Pumpkinvine Nature Trail
Volume 6, No. 3, November 1997

Lawyers for adjacent landowners ask judge to reconsider ruling on CSX-Monon corridor

By John D. Yoder, President

Lawyers for adjacent landowners have asked a Hamilton County Superior Court judge to reconsider his ruling that approximately 70 percent of the abandoned CSX-Monon corridor in Hamilton County is still owned by the railroad. Judge William J. Hughes made his ruling August 4 in Clark vs. CSX.

His decision clearly contradicts Farm Bureau's oft-repeated contention that most Indiana railroad corridors (including Monon) are easements. Most recently that claim came from Farm Bureau General Council David C. Ford in a widely distributed July 1997 letter to newspapers. In his letter Ford asserted that "in most cases in Indiana . . . the railroad acquired a 'right' or an 'easement' or 'right of way,' or otherwise took possession [of the corridor] for railroad purposes." After examining the original deeds adjacent landowners gave the railroad, Judge Hughes rejected that claim for the CSX-Monon corridor. By petitioning the court for a rehearing, the plaintiffs (in this case adjacent landowners) gain extra time for their appeal. Should they appeal and lose at the appellate-court level, Hughes' interpretation of the deeds would become a precedent for all similar deeds in the state.

Kyle and Shannon Hannon give their children a ride during the Friends' trail walk October 19th.

In his decision, Hughes undertook the most thorough analysis of property law related to 19th century railroad deeds by any Indiana court to date, according to Danaya Wright, adjunct professor law, Indiana University School of Law in Indianapolis. In sifting through the complicated and arcane property rules that have been established, he distilled nine "rules of construction" that he believed were pertinent in determining ownership of a CSX (former Monon) rail corridor in Hamilton County.

Judge Hughes' analysis is particularly helpful for future property disputes because he was faced with a wide variety of terms and conditions in these 19th-century deeds that had yet to be ruled on by a court of law. The result is the most comprehensive set of guidelines to date for determining the legal status of abandoned rail corridors in Indiana, according to Karl Mulvaney, Indianapolis attorney for the Sugar Creek Trail in Montgomery County. Among the rules Hughes applied were that: The granting

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Friends of the Pumpkinvine Nature Trail are cyclists, hikers, equestrians, and naturalists who by education and fund raising support the area parks department in their effort to create a linear park on the former Pumpkinvine corridor between Goshen and Shipshewana, Indiana.

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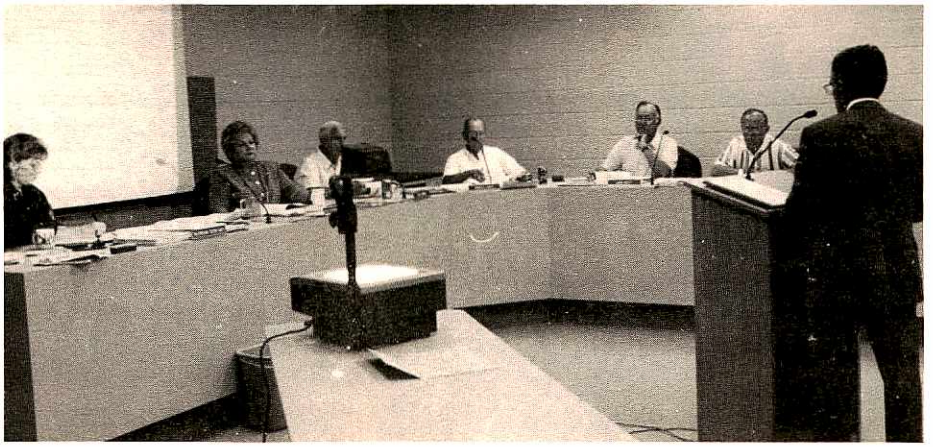

BZA Meeting: Attorney for the Goshen Park and Recreation Department Glenn Duncan addressed the concerns of adjacent landowners in his presentation to the BZA. BZA members are (from left after the board secretary): Ruth Ann Hertig, Dale Inbody, Harold Lantz, John Hufft and Dale Houser.

Special Use Permit Granted

The Elkhart County Board of Zoning Appeals has granted the City of Goshen and the Friends of the Pumpkinvine Nature Trail, Inc. a special use permit to develop a linear park and trail along the Pumpkinvine corridor between S.R. 4 and C.R. 28. The permit was necessary to have a park facility in an area zoned agricultural.

The Friends now have the green light to donate this 1.75-mile section of trail north east of Goshen to the city, and the city has the green light to use its ISTEA funds to develop the corridor in that section.

After hearing pro-and-con arguments for an hour, the BZA voted 3-2 to grant the permit. Attorney for the city park department, Glenn Duncan, presented a list of 11 concerns gathered in discussions with adjacent landowners and explained how the city would meet them.

Opponents of the trail tried to derail the request by insisting that the city fence the entire corridor, a requirement Duncan rejected as being unnecessary and cost-prohibitive. Mike Yoder, former president of the Elkhart County Farm Bureau, argued the development of the trail would have a domino-effect on the development of other sections of the trail, i.e., once people see it developed, it will be hard to stop in the rest of the county — a puzzling anti-trail argument, to be sure.

Our thanks to:
— Glenn Duncan for his skillful and thoughtful presentation of the permit request;
— Rich Fay, superintendent of the Goshen Park Dept. for his efforts in gathering and addressing the concerns of adjacent landowners since the BZA tabled the request July 17;
— Goshen Mayor Allan Kauffman who spoke about the city's willingness to police the corridor and fund the ongoing maintenance;
— Jerald Joldersma, adjacent landowner, who gave an eloquent testimonial of the value of trails from his 15 years of living in Dallas and his excitement on moving back to his boyhood home in Goshen two years ago and learning that the Pumpkinvine might become a similar trail in his backyard;
— Friends' who attended the meeting to show community support for the request.

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Lawyers for landowners ask judge to reconsider ruling...

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clause of a deed should receive the most weight in determining the intent of the grantor. The deed may convey "fee simple" title (full ownership) or an easement, the latter usually associated with the use of the phrase "right of way" in the granting clause. The presence of the phrase "right of way" later in a deed does not automatically mean the deed conveyed merely an easement (Rule 1).

- Language limiting, modifying or explaining the granting clause does not override the granting clause when the granting clause "is expressed in clear and unambiguous language." And a "metes and bounds" description of the real estate "may be considered . . . under the proper circumstances, to be strong evidence of an intent to convey fee simple title" (Rule 5).
- Railroads could acquire fee simple title before and after a 1905 law that limited them to acquiring only easements when they used condemnation proceedings. Hughes rejected the extreme argument that all land acquired by Indiana railroads was a form of "de facto condemnation," which would have limited their holdings to being mere easements (Rule 6).
- The use of the terms "upon," "across," "through," "over," and "on" in a deed that otherwise is fee simple in its granting clause does not automatically mean the deed conveyed an easement. These words are simply another factor to consider in trying to determine the intent of the parties (Rule 7).
- The phrase "right of way" has two meanings. It can mean a right, such as a right of passage over land, or it can mean the land where railroads build their roadbed. "As a result, care must be taken when ascribing significance to the appearance of the term 'right of way' in an instrument of conveyance to a railroad," Hughes said (Rule 8).

"These rules are incredibly helpful in spelling out some of the factors that should be considered and explaining the weight to be given to each factor in interpreting ambiguous deeds," said Wright.

Hughes' nine rules of construction are in the opening section of his 30-page decision—Clark vs. CSX Corp. He explained that "the complexity and uniqueness of the corridor instruments" demanded a more far-reaching analysis and decision than normally prevails in single disputes.

The conflict over ownership of the rail corridor is similar to many around the state being waged in the courts and in city-county council hearings. Because the dispute is bigger than just this single trail and these few deeds, Judge Hughes' decision was very timely, Wright said. It provided the courts with much-needed general rules that will make future property disputes easier to settle, and it will relieve overburdened judges of the task of delving into the history of these property rules each time a quiet title action is brought.

"It's unfortunate that some of these rail-trail project disputes end up in court, which generates more legal fees for all parties than it does solutions to the disputes," said Tom Olsen, volunteer B&O Trail board member and director-at-large of the Indiana Bicycle Coalition. "The principle benefit of this Hamilton County court decision is that all parties—trail advocates, railroads, and abutting landowners—know much more clearly where they stand, without wasting time and money."

In this case the City of Carmel wants to convert the former Monon-CSX corridor into a recreational trail. Attorneys for adjacent landowners and CSX agreed to litigate the corridor to determine ownership. The case was a subclass of a larger class-action lawsuit brought against CSX by adjacent landowers and Hamilton County Farm Bureau Cooperative Assoc., Inc. and Britton Farms, Inc.

"It's unfortunate that some of these rail-trail project disputes end up in court, which generates more legal fees for all parties than it does solutions to the disputes,"

In the case itself Judge Hughes examined 23 19th-century deeds and determined that in 14 of them CSX Corp. held fee simple title to the corridor. Six deeds granted easements, while three conveyed nothing at all. Trail advocates estimate the ruling means CSX still owns 70 percent of the corridor. Adjacent landowners had claimed the railroad owned virtually nothing.

The judge's ruling takes on added significance in light of the earlier Supreme Court Case of Consolidated Rail Corp v. Lewellen (June 19, 1997). "In the recent Indiana Supreme Court cases of Hefty and Lewellen, the court did not need to address all of these general rules of construction because it was faced with specific deeds for interpretation, not a whole stack of them," Wright said. "What makes this order so useful is that these rules are of general applicability to deeds anywhere in the state."

In a separate order, Judge Hughes reaffirmed the well-established rule that landowners cannot claim ownership of a piece of land simply by challenging their neighbor's title; they must show that they have a better title. To date, no landowner in any of the class-action suits challenging the railroads' ownership has provided evidence that he or she has better title than the railroad, according to Wright. Hughes' order requires the landowners to provide evidence that they have an ownership interest in the corridor land before proceeding further by either producing a title to the abandoned right of way or by showing CSX does not own the corridor.

Categorical Exclusion Paves the way for Development

By Kellie Edwards

A categorical exclusion from environmental concerns will pave the way for springtime development of the Pumpkinvine Nature Trail, the area's newest linear park and one of just a handful of rail trails in the Michiana region.

The exclusion, which is necessary before construction can begin, is nearly complete, according to Rich Fay, superintendent of the Goshen Park & Recreation Department. The exclusion allows development to proceed without fear that somewhere down the road a governmental group will bring things to a screeching halt over an unforeseen environmental concern, Fay said. The Indiana Department of Environmental Management, Indiana Department of Transportation, U.S. Army Corps of Engineers and the Department of Natural Resources have to look over an area proposed for development.

Once the letter of exclusion is received, that roadblock is removed.

Also, Fay said a surveyor, Marbach & Brady of Elkhart, was just chosen to complete survey work of the property which Friends of the Pumpkinvine Inc., plan to donate to the city parks department. Legal advisors told the Pumpkinvine Nature Trail board and the parks department that it would be best to have a "clean legal description" of all of the property in question before the actual transferal takes place. Since this would require another survey, Fay spoke with Marbach & Brady who agreed to use the same survey as the basis for this new legal description of the property formerly owned by the railroad. This agreement will result in a substantial savings for the park department, he said.

Once all of this is completed, the legal transfer of property can take place. The linear park can then be included in park budgeting processes, including grant-writing.

"We're really gunning for spring," he said. "We're going to run out of good weather very soon. But we knew that. Maybe by mid-November, definitely by Thanksgiving, all of the legal work can be done. Then we're set for construction in spring."

The linear park is now in design phase, where construction documents will be generated. Those documents will be sent to INDOT for approval or modification. Once approved, the trail project will be put out to the bidding process. Once a contract is awarded, construction can begin.

New Secretary Elected

GOSHEN – Merritt Lehman, a PVNT board member since last spring, has been elected secretary of the board.

The secretary post became available due to the recent resignation of board secretary Norm Kauffman who found continued service could be seen as a conflict of interest by his new employer, the Town of Shipshewana, which brought him on as town manager.

Lehman is looking forward to his new responsibilities, which include eating at "Steak N Shake" once a month and taking minutes from all of the PVNT meetings. "I think I can do that," he said, grinning at the board members.

BRIEFS

C.J. Yoder is heading up the nominating committee for a new board member. A couple of names of trail proponents were already suggested. If you know of someone who would be interested, submit his/her name and a telephone number to C.J.

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Eric Amt is gathering ideas for a new PVNT Strategic Plan. Now that we're through Goshen, where do we go from here? What is our vision for the remainder of the trail and how do we make it a reality? Have a thought, a dream, a possibility, call Eric at 294-3872.

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Needed: Founding Members, Friends of the Pumpkinvine Nature Trail Inc. A cumulative gift of $500 will get founder's names engraved on a permanent plaque to be located on the trail itself. Founders receive copies of all newsletters and advance notice of all upcoming trail events. For more information, call John D. Yoder at 534-0779 or write to him at 200 Westwood Road, Goshen, IN 46526-4836. Email: jdyoder@compuserve.com.

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Needed: Volunteers to help keep the trail and fencerow cleaned up and attractive. For more information, call John D. Yoder at 534-0779 or write to him at 200 Westwood Road, Goshen, IN 46526-4836. Email: jdyoder@compuserve.com.

The Valley Line Interurban RR Never Reached Pioneer, OH

By Robert Carrico

The Valley Line interurban railroad shared the Pumpkinvine corridor between Middlebury and Shipshewana. Passenger service from Middlebury to Shipshewana opened in 1905 but other sections of the project did not begin operations until several years later. Service from Elkhart to Bristol started in 1910 and the Bristol-Middlebury section became available for traffic a year later. Construction ended at Columbia, OH in 1915 just across the state line and Herbert Bucklen's dream to extend the rails to Pioneer, OH was never realized. His original plans called for overhead electric lines but these were installed and used only between Elkhart and Bristol.

In the absence of electrification passenger service was provided by a variety of equipment. Regular freight trains included passenger cars; however, the self-propelled passenger cars were more interesting. Some passenger cars had gasoline engines and were similar to typical interurban cars in appearance. A couple of passenger "cars" looked like automobiles on railroad wheels. One motor car had a standard traction motor connected to an electric generator driven by a gasoline engine. This system was designed to supplant trolley poles with overhead lines. A wagon for passengers was connected behind the motor car and was nicknamed "Bucklen's Arnica Salve Wagon" possibly because it broke down frequently.

Indiana Supreme Court issues important ruling

The Indiana Supreme Court has issued a significant ruling about the legalstatus of abandoned rail corridors. In Tazian v. Cline (September 26,1997), the court said that the 19th-century deed at issue conveyed feesimple absolute [title] to the railroad.

The ruling is important because that it involved the interpretation of anumber of phrases that trail opponents have claimed mean the railroad received only an easement. In its opinion, the high court rejected each of those interpretations, saying in each case that the these descriptive phrases did not limit the conveyance of fee simple title in the granting clause of the deed.

Watch for a more detailed report on this case in our next newsletter.

Contact Your Elected Officials

GOSHEN – Bicyclists and trail walkers need to make phone calls or drop letters to Elkhart County Commissioner Phil Neff who doesn't think there is any real interest in establishing bike trails in Elkhart County.

Neff was overheard recently stating "not one person has expressed any interest in a bike trail..." Members of the Pumpkinvine Nature Trail board decided to make their interests known to Neff and others who are in decision-making posts within government. OK, so nobody has expressed an interest – until now... Perhaps we all should.

Call Neff at 534-3541 or write to him at: Elkhart County Commissioners, 117 N. Second St., Goshen, IN, 46526.

Making your hikes more interesting

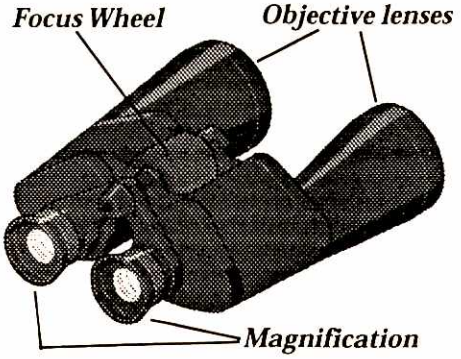
Choosing the Right Binoculars

By Dwight Fish

Walking the Pumpkinvine Nature Trail is a treat at this time of year, and viewing the wildlife with binoculars makes it even more fun.

Make sure your binoculars are well balanced and durable depending on your level of outdoor activity. They should be stable enough to get a steady view, but not make your arms tired even after holding them for several minutes. Decide whether weight or a brighter image is most important to you, and then pick out your binoculars with that in mind.

Here are three things to consider when selecting a pair of binoculars: magnification, "objective" lenses, and field of view.



Choosing the Right Binoculars

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Magnification is described by the first number on your binoculars. For example, a pair of 10X35 binoculars means the viewing image will be 10 times as large as viewed without binoculars.

The second number (35) is the diameter in millimeters of the objective lenses, the ones farthest from your eyes. The larger the objective lens, the brighter the image you'll see. But larger lenses also make the binoculars heavier and more awkward to use.

Field of view is also important when choosing binoculars. Standard field of view is 350ft/1000yds. This means that when you focus on an object 1,000 yards away, your field of view will be 350 feet wide. Bird-watchers usually like fields of view wider than standard.

If you wear glasses using binoculars can be a problem. Some binoculars have adjustable eye cups that can help, but the best thing to do is find a pair especially made for eyeglass wearers, with "eye relief" of 17 mm or more.

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Don't Forget Your Membership Dues

If the date on the label of this newsletter has passed, it's time to renew your membership in the Friends. Membership Levels are:

___ Individual $15 ___ Family $25 ___Sustaining $50
___ Contributing $100 ___ Patron $250 ___ Founder $500

Send your membership payments to:
Friends of the Pumpkinvine Nature Trail, P.O. Box 392, Goshen, IN 46527.

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Address _____

City _____ State _____ Zip _____

Phone _____ Fax _____

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Please take note of the expiration date of your membership on the address label. Thanks.

All funds go toward paying the day-to-day expenses of the Friends of the Pumpkinvine Nature Trail: printing, postage, letterhead, envelopes, copying and transportation. No officers receive remuneration. Founding members will receive special recognition at the trailhead in Goshen.

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