

## Farkas, Martin

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**From:** Behrman, Aaron  
**Sent:** Monday, December 06, 2010 12:14 PM  
**To:** Stokes, Mike  
**Cc:** Dicke, Dave; Seasley, David; Bradley, James; Ligibel, Mike; Colony, Steve  
**Subject:** RE: LUC-25-7.92 pid 85266 request root tile for canal and rail road intersection

Mike,

I guess the most important statement I get out the document is the following:

In obedience to a statute which conferred the authority, the Board of Public Works, in 1853, authorized the Northern Indiana Railroad Company, **the predecessor of the defendant**, to construct a tunnel under the canal at this point for the passage of its trains to and from either side of it.

Basically the way I am reading this is that for the mainline canal was there before the RR. This has the been the biggest issue with the RR.

Aaron

Aaron D. Behrman, P.E.  
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"Michael L. Stokes"  
<michael.stokes@ohioattorneygeneral.gov>

12/06/2010 08:16 AM

To "Aaron.Behrman@dot.state.oh.us" <Aaron.Behrman@dot.state.oh.us>,  
"Dave.Dicke@dot.state.oh.us" <Dave.Dicke@dot.state.oh.us>  
cc "David.Seasley@dot.state.oh.us" <David.Seasley@dot.state.oh.us>,  
"James.Bradley@dot.state.oh.us" <James.Bradley@dot.state.oh.us>,  
"Mike.Ligibel@dot.state.oh.us" <Mike.Ligibel@dot.state.oh.us>,  
"Steve.Colony@dot.state.oh.us" <Steve.Colony@dot.state.oh.us>  
Subject RE: LUC-25-7.92 pid 85266 request root tile for canal and rail road intersection

Aaron:

What you found was part of the documents the RR provided. It was a decision in an earlier phase of the litigation that ended in 1895.

It seems that, in the late 1800s, there was a statewide problem with encroachments on canal land. The General Assembly passed a law allowing the attorney general to sue to remove these encroachments and, in the case of railroads, made a specific provision allowing for these suits to happen in Franklin County. The decision you found deals with the same one-acre tract just east of canal Lock No. 6 where the stone abutments are. The state sued, the railroad raised a bunch of defenses, and in the decision you found the court tossed most of those defenses out. Not long afterward the state and the RR agreed to a settlement quieting the RR's title in the one-acre tract in return for payment of \$300.

This one-acre tract was acquired as a hydraulic reservoir for the canal but apparently never used and the RR later occupied it. It is different from the "mainline" of the canal, which is just to the west of it.

Mike

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**From:** Aaron.Behrman@dot.state.oh.us [<mailto:Aaron.Behrman@dot.state.oh.us>]  
**Sent:** Friday, December 03, 2010 1:34 PM  
**To:** Dave.Dicke@dot.state.oh.us  
**Cc:** David.Seasly@dot.state.oh.us; James.Bradley@dot.state.oh.us; Mike.Ligibel@dot.state.oh.us; Michael L. Stokes; Steve.Colony@dot.state.oh.us  
**Subject:** Re: LUC-25-7.92 pid 85266 request root tile for canal and rail road intersection

I did a google search on the trial and found this:

<http://books.google.com/books?id=y6EpAAAAYAAJ&dq=State%20of%20Ohio%20Plaintiff%20vs%20%20The%20Lake%20Shore%20%26%20Michigan%20Southern%20Railway%20Company&pg=PA292#v=onepage&q&f=false>

Now what it all means I have no clue, interesting stuff.

Aaron

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**Dave  
Dicke/RealEstate/D02/ODOT**

12/03/2010 11:00 AM

To David Seasily/RENW/CEN/ODOT@ODOT

cc Steve Colony/Production/D02/ODOT@ODOT, Aaron Behrman/Production/D02/ODOT@ODOT, James  
Bradley/Production/D02/ODOT@ODOT, Mike Ligibel/Planning/D02/ODOT@ODOT, <mstokes@ag.state.oh.us>

Subject Re: LUC-25-7.92 pid 85266 request root tile for canal and rail road intersection [Link](#)

Dave Seasily,

This is a complicated issue. Knowing for sure who was there first is important to determine who is responsible for the maintenance of the main bridge components. ODOT is convinced that the rail road is there by permit only and that the rail abutments are theirs to maintain.

We need to have a title done and research into the old canal land acquisition for the subject area and recorded railroad documents (including VAL maps) that show when they acquired the corridor that leads to the bridge (subject area) they (Northern Indiana Rail Road) built under the canal in 1853.

We also need a certified copy of the court case Franklin County Common Pleas no 23521 (1890, first petition thru May 13 1895 final Journal entry) State of Ohio Plaintiff vs The Lake Shore & Michigan Southern Railway Company. The copy of an answer dated Oct 1894 provided by N&S is missing 2 pages that are critical for the permit issue and Ohio's position.

We know that the old canal land was transferred to the City of Toledo from Harry L Davis Governor of Ohio to the City of Toledo on 12-30-1922 legislation number 264792. You should a copy of the legislation that describes the area of the old canal including the subject area. ODOT is responsible for bridge maintenance on SR 25/24 so we are looking to capture the other information.

So we need: a title showing who owns land under and adjacent to the subject bridge  
including canal land purchase for canal use and rail corridor purchases for rail road use adjacent to canal  
Rail Road Historic Val maps for this location (D-2 is looking for and will provide)  
certified copy of Franklin Common Pleas court case no 23521 from beginning of case to end 1890 thru 1895

Can your staff provide this information over the next 10 to 12 weeks please?

David T. Dicke  
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**David  
Seasly/RENW/CEN/ODOT**

12/01/2010 01:48 PM  
To David Seasly/RENW/CEN/ODOT@ODOT  
cc Dave Dicke/RealEstate/D02/ODOT@ODOT, James Bradley/Production/D02/ODOT@ODOT, Kay Ryan/RealEstate/D02/ODOT@ODOT, mstokes@ag.state.oh.us, Steve Colony/Production/D02/ODOT@ODOT  
Subject Re: LUC-25-7.92 pid 85266 request root tile for canal and rail road intersection [Link](#)

Dave Dicke and others,

Just a quick e-mail to let you know I received the package of material you sent.

As per our previous communications I'll set it aside until I hear from you what, if anything, you need from the region.

David E. Seasly, P.S. Northwest Region Projects Manager  
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Findlay, Ohio 45840  
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**David  
Seasly/RENW/CEN/ODOT**

11/24/2010 05:12 PM  
To Dave Dicke/RealEstate/D02/ODOT  
cc James Bradley/Production/D02/ODOT@ODOT, Kay Ryan/RealEstate/D02/ODOT@ODOT, mstokes@ag.state.oh.us, Steve Colony/Production/D02/ODOT@ODOT  
Subject Re: LUC-25-7.92 pid 85266 request root tile for canal and rail road intersection [Link](#)

Dave D.

Sounds good. We'll hold tight on doing anything until we hear more from you.

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**Dave  
Dicke/RealEstate/D02/ODOT**

11/24/2010 03:22 PM

To David Seasly/RENW/CEN/ODOT@ODOT, Kay Ryan/RealEstate/D02/ODOT@ODOT, Steve Colony/Production/D02/ODOT@ODOT, <mstokes@ag.state.oh.us>, James Bradley/Production/D02/ODOT@ODOT  
cc

Subject Re: LUC-25-7.92 pid 85266 request root tile for canal and rail road intersection [Link](#)

Dave S,

We will send you some data for review. We will need to decide after the 6th upon my return. It would be very good to be able to show without a shadow of doubt when the canal was acquired and from whom. And when the rail road acquired their land for the corridor and from whom at this location.

This data will provide us the foundation for our discussions with the rail road now and in the future when they want to enlarge the bridge to accommodate present and future rail traffic.

It is not your typical argument over who owns the property as it might seem, as it will relate to who will be responsible to maintain the old bridge and pay to build a new one when that time comes.

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**David  
Seasly/RENW/CEN/ODOT**

11/24/2010 02:46 PM

To Dave Dicke/RealEstate/D02/ODOT@ODOT  
cc Aaron Behrman/Production/D02/ODOT@ODOT, James Bradley/Production/D02/ODOT@ODOT, Mike Ligibel/Planning/D02/ODOT@ODOT, Steve Colony/Production/D02/ODOT@ODOT  
Subject Re: LUC-25-7.92 pid 85266 request root tile for canal and rail road intersection [Link](#)

Dave D.

Given the e-mails from you and Mike Stokes today, do you still need the region to do anything on this?

David E. Seasly, P.S. Northwest Region Projects Manager  
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Dave  
Dicke/RealEstate/D02/ODOT

11/19/2010 02:38 PM

To David Seasley/RENW/CEN/ODOT@ODOT, Mike Ligibel/Planning/D02/ODOT@ODOT, Aaron  
Behrman/Production/D02/ODOT@ODOT, Steve Colony/Production/D02/ODOT@ODOT, James  
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cc

Subject LUC-25-7.92 pid 85266 request root title for canal and rail road intersection

Dave Seasley

D-2 requests that you provide a title report for the land now occupied by SR 25 at station 7.92. ODOT has a bridge over a N&S active rail road there. We need to clearly understand who was first at this bridge, the railroad or the canal. And who has claim of the fee interests and who has easement interest. This is needed to determine who put in the bridge and who has responsibility for it. N&S provided some documentation that adjacent land was owned by the rail road but the area of contention, the bridge, is not a part of their evidence to my knowledge.

The old rail road was known as the Wabash Erie Railroad in 1836. The canal act of 1824 but may not have included this area as of that time it was still considered Michigan, not Toledo and until the Michigan released the land in 1836, land sales were recorded in Michigan.

It is possible, that the Wabash Rail road did own land prior to the canal act. We need a deep title search done then an opinion of an AAG as to the ownership of the existing bridge.

I have several documents I will copy and send via pony for your reference. We would like this answer in the next 3 to 4 months if possible.

Thanks D Dicke

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