

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

Finance Docket No. 36548

ACQUISITION AND OPERATION EXEMPTION
IN YORK COUNTY, PA

VERIFIED NOTICE OF EXEMPTION

SUPPLEMENT TO
PETITION FOR RECONSIDERATION

1. James Riffin, (Petitioner), a non-carrier, herewith **Supplements** his May 10, 2022 filed, Petition for Reconsideration of the Board's **April 21, 2022** Served Decision in the above entitled proceeding. [Which Decision rejected Petitioner's Notice of Exemption ("NOE").]

2. In the Board's April 21, 2022 Served Decision in the above entitled proceeding, the Board indicated that it desired some collaboration that MP 7.0 of the York Branch, was somewhere East of Campbell Road.

3. The Board suggested that a copy of the Valuation Map ("**Val Map**") for this portion of the Line, would be useful.

4. Petitioner has not been successful in his efforts to acquire a copy of the appropriate Val Map.

5. Petitioner was unable to locate a milepost marker in the general vicinity of where Milepost Marker 7.0 would be located.

6. Petitioner was successful in locating the actual original Pennsylvania Railroad (“**PRR**”) Milepost Marker 8 for the Line: It is located about 300 feet West of the Western edge of the Stonewood Road macadam, where the right-of-way crosses Stonewood Road. See appended May 15, 2022 Affidavit of James Riffin.

7. Adjacent to the original PRR Milepost Marker 8, is a more-recently-placed Milepost Marker 8.

8. Both the original Milepost Marker 8, and the more-recently-placed Milepost Marker 8, are (A) visible on Google’s Satellite Image for this location, and (B) on Google’s Street Image for this location.

9. Petitioner was successful in locating the more-recently-placed Milepost Marker 9 for the Line. There was no original PRR Milepost Marker 9 adjacent to the more-recently-placed Milepost Marker 9.

10. Milepost Marker 9 is located about 538 feet East of the center line of the creek that crosses the right-of-way in the vicinity of the Eastern End of Industrial Highway. (The right-of-way is about 300 feet north of, and parallel to, Industrial Highway.)

11. While Val Maps generally do indicate where mileposts are located, relative to surrounding physical features, in Pennsylvania, Monuments take precedent over metes and bounds descriptions, (such as milepost markers on a Val Map), and all other indications of where a point is physically located on the ground.¹

¹ In *Baker v. Roslyn Swim Club*, 206 Pa. Super. 192, 197 (1965), the court stated:

“The general rules to be applied in boundary cases were set forth in *Walleigh v. Emery*,

12. A milepost marker, particularly an original PRR milepost marker, would be considered to be a 'monument' under Pennsylvania real property law.

13. So while a Val Map would be collaborative evidence as to the probable location of a milepost marker, an actual milepost marker would be conclusive evidence as to the physical location of a particular milepost.

14. Under Pennsylvania real property law, Milepost Markers 8 and 9, would be conclusive evidence as to the location on the ground, of Mileposts 8 and 9 on the York Branch.

15. Since MP 9 is West of MP 8, MP 7 would have to be one mile East of MP 8.

16. Petitioner has a copy of the ADC of Alexandria, Inc. Map of York County, PA. ("ADC Map.") The Map Index indicates that one-inch on the Map equates to 2,000 feet on the ground. At a scale of one inch equals 2,000 feet, 2.64 inches would equal one mile (5,280 feet). 2.64 inches is about 2 5/8 inches (2 5/8 inches = 2.625 inches).

17. The ADC Map depicts the York Branch, Campbell Road, Stonewood Road, Industrial

193 Pa. Super. 53,58, 163 A.2d 665, as follows: 'Courses and distances in a deed must give way to monuments on the ground. *Merlino v. Eannotti*, 177 Pa. Super. 307, 110 A.2d 783.'"

In *Merlino v. Eannotti*, 177 Pa. Super. 307, 110 A.2d 783, the court stated:

"It is well established that courses and distances in a deed must give way to monuments on the ground: *Rook v. Greenewald*, 22 Pa. Super. 641; *Donaldson v. Fellabaum*, 68 Pa. Super. 347; *Pleasant Hills Borough Incorporation Case*, 161 Pa. Super. 259, 53 A. 2d 882.

Thus it was said in *Donaldson v. Fellabaum*, *supra*, 68 Pa. Super. 347: 'The description as contained in the deed is not ambiguous, but when applied to the land, at least two of the lines were found to be longer than those required by the monuments. Either the lines were not correctly measured, or the monument on the ground called for by the deed, was not in the location it was supposed to occupy. Under such circumstances the rule is well established that **fixed boundaries indicated by permanent monuments on the ground control, and that the distances, when differing therefrom, must give way to such monuments.**' "

Bold added.

Highway, and a creek crossing the York Branch right-of-way in the vicinity of the eastern-end of Industrial Highway, as depicted on the ADC Map.

18. On May 15, 2022, Petitioner drove to Hallam, PA, for the purpose of trying to locate MP 7, 8 and 9 on the York Branch.

19. MP 8 was found approximately 300 feet West of the Western edge of Stonewood Road. MP 9 was found approximately 538 feet East of the center line of the creek that crosses the York Branch in the vicinity of the Eastern end of Industrial Highway. Petitioner placed marks on a copy of the ADC Map, where MP Markers 8 and 9 would be located on the ADC Map. (**MP 8:** 300 feet = 0.15 inches at 1" = 2,000 feet; 0.15 inches = 2.4 / 16 ths of an inch. **MP 9:** 538 feet = 0.269 inches at 1" = 2,000 feet; 0.269 inches = about 1/4 inch.). Petitioner measured the distance between the MP 8 and MP 9 marks on the ADC Map: About 2 5/8 inches. Which approximates the calculated distance for one mile at 1" = 2,000 feet: 2.64 inches. See Petitioner's 5-15-2022 Affidavit.

20. The ADC Map depiction of the York Branch ends about 1.25 inches East of the depiction for Campbell Road. Which calculates to about 2,500 feet East of Campbell Road.

21. Petitioner measured the distance between the MP 8 mark on the ADC Map, and the Eastern end of the York Branch, as depicted on the ADC Map: About 2 5/8 inches.

22. From the above physical measurements and calculations, Petitioner concludes:

Milepost 7.0 is located 2,500 feet or so East of Campbell Road.

Respectfully,

/s/ James Riffin

James Riffin

CERTIFICATE OF SERVICE

I hereby certify that on May 25, 2022, I served a copy of the Supplement to Petition to Reconsider, upon Stephen Feinour, Nauman Smith Shissler & Hall LLP, 18th Floor, 200 N. 3rd Street, Harrisburg, PA 17101, counsel for Pennsylvania Lines LLC and Norfolk Southern Corporation, and on the East Penn Railroad, 505 S. Broad St., Kennett Square, PA 19348.

/s/ James Riffin

James Riffin

MAY 15, 2022 AFFIDAVIT OF JAMES RIFFIN

1. I am over the age of 21. I am competent and authorized to make this Affidavit.
2. On May 15, 2022, I went to York County, PA, in the vicinity of Hallam, PA. My goal was to locate Mileposts 8 and 9 on the York Branch, Line Code 1340.
3. I found, and photographed, Milepost 8. At Milepost 8, there is a Pennsylvania RR ("PRR") standard milepost marker, and an additional, more recently placed, milepost marker. Both milepost markers are West of the Western edge of the Stonewood Road right-of-way, and are located about 8 feet north of the northern-most rail.
4. I used a steel 100-foot measuring tape, to measure the distance between the western edge of the Stonewood Road macadam, and the center-line of the PRR standard Milepost 8 marker. The distance was measured to be precisely 300 feet.
5. I marked the location of MP 8 on a photocopy of P. 23 of the ADC of Alexandria, Inc. York County Map Gazette. See Appended Map P. 23, and Appended composite of Map PP. 22 and 23.
5. I then drove West on Market Street, to Edgewood Road; I traveled north on Edgewood Road to Industrial Highway; I then traveled East on Industrial Hwy to the end of the road. At the end of the road, I turned North, drove north about 300 feet, then parked in the parking lot adjacent to the York Branch line. A creek passes under the York Branch Line at that location. The creek is marked on Map P. 22. I looked East on the York Branch Line, and saw Milepost maker 9.
6. Milepost 9 marker is a more-recently placed milepost marker. (There was no PRR standard milepost marker 9.) The milepost 9 marker is East of the above noted creek, and is about 8-feet north of the northern rail.
7. I measured the distance from the center-line of the culvert that carries the creek under the York Branch line, to the center-line of the milepost 9 marker. That distance was measured to be 538 feet.
8. I photographed milepost marker 9. I also measured the distance between the MP 9 marker and a utility high-voltage line that crosses the York Branch East of the MP marker. The distance between the center-line of the utility line and the MP 9 marker, was measured to be 136 feet, 3 inches.
9. I marked the location of MP 9 on a photocopy of P. 22 of the ADC of Alexandria, Inc. York County Map Gazette. See Appended Map P. 22, and Appended composite of Map PP. 22 and 23.
10. Appended is a photocopy of the York County, PA Map Legend. The Map Legend indicates that one-inch distance on each map page equals 2,000 feet.
11. At 2,000 feet to the inch, one mile (5,280 feet) would be 2.64 inches, or about 2 5/8 inches.

12. The distance between MP 9 and MP 8 on the composite map was measured to be 2 5/8 inches, equating to one mile.

13. The distance between MP 8 and the end of the York Branch line as depicted on the ADC York County Map, was measured to be about 2 5/8 inches, or about one mile.

14. From the above noted measurements and calculations, I deduced that MP 7 would be at or near the end of the York Branch line as depicted on the ADC York County Map.

15. I drove to the approximate location of the end of the York Branch line as depicted on the ADC York County Map. (There is a dirt road off of Frysville Road, that leads to that location.)

16. At that location, there is a high-voltage utility line that crosses the York Branch right-of-way.

17. The original 130-pound Pennsylvania Standard jointed rails were clearly visible, 20 or so feet West of the above-noted utility line.

18. From the above noted measurements, calculations, and observations, I deduced that MP 7 would be at or near the end of the York Branch rails, as seen on the ground, and as depicted on the ADC York County Map.

19. I certify under the penalties of perjury that the above is true and correct to the best of my personal knowledge, information and belief.

/s/ James Riffin

Executed on May 15, 2022

James Riffin, Affiant

2310 000

76°37'30"

Joins Map 16

