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Office of Proceedings
May 26, 2021
Part of
Public Record

May 26, 2021

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

Re: *Grafton and Upton Railroad Company – Petition for Declaratory Order*, STB Docket
No. FD 36518

Dear Ms. Brown:

We attach for filing in the above-captioned proceeding the Motion for Extension of Time of
Hopedale Properties, LLC.

Thank you very much for your attention to this matter.

Sincerely,



Allison I. Fultz
Counsel for Hopedale Properties, LLC

David Lurie
Harley Racer
LURIE FRIEDMAN LLP
Counsel for Hopedale Properties, LLC

 GRANTED Office of Proceedings	DECISION ID NO.: <u>50805</u>
	DECIDED DATE: <u>5/28/2021</u>
	SERVED DATE: <u>5/28/2021</u>
	APPROVED:  Acting Director
	☐ Reply deadline extended to <u>7/19/21</u> .

Enclosures

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36518

**GRAFTON AND UPTON RAILROAD COMPANY – PETITION FOR DECLARATORY
ORDER**

MOTION OF HOPEDALE PROPERTIES, LLC, TO EXTEND TIME TO RESPOND

Communications with respect to this pleading should be addressed to:

David Lurie
Harley Racer
LURIE FRIEDMAN LLP
One McKinley Square
Boston, MA 02109
(617) 367-1970 (tel)
E-mail: dlurie@luriefriedman.com
E-mail: hracer@luriefriedman.com

Allison I. Fultz
KAPLAN KIRSCH & ROCKWELL LLP
1634 Eye Street, N.W.
Suite 300
Washington, DC 20006
(202) 955-5600
E-mail: afultz@kaplankirsch.com

Counsel for Hopedale Properties, LLC

Dated: May 26, 2021

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36518

**GRAFTON AND UPTON RAILROAD COMPANY – PETITION FOR DECLARATORY
ORDER**

MOTION OF HOPEDALE PROPERTIES, LLC, TO EXTEND TIME TO RESPOND

Hopedale Properties, LLC, the owner of the real property traversed by the line of railroad that is the subject of the above-captioned proceeding, submits this Motion to Extend Time to Respond to the initial pleadings of Grafton and Upton Railroad Company (“GU”), which GU filed on May 13, 2021.¹

Pursuant to the Board’s rules at 49 C.F.R. § 1104.13(a), a reply to GU’s submissions would be due no later than June 2, 2021. As the property owner most directly and significantly impacted by GU’s actions, Hopedale Properties, LLC, respectfully requests a 45-day extension of time, to July 19, 2021, to respond to GU’s assertions and arguments. At such time Hopedale Properties, LLC, will comment in detail on the issues framed by GU’s pleadings so that the Board may have a fully developed record on which to base its decision in this matter.

Discussion

The track GU describes in its Petition for Declaratory Order passes over and bisects an approximately 77 acre assemblage of 17 parcels which are contiguous or in close proximity to each other and which belong to Hopedale Properties, LLC and affiliates.. GU’s use of its track does not occur in a vacuum, and GU cannot ignore its obligation to cooperate with property

¹ Pursuant to the Board’s rules at 49 C.F.R. § 1104.7(b), this Motion to Extend Time was due no later than May 21, 2021. Hopedale Properties, LLC, respectfully seeks the Board’s leave to late-file this Motion since STB counsel was engaged very shortly prior to this date. Accordingly, the ten day period available for Hopedale Properties, LLC, to conduct its analysis and determine an appropriate course of action was impracticably short.

owners with whom the railroad interacts closely, particularly where the railroad's right-of-way is tightly bounded on either side by land belonging to a single property owner, and where the railroad's activities may alter existing at-grade crossings on which the property owner relies for safe access across the site.

Argument

In its Petition for declaratory relief, GU asserts that “[t]he track work at the location of the bridge has necessitated the closure of the two grade crossings,” purportedly to mitigate “safety hazards”. GU Petition for Declaratory Order at 4. GU claims that it “will no longer be possible to keep the two grade crossings open,” (GU Petition for Declaratory Order at 5) but then proceeds to describe a series of unilateral decisions and actions on GU's part that have significantly impaired Hopedale Properties, LLC's use of its property. Notably, GU does not describe any effort to inform Hopedale Properties, LLC of the railroad's desire to reconfigure its track and facilities because there were no such efforts.

As the result of GU's harm to Hopedale Properties, LLC's property and the resulting limitations on the property owner's use of and access to its own land, to which Hopedale Properties, LLC did not consent, GU has triggered a variety of issues arising under both state and federal law, which Hopedale Properties, LLC is in the process of evaluating. GU's actions not only impact the property owner's ability to access portions of its land in violation of state property law and historic usage, but also adversely affect redevelopment efforts that are already underway by the property owner. At a minimum, GU's common carrier obligation does not grant it carte blanche to appropriate the property of others, to any degree, without leave.

The default deadline for response of June 2, 2021, does not provide sufficient time for Hopedale Properties, LLC to fully evaluate and comment on GU's Petition. The Board should

allow additional time for Hopedale Properties, LLC, and any other interested parties to respond so that the record may be fully developed for careful consideration by the Board of those issues within the Board's jurisdiction.

WHEREFORE, Hopedale Properties, LLC respectfully requests that the Board grant this Motion to Extend Time to Respond in order that a thorough record can be compiled in the above-captioned proceedings.

Respectfully submitted,



David Lurie
Harley Racer
LURIE FRIEDMAN LLP
One McKinley Square
Boston, MA 02109
(617) 367-1970 (tel)
E-mail: dlurie@luriefriedman.com
E-mail: hracer@luriefriedman.com

Allison I. Fultz
KAPLAN KIRSCH & ROCKWELL LLP
1634 Eye Street, N.W.
Suite 300
Washington, DC 20006
(202) 955-5600
E-mail: afultz@kaplankirsch.com

Counsel for Hopedale Properties, LLC

Dated: May 26, 2021

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served a copy of the foregoing MOTION OF HOPEDALE PROPERTIES, LLC, TO EXTEND TIME TO RESPOND, upon the following party of record in the above-captioned proceedings via electronic mail:

James E. Howard
57 Via Buena Vista
Monterey, CA 93940
jim@jehowardlaw.com

Counsel for Grafton and Upton Railroad
Company



Allison I. Fultz

Dated this 26th day of May, 2021