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By Electronic Mail

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ENTERED
Office of Proceedings
December 14, 2022
Part of
Public Record

Re: *Collective Edge, LLC v. United States*, No. 20-34 (Fed. Cl.),
DJ# 90-1-23-15950

Mr. Keats:

In February 2020, the above-captioned case was filed in the United States Court of Federal Claims. It was thereafter consolidated with two related matters: *Ferg's Sports Bar & Grill, Inc. v. United States*, No. 20-84 (Fed. Cl.); and *Lopez v. United States*, No. 20-159 (Fed. Cl.). Plaintiffs in the consolidated cases allege takings resulting from the Surface Transportation Board's issuance of a Notice of Interim Trail Use or Abandonment ("NITU") on January 13, 2020 in Docket No. AB-55 (Sub-No. 794X), *CSX Transportation, Inc. – Abandonment Exemption – in Pinellas County, Fla.* The NITU pertains to an approximately 0.86-mile portion of right-of-way between milepost ARE 897.57 and milepost ARE 898.43 (the "ROW") in St. Petersburg, Pinellas County, Florida.

We wish to bring to your attention the following factual information ascertained in the course of litigating the consolidated case:

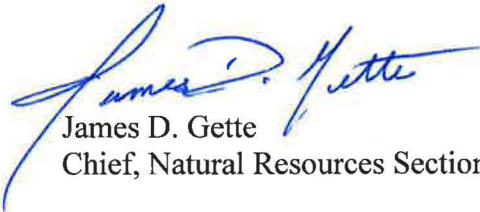
- CSX Transportation, Inc. ("CSXT") and the City of St. Petersburg, Florida (the "City") negotiated for the sale and purchase of the right-of-way for years, but never reached an agreement. According to CSXT, the main reason for the failure of negotiations was that CSXT "never received an offer of sufficient consideration from the City to incentivize CSXT to enter an agreement." See *Collective Edge LLC v. United States*, Case Nos. 20-34, 20-48, and 20-159, United States' Response in Opposition to Plaintiffs' Motion for Partial Summary Judgment on Liability, ECF No. 27, Exhibit 1, Declaration of G. Payne at ¶ 6 (Feb. 12, 2021) (noting that the "gap was significant").

- On July 23, 2019, the City filed an adverse abandonment proceeding with respect to the ROW. CSXT opposed the petition. *See* Docket No. AB-1289, *City of St. Petersburg, Fla.—Adverse Abandonment—CSX Transportation Inc. in Pinellas County, Fla.*
- On August 20, 2019, CSXT filed the Notice of Exemption to abandon the right-of-way. Docket No. AB-55 (Sub-No. 794X). According to CSXT, the City was engaged in negotiations to sell the ROW to a third party who was not prepared to close on the purchase. CSXT stated that the City’s adverse abandonment proceeding “forced CSXT’s hand.” *See* CSXT Reply to City of St. Petersburg’s Response to Letter of Intent to Negotiate with Georgetown and High Line Railway (Sept. 30, 2019). The City asserted that CSXT’s actions were “illusory negotiations” to “circumvent” abandonment regulations. *See* City of St. Petersburg’s Response to Letter of Intent to Negotiate (Sept. 9, 2019).
- The adverse abandonment proceeding was dismissed and denied as moot by the STB on January 3, 2020.
- On January 13, 2020, the STB issued a Notice of Interim Trail Use or Abandonment, authorizing CSXT to negotiate with Georgetown and High Line Railway (“GHL”), a subsidiary of CSXT. The City’s request for a NITU was denied.
- CSXT indicated it was negotiating with GHL as a placeholder for a third-party that had agreed to purchase the ROW. That third-party backed out.
- CSXT entered into a Purchase and Sale Agreement for the railbanking and interim trail use of the relevant right-of-way with its subsidiary, GHL, as of June 17, 2021.
- The quitclaim deed memorializing the transfer of the corridor from CSX to GHL was recorded on June 17, 2021 with the Pinellas County Clerk of Court and Comptroller at Book No. 21587. The consideration stated in the quitclaim deed is \$10.00.
- The quitclaim deed reserves to CSX an “Occupancy Easement” along the corridor that is encumbered by “existing occupancies of every type and nature, whether recorded or not, together with the right to maintain, operate, use, replace, relocate, renew and remove such occupancies, together with the further right to assign the Occupancy Easement, and/or the rights reserved pursuant thereto, in whole or in part, and to lease, license or permit third parties to use the Occupancy Easement and/or the rights reserved pursuant thereto.”
- The quitclaim deed specifies that GHL “shall not disturb any existing facilities located within the Occupancy Easement . . . nor cause or permit any interference with the enjoyment or use of the rights, interests and privileges created under the Occupancy Easement”

- Neither CSX nor GHIL has constructed a trail in the right-of-way. Additionally, to the best of our knowledge, neither CSX nor GHIL has developed a plan to construct a trail in the right-of-way, and neither CSX nor GHIL has any present intention to develop a trail in the right-of-way in the future.
- Since 1994, CSX has been leasing portions of the right-of-way to Ferg's Sports Bar and Grill, one of the Plaintiffs in the above-captioned case. The original lease charged approximately \$1,000 in annual rent.
- Over the course of the last 28 years, Ferg's has continued to lease portions of the right-of-way from CSX, as memorialized in a series of lease amendments with increasing annual rent.
- In February 2017, the rent increased from approximately \$4,700 to \$15,000 a year, with annual increases of \$10,000 every February thereafter. Annual rent was temporarily reduced from \$45,000 to quarterly billing of \$6,250 (annual reduction of \$20,000) to account for COVID-related closures.
- In April 2021, CSX increased the rent beginning in February 2022 at \$35,000, to be increased by \$5,000 a year through 2024.
- As of December 2021, Ferg's was still instructed to pay rent directly to CSX – not GHIL.

Much of this information was not available to the Board when it issued the NITU and subsequently authorized interim trail use and railbanking in Docket No. AB-55, but appears relevant to the reliance on the Trails Act to railbank this right of way and the Board's actions with respect to the City of St. Petersburg's adverse abandonment proceeding.

Sincerely,



James D. Gette
Chief, Natural Resources Section