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DOCKETING DIVISION
PUBLIC UTILITIES COMMISSION OF OHIO

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF:	)	CASE NO. 84-525-PL-ATA
	)	
THE APPLICATION OF PINETOP ESTATES PIPELINE COMPANY I, INC. FOR APPROVAL AND AUTHORITY TO FILE AND TO PUT INTO EFFECT A TARIFF FOR A NEW PIPELINE UTILITY SERVICE	)	APPLICATION FOR REHEARING

***

Now come RICHARD F. COOK, RUTH E. COOK, ALICE ENGLEBECK, DALLAS E. HANGE, PHYLLIS HANGE, GEORGE PARRETT, LINDA PARRETT, DR. RAYMOND P. ALLEN, M. D. ALLEN, and AGNES MARTIN, (Intervenors), pursuant to Ohio Revised Code §4903.10 and Ohio Administrative Code §4901-1-35 and respectfully request the Commission to grant their Application for Rehearing of the Order entered upon the Commission's Journal on November 6, 1984, on the ground as fully set forth in the attached Memorandum.

Amer Cunningham Brennan Co., L.P.A.

Robert D. Pritt
Attorney for Intervenors
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Application for Rehearing was sent by regular U.S. Mail to Warren Gibson, 234 Portage Trail, Cuyahoga Falls, Ohio 44221, this 27th day of November, 1984.

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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF:

THE APPLICATION OF PINETOP ESTATES PIPELINE COMPANY I, INC. FOR APPROVAL AND AUTHORITY TO FILE AND TO PUT INTO EFFECT A TARIFF FOR A NEW PIPELINE UTILITY SERVICE

CASE NO. 84-525-PL-ATA

MEMORANDUM IN SUPPORT OF APPLICATION FOR REHEARING

STATEMENT OF THE FACTS

The present proceeding is before the Commission on the Application of the Intervenors for a Rehearing of the Order entered on the Commission's Journal on November 6, 1984, granting Pinetop Estates Pipeline Company I, Inc. authority to put into effect tariffs as a public utility pipeline service.

On May 1, 1984, Pinetop Estates Pipeline Company I, Inc. (PINETOP I) filed an application with the Commission for approval and authority to file and to put into effect a tariff for a new pipeline utility service.

On August 14, 1984, the Commission granted the motion of RAYMOND E. COOK, RUTH E. COOK, ALICE J. ENGELBECK, DALLAS E. HANGE, PHYLLIS HANGE, GEORGE PARRETT, LINDA PARRETT, DR. RAYMOND P. ALLEN, M.D. ALLEN, and AGNES MARTIN (INTERVENORS) to intervene as parties in the present proceedings. The grounds upon which the Motion For Intervention was granted is that Pinetop Estates is currently involved in litigation as a Defendant in an

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action brought by the INTERVENORS (except MARTIN) in the Court of Common Pleas, Summit County, Ohio, Case No. CV83-2-0501. That action was commenced when Pinetop Estates, a private partnership for profit, began trenching and installing a gas pipeline within a County highway right of way across the INTERVENORS' properties. The INTERVENORS own title to their land to the centerline of the roadway. The right of way granted to the County in such case is expressly limited to public highway purposes. At no time did Pinetop Estates obtain permission from or compensate the INTERVENORS for the installation of the pipeline within the highway right of way. In all cases, the installation of the pipeline was against the express will of the INTERVENORS. Thus, the INTERVENORS (except Martin) commenced an action to enjoin Pinetop Estates from installing the pipeline on their property within the County highway right of way and to be compensated for the continual trespass and illegal taking caused by such installation. (See stipulations, attached hereto as Exhibit "B").

The Trial Court found, as a matter of fact, that Pinetop Estates was not a public utility and could not install its lines across the Plaintiffs' properties without their permission and ordered the pipelines removed (See Trial Court's Findings, Decisions, and Judgment Entry, attached hereto as Exhibit "A"). The case is currently on appeal in the Ninth District Court of Appeals, Case No. 11677. PINETOP I was formed for the sole

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purpose of avoiding the required removal of the trespassing pipeline, and to obtain public utility status for the pipeline to avoid compensating property owners for the illegal use of their properties. Its sole asset is the illegal and trespassing pipeline.

After a hearing held on September 18, 1984, the Attorney Examiner determined that PINETOP I's operations constituted that of a public utility pursuant to Ohio Revised Code §4905.03(A)(7), and found that the transportation charges and tariff provisions submitted by the Applicant did not appear unjust or unreasonable. Thereupon, the Order of the Commission granting PINETOP I authority to put into effect its tariffs was entered upon the Commission's Journal on November 6, 1984.

ERROR

The Public Utilities Commission erred, as a matter of law, in determing that PINETOP ESTATES PIPELINE COMPANY I is a public utility.

LAW AND ARGUMENT

Section 4909.18, Ohio Revised Code, provides, in pertinent part:

> Any public utility desiring to establish any rate... shall file a written application with the public utilities commission. (emphasis added)

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Under §4909.18, the Public Utilities Commission only has jurisdiction to grant authority for the establishment of rates to "public utilities".

Under §4909.01 of the Code, the term "public utility", as used in Chapter 4909, has the meaning set forth in §4905.02 of the Code. Section 4905.02 defines the term "public utility" as including those businesses defined in §4905.03 of the Code.

Section 4905.03 (A)(7) provides, in pertinent part:

> (A) Any person, firm, co-partnership, voluntary association, joint-stock association, company, or corporation, wherever organized or incorporated, is:
>
> (7) A pipe-line company, when engaged in the business of transporting natural gas, oil, or coal or its derivatives through pipes or tubing, either wholly or partly within this state.

Section 4905.03 (A)(7) of the Ohio Revised Code is a verbatim adoption of former General Code §614-2. In order to determine the Ohio Legislature's intended definition of "public utility", the term must be considered in relation with common law rules and traditions at the time of adoption of the original legislation. This determination would in turn govern the applicability of R.C. §4905.03 (A)(7), the presumption being that the legislature did not intend to extend the term "public utility" beyond the common law or traditional concepts of public utility status.

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The Ohio Supreme Court in Southern Ohio Power Co. v. Pub. Util. Comm. 110 Ohio St 246, 143 N.E. 700 (1924), held in its syllabus:

> 1. A dedication of private property to public utility service will not be presumed from the fact that the product and service of the use of such property is the usual subject-matter of utility service; neither does such presumption arise from the sale by private contract of such product and service to utility corporations for purposes of resale. Such dedication is never presumed without evidence of unequivocal intention. (emphasis added).
>
> 2. To constitute a "public utility," the devotion to public use must be of such character that the product and service is available to the public generally and indiscriminately or there must be the acceptance by the utility of public franchises or calling to its aid the police power of the state.

In Southern Ohio Power, the P.U.C.O. sought to compel the Southern Ohio Power Company to file a schedule of its rates and charges. The controlling stockholders of the Southern Ohio Power Company also owned controlling interest in the Hocking Power Company and the Athens Electric Company. The Hocking Power Company and Athens Electric Company sold electric energy to commercial customers. The electric energy distributed by the Hocking Power Company and Athens Electric Company was generated and sold to such companies by the Southern Ohio Power Company. The P.U.C.O. thus sought to bring the Southern Ohio Power Company under its regulation.

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In interpreting the definition of "public utility" under §614-2 of the General Code (R.C. §4905.^3), Chief Justice Marshall, writing for the majority, held that because the Southern Ohio Power Company never held itself out to the public as willing to serve the public generally and because it never intended to nor did it in fact dedicate its property to public utility service it was not a "public utility" as the term was used under §614-2 of the General Code.

The Ohio Supreme Court in Industrial Gas Co. v. Pub. Util. Comm. 135 Ohio St. 408, 21 NE2d 166 (1939) further held that in order for an enterprise to be considered a public utility it must be "affected" with a public interest. An enterprise is deemed to be affected with a public interest where it serves a "substantial" part of the public as to make its rates, charges and methods of operations a matter of public concern.

In order to establish an enterprise as a "public utility" under the foregoing authority it must be found that the operations of the enterprise constitute a devotion to public use and that the enterprise makes its service available indiscriminately to the public. 82 O.A.G. 052.

1. THERE IS NO UNEQUIVOCAL INTENTION ON THE PART OF PINETOP I TO DEDICATE ITS PROPERTY TO PUBLIC USE.

Pinetop Estates is an Ohio General Partnership. (See Exhibit "B", Stipulations, Nos. 9, 10, 11, and 12, and Exhibits, Nos. 8,9 and Stipulations). The partnership was formed

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for the exclusive purpose of drilling for and producing oil and gas (See Exhibit "B", Stipulations Exhibit, No. 10, Pinetop Estate's Partnership Agreement). The partnership is engaged in the leasing of property and the drilling for and sale of natural gas to the East Ohio Gas Co. (a public utility), private commercial buyers through "Self Help" agreements, and members of the drilling unit. (See Exhibit "B", Stipulations, No. 13, and Transcript of Proceedings, Joe Reeves, Page 28, Lines 22 through 25, and Page 29, Lines 1 through 5).

Richard Tinker, the accountant for both Pinetop Estates and PINETOP I, testified that the members of the Partnership and the shareholders in the Corporation are principally the same individuals. (See Transcript of Proceedings, Richard Tinker, Page 14, Lines 20 through 24). Joe Reeves, the General Manager of both Pinetop Estates and PINETOP I, testified that he is paid strictly by the partnership, not by the corporation (See Transcript of Proceedings, Joe Reeves, Page 40, Lines 7 through 12). And, that it was the partnership that originally installed the pipelines which are the subject of controversy. (See Transcript of Proceedings, Joe Reeves, Page 42, Lines 22 through 24).

The evidence further indicates that the formation of PINETOP I was not discussed by Pinetop Estates' partners until after the lawsuit was commenced by the Intervenors. (See Transcript of Proceedings, Richard Tinker, Page 10, Lines 17

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through 19, and Page 13, Lines 20 through 25, and Page 14, Lines 1 through 3, and Joe Reeves, Page 30, Lines 4 through 7).

Joe Reeves further testified, upon direct examination by Mr. Gibson:

Q. Tell me the general functions of the company, the partnership and the Pinetop Pipeline Co. I, Inc., that you work for. are their activities? How do they do this?

A. Well, generally the company does explore for oil and gas. We drill the wells, put the wells in production. We have there again a gas contract with East Ohio Gas and produce the oil, and basically that is about it in general.

Q. And transport it through the lines?

A. Transport it, yes.

. . .

Q. What are the functions that the partnership entity as an entity, the pipeline company as an entity, engage in?

A. To drill and produce oil and gas.

Q. Any other type of thing at all?

A. Not to my knowledge. (See Transcript of Proceedings, Joe Reeves, Page 30, Lines 16 through 24, and Page 31, Lines 13 through 17).

Upon cross-examination, Mr. Reeves also testified:

Q. To your knowledge, has there been any change in policy or in the use of this line at any time since you have been a member of this company?

A. Not to my knowledge.

Q. Whether it would have been under Pinetop Estates partnership or Pinetop Pipeline Company No. I?

A. No.

Q. In other words, you are doing business the same as they always did business, to your knowledge, is that right?

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A. Correct, I haven't seen any change. (See Transcript of Proceedings, Joe Reeves, Page 52, Lines 19 through 25, and Page 53, Lines 1 through 4).

Based upon the foregoing testimony, the Pinetop Estates partnership and PINETOP I are engaged in the same business, operate the same pipeline, are composed of the same individuals, and have the same employees. It thus becomes clear that the business of transporting gas through pipelines is merely incidental to the Partnership's production business. It was not until the above-mentioned litigation arose that the partners of Pinetop Estates incorporated PINETOP I. The sole purpose for incorporation was to be granted public utility status in order to legitimize the trespasses and unlawful takings involved in the litigation. Such a manipulation of the public utility laws for the private benefit of the individuals in the Pinetop Estates partnership is contrary to the public policy of this state. Furthermore, it is obvious that this sham corporation is and should be treated as the alter ego of PINETOP ESTATES Partnership.

As set forth in Southern Ohio Power Company, supra., all of the surrounding facts and circumstances must be considered in determining "public utility" status. The business engaged in by Pinetop Estates is identical to that of the Southern Ohio Power Company. The Pinetop Estates partnership does not dedi-

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cate any private property to public use and because PINETOP I is merely an incidental extension of the Pinetop Estate's partnership, it can not possibly be conceived to be a "public utility".

2. PINETOP I DOES NOT INDISCRIMINATELY PROVIDE ITS SERVICES TO THE PUBLIC.

Even if it were found that PINETOP I does in fact devote private property to public use, it also must be determined that the company indiscriminately provides its service to the public before being accorded the status of a public utility.

The Pinetop Estates partnership does not sell its products to any person or firm other than the East Ohio Gas Company, members of the drilling units and entities which it selectively contracts with under "Self-Help" Agreements. (See Exhibit "B", Stipulations, No. 13, and Transcript of Proceedings, Joe Reeves, Page 28, Lines 22 through 25, and Page 29, Lines 1 through 5). It does not provide natural gas service to the public at large. (See Exhibit "B" Stipulations, Nos. 15 and 38, and Transcript of Proceedings, Joe Reeves, Page 35, Lines 18 through 22). In fact, it transports only gas produced by its wells and has refused to transport gas for other companies. (See Exhibit "B", Stipulations, Nos. 39 and 40, and Transcript of Proceedings, Joe Reeves, Page 15, Lines 1 through 15).

When all of the facts are considered it becomes clear that PINETOP I was not organized for the purpose of transporting

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natural gas for the public. It was organized for the incidental purpose of transporting gas from the Pinetop Estates partnership wells for the private use and benefit of its partners. There is no supporting evidence that PINETOP I is installing the pipelines for the convenience or necessity of other drillers in the area, but are doing so solely for the convenience and necessity of the partnership wells. Nor is there any evidence that there are, in fact, any drillers in the area of PINETOP I's pipelines which require such service. Furthermore, it is highly unlikely that the pipelines in question ("4") hav capacity as anything but gathering lines for the Pinetop Estates partnership's wells.

It is clear that PINETOP I does not devote private property to public use nor does it make its services available indiscriminately to the public. The sole purpose for which PINETOP I filed the present application for authority to file and put into effect a tariff for a new pipeline utility service was to validate the illegal trespasses and takings of the INTERVENOR'S properties. Rather than filing for authority to be recognized as a public pipeline service prior to the installation of the pipeline, the applicants chose to trespass upon and illegally misappropriate private property, until they met resistance, at which time the applicants determined that they could validate such acts through this commission. Such misapplication of the public utility laws makes a mockery of the intended purpose of

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this Commission and totally contravenes the public policy of this state.

3. RECOGNITION OF THE PIPELINE AS A PUBLIC UTILITY IS ILLEGAL AND UNCONSTITUTIONAL.

To the extent that the PUCO would permit a sham corporation to be created for the purpose of avoiding the consequences of the law, and would grant such sham corporation public utility status, such action would constitute a deprivation of the civil rights secured by the Constitution and laws to the persons aggreived.

The state's assistance in permitting the trespass and unlawful taking to occur violates the rights of the property owners granted by the Fifth and 14th Amendments to the United States Constitution, 42 U.S.C. §1983 and 1985, and by the Constitution of the State of Ohio.

CONCLUSION

Based upon the foregoing facts and authorities cited, the INTERVENORS respectfully request the Commission to grant their Application for Rehearing of the Order entered upon the Commission's Journal on November 6, 1984.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum in Support of Application for Rehearing was delivered by regular U.S. Mail to Warren Gibson, 234 W. Portage Trail, Cuyahoga Falls, Ohio 44222, this 30th day of November, 1984.

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"EXHIBIT A"

IN THE COURT OF COMMON PLEAS

COUNTY OF SUMMIT

RAYMOND F. COOK, et al.

Plaintiffs

-vs-

PINETOP ESTATES, et al.

Defendants

AND

PAUL R. SUGDEN, SUMMIT COUNTY ENGINEER, et al.

Third-Party Defendants

AND

THE BOARD OF PARK COMMISSIONERS FOR AKRON METROPOLITAN PARK DISTRICT

Plaintiff-Intervenors

CASE NO. CV 83 2 0001

JUDGE MORGAN

FINDINGS, DECISION and JUDGMENT ENTRY

- - -

Plaintiffs and Plaintiff-Intervenors are united in interest in that they are owners of parcels of real estate in Northampton Township, Summit County, Ohio, fronting on Yellowcreek Road. There are other owners similarly situated in the path of Defendant Pinetop's proposed gas transportation line along Sand Run Road, Sourek Trail and Revere Road.

On or about February 10, 1983 the Defendant, Pinetop Estates, Inc., an Ohio partnership, commenced the digging of trenches and the laying of pipes in and through the dedicated limits of the above-described public highways.

In each and every case, the aforesaid Plaintiffs and Intervening Plaintiffs own title to their land to the center of

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the road. Pinetop Estates is a private Ohio general partnership for profit, the four partners of which are Ralph L. Barron, Jr., Dr. Salvatore H. Crano, Dr. Val A. Rongaus and Dr. Albert R. Pitts.

Pinetop Estates is engaged in the business of developing natural gas and oil resources for the profit of its partners; that natural gas being collected by said partnership from wells is being sold to the East Ohio Gas Company for distribution to the public. The East Ohio Gas Company is, in fact, a public utility pursuant to the laws of the state of Ohio. Once the East Ohio Gas Company acquires possession of the gas which it purchases from Pinetop, it is supplied to its customers for lighting, power, or heating throughout vast areas of the state of Ohio.

On or about February 9, 1983, the Summit County Engineer issued a permit to Pinetop authorizing the installation of a pipeline through the above-described highways, over and across the land owned by the Plaintiffs and Intervening Plaintiffs. The proposed pipeline is in fact crossing within the dedicated limits of all of the Plaintiffs' land within the dedicated limit of the public highways. The installation of the pipeline in Yellowcreek Road was pursuant to a permit issued by the Summit County Engineer's Office and supervised by personnel of the Summit County Engineer's Office. All of the gas line laid by the Defendant, through its contractor, A. S. Helbig Company, was laid in accordance with the street opening permit issued by the Summit County Engineer, and/or Township Trustees, within township roads.

Decision in this case shall, by agreement, be made upon the determination that none of the Plaintiffs and Intervening Plaintiffs gave their permission to the Defendant, by way of

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easement, license or other instrument, to lay the Defendants' gas transportation pipeline upon the property of the Plaintiffs, within the dedicated limits of Yellowcreek Road and the other streets involved.

The pipeline, owned and operated by the Defendants, does not provide gas service to any residents of Yellowcreek Road or the other streets involved. It is simply a transportation pipeline to conduct natural gas from the Defendants' gas wells to the East Ohio Gas Company.

Pinetop does not transport natural gas for any other producers in said pipeline. In other words, all of the natural gas which flows through the pipeline involved, is produced by Pinetop's own wells and is then transported to the East Ohio Gas Company. Pinetop refuses to service other producers with its pipelin

T portion of Yellowcreek Road which is the subject of this action is in the unincorporated territory of the County of Summit, and is commonly referred to as County Highway 33.

The parties have entered into a stipulation of facts, filed with the Court on August 15, 1983.

The Plaintiffs contend that the Defendant Pinetop Estates, Inc., which is engaged in the production of natural gas from wells, has no right to enter in and upon their property, within the dedicated limit of the public highway upon which their lands are situated, within a township, and construct natural gas transportation lines across their real estate, even though the lines are being constructed within a public highway and pursuant to permits issued by either the Summit County Engineer or the Board of

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Township Trustees of their communities.

Conversely, Defendant Pinetop Estates asserts that it is entitled to lay its pipeline under the county highway within the county highway easement; that the abutting owners have no right to interfere with Pinetop's use of the land within the dedicated limits of the highway; that the installation of a gas pipeline through the dedicated limits of a township or county highway does not create an additional burden upon the land of the abutting owners for which compensation must be made to the owners through eminent domain proceedings; that the abutting owners have no right to interfere with Pinetop in the use of the public highway in front of their property.

QUESTION PRESENTED

May an organization such as Pinetop Estates, Inc. which is engaged in the business of exploring for natural gas through gas wells, and selling the same to public utilities who in turn sell it to the public, construct gas transportation lines in township roads and county highways under County Engineer or Township Trustee permits, over the objection of abutting owners and without compensation to such owners? Can the County Engineer or Township Trustees, pursuant to permits issued by the County Engineer and/or Township Trustees, license gas well drillers to build transportation lines in the public highway against the will of the abutting owners, and without compensating such owners through eminent domain proceedings or by way of negotiation.

CONCLUSION

A company engaged in the business of acquisition of

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natural gas through the construction of gas wells, and the sale of natural gas to a public utility engaged in the distribution of gas to the public generally, may not lawfully, even upon acquisition of permits from the County Engineer, and local Township Trustees, enter in upon land within the dedicated limits of a county road or township road within an unincorporated township, and construct, locate and operate pipelines for the transmission of natural gas across property of the abutting owner, without first acquiring an easement or other consent in said property from the abutting owner.

Thus, the Defendant Pinetop Estates with respect to those lines constructed within the dedicated limits of the county and township roads in front of the Plaintiffs' premises, outside of municipal corporations is a trespasser.

The Plaintiffs are entitled to a temporary restraining order, and ultimately a permanent injunction prohibiting the Defendants Pinetop Estates from constructing, operating and maintaining gas lines across the Plaintiffs' property without their consent. In addition, Plaintiffs are entitled to be compensated for any damages done by the Defendant to the real estate which they own within the limits of the public highway.

The Defendant is not a public utility and as such, does not have the right to use the land within the dedicated limits of a public highway in townships as would a public utility company.

LAW AND ARGUMENT

In the case of Ziegler v. Ohio Water Service Company, 18 O.S. 2d 101 (1969), the Ohio Supreme Court established

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precedent as to the right of a public utility company to construct its lines and facilities within the dedicated limits of highways within unincorporated areas and held in its syllabus as follows:

> "The construction and maintenance underground of a water pipeline, for public purposes, in real property outside a municipal corporation, which is subject to an easement for highway purposes, is not an added burden on such property for which compensation must be awarded." Hofius v. Carnegie Illinois Steel Corporation, 146 O.S. 574 (overruled).

It is to be noted here that Ohio Water Service Company provides water service as a privately owned public utility in Paris Township where plaintiff Ziegler owns some of her land. Thus, if the Defendant, Pinetop Estates, can be categorized as a public utility, it would have the right to construct lines within the dedicated limits of township roads, against the will of abutting owners and without their consent in the form of an easement or license and without compensation to the owner.

There is no question but that a company formed for the purpose of transporting natural or artificial gas may become a public utility and appropriate land or interest in land. R.C. § 1723.01. In attempting to determine the public utility status of the Defendant Pinetop Estates, the Court has also read and carefully analyzed Revised Code Sections 1723.02; 163.01; 163.02; 4909.01; 4905.02; 4905.03; 4909.18; 4933.01; 4933.05; 5727.01 and 4727.41.

It is the conclusion of this Court that Pinetop Estates is a company, albeit a partnership, engaged in the business of drilling for oil and natural gas and transporting the natural gas to a public utility, the East Ohio Gas Company, who in turn

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distributes such gas to consumers for profit. Pinetop Estates is not a public utility although they could easily become a pipeline company by following the statutory proceedings of incorporating as such and offering to the public generally the opportunity to transport gas through Pinetop Estates' pipelines without discrimination. In other words, Pinetop Estates, Inc. would have to be formed for the purpose of either transporting natural or artificial gas on beha[illegible] of the public generally without discrimination, or, for distributing natural [illegible] to customers without discrimination. As it is now, Pinetop Estates is only interested in transporting its own natural gas.

There have been two very recent Court of Appeals opinions on the very subject of this lawsuit.

In the case of Richard Hanni, et al., Plaintiff-Appellants v. Floyd E. Kimble, et al., Defendants, (Case No. 1529, Unreported, Court of Appeals for Tuscarawas County, Fifth Appellate District) on November 17, 1993 the court sustained the right of appellee to install an underground pipeline in the traveled portion of Township Road #226 east of the center line of said road, all of which pipeline was in the 40 foot limit of said road, and all of which was east of the plaint ffs' westerly property line, notwithstanding that the oil and gas lease previously given by the appellants to the appellee provided "there will be no pipeline, drilling, or trespassing on the property without the permission of the lessor."

The plaintiff-appellants refused to give Hydrocarbons, Inc. and Floyd E. Kimble, defendant-appellees, consent to install a pipeline location within the dedicated limits of the highway.

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The township trustees had executed a permit to Floyd R. Kimble to place a pipeline in the right-of-way of Township Road #226.

The trial court expressly found that the defendants Kimble and Hydrocarbons, Inc. were companies as such word is used in Revised Code Section 723.01 organized for transporting natural gas and had the right to lay pipelines in township roads. In addition, the court found that the gas pipeline to be installed within the dedicated limits of the highway constituted no greater burden than the water pipeline, which was the subject of Ziegler v. Ohio Water Service Company, 13 O.S. 2d, 101, and hence that there was no additional servitude upon the land of the abutting owner. The court further concluded that the legislature, by authorizing township trustees to permit placement of gas pipelines in township roads, recognized that the transportation of natural gas is by its nature a public purpose. Therefore, the court dismissed the complaint of the plaintiffs requesting injunction against the trespass of the gas line on their property.

Under a similar fact situation, the Court of Appeals for Carroll County, Seventh Appellate District, on or about February 23, 1983, reached a different conclusion in the case of Whitacre-Greer Fireproofing Co. v. M & B Operating Co., Inc., (Unreported Case No. 459). The appellant, M & B Operating Co., Inc., was a closely held corporation engaged in the production, purchase, gathering and resale of oil and natural gas, which did not hold itself out to supply natural gas to the public, nor as a pipeline company. The appellee, Whitacre-Greer Fireproofing

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Company, owned in fee simple premises to the center line of Township Road #200, also known as June Road and also, such premises also being situated on County Road #23, also known as Bachelor Road.

Appellant M & B Operating Company, Inc. requested of Whitacre-Greer Fireproofing Company an easement for a pipeline through the properties of the appellee, Whitacre-Greer. The easement was refused and M & B Operating Company constructed a pipeline for the transmission of gas along the north side of Township Road #200, within the right-of-way, on the south side of the premises of Whitacre-Greer, and also within the property of Whitacre-Greer on County Road #23.

In addition, M & B Operating Company filed an application for a permit to install said pipeline with the County Commissioners of Carroll County and said application was approved. Further, appellant also filed an application for a permit with the Board of Township Trustees of Rose Township along the north side of Township Road #200 and, the Township Trustees also approved that application.

The appellee, Whitacre-Greer, requested that the appellant, M & B Operating Company, remove the gas pipelines from its property within the dedicated limits of the two highways.

As an express finding of fact, the court found that the appellant, M & B Operating Company, used said pipelines to transport gas, which it purchases from various wells in the area, to Columbia Gas Company.

The trial court entered its order against the appellant, M & B Operating Company, to remove its pipelines and to restore

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the premises within 90 days to its pre-construction condition. From that decision, appellant M & B Operating Company appealed to the Court of Appeals.

The decision below was sustained. The Court of Appeals held that Ziegler v. Ohio Water S[illegible]y, 19 O.S. 24, 101, did not apply for the reason th[illegible]f M & B Operating Company was not for a public [illegible]

The court held that th[illegible] B Operating Company, did not demonstrate a necessary [illegible]and, the property could therefore not be taken under eminent domain proceedings or otherwise for a use which was not public.

The court further held that County Commissioners cannot grant a permit to one who is only involved in a private interest to enter in upon the private property of abutting owner and construct pipelines, even though within the dedicated limits of a public highway.

The court therefore overruled the assignments of errors of M & B Operating Company and sustained the decision of the trial court in favor of Whitacre-Greer Fireproofing, the abutting owner.

This Court feels that the case of Whitacre-Greer Fireproofing, Inc. v. M & B Operating Company is a correct statement of the law of Ohio and that therefore, the Plaintiffs and Intervening Plaintiffs are entitled to the relief prayed for in the Complaints in the within case. The Court is aware, of course, that the parties have authorized Pinetop Estates, Inc. to enter in and upon some of their land and to construct its gas pipelines under an agreement whereby upon final determination of this

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matter, Pinetop would either remove the line and restore the premises or acquire consent from the abutting owners.

It is further determined that the County Engineer and Township Trustees have every right to regulate the use of highways and to issue permits for the occupation of highways by companies such as Pinetop to provide regulation to prevent injury to the highways and the traveling public.

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. Absent consent from the abutting owner Plaintiffs and Intervening Plaintiffs, an injunction issue ordering the Defendant, Pinetop Estates Inc., to remove its gas pipeline from the property of the Plaintiffs and Intervening Plaintiffs the within case, even though such pipeline may be within the dedicated limit of the township highway in front of such Plaintiffs' premises and even though consented to by the County Engineer and Township Trustees.

2. That the Defendants be further enjoined from entering onto Plaintiffs' property, and digging trenches and laying gas lines therein, without the consent of such property owners.

3. That the Defendants, upon removal of all piping installed across Plaintiffs' property, restore said property to its condition and function as it existed prior to entry by the Defendants.

4. That since the acts of Defendants constitute a trespass, a hearing be held on the 12th day of July, 1984 at 9:00 a.m. to determine damages and expenses incurred by such Plaintiffs.

5. All claims herein against the Township Trustees and

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County Engineer are dismissed with prejudice.

6. That the Defendants shall be charged with the costs of this proceeding.

7. There is no just cause for delay.

Glen B. Morgan
JUDGE GLEN B. MORGAN

I certify this to be a true copy of the original Sentence decision Judgment
Filed March 30 19 84
JAMES B. McCARTHY, Clerk of Courts
[signature] Deputy

cc: Attorney Robert Pritt
Attorney Warren Gibson
Attorney Kevin Campbell
Attorney David Hanna

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"EXHIBIT B"

IN THE COURT OF COMMON PLEAS

SUMMIT COUNTY, OHIO

RAYMOND E. COOK AND
RUTH E. COOK, et al.

Plaintiffs

vs.

THE BOARD OF PARK
COMMISSIONERS FOR THE
AKRON METROPOLITAN PARK
DISTRICT

Plaintiff-Intervenor

vs.

PINE TOP ESTATES, an
Ohio Partnership

Defendant

CASE NO. CV 89 2 0501

JUDGE MORGAN

STIPULATIONS

It is hereby stipulated by and between all parties to the within action:

1. That at all times pertinent to this action, Raymond E. Cook and Ruth E. Cook were and are owners in fee simple of real property abutting and running along the north side of the centerline of Yellow Creek Road, Summit County Highway No. 33, as shown by a deed or deeds, copies of which are attached as Exhibit 1. The property is commonly referred to as 3023 Yellow Creek Road, Akron, Ohio 44313.

2. That at all times pertinent to this action, Alice J. Englebeck, was and is the owner in fee simple of real property abutting and running along the north side of the centerline of Yellow Creek Road, Summit County Highway No. 33, as shown by a deed or deeds, copies of which are attached as Exhibit 2. The property is commonly referred to as 2943 Yellow Creek Road, Akron, Ohio 44313.

3. That at all times pertinent to this action, Dallas E. Hange and Phyllis Hange, were and are the owners in fee simple of real property abutting and running along the north side of the centerline of Yellow Creek Road, Summit County Highway No. 33, as shown by a deed or deeds, copies of which are attached

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as Exhibit 3. The property is commonly referred to as 2881 Yellow Creek Road, Akron, Ohio 44313.

4. That at all times pertinent to this action, George Parrett and L. L. Parrett, were and are the owners in fee simple of real property abutting and running along the north side of the centerline of Yellow Creek Road, Summit County Highway No. 33, as shown by a deed or deeds, copies of which are attached as Exhibit 4. The property is commonly referred to as 2851 Yellow Creek Road, Akron, Ohio 44313.

5. That at all times pertinent to this action, Dr. Raymond P. Allen and Mary D. Allen were and are the owners in fee simple of real property abutting and running along the south side of the centerline of Sourek Trail, Northampton Township Road No. 198, as shown by a deed or deeds, copies of which are attached as Exhibit 5. The property is commonly referred to as 2242 Sourek Trail, Akron, Ohio 44313.

6. That the Plaintiff, Board of Park Commissioners, is the duly appointed and acting Board for the Akron Metropolitan Park District.

7. That the Board of Park Commissioners is the owner of certain real property which adjoins County Road No. 33, commonly referred to as Yellow Creek Road, in Summit County, Ohio, a legal description for which is attached hereto, marked Exhibit 6.

8. That said property of the Board of Park Commissioners for the Akron Metropolitan Park District runs along the north side of the centerline of Yellow Creek Road, Summit County Highway No. 33, as shown by a deed or deeds attached hereto as Exhibit 7.

9. That Pine Top Estates is a private Ohio General Partnership for profit with its principal place of business located at 303 Marion Lake Boulevard, Cuyahoga Falls, Ohio.

10. That partners of Pine Top include the following:

(a) Dr. Ralph L. Barron, Jr., residing at 2133 - 20th Street, Cuyahoga Falls, Ohio 44223.

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(b) Dr. Salvatore H. Crano, residing at 303 Marion Lake Boulevard, Cuyahoga Falls, Ohio 44223.

(c) Dr. Val A. Rongaus, residing at 3553 Darrow Road, Stow, Ohio 44224.

(d) Dr. Albert R. Zito, residing at 397 Woodlawn Avenue, Wadsworth, Ohio 44281.

11. That partnership certificates for Pine Top are attached as Exhibits 8 and 9.

12. That the Partnership Agreement for Pine Top is attached as Exhibit 10.

13. That Pine Top is now and has at all times material to this action, engaged in the business of developing natural gas and oil resources for the profit of its partners, but that all natural gas going through the pipeline on Yellow Creek Road is and has been sold to East Ohio Gas Company, a public utility, or to private purchasers through East Ohio Gas Company through self-help contracts approved by the Public Utilities Commission of Ohio. A specimen of said self-help contract is attached as Exhibit 11.

14. That Pine Top Estates, hereinafter referred to as "Pine Top", is an Ohio Partnership, and, if called, the partners of Pine Top would testify that Pine Top is organized for and engaged in the business of supplying natural gas for lighting, power, or heating purposes to natural gas companies within the state of Ohio and is further organized for and engaged in the business of transporting natural gas through pipes or tubing wholly within the state of Ohio, with its principal place of business at 303 Marion Lake Boulevard, Cuyahoga Falls, Ohio.

15. That for the purposes of this litigation, this Court shall not consider any filings with the Public Utilities Commission of Ohio by Pine Top subsequent to the filing of the Complaint by the Plaintiffs for its determination in this matter.

16. That Pine Top has filed Windfall Profit Tax returns and has obtained permits from the Department of Natural Resources of the state of Ohio, copies of which are Exhibits

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12-A, 12-B, 12-C, and 12-D, which are stipulated to be true and accurate copies.

17. That Exhibits 13 and 14 are copies of tax maps obtained from the Summit County Auditor's Tax Map Department indicating the boundaries of properties along Yellow Creek Road and Sourek Trail. They may be admitted into evidence.

18. That Exhibit 15 is a copy of the Summit County Auditor's Tax Maps spliced together to show the relationship of all of the properties to the pipeline which has been installed by Pine Top. It may be submitted into evidence.

19. That prior to February 9, 1983, Pine Top erected natural gas wells on the private property located in the vicinity of the realty owned by the Plaintiffs.

20. That prior to July 13, 1982, Pine Top erected a natural gas well on property located east of the real property owned by Dr. Raymond P. Allen and Mary D. Allen on Sourek Trail (Northampton Township Road No. 198).

21. That said wells are currently operational and produce natural gas which is being pumped through a pipeline which Pine Top has installed in the Summit County road right-of-way of Yellow Creek Road, being County Highway 33.

22. That on or about February 9, 1983, Pine Top submitted a detailed plan to the Summit County Engineer for the installation of said pipeline through said road right-of-way; that on or about June 3, 1983, said plans were modified, and that the original plans and the plans as modified were approved by the Summit County Engineer's Office of Summit County, Ohio, and that permits were obtained. A modified set of plans is Exhibit 16, and said permits are Exhibits 17, 18 and 19.

23. That the permits identified as Exhibits 17 and 18 were unable to be utilized because of a restraining order of this Court. The permit which is Exhibit 19 is the one under which the work proceeded. The voided permits are attached hereto as Exhibits 20 and 21.

24. That Pine Top applied for road opening permits

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only through the Summit County Engineer's Office and did not otherwise apply to the Summit County Council nor to the Bath Township Trustees for a road opening permit.

25. That Pine Top did not commence any action for the appropriation of any of the Plaintiffs' properties for the installation of the above said pipeline pursuant to Section 163, Ohio Revised Code, or any other Section of the Code, pertaining to the appropriation of private property.

26. That on or about February 2, 1983, sections of pipe were placed along Yellow Creek Road in anticipation of laying such pipeline pursuant to the above said plan.

27. That on or about July 13, 1982, Pine Top or its agents began to excavate and install a pipeline to transmit natural gas from the above said well within the highway right-of-way on Sourek Trail across the property of Dr. Raymond P. Allen and Mary D. Allen. If called, Dr. Allen would testify that he conveyed his protest and objections to a Mr. Taylor, the foreman of the trenching crew; that, if called, Robert Wright, General Manager of Pine Top, would testify that he received oral permission of the Road Superintendent of Northampton Township to install the pipeline on said Northampton Township Road No. 198 in front of the Allens' property.

28. That the installation of the pipeline on Yellow Creek Road was supervised by the Summit County Engineer's Office, and that Pine Top paid the cost of said supervision to the Summit County Engineer's Office.

29. That the Summit County Engineer, if called, would testify that he acted in good faith in issuing said road opening permit, and he believes that the transmission of natural gas in the road opening area, as installed by Pine Top, is within a public easement on the public highway and incidental to the use of the public highway and for public purposes, and that there is no intent to injure abutting property owners in the issuance of said permits, and that he relied upon the advice of the Summit County Prosecutor's Office as his legal counsel in the issuing

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of said permits. Memorandum of County Prosecutor's Office attached as Exhibit 22.

30. That The A. P. Kelbig Company did lay said pipeline in accordance with the road opening permit on Yellow Creek Road in accordance with the plans approved by the Summit County Engineer's Office.

31. That in the construction of said pipeline, Pine Top, acting through its principals, agents, employees, and contractors, entered onto land included in the legal description of the Plaintiffs' property without permission of any of the Plaintiffs or the Board of Park Commissioners.

32. That the partners of Pine Top, if called, would testify that they relied upon the permission given to them by the Summit County Engineer's Office.

33. That the pipelines and conduits involved in this lawsuit are all within the road right-of-way of Yellow Creek Road, and no actions of Pine Top for installation or maintenance as he or her been at any time outside the right-of-way of Yellow Creek Road, except as to the property of Dr. Raymond P. Allen and Mary D. Allen (see Stipulations 6, 26, 27, and 34).

34. That on or about July 13, 1982, Dr. Allen, through his attorney, Leland D. Cole, wrote a letter to Dr. Barrow, a representative of Pine Top, notifying him that he had given no permission for the installation of such a pipeline across his property and that such installation was in contravention of his property rights.

35. That Pine Top, prior to and subsequent to the date of the commencement of this suit, has operated and used said pipeline and conduit for the transmission of natural gas, and that the pipe is buried at a depth of between three and seven feet, approximately three feet from the edge of the paved roadway surface, and operates under a pressure of approximately 155 pounds per square inch; that said gas is flammable; and that said pipeline runs through lands included in the legal description of the Plaintiffs, but all within the road right-of-way of Yellow

Creek Road.

36. That Pine Top is the sole owner and is solely responsible for the maintenance and repair of said pipeline and has had at all times pertinent hereto and continues to have liability insurance covering any negligence on the part of Pine Top in excess of Ten Million Dollars.

37. That said pipeline does not provide gas service to any residents of Yellow Creek Road.

38. That Pine Top does not sell natural gas to any residential customers.

39. That said pipeline does not serve or transport natural gas from any wells in which Pine Top does not have complete or partial ownership.

40. That Pine Top has refused to service other producers of natural gas with its pipeline.

41. That Pine Top has entered into a contract with the East Ohio Gas Company, a public utility, and that all gas transported through the pipeline on any portion of the property of the Plaintiffs is sold to or through East Ohio Gas Company, a public utility, qualified with the Public Utility Commission of the state of Ohio. A specimen contract is attached as Exhibit 23.

42. That the pipelines in question are used for the purpose of gathering gas produced at wells in which Pine Top has an interest and transporting same to transmission lines owned by East Ohio Gas Company.

43. That at all times mentioned herein, Pine Top did not directly contract to supply gas to the County of Summit, Bath Township, Northampton Township, nor any Municipality.

44. That the portion of Yellow Creek Road which is the subject of this action is in the unincorporated territory of the County of Summit and is commonly referred to as County Highway 35.

45. That the County of Summit has a public easement in Yellow Creek Road in the unincorporated territory of the

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county of Summit for public highway purposes.

46. That attached hereto are true and accurate copies of the Summit County Charter and Ordinances Nos. 81-342 and 81-541 as Exhibits 24, 25 and 26.

47. That Exhibit 27 is a true and accurate copy of a communication received from the Public Utilities Commission of the state of Ohio dated the 25th day of February, 1983.

48. That all references to construction and/or use of said pipeline in, on, or about the public highway easement known as Yellow Creek Road shall not constitute a stipulation that the pipeline was buried at a depth that is within a public easement for road purposes.

49. That attached hereto, marked as Exhibit 28 is a true and accurate copy of the "Road Opening Permit" issued by the Summit County Engineer for construction of pipeline in 1982.

The above stipulations are accepted.

Robert D. Pritt, Attorney for Plaintiffs

David J. Hanna, Attorney for The Board of Park Commissioners for the Akron Metropolitan Park District

Kevin R. Campbell, Summit County Prosecutor's Office, Attorney for Summit County Engineer

Warren W. Gibson, Attorney for Pine Top Estates

I certify this to be a true copy of the original Stipulations

Filed August 15 1983
JAMES B. McCARTHY, Clerk of Courts
[signature] Deputy

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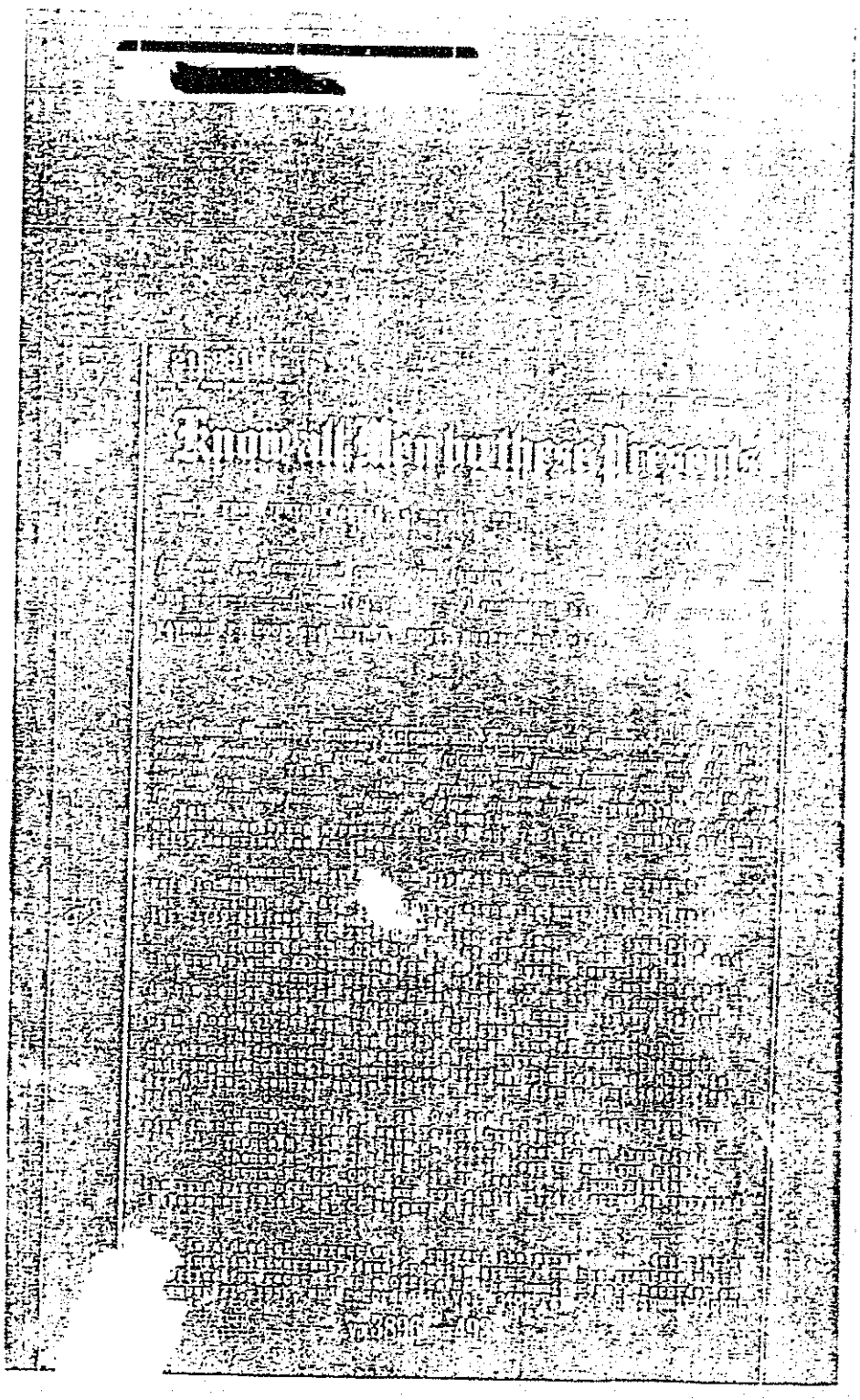
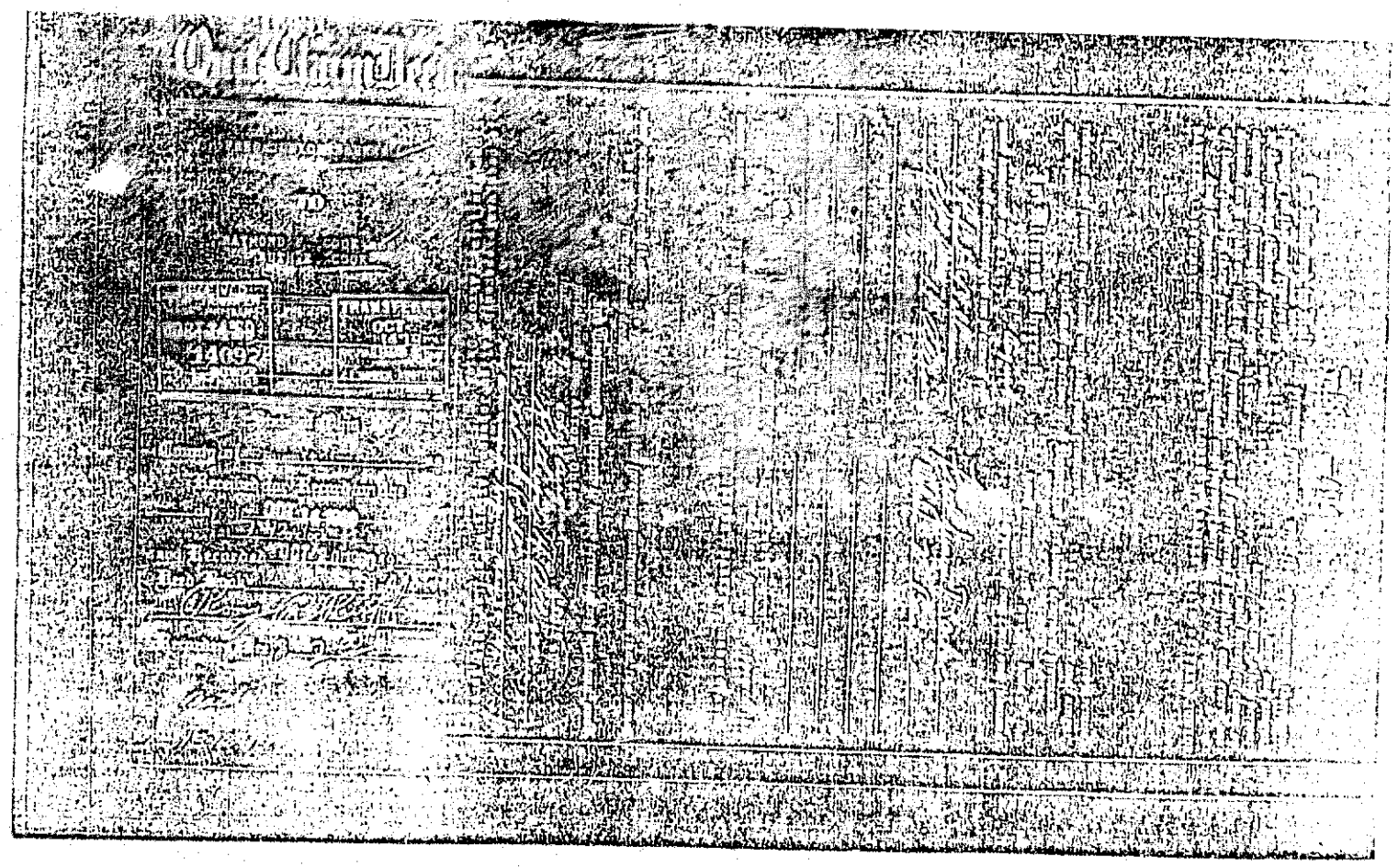
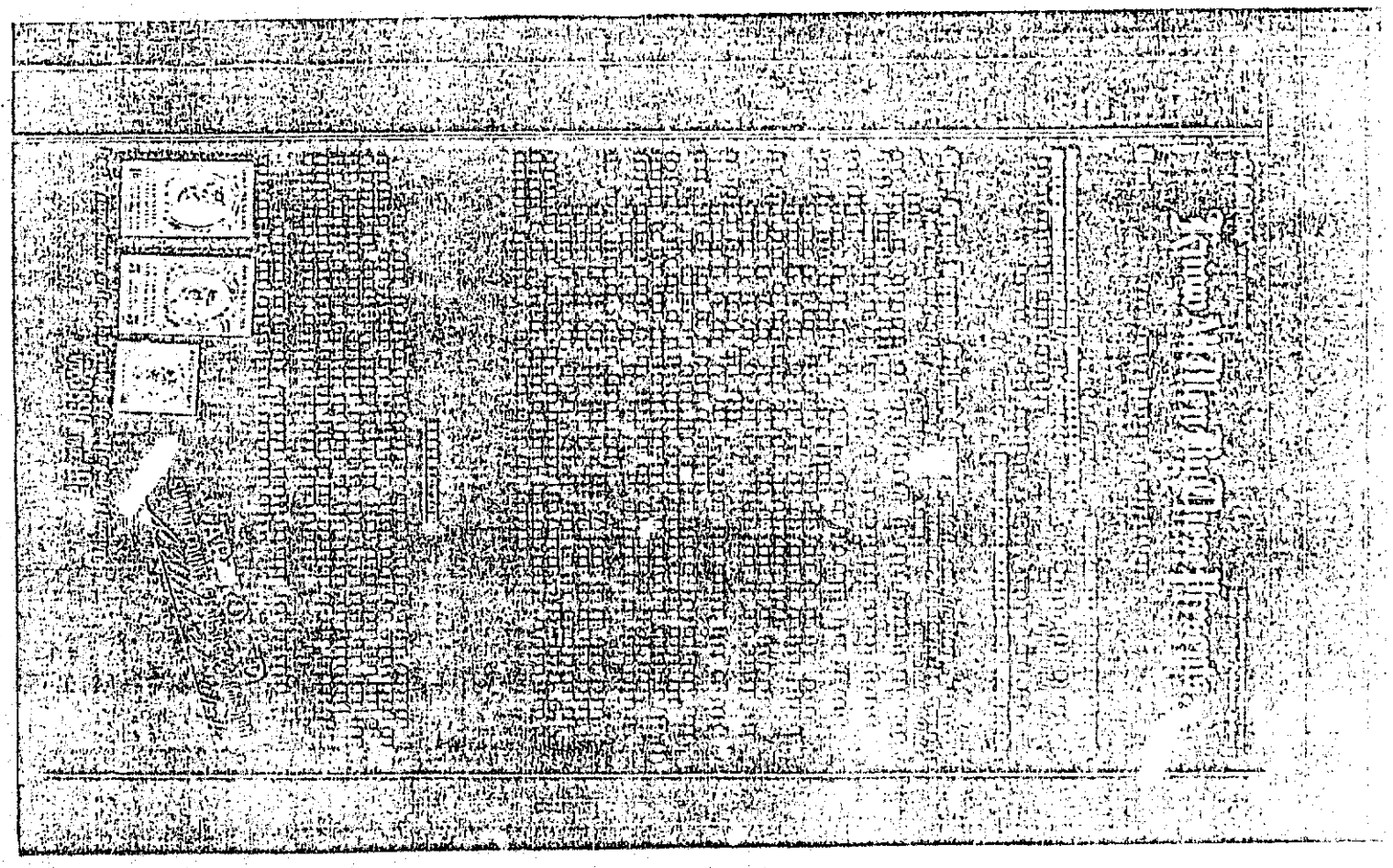
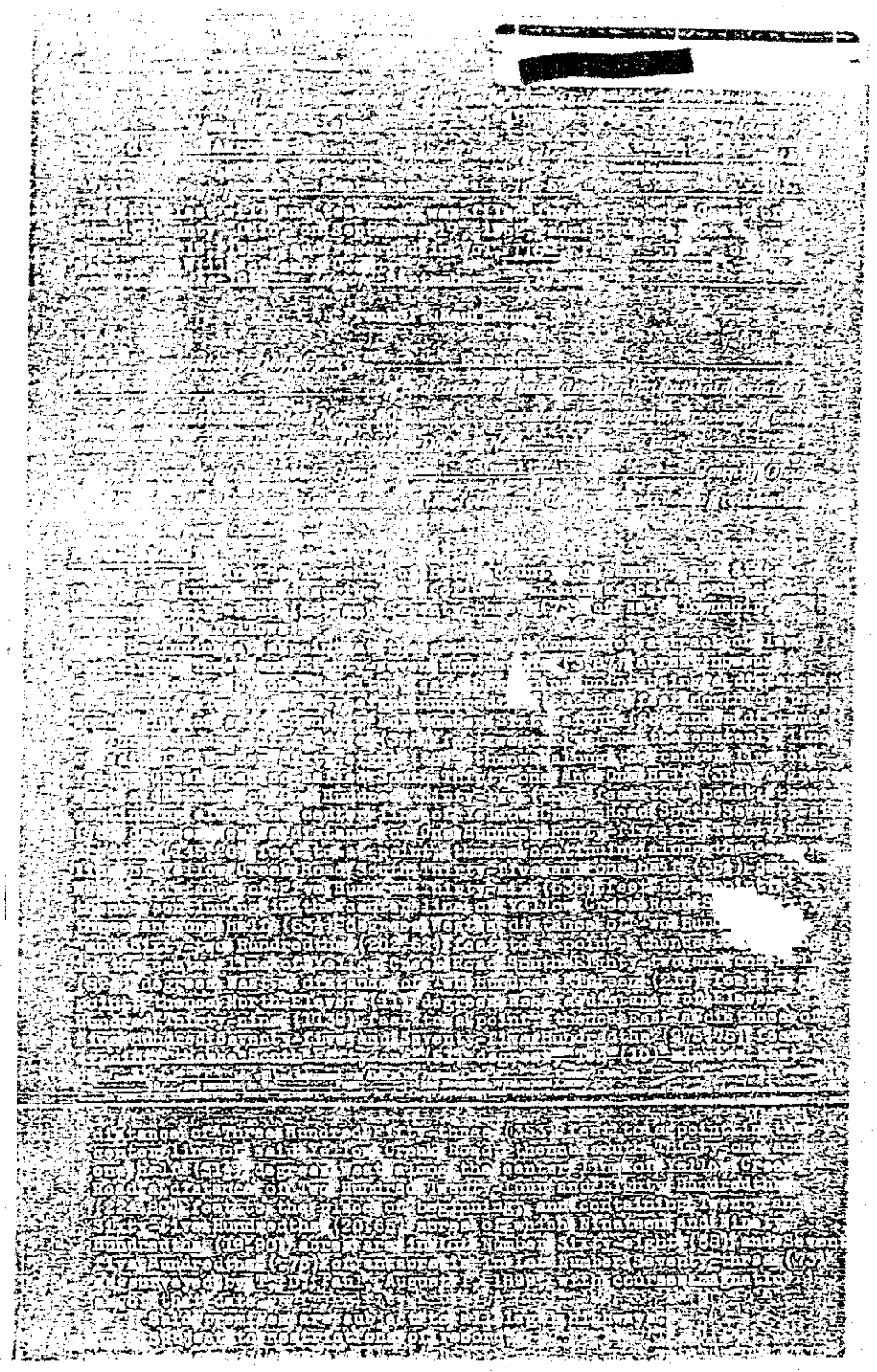
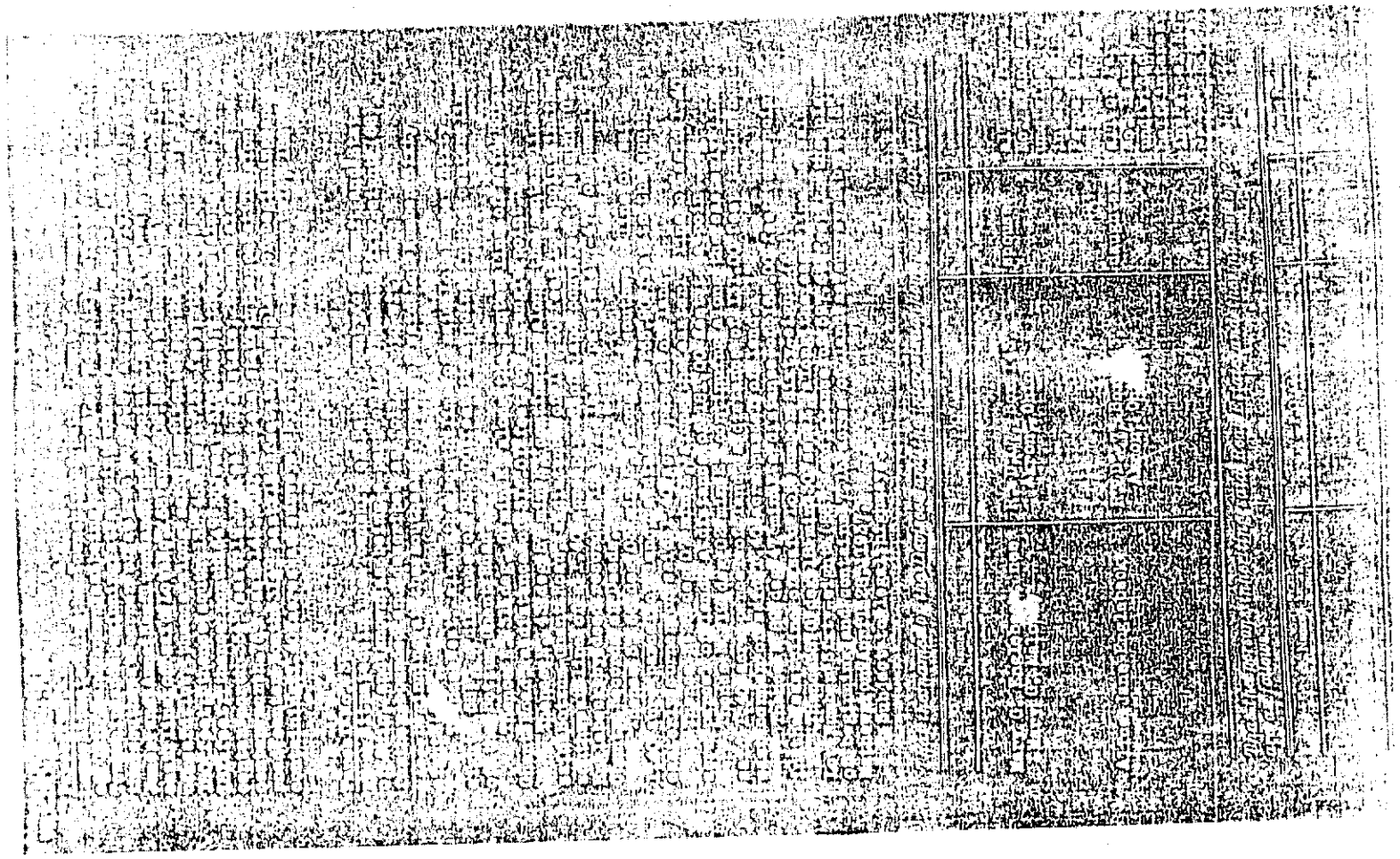


EXHIBIT 1









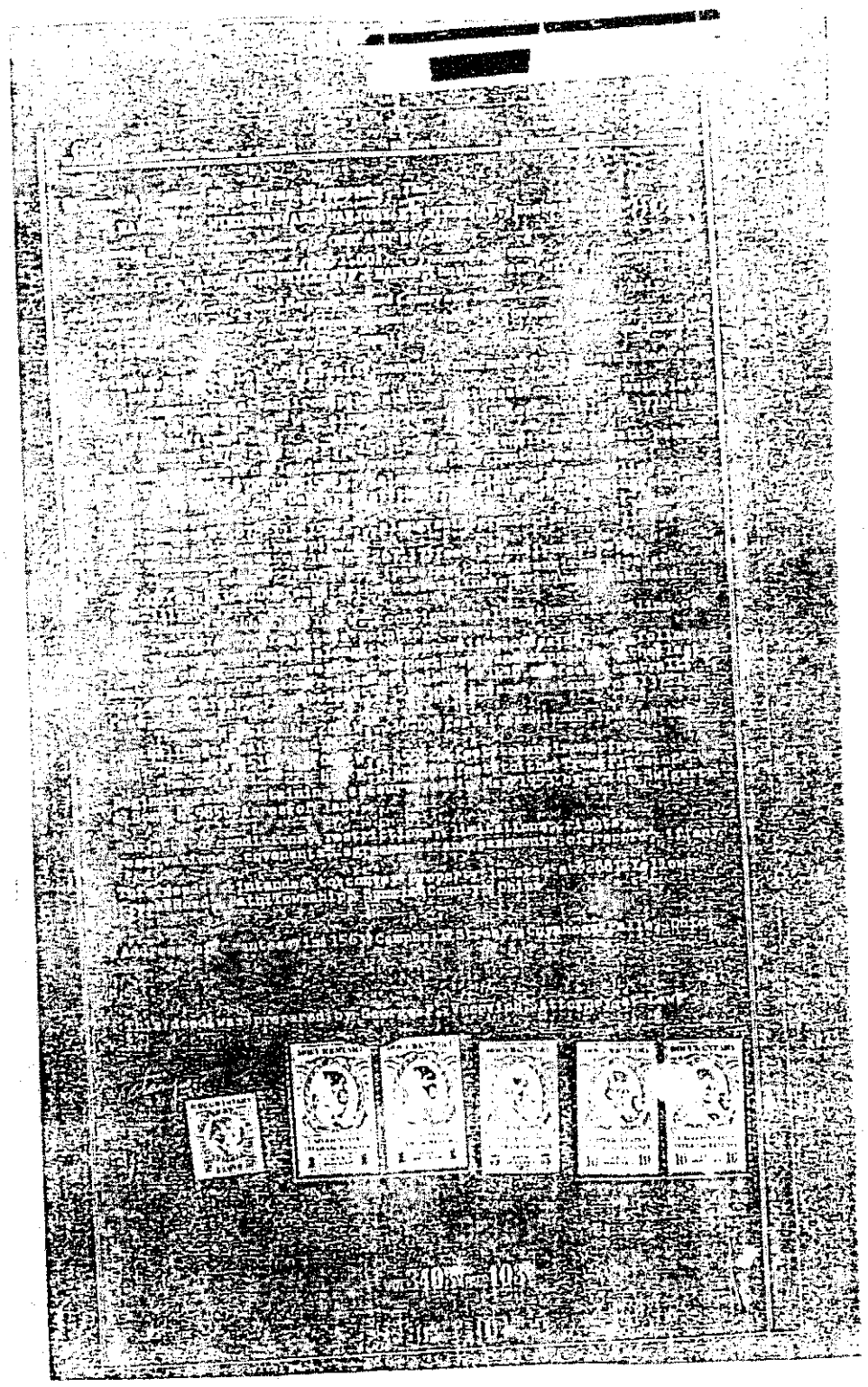


EXHIBIT 3

DOCUMENTS FILMED AS RECEIVED.

675694

Know all Men by these Presents

That I, Ella Teale Steele, not married,

the Grantor,

for the consideration of one dollar and other valuable consideration Dollars ($ 1.00) received to my full satisfaction of

George E. Parrett and Linda L. Parrett and Nelda M. Sullen,

the Grantees, do

Give Grant Bargain, Sell and Convey with the said Grantees, their

heirs and assigns, the following described premises situated in the Township of Bath, County of Summit and State of Ohio and known as being

Parcel #1

A part of Lot 68 in said township and more fully described as follows:

Commencing at an iron pipe at the northwest corner of said lot; thence S. 89° 51' 40" W. along the north line of said lot 1710.61 feet to an iron pipe;

Thence S. 7° 23' 20" E., 1501.25 feet to an iron pipe at the northwest corner of lands now owned by the grantee herein;

Thence N. 87° 11' 15" E., along said grantors north line, 745.37 feet to an iron pipe at the true place of beginning of land herein described;

Thence S. 11° 19' 10" [illegible] 267.17 feet to an iron pipe;

Thence S. 46° 27' 05" E., (passing through an iron pipe at 294.36 feet) 324.08 feet to the center line of Yellow Creek Road (C.H. 33);

Thence N. 44° 18' 10" E., along the center line of said road, 31.96 feet to a point of curve in said center line;

Thence continuing along the center line of said road, following the arc of a curve convex to the southeast and tangent to the last mentioned bearing, the radius of which is 471.30 feet, central angle 15° 27' 50", an arc distance of 127.20 feet;

Thence N. 61° 09' 40" W., 30.00 feet to an iron pipe in the northwesterly line of said road;

Thence N. 46° 27' 05" W., 500.29 feet to the true place of beginning and containing, as surveyed in August 1953 by S. C. Swigart & Son, 1.500 acres of land.

Parcel #2

A part of Lot 68 in said township, and more fully described as follows:

Commencing at an iron pipe at the northwest corner of said lot;

Thence S. 89° 51' 40" W., along the north line of said lot, 1710.61 feet to an iron pipe;

Thence S. 7° 23' 20" E., 1501.25 feet to an iron pipe at the northwest corner of lands formerly owned by Amos Engleheck;

Thence N. 87° 11' 15" E., along said Engleheck's north line, 745.37 feet to an iron pipe at the true place of beginning of land herein described;

Thence S. 48° 44' 25" E., 275.59 feet;

Thence S. 46° 27' 05" E. 192.08 feet to the center line of Yellow Creek Road;

Thence S. 28° 50' 20" W., along the center line of said road, 7.63 feet to a point of curve in said center line;

Thence N. 61° 09' 40" W., 30.00 feet to an iron pipe in the northwesterly line of said road;

Thence N. 46° 27' 05" W., 500.29 feet to the true place of beginning and containing as surveyed in August 1953 by S. C. Swigart & Son, 0.1150 of an Acre of land.

Subject to the restrictions, conditions, limitations, and easements of record.

Also known as 2851 Yellow Creek Rd., Akron, Ohio. 20013

Title [illegible]
23.506 N .374 ac
NORTH POINT [illegible]

be the same more or less, but subject to all legal highways.

VOL 6015 PAGE 617

EXHIBIT 4

THIS IS TO CERTIFY THAT THE MICROPHOTOGRAPH APPEARING ON THIS FILM IS AN ACCURATE AND COMPLETE REPRODUCTION OF A CASE FILE DOCUMENT DELIVERED IN THE NORMAL COURSE OF BUSINESS FOR PHOTOGRAPHING.
CAMERA OPERATOR [illegible] DATE PROCESSED 12-5-84

950553 . 0333 PAGE 701

Know all Men by these Presents

That we, GEORGE R. PARRETT and LINDA L. PARRETT, Husband and Wife, and WILDA M. JULIAN, unmarried

, the Grantors

who claim title by or through instrument, recorded in Volume 6015 , Page 617-618 , County Recorder's Office, for the divers good causes and considerations thereunto moving, and especially for the sum of One and no/100———————————— Dollars ($1.00)

received to Our full satisfaction of GEORGE R. PARRETT and LINDA L. PARRETT,

, husband and wife, the Grantees,

whose TAX MAILING ADDRESS will be

do

Grant, Bargain, Sell and Convey unto the said Grantees, their heirs and assigns, and to the survivor of them, his or their heirs and assigns, the following described premises, situated in the Township of Bath , County of Summit and State of Ohio and known as being

Parcel #1

A part of Lot 66 in said township and more fully described as follows:

Commencing at an iron pipe at the northeast corner of said lot; Thence S. 89 degrees 57' 40" W. along the north line of said lot 1710.83 feet to an iron pipe;

Thence S. 7 degrees 23' 20" E., 1503.25 feet to an iron pipe at the northwest corner of lands now owned by the grantor herein;

Thence N. 87 degrees 11' 15" E., along said grantors north line, 765.37 feet to an iron pipe at the true place of beginning of land herein described;

Thence S. 11 degrees 59' 10" E., 267.17 feet to an iron pipe;

Thence S. 46 degrees 27' 05" E., (passing through an iron pipe at 254.00 feet) 300.00 feet to the center line of Yellow Creek Road;

Thence N. 44 degrees 18' 10" E., along the center line of said road, 32.96 feet to a point of curve in said center line;

Thence continuing along the center line of said road, following the arc of a curve comes to the southeast and tangent to the last mentioned bearing, the radius of which is 471.30 feet, central angle 15 degrees 27' 50", an arc distance of 127.20 feet;

Thence N. 61 degrees 09' 40" W., 30.00 feet to an iron pipe in the northwesterly line of said road;

Thence N. 46 degrees 27' 05" W., 300.29 feet to the true place of beginning and containing, as surveyed in August 1953 by S. C. Seigert & Son, 1.500 acres of land.

Parcel #2

A part of Lot 66 in said township, and more fully described as follows:

Commencing at an iron pipe at the northeast corner of said lot;

Thence S. 89 degrees 57' 40" W., along the north line of said lot, 1710.83 feet to an iron pipe;

Thence S. 7 degrees 23' 20" E., 1503.25 feet to an iron pipe at the northwest corner of lands formerly owned by Ross Englehart;

Thence N. 87 Degrees 11' 15" E., along said Englehart's north line, 765.37 feet to an iron pipe at the true place of beginning of land herein described;

Thence S. 46 degrees 27' 05" E., 575.59 feet;

Thence S. 44 degrees 27' 05" E. 152.03 feet to the center line of Yellow Creek Road;

Thence S. 28 degrees 50' 20" W., along the center line of said road, 7.61 feet to a point of curve in said center line;

Thence N. 61 degrees 09' 40" W., 30.00 feet to an iron pipe in the northwesterly line of said road;

Thence N. 46 degrees 27' 05" W., 500.29 feet to the true place of beginning and containing, as surveyed in August 1953 by S. C. Seifert & Son, 0.1150 of an acre of land.

Subject to the restrictions, conditions, limitations, and easements of record.
Also known as 2851 Yellow Creek Road, Akron, Ohio

PP. 040-B2-0029-01-002

0.1150

EXEMPT

THIS IS TO CERTIFY THAT THE MICROPHOTOGRAPH APPEARING ON THIS FILM STRIP IS AN ACCURATE AND COMPLETE REPRODUCTION OF A CASE FILE DOCUMENT DELIVERED IN THE REGULAR COURSE OF BUSINESS FOR PHOTOGRAPHING AND WAS PHOTOGRAPHED ON 12-3-82

S69010

ESTATE BY THE ENTIRETIES WITH SURVIVORSHIP DEED No. 103-E (Revised 1972)

The Ohio Legal Blank, Co. Cleveland
Publishers and Dealers Since 1883

Know all Men by these Presents

That We, RAYMOND F. ALLEN and MARY D. ALLEN, Husband and Wife,
2242 Sourek Road, Akron, Ohio 44313
(insert marital status)

of Summit County, Ohio,

for valuable consideration paid, Grant(s), (Covenants, if any), to

RAYMOND F. ALLEN and MARY D. ALLEN

husband and wife, for their joint lives, remainder to the survivor of them,

whose tax mailing address is 2242 Sourek Road, Akron, Ohio 44313

the following described Real Property (Description of land or interest therein and encumbrances, reservations, and exceptions, if any.

Situated in the Township of Northampton, County of Summit and State of Ohio and known as being part of Lot No. 3, west of the Cuyahoga River (and further known as being part of an 84 acre parcel of land conveyed to Ida May Wright by deed recorded in Summit County Records, Volume 1351, Page 458, and described as PARCEL #11 in said deed) and more fully described as follows:

Beginning at a point on the north line of said Lot No. 3 and the centerline of Sourek Road (T.R. 198) 60 feet wide, which point bears S 85° 32' 20" E, a distance of 1627.66 feet from the northwest corner of said Lot No. 3;

Thence S 85° 32' 20" E on the north line of said Lot No. 3 and the centerline of Sourek Road, a distance of 660.00 feet to a point;

Thence S 04° 24' 50" W (passing over an iron pipe found 30.00 feet from the north line of said Lot No. 3) on a line parallel to the west line of said 84 acre parcel, a distance of 1686.82 feet to an iron pipe;

Thence N 85° 27' 50" W along the South line of said Lot No. 3, a distance of 660.00 feet to an iron pipe, which pipe is 1631.66 feet from the southwest corner of said Lot No. 3;

Thence N 04° 24' 50" E parallel to the west line of said 84 acre parcel, a distance of 1685.96 feet to the place of beginning (passing over an iron pipe found 30.00 feet from the north boundary of said Lot No. 3) and containing 25.55 acres of land, be the same more or less, as surveyed in April 1979 by Walter W. Dobbins, Registered Surveyor with Emmet J. McDonald and Associates, Inc., but subject to all legal highways and any restrictions and easements of record.

412-MA-0031-03-006

TRANSFER NOT NECESSARY
EXEMPT
REV. CODE COMPLIED WITH
JOHN POPA JR.
County Auditor
By [signature]
Deputy Auditor

Prior Instrument Reference: Vol. 1882 Page 166 of the Deed 15155

Records of Summit County, Ohio.

This is an Estate by the Entireties with Survivorship Deed*

*See Sections 5301 and 5302.17 of the Revised Code of Ohio as to covenants made and the warranties given by the Estate by the Entireties Survivorship Deed.

VOL 6305 PAGE 529

417.52 Easement - VOL 6514 - Page 426 6-26-81

THIS IS TO CERTIFY THAT THE MICROPHOTOGRAPH APPEARING ON THIS FILM STRIP IS AN ACCURATE AND COMPLETE REPRODUCTION OF A CASE FILE DOCUMENT DELIVERED IN THE REGULAR COURSE OF BUSINESS FOR PHOTOGRAPHING. CAMERA OPERATOR [signature] DATE PROCESSED 12-5-84

VOL 6305 PAGE 530

And We, MARY D. ALLEN and RAYMOND P. ALLEN [illegible] of the [illegible] Witnesses

all rights of dower therein.

Witness our hands this 11TH. day of August 1979

Signed and acknowledged in presence of

Donald C. Shook

Anna M. [illegible]

Raymond P. Allen

Mary D. Allen

State of Ohio County of MAHONING ss.

Be It Remembered, That on the 11 TH. day of August 1979

before me, the subscriber, a Notary in and for said county, and State of Ohio

personally came RAYMOND P. ALLEN and MARY D. ALLEN, Husband and Wife,

the Grantors in the foregoing Deed, and acknowledged the signing thereof to be their

voluntary act and deed.

In Testimony Whereof, I have hereunto subscribed my name and affixed my seal on the day and year last aforesaid.

Donald C. Shook

DONALD C. SHOOK, Attorney-at-Law
Notary Public - No Expiration Date

This instrument was prepared by Attorney Donald C. Shook
805 Wick Building
Youngstown, Ohio

TIN 8 24 79

569010
Estate by the Entireties
with Survivorship Deed
(Statutory Form)

FROM
RAYMOND P. ALLEN and
MARY D. ALLEN (H and W)
2242 Sourek Road
Akron, Ohio 44313

TO
RAYMOND P. ALLEN and
MARY D. ALLEN (H and W)
2242 Sourek Road
Akron, Ohio 44313

Transferred TRANSFER NOT NECESSARY 19
AUG 11 1979 County Auditor
John Pole Jr. County Auditor

State of Ohio, Summit County, ss.
Presented for record on the day of AUG 24 1979 19 at 8:50 o'clock, A M.
Recorded AUG 29 1979 19
in Deed Book No. 6305 Page 529-530
[signature] County Recorder

5.00

THIS IS TO CERTIFY THAT THE MICROPHOTOGRAPH APPEARING ON THIS FILM STRIP IS AN ACCURATE AND COMPLETE REPRODUCTION OF A CASE FILE DOCUMENT DELIVERED IN THE REGULAR COURSE OF BUSINESS FOR PHOTOGRAPHING. CAMERA OPERATOR [signature] DATE PROCESSED 12-5-84

THE STATE OF OHIO
SUMMIT COUNTY, SS.

I, Ralph James, Recorder of said County, do hereby certify that the annexed is a full and true copy of the record of a DEED recorded in Volume 6305 on Page 521-33(x) Summit County records, as the same appears from said record now in my office. I do hereby further certify that said DEED was recorded in conformity with the laws of the State of Ohio.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of this office, at Akron, in Summit County, this 7th day of April A.D. 1983

Ralph James
Recorder of Summit County, Ohio

By [signature]
Deputy Recorder

THIS IS TO CERTIFY THAT THE MICROPHOTOGRAPH APPEARING ON THIS FILM STRIP IS AN ACCURATE AND COMPLETE REPRODUCTION OF A CASE FILE DOCUMENT DELIVERED IN THE REGULAR COURSE OF BUSINESS FOR PHOTOGRAPHING
CAMERA OPERATOR [signature] DATE PROCESSED 12-5-84

FIRST PARCEL

Situated in the Township of Bath, County of Summit, and State of Ohio, and known as being a part of Original Bath Township Lot Number Seventy (70), surveyed and described as follows:

Beginning at the intersection of the center line of the Grant and Botsum Road, now known as Yellow Creek Rd., County Highway #33, with the easterly line of Bath Township; thence North 0° 31' West three hundred ninety-five and 34/100 (395.34) feet; thence South 89° 29' West three hundred seventy-five 54/100 (375.54) feet; thence South 0° 8' East two hundred ninety-nine and 74/100 (299.74) feet; thence South 73° 10' East one hundred fifty-seven and 00/100 (157.00) feet thence South 76° 1' East two hundred thirty-four and 26/100 (234.26) feet to the place of beginning and containing two and 089/1000 (2.089) acres of land as surveyed September 28, 1961, by S. G. Reinhart, Surveyor, be the same more or less, but subject to all legal highways.

SECOND PARCEL

Situated in the Township of Bath, County of Summit, and State of Ohio, and known as being a part of Lot Number Fifty-one (51) in Bath Township and bounded and described as follows: Beginning at the north east corner of Lot No. 51; thence south along the east line of Lot No. 51, four hundred twenty-nine (429) feet to a point which is the true place of beginning; thence South 89° 30' west one thousand five hundred twenty-six and 56/100 (1526.56) feet to a point; thence North along a line which is parallel to the east line of Lot No. 51, four hundred twenty-nine (429) feet to a point in the north line of Lot No. 51; thence west along the north line of Lot No. 51 to the northwest corner of said Lot No. 51, thence south along the west line of Lot No. 51 to the southwest corner of Lot No. 51; thence east along the south line of Lot No. 51 to the southeast corner of Lot No. 51; thence north along the east line of Lot No. 51 to the place of beginning, containing about one hundred twenty-nine and 50/100 (129.50) acres of land, be the same more or less, but subject to all legal highways.

THIRD PARCEL

Situated in the Township of Bath, County of Summit and State of Ohio, and known as being part of Lot 70 of said Township, and more fully described as follows:

Beginning at a lead-center monument set at the northeasterly corner of said Lot 70 (E. 2,248,208.28 N. 546,321.09) being on the westerly line of Northampton Township and easterly line of Bath Township;

Thence, S. 89°40'43" W. 2734.26 feet to a lead-center monument set at the northwesterly corner of said Lot 70 (E. 2,246,534.77 N. 546,714.55), said point being on the easterly line of a parcel conveyed to R. and M. Brewster (witness an iron pin found S. 0°50'56" E. along said west line of Lot 70 2392.45 feet, being at the southwesterly corner of said Lot 70);

Thence, S. 0°33'27" E. 580.69 feet to a lead-center monument set on the center line of Yellow Creek Road (C. H. #33) 60 feet wide, being at the same place where an old stone was found by the Summit County Engineer which was intended to be on the westerly line of Lot #70;

Thence, N. 62°56'23" E. along the center line of Yellow Creek Road 1.30 feet to the point of curve (witness a lead-center monument set N. 27°03'37" W. 30.00 feet from this point);

Thence, along the arc of a circle curving to the right (central angle 11°20' D=5°00' R=1145.92') 226.67 feet to the point of tangency (witness a lead-center monument set N. 15°43'37" W. 30.00 feet from this point);

Thence, N. 74°16'23" E. 200.45 feet to the point of curve (witness a lead-center monument set N. 15°43'37" W. 30.00 feet from this point);

Thence, along the arc of a circle curving to the left (central angle 17°29' D=7°00' R=818.51') 249.76 feet to the point of tangency (witness a lead-center monument set N.33°12'37" W. 30.00 feet from this point);

Thence, N. 56°47'23" E. 137.76 feet to a point of curve (witness a lead-center monument set N. 33°12'37" W. 30.00 feet from this point

EXHIBIT 6

THIS IS TO CERTIFY THAT THE MICROPHOTOGRAPH APPEARING ON THIS FILM STRIP IS AN ACCURATE AND COMPLETE REPRODUCTION OF A CASE FILE DOCUMENT WHEN FILMED IN THE REGULAR COURSE OF BUSINESS FOR PHOTOGRAPHING.
SIGNATURE Kay Howe DATE PROCESSED 12-5-84

Thence, [illegible] along the arc of a circle curving to the right (central angle 27°14' D=5°00' [illegible] 192.03' R=1145.92' L=544.70 feet to the point of tangency (witness a lead-center monument set N. 5°56'37" W. 30.08 feet from this point);

Thence, N. 1°01'23" E. 577.47 feet to a point of curve (witness a lead-center monument set N. 5°56'37" W. 30.00 feet from this point);

Thence, along the arc of a circle curving to the right (central angle=1°35'30" D=1°00' T=145.37' R=3437.67') 277.28 feet to a point of tangency (witness a lead-center monument [illegible] 5°30'53" E. 30.00 feet from this point);

Thence, S. 34°23'07" E. 179.13 feet to the point of curve (witness a lead-center monument [illegible] 55°30'53" E. 30.00 feet from this point);

Thence along the arc of a circle curving to the left (central angle = 18°25' D=10°00' [illegible] 184.17 feet to the tangency (witness a lead-center monument set [illegible]

Thence, [illegible] point of tangency (witness a lead-center monument set N. 22°1[illegible] [illegible] point);

Thence, along the arc of a circle curving to the left (central angle=19°32'01" D=5°0' R=1145.95' Chord=S. 77°34'22" E. 388.96') 390.84 feet to the intersection of the center line of Yellow Creek Road with the easterly line of said Lot 70 (witness a lead-center monument set N. 1°04'39" W. 27.32 feet from this point) being the southwesterly corner of Lot 7, Northampton Township, and southwesterly corner of a parcel conveyed to S. A. Hutchinson by instrument recorded in Volume 1523, Page 297, of the Summit County Records of Deeds, also witness a lead-center monument set N. 1°04'39" W. 30.05 feet from this point);

Thence, N. 1°04'39" W. along the easterly line of Lot 70, easterly line of G. O'Neil parcel, easterly line of Bath Township, westerly line of Northampton Township and westerly line S. A. Hutchinson land 430.32 feet to a lead-center monument set at the northwesterly corner thereof and southwesterly corner of a parcel conveyed to W. E. Sarich by instrument recorded in Volume 2973, Page 21, of the Summit County Record of Deeds;

Thence, N. 2°15'41" E. along easterly line of said Lot 70, easterly line of Bath Township, westerly line of Northampton Township, and westerly line of Sarich parcel 231.00 feet to the place of beginning;

Reserve, therefrom a parcel of land conveyed to J. L. Hellmich by instrument recorded in Volume 1709, Page 476, and further described as follows:

Situated in the Township of Bath, County of Summit, and State of Ohio, and known as being part of Lot 70 of said Township and more fully described as follows:

Beginning at a lead-center monument set at the northwesterly corner of said Lot 70 (E. 2,248,534.37 N. 548,714.53);

Thence, S. 0°50'56" E. along the westerly line of Lot 70, a distance of 595.05 feet to its intersection with the center line of Yellow Creek Road (C.H. #33) 60 feet wide (witness an iron pin found S. 0°50'56" E. 1797.40 feet, being at the southwesterly corner of said Lot 70);

Thence, N. 62°56'23" E. along the center line of Yellow Creek Road 19.49 feet to a lead-center monument, being at the same place at which an old stone was found by the Summit County Engineer, intending to be at the intersection of the center line of Yellow Creek Road with the westerly line of said Lot 70;

Thence, continuing N. 62°56'23" E. along the center line and center line extended 1145.00 feet to the "P.I." of a 5°00' curve to the right (central angle=11°20' R=1145.92' Tan.=113.70' Arc length=226.67'), from this "P.I." witness a railroad track spike found northwesterly 21.91 feet in the southwesterly side of an 18" elm tree, also witness a railroad track spike found northerly 24.00 feet to the easterly side of a 15" elm tree;

Thence, N. 74°16'23" E. along the forward tangent and center line of Yellow Creek Road 314.15 feet to the point of curve (witness a lead-center monument set N. 15°43'37" W. 30.00 feet from this point);

Thence, along the arc of a circle curving to the left (central angle=1°21'02" R=816.51' Chord=19.37' feet) 19.37 feet to a point on the westerly line of said Hellmich parcel;

5245 pg 97

THIS IS TO CERTIFY THAT THIS IS A PHOTOGRAPHIC REPRODUCTION OF AN INSTRUMENT APPEARING ON FILE AND OF RECORD IN THE SUMMIT COUNTY RECORDER'S OFFICE. NO RESPONSIBILITY IS ASSUMED FOR THE QUALITY OF THE IMPRESSION OR COPY HEREOF. FEE $1.00
RECORDED 12-3-97

Thence, N. 11°05'16" W. 101.05 feet to an iron pin found at the northwesterly corner of said Hellman parcel and true place of beginning.

Thence, N. 60°04'44" E. to an iron pin found at the northeasterly corner of said Hellman parcel.

Thence, S. 0°05'16" E. 121.90 feet to the intersection of the easterly line of said Hellman parcel with the center line of Yellow Creek Road (witness a lead-center monument set N. 0°05'16" W. 35.82 feet from this point).

Thence, S. 55°47'23" W. 75.62 feet to a point of curve (witness a lead-center monument set N. 35°12'37" W. 30.00 feet from this point).

Thence, along the arc of a circle curving to the right (central angle 16°07'58" R=818.51' D=7°00' Chord S. 64°01'22" W. 229.71') 230.49 feet to the intersection of the center line of Yellow Creek Road and westerly line of said Hellman parcel (witness a lead-center monument set N. 11°05'16" W. 30.[illegible] feet from this point).

Thence N. 11°05'16" W. 101.05 feet to the place of beginning and containing within these bo[illegible] 0.7977 acres.

The total area embraced by the first part of the above described property is 24.6005 acres, [illegible] area of Parcel #2 is 24.0032 acres as surveyed December, 1959, by Robert J. [illegible], Registered Surveyor #4240.

FOURTH PARCEL

Situated in the Township of Bath, County of Summit, and State of Ohio, and known as being a part of Lot Number Fifty (50), further bounded and described as follows, to wit: Beginning at the southeast corner of said Lot Number Fifty (50). Thence S 89° 30' W., along the south line of said Lot Number Fifty (50), a distance of 1594.56 feet to a point. Said point being the southeast corner of 25.75 acres deeded to David and Anna Davis by deed recorded in Vol. 986, page [illegible], Summit County Records. Thence N 1° 30' W., a distance of 5[illegible].00 feet to a point. Thence N 41° [illegible]' W., a distance of 489.72 feet to a point. Thence N 0° 30' E., a distance of 242.50 feet to a point. Said point being the northeast corner of said 25.75 acres. Thence S 89° 30' W., along the north line of said 25.75 acres, a distance of 833.90 feet to a point in the west line of said Lot Number Fifty (50). Thence N 1° 15' E., along the west line of said Lot Number Fifty (50), a distance of 325.38 feet to a point in the center line of the Martin Road. Thence N 58° 15' E., along the center line of said Martin Road, a distance of 153.78 feet to a point. Thence N 89° 45' E., along the center line of said martin Road and said center line produced, a distance of 2684.33 feet to a point in the east line of said Lot Number Fifty (50). Thence S 2° 05' W., along the east line of said Lot Number Fifty (50), a distance of 1533.47 feet to the place of beginning and contains 71.33[illegible] acres of land be the same more or less, but subject to all legal highways.

FIFTH PARCEL

Situated in the Township of Bath, County of Summit, and State of Ohio, and known as being a part of Lot Number Fifty One (51) further bounded and described as follows, to-wit: Beginning at a point in the north line of said Lot Number Fifty One (51). Said point being S 89° 30' W., a distance of 101.54 feet from the northeast corner thereof. Thence S 2° 05' W., a distance of 429.00 feet to a point. Thence S 89° 30' W., a distance of 1425.04 feet to a point. Thence N 2° 05' E., a distance of 429.00 feet to a point in the north line of said Lot Number Fifty One (51). Thence N 89° 30' E., along the north line of said Lot Number Fifty One (51), a distance of 1425.04 feet to the place of beginning and contains 14.034 acres of land as surveyed by G. S. Mathews in November 1934, be the same more or less, but subject to all legal highways.

THIS IS TO CERTIFY THAT THE MICROPHOTOGRAPH APPEARING ON THIS FILM STRIP IS AN ACCURATE AND COMPLETE REPRODUCTION OF A CASE FILE DOCUMENT DELIVERED IN THE REGULAR COURSE OF BUSINESS FOR THE ORIGINAL FILMING [illegible] DATE PROCESSED 12-5-89

Know all Men by these Presents

629260

That, I, Michael G. O'Neil, a married man

, the Grantor ,

who claims title by or through instrument , recorded in Volume 5079, Page 241,

County Recorder's Office, for the consideration of

Dollars ($1.00)

received to my full satisfaction of THE BOARD OF PARK COMMISSIONERS FOR THE AKRON METROPOLITAN PARK DISTRICT

the Grantee ,

whose TAX MAILING ADDRESS will be

have Given, Granted, Remised, Released and Forever Quit-claimed, and do by these presents absolutely give, grant, remise, release and forever quit-claim unto the said grantee , its successors ~~heirs~~ and assigns forever, all such right and title as I , the said grantor , have or ought to have in and to the following described pieces or parcels of land, ~~[illegible]~~ xxx ~~xxCountyxx~~ ~~[illegible]~~

As shown on Exhibit A, attached hereto and made a part hereof.

(The conveyance herein is of an undivided 1/5 interest in the premises described.)

18823

TRANSFERRED IN COMPLIANCE WITH SEC. 319.202 REV. CODE
$ EXEMPT $ A FEE
C. L. BOWER County Auditor By [signature] County Auditor

THIS IS TO CERTIFY THAT THE MICROPHOTOGRAPH APPEARING ON THIS FILM STRIP IS AN ACCURATE AND COMPLETE REPRODUCTION OF A CASE FILE DOCUMENT DELIVERED IN THE REGULAR COURSE OF BUSINESS FOR PHOTOGRAPHING. CAMERA OPERATOR [signature] DATE PROCESSED 12-5-84

EXHIBIT 7

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

10/30/2023 12:07:54 PM

in

Case No(s). 84-0525-PL-ATA

Summary: Application Part 3 Section B: Application for Approval and Authority to file a tariff for a new pipeline utility service (the “Application”); plus other related documents including the transcript for the hearing that was held by the PUCO; maps of the pipeline system; and a copy of the tariff approved; and opinion and order. electronically filed by Docketing Staff on behalf of Docketing.