

BEFORE THE INDIAN CLAIMS COMMISSION

THE OTTAWA TRIBE and GUY JENNISON,)	
BRONSON EDWARDS, and GENE JENNISON,)	
AS REPRESENTATIVES OF THE OTTAWA)	
TRIBE,)	
)	
)	
Plaintiffs,)	
)	
v.)	Docket No. 304
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: March 17, 1971

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. Plaintiff, the Ottawa Tribe of Oklahoma, as represented by individual plaintiffs, Guy Jennison, Bronson Edwards, and Gene Jennison, has the right and capacity to bring and maintain this claim for additional compensation under Section 2 of the Indian Claims Commission Act (60 Stat. 1049, 1050), on behalf of the Maumee Band of Ottawa Indians who ceded to the United States under the provisions of the Treaty of February 18, 1833, 7 Stat. 420, the lands that are the subject of the claims asserted herein.

2. For the purposes of identification, the 1833 Treaty entity has been variously designated, in contemporaneous correspondence and public papers, as the "Ottawa of the Maumee", the "Maumee Band of Ottawas", and the "Maumee Band" to distinguish them from other

independent and autonomous bands or tribes of Ottawa Indians who occupied separate tracts of land in different parts of northwestern Ohio, the northwest section of the Lower Michigan peninsula, and parts of northeastern Illinois prior to 1833.

3. The subject lands, or ceded area, consist of two contiguous tracts of land located in the extreme northwestern part of Ohio that are separated by the Maumee River at and near its mouth on Maumee Bay in Lake Erie.

Royce Area 182, the largest of the two tracts, is situated on the south side of the Maumee River and Maumee Bay and was originally reserved to the Maumee Band of Ottawa Indians under Article 20 of the Treaty of September 29, 1817, 7 Stat. 160, 166. Royce Area 182 is described in the 1817 Treaty as

"....a tract of land, to contain thirty-four square miles, to be laid out as nearly in a square form as practicable on the south side of the Miami [Maumee] river of lake Erie..." (7 Stat. 160, 166, 2 Kapp. 150, 151).

As officially surveyed, Royce Area 182 contained 21,760 acres.

Royce Area 182 on the north side of the Maumee River and Maumee Bay was reserved to the Maumee Band of Ottawa Indians under Article 6 of the Treaty of November 17, 1807, 7 Stat. 105, 106, and was described as a tract

"....four miles square on the Miami [Maumee] bay, including the villages where Meskemau and Waugau now live..."

As officially surveyed, the total area of Royce Area 183 was less than four miles square, containing 7,794.73 acres.

4. On February 18, 1833, the United States concluded a treaty with the Maumee Band of Ottawa Indians wherein the Indians ceded Royce Areas 182 and 183 to the United States in consideration of which it was agreed that the United States would pay the Indians the sum of \$29,440.00 to be applied in the extinguishment of their debts. The 1833 Treaty also reserved several tracts of the ceded area for Ottawa Chiefs, headmen, and white friends of the Indians. The total net cession to the United States of Royce Area 182 and 183 amounted to 26,981.74 acres. Said treaty was ratified on March 22, 1833, which date is the effective date of the treaty and the valuation date of the subject lands. The 1833 Treaty further provided for the payment of a prior debt due the Ottawa Indians in the amount of \$18,000 resulting from an apparent misunderstanding in the provisions of the Treaty of August 30, 1831, 7 Stat. 359. The funds were subsequently appropriated, and after payment of certain specified debts, the balance was divided proportionately between that part of the Maumee Band of Ottawa Indians who had migrated West under the terms of the 1831 Treaty and those who had chosen to remain in Ohio after the 1833 Treaty. Neither treaty required the Maumee Band of Ottawa Indians to remove West since this was optional with the Indians.

5. The subject lands were strategically located at the west end of Lake Erie on Maumee Bay at the mouth of the Maumee River and situated approximately 50 miles southwest of Detroit and 100 miles east of

Cleveland. Royce Area 182, on the south side of the Maumee River, had a depth and interior width of approximately five and one-half miles with about five miles of river frontage and two and one-half miles fronting on Maumee Bay in Lake Erie. Royce Area 183, north of the Maumee River and nearer its mouth, extended for approximately three and one-half miles along the river and the Maumee Bay shoreline. The Ottawa River, the largest of several streams in Royce Area 183, ran nearly diagonally through the middle of this tract.

6. The topography of subject tracts was generally flat, except for slight elevations and rolling slopes along river and stream banks. As of 1833, poor natural drainage was characteristic of a large segment of Royce Area 182 whose southern half was substantially within the region known as the Black Swamp and described in the record as a heavily timbered forest whose surface characteristic was mainly paludal or swampy. Royce Area 183 was also flat and marshy but to a much lesser extent than Royce Area 182. Principal access to both tracts was through existing navigable waters; i.e., through Lake Erie and Maumee Bay in the north and through the Maumee River from the West. Access from the East entailed traversing the Black Swamp by way of the inadequate Maumee and Western Reserve Road completed in 1827. This road was nearly impassable during the winter season and during excessively wet periods. Principal access routes to Royce Area 183 included the reasonably good post road from Detroit to the Maumee River.

Climatic unpredictability in fall and winter, poor access and transport facilities, particularly overland from the East, and the relatively unfavorable physical character of large segments of northwestern Ohio contributed to the retardation of large scale settlement and normal homesteading in Maumee Valley at the time of cession.

7. The region in northwestern Ohio in which subject lands were located was known historically as the Maumee Valley, an area which was well-traveled by early settlers, soldiers, fur traders, and missionaries. In the late 1600's, the French established a military and trading post known as Fort Miami about 15 miles up river from Maumee Bay. Because of its strategic location in relation to Detroit, Fort Miami and the surrounding area was the scene of important military engagements during the Indian wars of the Northwest Territory (1793-1796) and the War of 1812.

Prior to the War of 1812, the early settlers found the Maumee River the normal route of transportation and communication through the Maumee Valley and into the interior of northwestern Ohio and eastern Indiana. The considerable trade carried on with the Indians who occupied adjacent lands along the Maumee River and Maumee Bay was centered a few miles south of subject tract at the Port of Miami. In 1810, a customs house was established at Fort Miami to handle the commerce from the Lake Erie ports. In 1817, the towns of Maumee and Perrysburg sprang up just below the subject tracts on the Maumee River. Both towns were commercial centers for the Indian trade in furs, peltries,

maple sugar, fish, and corn. By 1833, the commercial navigation of the Maumee River was well established. Except during periods of heavy icing, regularly scheduled lines serviced the Maumee River and other ports of Lake Erie. In 1833 most of Ohio had been opened to settlement and its population at that time was the fourth highest in the Nation, having increased from 581,434 in 1820 to 937,903 in 1830. By 1830, the population of the three counties (Sandusky, Wood, and Monroe) geographically connected to subject areas was 7,140, increasing steadily to 29,486 by 1840.

8. A prime economic factor that contributed to the internal development and growth of the Maumee Valley was the construction of a network of canals in the state of Ohio. As early as January 5, 1825, the Ohio State Canal Commission had proposed an alternative western Ohio canal route which would run along the Maumee River from Cincinnati, where it was to join the Indiana canal system extending from the Wabash River. By 1832, speculation in Maumee River townsites and surrounding lands bordering or within subject areas was at its peak in expectation of high profit that would emerge from canal shipping and related operations. After the 1833 Ottawa Indian land cession, shipping interests in Buffalo and elsewhere in the East began to invest in lands along the Maumee River. Numerous towns were planned and a few were in fact organized at the very border of the Ottawa tracts. Two such towns, Port Lawrence, reorganized in 1832 after an earlier failure, and Vistula, organized in January 1833, consolidated in late 1833 to

become the city of Toledo. The town of Manhattan, on the north side of the Maumee River just below Royce Area 183, was organized in the early 1830's. At that time, Manhattan was considered a prime location for a canal terminal.

By the Law of March 3, 1834 (32 Ohio Laws 308), the State of Ohio accepted the responsibility of building the Ohio extension of the Wabash and Erie Canal from the Indiana border to the northern bank of the Maumee River where it would terminate within Royce Area 183. Under the Act of June 30, 1834, 4 Stat. 716, Congress granted necessary lieu lands to Ohio to finance the construction of said canal. Under this act, Ohio selected substantially all of subject lands, exclusive of the individual grants reserved under the 1833 treaty.

9. At the time of the 1833 cession, the United States was at the threshold of a spectacular economic boom fed largely by the fever of land speculation which reached its peak in 1836 in terms of land sales. By the end of 1833, more public lands had been sold in Ohio than in any other state or territory. The commercial traffic through the Maumee Valley at this time was high as a result of the large scale movement of immigrants seeking cheaper and better grade lands in eastern Indiana where the land boom was second only to Ohio in terms of land sales. The boom ended with the economic depression of 1837.

10. Between June 1834 and October 1836, all of the ceded area was appraised by the Ohio Canal Commission for the purpose of fixing minimum prices for the sale of these lands, the proceeds of which were

to be used to finance the construction of the Wabash and Erie Canal. These appraised values ranged from a low of \$4.00 per acre for inland property--principally in Royce Area 182--to a high of \$200.00 per acre for prime river and bayfront properties. Higher values generally were accorded acreage in Royce Area 183. The per acre value of both tracts, as thus appraised, averaged out to approximately \$22.50. The Ohio Canal Commission conducted the first sale of these lieu lands in November 1835 at Perrysburg. That sale, consisting of 17,481 acres and which may have involved some lands within the Ottawa tracts, averaged out to approximately \$8.60 per acre.

11. The evidence of sales data covers both public and private land sales within and without subject area during the period 1825-1835. The records of public land sales in Royce Area 163, some 75 miles south-southeast of subject area indicated an average per acre price of \$2.09. Private entries in the same area averaged \$1.25 per acre. Public land sales in Royce Area 164, some 125 miles south of subject area averaged out to \$1.74 per acre and private sales in this tract for the first six months of 1833 averaged at \$1.30 per acre. Both tracts are further inland and not comparable in many respects with the subject Ottawa tracts. Summaries of land sales in the Twelve-Mile Reserve bordering the subject tracts in the south reflected the government minimum price of \$1.25 per acre. Private sales in the Twelve-Mile Reserve averaged \$2.78 per acre and those recorded in 1833 averaged out to \$3.05 per acre.

The first private sales within the ceded area occurred in early 1835 when Wasaon, an Ottawa chief, sold his 160-acre Maumee River tract for \$25.00 per acre. Several months later, Au-to-kee, another Ottawa chief, sold two parcels of his land fronting on Maumee Bay for \$8.00 and \$12.50 per acre. Resales of the select Indian reserves on the waterfront in the subject tracts commanded prices in excess of \$35.00 per acre in 1835. Town lots that were offered for sale in Port Lawrence and Vistula between 1833 and 1834 ranged in price from \$25 to \$200 each, depending on their location in relation to the waterfront.

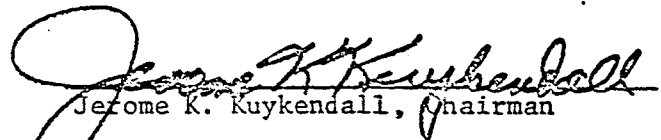
12. Defendant has relied on the testimony and appraisal report of Richard B. Hall, a real estate appraiser possessing over 40 years experience in the real estate business. Mr. Hall adopted a market data approach and concluded that the fair market value of both tracts as of the valuation date was \$37,289.82, or approximately \$1.50 per acre. In reaching his value conclusion, Mr. Hall appraised both tracts separately, and further divided each tract between inland and shore property, placing a value on waterfront property nearly five times higher than the averages cited by him.

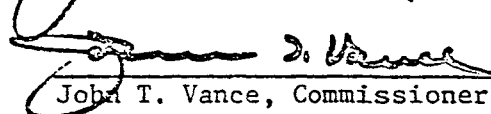
Plaintiff introduced no expert testimony on value but relied solely on the 1836 Ohio Canal Commission appraisal report. From the limited sales made by that Commission of lands in subject tract, the prices received therefor were far below the average appraisal price of \$22.50 per acre, the fair market value claimed by plaintiff.

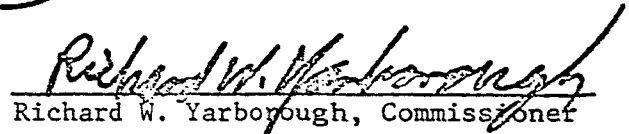
13. Based upon the foregoing findings of fact and the record as

a whole, the Commission finds that in 1833, the highest and best use of the subject tracts was for commercial purposes, and that, as of March 22, 1833, the effective date of the 1833 treaty of cession, the fair market value of said tracts as a whole was \$230,000 or approximately \$8.52 per acre.

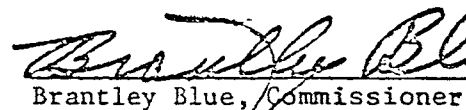
The Commission further finds that the United States paid the Maumee Band of Ottawa Indians the sum of \$29,440 for the subject lands pursuant to the terms of the 1833 Treaty, and that this sum was payment of an unconscionable consideration within the meaning of Clause 3, Section 2 of the Indian Claims Commission Act. Plaintiff is entitled to recover from the defendant, on behalf of the Maumee Band of Ottawa Indians, the sum of \$200,560, less gratuitous offsets, if any, which may be allowable under our Act.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner