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ENTERED  
Office of Proceedings  
January 20, 2023  
Part of  
Public Record

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January 19, 2023

## VIA E-FILING

Cynthia T. Brown, Chief  
Section of Administration, Office of Proceedings  
Surface Transportation Board  
395 E Street, SW  
Washington DC 20423-0001

Re: Flats Industrial Railroad Company – Abandonment Exemption –In  
Cleveland, OH AB-1327X

Dear Ms. Brown:

Pursuant to 49 C.F.R. 1152.27(a), Flats Industrial Inc., a Delaware corporation doing business as Flats Industrial Railroad Company (“FIR”), is hereby providing Werner G. Smith, Inc. (“WGS”) and the Surface Transportation Board with the information required by that regulation. Some of the information is being filed under seal pursuant to the Protective Order issued on November 16, 2022. If there are any questions about this matter, please contact me directly, either by telephone: 202-663-7823 or by e-mail: [wmullins@bakerandmiller.com](mailto:wmullins@bakerandmiller.com). If I am unavailable, you may contact Crystal Zorbaugh at 202-663-7831 or via email at [czorbaugh@bakerandmiller.com](mailto:czorbaugh@bakerandmiller.com).

Respectfully submitted,

/s/ *William A. Mullins*

William A. Mullins  
Attorney for Flats Industrial Inc., a Delaware corporation  
doing business as Flats Industrial Railroad Company

Enclosures

**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC**

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**AB-1327X**

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**FLATS INDUSTRIAL RAILROAD COMPANY  
– ABANDONMENT EXEMPTION –  
IN CLEVELAND, OHIO**

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**INFORMATION REQUIRED BY 49 CFR 1152.27(a)**

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**January 19, 2023**

**Attorneys for Flats Industrial Inc., a  
Delaware corporation doing business as  
Flats Industrial Railroad Company**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC**

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**AB-1327X**

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Flats Industrial Inc., a Delaware corporation doing business as Flats Industrial Railroad Company (“FIR”),<sup>1</sup> is hereby providing Werner G. Smith, Inc. (“WGS”) and the Surface Transportation Board with the information required by 49 CFR 1152.27(a). On October 11, 2022, FIR filed a verified notice of exemption to to abandon rail service over approximately 1.85 miles of rail line, extending from Milepost 10 to Milepost 11.85 (near West 41<sup>st</sup> Street) in Cleveland, OH (the “Line”).<sup>2</sup> Notice of the abandonment was issued on October 30, 2022. The exemption was scheduled to become effective on November 30, 2022, but WGS filed a formal expression of intent to file an offer of financial assistance (“OFA”) to subsidize a portion of the Line, from milepost 11.85 to the WGS facility. The filing of the notice of intent automatically stayed the effective date of the exemption until December 10, 2022.

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<sup>1</sup> FIR was incorporated on August 21, 1996, but amended its corporate name to Flats Industrial, Inc. on February 26, 2002. For consistency with prior Surface Transportation Board decisions, the entity abandoning the Line is referred to as Flats Industrial Railroad Company or FIR.

<sup>2</sup> In 1996, FIR became a Class III carrier when it acquired a 4-mile rail line from Conrail that extended north from Knob (milepost 14.0) to the Flats area of Cleveland, OH (Milepost 10.0). See Flats Industrial Railroad Company – Acquisition and Operation Exemption – Consolidated Rail Corporation, FD 33044 (STB served Oct. 11, 1996).

At the same time, WGS requested FIR to provide the information required by 49 CFR 1152.27(a). Because FIR had not operated in over two years, had only one part-time employee, and given the holidays, FIR informed WIS that it needed additional time to gather the required information. With FIR's consent, WGS, on November 22, 2022, filed a petition to toll the OFA filing for 60 days. By decision served November 29, 2022, the Director of Proceedings granted the request. Accordingly, WGS's OFA is due January 29, 2023.

As FIR is a very small family-owned company with only one part-time employee remaining and the railroad was not the primary business of the family, FIR retained the services of Mr. Bruce Carswell, whose curriculum vitae is attached as Exhibit 1, to gather as much of the required information as possible, to analyze the material, and to develop the required subsidy amount and rehabilitation costs. He was assisted by several financial, legal, and real estate advisors to the company, as well as the one part-time employee. Based upon his analysis, FIR provides the following information in compliance with 49 CFR 1152.27(a).

**1152.27(a)(1)(ii) - an estimate of the annual subsidy**

Based upon the information that is available<sup>3</sup> and applying that information in accordance with 49 CFR 1152.36, Mr. Carswell estimates that the annual subsidy amount would be \$3,420,938.13. Following the requirements of 49 CFR 1152.36, as applicable given the available information, his estimate was calculated as follows:

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<sup>3</sup> Pursuant to 49 CFR 1152.27(d), FIR did not maintain or keep the types of all of the types of documents or accounts that would have been used in preparing Exhibit 1(49 CFR 1152.36) had an abandonment or discontinuance application been filed. As such, Mr. Carswell relied upon "other records, reports, and data in the possession of the carrier" to provide as much comparable data as possible. All of the records, reports, and data relied upon by Mr. Carswell are being produced to WGS subject to the Protective Order issued in this proceeding. Furthermore, Mr. Carswell makes no opinion as to the quality of title and value of the real estate underlying the Line. For the underlying real estate, Mr. Carswell relied upon the legal and valuation opinions of others for purposes of his subsidy calculation.

**Flats Industrial Railroad**

§1152.36 Submission of Revenue and Cost Data

| Base year operations                                                           | Forecast year operations | Projected subsidy year operations |  |
|--------------------------------------------------------------------------------|--------------------------|-----------------------------------|--|
| Revenues attributable for:                                                     |                          |                                   |  |
| 1. Freight originated and/or terminated on branch                              | 10,800.00                |                                   |  |
| 2. Bridge traffic                                                              | -                        |                                   |  |
| 3. All other revenue and income                                                | 7,433.28                 |                                   |  |
| 4. Total revenues attributable (lines 1 through 3)                             | <b>18,233.28</b>         |                                   |  |
| Avoidable costs for:                                                           |                          |                                   |  |
| 5. On-branch costs (lines 5a through 5k)                                       | <b>431,382.06</b>        |                                   |  |
| a. Maintenance of way and structures                                           | 16,872.63                |                                   |  |
| b. Maintenance of equipment                                                    | 19,538.00                |                                   |  |
| c. Transportation                                                              | 267,537.42               |                                   |  |
| d. General administrative                                                      | 96,066.57                |                                   |  |
| e. Deadheading, taxi, and hotel                                                | 4,960.82                 |                                   |  |
| f. Overhead movement                                                           | -                        |                                   |  |
| g. Freight car costs (other than return on freight cars)                       | 684.85                   |                                   |  |
| h. Return on value-locomotives                                                 | 23,332.50                |                                   |  |
| i. Return on value-freight cars                                                | -                        |                                   |  |
| j. Revenue taxes                                                               | 174.00                   |                                   |  |
| k. Property taxes                                                              | 2,215.28                 |                                   |  |
| 6. Off-branch costs                                                            | -                        |                                   |  |
| a. Off-branch costs (other than return on freight cars)                        | -                        |                                   |  |
| b. Return on value-freight cars                                                |                          |                                   |  |
| 7. Total avoidable costs (line 5 plus line 6)                                  | <b>431,382.06</b>        |                                   |  |
| Subsidization costs for:                                                       |                          |                                   |  |
| <a href="#">8. Rehabilitation 1</a>                                            | 353,571.47               |                                   |  |
| <a href="#">9. Administration costs (subsidy year only) 2</a>                  | 12,000.00                |                                   |  |
| <a href="#">10. Casualty reserve account 2</a>                                 |                          |                                   |  |
| 11. Total subsidization costs (lines 8 through 10)                             | 365,571.47               |                                   |  |
| Return on value:                                                               |                          |                                   |  |
| 12. Valuation of property (lines 12a through 12c)                              | <b>25,479,439.61</b>     |                                   |  |
| a. Working capital                                                             | 25,000.00                |                                   |  |
| b. Income tax consequences                                                     | -                        |                                   |  |
| c. Net liquidation value                                                       | 25,454,439.61            |                                   |  |
| 13. Nominal rate of return                                                     | 10.37%                   |                                   |  |
| <a href="#">14. Nominal return on value (line 12 times line 13) 3</a>          | 2,642,217.89             |                                   |  |
| 15. Holding gain (loss)                                                        | -                        |                                   |  |
| <a href="#">16. Total return on value (line 14 minus line 15) 3</a>            | 2,642,217.89             |                                   |  |
| 17. Avoidable loss from operations (line 4 minus line 7)                       | (413,148.78)             |                                   |  |
| 18. Estimated forecast year loss from operations (line 4 minus lines 7 and 16) | (3,055,366.66)           |                                   |  |
| 19. Estimated subsidy (line 4 minus lines 7, 11 and 16)                        | <b>(3,420,938.13)</b>    |                                   |  |

**1152.27(a)(2) - most recent reports on the physical condition of the involved line**

There were no recent reports on the physical condition of the line. Based upon conversations, photos, and inventory reports (which are being produced), Mr. Carswell was able to develop an opinion as to the physical condition of the line and the costs of rehabilitation. Mr. Carswell estimates that it would take \$353,571 to rehabilitate the Line to Federal Railroad Administration class 1 safety standards (49 CFR part 213).

**1152.27(a)(3) - traffic, revenue, and other data necessary to determine the amount of annual financial assistance that would be required to continue rail transportation over that part of the railroad line. . . include[ing] the carrier's estimate of the net liquidation value of the line, with supporting data reflecting available real estate appraisals, assessments of the quality and quantity of track materials in the line, and removal cost estimates (including the cost of transporting removed materials to point of sale or point of storage for relay use), and, given that WGS has made an offer of subsidy, an estimate of the cost of rehabilitating the line to Federal Railroad Administration class 1 Safety Standards.**

All supporting information relied upon by Mr. Carswell is being produced as part of this filing as Exhibits 2, 3, and 4. Exhibit 2 is being produced under the Protective Order as Confidential Information. Exhibit 3 contains Highly Confidential Information. Exhibit 4 contains Public information, including deed information which FIR researched and is producing at its own costs, even though it was not legally obligated to do so. Based upon the information contained in the exhibits, and without the benefit of further analysis or studies, which may be required if the Board is requested to set the terms and conditions of any subsidies, Mr. Carswell's subsidy estimate was calculated in accordance with 49 CFR 1152.36 as best he could using this available information.

If there are any questions concerning this e-filing, please contact me by telephone at (202) 663-7823 or by e-mail at [wmullins@bakerandmiller.com](mailto:wmullins@bakerandmiller.com). If I am unavailable, you may contact Crystal Zorbaugh by telephone at (202) 663-7831 or by e-mail at [czorbaugh@bakerandmiller.com](mailto:czorbaugh@bakerandmiller.com).

Sincerely,

/s/ **William A. Mullins**

William A. Mullins

## CERTIFICATE OF SERVICE

I hereby certify that a true copy of Flats Industrial Inc., a Delaware corporation doing business as Flats Industrial Railroad Company response in the above-captioned proceeding was served by first-class mail, postage prepaid, or by a more expeditious manner, this 19<sup>th</sup> Day of January, on all Parties of Record.

/s/ **William A. Mullins**

William A. Mullins

Attorney for Flats Industrial Inc., a Delaware corporation  
doing business as Flats Industrial Railroad Company

**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC**

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**AB-1327X**

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**FLATS INDUSTRIAL RAILROAD COMPANY  
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**EXHIBIT 1**

**CURRICULUM VITAE OF MR. BRUCE CARSWELL (PUBLIC)**

**BRUCE CARSWELL**

14807 Joliet Avenue, Lubbock, TX 79423 | (575)361-1810 | lonestarrail@yahoo.com

**EDUCATION**

University of Idaho

**Bachelor of Science, Civil Engineering****1985****CONTINUING EDUCATION**

Harvard Business School

**Program for Management Development****2005****PROFESSIONAL EXPERIENCE**

Lone Star Rail Solutions, LLC

**Principal**

Consult with companies on matters pertaining to railroad activities. Specific services include project management, government affairs, operational/financial evaluations, FRA Compliance, and mechanical inspections, and due diligence.

**April 2021 to Present**

Jaguar Transport Holdings

**Senior Vice President**

Involved in due diligence, obtaining and administering grant funding agreements, capital expenditure, planning and tracking, government affairs, and assisting operations and FRA compliance on an as needed basis

**February 2021 to Present****Vice President of Operations**

Managing operations of five shortline railroads acquired from The Western Group

**November 2020 to February 2020**

The Western Group

**Senior Vice President**

Managed operations of six shortline railroads plus railroad track maintenance and construction company. Executed significant turnaround in safety and financial performance. Spearheaded growth plan that added two additional railroads to portfolio via competitive proposal process. Responsible for managing company sale process for sole proprietor owner including, management presentations and proposal evaluation process, liaison between transaction team (external legal, accounting, and investment banking consultants) and prospective buyers, field due diligence, financial modeling, environmental testing and resolution processes.

**October 2014 to November 2020**

Permian Basin Railways

**Vice President - Permian Basin Logistics**

Primary commercial officer managing unprecedented growth due to dramatic increase in oilfield activities. Work with new customers on planning and design of multiple multimillion dollar facilities. Develop and implement operational plans to provide substantial increase in rail service to handle six-fold increase in rail traffic. Develop pricing models to ensure maximum return on new freight traffic. Railroads received ASLRRA Marketing award in 2013.

**July 2012 to October 2014****General Manager**

Manage two shortline railroads comprising 250 route miles: including operations, marketing, government affairs, safety and compliance. Work as part of corporate team to ensure proper execution of \$18 million rehabilitation project funded by a Federal RRIF loan. Oversee parent company locomotive management and planning issues.

**July 2009 to July 2012**

Pacific Rail Solutions, LLC

**Principal**

Consult with companies on matters pertaining to railroad activities. Specific services include project management, government affairs, operational/financial evaluations, and due diligence. Wrote successful grant application for a \$3.0m rail line rehabilitation project funded under Federal Stimulus program. Served as part of the Oregon Department of Transportation's team conducting a comprehensive rail study assessing long term trends and associated strategies for the statewide rail network.

**November 2008 to December 2010**

## Portland &amp; Western Railroad (G&amp;W)

**Senior Vice President****August 2005 to October 2008**

Managed and oversaw all aspects of a 500mile regional railroad including: government affairs, marketing, financial reporting, operations, compliance and safety programs. Responsible for greatly improved relationships with Class 1 Railroads and state DOT.

Safety

- G&W Chairman's Awards for zero reportable injuries in 2006 and 2007. 2008 was also injury free. Involved in institution of DuPont safety process throughout G&W. Consecutive awards 2006-2008 from American Short line & Regional RR Association for safety, as well as Gold Harriman award in 2008.

Business development

- Successfully sited 110m gallon ethanol plant.
- Successfully negotiated with BNSF to institute a new interchange arrangement that resulted in major improvements for BNSF and new revenue for G&W.
- BNSF's National Short-line Award in 2007 for outstanding performance in marketing BNSF's franchise in Oregon.

Government affairs

- Efforts led to the receipt of \$25m from State of Oregon to upgrade rail infrastructure. Oversaw railroad's involvement in \$150m project establishing first commuter rail operation in Oregon on 15 miles of G&W's network.

## Australian Railroad Group (G&amp;W)

**National Equipment Manager****August 2001 to August 2005**

Seconded by Genesee & Wyoming to serve on senior management team for one of the largest government railroad privatizations in Australia.

Duties included:

- Financial and operational management of ARG's rolling stock fleet of 200 locomotives and 5000 freight cars.
- Organized major restructure of former government railway maintenance operation, rationalizing shops, personnel, and contractors.
- Significant role in companywide safety improvement initiative, reducing Lost Time Injury ratio from 30 to 5 in less than three years.
- Developed and managed major locomotive overhaul program modernizing 25% of ARG's fleet by the end of 2005.
- Established very successful maintenance operation, supporting construction trains on project that built 1400km of new railway from Alice Springs to Darwin. Interim Regional Manager managing rail operations in central Australia including construction train operations on Alice Springs to Darwin railway project.

## Portland &amp; Western Railroad/Willamette &amp; Pacific Railroad (G&amp;W)

**Vice President/General Manager****December 1997 to August 2001**

Serving as senior manager with responsibility for all operational activities including maintenance of way, operations, mechanical, customer service, and marketing. Participated in the parent company's acquisition due diligence efforts both domestically and internationally. Served on the startup team for two separate large railroad acquisitions in Australia.

## Portland &amp; Western Railroad/Willamette &amp; Pacific Railroad (G&amp;W)

**Manager Motive Power & Equipment****January 1993 to December 1997**

Managed equipment maintenance activity for regional railroad. Served on startup team and developed all maintenance standards, performance monitoring, inventory control, and budgets. Designed and supervised construction of locomotive shop. Spearheaded acquisition of entire locomotive fleet that totaled 30 units by 2001. Managed major overhauls in house as well as major upgrades by third party contractors. This included acquisition and rebuild of two mother slugs sets for high tractive effort service on aggregate trains and mountain grade operations.

## Morrison Knudsen Company, Inc.

**Project Engineer****January 1992 to January 1993**

Senior mechanical engineer on large locomotive project for Burlington Northern. Supervised and coordinated multiple engineering disciplines and directed shop construction activity. Managed large engineering team engaged in development of new 5000 HP freight locomotive.

**Shop Superintendent**

Served as local manager establishing MK's first lease maintenance operation on Utah Railway. Hired staff, established complete management processes, and developed reporting protocols. Managed running maintenance activity for 14 locomotive fleet engaged in heavy coal haul service over one of the steepest mountain grade territories in western US.

**March 1991 to January 1992**

**Design Engineer/Estimator**

Served on Estimating and preliminary engineering team for MK's shops in Boise, ID, Hornell, NY, and Mountaintop, PA. Evaluated requests for proposals, developed estimates and proposals, and coordinated with manufacturing on awarded projects. Coordinated closely with finance and accounting to ensure accurate costing structure was developed on mechanical engineering and fabrication activities.

**August 1988 to March 1991**

Gunderson Railcar (Greenbriar)

**Railcar Designer**

Railcar designer working on mechanical engineering team at large freight railcar manufacturing plant. Served as liaison between engineering and manufacturing. Participated in significant achievement in transitioning to Computer Aided Drafting system. Also served as primary designer on two prototype railcar designs including bulkhead flatcar and last generation stock car.

**July 1987 to August 1988**

## RELATED EXPERIENCE

American Shortline and Regional Railroad Association

**Central Region Board Member**

Serve as a member of the Board of Directors for ASLRRA, reviewing and advising staff on operational and financial matters. Also serve on ASLRRA's Small Railroad Committee advocating within the Association for smaller railroads' perspective on various operation and government affairs challenges.

Sumpter Valley Railroad

**Board Member and President**

Serve on Board of Directors and was elected president of steam powered narrow gauge tourist railroad in eastern Oregon. Oversaw several successful grant applications totaling nearly \$2.0m dollars which was used to reconstruct 3 miles of roadbed and track, purchase and rebuild an 1890 coach, and restore a 1920 2-8-2 steam locomotive.

Sumpter Valley Railroad

**Engineer, Fireman, and Conductor (Volunteer)**

Steam qualified operating crew member on narrow gauge tourist railroad.

**November 2021 – Present**

**January 1987 – February 1993**

**December 1982 – August 1997**

Oregon Rail Advisory Committee

**Member, Chair (2021-Present)**

Appointed to committee tasked with advising Oregon Department of Transportation on rail policy matters. The RAC also evaluates state funding of projects funded by state programs including Connect Oregon multimodal investment program.

**2005 to Present**

## PUBLISHED PAPERS

Served on Team that produced Oregon State Rail Study (2010) under prime contractor Parsons Brinkerhoff. My specific assignment was developing sections on Shortline Railroads, adjacent land use planning, and commuter rail on freight railroads.

## MEMBERSHIPS

Small Railroad Committee, American Shortline & Regional Railroad Committee (ASLRRA)

Regional VP and BOD member, Pacific Region ASLRRA (2008-2009)

BOD member, Central Region ASLRRA (2021-Present)

Current Member Kansas Freight Advisory Committee

Current Member New Mexico Freight Advisory Committee

Past Member Texas State Rail Plan Steering Committee

**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC**

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**AB-1327X**

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**FLATS INDUSTRIAL RAILROAD COMPANY  
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IN CLEVELAND, OHIO**

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**INFORMATION REQUIRED BY 49 CFR 1152.27(a)**

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**EXHIBIT 2**

**SUPPORTING INFORMATION AND WORKPAPERS  
CONFIDENTIAL MATERIALS**

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**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC**

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**AB-1327X**

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**FLATS INDUSTRIAL RAILROAD COMPANY  
– ABANDONMENT EXEMPTION –  
IN CLEVELAND, OHIO**

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**INFORMATION REQUIRED BY 49 CFR 1152.27(a)**

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**EXHIBIT 3**

**SUPPORTING INFORMATION AND WORKPAPERS –  
HIGHLY CONFIDENTIAL MATERIALS**

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**BEFORE THE  
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**AB-1327X**

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**FLATS INDUSTRIAL RAILROAD COMPANY  
– ABANDONMENT EXEMPTION –  
IN CLEVELAND, OHIO**

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**INFORMATION REQUIRED BY 49 CFR 1152.27(a)**

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**EXHIBIT 4**

**SUPPORTING INFORMATION AND WORKPAPERS –  
PUBLIC MATERIALS**



U.S. Department of Transportation  
**Federal Transit Administration**

# VALUATION OF RAILROAD RIGHT OF WAY

FEDERAL TRANSIT ADMINISTRATION

Office of Program Management (TPM)

Washington, DC

## VALUATION OF RAILROAD RIGHT OF WAY

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## VALUATION OF RAILROAD RIGHT OF WAY

### RECOMMENDATIONS SUMMARY

The Federal Transit Administration (FTA) should evaluate the following when a grantee is considering the possibility of acquiring a property interest, or some similar type of agreement, for the use of or an accommodation within the right of way (ROW) owned by a railroad:

1. Require a grantee to prepare a detailed valuation or appraisal scope of work (SOW) prior to making an assignment to an appraiser or other entity qualified to undertake such a project, including references to specific requirements in the Recommendations section of this paper. FTA should review and concur in the appraisal SOW and the qualifications of the appraiser recommended by the grantee to undertake the assignment.
2. If the railroad corridor is subject to the jurisdiction of Federal Surface Transportation Board (STB) requirements, a railroad specialist report must be procured by the grantee to determine the possible legal uses of or limitations on the existing right of way for transit applications. This report will be incorporated into the aforementioned appraisal SOW to facilitate determination of the highest and best use of the existing railroad corridor by the appraiser.
3. Expand this study to include an analysis of transactions from the STB database involving inter-railroad mergers and acquisitions to compile meaningful private sector market data relative to the valuation of railroad real property assets. This research will address whether relevant open and arms length market sales of rail corridors or interests therein exist and/or will assist in determining the relevancy of such data to the railroad corridor valuation process by transit grantees.
4. Consider further research regarding the acceptability, viability and any obstacles regarding the use of alternative existing linear ROW corridors that could accommodate a transit facility such as those presently used for:
  - electrical power transmission,
  - pipeline transmission,
  - surface drainage, and
  - highways
5. Keep FTA grantees informed regarding the availability and implementation of nonbinding mediation that is available as the result of Section 401 of Title IV of the “Passenger Rail Investment and Improvement Act of 2008”. This Section requires “Commuter Rail Mediation” to be made available by the STB to assist a grantee to resolve a disagreement related to a proposed passenger commuter rail accommodation in an existing railroad ROW corridor. This alternative dispute resolution initiative, may enhance the importance for transit grantees to procure objective, well documented railroad ROW valuation/appraisal reports, and should facilitate earlier reasonable agreements with railroad corridor owners.

(Please see individual detailed discussions and conclusions regarding these Recommendations in related sections of the report).

## **PROBLEM STATEMENT**

On occasion, FTA grantees are required to estimate a value of property that is now or previously has been utilized as an operating railroad right of way. This occurs when a project sponsor or grantee has proposed direct project Federal-aid reimbursement for property to be acquired for a project or where credits to the State or local matching share are requested in return for an in-kind contribution of property already owned to the project. Ownership of such land could involve varying property interests usually ranging from a lease, a perpetual or long-term easement, to fee simple title. The property may or may not be an element of an operating railroad ROW. Since an existing longitudinal ROW corridor is a unique property ownership situation, there is no single generally accepted method of valuing such property. In fact, the variables that must be considered are sufficiently unique as to allow for various approaches to value, depending upon the defined SOW for the appraisal problem.

Where real estate procurement or relocation assistance occurs on a federally funded project involving the acquisition of railroad property, the requirements of the following may be applicable.

- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA)
- URA implementing regulations at Title 49 CFR Part 24
- FTA Circular 5010.1E, effective March 21, 2017
- FTA Final Guidance on the Application of 49 U.S.C. § 5323(q) to Corridor Preservation for a Transit Project effective on November 12, 2014
- Other guidance, as applicable

## **TYPICAL CONSIDERATIONS IN THE VALUATION OF RAILROAD CORRIDORS**

Section 3024 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: Legacy for Users (SAFETEA-LU) amended Federal transit law by adding a new provision at

49 U.S.C. 5324(c) that allows FTA, under certain conditions, to assist in the acquisition of pre-existing railroad right-of-way (ROW) before the completion of an environmental review of any transportation project that will eventually be built on that ROW.

FTA issued its final implementation policy on this, which is available on its website at:

**[HTTPS://WWW.TRANSIT.DOT.GOV/SITES/FTA.DOT.GOV/FILES/DOCS/FINAL CORR PRES GUIDANCE FINAL 10-27-2014.PDF](https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/final_corr_pres_guidance_final_10-27-2014.pdf)**

As was noted previously, this authority was expanded by the 21st Century Act (MAP-21) amending Federal transit law by adding a new provision at 49 U.S.C. § 5323(q) that allows the Federal Transit Administration (FTA), under certain conditions, to assist in the acquisition of right-of-way (ROW) before the completion of the environmental review process under the National Environmental Policy Act (NEPA) for any transit project that eventually will use that ROW. MAP-21 did not, however, change the prohibition on the acquisition of real property that is not “right-of-way” prior to the completion of the environmental review process for the transit project unless conditions for certain exceptions (hardship and protective acquisitions) are met.

The additional flexibility afforded by the new provision at 49 U.S.C. § 5323(q), potentially can be utilized in conjunction with a railroad corridor acquisition for a transit project. FTA defines ROW for the purpose of corridor preservation under this provision to be any real property interest in a linear configuration needed for a core capacity improvement project.

In relation to an existing railroad corridor acquisition, real property interests needed for station footprints (i.e., all real property interests needed for the operation of the station), such as, but not limited to: platforms, tail tracks, bus transfer areas, and park-and-ride lots) would be eligible for early acquisition under this expanded authority. FTA issued its final implementation policy on this new authority, which is available on its website at:

[http://www.fta.dot.gov/documents/Final\\_Corr\\_Pres\\_Guidance\\_FINAL\\_10-27-2014.pdf](http://www.fta.dot.gov/documents/Final_Corr_Pres_Guidance_FINAL_10-27-2014.pdf)

These policies, collectively can be helpful in terms of navigating the planning and environmental clearances that are required to accomplish an early acquisition of a railroad corridor. The requirements related to real estate acquisition and relocation assistance as recited in the previous section are all applicable. Additionally, the following 11 considerations are also in the context of the required valuation of a railroad corridor.

The situations and circumstances of railroad corridor can vary greatly with regard to any applicable to such early acquisitions number of basic elements. For example, the following illustrate the diversity of the appraisal problem:

1. Was the original ROW acquired in fee, or by easement, or by some combination of both?
2. A title search of the existing ownership documentation will be accomplished for the property to be acquired. This will determine the owner’s interest in the property and if an appropriate interest therein can be conveyed for transit use. If there is a reversion clause in an earlier conveyance document, the title search will reveal the detailed circumstances related thereto.

3. If there is a reversion clause, what uses could continue if the property was conveyed for transit use or other purposes, and what joint uses would be allowed?
4. Are there existing utility or transmission lines located in the ROW? If so, what rights of continuance do these facilities have, and what impact do they have on value, generally and specifically for a transit application?
5. Are there any railroad owned lands involved that are outside the normal operational railroad ROW that are used for railroad stations, maintenance facilities, industrial uses related to railroad freight/passenger operations, or other uses, and what property interest is owned in such areas?
6. Are there any sites within the corridor to be appraised that are used, or may be used as sites for the erection of outdoor advertising signs and which may potentially generate revenue?
7. Does the airspace above or subterranean interests below the surface have value in relation to the property interests required for the transit project, and does the railroad own such rights?
8. Do existing railroad improvements have contributory value for transit use?
9. Further, in cases where an existing railroad corridor is proposed to coexist with transit operations, it is not unusual that existing operating facilities may need adjustment to either preserve existing capacity and/or for safety reasons. Such “cost to cure” expenses may be considered in the valuation process so long as the costs were reasonable, necessary and do not exceed the value of property damages that may otherwise occur.
10. Has the grantee delineated the minimum real estate/ROW needed for the project and does the FTA agree with that determination, which has been documented with maps, legal descriptions, proposed design/construction limits, adjustments of existing rail facilities, etc., and will this information be provided to the real estate appraiser as an appraisal SOW requirement?
11. Due diligence related to any property acquisition will require that an environmental site assessment of the property will be made and that information provided to the real estate appraiser as part of the appraisal SOW.

The traditional definition of market value may be of little use in these situations, as an operating or unused railroad corridor property is not typically sold in the open market. The value of the land can be estimated using a variety of assumptions and approaches, any of which may present serious challenges for the appraiser. Depending upon what specific assumptions are set out in the problem statement or appraisal SOW, a dramatic divergence in property values may result. Thus, the FTA provides appraisal guidelines specifically applicable to valuation of existing railroad ROW. The objective is to achieve consistent and reliable valuation outcomes in similar railroad ROW procurement situations.

When it is apparent the purchase of an existing railroad ROW corridor is a viable option, a railroad specialist's report should be procured and can be specified as part of the appraisal SOW. This report as a minimum should address the following:

- STB regulation applicable to the railroad corridor regarding existing and future rail operation thereof,
- inventory and analysis of the existing physical conditions of the corridor, including all railroad improvements as to whether they have potential application for transit use, and
- analyze the existing capacity of the corridor, current use thereof and capacity available for transit operations.

This specialists report should be obtained by or provided to the property appraiser for consideration in the analysis of the highest and best use (HBU) as required in the appraisal assignment.

The appraisal problem/assignment for valuing railroad ROW will likely be quite different, depending on whether the ROW is currently unused or abandoned, or whether it is operational. This paper will look at these two situations from a point of view that makes the most sense as to valuation techniques employed. There seems to be more differences than similarities in transactions involving the valuation of railroad ROW. The process used and valuation techniques employed must be well understood, and sufficiently flexible to deal with the myriad of situations and variables than can occur.

## **UNUSED, ABANDONED, OR BANKRUPT RAILROAD RIGHT OF WAY**

### **Historical Background**

Over the past 20 to 30 years, numerous individual State court proceedings have been undertaken to establish the value of unused or abandoned railroad and utility corridors. After reviewing many of these court decisions, there is no evidence of any clearly defined trend in valuation that can be determined. Each of the individual cases is so unique as to render any similarity between cases as almost indefinable. Not only were the trial issues varied and unique, but the different court decisions place varying emphasis and degrees of weight on pertinent elements of the case under review.

By far, the most relevant court decision on valuation occurred in the mid 1970's in response to the issues raised and related to the Federal Regional Rail Reorganization Act of 1973. This Congressional Act transferred the property of several bankrupt Northeast railroads (including the Penn Central) to establish CONRAIL. A Special Court was convened to hear testimony, and determine property value of the bankrupt railroad ROW. This Special Court was headed by

three prominent Federal court judges, who considered extensive testimony and handed down findings in this valuation effort. Many of these findings are considered landmark decisions, which are still valid today.

### **Miscellaneous Background Issues**

Some basic issues, which tend to cloud the wide variety of corridor valuation concerns include:

- reversion clauses,
- existing utility or transmission line corridors, outdoor advertising signs, or other uses that may exist within the railroad corridor
- assemblage value or corridor enhancement factors (CEF),
- potential future corridor uses and
- STB regulatory status and applicability.

Reversion clauses, depending upon the property interest that was originally acquired for the railroad ROW, easement acquisitions may contain a clause that upon termination of the railroad use, the underlying fee ownership would revert to the original owner. This could potentially have a major impact on overall value of the property when trying to estimate value of the corridor no longer being actively used as a railroad. Although this is a sensitive issue, several courts have ruled that these reversion clauses are of limited applicability due to the inherent public interest in these corridors for either trails or open space. This public interest factor has effectively overridden reversion clause provisions.

Additionally, these longitudinal corridors continue to have the potential for unforeseen future use, which would render the dissemination of the corridor to be poor public policy. The bottom line is that reversion clauses are seldom enforceable.

Existing utility or transmission lines located within the railroad ROW may be a complicating issue, which could have an impact on land values. There is no limit to the manner in which these “corridors within the corridor” may be situated, or the varying rights to exist that may be in effect. A title search is required by the grantee of the property to be acquired and provided to the appraiser. The railroad may also share its records or maps documenting ownership interests and locations thereof. Based on this information, the appraiser would have to determine what utility or transmission rights are in existence, and determine what impacts these rights may have on value. This issue would have to be set out and addressed in the appraisal assignment SOW.

These so-called corridors within the railroad corridor ROW may have the effect of either increasing the value, as the result of the additional revenue generated or diminishing value as certain uses may be restricted due to the legal and physical constraints created by the presence

of the utility facilities. This issue will necessarily be addressed in the appraisal SOW and the appraiser will be tasked with analyzing the valuation impact, if any.

Of all the complicating valuation issues, perhaps the most contentious is the application of assemblage value. The assemblage value is the incremental result of applying a “corridor multiplier” or “corridor enhancement factor.” This factor is applied to the base property value to take into account the extra cost, time and inconvenience of putting together a linear corridor, which is often expressed as a total property value exceeding the sum of its parts. Assemblage value is a well-known and accepted appraisal principle, which has validity in specific situations. When it comes to valuing a railroad corridor that is no longer being used by an operating railroad, assemblage value has been hotly debated in both academic literature and court findings. Specifics regarding this concept will be discussed in detail later in this paper.

In addition to the aforementioned preservation or banking of existing unused corridors for future use, (with interim use as trails for public use) there are other considerations for future uses. For example, what is the future use potential of the existing corridor for its continued use as an operating railroad. Given the status of railroad ROW in this category (Unused, Abandoned, or Bankrupt Railroad Right of Way), it would be doubtful that it would be subject to STB regulation, which would simplify the appraisal highest and best use analysis. The lack of STB control would also simplify or remove obligations to continue rail service in the corridor.

If the line is rarely used or not operational, it may be possible that the transit grantee could petition the STB for involuntary abandonment of the line. Elimination of STB control through this process can greatly simplify the acquisition process and possibly lower costs. This may be an element to be considered in the context of the railroad specialist report previously discussed and mediation under the auspices of the STB as discussed later.

Is there existing capacity remaining for future operations and/or the addition of transit? Will modifications have to be made in existing operations or facilities to accommodate transit project? Research of this background information will have to be undertaken by either the grantee or the appraiser or possibly in a joint effort by both. This again would be addressed in the appraisal SOW, that the information either will be provided by the grantee or researched by the appraiser or by other railroad specialist’s analysis reports in the valuation assignment.

## **Literature Search**

A literature search on the topic of valuation of unused, abandoned, or railroad ROW of bankrupt companies over the past twenty years, has not turned up much activity, and much that has been written is often contradictory. When trying to value unused railroad ROW, the traditional appraisal rules and approaches do not usually apply, as most authors describe the

valuation problem as being monopolistic rather than open market. One would have to agree that open and “arms length” market sales may not exist, and that accepted appraisal valuation techniques might not be entirely applicable. One of the few items that most authors seem to agree on is that none of the traditional appraisal approaches (market, cost, and income) can be relied on in this valuation matter. That being said, it is easy to see how controversial valuation methodologies can become.

### **Valuation Approaches**

After careful consideration of the available literature and the findings of relevant court cases, there seems to be four basic approaches that may be applicable to valuing unused railroad right of way:

1. Liquidation value,
2. Across the fence value (ATF),
3. ATF value plus assemblage value,
4. Replacement cost.

These four approaches will usually result in widely varying end point estimates of value, and any of the four would be valid depending on the definition of value that is being estimated. In virtually every given situation, the liquidation approach would yield the lowest value estimate; across the fence would yield the next highest; across the fence plus assemblage or corridor enhancement factor (CEF) would be higher still; and replacement cost would usually yield the highest value estimate.

1. The Liquidation Value Approach assumes that the existing ROW is to be divided and disposed to whoever is willing to purchase the property for the highest price. In most instances, this would be the abutting owner, but not necessarily. One would have to consider that many abutting property owners would have no economic need for the land, and may actually view the land as a negative value considering the additional cost of maintenance, general liability and property taxes. It is quite likely that these narrow strips of railroad land would only have value to the abutter and only in those situations where it could be put to some incremental use. This would seemingly only occur where expansion of the abutting use was valuable, such as in cases where additional parking, storage, or other expansion were needed or desired. Most of the time, the abutting uses have developed without any consideration of expansion onto the railroad ROW, and its new found availability does not have the potential to add much, if any, value. In utilizing this approach, the appraiser would have to analyze the corridor in relatively small segments to determine what the level of benefit might be for potential purchasers.
2. The Across the Fence (ATF) Approach to corridor value would tend to be higher than the liquidation value. Under this approach, the appraiser would assume that the value of the unused railroad property would be similar to the value of the adjacent land located

outside the corridor, regardless of the incremental benefit that the railroad land might have. This is a somewhat straightforward approach, and one that most appraisers would be comfortable in utilizing, as market data would generally be available. The level of reliability of values obtained would probably be the most supportable of the four approaches.

As an example, if the railroad ROW was situated adjacent to agricultural lands selling for a unit value of \$5,000/acre, it can be inferred that the railroad ROW also has a value of \$5,000/acre. On the other hand, if the corridor was passing through industrial lands selling for \$2.00/square foot, it can be inferred that the railroad ROW is also worth the same unit value. This valuation approach would ultimately be as complicated or as simple as the variety of lands adjacent to the railroad-owned property and the availability of market data to analyze.

3. The Across the Fence (ATF) Plus Corridor Enhancement Factor (CEF) Approach is the next approach that is deemed to have legitimate standing in terms of likely increasing value. This approach would utilize the ATF approach, and then multiply that result by a developed factor to take into account the assemblage value of the corridor. This approach assumes that the mere fact that all of the various parcels of land have been assembled into a unified linear purpose, adds some incremental measure of value due to the unique scarcity of the resource. There is little doubt that in the creation of the land corridor, a premium was paid in order to assemble the corridor. This premium is a combination of the significant added acquisition expenses, along with damages paid for remainder parcels reduced in value during the acquisition/assemblage.
4. The approach that would usually yield the highest value estimate is known as the Replacement Cost Approach, and represents an estimate of what it would cost to assemble a new corridor. In this approach, one would have to consider all the costs associated with the purchase of a new corridor (this would include all direct costs for land, improvements, any property damages due to partial acquisitions, relocation assistance, all indirect costs (including overhead), and as well taking into account obstacles that may have to be overcome. Such obstacles may include public opposition to the project or other specific changes causing socio-economic impact or disruption.

Of particular relevance are all of the existing environmental laws that are currently in place. Many of the existing longitudinal railroad corridors were purchased prior to the emergence of the environmental movement, and were able to incorporate properties which were of little value at the time, but which currently have some level of protected status (such as “wetlands”).

## Analysis

Of the four possible approaches to value listed above, only the “ATF” approach and the “ATF plus assemblage factor” or CEF approach appear to be reasonable for FTA valuation reimbursement of an unused or abandoned railroad ROW corridor. The guiding principle of the

whole endeavor is to arrive at a fair and reasonable figure as to the value that represents just compensation for the required transit interest in the property. This means that the value estimate must not be skewed towards the primary interest of either the current owner of the property or a potential purchaser of the property.

Of the four basic approaches to value, the liquidation value represents the lowest value viewpoint that a purchaser would likely try to pursue, which would place the seller in the least advantageous position. Likewise, the replacement cost approach would place the purchaser in the least advantageous position. These two approaches, while possibly valid in some situations, do not adhere to what most would consider relatively fair treatment of both a purchaser and seller, thus representing market value. Existing literature also tends to eliminate both the liquidation and the replacement cost approaches to value as representing fair and open market value, taking into account the positions of both a potential buyer and seller.

The remaining question is whether the most appropriate approach to valuing the property in an existing, but unused railroad corridor, is by the ATF approach or by the ATF plus assemblage factor-CEF approach. In arriving at a conclusion, a search of current literature indicates that there is no clear-cut consensus between these positions. Strong and sensible arguments can be made on both sides of the issue. After considering all available sources of opinion, it appears that for FTA purposes, the most reasonable approach would be the straight ATF value, without including any assemblage factor-CEF. This conclusion is based on two individual items of analysis:

1. Any assemblage factor-CEF would be speculative in nature, and subject to controversy. Although it is certainly fair to assume that an assemblage factor-CEF may be present, there is no consensus as to how such a factor would be determined. The fact that it would be difficult and controversial to establish an assemblage factor should not inherently dismiss such a factor as being relevant. However, the difficulty in arriving at such a factor does play into the development of valuation guidelines.
2. The most relevant guidance in determining the applicability of an assemblage factor-CEF in valuation comes from the findings of the Federal Special Court valuation case in the creation of CONRAIL. After careful and detailed consideration, in 1977 the Special Court rejected the application of assemblage value as a general rule. The Special Court did say that assemblage value would only be appropriate when there was a nonspeculative likelihood of sales in the private marketplace for amounts higher than those that could be realized by disassembling the ROW and selling it as separate parcels. This means that in order for assemblage value to be considered as an element of value, an appraiser would have to demonstrate that the marketplace would assign an assemblage factor-CEF in each particular instance.

Note: This may be justification for the expansion research in this area as recommended in the beginning of this paper. Such research would hopefully document and provide insight into, an improved understanding of, how private inter-railroad sales consider corridor enhancement as an element of value. Such research may justify the application of an enhancement factor and the magnitude thereof, based on actual market transactions, or conversely it may determine that it does not exist or is not relevant in all situations. A model for the application or non-application of a corridor enhancement factor and its relative magnitude would be quite useful for railroad ROW valuation purposes.

By rejecting the automatic inclusion of an assemblage factor-CEF as an element of corridor value, the Special Court essentially followed basic appraisal philosophy that any aspect of value should be able to be demonstrated in the marketplace. The mere likelihood of an assemblage factor-CEF is not sufficient to assume that it is present. If a CEF is to be utilized, there must be some legitimate market evidence of its presence.

### **Corridor Enhancement Factor Experiences**

One appraisal report done for an FTA grantee that had purchased an existing railroad ROW was examined in conjunction with this research report. This report and its value conclusion were recommended for approval by FTA. The appraisal analysis utilized and relied on the ATF plus Corridor Enhancement Factor approach described previously.

In this case, the appraiser undertook a nationwide search seeking sales of transportation corridors or operating rights, which had been acquired for transit development purposes. The sales that were utilized occurred during the period 1985 to 2002. The appraiser concluded that although the sales were not indicative of current pricing, the ratio of ATF value to the price paid remain valid despite the passage of time. The seven sales considered pertinent from the research, presented a factor range of 1.096 to 1.298 (Purchase Price/ATF Value=CEF), and the transaction average was calculated as 1.171, with the median as 1.158.

The appraiser selected and applied CEF of 1.150 as the corridor enhancement factor in this valuation (Example: ATF Value X 1.150 CEF = Estimated Value). The appraiser justified the application and the amount of the factor as reasonable, based on the fact that two of the transactions involved in this analysis involved the same railroad and transit grantee as in the transaction under appraisal.

It can be argued that the use of such data is flawed since these transactions are not necessarily market driven by parties that may not have property “highest and best use” (HBU) or the “greatest net return” as the prime motivation. Further, some of these transactions may have been under the threat of the power of eminent domain.

Conversely, if the railroad corridor was subject to STB regulation, the acquiring agency may not have had eminent domain authority in a given transaction. This condition may also influence the magnitude of the corridor enhancement factor. The CEF accuracy is dependant on numerous variables that must be considered, including, but not limited to the following:

- land uses involved
- land use density
- cost of adjusting facilities paid to owner
- cost of adjusting facilities undertaken or paid for by project
- accuracy of the ATF value
- STB regulation status

We believe that all of the transactions in this analysis were negotiated, and were not necessarily under the threat of condemnation. The “purist” valuation advocate would argue that the real test here is what another competing railroad company would pay for such corridor in relation to the ATF value. Such data does not seem readily available and is the topic of one of the recommendations regarding further research included in this report.

## **CERTIFICATION OF PROPERTY NECESSARY FOR THE PROJECT**

An additional consideration that falls into the physical characteristics category is the presence of any “out parcels” of property that will also be conveyed in the transaction. Over time and for a variety of reasons, many railroads have acquired parcels of property outside of the normal operating ROW corridor. Depending on the nature and possible use of these parcels for transit purposes, the transaction price or FTA participation value could be altered. These out parcels may, or may not, be dedicated directly to railroad usage. Again, whether such out parcels are needed and can be used for the transit project would require investigation and a determination by the grantee before the appraisal SOW is developed and the appraisal work is assigned.

This leads to another issue that must be addressed by the grantee prior to the appraisal assignment. The grantee must provide a certification of property necessary for the project. As discussed earlier, the property or ROW corridor being considered for purchase may involve interests in excess of that required for the project. FTA cannot consider such excess property for project reimbursement or credit. These excess property interests must be identified and excluded from the valuation by the grantee prior to obtaining the appraisal. Alternatively, the grantee may have the appraiser value the entire property and also value only the portion of the

larger parcel that will be devoted to the actual transit project under development and approved by the FTA.

The required transit agency survey/analysis of the physical features or improvements of the existing railroad corridor and the determinations discussed here must be documented with maps, legal descriptions, and the grantee's engineering design review and determination of necessity of acquiring specific real estate for the project. The transit agency survey/analysis must also address whether any of the existing railroad improvements or features of the existing corridor have any potential contributory value or negative value in relation to the HBU for transit use to be developed in the corridor. Again, this survey/analysis report necessarily must be provided to the appraiser and addressed in the appraisal SOW.

## Conclusion

When valuing abandoned or unused property within existing railroad corridors for FTA purposes, the proper methodology would be the basic across the fence approach. This value could be calculated in whatever increments are most reasonable depending upon the attributes of the adjacent properties. If any additional value is to be added due to either an assemblage factor/CEF, or due to some subsurface, air rights or other physical attribute, such additional value must be demonstrated as recognizable in the marketplace.

Even where it is not possible to document corridor enhancement from research of market data, it still may exist in an abstract sense and may come into play with a high-level grantee decision to proceed or not with the project. Such factors that can contribute to a corridor enhancement issue may include, but not be limited to the following:

1. There may not be a cost effective alternative to the use of an existing railroad corridor.
2. An environmentally satisfactory alternative that would be viable does not exist.
3. The overall public interest served by the project may come into consideration.

Setting out the above factors is not a responsibility of the appraiser, review appraiser, or the valuation process. Such factors may be appropriately considered in the context of an administrative settlement in accordance with Chapter IV of Circular 5010.1D and 49 CFR 24.102(i) of the URA Regulations.

The valuation process should only endeavor to document whether corridor enhancement exists based on market conditions, and then present this documented conclusion in the appraisal report. This concept should also be addressed in the appraisal SOW. Unfortunately, sometimes grantees expect appraisers to justify a value that really cannot be substantiated based on market actions or data. If one or more of the three elements listed above are involved, then grantee management should get involved and make/justify a decision that is in the overall public interest, relying on the appraised value as part of the basis for the decision.

## OPERATING RAILROAD RIGHT OF WAY

### Background

The variables to consider when estimating what a transit agency should pay or consider as value for a privately owned operating railroad ROW can be extensive and may be quite complicated. There have been numerous property sales and leases of railroad ROW to public transit agencies over the past twenty-five years; however, the circumstances of each transaction are seldom similar in critical aspects. As indicated previously, the relevant variables that are typically considered in these types of transactions fall into the general categories of:

- physical characteristics of and existing improvements within the corridor,
- motivations of the buyer and seller, and
- terms/conditions of the transaction.

### Most Significant Physical Characteristics

A summary of these characteristics are as follows:

1. length of corridor
2. width of corridor
3. number and condition of tracks
4. availability and condition of signalization system
5. presence of any “out parcels” of property
6. certification of only property necessary for the project

The length of the corridor being acquired is one of the major considerations in arriving at a transaction value. What has to be understood is that for transit purposes, up to a point, there is usually a premium paid for the greater length of ROW available. As a general rule, the greater length of a transit corridor, the more and varied the services that can be accommodated.

The width of the corridor can also be a major consideration. Once again, the greater the width available, the greater the opportunity to provide more services or expand the infrastructure at a reasonable cost. Depending of the width of the corridor, it might be possible to add another track or construct structures that will enhance the facility without incurring substantial ROW costs. A greater width may also facilitate the possible accommodation of utilities or other compatible transmission facilities.

Narrower corridors can create issues for the grantee, sometimes involving the cost of acquiring additional ROW, or possible increased construction costs of the transit project to accommodate the transit facilities. Alternatively, if freight and transit are using the same corridor, significant construction costs may be involved in the relocation or adjustment of the

existing freight or other rail facilities to accommodate the added transit operations if the ROW is narrow or constricted in certain areas.

The number and condition of the tracks in place may be a factor in arriving at an estimated transaction value. The corridor may contain a single track, dual track, or possibly several sets of tracks. Additionally, certain sections of the corridor may have had the track previously removed. If there are dual or more sets of tracks, as opposed to one set, the versatility of the corridor may be dramatically improved. Of course, not all track conditions may be equal, and the relative condition of the track could have a major impact on the transaction value.

Track that must be removed may only have a salvage value or a negative value depending of the net cost to remove it. Whether the existence of such tracks contributes value or is a detriment for transit HBU would require investigation and a determination by the grantee engineering staff. Such a survey/analysis as discussed later should be done prior to the appraisal assignment and that information should be referenced and included in the appraisal SOW.

One of the most important attributes of a railroad corridor can be the availability and condition of a signalization system. According to the Charles River Associates paper, this price difference may be attributable to the importance of a having modern signalization system in place in a transit railroad corridor and the reduction in front end costs to implement passenger rail services. Whether the existence of such signalization systems contribute value or are a detriment for transit HBU would require investigation and a determination by the grantee engineering staff. Such a determination should be shared with the appraiser and addressed in the appraisal SOW.

## **CERTIFICATION OF PROPERTY NECESSARY FOR THE PROJECT**

The requirement for this certification also applies to this category of railroad property acquisition. Please see the earlier discussion of this topic in the section titled **Unused, Abandoned, or Bankrupt Railroad Right of Way**. As discussed previously, this certification and its supporting documentation will be provided to the appraiser and addressed in the appraisal SOW.

The inclusion of outparcels in the transaction with the railroad owner may occur for various reasons:

- Parcels are no longer needed,
- Disposition may result in an advantage to owner from STB regulation perspective
- Owner may want to generate revenue

- Transit May Need Outparcels for Stations, Parking or Storage/Maintenance Facilities

### **Motivating Factors**

Either the purchaser or the seller could be under outside pressure; political, economic, or otherwise, to complete the transaction. The economic circumstances of the railroad owner may be such that the corridor is no longer an integral factor in the company operations, and an infusion of cash may be of great importance. The general economy may have also had an impact on the corridor value, and the railroad could continue to operate by sharing the corridor with the transit agency, or could do so by shifting traffic to an alternate corridor. In some cases the railroad company may be operating at close to capacity on its line and it will dictate that such capacity must be maintained, which may indicate a higher value to a buyer and/or the incurrence of “costs to cure” to maintain the existing capacity on the rail line. Such costs may end up being paid by the transit project as a part of its overall project real estate acquisition cost.

In the case of a transit agency, probably the greatest motivating factor would be the need to create or provide upgraded service to accommodate the transportation needs of the public. This need may come in either the form of greater connectivity with existing services, or political and environmental needs to reduce vehicle congestion on the roadways. The availability of funding to the transit agency may also have a motivating influence.

Since railroad right of way purchases may not necessarily conform to typical arm’s length market value conditions, market value may not always be accurately measured using any of the traditional valuation techniques or formats. On the other hand, open market driven motivations may influence the ultimate price paid for a property, and are usually easier to identify and measure. Such market influences on value can be quantified and thus offered as supporting documentation for a value conclusion.

In the typical transit acquisition of railroad right of way, significant political or non-market factors may be present. The extent of influence these factors generate can make for a very difficult analysis and appraisal problem. This situation can be justification for the use of an administrative settlement solution of the property acquisition problem.

### **Conditions of the Transaction**

One of the two most important considerations of the transaction is whether the transit agency will share track usage with a freight railroad. Whenever there is a sharing of a resource such as this, both sides are limited in how they will adjust their operations in the future, as each has to take into account the needs of the other.

The other major variable condition is whether the transit agency will take complete ownership of the facility or merely acquire rights to exist within the ROW corridor. The financial implications and STB regulatory impact of such a decision are perhaps the greatest variable factors in the entire transaction.

An additional factor may, or may not, have some influence on the ultimate transaction price could be the value of property adjacent to the railroad right of way. It is possible that the value of the transaction could be influenced depending on whether the adjacent land was low value farmland as opposed to high value commercial/industrial land. While this factor would certainly be relevant when dealing with abandoned or unused ROW, just how important it may be when valuing operating railroad ROW is open to some conjecture.

The conditions of the transaction as outlined can create various scenarios, which must be clarified in the development of an appraisal assignment SOW. All of these circumstances represent challenging valuation issues for the appraiser. Listed below are some of the many possible scenarios:

- Permanent accommodation with exclusive use of ROW and rails for transit, utilizing new or existing rails, controls and signals, or
  - Railroad company may reserve the right to run only limited short haul delivery trains during certain hours to existing customers using new or existing track.
- Permanent accommodation (through lease, permanent easement, or fee simple title) within a railroad ROW corridor with continued use of the corridor for freight with the following variations:
  - Both freight and transit sharing the same track with arrangements required regarding dispatching, maintenance, and number and timing of train sets. Under this variation, the adjustment of freight facilities may be required.
  - Freight and transit sharing the same corridor, but freight and transit run on separate tracks and an adjustment of freight facilities may be required to accommodate transit.

## Literature

In reviewing existing literature on the subject, the most comprehensive study of this matter appears in a paper titled “Determinants of Price in Sales of Railroad Rights-of-Way to Public Transportation Agencies”, which was prepared by Charles River Associates, and presented in October 2004, at the Second Conference on Railroad Industry Structure, Competition, and Investment, at Northwestern University.

The authors analyze twenty-one separate transactions subsequent to 1980 from throughout the United States between public transit agencies and operating railroads, to attempt to come up with a valuation methodology that is realistic and relevant. (The authors indicate that thirty

transactions had occurred, but give no explanation as to why only twenty-one were chosen for study review). They attempt to identify all of the relevant factors and characteristics of each of the sales, and determine areas of comparability, which could be isolated as indicators of value.

The Charles River Associates paper presented an evaluation of the components of the twenty-one sales, and through a regression analysis process, attempted to find out which components could be determined to be the most statistically significant aspects. Their study relied heavily on statistical significance to try to arrive at a valuation process for operating ROW. The sales that were evaluated turned out to be so unique and diverse, that the only truly significant component of value from their sample set was found to be linear miles of corridor in the transaction.

While width of the corridor was among the other findings and may have had some impact, it was not statistically relevant. Additionally, components such as the number of tracks within the corridor, whether rail freight would share the corridor, and the presence of out-parcels, also did not present a significantly identifiable statistical impact.

Other than the actual length of the corridor being considered, the other two aspects of the transaction that had lesser, but yet a significant impact on value were whether the corridor;

- had an operational signalization structure, and
- was being purchased outright or the transit agency was just acquiring trackage rights.

The study found that the presence of an operating signalization structure was of significant value, and that a higher price was paid in the obtaining of trackage rights, rather than purchase of fee title. The assumption is that the higher costs of obtaining trackage rights reflect a premium paid to avoid risks and financial obligations that are inherent in track ownership.

Note: We offer additional possible explanations for the higher cost of acquiring trackage rights. This may result from:

- The condition may exist where the existing corridor is operating at or near its capacity, and the cost of accommodating transit is greater because of the competition for such capacity; and/or
- The need to adjust/expand existing facilities to maintain existing capacity, while accommodating the additional burden of transit will result in additional costs. The cost of any such adjustments that are necessary may be included in the transaction price paid, thus increasing it.

Both of these influences, if they exist, should be addressed by the appraiser in the appraisal analysis.

There is no doubt that in individual transaction circumstances, issues such as; corridor width, number of tracks (if any), out-parcels, sharing track or corridor with freight rail, and adjacent property values, could have an impact on purchase value. However, the twenty-one transactions that were reviewed by Charles River Associates did not reveal a statistically significant impact that could be applied on a general basis. Apparently, there would have to be a much larger number of transactions available for analysis before such a trend could be discernable. Of course, it is also somewhat likely that given the unique structure of these transactions, it may not be possible to arrive at any statistical significance to these particular elements.

Note: Remember the transactions analyzed in this study were all purchases by transit agencies, not open market transactions. We believe that some of the attributes may not exhibit statistical significance as the result of two possible reasons that tend to inject non-economic considerations into this equation. These are:

- First, the transit agency is not entirely motivated by the economics of the situation, i.e., appraised value or rate of return on investment, but has other obligations such as provision of necessary services to the public, protecting the environment, etc.
- On the other hand, the railroad company may have a very strong bargaining position since the alternatives to use of its existing ROW may be nonexistent, or at the very best, limited.

## **Analysis**

When attempting to isolate individual factors as contributing to value in a transaction, appraisers attempt to do what is known as a paired sales analysis. In this methodology, sales are obtained which are quite similar in almost all aspects except for one critical factor. By isolating this one factor out of the similar transactions, it is possible to arrive at a supportable and statistically significant value for that one factor. When applied to real estate transactions, this methodology can be applied to sales of similar properties within a specified time period, or to sales of the same property that occur within a short timeframe when one specific condition has been altered. Using this methodology, appraisers can arrive at a reliable indication of value for one contributing factor that can then be extrapolated for application in other sales comparison adjustments or analysis.

In doing an independent review of the twenty-one sales that were utilized in the Charles River Associates study, there is virtually no opportunity to perform a legitimate and supportable paired sales analysis. The factors in each of the sales are so unique and complicated or exhibit incomplete data, as to render any attempt to isolate individual factors very unreliable. Although it is possible that additional sales could provide more definitive results, the nature of these

transactions is such that even with a larger sample of transactions, there still may not be enough data to obtain reliable and statistically significant individual value indicators.

## Conclusion

The various sales and leases of operating railroad ROW to public agencies that have occurred over the past twenty-five years are so unique and diverse, as to render difficulty in establishing a statistically significant economic relationship of various physical characteristics for valuation purposes. Notwithstanding this conclusion, certain factors in the transaction need to be surveyed, inventoried, and analyzed for their potential affect on or contribution to value, and include the following:

- longitudinal corridor length,
- corridor width,
- amount and condition of track and ballast within corridor,
- presence of ancillary buildings and structures,
- ownership of out-parcels of land and improvements,
- presence and status of signalization system,
- shared use between transit and freight service,
- purchase of corridor and track, or obtaining track usage rights, and
- presence of utility corridors and existing lines, as well as outdoor advertising sign sites.

In addition to the factors listed above, the various political or economic circumstances of the moment would likely have more of an impact than would normally be encountered in a typical real estate transaction. If a railroad were to be under any particular financial pressure, a potential transaction of this nature may put the railroad in the position of having only one good and legitimate opportunity to take advantage of the situation. On the other hand, a transit agency may have few options to meet its goals other than to enter into a deal or partnership with the railroad.

Attempting to arrive at a valuation methodology that is legitimate and can be supported, may be very challenging when an analysis of previous transactions does not lend itself to finding many statistically significant measures of comparison. While any of the factors listed previously may be important in the valuation process, the only one that can be counted on to be statistically significant is the length of the corridor being purchased. The two other major factors that can be demonstrated to affect value are, (1) the status of signalization of the corridor and (2) whether the transaction is an outright purchase or acquisition of track usage rights.

## **CONSIDERATION OF ALTERNATIVE RIGHT OF WAY CORRIDORS**

Although it may already be accomplished in most cases, it is worth reiterating the importance of this topic and its relevance in this paper. Existing rail corridors, whether in use or not, usually will represent the best alternative for accommodation of commuter rail passenger transportation, although there may be other possibilities.

In this regard, the acceptability and viability of any alternative existing linear ROW corridors that could accommodate such a transit facility should be considered, such as those presently used for:

- electric power transmission
- pipeline transmission
- surface drainage
- highways

This consideration would usually occur very early in the transportation planning process for the area to be served by transit. Such alternatives should also be addressed and appropriately analyzed during the environmental documentation process. If obstacles to the consideration of such alternatives exist, they should be further analyzed or researched to achieve a better understanding of what they are and why they are perceived to be a problem.

Any safety, legal or physical impediments that may exist to a transit accommodation, should be evaluated to ensure understanding of what they are and whether they preclude consideration of the alternative or can be mitigated in some way. It is our conclusion that this is an important determination that must be accomplished as expansion of commuter rail passenger transportation is considered. Additional research in this area should be undertaken as appropriate to accomplish a level of comfort in the utilization of such alternatives. This is critical, considering the limited resources available for building the nation's transportation infrastructure and to have a policy that best serves the overall public interest.

## **SURFACE TRANSPORTATION BOARD (STB) MEDIATION OF RIGHT OF WAY ISSUES**

In 2008, the U. S. Congress enacted and the President signed PUBLIC LAW 110-432—OCT. 16, 2008, DIVISION B—referred to as the “Passenger Rail Investment and Improvement Act of 2008”. Section 401 of Title IV of this statute references Commuter Rail Mediation. Although this provision may not directly pertain to the valuation of railroad corridors or trackage, it does recognize that it is in the public interest to accommodate commuter rail transportation within existing railroad corridors throughout the nation. It does provide the opportunity for the resolution of a disagreement concerning a proposed commuter rail passenger transportation accommodation that did not exist previously. We also believe this does highlight the necessity for an accurate and well-documented real estate valuation analysis of such a proposal.

This section requires that a process for nonbinding mediation be established by the STB. This requirement is as follows as set out in the statute:

**§ 28502. Surface Transportation Board mediation of trackage use requests**

*If, after a reasonable period of negotiation, a public transportation authority cannot reach agreement with a rail carrier to use trackage of, and have related services provided by, the rail carrier for purposes of commuter rail passenger transportation, the public transportation authority or the rail carrier may apply to the Board for nonbinding mediation. The Board shall conduct the nonbinding mediation in accordance with the mediation process of section 1109.4 of title 49, Code of Federal Regulations, as in effect on the date of enactment of this section.*

**§ 28503. Surface Transportation Board mediation of rights-of-way use requests**

*If, after a reasonable period of negotiation, a public transportation authority cannot reach agreement with a rail carrier to acquire an interest in a railroad right-of-way for the construction and operation of a segregated fixed guideway facility to provide commuter rail passenger transportation, the public transportation authority or the rail carrier may apply to the Board for nonbinding mediation. The Board shall conduct the nonbinding mediation in accordance with the mediation process of section 1109.4 of title 49, Code of Federal Regulations, as in effect on the date of enactment of this section.*

The following section tasks the STB with the responsibility of issuing rules and regulations for the implementation of the above mediation provisions by October 16, 2009:

**§ 28505. Rules and regulations**

*Within 1 year after the date of enactment of this section, the Board shall issue such rules and regulations as may be necessary to carry out this chapter.*

Implementing regulations are in place regarding the mediation provision in the statute. The STB held a public hearing on this and other matters on 2/11/09, and as of June 2010, no applications for mediation had been received regarding passenger rail accommodation by the STB. Based on the best information available, mediation can be requested under existing regulations as follows:

“TITLE 49—Transportation, Subtitle B—OTHER REGULATIONS RELATING TO TRANSPORTATION

CHAPTER X—SURFACE TRANSPORTATION BOARD, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER B—RULES OF PRACTICE

**PART 1106—PROCEDURES FOR SURFACE TRANSPORTATION BOARD CONSIDERATION OF SAFETY INTEGRATION PLANS IN CASES INVOLVING RAILROAD CONSOLIDATIONS, MERGERS, AND ACQUISITIONS OF CONTROL**

**PART 1109—USE OF ALTERNATIVE DISPUTE RESOLUTION IN BOARD PROCEEDINGS AND THOSE IN WHICH THE BOARD IS A PARTY**

**§ 1109.1 Invoking ADR in Board proceedings.**

Any proceeding may be held in abeyance for 90 days while administrative dispute resolution (ADR) procedures (such as arbitration and mediation) are pursued. (Additional 90 day periods can be requested.) The period while any proceeding is held in abeyance to facilitate ADR will not be counted towards the statutory deadlines. All parties are required to indicate their written consent for ADR treatment. Requests that a proceeding be held in abeyance while ADR procedures are pursued should be submitted to the Office of the Secretary. The Secretary shall promptly issue an order in response to such requests. Unless arbitration or some other binding process involving a neutral has been undertaken, any party believing that ADR procedures are not yielding the intended results shall inform the Secretary and all parties in writing, and normal agency procedures will be reactivated by the Secretary by notice served on all the parties.

**PART 1111—COMPLAINT AND INVESTIGATION PROCEDURES**

***§ 1111.1 Content of formal complaints; joinder.***

(a) *General.* A formal complaint must contain the correct, unabbreviated names and addresses of each complainant and defendant. It should set forth briefly and in plain language the facts upon which it is based. It should include specific reference to pertinent statutory provisions and Board regulations, and should advise the Board and the defendant fully in what respects these provisions or regulations have been violated. The complaint should contain a detailed statement of the relief requested. Relief in the alternative or of several different types may be demanded, but the issues raised in the formal complaint should not be broader than those to which complainant's evidence is to be directed at the hearing. In a complaint challenging the reasonableness of a rail rate, the complainant should indicate whether, in its view, the reasonableness of the rate should be examined using constrained market pricing or using the simplified standards adopted pursuant to 49 U.S.C. 10701(d)(3). If the complainant seeks to use the simplified standards, it should support this request by submitting, at a minimum, the following information:

**CONCLUSION**

These provisions may enhance the relevance of developing an accurate and reasonable valuation analysis of the property interests necessary to accommodate commuter rail passenger transportation. Such an objective analysis would seem most helpful to an FTA grantee, if it would be necessary to apply for mediation under this provision of the law.

This alternative dispute resolution initiative may increase the importance for transit grantees to procure objective and well-documented railroad ROW valuation/appraisal reports. The availability of the mediation alternative should also facilitate earlier reasonable agreements with railroad corridor owners and facilitate accommodation of commuter rail passenger transportation,

## RECOMMENDATIONS

1. The FTA should evaluate the following when a grantee is considering the possibility of the acquisition of a property interest, or when considering entering into some kind of agreement for the use of ROW owned by a railroad:
  - i. Require a grantee to prepare a detailed appraisal SOW prior to making an assignment to an appraiser or other entity qualified to undertake such a project, including reference to specific requirements for data collection and analysis thereof.
  - ii. An appraisal SOW should be required in all appraisal assignments, and specifically any assignment involving the valuation of an existing railroad ROW. Its development and application to railroad property outlined in FTA Circular 5010.1E, Appendix D.
  - iii. The FTA should also specify that any appraisal SOW for railroad property would be submitted by the grantee for review and approval prior to making the assignment, because of the cost and complexity of such assignments.
  - iv. An Appraisal SOW Checklist or sample Appraisal SOW may be helpful in this regard. Please reference Exhibit A for a suggested draft checklist.
  - v. Consider developing specific and appropriate criteria, process, and/or model to document whether an assemblage or corridor enhancement factor can be supported based on market data research.
2. If the railroad corridor is subject to the jurisdiction of Federal Surface Transportation Board (STB) requirements, a railroad specialist report must be procured by the grantee to determine the possible legal uses of or limitations on the existing right of way for transit applications. This report will be incorporated into the aforementioned appraisal SOW to facilitate determination of the highest and best use of the existing railroad corridor by the appraiser.
3. Consider expanding this study to include an analysis of transactions from the Federal STB database of transactions involving inter-railroad mergers and acquisitions, to compile meaningful private sector market data relative to the valuation of railroad real property assets. This would address whether relevant open and arm's length market sales of rail corridors exist or would assist in determining the relevancy of such data to the railroad corridor valuation process.
4. Consider further research regarding the acceptability, viability and any impediments of alternative existing linear ROW corridors that could accommodate a transit facility such as those presently used for:
  - i. electric power transmission
  - ii. pipeline transmission
  - iii. surface drainage

iv. highways

5. Keep FTA grantees informed regarding the availability and implementation of nonbinding mediation that is available under Section 401 of Title IV of the “Passenger Rail Investment and Improvement Act of 2008”. This Section requires “Commuter Rail Mediation” to be made available by the STB. FTA should appropriately facilitate any grantee application for mediation by the STB involving any legitimate disagreement arising as the result of the proposed accommodation of commuter rail transportation within an existing rail corridor subject to STB regulation.

This alternative dispute resolution initiative may increase the importance for transit grantees to procure objective and well-documented railroad ROW valuation/appraisal reports. The availability of the mediation alternative should also facilitate earlier reasonable agreements with railroad corridor owners and the accommodation of commuter rail passenger transportation.

## RAILROAD VALUATION ASSIGNMENT

### EXHIBIT A: APPRAISAL SCOPE OF WORK CHECKLIST

49 CFR Part 24, Section 24.103(a)(1) Appraisal requirements, specifies that an appraisal scope of work (SOW) will be developed to ensure appropriate definition of the appraisal problem and the required analysis to estimate a supported value considering all relevant appraisal standards and applicable Federal requirements.

FTA Circular 5010.1E also addresses real estate appraisal SOW requirements in Chapter IV and its Appendix D.

In the case of an appraisal assignment involving the valuation of an existing railroad ROW corridor, the following checklist of items as a minimum must be considered in addition to the above, in the development of an appraisal SOW. FTA concurrence in the appraisal SOW is encouraged as such valuation assignments are very complex and usually involve high values.

#### **Prepare Specialty Report on Legal Requirements Related to STB Regulation:**

- Engage analyst qualified to determine requirements and obligations of rail carriers subject to STB regulations.
- Provide report to real estate appraiser so any legal limitations regarding of property utilization can be analyzed, when determining highest and best use.

#### **Physical Characteristics-Describe and Relate To Contributory Value and Use for Transit:**

- Length of Corridor
- Width of Corridor
- Number and Condition of Track Sets
- Signalization System and Condition
- Presence of “Out Parcels” and Use for Transit
- Certification of actual ROW Needed for Project
- Present Status of the Existing Railroad ROW and Improvements and applicability of STB regulation thereof:
  - o Operational-
    - Total capacity of the existing ROW/Facilities
    - Railroad traffic density (from National Transportation Atlas Database)
    - Portion of capacity used currently
    - Expected future capacity needed
    - Alternative traffic re-routing possibilities
    - Describe improvements and condition thereof
  - o Unused

- Describe improvements and condition
- STB regulation if any
- Abandoned
  - Describe improvements and condition
  - STB regulation, if any

**Agency Certification of Actual ROW Needed for Transit Project and FTA Approval:**

This will require a grantee engineering design and construction analysis of all permanent or temporary real property necessary to construct, operate, and maintain the project. Based on this certification of necessity the grantee will provide all appropriate plans and title information so appraiser knows what property is needed for the project that is to be appraised.

- Specify if “carve-out” valuation of only necessary ROW from “larger parcel” may be required to accommodate transit project.

**Potential Costs Associated with Adapting ROW Corridor for Transit Use:**

- Define additional ROW required to achieve desired functionality of transit project
- Identify any necessary adjustment of existing facilities and the cost to modify such facilities (using “cost to cure” or other analysis as appropriate).

(Note: Both of above require grantee engineering design and construction review and cost estimates for consideration by appraiser.)

**Motivation of Buyer and Seller:**

- Economic Circumstances of the property owner/Railroad Company
  - Capacity of existing ROW underutilized or fully utilized
  - Current business and cash flow situation, if known
- Motivation of Transit Agency
  - What alternatives exist to the use of railroad ROW corridor
  - What are environmental and cost Impacts of alternatives
  - How is the public interest best served

**Legal Considerations and Terms of Acquisition (to be provided by Grantee):**

- Plats and legal descriptions of existing property and proposed interests to be acquired
- Title report regarding interests owned by railroad
- Address compensability issues-consult legal counsel
- Report of environmental site assessment regarding any contamination
- Property Interests to be acquired:
  - Fee title
  - Permanent or temporary easement
  - Perpetual track and/or ROW sharing easement or license

- o Combination of one or more of the above
- o Airspace or subterranean interests

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Bedrock, the Detroit-based owner of Tower City Center and a key stretch of riverfront land behind it, has a \$3.5 billion vision to transform those underused properties into a district where Clevelanders will live, work, shop and play.

A new master plan, developed by global design studio Adjaye Associates, shows more than 3.5 million square feet of development climbing toward the downtown skyline from the east bank of the Cuyahoga River. Bedrock, the real estate arm of billionaire Dan Gilbert's Rock family of companies, unveiled the proposal Friday, Dec. 2, at the Ritz-Carlton Cleveland hotel.

The plan lays the foundation for deeper engineering and discussions with the city about how to finance extensive infrastructure work. The linchpin of the vision is a dramatic rethinking of roads and pedestrian paths to enable smooth passage from Public Square to the riverfront — and to create a sense of place once people traverse that 100-foot grade change.

"If you are going to come out to the riverfront, there has to be a riverfront to come out to," said Kofi Bonner, Bedrock's CEO, during an interview before the formal unveiling.

Guided by Sir David Adjaye, an

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Guided by Sir David Adjaye, an award-winning Ghanaian-British architect, a [project team](#) that also includes Osborn Engineering proposes to transform the back of Tower City — a cascade of parking structures and pitted pavement today — into another front door.

"Our redevelopment strategy for the downtown Cleveland riverfront taps into the lost heritage of the city, establishing a new relationship between the urban core and the shore," Adjaye said in a prepared statement. "As I became more deeply immersed, the need to build a more tempered flow of movement through the city became immensely clear."

Images show 12 acres of public open space lined by a procession of new mid- and high-rise buildings. Those buildings could contain 2,000 new homes, a mix of rental and for-sale, and 1.4 million square feet of commercial space, including a hotel, offices, entertainment and retail.

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Bonner described that development as a 15- to 20-year plan, one that might move faster if the right mix of public and private-sector partners coalesces around infrastructure needs. And though Bedrock is creating the framework, the company isn't looking to be the sole developer.

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"Our goal is to create a template here. ... Success will be defined by others wanting to build next to us, and with us," Bonner said.

Bedrock affiliates own the Tower City shopping mall and roughly 24 acres of riverfront land, plus other nearby buildings. But the master plan spans approximately 35 acres, including the Sherwin-Williams Co.'s Breen Technology Center and parking at 601 Canal Road.

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roughly 24 acres of riverfront land, plus other nearby buildings. But the master plan spans approximately 35 acres, including the Sherwin-Williams Co.'s Breen Technology Center and parking at 601 Canal Road.

The Cleveland-based coatings giant is building a new research and development center in Brecksville and erecting a new headquarters tower west of Public Square. Sherwin-Williams plans to vacate the Breen complex and its longtime headquarters, the historic Landmark Office Towers adjacent to Tower City, by late 2024.

Bedrock confirmed Friday that it has inked purchase agreements to acquire both downtown properties. "We have had very productive conversations with Sherwin-Williams," Bonner said.

In an emailed statement, a Sherwin-Williams spokeswoman said the sales are scheduled to close by the second quarter of 2023, though the company will continue using the facilities until its new buildings are



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the 9-acre technology center site.

"Both facilities will be integral to the new Bedrock master plan, and we are pleased to support this significant investment in the city of Cleveland," wrote Julie Young, the publicly traded company's vice president of global corporate communications.

The master plan shows an expansive park on Sherwin-Williams' riverfront land, at the western edge of the study area along Carter Road. That park will connect the riverfront site to a growing trail network. Bedrock views the public spaces as critical elements of placemaking and increasing property values in the broader area.

New steps would traverse the hillside near the Carl B. Stokes U.S. Courthouse, off Huron Road near the Detroit-Superior Bridge, creating a path between the water and the center city.

At the eastern end of the site, near Ontario Street, another series of steps would help pedestrians navigate the slope. And in the middle, a reimagined Tower City Center could act as a grand corridor linking Public Square to the riverbank, with an indoor shopping area giving way to a lengthy covered porch.

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That approach will require Bedrock to demolish the middle, or Public Square, level of the mall to create a much more open, central space. That means razing the floor starting just past the ornate entrance to the complex, beyond where the Brooks Brothers store used to be.



Escalators still will transport passengers to and from Greater Cleveland Regional Transit Authority trains that run beneath the center. But Bedrock wants to remove other physical, and visual, barriers as part of its ongoing effort to transform the mall into a marketplace, an airier space with a blend of shops, food and beverage operators,

entertainment and kiosks.

A cross-section of the Tower City plans shows that Bedrock hopes to close part of Huron Road between West Second and West Third streets. Adjaye's images depict a decorative porch roof that would span Prospect Avenue, creating a tunnel over

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roof that would span Prospect Avenue, creating a tunnel over traffic; stretch above the existing Skylight Concourse; and reach past where Huron runs today to jut toward the river.

Underneath, the retail floor would gradually give way to ramps and steps, a landscaped area where the indoors and outdoors appear to bleed together. The complicated project would wipe out structured and surface parking, but Bedrock plans to reconfigure and replace lots and garages as it works through the redevelopment, phase by phase.

The proposal calls for redirecting traffic from Huron onto Prospect at West Second and West Third. Bedrock hopes to calm traffic in the area and to shift Canal Road, which runs past parking lots along the river, to create new development pads and make room for green space and trails. In some places, Canal would run closer to the water; in others, it would pull away.

At the eastern end of the study area, the plan shows a rebuilt Eagle Avenue, a ramp that once stretched from the south side of Ontario Street, across from Progressive Field, to the river. The idea is to create several gateways to the site, with easy access for pedestrians and cyclists.

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Bedrock also is exploring ways to connect new riverfront buildings to an indoor walkway that links Tower City and Rocket Mortgage FieldHouse, where Gilbert's Cleveland Cavaliers play.



"It's a classic redevelopment puzzle," Bonner said of the property, where former Tower City owner and developer [Forest City Enterprises Inc.](#) once had similar aspirations.

Forest City's Tower City Center project spanned Terminal Tower, an abandoned rail hub and troubled office and retail spaces. The property also

included foundation supports from the 1920s, installed for buildings that never materialized. Forest City opened the 360,000-square-foot mall in 1990 and developed new office space, parking and the attached Ritz-Carlton hotel.

But the project, which debuted during a recession, fell short of Forest City's ambitious vision. The riverfront real estate has been languishing a sea of parking for decades.

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One can solve, through engineering and design, most of the challenges," Bonner said. "What one can't solve for is the marketplace and the financing for these kinds of projects. ... The strength of a public-private partnership that not only understands the challenges but also participates in the solution makes those complicated projects much more likely to succeed."

It's too early to say how much public financing Bedrock will seek. The company has had preliminary discussions with city leaders and early talks about what kinds of resources might be available at the county, state and federal level.

Bonner mentioned tax-increment financing, which captures new property-tax revenues created by development and pledges them to the project. Developers can borrow against that promised revenue stream to finance infrastructure, public spaces and other up-front spending.

"We need to get into much more sophisticated conversations about this," he said.

Bedrock's next steps will include assessing public officials' response to the master plan. If Mayor Justin Bibb's administration and City Council members are supportive, Bedrock will work with officials to hammer out a development

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Bibb and other city officials, including council president Blaine Griffin, joined Bedrock at Friday's standing-room-only event.

"Today's announcement is a prime example of what can be accomplished when the private and public sectors align on equitable initiatives in support of all Clevelanders," Bibb said in a prepared statement. "Bedrock's vision for the redevelopment of the Cuyahoga riverfront is one of the major projects that will help us realize Cleveland's goal of becoming the 18-hour, 15-minute city we know it can be."

Meanwhile, after working through supply-chain delays, Bedrock expects to begin streetscape improvements around Tower City within weeks. And the developer is continuing to pitch local retailers on moving into the long-troubled mall, where Bedrock is taking a [business-incubator approach](#), hosting pop-ups and emphasizing programming, including holiday events.

"Even though we're going through this uncertainty in the economy, I think that it is still true that if you give people a reason to come to downtowns — and downtowns are vibrant and active — people will want to be there," Bonner said.

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# NRP buys Scranton Peninsula land for 316-unit apartment project

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The NRP Group has closed on its purchase of 7.5 acres on Scranton Peninsula, where the Cleveland-based company plans to build a 316-unit apartment project.

The transfer doesn't appear in public records yet. But Scott Skinner, NRP's vice president of development, confirmed in an interview Thursday, Dec. 22, that the long-simmering deal is done.

He wouldn't disclose pricing for the land, along the east side of Carter Road.

Across the street, Silver Hills Development Inc. and Edwards Communities [paid](#) \$1.4 million an acre in August for another apartment site along the water. The NRP property is not adjacent to the Cuyahoga River, but it's elevated, offering sweeping views of the Flats and downtown.



NRP expects to break ground within 30 days for its roughly \$100 million project. The development will span 301 mid-rise apartments, 15 rental townhomes, a parking garage and pathways that connect to

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Construction will take two and a half to three years, with pre-leasing expected to start in

summer of 2024, Skinner said.

"This word gets overused, but this really will be a transformational project in Cleveland and will create a new neighborhood," he said.

The sale largely closes out the 25-acre Thunderbird site, an area prepared and master-planned by homegrown developer Fred Geis, Jesse Grant of Cleveland-based J Roc Development and Matthew Weiner, a Georgia-based attorney and a principal of the East West Alliance group of companies.

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The partners purchased the former industrial land in 2017.

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The partners purchased the former industrial land in 2017 from longtime owner Forest City Realty Trust Inc. and repackaged it as a potential mixed-use waterfront neighborhood. Joseph Khouri and Kevin Moss of the CBRE Group Inc. brokerage's Cleveland office marketed the parcels to prospective buyers.

NRP's apartment proposal surfaced in 2019.

But the national developer backed away from the deal the following year, as the coronavirus pandemic shook the urban rental market. Amid so much uncertainty, the company focused on its affordable-housing developments and put higher-end projects like Scranton Peninsula on hold.

"We've always loved the site," Skinner said earlier this year. "There's never been any doubt there."



The NRP proposal [reemerged](#) in early 2022. The company worked with city planners to refine its designs and to ensure pedestrian and bicycle traffic flow between its site and the

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refine its designs and to ensure pedestrian and bicycle traffic flow between its site and the Edwards-Silver Hills property across the street.

"The city of Cleveland has been enormously helpful and supportive of this development

and has been instrumental in our ability to get here," Skinner said.

Construction is getting started at the 304-unit Silverhills at Thunderbird project, which could open in 2024.

To the south, Great Lakes Brewing Co. owns 10 acres, where the company has talked about building a production facility and taproom inland. The riverfront portion of the Great Lakes land, roughly 2 acres, is earmarked for public space.

The Thunderbird team still owns a two-story building, partially leased to Scottish craft brewer BrewDog, and a small riverfront parcel that they're holding for eventual development.

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NRP had hoped to close on its land purchase in the fall. But the company was waiting on a few key pieces of financing. On Dec. 16, the Ohio Department of Development [awarded](#) a \$6 million brownfield cleanup grant to the project. That money will pay for capping contaminated soil and installing a vapor-mitigation system beneath building slabs, according to the state.



On Dec. 5, Cleveland City Council approved tax-increment financing for the project. That 30-year arrangement will redirect a portion of the new property taxes created by NRP's development back into the project, to help pay for construction costs and debt service. The TIF agreement will not impact tax revenues

earmarked for the Cleveland public schools.

NRP also is making use of the city's longstanding tax-abatement program for housing, in exchange for meeting

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development back into the project, to help pay for construction costs and debt service. The TIF agreement will not impact tax revenues

earmarked for the Cleveland public schools.

NRP also is making use of the city's longstanding tax-abatement program for housing, in exchange for meeting certain green-building standards. That means the residential portions of the project will be tax-exempt for 15 years. Then they'll generate property taxes at a reduced rate for another 15 years because of the tax-increment financing deal.



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**201305060864**Parcel 2  
152(Parcel 3  
herein)**QUITCLAIM DEED**

KNOW ALL MEN BY THESE PRESENTS that **FLATS INDUSTRIAL INC.** (fka Flats Industrial Railroad Co.), a Delaware corporation (hereinafter referred to as "Grantor"), whose tax-mailing address is 1757 Columbus Road, Cleveland, Ohio 44101-0491, claiming title by or through that certain deed recorded with the Recorder of Cuyahoga County, Ohio on March 4, 1998 at Volume 98-02328 pg. 11, AFN 199907070896, does hereby **Give, Grant, Bargain, Sell, Quit-Claim and Convey** to **FLATS INDUSTRIAL INC.** (fka Flats Industrial Railroad Co.), a Delaware corporation (hereinafter referred to as "Grantee"), whose tax-mailing address is 1757 Columbus Road, Cleveland, Ohio 44101-0491, all such right and title as Grantor has or ought to have in and to the following described real property (hereinafter the "Property"):

SEE EXHIBIT A ATTACHED HERETO

## Permanent Parcel Numbers:

|                                             |                                   |
|---------------------------------------------|-----------------------------------|
| 006-23-001 (Exhibit A, Parcel 1)            | 101-19-020 (Exhibit A, Parcel 5)  |
| 007-13-010 (Exhibit A, Parcel 2)            | 101-17-015 (Exhibit A, Parcel 6)  |
| 004-04-017 (Exhibit A, Parcel 3)            | 101-17-014 (Exhibit A, Parcel 7)  |
| 004-25-002 (Exhibit A, Parcel 3)            | 101-19-041 (Exhibit A, Parcel 8)  |
| <del>004-29-002 (Exhibit A, Parcel 3)</del> | 101-18-009 (Exhibit A, Parcel 10) |
| 004-29-001 (Exhibit A, Parcel 4)            | 016-05-001 (Exhibit A, Parcel 11) |
|                                             | 016-01-011 (Exhibit A, Parcel 12) |

[Signature on Following Page]

|                      |                        |                     |
|----------------------|------------------------|---------------------|
| Permanent            | 007-13-010             | 101-17-014          |
| Parcel #:            | 004-04-017             | 016-01-001          |
|                      | 004-29-001             |                     |
| Type Instrument:     | Quit Claim Deed Ex     | Date: 5/6/2013 4    |
| Tax District #:      | 3100                   | Tax List Year: 2013 |
| Grantee:             | Flats Industrial Rr Co | Land Use Code: 8400 |
| Balance Assumed:     | \$ 0.00                | Land Value: 0       |
| Total Consideration: | \$ 0.00                | Building Value: 0   |
| Conv. Fee Paid:      | \$ 0.00                | Total Value: 0      |
| Transfer Fee Paid:   | \$ 2.50                | Rcpt: c-05062013-21 |
| Fee Paid by:         | CASH                   | Inst #: 591116      |
| Exempt Code:         | C                      | Check #:            |

  
Cuyahoga County Fiscal Officer

5577531.2

IN WITNESS WHEREOF, the Grantor has, by its authorized officer hereunto set its hand this 6<sup>th</sup> day of May, 2013.

**FLATS INDUSTRIAL INC.** (fka Flats Industrial Railroad Co.), a Delaware corporation

By: [Signature]  
Print Name: CHERYL A. BALL  
Title: GENERAL MGR

STATE OF OHIO                     )  
                                              ) ss  
COUNTY OF CUYAHOGA        )

Before me a Notary Public in and for said State and County, personally appeared the above named Flats Industrial Inc. (fka Flats Industrial Railroad Co.), a Delaware corporation, by Cheryl A. Ball, its authorized officer, who acknowledged that she did sign the foregoing instrument in her authorized capacity for and on behalf of said entity, and that the same is her free act and deed individually and as such authorized officer.

IN TESTIMONY WHEREOF, I have hereunder set my hand and affixed my official seal this 6<sup>th</sup> day of May, 2013.

[Signature]  
Notary Public  
My commission expires: 1/22/2018

This instrument was prepared by:

Joshua A. Lusk, Esq.  
Hahn Loeser & Parks LLP  
200 Public Square, Suite 2800  
Cleveland, OH 44114  
(216) 621-0150



KESHA SWEATTE  
Notary Public, State of Ohio  
Recorded in Cuyahoga Cty.  
My Commission Expires  
January 22, 2018.

**Exhibit A**

## Legal Description

Permanent Parcel No. 006-23-001

## Parcel 1

Situated in the City of Cleveland, County of Cuyahoga and State of Ohio, and known as being a part of Original Brooklyn Township Lot Nos. 33, 34, 48 and 53, together forming a parcel of land bounded and described as follows:

Beginning on the easterly line of West 65th Street (formerly Gordon Street), 80 feet in width, at its intersection with the northwesterly line of land conveyed to the Flats Industrial Railroad Company;

Thence northeasterly and southeasterly along the northwesterly line of land so conveyed to the Flats Industrial Railroad Company, the following courses and distances;

Course No. 1: thence North  $46^{\circ}-44'-10''$  East, 31.46 feet;

Course No. 2: thence South  $43^{\circ}-15'-50''$  East, 25.00 feet;

Course No. 3: thence North  $46^{\circ}-44'-10''$  East, 574.02 feet to a point of curvature therein;

Course No. 4: thence northeasterly along the arc of a circle deflecting to the right, 770.37 feet to a point of compound curvature therein, said curved line having a radius of 3,324.17 feet and a chord which bears North  $53^{\circ}-22'-31''$  East a distance of 768.65 feet;

Course No. 5: thence northeasterly along the arc of a circle deflecting to the right 1,061.41 feet to a point of compound curvature therein, said curved line having a radius of 5,779.65 feet and a chord which bears North  $65^{\circ}-16'-32''$  East a distance of 1,059.92 feet;

Course No. 6: thence northeasterly along the arc of a circle deflecting to the right, 929.25 feet to a point of tangency therein, said curved line having a radius of 1,960.08 feet and a chord which bears North  $84^{\circ}-07'-05''$  East a distance of 920.57 feet;

Course No. 7: thence South  $82^{\circ}-18'-01''$  East, 386.30 feet to a point of curvature therein;

Course No. 8: thence southeasterly along the arc of a circle deflecting to the left, 363.99 feet to its intersection with the northerly prolongation of the easterly line of West 44th Street (formerly Gauge Street), 60 feet in width, said curved line having a radius of 1,860.08 feet and a chord which bears South  $87^{\circ}-54'-08''$  East a distance of 363.41 feet;

Course No. 9: thence South  $1^{\circ}-24'-50''$  East along said northerly prolongation of the easterly line of West 44th Street, 62.73 feet to its intersection with the southeasterly line of land so conveyed to the Flats Industrial Railroad Company;

Thence northwesterly and southwesterly along the southwesterly line of land so conveyed to the Flats Industrial Railroad Company, the following courses and distances;

Course No. 10: thence northwesterly along the arc of a circle deflecting to the right, 347.72 feet to a point of tangency therein, said curved line having a radius of 1,563.20 feet and a chord which bears North 89°-06'-15" West a distance of 347.00 feet;

Course No. 11: thence North 82°-43'-55" West, 398.00 feet to a point of curvature therein;

Course No. 12: thence northwesterly along the arc of a circle deflecting to the left, 501.27 feet to a point of compound curvature therein, said curved line having a radius of 2,028.94 feet and a chord which bears North 89°-48'-35" West a distance of 500.00 feet;

Course No. 13: thence southwesterly along the arc of a circle deflecting to the left, 300.24 feet to a point of compound curvature therein, said curved line having a radius of 2,177.51 feet and a chord which bears South 79°-09'-25" West a distance of 300.00 feet;

Course No. 14: thence southwesterly along the arc of a circle deflecting to the left, 400.03 feet to a point of compound curvature therein, said curved line having a radius of 2,354.86 feet and a chord which bears South 70°-20'-25" West a distance of 399.55 feet;

Course No. 15: thence southwesterly along the arc of a circle deflecting to the left, 500.01 feet to a point of compound curvature therein, said curved line having a radius of 16,528.30 feet and a chord which bears South 64°-36'-25" West a distance of 499.99 feet;

Course No. 16: thence southwesterly along the arc of a circle deflecting to the left, 600.02 feet to a point of compound curvature therein, said curved line having a radius of 3,381.50 feet and a chord which bears South 58°-39'-25" West a distance of 599.23 feet;

Course No. 17: thence southwesterly along the arc of a circle deflecting to the left, 500.17 feet to a point of tangency therein, said curved line having a radius of 4,112.54 feet and a chord which bears South 50°-05'-22" West a distance of 499.86 feet;

Course No. 18: thence South 46°-44'-10" West, 606.20 feet to its intersection with the aforementioned easterly line of West 65th Street;

Course No. 19: thence North 0°-01'-11" East along said easterly line of West 65th Street, 130.50 feet to the place of beginning, containing 292,789 square feet of land (6.7215 acres), according to a survey by Garrett and Associates, Inc., Registered Engineers and Surveyors, made in December, 1998, be the same more or less, but subject to all legal highways.

Excepting therefrom the following parcel of land conveyed to The Cincinnati, New Orleans and Texas Pacific Railway Co. by deed recorded in AFN: 200112170072. Bounded and described as follows:

Situate in the City of Cleveland, County of Cuyahoga, State of Ohio and known as being a part of Original Brooklyn Lots 33, 34, 48, 53, 68, and 69. Together forming a parcel described as follows:

BEGINNING AT A POINT in the westerly right of way line of West Forty First Street (formerly Burton Street), sixty feet (60') in width, at its intersection with the common right of way line dividing the lands of the Grantor and Grantee:

Thence southwesterly along said common line for the following 14 courses and distances:

1. Thence South 59°08'45" West, 60.60 feet;
2. Thence South 65°23'56" West, 178.10 feet;
3. Thence following the arc of a curve to the right, radius = 397.24 feet, arc length = 79.72 feet, chord= 79.59 feet, chord bearing= South 71°08'55" West;
4. Thence South 76°53'56" West, 293.51 feet;
5. Thence following the arc of a curve to the right, radius = 1372.90 feet, arc length = 235.34 feet, chord = 235.05 feet, chord bearing = South 81°48'35" West;
6. Thence following the arc of a curve to the right, radius= 1563.20 feet, arc length = 347.72 feet, chord = 347.00 feet, chord bearing = North 89°21'47" West;
7. Thence North 82°59'27" West, 398.00 feet;
8. Thence following the arc of a curve to the left, radius= 2028.94 feet, arc length = 501.27 feet, chord= 500.00 feet, chord bearing= South 89°55'53" West;
9. Thence following the arc of a curve to the left, radius = 2177.51 feet, arc length = 300.24 feet, chord= 300.00 feet, chord bearing = South 78°53'53" West;
10. Thence following the arc of a curve to the left, radius= 2354.86 feet, arc length = 400.03 feet, chord= 399.55 feet, chord bearing= South 70°04'53" West;
11. Thence following the arc of a curve to the left, radius = 16,528.30 feet, arc length = 500.01 feet, chord = 499.99 feet, chord bearing = South 64°20'53" West;
12. Thence following the arc of a curve to the left, radius= 3381.50 feet, arc length = 600.02 feet, chord = 599.23 feet, chord bearing = South 58°23'53" West;

13. Thence following the arc of a curve to the left, radius = 4112.54 feet, arc length = 500.17 feet, chord= 499.86 feet, chord bearing = South 49°49'50" West;
14. Thence South 46°28'38" West, 606.21 feet; to the easterly right of way line of West Sixty Fifth Street (formerly Gordon Street), 80 feet in width;

Thence northerly along said easterly line, North 0°14'21" West, 130.50 feet;

Thence northeasterly along the north line of the lands of the Grantor for the following 6 courses and distances:

1. Thence North 46°28'38" East, 31.46 feet;
2. Thence South 43°31'22" East, 25.00 feet;
3. Thence North 46°28'38" East, 574.02 feet;
4. Thence following the arc of a curve to the right, radius = 3324.17 feet, arc length = 770.37 feet, chord= 768.65 feet, chord bearing = North 53°06'59" East;
5. Thence following the arc of a curve to the right, radius = 5779.65 feet, arc length = 1061.41 feet, chord = 1059.92 feet, chord bearing = North 65°01'00" East;
6. Thence following the arc of a curve to the right, radius = 1960.08 feet, arc length = 538.09 feet, chord = 536.40 feet, chord bearing = North 78°08'31" East to the center line of Junction Road, S. W.;

Thence southerly and easterly along a new property line through the lands of the grantor, separating the lands of the Grantee from those of the Grantor for the following 14 courses and distances:

1. Thence South 03°59'36" East, 39.37 feet;
2. Thence following the arc of a curve to the right, radius= 2108.93 feet, arc length = 325.57 feet, chord = 325.24 feet, chord bearing= South 89°07'37" East;
3. Thence South 83°34'11" East, 124.74 feet;
4. Thence South 82°59'59" East, 210.02 feet;
5. Thence South 83°46'20" East, 153.97 feet;
6. Thence following the arc of a curve to the left, radius = 1884.83 feet, arc length = 584.95 feet, chord = 582.60 feet, chord bearing = North 85°47'05" East;
7. Thence South 13°06'22" East, 17.50 feet;
8. Thence following the arc of a curve to the left, radius = 1902.33 feet, arc length = 429.33 feet, chord= 428.42 feet, chord bearing = North 70°25'42" East;
9. Thence North 62°24'44" East, 154.68 feet;
10. Thence North 61°38'17" East, 240.93 feet;

11. Thence following the arc of a curve to the left, radius = 7070.20 feet, arc length= 325.09 feet, chord = 325.06 feet, chord bearing = North 60°19'16" East;
12. Thence North 59°00'14" East, 748.52 feet;
13. Thence following the arc of a curve to the right, radius = 1678.30 feet, arc length = 377.52 feet, chord = 376.72 feet, chord bearing = North 65°26'52" East;
14. Thence North 71°53'29" East, 194.65 feet, to a point on the existing southerly boundary of the lands of the Grantor;

Thence westerly along the existing southerly boundary of the lands of the Grantor, said southerly boundary being the common right of way line presently dividing the lands of the Grantor and Grantee, the following three courses and distances:

1. Thence South 66°09'16" West, 341.43 feet;
2. Thence South 63°28'04" West, 201.10 feet;
3. Thence South 59°08'45" West, 1356.44 feet, to the true PLACE OF BEGINNING.

Containing 7.663 acres, more or less, and subject to all legal streets and highways and to all existing easements whether or not of record; according to a survey by CT Consultants, Inc., Licensed Surveyors, made in October, 2000.

The above parcel is subject to a perpetual easement retained for access to and through the existing gate at Junction Road, S. W. to Junction Road, S. W. by the Grantor, their successors and assigns.

## Permanent Parcel No. 007-13-010

## Parcel 2

Situated in the City of Cleveland, County of Cuyahoga and State of Ohio, and known as being a part of Original Brooklyn Township Lot Nos. 53, 68 and 69, together forming a parcel of land bounded and described as follows:

Beginning on the southwesterly line of land conveyed to the Flats Industrial Railroad Company, at its intersection with the northerly prolongation of the easterly line of West 44th Street (formerly Guage Street), 60 feet in width;

Course No. 1: thence North  $1^{\circ}-24'-50''$  West along said northerly prolongation of the easterly line of West 44th Street, 62.73 feet to its intersection with the northeasterly curved line of land so conveyed to the Flats Industrial Railroad Company;

Thence northeasterly along the northeasterly lines of land so conveyed to the Flats Industrial Railroad Company, the following courses and distances;

Course No. 2: thence northeasterly along the arc of a circle deflecting to the left, 425.54 feet to a point of compound curvature therein, said curved line having a radius of 1,860.08 feet and a chord which bears North  $79^{\circ}-56'-16''$  East a distance of 424.61 feet;

Course No. 3: thence northeasterly along the arc of a circle deflecting to the left, 408.39 feet to a point of tangency therein, said curved line having a radius 1,865.68 feet and a chord which bears North  $65^{\circ}-35'-41''$  East a distance of 407.57 feet;

Course No. 4: thence North  $59^{\circ}-19'-26''$  East, 22.83 feet to a point in the westerly line of West 41st Street, 60 feet in width;

Course No. 5: thence North  $62^{\circ}-25'-04''$  East, 67.11 feet to a point in the easterly line of said West 41st Street;

Course No. 6: thence North  $59^{\circ}-14'-10''$  East, 322.82 feet;

Course No. 7: thence North  $30^{\circ}-45'-50''$  West, 30.62 feet to a point of intersection of the southwesterly line of Palm Avenue S.W., 50 feet in width, with the easterly line of West 40th Street, 50 feet in width;

Course No. 8: thence North  $48^{\circ}-54'-37''$  East, 535.76 feet to a point of curvature therein;

Course No. 9: thence northeasterly along the arc of a circle deflecting to the right, 268.16 feet to a point, said curved line having a radius of 2,085.03 feet and a chord which bears North  $54^{\circ}-02'-24''$  East a distance of 267.97 feet;

Course No. 10: thence North 71°-39'-47" East, 751.22 feet to a point of curvature therein;

Course No. 11: thence northeasterly along the arc of a circle deflecting to the left, 477.45 feet to a point of compound curvature therein, said curved line having a radius of 3,661.58 feet and a chord which bears North 67°-55'-39" East a distance of 477.12 feet;

Course No. 12: thence northeasterly along the arc of a circle deflecting to the left, 380.18 feet to a point of compound curvature therein, said curved line having a radius of 1,159.04 feet and a chord which bears North 54°-47'-42" East a distance of 378.48 feet;

Course No. 13: thence northeasterly along the arc of a circle deflecting to the left, 148.54 feet to a point of compound curvature therein, said curved line having a radius of 1,550.52 feet and a chord which bears North 42°-39'-13" East a distance of 148.48 feet;

Course No. 14: thence northeasterly along the arc of a circle deflecting to the left, 53.46 feet to a point of tangency therein, said curved line having a radius of 1,550.52 feet and a chord which bears North 38°-55'-17" East a distance of 53.46 feet;

Course No. 15: thence North 37°-54'-07" East, 89.49 feet;

Course No. 16: thence North 37°-55'-57" East, 76.31 feet;

Course No. 17: thence North 56°-16'-53" East, 107.01 feet;

Course No. 18: thence South 37°-33'-06" West, 122.51 feet;

Course No. 19: thence South 37°-33'-03" West, 6.75 feet;

Course No. 20: thence South 37°-47'-24" West, 63.19 feet;

Course No. 21: thence South 38°-47'-47" West, 32.56 feet;

Course No. 22: thence South 38°-47'-53" West, 77.46 feet;

Course No. 23: thence South 23°-20'-37" East, 24.60 feet;

Course No. 24: thence North 66°-39'-09" East, 175.25 feet;

Course No. 25: thence North 41°-15'-22" East, 114.83 feet;

Course No. 26: thence North 38°-15'-22" East, 21.07 feet;

Course No. 27: thence North 38°-15'-24" East, 96.20 feet;

Course No. 28: thence North 36°-08'-55" East, 56.01 feet;

Course No. 29: thence North 35°-30'-47" East, 58.01 feet;

Course No. 30: thence North 34°-51'-44" East, 58.01 feet;  
 Course No. 31: thence North 34°-27'-31" East, 50.71 feet;  
 Course No. 32: thence South 30°-52'-26" East, 34.25 feet;  
 Course No. 33: thence North 33°-44'-34" East, 7.19 feet;  
 Course No. 34: thence North 33°-27'-46" East, 58.01 feet;  
 Course No. 35: thence North 33°-39'-49" East, 58.01 feet;  
 Course No. 36: thence North 33-25'-00" East, 290.04 feet;  
 Course No. 37: thence North 32°-25'-48" East, 58.01 feet;  
 Course No. 38: thence North 32°-59'-25" East, 42.01 feet;  
 Course No. 39: thence South 57°-01'-01" East, 15.00 feet;  
 Course No. 40: thence North 30°-11'-05" East, 41.98 feet;  
 Course No. 41: thence North 30°-11'-08" East, 68.04 feet;  
 Course No. 42: thence North 23°-24'-09" East, 109.36 feet;

Course No. 43: thence northeasterly along the arc of a circle deflecting to the right, 80.90 feet to a point of tangency therein, said curved line having a radius of 1,980.34 feet and a chord which bears North 63°-41'-31" East a distance of 80.89 feet;

Course No. 44: thence North 64°-51'-43" East, 79.30 feet to a point in the westerly line of West 25th Street (formerly Pearl Road), 66 feet in width;

Course No. 45: thence South 20°-37'-38" East along said westerly line of West 25th Street, 90.71 feet to its intersection with the southwesterly line of land so conveyed to the Flats Industrial Railroad Company;

Thence southwesterly along the southwesterly lines of land so conveyed to the Flats Industrial Railroad Company, the following courses and distances;

Course No. 46: thence southwesterly along the arc of a circle deflecting to the left, 59.89 feet to a point of compound curvature therein, said curved line having a radius of 1,447.27 feet and a chord which bears South 54°-27'-09" West a distance of 59.89 feet;

Course No. 47: thence southwesterly along the arc of a circle deflecting to the left, 79.93 feet to a point of compound curvature therein, said curved line having a radius of 1,312.35 feet and a chord which bears South 51°-31'-20" West a distance of 79.91 feet;

Course No. 48: thence southwesterly along the arc of a circle deflecting to the left, 99.33 feet to a point of compound curvature therein, said curved line having a radius of 1,900.85 feet and a chord which bears South 48°-16'-50" West a distance of 99.31 feet;

Course No. 49: thence southwesterly along the arc of a circle deflecting to the left, 99.33 feet to a point of compound curvature therein, said curved line having a radius of 1,123.72 feet and a chord which bears South 44°-14'-55" West a distance of 99.29 feet;

Course No. 50: thence southwesterly along the arc of a circle deflecting to the left, 82.23 feet to a point in compound curvature therein, said curved line having a radius of 2,053.84 feet and a chord which bears South 40°-34'-20" West a distance of 82.22 feet;

Course No. 51: thence southwesterly along the arc of a circle deflecting to the left, 74.71 feet to a point of compound curvature therein, said curved line having a radius of 1,038.79 feet and a chord which bears South 37°-22'-54" West a distance of 74.69 feet;

Course No. 52: thence southwesterly along the arc of a circle deflecting to the left, 87.49 feet to its intersection with the northwesterly curved line of Train Avenue S.W., 60 feet in width, said curved line having a radius of 5,332.83 feet and a chord which bears South 34°-50'-05" West a distance of 87.49 feet;

Course No. 53: thence southwesterly along said northwesterly line of Train Avenue S.W., along the arc of a circle deflecting to the left, 34.50 feet to a point of tangency therein, said curved line having a radius of 310.00 feet and a chord which bears South 36°-35'-48" West, a distance of 34.48 feet;

Course No. 54: thence South 33°-24'-32" West along said northwesterly line of Train Avenue S.W., 227.59 feet to a point of curvature therein;

Course No. 55: thence southwesterly along a northwesterly line of Train Avenue S.W., along the arc of a circle deflecting to the left, 3.81 feet to a point, said curved line having a radius of 160.00 feet and a chord which bears South 32°-43'-39" West a distance of 3.81 feet;

Thence northwesterly and southwesterly along the southwesterly lines of the Flats Industrial Railroad Company, the following courses and distances;

Course No. 56: thence North 33°-43'-50" West, 0.18 feet;

Course No. 57: thence South 33°-24'-58" West, 154.24 feet;

Course No. 58: thence North 56°-34'-32" West, 2.37 feet;

- Course No. 59: thence South 33°-25'-00" West, 71.51 feet;
- Course No. 60: thence South 39°-51'-17" West, 25.43 feet;
- Course No. 61: thence South 39°-51'-14" West, 40.83 feet;
- Course No. 62: thence South 39°-58'-03" West, 58.01 feet;
- Course No. 63: thence South 42°-25'-04" West, 58.01 feet;
- Course No. 64: thence South 44°-42'-02" West, 58.01 feet;
- Course No. 65: thence South 46°-46'-18" West, 58.01 feet;
- Course No. 66: thence South 48°-41'-13" West, 58.01 feet;
- Course No. 67: thence South 50°-22'-23" West, 58.01 feet;
- Course No. 68: thence South 51°-34'-52" West, 30.01 feet;
- Course No. 69: thence South 49°-06'-29" West, 118.84 feet;
- Course No. 70: thence southwesterly along the arc of a circle deflecting to the right, 58.70 feet to a point of compound curvature therein, said curved line having a radius of 2,101.68 feet and a chord which bears South 56°-01'-42" West a distance of 58.70 feet;
- Course No. 71: thence southwesterly along the arc of a circle deflecting to the right, 91.53 feet to a point of compound curvature therein, said curved line having a radius of 1,807.83 feet and a chord which bears South 58°-16'-41" West, 91.52 feet;
- Course No. 72: thence southwesterly along the arc of a circle deflecting to the right, 130.28 feet to a point, said curved line having a radius of 2,038.87 feet and a chord which bears South 61°-33'-47" West a distance of 130.26 feet;
- Course No. 73: thence South 66°-02'-40" West, 592.18 feet;
- Course No. 74: thence South 66°-24'-48" West, 400.00 feet;
- Course No. 75: thence South 63°-43'-36" West, 201.10 feet;
- Course No. 76: thence South 59°-24'-18" West, 1,417.04 feet;
- Course No. 77: thence South 65°-39'-28" West, 178.10 feet to a point of curvature therein;
- Course No. 78: thence southwesterly along the arc of a circle deflecting to the right, 79.72 feet to a point of tangency therein, said curved line having a radius of 397.24 feet and a chord which bears South 71°-24'-27" West a distance of 79.59 feet;

Course No. 79: thence South  $77^{\circ}09'28''$  West, 293.51 feet to a point of curvature therein;

Course No. 80: thence southwesterly along the arc of a circle deflecting to the right, 235.34 feet to the place of beginning, said curved line having a radius of 1,372.90 feet and a chord which bears South  $82^{\circ}04'07''$  West a distance of 235.05 feet, containing 599,825 square feet of land ( 13.7701 acres), according to a survey by Garrett & Associates, Inc., Registered Engineers and Surveyors, made in December, 1998, be the same more or less, but subject to all legal highways.

Excepting therefrom the following parcel of land conveyed to The Cincinnati, New Orleans and Texas Pacific Railway Co. by deed recorded in AFN: 200112170072. Bounded and described as follows:

Situate in the City of Cleveland, County of Cuyahoga, State of Ohio and known as being a part of Original Brooklyn Lots 33, 34, 48, 53, 68, and 69. Together forming a parcel described as follows:

BEGINNING AT A POINT in the westerly right of way line of West Forty First Street (formerly Burton Street), sixty feet (60') in width, at its intersection with the common right of way line dividing the lands of the Grantor and Grantee:

Thence southwesterly along said common line for the following 14 courses and distances:

1. Thence South  $59^{\circ}08'45''$  West, 60.60 feet;
2. Thence South  $65^{\circ}23'56''$  West, 178.10 feet;
3. Thence following the arc of a curve to the right, radius = 397.24 feet, arc length = 79.72 feet, chord = 79.59 feet, chord bearing = South  $71^{\circ}08'55''$  West;
4. Thence South  $76^{\circ}53'56''$  West, 293.51 feet;
5. Thence following the arc of a curve to the right, radius = 1372.90 feet, arc length = 235.34 feet, chord = 235.05 feet, chord bearing = South  $81^{\circ}48'35''$  West;
6. Thence following the arc of a curve to the right, radius = 1563.20 feet, arc length = 347.72 feet, chord = 347.00 feet, chord bearing = North  $89^{\circ}21'47''$  West;
7. Thence North  $82^{\circ}59'27''$  West, 398.00 feet;
8. Thence following the arc of a curve to the left, radius = 2028.94 feet, arc length = 501.27 feet, chord = 500.00 feet, chord bearing = South  $89^{\circ}55'53''$  West;
9. Thence following the arc of a curve to the left, radius = 2177.51 feet, arc length = 300.24 feet, chord = 300.00 feet, chord bearing = South  $78^{\circ}53'53''$  West;
10. Thence following the arc of a curve to the left, radius = 2354.86 feet, arc length = 400.03 feet, chord = 399.55 feet, chord bearing = South  $70^{\circ}04'53''$  West;

11. Thence following the arc of a curve to the left, radius = 16,528.30 feet, arc length = 500.01 feet, chord = 499.99 feet, chord bearing = South 64°20'53" West;
12. Thence following the arc of a curve to the left, radius = 3381.50 feet, arc length = 600.02 feet, chord = 599.23 feet, chord bearing = South 58°23'53" West;
13. Thence following the arc of a curve to the left, radius = 4112.54 feet, arc length = 500.17 feet, chord = 499.86 feet, chord bearing = South 49°49'50" West;
14. Thence South 46°28'38" West, 606.21 feet; to the easterly right of way line of West Sixty Fifth Street (formerly Gordon Street), 80 feet in width;

Thence northerly along said easterly line, North 0°14'21" West, 130.50 feet;

Thence northeasterly along the north line of the lands of the Grantor for the following 6 courses and distances:

1. Thence North 46°28'38" East, 31.46 feet;
2. Thence South 43°31'22" East, 25.00 feet;
3. Thence North 46°28'38" East, 574.02 feet;
4. Thence following the arc of a curve to the right, radius = 3324.17 feet, arc length = 770.37 feet, chord = 768.65 feet, chord bearing = North 53°06'59" East;
5. Thence following the arc of a curve to the right, radius = 5779.65 feet, arc length = 1061.41 feet, chord = 1059.92 feet, chord bearing = North 65°01'00" East;
6. Thence following the arc of a curve to the right, radius = 1960.08 feet, arc length = 538.09 feet, chord = 536.40 feet, chord bearing = North 78°08'31" East to the center line of Junction Road, S. W.;

Thence southerly and easterly along a new property line through the lands of the grantor, separating the lands of the Grantee from those of the Grantor for the following 14 courses and distances:

1. Thence South 03°59'36" East, 39.37 feet;
2. Thence following the arc of a curve to the right, radius = 2108.93 feet, arc length = 325.57 feet, chord = 325.24 feet, chord bearing = South 89°07'37" East;
3. Thence South 83°34'11" East, 124.74 feet;
4. Thence South 82°59'59" East, 210.02 feet;
5. Thence South 83°46'20" East, 153.97 feet;
6. Thence following the arc of a curve to the left, radius = 1884.83 feet, arc length = 584.95 feet, chord = 582.60 feet, chord bearing = North 85°47'05" East;

7. Thence South 13°06'22" East, 17.50 feet;
8. Thence following the arc of a curve to the left, radius = 1902.33 feet, arc length = 429.33 feet, chord = 428.42 feet, chord bearing = North 70°25'42" East;
9. Thence North 62°24'44" East, 154.68 feet;
10. Thence North 61°38'17" East, 240.93 feet;
11. Thence following the arc of a curve to the left, radius = 7070.20 feet, arc length = 325.09 feet, chord = 325.06 feet, chord bearing = North 60°19'16" East;
12. Thence North 59°00'14" East, 748.52 feet;
13. Thence following the arc of a curve to the right, radius = 1678.30 feet, arc length = 377.52 feet, chord = 376.72 feet, chord bearing = North 65°26'52" East;
14. Thence North 71°53'29" East, 194.65 feet, to a point on the existing southerly boundary of the lands of the Grantor;

Thence westerly along the existing southerly boundary of the lands of the Grantor, said southerly boundary being the common right of way line presently dividing the lands of the Grantor and Grantee, the following three courses and distances:

1. Thence South 66°09'16" West, 341.43 feet;
2. Thence South 63°28'04" West, 201.10 feet;
3. Thence South 59°08'45" West, 1356.44 feet, to the true PLACE OF BEGINNING.

Containing 7.663 acres, more or less, and subject to all legal streets and highways and to all existing easements whether or not of record; according to a survey by CT Consultants, Inc., Licensed Surveyors, made in October, 2000.

The above parcel is subject to a perpetual easement retained for access to and through the existing gate at Junction Road, S. W. to Junction Road, S. W. by the Grantor, their successors and assigns.

## Permanent Parcel Nos. 004-04-017, 004-25-002, 004-29-002

## Parcel 3

Situated in the City of Cleveland, County of Cuyahoga and State of Ohio, and known as being a part of Original Brooklyn Township Lot Nos. 69, 70 and 87, together forming a parcel of land bounded and described as follows:

Beginning on the westerly line of West 25th Street, 66 feet in width, at its intersection with the southeasterly line of land conveyed to the Flats Industrial Railroad Company, at the point distant North  $20^{\circ}-37'-38''$  West, 103.47 feet as measured along said westerly line of West 25th Street from the northeasterly line of Train Avenue S.W., 60 feet in width;

Course No. 1: thence North  $20^{\circ}-37'-38''$  West along said westerly line of West 25th Street, 100.14 feet to its intersection with the northeasterly line of land so conveyed to The Flats Industrial Railroad Company;

Thence northeasterly and northwesterly along the northeasterly and northwesterly lines of land so conveyed to the Flats Industrial Railroad Company, the following courses and distances;

Course No. 2: thence northeasterly along the arc of a circle deflecting to the left, 547.08 feet to its intersection with the easterly line of West 20th Street, 66 feet in width, said curved line having a radius of 1,595.32 feet and a chord which bears North  $56^{\circ}-27'-38''$  East a distance of 544.41 feet;

Course No. 3: thence North  $0^{\circ}-22'-32''$  West along said easterly line of West 20th Street, 42.83 feet;

Course No. 4: thence South  $83^{\circ}-01'-52''$  East, 39.49 feet to a point of curvature;

Course No. 5: thence northeasterly along the arc of a circle deflecting to the left, 20.20 feet to a point, said curved line having a radius of 1,595.32 feet and a chord which bears North  $44^{\circ}-19'-09''$  East a distance of 20.20 feet;

Course No. 6: thence North  $59^{\circ}-45'-47''$  West, 7.91 feet;

Course No. 7: thence North  $21^{\circ}-02'-13''$  East, 137.05 feet;

Course No. 8: thence South  $59^{\circ}-45'-47''$  East, 57.00 feet;

- Course No. 9: thence North 40°-05'-13" East, 130.80 feet to its intersection with the easterly line of Willey Avenue S.W., 60 feet in width;
- Course No. 10: thence North 53°-37'-32" West along said easterly line of Willey Avenue S.W., 55.72 feet;
- Course No. 11: thence North 36°-22'-28" East, 88.66 feet to a point in the westerly line of Mill Avenue S.W., 30 feet in width;
- Course No. 12: thence South 0°-47'-55" East along said westerly line of Mill Avenue S.W., 93.71 feet;
- Course No. 13: thence northeasterly along the arc of a circle deflecting to the left, 501.81 feet to a point of tangency therein, said curved line having a radius of 2,006.58 feet and a chord which bears North 32°-45'-15" East a distance of 500.50 feet;
- Course No. 14: thence North 25°-35'-24" East, 872.80 feet to a point of curvature therein;
- Course No. 15: thence northeasterly along the arc of a circle deflecting to the left, 763.90 feet to a point of tangency therein, said curved line having a radius of 1,302.63 feet and a chord which bears North 8°-47'-24" East, a distance of 753.00 feet;
- Course No. 16: thence North 8°-00'-36" West, 336.13 feet;
- Course No. 17: thence North 81°-59'-24" East, 20.00 feet;
- Course No. 18: thence North 8°-00'-36" West, 71.08 feet;
- Course No. 19: thence North 13°-24'-07" West, 106.42 feet;
- Course No. 20: thence South 81°-59'-24" West, 10.00 feet;
- Course No. 21: thence North 8°-00'-36" West, 690.54 feet to a point of curvature therein;
- Course No. 22: thence northwesterly along the arc of a circle deflecting to the left, 235.80 feet to a point of compound curvature therein, said curved line having a radius of 1,434.09 feet and a chord which bears North 12°-43'-06" West a distance of 235.53 feet;
- Course No. 23: thence northwesterly along the arc of a circle deflecting to the left, 734.12 feet to its intersection with the westerly line of Carter Road N.W., 60 feet in width, said curved line having a radius of 810.67 feet and a chord which bears North 52°-06'-15" West a distance of 709.29 feet;
- Course No. 24: thence North 7°-37'-48" West along said westerly line of Carter Road N.W., 0.43 feet to an angle therein;

Course No. 25: thence North  $31^{\circ}-35'-25''$  East along said northwesterly line of Carter Road N.W., 42.45 feet to its intersection with the northeasterly line of land so conveyed to the Flats Industrial Railroad Company;

Thence southeasterly along the northeasterly line of land so conveyed to the Flats Industrial Railroad Company, the following courses and distances;

Course No. 26: thence southeasterly along the arc of a circle deflecting to the right, 794.63 feet to a point of tangency therein, said curved line having a radius of 851.17 feet and a chord which bears South  $50^{\circ}-21'-06''$  East a distance of 766.08 feet;

Course No. 27: thence South  $23^{\circ}-36'-24''$  East, 259.73 feet to its intersection with the southwesterly line of Gerard Avenue N.W., 60 feet in width;

Course No. 28: thence South  $8^{\circ}-00'-36''$  East, 394.64 feet;

Course No. 29: thence South  $18^{\circ}-54'-36''$  East, 229.00 feet to a point of curvature therein;

Course No. 30: thence southeasterly along the arc of a circle deflecting to the left, 216.99 feet to its intersection with the northwesterly line of Scranton Road S.W., 60 feet in width, said curved line having a radius of 1,200.00 feet and a chord which bears South  $24^{\circ}-09'-25''$  East and a distance of 216.70 feet;

Course No. 31: thence South  $1^{\circ}-40'-29''$  East along said northwesterly line of Scranton Road S.W., 271.44 feet to an angle therein;

Course No. 32: thence South  $3^{\circ}-22'-36''$  West along a northwesterly line of Scranton Road S.W., 67.93 feet;

Thence northwesterly and southwesterly along the southwesterly and southeasterly lines of land so conveyed to the Flats Railroad Company, the following courses and distances;

Course No. 33: thence North  $51^{\circ}-31'-42''$  West, 87.08 feet;

Course No. 34: thence South  $8^{\circ}-00'-36''$  East, 63.61 feet to a point of curvature therein;

Course No. 35: thence southwesterly along the arc of a circle deflecting to the right, 822.54 feet to a point of tangency therein, said curved line having a radius of 1,402.63 feet and a chord which bears South  $8^{\circ}-47'-24''$  West a distance of 810.81 feet;

Course No. 36: thence South  $25^{\circ}-35'-24''$  West, 872.80 feet to a point of curvature therein;

Course No. 37: thence southwesterly along the arc of a circle deflecting to the right, 533.00 feet to a point of tangency therein, said curved line having a radius of 2,106.58 feet and a chord which bears South 32°-50'-18" West a distance of 531.58 feet;

Course No. 38: thence South 40°-05'-13" West, 118.07 feet to its intersection with the southwesterly line of Willey Avenue S.W., as aforementioned;

Course No. 39: thence North 33°-44'-37" West along said northwesterly line of Willey Avenue S.W., 0.48 feet to its intersection with the centerline of Mill Avenue S.W., 60 feet in width, now vacated;

Course No. 40: thence South 29°-59'-41" West along said centerline of vacated Mill Avenue, 152.81 feet;

Course No. 41: thence North 60°-00'-19" West perpendicular to said centerline of vacated Mill Avenue S.W., 30.00 feet to a point in the northeasterly line thereof;

Course No. 42: thence southwesterly along the arc of a circle deflecting to the right, 676.07 feet to the place of beginning, said curved line having a radius of 1,695.32 feet and a chord which bears South 55°-02'-33" West a distance of 671.60 feet, containing 529,574 square feet of land (12.1573 acres), according to a survey by Garrett and Associates, Inc., Registered Engineers and Surveyors, made in December, 1998, be the same more or less, but subject to all legal highways.

The bearings used herein are based on an assumed meridian and are used only to denote angles.

**Permanent Parcel No. 004-29-001****Parcel 4**

Situated in the City of Cleveland, County of Cuyahoga and State of Ohio, and known as being a part of Original Brooklyn Township Lot No. 70, bounded and described as follows:

Beginning on the southwesterly line of Carter Road N.W., 35 feet in width, at its intersection with the southwesterly line of land conveyed to the Flats Industrial Railroad Company;

Course No. 1: thence southwesterly along the southwesterly line of land so conveyed to the Flats Industrial Railroad Company, along the arc of a circle deflecting to the left, 363.15 feet to its intersection with the established easterly Dock Line of the Cuyahoga River, said curved line having a radius of 810.67 feet and a chord which bears South 89°-07'-11" West a distance of 360.13 feet;

Course No. 2: thence North 0°-03'-52" East along said established easterly Dock Line of the Cuyahoga River, 41.64 feet to its intersection with the northeasterly line of land so conveyed to the Flats Industrial Railroad Company;

Course No. 3: thence northeasterly along the northwesterly line of land so conveyed to the Flats Industrial Railroad Company, along the arc of a circle deflecting to the right, 385.50 feet to its intersection with the northwesterly line of Carter Road N.W., 50 feet in width, said curved line having a radius of 851.17 feet and a chord which bears North 89°-55'-44" East a distance of 382.22 feet;

Course No. 4: thence South 31°-35'-25" West along said northwesterly line of Carter Road N.W., 42.45 feet to an angle therein;

Course No. 5: thence South 7°-37'-48" East along the aforementioned southwesterly line of Carter Road N.W., 0.43 feet to the place of beginning, containing 15,155 square feet of land (0.3479 acres), according to a survey by Garrett and Associates, Inc., Registered Engineers and Surveyors, made in December, 1998, be the same more or less, but subject to all legal highways.

The bearings used herein are based on an assumed meridian and are used to denote angles only.

**Permanent Parcel No. 101-19-020**

**Parcel 5**

Situated in the City of Cleveland, County of Cuyahoga and State of Ohio, and known as being a part of the Merwin Tract, bounded and described as follows:

Beginning on the easterly line of Columbus Road N.W., 80 feet in width, at its intersection with the northeasterly line of Leonard Street N.W., 50 feet in width;

Course No. 1: thence North  $0^{\circ}-20'-11''$  West along said easterly line of Columbus Road N.W., 109.35 feet to its intersection with the northerly line of land conveyed to the Flats Industrial Railroad Company,

Course No. 2: thence North  $89^{\circ}-39'-49''$  East perpendicular to said easterly line of Columbus Road N.W., and along said northerly line of land so conveyed to the Flats Industrial Railroad Company, 82.99 feet to its intersection with the established westerly Dock Line of the Cuyahoga River;

Course No. 3: thence South  $0^{\circ}-03'-32''$  West along said established westerly line of Dock Line of the Cuyahoga River, 59.18 feet to its intersection with the southeasterly line of land so conveyed to the Flats Industrial Railroad Company;

Course No. 4: thence South  $58^{\circ}-22'-52''$  West along said southeasterly line of land so conveyed to the Flats Industrial Railroad Company, 96.63 feet to the place of beginning, containing 6,971 square feet of land (0.1600 acres), according to a survey by Garrett and Associates, Inc., Registered Engineers and Surveyors, made in December, 1998, be the same more or less, but subject to all legal highways.

The bearings used herein are based on an assumed meridian and are used only to denote angles.

**Permanent Parcel No. 101-17-015**

**Parcel 6**

Situated in the City of Cleveland, County of Cuyahoga and State of Ohio, and known as being a part of the Merwin Tract, bounded and described as follows:

Beginning on the northeasterly line of French Street N.W., 50 feet in width, at its intersection with the northwesterly line of formerly Gravity Place, in the Cleveland Centre Allotment of part of the Merwin Tract, as shown by the recorded plat in Volume 2 of Maps, Page 21 of Cuyahoga County Records;

Course No. 1: thence North  $83^{\circ}-44'-11''$  West along said northeasterly line of French Street N.W., 87.11 feet to its intersection with the westerly line of land conveyed to the Flats Industrial Railroad Company;

Course No. 2: thence North  $1^{\circ}-44'-36''$  West along said westerly line of land so conveyed to the Flats Industrial Railroad Company, 42.06 feet to the northwesterly corner thereof;

Course No. 3: thence southeasterly along the northeasterly line of land so conveyed to the Flats Industrial Railroad Company, along the arc of a circle deflecting to the left, 105.66 feet to its intersection with the aforementioned northwesterly line of Gravity Place in said Cleveland Centre Allotment, said curved line having a radius of 378.51 feet and a chord which bears South  $72^{\circ}-25'-55''$  East a distance of 105.31 feet;

Course No. 4: thence South  $32^{\circ}-23'-03''$  West along the northwesterly line of Gravity Place in said Cleveland Centre Allotment, 23.40 feet to the place of beginning, containing 2,746 square feet of land (0.0631 acres), according to a survey by Garrett and Associates, Inc., Registered Engineers and Surveyors, made in December, 1998, be the same more or less, but subject to all legal highways.

The bearings used herein are based on an assumed meridian and are used only to denote angles.

# Permanent Parcel No. 101-17-014

## Parcel 7

Situated in the City of Cleveland, County of Cuyahoga and State of Ohio, and known as being a part of Merwin Tract, bounded and described as follows:

Beginning on the southeasterly line of Fall Street N.W., 50 feet in width, at a point distant South 22°-52'-42" West, 75.25 feet as measured along said southeasterly line from its intersection with the southwesterly line of Leonard Street N.W., 60 feet in width, being also the northerly corner of land conveyed to the Flats Industrial Railroad Company;

Course No. 1: thence South 57°-02'-18" East along a northeasterly line of land so conveyed to the Flats Industrial Railroad Company, 12.08 feet to a point of curvature therein;

Course No. 2: thence southeasterly along a northeasterly line of land so conveyed to the Flats Industrial Railroad Company, along the arc of a circle deflecting to the right, 80.73 feet to a point of tangency therein, said curved line having a radius of 352.14 feet and a chord which bears South 50°-28'-13" East a distance of 80.56 feet;

Course No. 3: thence South 43°-54'-09" East along a northeasterly line of land so conveyed to the Flats Industrial Railroad Company, 30.73 feet to the northeasterly corner thereof;

Course No. 4: thence South 0°-58'-23" West along the easterly line of land so conveyed to the Flats Industrial Railroad Company, 28.35 feet to the southeasterly corner thereof;

Course No. 5: thence North 43°-54'-09" West along a southwesterly line of land so conveyed to the Flats Industrial Railroad Company, 50.82 feet to a point of curvature therein;

Course No. 6: thence northwesterly along a southwesterly line of land so conveyed to the Flats Industrial Railroad Company, along the arc of a circle deflecting to the left, 76.15 feet to a point of tangency therein, said curved line having a radius of 332.14 feet and a chord which bears North 50°-28'-13" West a distance of 75.98 feet;

Course No. 7: thence North 57°-02'-18" West along a southwesterly line of land so conveyed to the Flats Industrial Railroad Company, 8.52 feet to its intersection with the aforementioned southeasterly line of Fall Street N.W.;

Course No. 8: thence North  $22^{\circ}-52'-42''$  East along said southeasterly line of Fall Street N.W., 20.31 feet to the place of beginning, containing 2,590 square feet of land (0.0595 acres ), according to a survey by Garrett & Associates, Inc., Registered Engineers and Surveyors, made in December, 1998, be the same more or less, but subject to all legal highways.

The bearings used herein are based on an assumed meridian and are used only to denote angles.

**Permanent Parcel No. 101-19-041**

**Parcel 8**

Situated in the City of Cleveland, County of Cuyahoga and State of Ohio, and known as being a part of the Merwin Tract, bounded and described as follows:

Beginning on the southeasterly line of British Street N.W., 50 feet in width, at a point distant South  $75^{\circ}-14'-24''$  West, 46.19 feet as measured along said southeasterly line from its intersection with the westerly line of Columbus Road N.W., 80 feet in width, being also the northeasterly corner of land conveyed to the Flats Industrial Railroad Company;

Course No. 1: thence southwesterly along the southeasterly curved line of land so conveyed to the Flats Industrial Railroad Company, along the arc of a circle deflecting to the left, 37.93 feet to a point of tangency therein, said curved line having a radius of 316.38 feet and a chord which bears South  $54^{\circ}-47'-19''$  West a distance of 37.91 feet;

Course No. 2: thence South  $51^{\circ}-21'-13''$  West along a southeasterly line of land so conveyed to the Flats Industrial Railroad Company, 109.40 feet to the southwesterly corner thereof;

Course No. 3: thence North  $3^{\circ}-06'-12''$  West along the westerly line of land so conveyed to the Flats Industrial Railroad Company, 58.76 feet to its intersection with the aforementioned southeasterly line of British Street N.W.;

Course No. 4: thence North  $75^{\circ}-14'-24''$  East along said southeasterly line of British Street N.W., 123.68 feet to the place of beginning, containing 3,420 square feet of land (0.0785 acres), according to a survey by Garrett and Associates, Inc., Register Engineers and Surveyors, made in December, 1998, be the same more or less, but subject to all legal highways.

The bearings used herein are based on an assumed meridian and are used only to denote angles.

## Parcel 9

Any and all interest of Flats Industrial, Inc. (fka Flats Industrial Railroad Co.), whether in fee, by easement or otherwise, if any, as granted under that certain deed recorded with the Recorder of Cuyahoga County, Ohio on October 28, 1988 at Volume 88-5651 pg. 70, Instrument No. 00652807, in the following described property. The permanent parcel number assigned to this parcel is 101-19-001.

Situated in the City of Cleveland, County of Cuyahoga and State of Ohio, and known as being a part of the Merwin Tract, bounded and described as follows:

Beginning on the southeasterly line of British Street N.W., 50 feet in width, at the point distant South  $75^{\circ}-14'-24''$  West, 169.87 feet as measured along said southeasterly line from its intersection with the westerly line of Columbus Road N.W.; 80 feet in width, being also in the northeasterly corner of land so conveyed to the Flats Industrial Railroad Company;

Course No 1: thence South  $3^{\circ}-06'-12''$  East along the easterly line of land so conveyed to the Flats Industrial Railroad Company, 58.76 feet to the southeasterly corner thereof;

Course No. 2: thence South  $51^{\circ}-21'-13''$  West along the southeasterly line of land so conveyed to the Flats Industrial Railroad Company, 105.90 feet to a point of curvature therein;

Course No. 3: thence southwesterly along a southeasterly line of land so conveyed to the Flats Industrial Railroad Company, along the arc of a circle deflecting to the left, 79.16 feet to a southwesterly corner of land conveyed to the Flats Industrial Railroad Company, said curved line having a radius of 617.27 feet and a chord which bears South  $47^{\circ}-40'-46''$  West a distance of 79.11 feet;

Course No. 4: thence North  $1^{\circ}-48'-58''$  West along a westerly line of land so conveyed to the Flats Industrial Railroad Company, 140.60 feet to the aforementioned southeasterly line of British Street N.W.;

Course No. 5: thence North  $75^{\circ}-14'-24''$  East along said southeasterly line of British Street N.W., 147.34 to the place of beginning, containing 14,092 square feet of land (0.3235 acres), according to a survey by Garrett and Associates, Inc., Registered Engineers and Surveyors, made in December, 1998, be the same more or less, but subject to all legal highways.

The bearings used herein are based on an assume meridian and are used only to denote angles.

# Permanent Parcel No. 101-18-009

## Parcel 10

Situated in the City of Cleveland, County of Cuyahoga and State of Ohio, and known as being a part of the Merwin Tract, bounded and described as follows:

Beginning on the southeasterly line of British Street N.W., 50 feet in width, at the point distant South  $75^{\circ}-14'-24''$  West, 317.21 feet as measured along said southeasterly line from its intersection with the westerly line of Columbus Road N.W., 80 feet in width, being also a northeasterly corner of land conveyed to the Flats Industrial Railroad Company;

Course No. 1: thence South  $1^{\circ}-48'-58''$  East along the easterly line of land so conveyed to the Flats Industrial Railroad Company, 140.60 feet to the southeasterly corner thereof;

Course No. 2: thence southwesterly along the southeasterly curved line of land so conveyed to the Flats Industrial Railroad Company, along the arc of a circle deflecting to the left, 75.26 feet to a point of tangency therein, said curved line having a radius of 617.27 feet and a chord which bears South  $40^{\circ}-30'-47''$  West a distance of 75.21 feet;

Course No. 3: thence South  $37^{\circ}-01'-13''$  West along a southeasterly line of land so conveyed to the Flats Industrial Railroad Company, 138.72 feet to the most southerly corner thereof;

Course No. 4: thence North  $47^{\circ}-40'-43''$  West along a southwesterly line of land so conveyed to the Flats Industrial Railroad Company, 100.00 feet to an angle therein;

Course No. 5: thence North  $9^{\circ}-19'-07''$  West along a westerly line of land so conveyed to the Flats Industrial Railroad Company, 182.58 feet to the northwesterly corner thereof, being also in the aforementioned southeasterly line of British Street N.W.;

Course No. 6: thence North  $75^{\circ}-14'-24''$  East along said southeasterly line of British Street N.W., 239.32 feet to the place of beginning, containing 46,760 square feet of land (1.0735 acres), according to a survey by Garrett and Associates, Inc., Registered Engineers and Surveyors, made in December, 1998, be the same more or less, but subject to all legal highways.

The bearings used herein are based on an assumed meridian and are used only to denote angles.

**Permanent Parcel No. 016-05-001**

**Parcel 11**

Situated in the City of Cleveland, County of Cuyahoga and State of Ohio, and known as an area within West 65th Street, 80 feet in width, in Original Brooklyn Township Lot No. 34, bounded and described as follows:

Beginning on the westerly line of West 65th Street at its intersection with the northwesterly line of land conveyed to the Flats Industrial Railroad Company;

Course No. 1: thence North  $46^{\circ}-44'-10''$  East along said northwesterly line of land so conveyed to the Flats Industrial Railroad Company, 109.90 feet to its intersection with the easterly line of said West 65th Street;

Course No. 2: thence South  $0^{\circ}-01'-11''$  West along said easterly line of West 65th Street, 96.16 feet to its intersection with the southeasterly line of land so conveyed to the Flats Industrial Railroad Company;

Course No. 3: thence South  $46^{\circ}-44'-10''$  West along said southeasterly line of land so conveyed to the Flats Industrial Railroad Company, 109.90 feet to its intersection with the aforementioned westerly line of West 65 Street;

Course No. 4: thence North  $0^{\circ}-01'-11''$  East along said westerly line of West 65th Street, 96.16 feet to the place of beginning, containing 7,693 square feet of land (0.1766 acres), according to a survey by Garrett and Associates, Inc., Registered Engineers and Surveyors, made in December, 1998, be the same more or less, but subject to all legal highways.

The bearings used herein are based on an assumed meridian and are used only to denote angles.

## Permanent Parcel No. 016-01-011

## Parcel 12

Situated in the City of Cleveland, County of Cuyahoga and State of Ohio, and known as an area within Denison Avenue S.W., of various width, in Original Brooklyn Township Lot No. 27, bounded and described as follows:

Beginning on the southwesterly line of said Denison Avenue S.W., at its intersection with the northwesterly line of land conveyed to the Flats Industrial Railroad Company;

Course No. 1: thence North  $46^{\circ}-44'-46''$  East along said northwesterly line of land so conveyed to the Flats Industrial Railroad Company, 33.12 feet to the stone monument in an angle therein;

Course No. 2: thence North  $46^{\circ}-44'-10''$  East, along a northwesterly line of land so conveyed to the Flats Industrial Railroad Company, 45.20 feet to its intersection with the northeasterly line of said Denison Avenue S.W.;

Course No. 3: thence South  $64^{\circ}-56'-09''$  East along said northeasterly line of Denison Avenue S.W., 38.61 feet to an angle therein;

Course No. 4: thence South  $14^{\circ}-44'-58''$  West, 10.16 feet to a point in the northeasterly line of Denison Avenue S.W., 60 feet in width;

Course No. 5: thence South  $64^{\circ}-56'-09''$  East along said northeasterly line of Denison Avenue S.W., 63.20 feet to its intersection with the southeasterly line of land so conveyed to the Flats Industrial Railroad Company;

Course No. 6: thence South  $46^{\circ}-44'-10''$  West along said southeasterly line of land so conveyed to the Flats Industrial Railroad Company, 64.56 feet to its intersection with the southwesterly line of Denison Avenue S.W.;

Course No. 7: thence North  $64^{\circ}-56'-09''$  West along said southwesterly line of Denison Avenue S.W., 63.47 feet to an angle therein;

Course No. 8: thence North  $68^{\circ}-27'-21''$  West along a southwesterly line of Denison Avenue S.W., 45.33 feet to the place of beginning, containing 6,933 square feet of land (0.1592 acres), according to a survey by Garrett & Associates, Inc., Registered Engineers and Surveyors, made in December, 1998, be the same more or less, but subject to all legal highways.

The bearings used herein are based on an assumed meridian and are used only to denote angles.

Signed sealed and delivered  
in presence of

Homer Strong, Eunice M. Burton  
The State of Ohio

Wm. Burton

Lucy B. Burton

Ohio City Dec. 21<sup>st</sup> 1850  
Cuyahoga County p. 3

Personally appeared Wm. Burton who acknowledged that he did sign and seal the foregoing instrument and that the same is his free act and deed. I further certify that I did examine the said Lucy B. Burton separate and apart from her said husband and did then and there make known to her the contents of the foregoing instrument; and upon that examination she declared that she did voluntarily sign seal and acknowledge the same and that she was still satisfied therewith.

Before me - Homer Strong

Received April 5, 1851

Justice of the Peace

Recorded April 12, 1851 John Packard - Dep. Recorder

Joel Scranton & others To C. C. & C. Rail Road Co.

To all people to whom these presents shall come. Greeting. Know ye, that we William H. Averell of New York and Joel Scranton & others wife of said Joel Scranton of Cleveland Ohio for the consideration of ten thousand dollars received to our full satisfaction of The Cleveland, Columbus & Cincinnati Rail Road Company. do give grant bargain sell and confirm unto the said Rail Road Company [for said Rail Road purposes] the following described tracts or parcels situate in the townships of Brooklyn being numbers seven in the thirteenth range of townships in the Connecticut Western Reserve in the state of Ohio and which is also in the County of Cuyahoga and is known as part of original lots in said townships of 69, 70 & 87. The first parcel is on lots W-70 & 87, bounded beginning on the Northernly line of said Scranton & Averell's land where the centre line of the Cleveland, Columbus, Rail Road crosses it; thence Southernly on said centre line which passes the centre of the abutment of the bridge & abutment of said Rail Road to the Westernly line of said lot W-70 which is the Western boundary of said parcel; which parcel is fifty feet at right angles from said centre line & on each side of it, and the side lines are parallel with said centre line and are to be produced to the West line of said lot W-87 and contains eleven & one-half acres more or less. Also part of lot W-69, bounded beginning on the East line of the land of said Scranton & Averell, where the centre line of said Rail Road touches it, and thence runs South westerly to the North line of said Scranton & Averell to the Southern boundary of said Rail Road which is fifty feet Southernly at right angles from said centre line, thence returning North Easterly on said South Eastern line of said Rail Road which is parallel with said centre line & parallel with the East line, thence Northernly on said East line to the place beginning & containing eight & one-half acres more or less. Also part of lot W-83, bounded beginning on the West line of the parcel bounded on the centre line of said Rail Road thence South westerly

PUBLIC VERSION

on said certain line, which is the centre of their embankment to the West line of said Scranton & Averill's land bounded by side lines parallel with said centre line & fifty feet at right angles from it on each side & contains three acres. Reserving the right to use the mill privileges of the grantor in & along the Mat. south & unpunished. To have and to hold the above granted and bargained premises with the appurtenances thereunto belonging unto the said Cleveland Columbus & Cincinnati Rail Road Company and its assigns forever to its and their proper use and behoof. And we the said William H. Averill & Irene P. Scranton do for ourselves & our heirs executors and administrators covenant with the said Rail Road Company and its assigns that at and until the executing of these presents we are well seized of the premises as a good and indefeasible estate in fee simple and have good right to bargain and sell the same in manner and form as above written and that the same be free from all incumbrance whatsoever. And furthermore we the said William H. Averill & Irene P. Scranton do by these presents bind ourselves & our heirs forever to warrant and defend the above granted and bargained premises to the said Cleveland Columbus & Cincinnati Rail Road and its assigns against all lawful claims and demands whatsoever. And I the said Irene P. Scranton do hereby remise release and forever quit claim unto the said Rail Road Company and its assigns all my right and title of dower in the above described premises. In witness whereof we have hereunto set our hands and seals the seventh day of October in the year of our Lord one thousand eight hundred and fifty.

Signed, sealed and delivered

Joel Scranton

in presence of

Irene P. Scranton

John H. Gallagher } for William H. Averill

By his Attorney Joel Scranton

The State of Ohio, Cleveland Oct. 7, 1850.

Cuyahoga County, I personally appeared Joel Scranton & Irene P. Scranton his wife who acknowledged that they did sign and seal the foregoing instrument and that the same is their free act and deed. I further certify that I did examine the said Irene P. Scranton separate and apart from her said husband and did then and there make known to her the contents of the foregoing instrument and upon that examination she declared that she did voluntarily sign and seal and acknowledge the same and that she was still satisfied therewith.

Before me, John Parr

The State of Ohio, Cleveland Oct. 7, 1850 - Justice of the Peace  
Cuyahoga County, I, John Parr, Attorney at Law, do hereby certify that I did examine the said Irene P. Scranton separate and apart from her said husband and did then and there make known to her the contents of the foregoing instrument and upon that examination she declared that she did voluntarily sign and seal and acknowledge the same and that she was still satisfied therewith.

Personal appearance

FIR-0080

Recorded at the office of the Recorder of Deeds for the County of Cuyahoga, Ohio, on the 10th day of October, 1850.

John Parr

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## Huge Tremont hillside development site is in the works

By Ken Prendergast / January 18, 2023

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Potentially one of the largest and most attractive development sites in the city of Cleveland is being assembled on a Tremont hillside above the Cuyahoga River. Tremont-based developer J Roc Development has at least 18 acres under a purchase agreement with up to 25 acres to be rezoned for a mixed-use residential-retail development (Google). [CLICK IMAGES TO ENLARGE THEM.](#)

### Former rail yard may become homes, shops, restaurants

**ARTICLE UPDATED JAN. 18, 2023**

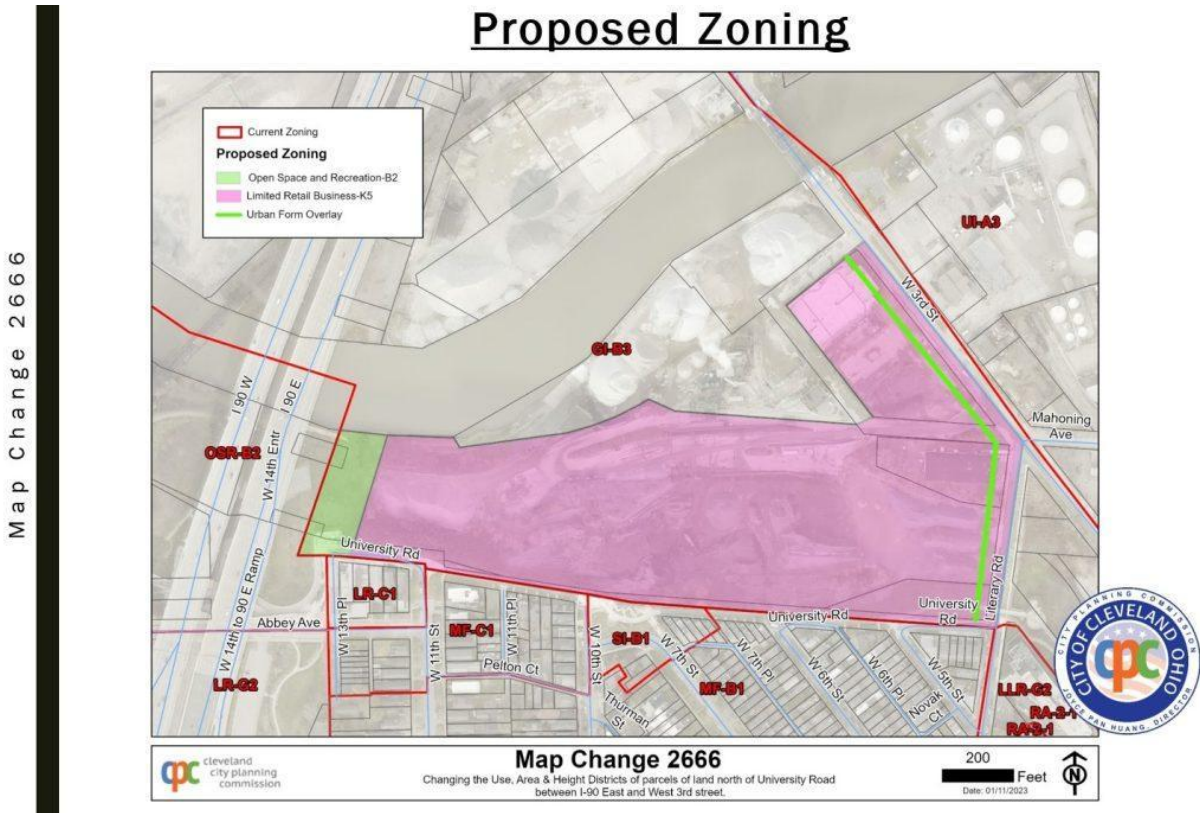
A former railroad yard-turned-asphalt plant at the edge of one of Cleveland's hottest neighborhoods is the location of an emerging, large development site that could add shops, restaurants, other small businesses and hundreds of homes at a riverfront location. The developer leading the charge for this nearly 25-acre site is the same one involved in helping to move forward the 25-acre Thunderbird development on Scranton Peninsula in the Flats. But there appears to be some disagreement as to whether neighbors support or oppose the development.

While Thunderbird is somewhat isolated from other activity centers by the curving Cuyahoga River and the hillside above it, J Roc Development LLC's latest pursuit could be better connected to a vibrant city neighborhood. Although no formal plans have been publicized by J Roc as to what it intends to do with the site, a proposed rezoning provides some insight.

On Friday, City Planning Commission will weigh in on a proposed change to the city's zoning map which would convert up to 25 acres of land north of University Road in Tremont from an industrial classification to limited retail and open/space recreation. While the existing industrial zoning prevents housing development, the proposed retail classification allows it as well as neighborhood-scale retailers, restaurants and other small businesses. The open space/recreation zoning would be applied to a small portion of the affected area that's closest to the Inner Belt-Interstate 90 bridge. It would be below an overlook built as part of the Towpath Trail next to [the former Sokolowski's Inn](#), to be redeveloped with a mid-rise residential-retail building.

PUBLIC VERSION

The proposed rezoning would also include an urban form overlay along the west side of Literary Road and West 3rd Street. Such an overlay requires buildings to be located 10 feet or less from the street with patios or lots of windows and doors to promote pedestrian interaction with sidewalks. In the overlay, parking is kept to a minimum and placed next to or behind buildings, according to the city's building code. J Roc also reportedly seeks to increase the site's height district to 250 feet which could allow buildings to built up to roughly 25 stories. The current height limit is 115 feet, roughly equivalent to an 11-story building.



The green and pink areas on this map show the parcels to be rezoned, along with a short stretch of Mahoning Avenue. The green portion at left would correct a split-zoning of a single parcel among two different use categories. University Road has been partially converted into the Towpath Trail (CPC).

A presentation regarding the proposed rezoning was drafted by the City Planning Commission staff and sent to the Design Review Committee members and the media in advance of the committee's next scheduled meeting Jan. 20. The presentation said the zoning change is being sought to remove legacy industrial zoning and to correct a split-zoning occurrence as the westernmost parcel is zoned as both open space/recreation and general industry.

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But the most visible goal of the rezoning is "to promote a variety of uses – multi-family, townhomes, single family, light commercial and neighborhood retail, and to align with the [Vision for the Valley plan](#) and [Connecting Cleveland 2020](#)," according to the city's presentation.

City officials said the Tremont portion of the Vision for the Valley recommends connecting the Tremont neighborhood to the waterfront, cleaning up legacy environmental issues within the river valley and restoring native riparian landscapes along the riverfront to manage stormwater runoff, improve water quality, and improve the aesthetic quality of the river valley. "This is an industrial site we can remediate as a part of the development process," the rezoning presentation notes.

Officials in large cities like Cleveland invariably have a lot on their to-do list, so they usually only pursue parcel-specific zoning changes when someone else requests them. The interested party was revealed to be J Roc Principal Aaron Taylor, as noted in the City Planning Commission's staff presentation that was sent Monday to Design Review Committee members and the media. He was identified by commission staff in part of an e-mail from Ward 3 Councilman Kerry McCormack informing others of his support for the rezoning. That e-mail included a clip of a Jan. 7 e-mail to which McCormack responded, written by Taylor who was requesting McCormack's documented support.



The Tremont hillside redevelopment site is visible from Interstate 90's George Voinovich Bridges. The site extends from the West 3rd Street lift bridge at left to the elevated billboard sign at right, just above the Cuyahoga River and the piles of aggregates on Lafarge Corp.'s property (Google).

As a matter of course, McCormack requests all development and zoning change applications to be presented to block clubs first before he decides whether to support them. Taylor said the North Of Literary Block Club (NOL BC) is supportive of the zoning change.

"After sending the rezoning packet and reviewing the zoning change request with NOL BC Chair, a subsequent conversation was had between the Chair and the TWDC (Tremont West Development Corp.), and it was decided that we do not need to represent at the (Jan.) 17th BC meeting to obtain NOL support," Taylor wrote in his Jan. 7 email to McCormack. "The Chair will make the BC aware of the zoning change intent and will let us know if there are any issues or follow-up questions, but there is a strong belief that the BC will support the zoning change without dispute."

Block club members met yesterday evening in Tremont to view the same presentation that will be shown to City Planning Commission later this week. But neighbors expressed concerns about the site's pollutants, the noise, traffic and structural impacts from developing next to existing residences, the lack of a detailed development plan, as well as the proposed 250-foot building height.

"There was a lot of opposition to the rezoning request," said Tremont resident Michael Meyer who was at last night's block club meeting. "Taylor's statement is not accurate."

Taylor, Tremont West Development Corp. Executive Director Cory Riordan as well as North Of Literary Block Club co-chairs Fred Calatrello and Jim Naccarato opened but did not respond to e-mails from NEOtrans prior to publication of this article. The e-mails requested confirmation of their support for redeveloping the hillside site with housing and neighborhood shops, restaurants or other businesses and in the rezoning necessary to accommodate them.



Much of University Road in Tremont, just above the J Roc-Emerald Dock development site, was converted in 2020 into the Towpath Trail. Nearby are townhomes selling in the past year for from \$555,000 to \$1.1 million (Howard Hanna).

The current, primary user of the area to be rezoned is [The Shelly Co.](#), which leases a 17.9-acre parcel owned by Emerald Dock Inc. as Asphalt Plant 76, 2214 W. 3rd St. J Roc reportedly has a purchase agreement with Emerald Dock, which has owned the parcel since acquiring it in 2005 from River West Dock, Inc. While no purchase price is yet available, Cuyahoga County has valued the property for tax purposes at \$1,014,600. The Shelly Co., successor by merger of S.E. Johnson Companies, Inc., began leasing the property in July 27, 2003 for three successive five-year terms with the fourth and final term concluding July 27, 2023, according to a lease recorded with the county's fiscal officer.

McCormack acknowledged a real estate developer has a purchase agreement for the asphalt plant property and had requested the rezoning but he would not comment on who it is. The proposed rezoning also affects two other parcels. One is a 1.16-acre lot at 360 Literary owned by the Zemaitis family since 1985 and used by Northern Chemical Blending Corp. It was purchased for \$225,000 and valued for taxes in 2021 at just \$179,000.

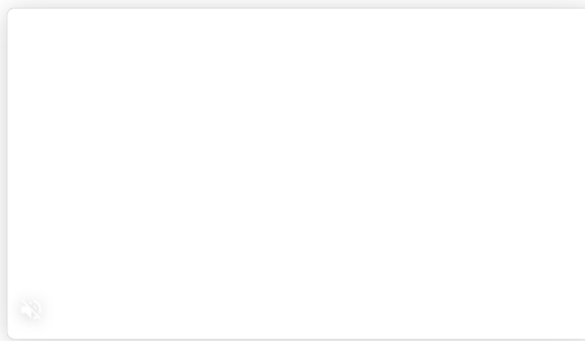
The last property affected by the rezoning is a 3.104-acre parcel owned by the city for an 88-year-old, two-story brick building once used by the Division of Motor Vehicle Maintenance, 2200 W. 3rd. The parcel also has an address of 260 Mahoning Ave. which is not a passable street; its right of way is partially included in the rezoning. This property was valued for taxes at \$1,014,600.

McCormack said he was not aware of whether the real estate developer had interest in any parcel other than the one owned by Emerald Dock. He said the existing asphalt plant use would be grandfathered in any rezoning until the plant permanently ceases operation.

PUBLIC VERSION



Looking north from University Road in 1955, in the foreground was the Erie Railroad's Literary Street Yard. Just beyond it was Sherwin Williams' linseed oil factory and power plant with Cleveland Builders Supply warehouse barely visible. In the background is the Inner Belt highway bridge under construction and downtown Cleveland (Fred Bultman photo).



Before it was abandoned in 1981, the Emerald Dock property was used by the Consolidated Rail Corp. (Conrail) and its predecessors going back to 1856 when the Cleveland & Mahoning Valley Railroad built tracks linking its Lake Erie port facilities on Riverbed Street to the Youngstown area, historical records show. Specifically, the property was the site of the Erie Railroad's Literary Street Yard with about a dozen tracks to facilitate interchanging freight cars with the Baltimore & Ohio and Wheeling & Lake Erie railroads, according to a 1977 track chart from the Erie-Lackawanna Historical Society.

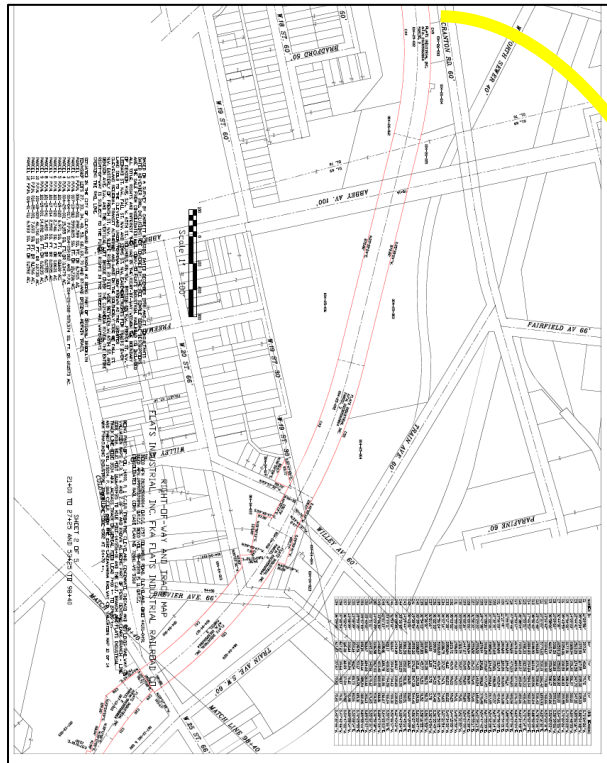
Just north of the rail yard was Sherwin-Williams' linseed oil plant, from which a five-story concrete and brick building survives. A long-gone Cleveland Builders Supply warehouse stood next to West 3rd's lift bridge. The Sherwin-Williams and Cleveland Builders Supply properties are now owned by Lafarge Corp. but the city's presentation shows they are not part of the proposed rezoning. Lafarge uses its property as an aggregate transload between ships and trucks.

J Roc is an active developer with many significant projects recently built, underway or planned in Cleveland. Recent projects include the 130-unit [Electric Gardens apartments](#) that opened in 2021 very close to the rezoning site at 425 Literary in Tremont. An underway project by J Roc is the 97-unit [Driftwood Apartments](#) with a small retail space at 1209 Fairfield Ave. in Tremont, across the street from the South Side Restaurant. J Roc is also planning [a 13-story apartment building](#) overlooking Edgewater Park next to the Shoreway Apartments it converted from a warehouse in 2014. Additionally, the firm has built numerous townhouses on the city's near-West Side.

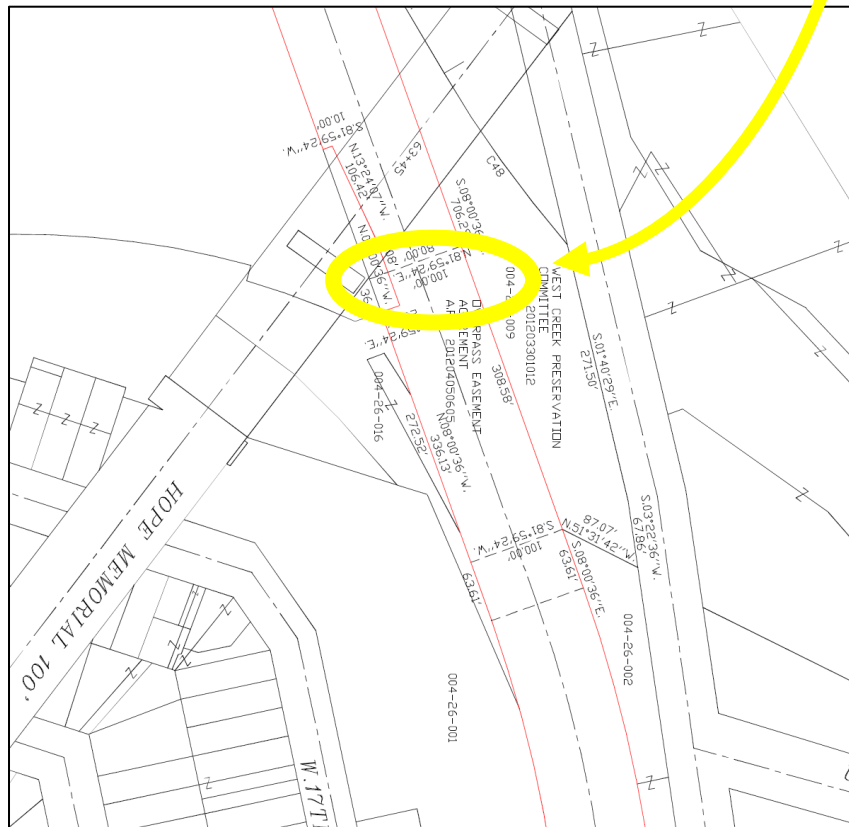
One of J Roc's biggest developments is its partnership with Fred Geis and a Savannah, GA-based investor group called East West Alliance to redevelop 25 acres of the neglected and forgotten [Scranton Peninsula](#), across the river from Tower City Center. The partnership was called Thunderbird which envisioned the polluted, former industrial haven as a mixed-use riverfront district to be developed mostly by others. But J Roc was first to develop there, opening the BrewDog Cleveland Outpost brewpub in 2021 in a long-vacant former industrial building on the river. More than 600 apartments and a Great Lakes Brewing Co. production facility and tasting room are due to start construction on Scranton Peninsula this year.

END

PUBLIC VERSION  
**MAPS – Werner G. Smith**  
Willey Avenue to Abbey Avenue

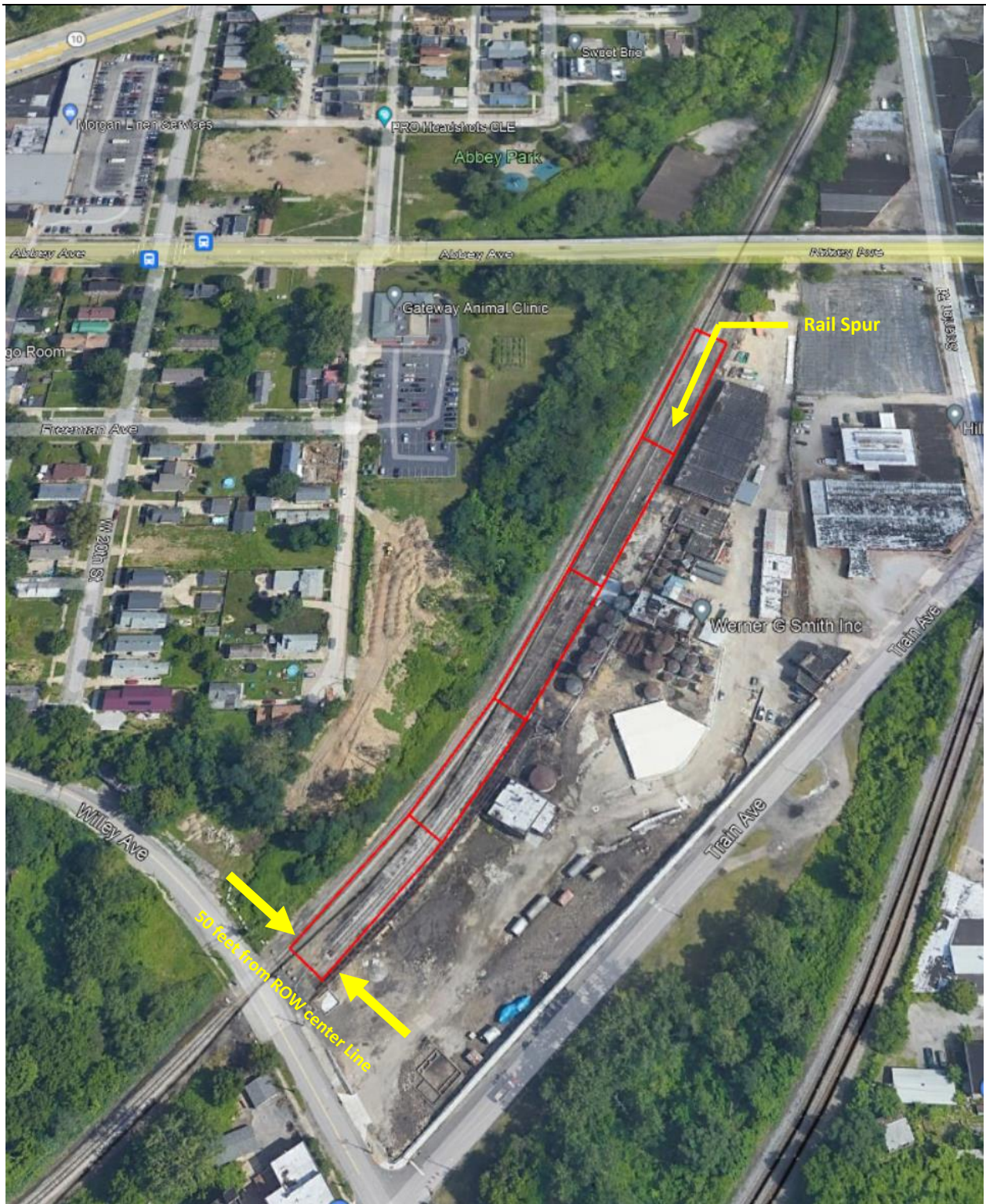


ROW is 100 feet wide



Source: Survey Map SHT2FIRR

PUBLIC VERSION  
**MAPS – Werner G. Smith**  
Wiley Avenue to Abbey Avenue



Source: Google Earth

**MAPS – Werner G. Smith**  
Willey Avenue to Abbey Avenue



Source: [www.myplace.cuyahogacounty.us](http://www.myplace.cuyahogacounty.us)

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September 12, 2022 02:31 PM

## Apartment developers pay \$5.9 million for a slice of Cleveland's Scranton Peninsula

MICHELLE JARBOE

Dimit Architects

A rendering of Silverhills at Thunderbird, a planned waterfront apartment complex on Scranton Peninsula in Cleveland.

The Silverhills at Thunderbird project could start rising from long-fallow dirt this fall.

The developers of a planned 304-unit apartment complex in the Flats recently paid \$1.4 million an acre for their project site.

Public records show that Silver Hills Development Inc. of Shaker Heights and Columbus-based Edwards Communities shelled out \$5.9 million for 4.17 acres on Scranton Peninsula. The land sits on the west side of the long-fallow peninsula, just south of the BrewDog brewpub.

A separate but related transfer, of a 1.13-acre strip of land at the water's edge, still does not appear in Cuyahoga County records. That long, narrow parcel is earmarked for a waterfront boardwalk or trail being discussed by an array of public and private partners.

Through a [joint venture](#), Silver Hills and Edwards are set to break ground in October for their [project](#), called Silverhills at Thunderbird. The apartments could open in 2024.

The partners did not respond to interview requests.

Matthew Weiner, a member of the group that sold the real estate, confirmed that both parcels changed hands on Aug. 31. He wouldn't discuss pricing.

"I think the vision of Scranton Peninsula, that it's going to be a really exciting and dynamic and fun place to live and work and play ... is really starting to come to fruition," said Weiner, a Georgia-based attorney and a principal of the East West Alliance group of companies.

In 2017, Weiner partnered with local developer Fred Geis and Jesse Grant of Cleveland-based J Roc Development to acquire 25 acres of the peninsula from longtime owner Forest City Realty Trust Inc. The price they paid was never disclosed. Now, after master-planning, some clean-up and marketing by the CBRE Group Inc. brokerage, most of that land is spoken for.

Great Lakes Brewing Co. bought 8 acres in 2018 for a potential production facility and taproom near the peninsula's base. That project has not moved forward yet.

Great Lakes affiliates also control roughly 2 acres slated for a riverfront park.

The NRP Group, a Cleveland-based apartment developer, has a deal to buy 7.4 acres for a 316-unit apartment project. That land sits east of the Silverhills site, on the opposite side of Carter Road. The sale is likely to occur this fall.

After that transaction, Geis, Grant and Weiner will be left with the BrewDog building, which is partially leased to the Scottish craft brewer, and a modest riverfront parcel that they're holding for eventual development.

"We've worked our butts off to get this done, so I'm really excited about it," Weiner said of serving as master developer for a key piece of Cleveland's waterfront. "We vetted a lot of different buyers along the way."

Inline Play

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**Source URL:** <https://www.crainscleveland.com/real-estate/apartment-developers-pay-59-million-slice-clevelands-scranton-peninsula>

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December 22, 2022 05:00 PM

## **NRP buys Scranton Peninsula land for 316-unit apartment project**

**MICHELLE JARBOE**

The NRP Group; BKV Group; Behnke Landscape Architecture

An aerial rendering shows the NRP Group's planned 316-unit apartment project on Cleveland's Scranton Peninsula. After years of eying the site, the developer finally closed on the 7.5-acre land purchase on Thursday, Dec. 22.

The transfer doesn't appear in public records yet. But Scott Skinner, NRP's vice president of development, confirmed in an interview that the long-simmering deal is done.

The NRP Group has closed on its purchase of 7.5 acres on Scranton Peninsula, where the Cleveland-based company plans to build a 316-unit apartment project.

The transfer doesn't appear in public records yet. But Scott Skinner, NRP's vice president of development, confirmed in an interview Thursday, Dec. 22, that the long-simmering deal is done.

He wouldn't disclose pricing for the land, along the east side of Carter Road.

Across the street, Silver Hills Development Inc. and Edwards Communities **paid** \$1.4 million an acre in August for another apartment site along the water. The NRP property is not adjacent to the Cuyahoga River, but it's elevated, offering sweeping views of the Flats and downtown.

NRP expects to break ground within 30 days for its roughly \$100 million project. The development will span 301 mid-rise apartments, 15 rental townhomes, a parking garage and pathways that connect to a growing network of trails.

Construction will take two and a half to three years, with pre-leasing expected to start in summer of 2024, Skinner said.

"This word gets overused, but this really will be a transformational project in Cleveland and will create a new neighborhood," he said.

The sale largely closes out the 25-acre Thunderbird site, an area prepared and master-planned by homegrown developer Fred Geis, Jesse Grant of Cleveland-based J Roc Development and Matthew Weiner, a Georgia-based attorney and a principal of the East West Alliance group of companies.

The partners purchased the former industrial land in 2017 from longtime owner Forest City Realty Trust Inc. and repackaged it as a potential mixed-use waterfront neighborhood. Joseph Khouri and Kevin Moss of the CBRE Group Inc. brokerage's Cleveland office marketed the parcels to prospective buyers.

NRP's apartment proposal surfaced in 2019.

But the national developer backed away from the deal the following year, as the coronavirus pandemic shook the urban rental market. Amid so much uncertainty, the company focused on its affordable-housing developments and put higher-end projects like Scranton Peninsula on hold.

"We've always loved the site," Skinner said earlier this year. "There's never been any doubt there."

The NRP proposal [reemerged](#) in early 2022. The company worked with city planners to refine its designs and to ensure pedestrian and bicycle traffic flow between its site and the Edwards-Silver Hills property across the street.

"The city of Cleveland has been enormously helpful and supportive of this development and has been instrumental in our ability to get here," Skinner said.

Construction is getting started at the 304-unit Silverhills at Thunderbird project, which could open in 2024.

To the south, Great Lakes Brewing Co. owns 10 acres, where the company has talked about building a production facility and taproom inland. The riverfront portion of the Great Lakes land, roughly 2 acres, is earmarked for public space.

The Thunderbird team still owns a two-story building, partially leased to Scottish craft brewer BrewDog, and a small riverfront parcel that they're holding for eventual development.

NRP had hoped to close on its land purchase in the fall. But the company was waiting on a few key pieces of financing. On Dec. 16, the Ohio Department of Development **awarded** a \$6 million brownfield cleanup grant to the project. That money will pay for capping contaminated soil and installing a vapor-mitigation system beneath building slabs, according to the state.

On Dec. 5, Cleveland City Council approved tax-increment financing for the project. That 30-year arrangement will redirect a portion of the new property taxes created by NRP's development back into the project, to help pay for construction costs and debt service. The TIF agreement will not impact tax revenues earmarked for the Cleveland public schools.

NRP also is making use of the city's longstanding tax-abatement program for housing, in exchange for meeting certain green-building standards. That means the residential portions of the project will be tax-exempt for 15 years. Then they'll generate property taxes at a reduced rate for another 15 years because of the tax-increment financing deal.

Inline Play

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**Source URL:** <https://www.craainscleveland.com/real-estate/nrp-group-closes-75-acre-land-deal-clevelands-scranton-peninsula>

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January 10, 2023 06:00 AM

## Neighborhood changes may be giving downtrodden Train Avenue a lift

STAN BULLARD



Stan Bullard for Crain's Cleveland Business

Alex Euse is a co-owner of Sixth City Glazing, which has just bought a bedraggled Train Avenue building and part of a whif of new investment on the street. Most West Siders know it as a light-trafficked but bumpy alternative route downtown.

Long dubbed Trash Avenue due to its problem with illegal dumping and named for adjoining railroad tracks, parts of the 2-mile road stretching from Scranton Road in the Flats to Clark Avenue on Cleveland's West Side are starting to pick up benefits from the path of development between the nearby Ohio City and Tremont neighborhoods.

When Sixth City Glazing co-owner Rob Strickland in 2019 stopped to check out the building at 3100 Train Ave. in Cleveland, a second-story "for sale" sign with the owner's phone number was covered with weeds that grew from the roof below.

Fast forward to now, and Strickland and Sixth City business partner Alex Euse own the former Tows R Us building and its land-rich — in urban terms — 2-acre site. They plan to raze the 1940s-era metal building to replace it with a new building that will provide a larger home for their office and window fabricating shop. They value the site's proximity to downtown and consider it more centrally located than the company's rented location in a North Royalton multitenant industrial building.

Sixth City Glazing's owners are part of a new story starting to emerge on Train Avenue. It's a switch for the street best known for decades as "Trash Avenue." That's the name given to it by Cleveland Press headlines as far back as the 1940, when area residents began complaining about it being a problematic illegal dump for junk.

However, the 30-something Strickland and Euse are hindered neither by Train's rep or the old engines and tires on their new graffiti-tagged property. With a background in commercial contracting before they launched their glazing subcontracting concern in 2014, they appreciate the opportunity to grab such a site last November for \$250,000. Even with a new building in the wings, their cost is likely to be a huge discount from a typical suburban play. That is, if such a smallish building could be snagged in the industrial market as the new home for a 17-person company with gross sales last year of about \$5 million, including the cost of material.

Moreover, they have some intriguing neighbors.

At the property across West 30th Street from Sixth City's proposed new home, junked cars and decades of weed infestation are being cleared by a new owner. The property changed hands in July 2022 to Opportune Development LLC of Cleveland's Little Italy neighborhood for \$1.6 million, according to Cuyahoga County land records.

Opportune Development is an affiliate of ARPI Development, which is building a 40-unit apartment building in Hough and has built and sold townhouse projects throughout the

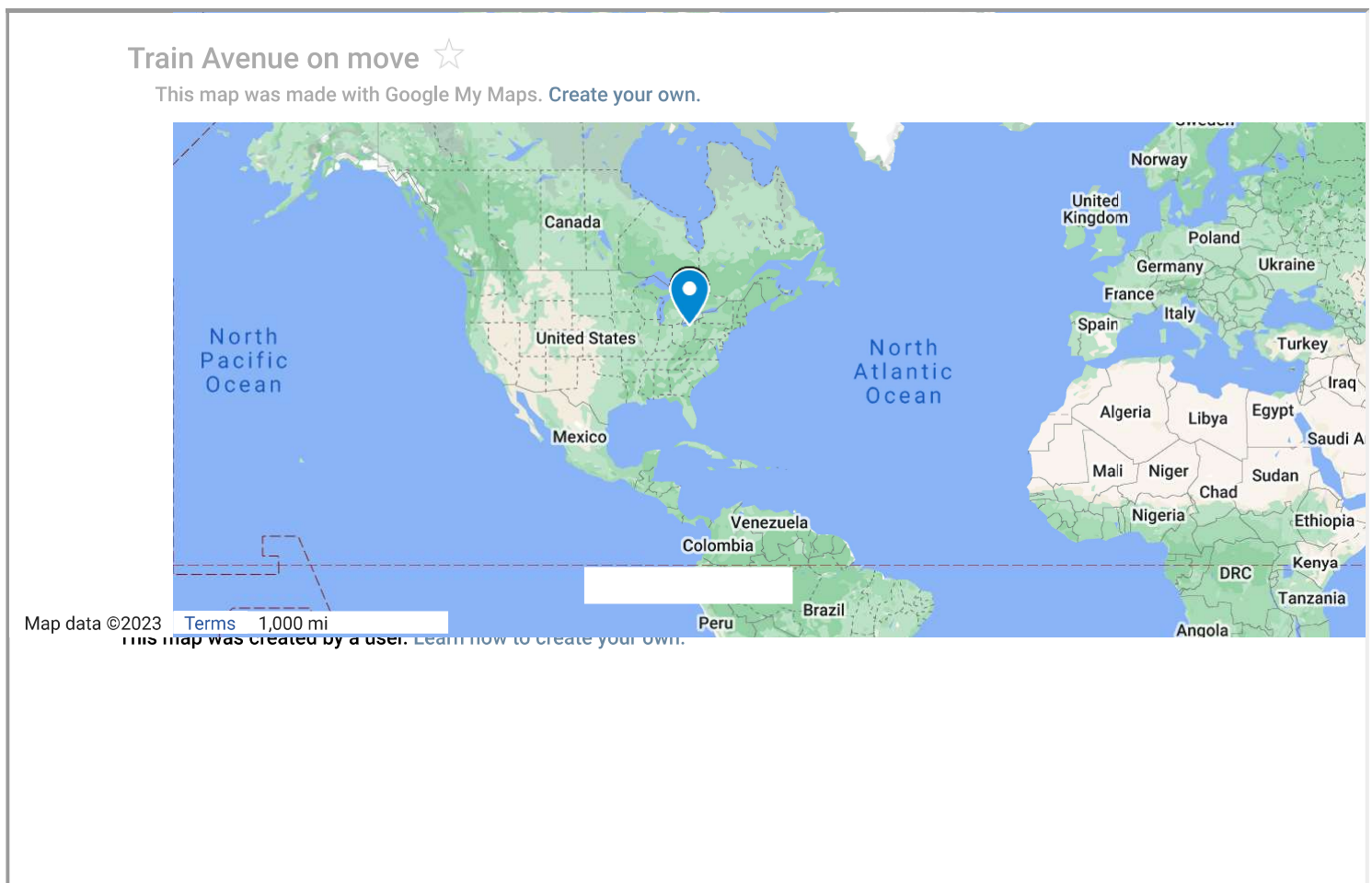
Cleveland area.

Zachary Pinkert, president of ARPI, wrote in an email, "We are currently in the planning stages of a transformative mixed-use project that will bring to life a long dormant site in one of Cleveland's most dynamic neighborhoods."

The empty site, which stretches three blocks east from West 30th to West 27th streets and goes uphill from Train to Queen Avenue, consists of 5 acres, which could accommodate a multimillion-dollar development project.

Pinkert, a business partner with orthodontist Richard Arnstine in ARPI, said in a phone interview that it's too early to discuss the potential project, which is designed to benefit from federal Opportunity Zone incentives. However, he shared what attracted ARPI to the site bordering Train.

"This is where Ohio City meets Tremont," Pinkert said of the two neighborhoods known as hotbeds for both new realty development and gentrification. "It's a rare opportunity to find a site as large as this available near other projects," from TREO apartments to the Lincoln and the Tappan.



He declined to put a timeline on the potential project because of its nascent status and the importance for developer's desire to fully air plans first with city officials and neighborhood groups before discussing them with media.

Another new stakeholder on Train is Nextgen Development LLC, which is owned by David Raemensnyder, a pharmacist who lives in Battery Park with a self-described entrepreneurial streak.

Nextgen is the landlord for Taps & Tails, the Tremont outdoor dog park and bar combo at 1901 Train as well as a warehouse and office building at 1900 Train. One of the tenants there is Novo, a nonprofit that helps prepare neighborhood children for good careers not requiring college degrees. Another is Foodstrong, a nonprofit focused on health and wellness. Nextgen in 2019 shelled out almost \$500,000 for the two structures, which date from 1900.

Raemensnyder originally considered putting co-working offices in the two-building complex but scuttled that plan when COVID-19 hit. For a time during the pandemic, he also used it as the address for Modtempo, an online contemporary furniture retailer, but has since closed that.

"I've been approached by trucking companies who want the complex, but I don't think that will help develop the area," Raemensnyder said, as it simply continues industrial uses that have populated the street for generations.

When Raemensnyder was sizing up jumping on the Train property, he discussed the area with Josh Rosen, a member of Sustainable Community Associates which redeveloped the nearby Fairmount Creamery for residential and fitness use; Gusty Molnar, who developed Scranton Lofts, a townhouse project just east of where Train ends at Scranton Road; and Matt Berges, the operator of Berges LLC, which has built multiple homes in the adjoining Duck Island area and is now building townhouses on Willey Avenue near Train.

"It really inspires confidence when you meet people living (and working) in the area," Raemensnyder said. As it stands, the property is in the black.

While Nextgen has made existing investments work, it also has an eye open for potential redevelopment. Nextgen's 1900 and 1901 Train properties between them have enough land to create a maximum development of 600,000 square feet.

But that's not an active thought now or in the near future.

"With rising interest rates, we're playing it by ear right now and decided to take our time," Raemensnyder said.

Train's tweener status with respect to Ohio City and Tremont is not new, but the reinvestment in the area is clearly an offshoot of the lengthy list of projects nearby. The J.F. Spang apartments on nearby Barber Avenue is an estimated \$7 million rehabilitation and conversion project of the former bakery building and its onetime stables, spanning four city blocks, to about 70 apartments to its south and multiple projects to its east.

Moreover, the busy Red Line Greenway trail of Cleveland Metroparks runs parallel, though separated by train tracks.

Although Train stretches west to end at Clark Avenue near West 65th Street, a major recent development setting the groundwork for more investment on the chuckhole-pocked street is Platform Brewery's production plant at Train and Vega Avenue.

Justin Carson, who owns the Train brewery production building and a co-founder of Platform, said part of the attraction for that project in 2014 was its origin as the home of the famed Leisy Brewing Co. of Cleveland, but he has always seen Train in a different light.

"It's not an artery used by the masses," Carson said, "but I've always viewed it as a slice of a natural area dropped into a valley that's also home to old industrial uses. For years it has been home to multiple modes of travel, from automobiles to bicycles because it connects so many neighborhoods."

That is a profoundly different way of looking at Train from years past. Old-timers in the area whose childhoods predate the 1970s often will observe they simply hated the street or sought to avoid it.

However, in 2014, Carson said, who would have guessed that Knez Homes would build high-end townhouses on the northern side of the slope at Train Avenue near the Werner G. Smith Chemical Co., a biochemical company whose tanks have long been a neighborhood landmark.

"Stuff had to be built around it for development on Train to make sense," Carson said. "I think it has a positive role to play in the future, even if it's as a connection to different neighborhoods."

One thing also has not changed. Illegal dumping remains a problem, and keeping the thoroughfare clean is a continuing challenge.

"We (collectively) still have not figured that out," Carson noted.

Inline Play

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**Source URL:** <https://www.crainscleveland.com/real-estate/clevelands-trash-avenue-getting-new-investors>