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APPROVAL—CERTIFICATE OF TITLE, WARRANTY DEED,
AND CONTRACT ENCUMBRANCE RECORD RELATING
TO THE PROPOSED PURCHASE BY THE STATE OF
OHIO OF A TRACT OF LAND IN GREEN TOWNSHIP,
SUMMIT COUNTY, OHIO.

COLUMBUS, OHIO, June 16, 1937.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval a certificate of title, warranty deed and contract encumbrance record No. 30, relating to the proposed purchase by the State of Ohio for the use of your department in the construction of the Nimisila Creek Basin Reservoir Project, of a tract of land which is apparently owned of record by James Cipot and Bertha Cipot in Green Township, Summit County, Ohio. This tract of land is a part of the northwest quarter of Section No. 30 in said township and county and is more completely described by metes and bounds as follows:

Beginning at a stake set in the southwest corner of the northwest quarter of Section No. 30, which is also the point of intersection of the centerlines of South Main Street Road and Killinger Road; thence along the center line of Killinger Road S. $83^{\circ} 01' 30''$ E. thirteen hundred sixty-six and seventy-one hundredths (1366.71) feet to a point in the southwest corner of lands now or formerly owned by Kelly Myers; thence along Myers' west line N. $7^{\circ} 26' 00''$ E. twenty-seven hundred forty-one and eighteen hundredths (2741.18) feet to a point in the center line of Clinton-Greensburg Road; thence along the center line of Clinton-Greensburg Road E. $83^{\circ} 44' 53''$ W. thirteen hundred eighty-seven and two-hundredths (1387.02) feet to an iron pin in the center line of South Main Street Road; thence along the center line of South Main Street Road S. $7^{\circ} 00' 40''$ W. twenty-seven hundred twenty-three and sixty hundredths (2723.60) feet to the place of beginning and containing eighty-six and thirty-six hundredths (86.36) acres of land.

Excepting from the above described premises a strip of land, said strip of land being a part of the southwest quarter of Section No. 19 and part of the northwest quarter of Section

No. 30, and being more completely described as a strip of land, the center line of which is the located line of the C. M. & A. R. R., said located line crosses the center line of the Clinton-Greensburg Road S. 83° 44' 35" E. ten hundred forty-two and fifty-nine hundredths (1042.59) feet from the intersection of the center line of said Clinton-Greensburg Road and center line of South Main Street Road and thence runs S. 2° 40' 29" W. twelve hundred ninety-one and no hundredths (1291.00) feet to a point, said strip to be sixty (60) feet wide, said located line then continues S. 2° 40' 29" W. fourteen hundred fifty-three and forty-nine hundredths (1453.49) feet to the center line of Killinger Road and the south line of the northwest quarter of Section No. 30 and is the center line of a strip of land eighty (80) feet wide, making said right-of-way sixty (60) feet wide for twelve hundred ninety-one (1291) feet and eighty (80) feet wide for fourteen hundred fifty-three and forty-nine hundredths (1453.49) feet and containing four and forty-five hundredths (4.45) acres of land. The property herein intended to be excepted is that part of the C. M. & A. R. R. right-of-way, now owned by the East Ohio Gas Company and located in the northwest quarter of Section No. 30 and the southwest quarter of Section No. 19, between the center line of the Clinton-Greensburg Road and the center line of Killinger Road. Leaving the land to be conveyed as eighty-one and ninety-one hundredths (81.91) acres of land as surveyed May 22, 1936, by FRANCIS W. STAFFORD.

Also excepting and reserving certain rights-of-way heretofore granted to the East Ohio Gas Company.

Upon examination of the certificate of title presented, which is certificate No. 56,866 prepared by The Northern Ohio Guarantee Title Company and the last continuation of which is February 27, 1937, I find that the title to this property is so involved on account of outstanding mortgage and judgment liens and of other liens and encumbrances that it is a matter of some difficulty to make an exact statement of the title with respect to such outstanding liens and encumbrances. Apparently, James Cipot and Bertha Cipot still have the legal and record title to this property; but the same is subject to liens and encumbrances which are here noted as exceptions to the title in and by which this property is now owned and held.

1. On August 18, 1902, one Adam Rhoades, who, apparently, was then the owner of the property here in question, executed an instrument in deed form in and by which on the consideration therein stated he

granted to The East Ohio Gas Company the right to lay, maintain and operate two pipe lines over and through said lands for the transportation of gas, and also the right to maintain and operate a telegraph line in and over said lands. The easement granted to The East Ohio Gas Company by this instrument is an encumbrance upon this property.

2. Some time later, to wit, September 10, 1907, Charles Rhoades and others, heirs at law of Adam Rhoades, then deceased, executed an instrument in deed form granting to The East Ohio Gas Company the right to lay, maintain and operate another pipe line for the transportation of gas on and over the above described lands. This easement is likewise an encumbrance upon the property.

3. On April 16, 1932, James Cipot and Bertha Cipot executed to The Ohio Bell Telephone Company an instrument in deed form in and by which they granted to said company, its successors and assigns the right, privilege and authority to construct, operate and maintain lines of telephone and telegraph in and upon the above described lands, together with all necessary conduits, manholes, poles, wires, cables, etc. By the terms of this easement, such lines of telephone and telegraph were to be constructed along the east side of the highway known as Akron South Main Street Extension and on a line to be determined by the Department of Highways. This easement is likewise an encumbrance upon the property.

4. On May 26, 1933, James Cipot and Bertha Cipot executed an oil and gas lease on the above described property to The East Ohio Gas Company. This lease is one for a term of seven years or so much longer as oil or gas or their constituents are found on said premises in paying quantities. This oil and gas lease is likewise an encumbrance upon the property.

5. On September 3, 1934, James Cipot and Bertha Cipot executed a lease to one Miklos Kovach in and by which they leased and demised to the lessee above named a gas station on the southeast corner of the Greensburg-Manchester Road and South Main Street Extension. This lease is one for a term of three years. And inasmuch as it has not expired, the same is an encumbrance upon the property.

6. On January 18, 1928, James Cipot and Bertha Cipot executed a mortgage on the above described premises to Paul Wenhardt and Mary Wenhardt to secure the payment of a promissory note in the sum of \$5,000.00 due and payable in three years from said date, with interest at the rate of seven per cent per annum, payable semiannually. This mortgage has not been canceled of record and the same is a lien upon this property to the extent of the amount remaining unpaid upon the promissory note secured thereby or upon the judgment entered on said note in the case of *Paul Wenhardt and Mary Wenhardt vs. James Cipot and Bertha*

Cipot and others, in Case No. 97110 on the docket of the Common Pleas Court of Summit County. As to this, it is noted from the certificate of title that on October 13, 1932, Paul Wenhardt and Mary Wenhardt filed the action above referred to which was one for the foreclosure of this mortgage. On September 23, 1933, the court entered judgment in favor of the plaintiffs against the defendants James Cipot and Bertha Cipot on the promissory note secured by this mortgage, which judgment was for the sum of \$5209.62, with interest at seven per cent from July 12, 1932. The court at the same time entered a decree foreclosing the defendant's equity of redemption as to such mortgage and ordered the sale of the property. After this property had been appraised in the manner required by law the property was sold to Paul Wenhardt and others for the sum of \$5735.00. This sale was made on February 1, 1935. No order was made by the court confirming this sale and no deed conveying this property to Paul Wenhardt and others pursuant to such sale was ever prepared and delivered. On the contrary, it appears that on February 7, 1935, the court made an order restraining the confirmation of such sale on condition that the defendants James Cipot and Bertha Cipot pay to the plaintiffs in said action the sum of \$39.00 per month, starting February 13, 1937, and that such order of confirmation should be restrained as long as such payments were made. The certificate of title shows that there were accrued costs in this action to the amount of \$131.18, of which amount \$68.98 was paid August 28, 1933, and that on or about the same time the sum of \$101.64 was paid to and received by the plaintiffs' attorney, to apply on plaintiffs' judgment.

In the foreclosure action above referred to, Saumel J. Brendel, Frank A. Brendel, William Elzholtz, Armor Sayre, Lewis C. Byers, The East Ohio Gas Company and James Dillian, Clerk of Courts, were made parties defendant. The East Ohio Gas Company was made a party defendant in this case by reason of the first two easements herein noted as exceptions, which easements were owned and held by said company, and James Dillian was made a party defendant by reason of judgments for costs against James Cipot and Bertha Cipot in other cases.

The certificate of title does not, however, disclose the reason for making Samuel J. Brendel, Frank A. Brendel, William Elzholtz, Armor Sayre or Lewis C. Byers parties defendant in this action or what interest these parties defendant had or claimed to have in the premises. Although as to this there is a pencil notation which seems to indicate that one of these parties defendant then held a lease on the gas station now owned and held by Miklos Kovach. Inasmuch as no judgment has been entered in this case which would in any wise foreclose the rights or interests of these parties defendant in and to the above described lands, if any such rights or interests they had therein, an investigation

should be made for the purpose of ascertaining what these interests are before the transaction for the purchase of this property is closed.

7. On October 4, 1932, Paul Wenhardt obtained a judgment by the consideration of the Common Pleas Court of Summit County in Case No. 96981 on the docket of said court against *Jim* Cipot and Howard Colliers Company of Chatteroy, West Virginia, in the sum of \$5209.82, with interest at seven per cent per annum from January 18, 1932, and costs in the case amounting to the sum of \$4.90. I assume that *Jim* Cipot is one and the same person as James Cipot and that this judgment, which was entered on a cognovit note, was and is on a consideration separate and apart from the mortgage note upon which judgment was taken in Case No. 97110, above referred to. In other words, it appears that this judgment in the sum of \$5209.82 in favor of Paul Wenhardt is in addition to that rendered upon the mortgage note. The judgment rendered on the mortgage note referred to in exception No. 6 above is, of course, a lien upon the property to the extent of the amount of money remaining unpaid on the principal amount and interest of said judgment, together with the accrued costs in the case. This judgment in favor of Paul Wenhardt against James Cipot, under the name of *Jim* Cipot, and Howard Colliers Company is a lien upon this property or upon James Cipot's interest therein to the extent of the amount remaining unpaid upon the principal amount of said judgment, the sum of \$5209.82, and the accrued interest thereon.

8. It appears from the certificate of title that on June 3, 1933, an injunction case in which *Jim* Cipot and Bertha Cipot were plaintiffs was dismissed at plaintiffs' costs in the sum of \$19.17 against which they are entitled to a credit of \$15.35 which was paid in as advanced costs. The case number of this action is 96507.

9. It appears further from the certificate of title that by the consideration of the Common Pleas Court of Summit County in Case No. 101201 on the docket of said court, James Drusin and Mary Drusin obtained a judgment in and for the sum of \$1012.50, with interest, against James Cipot and Bertha Cipot. The date of this judgment is not indicated. However, it appears that on November 8, 1934, an execution was levied on the above described premises for the amount of this judgment, together with costs in the sum of \$25.06.

Apparently, in this same action one Frank W. Laney obtained a judgment against James Cipot and Bertha Cipot in and for the sum of \$596.94, with interest at seven per cent from the date of said judgment.

Both of these judgments are liens upon the above described property to the extent of the amount remaining due and unpaid upon the same.

10. It appears from the certificate of title that by the consideration of the Common Pleas Court of Summit County in Case No. 110059 The

Akron Savings and Loan Company recovered a judgment in and for the sum of \$2141.82, with interest at the rate of seven per cent per annum from March 27, 1935, against James Cipot and Bertha Cipot and against Jim Drusin and Mary Drusin. It appears that the sum of \$1783.94 was paid to the plaintiff in this case to apply upon its judgment. It does not appear who made this payment. That is, it does not appear whether James Cipot and Bertha Cipot made the payment or whether it was made by Jim Drusin and Mary Drusin or either of them under circumstances which would create an equity in their favors against James Cipot and Bertha Cipot. In any event, this judgment is a lien upon this property to the extent of the amount remaining unpaid thereon, together with accrued interest.

It appears that James Drusin and Mary Drusin were made parties defendant in the foreclosure action above referred to in Case No. 97110 on the docket of the Court of Common Pleas of Summit County and that they filed an answer and cross petition in this case setting up their judgment obtained in Case No. 101201, above referred to, and that likewise Frank Laney filed an answer and cross petition in said foreclosure action in which he set up the judgment which he obtained in Case No. 101201, above noted.

With respect to the many judgment liens above noted, I can only suggest that before the transaction for the purchase of this property is closed by your department, Mr. Thomas or some other competent and careful attorney at Akron be assigned the duty of ascertaining and determining the exact amounts of money remaining due and unpaid upon these several judgments and that such judgment liens should be satisfied and released of record before the transaction for the purchase of this property is finally closed.

11. With respect to the matter of special assessments and general taxes on this property, the following appears in an extension to the certificate of title made by The Northern Ohio Guarantee Title Company under date of February 27, 1937:

“There are no Special Taxes charged against the premises above described on the Treasurer’s 1935 General Tax Duplicate or shown on the County Auditor’s 1935 Certified List of Special Assessments except an assessment for improvement of Killinger Road payable in semi-annual installments of \$5.59 each, beginning December 20, 1931, and ending June 20, 1936:

The Status of said Assessments is as follows:

Delinquent Assessments of former years amounting to \$24.60, are a lien.

Assessments for the first half of 1935 are paid.

Assessments for the last half of 1935 amounting to \$5.59 are delinquent; penalty 56 cents.

There is listed on the Treasurer's Tax Duplicate, Green Township, in the name of James and Bertha Cipot:

Tract 19 S. W. - M. S. .80 acres.

Valuation: Lands \$30.00. Buildings \$..... Total \$30.00.

Taxes for the first half of 1935 are paid.

Taxes for the last half of 1935 amounting to 25 cents, are delinquent; penalty 3 cents.

Taxes for 1936 are a lien.

Tract 30 N. E. - W. 78.09 acres.

Valuation: Lands \$1950.00. Buildings \$510.00. Total \$2460.00.

Taxes of former years amounting to \$85.65, 'Certified Delinquent' 1935 are a lien.

Penalties, cost of advertising and certification, and interest, are to be added to the above taxes.

Taxes for the first half of 1935 are paid.

Taxes for the last half of 1935 amounting to \$20.66, are delinquent; penalty \$2.07.

Taxes for 1936 are a lien."

In this connection, it is suggested that investigation be made with respect to the status of the installment assessments on this property for the year 1936 keeping in mind that the total amount of the assessment for the Killinger Road Improvement over and above the total amount of the installments thereon which have been paid, is a lien upon this property as are the penalties upon any delinquent installments. I may further add with respect to the statement appearing in the certificate of title as to the general taxes, that the taxes for the year 1937 are likewise now a lien upon the property.

The certificate of title contains the following statement:

"No examination has been made for liens arising by reason of any fine, assessment or levy imposed on account of the manufacture, sale or giving away of intoxicating liquor or for any liquor tax."

No information is available to this office to show whether James Cipot and/or Bertha Cipot are selling malt or spirituous liquors on these premises under permits therefor or otherwise and in view of the fact that the certificate of title has made no investigation of this matter with

respect to possible liens on the premises which might arise with respect to the sale of liquor on the premises, some investigation along this line should be made. Upon the facts before me, I cannot assume that any sale of liquors, either legal or illegal, has been made on the premises either by the Cipots or by any lessees under them. However, as a matter of precaution, some consideration should be given to this matter in view of the statement made in the certificate of title.

It is noted that the last extension to this certificate of title is under date of February 27, 1937. In view of this fact, it might be well for Mr. Thomas or for some other competent and careful attorney under his direction to make a further check of the records in the proper offices at the Court House at Akron to determine whether or not any judgments or other liens of any kind have been imposed upon this property since the date of the last certification thereof.

Upon examination of the warranty deed tendered to the State of Ohio by James Cipot and Bertha Cipot, I find that this deed has been properly executed and acknowledged by said grantors and that the form of this deed is such that the same is legally sufficient to convey this property to the State of Ohio by fee simple title, subject only to the exceptions and reservations stated in said deed with respect to the rights of way heretofore granted to The East Ohio Gas Company. By this deed James Cipot and Bertha Cipot, as husband and wife, release their respective inchoate dower interests in the undivided estate of the other in this land; and the deed contains a covenant of warranty that the property is conveyed to the State of Ohio free and clear of all encumbrances whatsoever.

Contract encumbrance record No. 30 has been properly executed and the same shows a sufficient balance, otherwise unencumbered, in the appropriation account to the credit of your department to pay the purchase price of this property, which purchase price is the sum of \$12,400.00. It likewise appears from this contract encumbrance record that the purchase of this property has been approved by the Controlling Board.

I am herewith returning to you said certificate of title, warranty deed and contract encumbrance record.

Respectfully,

HERBERT S. DUFFY,

Attorney General.