A. Charville Trust Dated September 28, 1994, Dorcas P. Gastier, Gerald O.E. Nickoli and Robin L. B. Nickoli, as custodians for Autumn M. Nickoli and Jared J.B. Nickoli under the Ohio Transfers to Minors Act, Douglas Hildenbrand, John F. Landoll and/or Virginia A. Landoll U/A Co-Trustees Landoll Family Trust Dated July 24, 1998, Warren R. Jones, Robert C. Bickley, Teresa R. Johnston, Eliot F. Fischer, Kim Reid-Fischer, Gary R. Steiner, Virginia M. Steiner, Michael P. Meyer, Alice F. Fowler, Thomas S. Jordan, Marsha A. Jordan, John J. Joyce, Christine Joyce, Billy R. Rasnick, Donna J. Rasnick, Maria Sperling, Joseph Jirousek, Patricia Jirousek, Richard Rinella, Carol Rinella, Huron Lime Company, Edwin Coles or Lisa Coles.

11. The Park District is in the process of improving the Property for use as a recreational trail for the transportation of persons and property.

12. When Wheeling Railway acquired its interest in the Lease from N & W, there was confusion as to who was to continue making the rent payments under the Lease, and as a result Wheeling Railway neglected to make the rent payments under the Lease.

13. Wheeling Railway did not receive any notice from the lessor under the Lease that it was in default in its payment of rent.

14. When Wheeling Railway, as transferee of the lessee's rights under the Lease, discovered that rent under the Lease had not been paid, it attempted to determine from Society Bank, predecessor to Key Trust, who was responsible for collecting such rent. However, it received no adequate response. On or about September 29, 1995, Wheeling Railway sent to Society Bank Wheeling Railway's check (the "Wheeling Check") in the amount of \$300.00 for rent for the years 1990 through 1995.

15. The Wheeling Check was not returned to Wheeling Railway by Society Bank.

16. When the Park District purchased the lessee's interest under the Lease from Wheeling Railway, Wheeling Railway neglected to advise the Park District of the tardy rent payments.

17. For over one hundred years prior to 1990, rent under the Lease had been timely paid. The Park District is ready, willing and able to make all payments required under the Lease, including any delinquent rental payments.

18. On September 14, 1999, the Park District mailed to Key Trust a check in the amount of \$550.00, representing the rent payable under the Lease through the year 2000 (the "Park District Check").

19. Disputes have arisen between the Park District and Defendants as to the interpretation of various provisions of the Lease relating to the permitted use of the Property.

20. On September 27, 1999, counsel for Key Trust transmitted to the Park District a letter stating that the Park District Check would be returned and that the Lease had terminated, a copy of which letter is attached as Exhibit B hereto and made a part hereof.

21. Under principals of law and equity the Lease is in full force and effect.

EXHIBIT 10

IN THE COMMON PLEAS COURT OF ERIE COUNTY, OHIO

Board of Park Commissioners,
Erie Metroparks,

Plaintiff,

-vs-

Key Trust Company of Ohio, NA
Trustee of the Testamentary
Trust of Verna Lockwood
Williams, et. al.,

Defendants.

Case No. 99CV442

Judge Joseph Cirigliano

Judgment Entry

FILED
COMMON PLEAS COURT
ERIE COUNTY, OHIO
NOV 7 11 30 AM '00
CLERK OF COURTS

—oOo—

This case was tried to the Court on August 23 and 24, 2000. One issue before the Court is the validity of a lease ("Lease") originally entered into by the predecessors-in-interest to the parties herein, the owner/lessor, Milan Canal Company and the lessee Wheeling & Lake Erie Railroad Company ("Wheeling Railroad"). The second issue before the Court is whether Plaintiff has acquired any ownership interest in the property at issue by virtue of a quitclaim deed from the Wheeling Railroad. The third issue the Court has been asked to decide is whether Plaintiff has gained any interest in the property at issue by adverse possession. The fourth issue the Court has been asked to decide is the extent of the property covered by the Lease.

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11/30/00

Findings of Fact

The Lease was originally signed on July 12, 1881, and is recorded with the Erie County Recorder's Office, and entered into evidence by stipulation. Pursuant to the Lease, the Milan Canal Company leased to the Wheeling Railroad certain land (the "Leased Property"), which is described in the attached Exhibit A. The term of the Lease is 99 years, renewable forever, and the annual rent is Fifty Dollars (\$50.00). The Lease further requires that the lessee, its successors, and assigns, maintain and operate a railroad for public transportation and travel. Upon the abandonment of the Leased Property for railway purposes, or upon the failure for six months to pay the stated annual rental of fifty dollars (\$50.00) to the lessor after the same became due and payable, the Lease becomes void and the real estate reverts to the lessor. The Lease was renewed for its second 99-year term in 1980.

The Leased Property was ultimately conveyed to Key Trust Company of Ohio, NA, Trustee of the Testamentary Trust of Verna Lockwood Williams ("Key Trust"). It is undisputed that the Railroad failed to pay annual rental for the Leased Property after 1989 until a check for \$300.00 was transmitted to Key Trust, Trustee for Verna Lockwood Trust, in September 1995. The payment was rejected.

By 1988, the Norfolk and Southern Railway Company, predecessor in interest to the Wheeling Railroad, filed an abandonment of service application before the Interstate Commerce Commission with respect to the Leased Property, which was granted. Thereafter, the Railroad

removed railroad tracks and ballast from the Leased Premises, making the property unfit for the purpose of operating a railway. In October 1995, the Wheeling Railroad transferred its interest in the Leased Property to Plaintiff by quitclaim deed, which was recorded on June 1, 1998.

In the year 2000, Defendant Key Trust, transferred all of its right, title, and interest as successor-in-interest to the original lessor, to the remaining Defendants.

Having assessed the credibility of the witnesses who testified at trial and the reliability of the documents submitted into evidence, the Court finds that the Milan Canal Company, the predecessor in title to Defendant Key Trust Company of Ohio, NA, Trustee ("Key Trust"), acquired its real property interests to construct the canal (the "Milan Canal Property") solely by way of two instruments and no others:

(a) A conveyance from Kneeland Townsend dated May 10, 1838, recorded May 29, 1852, in Volume 10 of Deeds, Page 23 of Erie County Records (the "Townsend Conveyance"); and

(b) A conveyance from Ebeneser Merry dated April 21, 1838, recorded October 29, 1852, in Volume 10 of Deeds, Page 25 of Erie County Records (the "Merry Conveyance").

The Milan Canal Property consisted of a roughly three mile long corridor of property the northern terminus being known as Lock No. 1, which was located where the Milan Canal joined the Huron River on property now owned by Wikel Farms, Ltd., just north of Mason Road, in

Section 2, Milan Township, Erie County, Ohio. Neither Kneeland Townsend nor Ebeneser Merry conveyed to the Milan Canal Company any interest in real property north of Lock No. 1.

The only lands owned by the Milan Canal Company at the time the Lease was executed lay within the boundaries of the Kneeland Townsend property and the Ebeneser Merry property, neither of which lay north of Lock No. 1.

Conclusions of Law

It is axiomatic that a seller cannot transfer any greater interest in land than that which the seller possesses. In the instant case, the Wheeling Railroad had a leasehold interest in the property at issue, which is evidenced by Exhibit A. The Court hereby finds the lease, which was entered into by Wheeling Railroad and Key Trust, was a valid lease. The Court finds that the Lease was materially breached by the Wheeling Railroad for the nonpayment of rent for a period of more than six months, and because the property was abandoned for the purpose of operating a railroad. The lease, thereby, became void by its clear terms. The Court finds that there was no evidence presented by either party to show that the parties to the Lease did not intend an ordinary and common meaning to be given to the words contained therein, or that there was any mistake by either party in entering into the Lease. See Hinman v. Barnes 146 Ohio St. 497 (1946); and Greenfield v. Aetna Cas. Co., 75 Ohio App. 122 (1944).

Further, the Court finds that the Lease, which was for a term of 99 years and renewable forever, did not confer a fee simple estate under Ohio law to the Wheeling Railroad because it was aware that its interest could be forfeited to the lessor upon its breach of the lease covenants.

Therefore, the fee simple remains in the lessor, its heirs, devisees, or assigns. See Rawson v. Brown 104 Ohio State 548 (1922); and Quill v. R.A. Investment Corporation 124 Ohio App.3d 653 (1997).

Finally, the Court finds that the Plaintiff has not met its burden to establish any interest in the property at issue by adverse possession. To prevail on a claim for adverse possession a claimant must establish by a preponderance of the evidence that his possession of the land was open, notorious, exclusive, adverse, hostile, and continuous for more than twenty-one years. See Coleman v. Pennel Co. 123 Ohio App.3d 125 (1997); Demmitt v. McMillan (1984), 16 Ohio App.3d 138. The use is not adverse if it is either by permission, or accommodation for the owner Hindall v. Martinez (1990), 69 Ohio App.3d 580.

In the instant case, it is undisputed that the lessee and its successors maintained railroad operations and train traffic and paid rent while maintaining the Leased Property from the inception of the Lease until sometime in the 1980's, and then filed for abandonment of service in 1988. The Railroad and its predecessors-in-interest did not hold the Leased Property adverse to the lessor's interests until, at the latest, 1989, when it stopped paying rent.

The Court finds that it was not until sometime after the Plaintiff acquired its quitclaim deed from the Wheeling Railroad in October 1999, that Plaintiff entered the Leased Premises adversely to the lessor, its successors, and assigns-in-interest. The Court finds that the Railroad

was in active operations, paying rent, and otherwise complying with the Lease terms as late as 1986, or later, which was well within the last twenty-one years.

The description of the Leased Property in the Lease unambiguously describes it as consisting of all lands then owned by the Milan Canal Company within a 150 foot wide corridor from approximately the intersection of Maine and Union Streets in the Village of Milan northerly to the north of the mouth of the Huron River. The only lands owned by the Milan Canal Company at the time the Lease was executed lay within the boundaries of the Kneeland Townsend property and the Ebeneser Merry property, neither of which lay north of Lock No. 1. Therefore, the Leased Property extends from the southern terminus of the old Milan Canal at or near the southerly end of the Milan Canal basin in the Village of Milan to its northerly terminus at the Huron River at the former location of Lock No. 1 on premises now owned by Wikel Farms, Ltd. immediately north of Mason Road in Section 2, Milan Township, Erie County.

Judgment in favor of Defendants and against Plaintiff, except as to the issue of the extent of the property covered by the Lease.

IT IS SO ORDERED.



Judge Joseph Cigliano

cc: Abraham Lieberman
Dennis O'Toole Peggy Kirk
Randall Strickler Anthony Logan
Darrel Bilancini Jeffrey Rengel

EXHIBIT 11

Findings of Fact

The Lease, originally signed on July 12, 1881, and recorded in Volume 2, Pages 26, 27 and 18 of Erie County Lease Records, was entered into evidence by stipulation. Pursuant to the Lease, the Milan Canal Company leased to Wheeling Railroad certain land (the "Leased Property"), which is described in the attached Exhibit A. The term of the Lease is 99 years, renewable forever, and the annual rent is Fifty Dollars (\$50.00). The Lease requires the Leased Property to be used "for public transportation and travel." The Lease further provides that the Leased Property is to revert to the lessor "on the failure of said lessees to so maintain and operate said Railroad for public transportation and travel and on the abandonment thereof for railway purposes, or on the failure of for six months to pay said annual rent" However, the Lease does not contain an express waiver of the common law requirement that the lessor demand payment of rent before declaring a forfeiture of the Lease. The Lease was renewed for its second 99-year term in 1979.

In 1904, the Milan Canal Company was dissolved and its assets purchased by Stephen Lockwood. Stephen Lockwood's interest in the Lease and the Leased Property eventually devolved to Key Trust Company of Ohio, NA, Trustee of the Testamentary Trust of Verna Lockwood Williams ("Key Trust").

Wheeling and Lake Erie Railway Company ("Wheeling Railway") acquired Norfolk Southern's interest in the rail corridor, and, in October, 1995, Wheeling Railway transferred its interest in the Leased Property to Plaintiff by quit-claim deed, which was recorded on June 1, 1998.

In the year 2000, during the pendency of this case, Defendant Key Trust, transferred all of its right, title, and interest as successor-in-interest to the original lessor, to the remaining Defendants.

Train service on the Leased Property was discontinued not later than 1986 and perhaps as early as 1982. In 1988, Norfolk and Western Railway Company ("N&W"), predecessor to Norfolk Southern Corporation ("Norfolk Southern"), filed a Notice of Exemption with the Interstate Commerce Commission for permission to discontinue train service along an 8.3 mile corridor including the Leased Property. Such permission was granted.

It is undisputed that the lessee failed to pay annual rental for the Leased Property after 1989, until a check for \$300.00 was transmitted to Key Trust in September 1995. The payment was rejected. It is also undisputed that no demand for rent was ever made by the lessor.

Having assessed the credibility of the witnesses who testified at trial and the reliability of the documents submitted into evidence, the Court finds that the Milan Canal Company, the predecessor in title to Defendant Key Trust, acquired its real property interests to construct the canal (the "Milan Canal Property") solely by way of two instruments and no others:

- (a) A conveyance from Kneeland Townsend dated May 10, 1838, recorded May 29, 1852, in Volume 10 of Deeds, Page 23 of Eric County Records (the "Townsend Conveyance"); and

(b) A conveyance from Ebeneser Merry dated April 21, 1838, recorded October 29, 1852, in Volume 10 of Deeds, Page 25 of Erie County Records (the "Merry Conveyance").

The Milan Canal Property consisted of a roughly three mile long corridor of property the northern terminus being known as Lock No. 1, which was located where the Milan Canal joined the Huron River on property now owned by Wikel Farms, Ltd., just north of Mason Road, in Section 2, Milan Township, Erie County, Ohio. Neither Kneeland Townsend nor Ebeneser Merry conveyed to the Milan Canal Company any interest in real property north of Lock No. 1.

The only lands owned by the Milan Canal Company at the time the Lease was executed lay within the boundaries of the Kneeland Townsend property and the Ebeneser Merry property, neither of which lay north of Lock No. 1.

Conclusions of Law

It is axiomatic that a seller cannot transfer any greater interest in land than that which the seller possesses. In the instant case, Wheeling Railroad had a leasehold interest in the Leased Property, which is evidenced by Exhibit A. The Court hereby finds the Lease was a valid lease. Further, the Court finds that the Lease, which was for a term of 99 years and renewable forever, did not confer a fee simple estate under Ohio law to the Wheeling Railroad, because it was aware that its interest could be forfeited to the lessor upon its breach of the lease covenants. Therefore, the fee

simple remains in the lessor, its heirs, devisees, or assigns. See Rawson v. Brown (1922), 104 Ohio St. 548; and Quill v. R.A. Investment Corporation (1997), 124 Ohio App.3d 653.

The description of the Leased Property in the Lease unambiguously describes it as consisting of all lands then owned by the Milan Canal Company within a 150 foot wide corridor from approximately the intersection of Maine and Union Streets in the Village of Milan northerly to the north of the mouth of the Huron River. The only lands owned by the Milan Canal Company at the time the Lease was executed lay within the boundaries of the Kneeland Townsend property and the Ebeneser Merry property, neither of which lay north of Lock No. 1. Therefore, the Leased Property extends from the southern terminus of the old Milan Canal at or near the southerly end of the Milan Canal basin in the Village of Milan to its northerly terminus at the Huron River at the former location of Lock No. 1 on premises now owned by Wikel Farms, Ltd. immediately north of Mason Road in Section 2, Milan Township, Erie County.

It is axiomatic in Ohio jurisprudence that the law abhors a forfeiture. Wheatstone Ceramics Corp. v. Turner (1986), 32 Ohio App.3d 21, 23, citing Easel v. Lumber Ins. Co. of New York (1913), 88 Ohio St. 269, 281.

Contracts incorporate the law applicable at the time of their creation. 11 Williston on Contracts (1999), 203, Section 30.19. The common law of Ohio at the time the Lease was executed required that, in order to show a forfeiture of a leasehold estate, the lessor had to prove that a demand for payment of rent had been made when due. Smith v. Whitbeck (1862), 13 Ohio St. 471. The

Lease contained no express waiver of this common law requirement, and the evidence was unrefuted that no demand for payment of rent had been made. Since no forfeiture may be had absent demand, the lapse in annual rent payments does not constitute an irreparable breach of the Lease.

The Lease requires the Leased property to be used "for public transportation and travel," and further provides that the Leased Property is to revert to the lessor "on the failure of said lessees to so maintain and operate said Railroad for public transportation and travel and on the abandonment thereof for railway purposes." The transformation of a railroad right-of-way to a recreational trail is a permissible use of such property. Rieger v. Penn Central Corp. (May 21, 1985), Greene App. No. 85-CA-11, unreported. Both serve a public purpose related to public transportation and travel. Id., citing Minnesota Dept. of Wildlife v. State of Minnesota (Minn. 1983), 329 N.W.2d 543, 546-547, certiorari denied (1983), 463 U.S. 1209. Consequently, the proposed use of the Leased Property is consistent with the requirements of the Lease. Furthermore, the transitional period between the uses is not so great as to constitute a failure to "maintain and operate" the Leased Property for such uses so as to constitute a breach of the Lease. This is especially so absent a demand from the lessor for performance.

To constitute abandonment of a railroad right-of-way, there must be a "nonuser together with an intention to abandon." Rieger, supra, citing Scheck v. Cleveland, Cincinnati, Chicago and St. Louis Railway Co. (1919), 11 Ohio App. 164, 167. The intention must be shown by unequivocal and decisive acts indicative of abandonment. Id.; see, also, Roby v. New York Central (1984), 142 N.Y. 176, 181. The filing of a Notice of Exemption with the Interstate Commerce Commission for

permission to discontinue train service was evidence, but not conclusive. Contradictory to the filing was undisputed evidence that when Norfolk Southern transferred this spur to Wheeling Railway, Norfolk Southern reserved a portion of the corridor for the future installation of fiber-optic cable. Moreover, Wheeling Railway's grant to Plaintiff reserves a future right to construct and operate another rail line in the corridor. Both of these acts constitute "railway purposes," and both indicate an intention to pursue future use of the property for such purposes. Far from the "unequivocal and decisive" acts indicative of abandonment necessary to prove an intent to abandon, these reservations are antithetical to such an intent.

The Court therefore rules that:

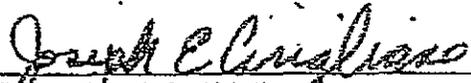
1. The extent of the Leased Property is as set forth in Exhibit A hereto.
2. The lessees have not abandoned the Leased Property.
3. The Lease is still in full force and effect and encumbers the Leased Property.
4. Plaintiff is the current lessee and the holder of the lessee's rights under the Lease.
5. Plaintiff is entitled to the sole occupancy and use of the Leased Property.
6. Any rights of Defendants in the Leased Property are subject to the rights of Plaintiff as lessee of the Leased Property.
7. The Lease permits the Plaintiff to improve and use the Leased Property as a parkway and/or recreational trail and purposes incidental and/or related thereto.

8. There is currently outstanding the sum of Six Hundred Fifty Dollars (\$650.00) as delinquent rent under the Lease. Plaintiff has deposited with the clerk of courts the sum of One Thousand Dollars (\$1,000.00), representing thirteen years' past due rent and future rent for seven years. Such deposit shall be released to Defendants upon motion of Defendants advising the Court to whom such rent is to be paid. Defendants shall keep Plaintiff advised in writing as to where future installments of rent are to be directed. If Defendants do not timely notify Plaintiff to whom future rent is to be paid and the address at which rent is to be paid, then Plaintiff may deposit future rent with the Clerk of Courts, until further notice.
9. Only those Defendants who hold an interest in the Leased Property are entitled to any portion of the rent under the Lease or to the benefit of any of the rights of the lessor under the Lease.

Judgment on Plaintiff's Complaint and on Defendants' Counterclaim is rendered in favor of Plaintiff and against Defendants.

Costs to Defendants.

IT IS SO ORDERED.



Judge Joseph E. Cirigliano

cc: Abraham Lieberman
Dennis O'Toole Peggy Kirk
Randall Strickler Anthony Logan
Darrel Bilancini Jeffrey Rengel

EXHIBIT 12

Not Reported in N.E.2d

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118AIII(C) Parties

118Ak306 k. New Parties. Most Cited

Cases

Prospective intervenor was not entitled to intervene in lease dispute to contest one of the boundaries of the leased property, as by the time prospective intervenor filed its renewed motion to intervene, trial court's determination as to the scope of the leased property had been affirmed by appellate court.

Abraham Lieberman and Dennis M. O'Toole, for appellee.

Anthony Logan, D. Jeffery Rengel and Thomas R. Lucas, for appellants Buffalo Prairie, Ltd., et al.; Charles J. Pawlukiewicz, for appellant Wikel Farms, Ltd.

KNEPPER, J.

*1 ¶ 1 This is a consolidated appeal from two judgments of the Erie County Court of Common Pleas in a property dispute. The first judgment, entered February 21, 2002, denied the motion to intervene filed by appellant Wikel Farms, Ltd. The second judgment appealed from, entered March 1, 2002 upon remand from this court, determined the validity of the lease in question. On March 29, 2002, this court sua sponte ordered that the two appeals be consolidated under E-02-009. For the reasons that follow, this court affirms the judgments of the trial court.

¶ 2 Appellants Buffalo Prairie, Ltd., et al. set forth the following assignments of error:

¶ 3 "1. The trial court's Entry establishing the description of the leased property is directly contrary to this Court's decision in *Board of Commissioners v. Key Trust* 135 Ohio App.3d 787.

¶ 4 "2. The trial court abused its discretion by adopting findings of fact which did not address the issues raised in Defendants' Answer and Counterclaim."

¶ 5 Appellant Wikel Farms, Ltd. sets forth the following assignment of error:

¶ 6 "The trial court erred and abused its

discretion by denying the renewed motion of Wikel Farms, Ltd. to intervene."

¶ 7 The background necessary for a thorough understanding of this appeal is as follows. In 1827, the Ohio General Assembly chartered the Milan Canal Company to construct and operate a canal from Milan, Ohio, to Lake Erie. The canal company acquired land from Ebeneser Merry and Kneeland Townsend and dug a canal between Milan and "Lock 1," located where the navigable portion of the Huron River intersected the canal.

¶ 8 In 1881, the Milan Canal Company leased a 150-foot wide corridor through its property to the Wheeling and Lake Erie Rail Road Company. The lease was for 99 years, renewable "forever," and called for an annual rent of \$50. The lease also provided that "on the failure of said Lessee * * * to so maintain and operate said Rail Road for public transportation and travel and on the abandonment thereof for railway purposes or on the failure for Six months to pay said annual rental of (\$50) Fifty dollars to the said Lessor after the same became due and payable these presents shall become void and the said real estate shall revert to the said Lessor the Milan Canal Company * * *."

¶ 9 It is undisputed that during the next 100 years, the railroad and its successor railroad companies maintained and operated a line on the leased corridor.^{FN1} In 1979, the lease was renewed for another 99 years. In October 1995, the Wheeling and Lake Erie Railway Company transferred its interest in the leased property to appellee Board of Commissioners, Erie Metroparks ("Metroparks"), which intended to convert the property to a recreational hiking and bicycling trail.

FN1. The Wheeling and Lake Erie Rail Road Company was eventually absorbed by the Norfolk and Western Rail Company, which was merged into the Norfolk Southern Company. In 1990, the Norfolk Southern assigned its interest in the lease at issue to the Wheeling and Lake Erie Railway Company.

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boundaries of the leased property is directly contrary to that court's own finding in its original decision filed on November 7, 2000 and this court's September 14, 2001 decision on the first appeal. Appellants assert that this court and the trial court both found that the only two tracts of land subject to the Milan Canal lease, and therefore subject to the leasehold interests of Erie Metroparks, were two non-contiguous tracts conveyed by Ebeneser Merry and Kneeland Townsend. They further assert, however, that the trial court's judgment entry on remand erroneously describes the land subject to the lease to include a two-mile corridor that the courts previously have determined is not part of the leasehold.

{¶ 18} This court has carefully examined the trial court's November 7, 2000 judgment entry, our own decision of September 14, 2001, and the trial court's February 22, 2002 judgment entry on remand. Despite appellants' assertion that the trial court's entry on remand was contrary to our September 2001 decision, we find that the descriptions of the leased property are identical in both of the trial court's entries.

{¶ 19} Significantly, both entries define the property as encompassing only land previously owned by Merry and Townsend. As this court explained in its September 14, 2001 decision: "Although the metes and bounds description contained in the 1881 lease describes a one-hundred-fifty-foot corridor for the full length of the canal, the lease limits the conveyance to property 'owned by' the canal company. The trial record shows that the Milan Canal Company acquired property *only* from Townsend and Merry. The trial court ruled that *this property alone* was the subject of the lease. Consequently, the court never modified the 1881 lease. Since there was no reformation of the lease, appellants' arguments concerning an improper reformation of the contract are without merit. * * * [Emphasis added.]

{¶ 20} " * * * The only competent, credible evidence presented at trial was that the canal company obtained property solely from Townsend and Merry. On such evidence, we cannot say that the trial court's decision to limit the lease to such

property was unsupported by the evidence. * * * " *Erie Metroparks Bd. of Commrs. v. Key Trust Co. of Ohio, N.A.*, supra, at 787-788, 764 N.E.2d 509.

*4 {¶ 21} Thus, this court affirmed the trial court's original determination that the leased property included only land obtained from Townsend and Merry. On remand, for reasons not apparent to this court, the trial court revisited the issue of the scope of the leased property. This was unnecessary since we had left undisturbed that portion of the November 2000 entry and remanded the case solely on the issue of the validity of the lease.

{¶ 22} It has been emphasized in all three judgment entries that the leased property encompassed only land obtained from Townsend and Merry. There is no discrepancy as to that issue and the trial court's February 22, 2002 judgment entry did not contradict that finding as set forth in either of the two prior judgments.

{¶ 23} Accordingly, appellant's first assignment of error is not well-taken.

{¶ 24} In their second assignment of error, appellants assert that the trial court abused its discretion by adopting findings of fact on remand which did not address the issue of Metroparks' prior claim of adverse possession. In its November 7, 2000 decision, the trial court found that Metroparks did not acquire title to the leased property by adverse possession because it did not begin to occupy the property adversely until it went into default for nonpayment of rent in 1995. Since this court then found that the original lease was still in effect, the issue of adverse possession was irrelevant on remand, and there was no reason for the trial court to address the matter in its February 2, 2002 judgment entry. This argument is therefore without merit.

[2] {¶ 25} Appellants also argue that the trial court improperly authorized appellee to pay the rent to the clerk of courts until further notice. Appellants, however, misrepresent the trial court's order. In its February 22, 2002 judgment entry, the trial court stated that appellee had deposited with the clerk of courts the sum of \$1,000, representing 13 years'

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Ex. 12 (page 4 of 5)

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past due rent plus future rent for seven years. The trial court ordered that the deposit should be released to the trust upon the trust's motion advising the court as to whom such rent is to be paid. Further, the trial court instructed appellants to keep appellee advised as to where future rent payments should be directed, and then ordered that if the trust did not notify Metroparks as to where to send the payments and to whom they should be directed, Metroparks should deposit future payments with the clerk of courts until further notice. This is a reasonable and appropriate order in light of the facts and the trial court did not err by so ordering. This argument is without merit.

{¶ 26} Based on the foregoing, appellants' second assignment of error is not well-taken.

[3] {¶ 27} Finally, we must consider the appeal from the trial court's denial of the motion to intervene filed by Wikel Farms, Ltd. Wikel Farms, Ltd. contends that the tract of land it owns at the northern end of the canal is not included in the property covered by the lease and it sought to intervene for the sole purpose of contesting the northern boundary of the leased property.

*5 {¶ 28} Wikel Farms originally filed a motion to intervene on March 15, 2000, several months after Metroparks initiated its declaratory judgment action. The motion was not ruled on by the trial court prior to its November 7, 2000 decision. Wikel Farms renewed its motion to intervene on February 12, 2002, after this court's decision on the first appeal and while the case was pending in the trial court on remand. On February 21, 2002, the trial court summarily denied the motion to intervene.

{¶ 29} A trial court's decision on a motion to intervene is reviewed pursuant to an abuse of discretion standard. *Peterman v. Pataskata* (1997), 122 Ohio App.3d 758, 702 N.E.2d 965. Abuse of discretion connotes more than an error of law or judgment; it implies that the trial court's decision was unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1984), 5 Ohio St.3d 217, 219, 450 N.E.2d 1140. In this case, appellant Wikel Farms wishes to intervene in order to contest one of the boundaries of the leased property. By the time

Wikel Farms filed its renewed motion to intervene, however, the trial court's determination as to the scope of the leased property had been affirmed by this court. Accordingly, the trial court's judgment entry denying the motion to intervene was not unreasonable, arbitrary or unconscionable and therefore not an abuse of discretion.

{¶ 30} Based on the foregoing, this court finds the sole assignment of error of appellant Wikel Farms, Ltd. not well-taken.

{¶ 31} Upon consideration whereof, the judgments of the Erie County Court of Common Pleas are affirmed. Costs of this appeal are assessed to appellants equally.

JUDGMENTS AFFIRMED.

PETER M. HANDWORK, JAMES R. SHERCK,
 and RICHARD W. KNEPPER, JJ., concur.
 Ohio App. 6 Dist., 2002.

Board of Park Com'rs v. Key Trust Co. of Ohio
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Ex. 12 (page 5 of 5)

EXHIBIT 13

Because the district court erroneously dismissed the case under the *Rooker-Feldman* doctrine, the case should be reversed and remanded for further proceedings.

II. The District Court Erred In Dismissing Plaintiffs' Takings Claims As Unripe.

Having concluded early in its opinion that the Plaintiffs were seeking to re-litigate what the district court wrongly described as the "final outcome of the state court proceedings," the district court dismissed the federal complaint under the rationale that the Plaintiffs must first avail themselves of further state proceedings. Specifically, the district court held that the Plaintiffs' federal claims were not ripe because they were required to pursue a "mandamus" action in the Ohio courts seeking to compel the state to commence a compensation case. (R.47 Order at pp. 4-5, Apx. pp. 329-330.) The Supreme Court in *Williamson County Reg'l Planning Comm'n v. Hamilton Bank*, 473 U.S. 172 (1985), established the following two-prong test for determining ripeness for a federal takings claim: (1) that "the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue;" and (2) that if the state had a "reasonable, certain and adequate provision for obtaining [just] compensation ... at the time of the taking," just compensation was sought and denied through that procedure. *Id.* at 186,

194. There is no absolute requirement to exhaust state remedies under the *Williamson* ripeness test; the state cannot compel a federal litigant to follow a state procedure that fails the “reasonable, certain, and adequate” test. *See, e.g., Arnett v. Myers*, 281 F.3d 552, 563 (6th Cir. 2002).¹⁰

In *Kruse v. Village of Chagrin Falls, Ohio*, 74 F.3d 694 (6th Cir. 1996), *cert. denied*, 519 U.S. 818 (1996), this Court, looking directly at the procedures available in Ohio, held that under the second prong of *Williamson*, pursuing a writ of mandamus in the Ohio courts is not required before commencing a constitutional challenge to the *physical* seizure of property.

Kruse involves a remarkably similar fact pattern to the present case. The Kruses were a family from Chagrin Falls, Ohio, in Cuyahoga County. On returning home one afternoon in 1986, they discovered that their backyard was missing. The defendant (“Village”) had abandoned a road that passed through the Kruses’ back yard in the 1800s, and had even given

¹⁰ *See also Hoehne v. County of San Benito*, 870 F.2d 529, 534 (9th Cir.1989) (takings claim was ripe for federal court review because, at the time the plaintiff brought the federal action, the State of California did not provide an inverse condemnation remedy); *Corn v. City of Lauderdale Lakes*, 816 F.2d 1514, 1517-19 (11th Cir. 1987) (reviewing Florida law and concluding that it did not provide an adequate procedure for compensation for “injuries sustained as a result of an unreasonable zoning ordinance later declared invalid.”).

building permits allowing extension of the house into the back yard.

Without notice, however, the Village decided to reclaim the abandoned road for use in expanding a roadway. It did so, seizing the Kruses' property and removing trees and landscaping leading up to the edge of their house in much the same way that MetroParks destroyed Plaintiffs' decks and stairs. As here, the Kruses were able to prove in state litigation that they held title. But the state refused to compensate the Kruses for their loss under an assertion of governmental immunity. In response, the Kruses filed federal claims under 42 U.S.C. §§ 1983 and 1988. As here, the district court dismissed their claims for compensation on ripeness grounds for failure to follow state compensation procedures.

This Court reversed. The Court specifically rejected the argument that an Ohio plaintiff suffering a physical invasion of its land and destruction of its property must first file a writ of mandamus in Ohio state court in order to exhaust state proceedings before filing a federal claim. The Court held (74 F.3d at 700):

Ohio has no statutory provision for relief under the circumstances of this case. The fact that the State's courts recognize an action in mandamus, where the State has no mandated procedures governing inverse condemnation, cannot be equated to a "reasonable, certain and adequate provision for obtaining compensation," after the property has been physically taken in violation of the appropriation statutes. An action for the extraordinary writ of mandamus is, at best, a

procedure which must be invoked in the absence of any statutory framework in an attempt to obtain wholly equitable relief for an injury already inflicted.

The *Kruse* decision implicitly distinguished *Silver v. Franklin Township, Board of Zoning*, 966 F.2d 1031 (6th Cir. 1992), holding unripe a takings claim involving a municipal zoning decision where the litigant had not first sought a writ of mandamus in the Ohio courts. The *Kruse* Court emphasized the difference between the physical takings at issue before it, and the regulatory takings through state zoning and land use regulation. The Court observed that in regulatory takings there are "generally numerous opportunities available to landowners to be heard and to attempt to prevent a proposed zoning ordinance from taking effect, or to reach a compromise with the authorities," *Kruse*, 74 F.3d at 700, so that it is fair in those cases to place on the party claiming injury from a regulatory action the burden of initiating a state procedure. In contrast, the Court explained, a landowner who finds his property physically occupied or destroyed, often has no prior knowledge or opportunity to take protective actions, and it would be unfair to require the landowner to pursue further state litigation to obtain compensation for his loss. The Court also recognized the difference between a regulatory takings claim, which often does not rise to the level of a constitutional taking and turns on close examination of the impact of state

laws on a particular litigant, and a physical taking or destruction of property, where there is rarely any question of the actual injury and loss. *Id.* at 698.¹¹

Since *Kruse*, this Court has on a number of occasions reiterated its distinction between physical occupation of land and regulatory takings. In *Montgomery v. Carter County, Tennessee*, 226 F.3d 758 (6th Cir. 2000), the Court overturned a district court's dismissal order, and held that a claim for physical takings was ripe without further pursuit of remedies in the state courts. Relying on *Kruse*, the Court contrasted land use regulation cases (where it was appropriate to give the state an opportunity to consider the application of the regulation under the litigant's specific circumstances) from physical takings cases (where "there is generally no need to ask the relevant state decision maker to clarify its final position in order to determine whether a taking has occurred"). *Montgomery*, 226 F.3d at 766.¹²

¹¹ The Court quoted *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 488-89 n.18 (1987):

[A] "taking" may more readily be found when the interference with property can be characterized as a physical invasion by the government[.] While the Court has almost invariably found that the permanent physical occupation of property constitutes a taking, the Court has repeatedly upheld regulations that destroy or adversely affect real property interests.)

¹² The Court also cited *Sinaloa Lake Owners Ass'n v. City of Simi Valley*, 864 F.2d 1475, 1478 (9th Cir.1989) ("A physical taking ... is by definition a final decision, and thereby satisfies *Williamson's* first

Arnett v. Myers, 281 F.3d 552 (6th Cir. 2002), once again, reversed a district court in a physical takings case. The Court, citing *Kruse*, held that the removal and destruction of duck blinds by a state agency was a physical destruction of property for which no further state clarification of intent was needed, and further that the case was ripe for federal adjudication because, at the time of the property destruction, Tennessee did not have a statutory remedy for seeking just compensation for that taking.

The Court has further emphasized the continued validity of *Kruse* for physical invasion of property claims in two unpublished decisions. *Buckles v. Columbus Municipal Airport Authority*, 90 Fed.Appx. 927, 2004 WL 346045 (6th Cir. Feb. 24, 2004), and *Tri-Corp Management Co. v. Praznik*, 33 Fed.Appx. 742, 2002 WL 486241 (6th Cir. Mar. 29, 2002). Both *Buckles* and *Tri-Corp* were regulatory takings cases where the Court held that an Ohio litigant must first seek a writ of mandamus in state court. In both cases, however, the Court took pains to reiterate that *Kruse* continued to apply in physical takings case. *Buckles*, 90 Fed.Appx. at 929-30 (quoting and applying *Kruse*'s distinction between physical and regulatory takings cases); *Tri-Corp*, 33 Fed.Appx. at 749 ("reconcil[ing]" *Kruse* and *Silver* by distinguishing between physical takings and regulatory takings cases with

exhaustion requirement."), *overruled on other grounds*, *Armendariz v. Penman*, 75 F.3d 1311 (9th Cir. 1996) (en banc).

Kruse the controlling legal authority on physical takings and *Silver* the controlling legal authority on regulatory takings).

In short, this Court has ruled again and again that where, as here, physical takings are involved, *Kruse* is the controlling precedent and a writ of mandamus is not necessary to make a federal claim ripe. Ignoring this body of precedent, the district court's decision below did not distinguish, or even cite, *Kruse*, *Montgomery*, or *Arnett*, nor did the court acknowledge this Circuit's careful distinction between physical and regulatory takings claims. Without further analysis, the court simply held that mandamus is the "appropriate action to compel the state to institute compensation proceedings," (R.47 Order at p. 5, Apx. p. 330.) and dismissed on ripeness ground based on its finding that there is no evidence in the record that Plaintiffs sought a writ of mandamus in the Ohio courts.

The district court's reasoning missed the point. The question under *Williamson* is not whether the existing state procedures (here mandamus) are "appropriate" for state proceedings, but whether those procedures are "reasonable, certain and adequate" for purposes of the independent question of federal jurisdiction. *Kruse* concluded that the Ohio mandamus procedure "cannot be equated to a 'reasonable, certain and adequate provision for obtaining compensation,' after the property has been physically taken in

violation of the appropriation statutes.” 74 F.3d at 700. The district court made no findings that, contrary to *Kruse*, mandamus is in fact “reasonable, certain and adequate” under the circumstances here. *Kruse*, *Montgomery*, and *Arnett* were simply disregarded by the district court.

The district court’s error is clear. Plaintiffs’ claim of a physical taking and destruction of property was ripe for federal litigation. There is no dispute that the distinction drawn in *Kruse* and its progeny is applicable to the facts here – MetroParks does not deny its physical occupation of the subject property and the related physical destruction of property in connection with that occupation.

Under the first (finality) prong of *Williamson*, the intent of MetroParks with respect to Plaintiffs’ property requires no further clarification. MetroParks continues to occupy the subject property even after the state title litigation limited the Railroad Lease to parcels that excluded those owned by Plaintiffs. See *Arnett*, 281 F.3d at 563 (finality of governmental intent is evidenced in the act of physical occupation and destruction of property).

Further, in the circumstances here, seeking a writ of mandamus to require the state to initiate a compensation proceeding after more than six years of prior state litigation would be futile, and unnecessary under

EXHIBIT 14

If a state provides an adequate procedure for seeking just compensation, a property owner may not claim a violation of the Takings Clause until the owner has unsuccessfully utilized the procedure. *Gabhart v. City of Newport, Tenn.*, 2000 U.S. App. LEXIS 4146 (6th Cir. 2000). As the Sixth Circuit observed in *Harris v. City of Akron*, 20 F.3d 1396, 1405 (6th Cir. 1994), "The plaintiff may pursue his claim for damages in an inverse condemnation proceeding as recognized by the Ohio Supreme Court in *Solly v. City of Toledo*, 7 Ohio St.2d 16, 19-20, 218 N.E.2d 463 (1966). Only if that action fails to produce a remedy will the plaintiff have fulfilled the prerequisites for a Fifth Amendment claim based on a taking of his property without just compensation."

Consistent with *Harris*, and regarding compensation of so-called "already completed takings," in *Buckles v. Columbus Mun. Airport Auth.*, 90 Fed. Appx. 927 (6th Cir. 2004), the Sixth Circuit observed:

The Takings Clause of the Fifth Amendment does not prohibit the public taking of private property, but only taking "without just compensation." U.S. Const., amend. V. Therefore, the Supreme Court has held that a taking claim is not ripe for judicial review until the state has refused to pay for the property it took. *Williamson Cty. Regional Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 194-95, 87 L. Ed. 2d 126, 105 S. Ct. 3108 (1985). Furthermore, **the state need not pay in advance: if the state has made available some "reasonable, certain and adequate provision for obtaining compensation," then the claim is not ripe until the claimant has attempted to use this "adequate procedure" and has been rebuffed.** *Id.* at 194 (internal quotation marks

view ahead, Washington Township workers went onto to number of properties, including the Hunts, to cut trees down. As it turned out, some of the trees were in the road right of way, some were on the line, and some were outside the right of way (and inadvertently cut down through the negligence of township employees in failing to ascertain where the right of way ended). The Hunts sued the Township asserting various state law tort claims and seeking compensation for all the trees; however, they did not include a petition for a writ of mandamus among the claims for relief. The trial court granted summary judgment to the Township on all of the Hunts' claims. On appeal, the Hunts claimed that the trial court erred in dismissing their constitutional claims of taking and appropriation without compensation. However, the court of appeals disagreed, stating "The trial court specifically found the appropriate remedy was a mandamus action and we concur."

Applying the Sixth Circuit's decision in *Buckles*, since Ohio does have a reasonable, certain, and adequate procedure for obtaining compensation for an alleged "taking," the record is clear that Appellants have not pursued that remedy in state court. Again, MetroParks submits that under state law, which defines the nature of property interests, Appellants have not presented a "physical" takings claim and, therefore, must pursue their remedies in state court.

III. UNDER THE CIRCUMSTANCES OF THIS CASE, THE DISTRICT COURT'S DISMISSAL OF WIKEL'S CLAIM PURSUANT TO *YOUNGER* ABSTENTION WAS PROPER

A. Abstention Generally

The United States Supreme Court has stated that "The various types of abstention are not rigid pigeonholes into which federal courts must try to fit cases. Rather, they reflect a complex of considerations designed to soften the tensions inherent in a system that contemplates parallel judicial processes." *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 12 (1987). "In some cases, the probability that any federal adjudication would be effectively advisory is so great that this concern alone is sufficient to justify abstention, even if there are no pending state proceedings in which the question could be raised." *Id.*, citing *Railroad Comm'n of Texas v. Pullman Co.*, 312 U.S. 496 (1941).

B. A Stay of Proceedings is Not Required in All Cases.

"Appellants do not contest the court's decision to abstain." Appellants' Brief at 33. Rather, Appellants assert that Wikel's case should have been stayed, rather than dismissed without prejudice. *Id.* Appellants seem to suggest that the Sixth Circuit has adopted a *per se* rule that in all cases where *Younger* abstention is applied, the district court must stay the case, rather than dismiss it.

Such an argument is not supported by either United States Supreme Court or Sixth Circuit precedent. "[A]lthough "the pendency of an action in [a] state court

EXHIBIT 15

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Edwin M. Coles, et al,

Case No. 3:03CV7595

Plaintiffs,

v.

ORDER

Jonathan Granville, et al,

Defendants.

This case involves multiple federal and state law claims. Plaintiffs' complaint alleges violations of 42 U.S.C. §§ 1983, 1985(2), and 1985(3). Plaintiffs further allege two state law claims suing for: 1) quiet title; and 2) slander of title.

Plaintiffs are owners of property located in Erie County, Ohio. Defendants are various corporate entities, as well as Jonathan Granville, named in his individual capacity and as Director-Secretary of Erie Metroparks. Plaintiffs plead that all events alleged in their complaint occurred in Erie County, Ohio. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343, and 1367. Venue is appropriate in this District pursuant to 28 U.S.C. § 1391.

Pending is defendants' motion to dismiss pursuant Rule 12(b)(1) of the Federal Rule of Civil Procedure. Defendants claim that: 1) because the claim is not ripe for adjudication, the plaintiffs' takings

claim should be dismissed; 2) that *Younger* abstention requires this Court to abstain from matters involving Plaintiff Wickel as there is currently pending state court litigation regarding the same issues Wickel complains of in this suit; and 3) the *Rooker-Feldman* doctrine bars those of plaintiffs' claims that already have been litigated in state court. For the following reasons, defendants' motion shall be granted.

BACKGROUND

This case involves a dispute between the Board of Erie Metroparks (Metroparks) and several owners of land either along or part of a "rails to trails" path between Milan and Huron, Ohio.

In 1838, two landowners conveyed property to the Milan Canal Company which dug a canal from Milan to Huron. This canal ceased operation in 1865. In 1881, the canal company leased its lands to a railroad.

By the 1980s, trains were no longer traveling on the rails. In 1995, the railroad quitclaimed its interest in the property — property which was originally leased to its predecessor by the canal company — to Metroparks.

Metroparks instituted appropriation proceedings in state court against several landowners. These landowner-defendants in the state proceedings included, with the exception of Wickel Farms,¹ the plaintiffs in the instant case. The state trial court held: 1) the lease under which Metroparks took the land was limited to the lands conveyed in 1838 by the two grantors; and 2) the railroad had abandoned the premises, so that the lease was no longer valid. Therefore, the court concluded, the railroad could not have conveyed any interest in land to Metroparks.

¹ Wickel Farms moved to intervene in the original litigation. This motion was denied by the trial court; a holding affirmed on appeal.

Ohio's Sixth District Court of Appeals reversed the trial court's holding. The appellate court held that the trial court's opinion regarding the validity of the lease was erroneous and remanded to the trial court. *Erie Metroparks Bd. of Com'rs v. Key Trust Co. of Ohio, N.A.*, 145 Ohio App. 3d 782, 790-91 (Ohio App. 6th Dist. 2001).

On remand, the trial court held: 1) the lease was valid, and the premises had been conveyed to Metroparks; and 2) the lease covered the entire length of the canal. This judgment was affirmed on appeal. *Board of Park Com'rs v. Key Trust Co. of Ohio*, 2002 WL 31054032, *5 (Ohio App. 6th Dist. Sept. 13, 2002).

Plaintiffs have claimed throughout the pendency of the state litigation that the property conveyed in 1838 by the two grantors covered only a portion of the canal's length. Thus, they argued, even though the lease may be valid, and Metroparks may be the lessee, Metroparks only has a valid lease for a portion of the railroad, rather than the entire length. This issue has been resolved by the state courts — except as to Wickel Farms; however, Wickel Farms is currently a party to pending state court litigation that involves the same dispute sought to be litigated here.

The final outcome of the state court proceedings — except as to Wickel Farms — is: 1) Metroparks is the lessee of the entire length of the former canal/railroad lands; and 2) the lease is valid; Metroparks retains possession for an annual payment of \$50.00 to the plaintiffs.

After the state court proceedings, plaintiffs brought a § 1983 action in this Court claiming that their property had been taken without just compensation. The "property" alleged to have been taken includes: 1) the lands *not* covered by the 1838 conveyance; and 2) a tractor and a deck and stairs removed from the rails to trails path.

DISCUSSION

Defendants seek dismissal on three grounds: 1) the takings claim is not ripe for adjudication; 2) as to plaintiff Wickel Farms, the *Younger* abstention doctrine requires me to abstain from adjudicating this case while a substantially similar case is pending in state court; and 3) the *Rooker-Feldman* abstention doctrine requires me to abstain from adjudicating this case as the case is merely an appeal of a state court judgment.

1. Ripeness

Ripeness is a necessary prerequisite to subject matter jurisdiction. *Bigelow v. Michigan Dep't of Natural Resources*, 970 F.2d 154, 157 (6th Cir. 1992).

For a Fifth Amendment takings claim to be ripe for federal court adjudication, the taking must be final and the plaintiff must have sought compensation through the procedures the state has available. *DLX, Inc. v. Kentucky*, 381 F.3d 511, 518–19 (6th Cir. 2004) (citing *Williamson Cty. Regional Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 195 (1985)). A violation of the Fifth Amendment does not occur until a plaintiff “has used the procedure and been denied just compensation.” *Id.* (quoting *Williamson County*, 473 U.S. at 195). Therefore, if there is an adequate procedure available for a property owner to seek just compensation, a Takings Clause claim will not be ripe for federal court review until the owner has tried the state procedure and failed. *Gabhart v. City of Newport, Tenn.*, 2000 WL 282874, *3 (6th Cir. Mar. 10, 2000) (citing *Williamson Cty.*, 473 U.S. at 195).

Additionally, it is not necessary for the state to pay in advance; if the state has made available reasonable provisions for obtaining compensation for the taking, then a claim will not be ripe for federal court adjudication until the property owner has attempted and been “rebuffed” by the state. *Buckles v.*

Columbus Mun. Airport Auth., 90 Fed. Appx. 927, 929 (6th Cir., 2004) (citing *Reg'l Rail Reorganization Act Cases*, 419 U.S. 102, 124-25 (1974)).

Under Ohio law, when private property is involuntarily taken by the state, mandamus is the appropriate action to compel the state to institute proceedings. *State ex rel. Preschool Dev., Ltd. v. City of Springboro*, 99 Ohio St.3d 347, 349 (2003) (citing *State ex re. Shemo v. Mayfield Hts.*, 95 Ohio St.3d 59, 63 (2002)).

There is no evidence that the plaintiffs applied for a writ of mandamus at the time of the alleged taking. Therefore, this claim is not ripe for adjudication.²

2. *Younger* Abstention

Defendants ask that, as to plaintiff Wickel Farms, I abstain from jurisdiction under the abstention doctrine of *Younger v. Harris*, 401 U.S. 37 (1971). The *Younger* doctrine initially applied only to ask federal courts to refrain from jurisdiction in suits properly before them in deference to ongoing state criminal proceedings. *Tindall v. Wayne County Friend of the Court*, 269 F.3d 533, 538 (6th Cir. 2001). However, the *Younger* doctrine has been “extended to include certain civil enforcement proceedings and civil proceedings uniquely involving the ability of state courts to perform their judicial functions. . .” *Executive Arts Studio, Inc. v. City of Grand Rapids*, 391 F.3d 783, 791 (2004) (citing *New Orleans Pub. Serv., Inc. v. Council of the City of New Orleans*, 491 U.S. 350, 367–68 (1989)).

2

I do not reach the question as to whether the damage caused to plaintiffs’ property is validly subject to a takings claim as plaintiffs have failed to raise such in applying for a writ of mandamus.

To abstain under *Younger*, I must apply a three part test: “*First*, do state [proceedings]. . . constitute an ongoing state judicial proceeding; *second*, do the proceedings implicate important state interests; and *third*, is there an adequate opportunity in the state proceedings to raise constitutional challenges.” *Middlesex County Ethics Comm. v. Garden State Bar Ass’n*, 457 U.S. 423, 432 (1982) (emphasis added).

As to the first part of the test, there are ongoing judicial proceedings in state court. Further, the proceedings implicate the important state interest of land appropriation for public use without federal interference in the state’s judicial process. However, the plaintiff insists that they have not had an adequate opportunity in the state proceedings to raise their constitutional challenges. This contention is without merit.

Wickel Farms is seeking to re-litigate the same suit that was litigated and/or is pending in state court. This is not appropriate. Wickel Farms’ only claim that they have not had an adequate opportunity to raise their constitutional challenges in state court is that the state court proceedings have been pending for a long time with no end in sight. Wickel Farms also complains that it has yet to receive compensation for their taken property.

State court proceedings that are lengthy in duration do not preclude an adequate opportunity to raise constitutional claims in state court. *Tindall v. Wayne County Friend of Court*, 269 F.3d 533, 541 (6th Cir. 2001) (an opportunity is adequate if “the possibility of raising and correcting constitutional claims in state courts” exists (citation omitted)). Further, as the state has, by plaintiff’s own admission, deposited funds into escrow for the purposes of compensating the taking, the question is not whether Wickel Farms

will be paid (if it prevails), but when and how much. Therefore, I choose to abstain from jurisdiction in the Wickel Farms matter under the *Younger* abstention doctrine.

3. *Rooker-Feldman* Doctrine

Under *Rooker-Feldman* doctrine the only federal court that may exercise appellate jurisdiction over state court adjudications is the Supreme Court. *Executive Arts*, 391 F.3d at 793 (citing *D.C. Ct. of Appeals v. Feldman*, 460 U.S. 462, 486–87 (1983)). This doctrine includes claims that are “inextricably intertwined” with issues decided in state court proceedings. *Id.* The Sixth Circuit had held “that a federal claim is ‘inextricably intertwined’ with a state court judgment and thus implicates *Rooker-Feldman* when the ‘federal claim succeeds only to the extent that the state court wrongly decided the issues before it[.]’” *Executive Arts*, 391 F.3d at 793 (citing *Peterson Novelties Inc. v. City of Berkley*, 305 F.3d 386, 393 (6th Cir. 2002)).

Plaintiffs claim that they are not trying to relitigate any state court adjudications. Although plaintiffs may not have asserted a § 1983 contention in the state proceedings, that contention in this Court depends entirely on their claim that their property is not covered by the lease. Regardless of the merits of that claim, it is clear that the state courts have concluded that their property — or, rather, that portion of their property that was used for the canal/railroad, and is not part of the rails to trails path — is covered by the lease.

Plaintiffs’ suit in this court seeks to relitigate the underlying question of what property is covered by the lease. Under the *Rooker-Feldman* doctrine, this is not permissible. Therefore, I choose to abstain from jurisdiction under the *Rooker-Feldman* doctrine.

CONCLUSION

In light of the foregoing it is hereby

ORDERED THAT

1. Defendants' motion to dismiss for lack of ripeness, and the same hereby is, granted;
2. Defendants' motion that *Younger* abstention requires this Court to abstain from litigation involving Plaintiff Wickel, and the same hereby is, granted;
3. Defendants' motion that the *Rooker-Feldman* doctrine bars plaintiffs' claims, and the same hereby is, granted;.

So ordered.

/s/ James G. Carr

James G. Carr

Chief Judge

EXHIBIT 16

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EDWIN M. COLES; LISA COLES; BUFFALO PRAIRIE,
LLC; VINCENT OTRUSINA; ROBERT C. BICKLEY;
WARREN JONES; WIKEL FARMS, LTD.,
Plaintiffs-Appellants,

No. 05-3342

v.

JONATHAN GRANVILLE; ERIE METROPARKS BOARD
OF PARK COMMISSIONERS; WHEELING AND LAKE
ERIE RAILWAY CO.; NORFOLK SOUTHERN CORP.,
Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Ohio at Cleveland.
No. 03-07595—James G. Carr, Chief District Judge.

Argued: April 25, 2006

Decided and Filed: May 22, 2006

Before: GUY, DAUGHTREY, and CLAY, Circuit Judges.

COUNSEL

ARGUED: Nels J. Ackerson, ACKERSON KAUFFMAN FEX, Washington, D.C., for Appellants. John D. Latchney, TOMINO & LATCHNEY, LLC, LPA, Medina, Ohio, for Appellees. **ON BRIEF:** Nels J. Ackerson, ACKERSON KAUFFMAN FEX, PC, Washington, D.C., Thomas R. Lucas, D. Jeffery Rengel, RENGEL LAW OFFICE, Sandusky, Ohio, J. Anthony Logan, BROOKS & LOGAN CO., LPA, Columbus, Ohio, for Appellants. John D. Latchney, TOMINO & LATCHNEY, LLC, LPA, Medina, Ohio, Dennis M. O'Toole, BAUMGARTNER & O'TOOLE, Sheffield Village, Ohio, for Appellees.

OPINION

CLAY, Circuit Judge. Plaintiff landowners appeal the January 25, 2005 order of the United States District Court for the Northern District of Ohio, which dismissed Plaintiffs' 42 U.S.C. §§ 1983, 1985(2), 1985(3), and state law claims against Defendant public officials and railroad companies for actions taken relative to Plaintiffs' real property. The district court held that

Plaintiffs' action was not ripe in part, barred by the *Rooker-Feldman* doctrine in part, and merited *Younger* abstention in part.

For the reasons which follow, we **AFFIRM** the district court's dismissal of this case.

I.

BACKGROUND

A. Substantive Facts

Plaintiffs are landowners along the old Milan Canal in Erie County, Ohio. The old Milan Canal extended, during its period of use, for 6.5 miles from the town of Milan, Ohio northward to the mouth of the Huron river, at which point the Huron river emptied into Lake Erie. Plaintiffs Edwin M. Coles, Lisa Coles, Vincent Otrusina, Robert C. Bickley, Warren Jones, and Buffalo Prairie, LLC were all parties to a prior state court proceeding in which Erie County Metroparks sought a declaratory judgment that Plaintiffs possessed no property interest in a 150 foot wide corridor along the old canal. Metroparks claimed to be the valid assignee of an infinite duration leasehold interest in that corridor and was interested in transforming the corridor into a recreational trail. The state court proceeding ultimately found that Metroparks did possess a valid leasehold interest, and further defined the property subject to the leasehold as follows:

The description of the Leased Property in the Lease unambiguously describes it as consisting of all lands then owned by the Milan Canal Company within a 150 foot wide corridor from approximately the intersection of Maine and Union Streets in the Village of Milan northerly to the north of the mouth of the Huron River. The only lands owned by the Milan Canal Company at the time the Lease was executed lay within the boundaries of the Kneeland Townsend property and the Ebeneser Merry property, neither of which lay north of Lock No. 1. *Therefore, the Leased Property extends from the southern terminus of the old Milan Canal at or near the southerly end of the Milan Canal basin in the Village of Milan to its northerly terminus at the Huron River at the former location of Lock No. 1* on premises now owned by Wikel Farms, Ltd. immediately north of Mason Road in Section 2, Milan Township, Erie County.

(J.A. at 123 (emphasis added).)

Plaintiff Wikel Farms was not a party to the prior state court proceeding. Rather, Wikel Farms is currently involved in an appropriation action brought by Erie County Metroparks against Wikel Farms in state court, which involves portions of Wikel Farms' property along the old Milan Canal. Metroparks initiated that action in 1999 and, pursuant to Ohio law, deposited \$20,000 in escrow at the onset of litigation, which is Metroparks' estimated valuation of the disputed property. Wikel Farms places a much higher valuation on the property, that of \$500,000. That suit is not yet resolved.

B. Procedural History

The state court judgment against all Plaintiffs (save Wikel Farms), establishing Metroparks' leasehold interest in the Milan Canal corridor, was final in September 2002. Metroparks then proceeded to take actions to develop the recreational trail. Plaintiffs brought the instant suit on October 7, 2003 in the United States District Court for the Northern District of Ohio against Defendants Jonathan Granville (Director-Secretary of Erie Metroparks), the Erie Metroparks Board of Park Commissioners, Wheeling & Lake Erie Railway Co., and Norfolk Southern Corp. Plaintiffs sought redress under 42 U.S.C. §§ 1983, 1985(2), and 1985(3) for violations of their rights under

the Fourth, Fifth, and Fourteenth Amendments of the United States Constitution. Plaintiffs alleged that in their efforts to develop the recreational trail, Defendants laid claim to property beyond that found by Ohio state courts to fall within Metroparks' valid leasehold interest. Plaintiffs further alleged that Defendants wrongfully destroyed Plaintiffs' personal property. Plaintiffs also apparently sought a judgment that Plaintiffs were the rightful owners to all property under dispute with Defendants in the federal action. (See J.A. at 30, "Fifth Count, Quiet Title. . . . Plaintiffs are the owners of and are in possession of and otherwise have and claim a superior title and interest to that of defendants in the real property described [above].") Plaintiffs also sought damages in tort for slander of title.

After filing their Answer, Defendants filed a motion under Federal Rule of Civil Procedure 12(b)(1) with the district court, arguing that the district court either lacked or should decline to exercise jurisdiction over the case because 1) the *Rooker-Feldman* doctrine precluded Plaintiffs' collateral attack on the validity of Metroparks' leasehold interest; 2) those lands allegedly not within the leasehold interest represented a new takings claim for which Plaintiffs had not sought redress through state courts, and the issue was therefore not yet ripe for federal judicial review; and 3) the claims with respect to Wikel Farms (the only Plaintiff not a party to the leasehold litigation) were pending in state court proceedings which antedated the instant federal actions, and therefore *Younger* abstention was merited. The district court agreed, dismissing the case without prejudice on January 24, 2005.

On appeal, Plaintiffs argue that 1) the district court erred in dismissing Plaintiffs' claims, in part, on the basis of the *Rooker-Feldman* doctrine because Plaintiffs are seeking only to enforce the limitation on the scope of Metroparks' leasehold interest as decided in the prior litigation; 2) with respect to lands allegedly not adjudicated as falling under Metroparks' lease, Plaintiffs' takings claim is ripe for review; and 3) the district court erred when it chose to dismiss the claims asserted by Plaintiff Wikel Farms in lieu of holding them in abeyance under *Younger*.

II.

ANALYSIS

A. Plaintiffs' Do Not Pursue Claims Which Implicate the *Rooker-Feldman* Doctrine

The district court dismissed Plaintiffs' case, in part, because the court found that *Rooker-Feldman* barred federal jurisdiction over some of Plaintiffs' claims. Because we find that Plaintiffs' case as presented to both the district court and this Court does not implicate *Rooker-Feldman*, we hold that *Rooker-Feldman* is inapplicable to Plaintiffs' allegations on appeal. To the extent that the district court decision may have improperly relied on *Rooker-Feldman* as a basis to dismiss Plaintiffs' case, we find such error harmless in light of our conclusion that Plaintiffs' takings claims are not yet ripe for review. This Court can affirm the district court on any grounds supported by the record. *City Mgmt. Corp. v. U.S. Chem. Co.*, 43 F.3d 244, 251 (6th Cir. 1994).

1. *The Rooker-Feldman Doctrine Generally*

Plaintiffs argue to this Court that they are not seeking review of the state court decision that adjudicated the validity and extent of Metroparks' leasehold interests. Rather, Plaintiffs allege on appeal that Defendants are misreading the state court decision to give them more property than the decision actually held was rightfully possessed by Defendants. In contrast, Defendants argue that Plaintiffs' instant action is an attempted end-run around the state leasehold decision and contend that *Rooker-Feldman* bars their suit.

Rooker-Feldman is a doctrine with only limited application. The doctrine originates from two Supreme Court decisions, which were rendered 60 years apart. See *Rooker v. Fidelity Trust Co.*,

263 U.S. 413 (1923); *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983). In both cases the plaintiffs challenged the validity of state court decisions by filing suit in federal district court. In *Rooker*, the plaintiff asked the district court to render the state court judgment against him “null and void.” See *Rooker*, 263 U.S. at 414-15. In *Feldman*, the plaintiffs filed suit against the actual state court that had rejected the plaintiffs’ applications to practice law. *Feldman*, 460 U.S. at 478-79. In both cases the Supreme Court dismissed the suits for lack of subject-matter jurisdiction, reasoning that pursuant to 28 U.S.C. § 1257, only the Supreme Court, and not the lower federal courts, enjoys appellate jurisdiction over state court decisions. See *Rooker*, 263 U.S. at 414-15; *Feldman*, 460 U.S. at 478-79. Significantly, the *Feldman* Court reasoned that the plaintiffs *could* challenge the *state rules themselves* in federal court on constitutional grounds; such a challenge would not be asking the district court to exercise appellate authority over a state court, but normal preclusion rules would still apply. *Id.* at 487-88; see also *Todd v. Weltman, Weinberg & Reis Co.*, 434 F.3d 432, 435-36 (6th Cir 2006) (discussing the Supreme Court’s analysis in the *Rooker* and *Feldman* cases more extensively). The source of the plaintiffs’ alleged injury, then, was dispositive in *Feldman* on the issue of jurisdiction, a distinction which the Supreme Court reiterated more than 20 years later in *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (2005).

After the 1983 *Feldman* decision, the lower federal courts began to invoke the *Rooker-Feldman* doctrine in a variety of circumstances in which the federal and state courts enjoy concurrent jurisdiction. Because of inconsistencies between the circuits, the Supreme Court again explained the doctrine in *Exxon Mobil*, stating that the *Rooker-Feldman* doctrine applied only to:

cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments. *Rooker-Feldman* does not otherwise override or supplant preclusion doctrine or augment the circumscribed doctrines that allow federal courts to stay or dismiss proceedings in deference to state-court actions.

Exxon Mobil, 544 U.S. at 284. *Exxon Mobil* dealt specifically with a case where there were parallel state and federal cases on the same issue. The court held that normal preclusion jurisprudence, not *Rooker-Feldman*, would guide the federal court decision if the state court reached a decision first. *Id.* In dicta, the Supreme Court also addressed the circumstance where the plaintiff initiated a federal claim after a state court decision, circumstances such as the case at bar:

Nor does [*Rooker-Feldman*] stop a district court from exercising subject matter jurisdiction simply because a party attempts to litigate in federal court a matter previously litigated in state court. If a federal plaintiff “present[s] some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party . . . , then there is jurisdiction and state law determines whether the defendant prevails under principles of preclusion.”

Id. (quoting *GASH Assocs. v. Vill. of Rosemont*, 995 F.2d 726, 728 (7th Cir. 1993) (ellipses in original)).

This Circuit and other circuits have taken the Supreme Court’s guidance on the application of *Rooker-Feldman* and applied the doctrine only when a plaintiff complains of injury from the state court judgment itself. In *Todd*, 434 F.3d at 437, this Court rejected a defendant’s argument that *Rooker-Feldman* precluded jurisdiction over a plaintiff’s federal suit that complained that the defendant had lied in an affidavit submitted as the basis for a prior state court garnishment proceeding. We reasoned that the plaintiff was alleging injuries from the defendant’s deception, and not from the state court judgment itself, which had found that the defendant’s affidavit was valid.

Id. We further noted that the rules of preclusion would guide the district court on remand regarding whether the plaintiff could properly litigate the affidavit's validity in the federal action. *Id.*

Other circuits have agreed with this Court's approach. See *Davani v. Va. DOT*, 434 F.3d 712, 713 (4th Cir. 2006) ("*Exxon* teaches . . . that the *Rooker-Feldman* doctrine applies only when the loser in state court files suit in federal district court seeking redress for an injury allegedly caused by the state court's decision itself. Because *Davani*'s suit does not challenge the state court's decision, and it instead seeks redress for an injury allegedly caused by Appellees, the *Rooker-Feldman* doctrine does not apply . . ."); *Galibois v. Fisher*, No. 05-1576, 2006 U.S. App. LEXIS 8246, at *4 (1st Cir. Mar. 31, 2006) ("*Exxon* requires this court to examine whether the state court loser who files suit in federal court seeks redress for an injury caused by a state court decision itself or an injury caused by the defendant."); *Hoblock v. Albany County Bd. of Elections*, 422 F.3d 77, 85 (2d Cir. 2005) (finding *Rooker-Feldman* implicated only when a plaintiff asked the federal district court to review the validity of a state court judgment). The Tenth Circuit summarized the difference between a suit barred by *Rooker-Feldman* and normal preclusion principles:

Appellate review – the type of judicial action barred by *Rooker-Feldman* – consists of a review of the proceedings already conducted by the "lower" tribunal to determine whether it reached its result in accordance with law. When, in contrast, the second court tries a matter anew and reaches a conclusion contrary to a judgment by the first court, without concerning itself with the bona fides of the prior judgment (which may or may not have been a lawful judgment under the evidence and argument presented to the first court), it is not conducting appellate review, regardless of whether compliance with the second judgment would make it impossible to comply with the first judgment. In this latter situation the conflict between the two judgments is to be resolved under preclusion doctrine, not *Rooker-Feldman*.

Bolden v. City of Topeka, 441 F.3d 1129, 1143 (10th Cir. 2006).

2. Plaintiffs' Arguments Below and to This Court

In response to Defendants' motion to dismiss, in part, under *Rooker-Feldman*, Plaintiffs argued to the district court – and continue to argue to this Court – that their dispute in federal court concerns property *outside* of the land adjudicated by the state courts to fall within Metroparks' leasehold interests. Plaintiffs allege that Defendants are taking property that the state court held was *not* within Metroparks' leasehold interest. Having constrained their case by their own argument, Plaintiffs seek not to throw out a state court judgment, but *to enforce* the judgment, because Defendants are allegedly exceeding the scope of their property interests under the state court decision. This is precisely the type of claim which is not barred by *Rooker-Feldman* because Plaintiffs are not asking the lower federal courts to exercise appellate review over a state court decision. See Part II.A.1, *supra*. What Plaintiffs are asking this Court to do is to interpret the state court decision – *i.e.*, decide between Plaintiffs' construction and Defendants' construction of a state court judgment as it pertains to the boundaries of Metroparks' leasehold. Merely requiring a federal court to understand what it is that a state court decided does not implicate *Rooker-Feldman*, but rather normal preclusion principles and rules of construction.

Defendants continue to argue on appeal, however, that *Rooker-Feldman* precludes jurisdiction over Plaintiffs' case. In making this argument, Defendants contend that Plaintiffs' suit is an attempted end-run around the state court decision on the extent of Metroparks' leasehold interest. Whether this is true or not, however, does not make *Rooker-Feldman* more or less applicable. *Rooker-Feldman* applies only when a plaintiff asserts injury from the state court judgment. See *Exxon Mobil*, 544 U.S. at 284. In the instant case, Plaintiffs allege that Defendants

are the ones injuring Plaintiffs; Plaintiffs do not allege that their injury arises from the state court judgment itself or even as a result of the state court judgment. We acknowledge that whether or not Defendants are, in fact, injuring Plaintiffs depends, in part, on the parties' respective property interests. This is an issue which was litigated, at least in part, in the state court leasehold proceedings. Should the federal courts need to reach the merits of Plaintiffs' claims, however, normal preclusion principles would apply to assist us in deciding what has been settled between the parties and what has not been so settled.¹ *Id.*

B. Plaintiffs' Takings Claims Are Not Yet Ripe for Federal Judicial Review

1. Standard of Review

Whether this Court has subject-matter jurisdiction is a question of law that this Court reviews *de novo*. See, e.g., *Kruse v. Village of Chagrin Falls*, 74 F.3d 694, 697 (6th Cir. 1996).

2. The Extent of Metroparks' Valid Leasehold Interest Is Not Dispositive on Appeal

Plaintiffs allege that the state court language noting that "[t]he only lands owned by the Milan Canal Company at the time the Lease was executed lay within the boundaries of the Kneeland Townsend property and the Ebeneser Merry property" limits Metroparks' leasehold interest to those lands along the canal path which formerly lay within the Townsend and Merry property grants. (J.A. at 123.) Plaintiffs further argue that the evidence before the Ohio courts was that these grants did not create a contiguous tract along the 3 miles of canal to which Defendants now claim a right of possession. Defendants counter, however, by noting the language in the Ohio decision that states "the Leased Property extends from the southern terminus of the old Milan Canal at or near the southerly end of the Milan Canal basin in the Village of Milan to its northerly terminus at the Huron River at the former location of Lock No. 1." (J.A. at 123.) Defendants argue that this language very clearly indicates that Defendants have a valid leasehold interest along the entire length of the canal between the points noted in the state court's decision.

If Defendants are correct, and the property Plaintiffs put at issue in this case was adjudicated as within Metroparks' leasehold interest by the Ohio courts, then *res judicata* would prevent us from reaching a different conclusion than that reached by the Ohio courts on this very same issue, and Plaintiffs' case (with the exception of Wikel Farms) was properly dismissed. If Plaintiffs are correct, however, in their belief that the property at issue here was not adjudicated as within Metroparks' leasehold interest, then Plaintiffs' claims to this Court devolve to new takings allegations. That is, Plaintiffs allege Defendants are unconstitutionally taking Plaintiffs' property by invading lands beyond the scope of Metroparks' leasehold interests. As discussed *infra*, before seeking relief in federal courts, plaintiffs alleging an unconstitutional taking by a local government entity must first seek compensation for the taking through state measures. Because Plaintiffs in the instant action have not done this, Plaintiffs' case is not yet ripe for review.

¹ Defendants' *Rooker-Feldman* argument relies on Circuit case law which was handed down prior to the Supreme Court's recent holding in *Exxon Mobil*, which made the boundaries of *Rooker-Feldman* more explicit. See Part II.A.1, *supra*. Much of our pre-*Exxon Mobil* case law expanded *Rooker-Feldman* to encompass preclusion and abstention law, an expansion which *Exxon Mobil* makes clear was an incorrect reading of *Rooker-Feldman*. See, e.g., *Peterson Novelties, Inc. v. City of Berkeley*, 305 F.3d 386, 391 (6th Cir. 2002) (incorrectly incorporating preclusion principles as a component of its *Rooker-Feldman* analysis); *Catz v. Chalker*, 142 F.3d 279, 294 (6th Cir. 1998) (reflecting preclusion analysis in its *Rooker-Feldman* discussion). It is preclusion law alone, and not *Rooker-Feldman*, which guides the disposition of federal questions already litigated in state court, when the plaintiff does not attack the actual judgment. See *Exxon Mobil*, 544 U.S. at 284.

3. *Takings Claims in Federal Courts*

- a. *The Supreme Court requires claimants to pursue any "reasonable, certain, and adequate procedures" in state court prior to seeking federal judicial review*

The Takings Clause does not prohibit the government from taking private property; it prohibits the government from taking private property without just compensation. *Williamson County Reg'l Planning Comm'n v. Hamilton Bank*, 473 U.S. 172, 194 (1985). A takings claim is not ripe for review unless a property owner is denied just compensation. *Id.* ("Because the Fifth Amendment proscribes takings without just compensation, no constitutional violation occurs until just compensation has been denied."); *Waste Mgmt., Inc. of Tenn. v. Metro. Gov't of Nashville & Davidson County*, 130 F.3d 731, 739 (6th Cir.1997); *Hammond v. Baldwin*, 866 F.2d 172, 178-79 (6th Cir. 1989); *Four Seasons Apartment v. City of Mayfield Heights*, 775 F.2d 150, 151-52 (6th Cir. 1985); see also *Eide v. Sarasota County*, 908 F.2d 716, 721 (11th Cir. 1990) ("[A] Fifth Amendment just compensation claim is not ripe until the landowner has pursued the available state procedures to obtain just compensation."). Under this reasoning, "if a State provides an adequate procedure for seeking just compensation, the property owner cannot claim a violation of the Just Compensation Clause until it has used the procedure and been denied just compensation." *Williamson*, 473 U.S. at 195. In other words, a wronged party satisfies its duty to seek just compensation by pursuing "reasonable, certain, and adequate procedures" for obtaining compensation. *Id.* at 194 (quoting *Reg'l Rail Reorganizational Act Cases*, 419 U.S. 102, 124-25 (1974)).

- b. *Ohio now has a "reasonable, certain, and adequate procedure" for takings claimants to pursue in Ohio state courts*

Ohio does not have an inverse condemnation or other direct, statutory cause of action for plaintiffs seeking just compensation for a taking. Rather, Ohio law provides a statutory mechanism by which the government actor seeking to take property is under a duty to bring an appropriation proceeding against the landowner. See Ohio Rev. Code §§ 163.01-163.62; *Shemo v. City of Mayfield Heights*, 765 N.E.2d 345, 350 (Ohio 2002). A property owner who believes that his property has been taken in the absence of such an appropriation proceeding may initiate a mandamus action in Ohio court to force the government actor into the correct appropriation proceeding.² *Id.* This Circuit has therefore focused on whether Ohio's writ of mandamus provides a "reasonable, certain, and adequate provision for obtaining compensation" pursuant to Supreme Court direction.

This Circuit first addressed this issue in *Silver v. Franklin Township*, 966 F.2d 1031 (6th Cir. 1992). The *Silver* Court was presented with a regulatory takings claim and found Ohio's writ of mandamus procedure to be an adequate mechanism for pursuing just compensation. *Id.* at 1035. Just four years later, however, this Court appeared to reason differently in *Kruse*, a physical takings case:

We hold that Ohio affords no "reasonable, certain and adequate provision for obtaining compensation" after private property is taken by public authorities without following the mandatory pretaking appropriation procedures set out in Ohio Rev. Code §§ 163.01-163.62. Ohio's decisional law in this area is anything but certain.

²Mandamus is defined as "[a] writ issued by a superior court to compel a lower court or a government officer to perform mandatory or purely ministerial duties correctly." *Black's Law Dictionary* 973 (7th ed. 1999). Ohio further defines mandamus in Ohio Revised Code § 2737.01 as "a writ, issued in the name of the state to an inferior tribunal, a corporation, a board, or person, commanding the performance of an action which the law specially enjoins as a duty resulting from an office, trust, or station."

Ohio has no statutory provision for relief under the circumstances of this case. The fact that the State's courts recognize an action in mandamus, where the State has no mandated procedures governing inverse condemnation, cannot be equated to a "reasonable, certain and adequate provision for obtaining compensation," after the property has been physically taken in violation of the appropriations statutes. An action for the extraordinary writ of mandamus is, at best, a procedure which must be invoked in the absence of any statutory framework in an attempt to obtain wholly equitable relief for an injury already inflicted.

74 F.3d at 700.

Although the *Silver* and *Kruse* holdings appear contradictory, subsequent panels of this Court have reconciled the cases by limiting each to its facts. This approach applies the rule in *Silver* to regulatory takings claims, but applies the *Kruse* rule to physical takings claims. See *Buckles v. Columbus Mun. Airport Auth.*, 90 Fed. App'x 927, 929-30 (6th Cir. Feb. 23, 2004); *Tri Corp Mgmt. Co. v. Praznik*, 33 Fed. App'x 742, 749 (6th Cir. Mar. 29, 2002). The *Buckles* decision noted further language in the *Kruse* decision in support of the view that physical takings implicate different procedures:

Kruse did not discuss *Silver*, but it did distinguish regulatory from physical takings in arriving at its holding, and this distinction reconciles the two cases:

In regulatory cases, where the government has fulfilled its obligation to provide notice to the property owner, it may be fair to place the burden of making the next move on the landowner. It may make sense to require landowners to pursue relief through administrative appeals and the mandatory injunction process when the landowners know in advance that the government is planning action that threatens their ownership of their property . . . since there are generally numerous opportunities available to landowners to be heard and to attempt to prevent a proposed zoning ordinance from taking effect, or to reach a compromise with the authorities that permits some alternative use of the land.

[*Kruse*, 74 F.3d at 700.] In contrast, where the landowner simply one day finds his land physically invaded and his title transferred against his will, and yet the government refuses to pay up despite explicit requests, he need not go through Dickensian formalities to confirm the government's obvious intentions.

Buckles, 90 Fed. App'x at 929-30.

Additional language in the *Kruse* decision sheds further light on why the *Kruse* panel found the Ohio mandamus action to be an inadequate remedy for physical takings at the time:

The Ohio Supreme Court has very recently stated that a landowner who has been deprived of his property may bring an action in mandamus to require the government to institute appropriation proceedings pursuant to Ohio's Appropriation of Property statute. See *Levin v. City of Sheffield Lake*. . . 637 N.E.2d 319, 323-24 (Ohio 1994). There, the court reviewed some of its prior decisions, which indicated that appropriation proceedings may be compelled through mandamus, but also reiterated the stringent requirements for issuance of the extraordinary writ and explained that prior to issuance of the writ to compel the commencement of appropriation proceedings, the issue of whether the petitioner's property had been appropriated had first to be determined by the court in which the writ was requested. *Id.*

Levin, however, was not decided until 1994, well after the Kruses had begun their heretofore fruitless attempt to obtain compensation from the Village for its taking of their property. And *Levin*'s cited cases which have held that mandamus is the vehicle for compelling appropriation proceedings by public authorities, are all cases in which the court addressed a taking by the state, through the action of the Director of Highways.

....

The *Levin* court did not address at all its decision in *City of Worthington v. Carskadon*, . . . 249 N.E.2d 38 (Ohio 1969), a case which post-dates all of the decisions *Levin* relied upon, in which the City of Worthington took possession of property pursuant to a "quick take ordinance," prior to determination of value by a jury. There, the court held that "the proper remedies for illegal entry upon one's property are criminal trespass and civil damages against the individuals entering, and injunction against the city and its agents." 249 N.E.2d at 39.

None of these cases even mentions the remedy of inverse condemnation. The claim by the Village that *Solly v. City of Toledo*, . . . 218 N.E.2d 463 (Ohio 1966) holds that Ohio has such a remedy is simply incorrect.

Kruse, 74 F.3d at 698-99.

The *Kruse* panel, therefore, placed considerable emphasis on the apparent uncertainty in the Ohio case law on the appropriateness of a mandamus action when a physical taking by a local government entity is alleged. Today, ten years after the *Kruse* decision, this uncertainty has all but disappeared, as the Ohio courts have accepted a mandamus action as the appropriate approach for a plaintiff alleging a taking without just compensation. The use of the writ of mandamus in such circumstances has been affirmed by the Ohio Supreme Court at least six times since 1996. Moreover, the Ohio intermediate appellate courts routinely accept mandamus actions from plaintiffs alleging a local government actor has unconstitutionally taken their property.

In *BSW Development Group v. City of Dayton*, 699 N.E.2d 1271 (Ohio 1998), the Ohio Supreme Court stated that "[m]andamus is the appropriate vehicle for compelling appropriation proceedings by public authorities where an involuntary taking of private property is alleged." *Id.* at 1274. While a regulatory taking was alleged in *BSW*, three years later the Ohio Supreme Court reaffirmed the correctness of the mandamus action for an alleged physical taking in *Sekermestrovich v. City of Akron*, 740 N.E.2d 252, 254-55 (Ohio 2001). Later that same year, the Ohio Supreme Court overturned an Ohio court of appeals' decision and granted a writ of mandamus to force appropriation proceedings in a case where the plaintiffs alleged a physical taking of their property.

³ A prior panel of this Court has already noted the changed circumstances in Ohio. The *Tri Corp* panel noted:

Complicating matters further, we note that a recent Ohio Supreme Court decision may shed additional light on whether the writ of mandamus in Ohio is a "reasonable, certain, and adequate provision for obtaining compensation" for an unconstitutional taking. In *State ex rel. Elsass v. Shelby County Board of Commissioners*, the Ohio Supreme Court explained that "mandamus is the appropriate action to compel public authorities to institute appropriation proceedings where an involuntary taking of private property is alleged." . . . 751 N.E.2d 1032, 1037 (Ohio 2001). Although that decision suggests that Ohio now recognizes the writ of mandamus as a "reasonable, certain, and adequate provision for obtaining compensation" after an unconstitutional taking has occurred, we do not go so far as to reach that result.

See *Elsass v. Shelby County Bd. of Comm'rs*, 751 N.E.2d 1032, 1039 (Ohio 2001). The Ohio Supreme Court has since addressed a physical and at least two regulatory takings cases, and in all these cases the court affirmed the use of the writ of mandamus by plaintiffs seeking compensation for local government takings. See *Duncan v. City of Mentor City Council*, 826 N.E.2d 832 (Ohio 2005) (regulatory taking); *Preschool Dev. Ltd. v. City of Springboro*, 792 N.E.2d 721 (Ohio 2003) (physical taking); *Shemo*, 765 N.E.2d at 345 (regulatory taking).

At a minimum, since the *BSW Development* case in 1998, Ohio intermediate appellate courts have consistently recognized the writ of mandamus as the appropriate vehicle with which to challenge an involuntary taking by a local or state government agent. See, e.g., *Howland Twp. Bd. of Trs. v. Casale*, No. 98-T-0179, 1999 Ohio App. LEXIS 4669 (Ohio Ct. App. Sept. 30, 1999) (regulatory taking); *Hardale Inv. Co. v. Ohio Dep't of Natural Res.*, No. 98-BA-40, 2000 Ohio App. LEXIS 1769 (Ohio Ct. App. Apr. 14, 2000) (enforcing trial court's issuance of writ of mandamus for physical taking); *Cincinnati Entm't Assoc. v. Bd. of Comm'rs of Hamilton County*, 753 N.E.2d 884 (Ohio Ct. App. 2001) (enforcing trial court's issuance of writ of mandamus for physical taking); *Hunt v. Washington Twp.*, 2001 Ohio 1734 (Ohio Ct. App. 2001) (refusing to hear takings claim when plaintiffs had failed to request mandamus); *Proctor v. Huck*, 2004 Ohio 7281 (Ohio Ct. App. 2004) (refusing to address takings claims when plaintiffs had failed to request mandamus); *Craig v. Luebbe*, 2004 Ohio 6933 (Ohio Ct. App. 2004) (requiring trial court to address plaintiffs' takings claims when plaintiffs had properly requested mandamus).

We further note that Ohio's mandamus action is not entirely a creature of the common law. Ohio has a statutory provision that requires public officials to bring an appropriation action prior to taking any private property. Ohio Rev. Code §§ 163.01-163.62. This statute creates obligations for public officials and not a direct cause of action for citizens. However, mandamus allows property owners to usurp section 163 for their own benefit, and this ability to compel an official into an appropriation action is buttressed by Ohio's incorporation of the mandamus action into its statutory structure. Ohio Revised Code § 2737.01 defines "mandamus" as "a writ, issued in the name of the state to an inferior tribunal, a corporation, a board, or person, commanding the performance of an action which the law specially enjoins as a duty resulting from an office, trust, or station." The code further provides that "[a]pplication for the writ of mandamus must be by petition, in the name of the state on the relation of the person applying, and verified by affidavit." Ohio Rev. Code § 2737.04. Because Ohio government officials are required by statute to bring appropriation proceedings whenever a taking occurs, this is such a "duty" which can be compelled by mandamus. The mandamus action and its relationship to appropriations proceedings is therefore reflected in Ohio's statutory scheme, albeit in a more general fashion than as a direct, statutory cause of action for private parties.

The very frequency of mandamus actions as a means to force appropriation proceedings in Ohio today, as opposed to the mid-1990s, significantly distinguishes the instant case from the 1996 *Kruse* case. The Court also notes that the *Kruse* panel emphasized that the 1994 *Levin* decision from the Ohio Supreme Court, which was the genesis of the modern recognition of the mandamus action to force appropriation proceedings, had not yet been handed down when the *Kruse* plaintiffs began their efforts to achieve compensation. 74 F.3d at 700 ("*Levin*, however, was not decided until 1994, well after the Kruses had begun their heretofore fruitless attempt to obtain compensation from the Village for its taking of their property.") In the instant case, Plaintiffs began their action in 2003, well after the Ohio Supreme Court and lower courts had issued numerous opinions emphasizing mandamus as the proper action to force appropriations proceedings against local government officials. Finally, the *Kruse* panel was concerned that "*Levin*'s cited cases which have held that mandamus is the vehicle for compelling appropriation proceedings by public authorities, are all cases in which the court addressed a taking by the state, through the action of the Director of Highways." *Id.* Intervening case law has made it clear and "certain" that mandamus is appropriate when the taking is done by local, as opposed to state, entities.

Today, Ohio has “reasonable, certain, and adequate procedures” for plaintiffs to pursue compensation for an involuntary taking. Significant factors distinguish the certainty of Ohio measures as analyzed today from those assessed by the *Kruse* panel in 1996. Over the last ten years Ohio courts, including the Ohio Supreme Court, have consistently recognized mandamus as the vehicle with which to contest an involuntary taking, no matter whether that taking is a regulatory or a physical one, and no matter whether the public actor is a state or local entity. Because the Supreme Court’s direction in *Williamson* requires us to assess the adequacy of state measures, these differences in the state of Ohio decisional law require this Court to reach a different conclusion today than that reached by the *Kruse* panel ten years ago.

4. *Plaintiffs Have Failed to Request Mandamus, and Therefore the Case Is Not Ripe*

In the instant case, there is no dispute that Plaintiffs have failed to request mandamus from the state. Their case is therefore not yet ripe for review; the district court was correct in finding that the federal courts lack jurisdiction to hear Plaintiffs’ takings claims at this time.

C. **The District Court Did Not Abuse Its Discretion in Dismissing Wikel Farms’ Claim Without Prejudice in Lieu of Holding the Claim in Abeyance After Deciding to Abstain Under the *Younger* Doctrine**

1. *Standard of Review*

This Court reviews a district court’s decision to dismiss a case without prejudice after a decision to abstain under *Younger* for an abuse of discretion. *See Carroll v. Mt. Clemens*, 139 F.3d 1072, 1075 (6th Cir. 1998).

2. *Younger Abstention Generally*

Plaintiff Wikel Farms does not dispute that *Younger* abstention properly applies in this case. *Younger* abstention applies when the state proceeding 1) is currently pending, 2) involves an important state interest, and 3) affords the plaintiff an adequate opportunity to raise constitutional claims. *Middlesex County Ethics Comm. v. Garden State Bar Ass’n*, 457 U.S. 423, 432 (1982). Although *Younger* arose in the context of a state criminal proceeding, the Supreme Court has extended its principles to civil enforcement actions, such as the state proceeding here. *Trainor v. Hernandez*, 431 U.S. 434, 444 (1977).

Younger abstention is built upon common sense in the administration of a dual state-federal system of justice. When a person is the target of an ongoing state action involving important state interests, a party cannot interfere with the pending state action by maintaining a parallel federal action involving claims that could have been raised in the state case. If the state party files such a case, *Younger* abstention requires the federal court to defer to the state proceeding. *Watts v. Burkhardt*, 854 F.2d 839, 844-48 (6th Cir. 1988); *see also Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 15 (1987) (“[W]hen a litigant has not attempted to present his federal claims in related state-court proceedings, a federal court should assume that state procedures will afford an adequate remedy.”).

Wikel Farms argues that the district court improperly dismissed his case without prejudice instead of properly holding the case in abeyance pending the conclusion of the state court proceedings. A district court deciding to abstain under *Younger* has the option of either dismissing the case without prejudice or holding the case in abeyance. *See Carroll*, 139 F.3d at 1075. In exercising this discretion, a district court should look to the nature of the state proceedings and consider whether a litigant will be able to address his federal claim on the merits in the state court proceeding. *Id.* The court should also consider whether there are any statute of limitations issues should the case be dismissed and the limitations clock continue to run. *Id.*

3. *Wikel Farms' Case Is Not Yet Ripe*

Pursuant to the analysis, Part II.A, *supra*, Wikel Farms' allegation of an unconstitutional taking without just compensation is not yet ripe for federal review. Wikel Farms is currently involved in appropriation proceedings with Defendants in state court. Wikel Farms has not yet been denied compensation and therefore has no injury necessary to make his case ripe for federal review. On this basis alone, the district court's dismissal without prejudice, in lieu of abstention, was not an abuse of discretion.

4. *The Statute of Limitations Has Not Yet Begun to Run*

Wikel Farms cites to *Carroll and Brindley v. McCullen*, 61 F.3d 507, 509 (6th Cir. 1995) for the proposition that the "the appropriate procedure, when abstaining under *Younger*, is to stay proceedings rather than to dismiss the case without prejudice," *id.* Yet both these cases were primarily concerned with a running of the statute of limitations. In the instant case, Wikel Farms' alleged injury has not yet occurred; the company has not yet been denied compensation. A statute of limitations does not begin to run until a cause of action has accrued, and Wikel Farms' cause of action has not yet accrued. A dismissal bears no risk relative to the statute of limitations running during the state court proceedings. Therefore, it was not an abuse of discretion for the district court to dismiss Wikel Farms' claims without prejudice once it made the decision to abstain.

III.

CONCLUSION

Plaintiffs' causes of action for unconstitutional takings are not yet ripe for federal review. In addition, the district court did not abuse its discretion in dismissing without prejudice the case as brought by Plaintiff Wikel Farms in lieu of holding the case in abeyance. For the foregoing reasons, we **AFFIRM** the district court's dismissal of the case.