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VIA E-FILING

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

**Re: Ohio Rail Development Commission – Petition for Declaratory Order, FD
36822**

On December 3, 2024, the Ohio Rail Development Commission (“ORDC”), an independent commission within the Ohio Department of Transportation, filed a petition for declaratory order asking the Board to find that (1) a rail line owned by ORDC, which extends 43.2 miles from milepost 81.1 at North Warren, Ohio, to milepost 124.3 at Ashtabula, Ohio (the “Line”), remains subject to the Board’s jurisdiction; (2) certain state law adverse possession claims asserted by Mr. Charles Supplee concerning the Line are preempted; and (3) the Line was railbanked according to federal law before the issuance of the railbanking regulations in Rail Abandonments—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591 (1986) (“Petition”). On March 21, 2025, the Surface Transportation Board (“Board”) instituted the requested declaratory order proceeding, and set a procedural schedule for interested parties to reply to the petition on or before April 15, 2025. In the procedural schedule, the Board specifically permitted ORDC to file a rebuttal to any additional comments filed in this proceeding. As one of two counties currently railbanking the Line, Ashtabula County has a vested interest in the outcome of Mr. Charles Supplee’s claim of adverse possession brought in the Court of Common Pleas of Franklin County, Ohio Civil Division (and the related pending appeal)¹ and this proceeding. As explained herein, Ashtabula

¹ See Charles Supplee v. Ohio Rail Transportation Authority, Et. Al., Case Number 23 CV-12-8741, In the Court of Common Pleas of Franklin County, Ohio Civil Division, Filed December 6, 2023. Plaintiff asserts that since 1996, he has openly, notoriously, and continuously utilized certain portions of property owned by ORDC in a manner sufficient to sustain a cause of action for adverse possession. On October 4, 2024, Judge Carl A. Aveni II, granted a motion by ORDC to issue judgment on the pleadings for failure to state a claim upon which relief can be granted. However, the Plaintiff, Mr. Supplee is appealing the decision and the case remains open for adjudication.

County Park District (“Ashtabula Park District”) hereby files these comments in support of ORDC, and asks that the Board take all actions necessary to preserve the railbanked corridor, an important rail corridor that has been railbanked for decades, subject to reactivation of rail service, if and when, it is determined necessary in the future.

As explained in the Petition, ORDC, its predecessors, the state of Ohio, and local counties, including Ashtabula County, over four decades ago undertook efforts to railbank the Line pursuant to the direction of Congress before the Board’s predecessor, the Interstate Commerce Commission, developed and implemented railbanking regulations.² These efforts are explained in detail in the Petition,³ and out of respect for the Board’s limited resources, will not be repeated fully here. That said, viewed collectively, those efforts undertaken by ORDC and its predecessor state agencies all demonstrate the State of Ohio’s commitment to railbanking, including: (1) issuing in 1978 the State Rail Plan, RailOhio (“RailOhio”), mapping out the State’s then-current and future intention and efforts to preserve underutilized lines, such as the Line, in the event reactivation of rail service is necessary;⁴ (2) acquiring the Line using grant monies which expressly imposed requirements on ORDC (and its predecessors) to ensure that the rail corridor remains intact and available should a need for rail service arise in the future; (3) seeking approval from the FRA for the counties to lease the rail lines for interim trail use - a hiking/biking trail in 1997, subject to reactivation of rail service;⁵ and (4) refraining from consummating abandonment authority over the Line despite the Line being authorized for abandonment.

Ashtabula Park District also has upheld its related responsibilities. Since 1997, the Ashtabula Park District⁶ has leased its portion of the Line, which is depicted in the map on the next page (former USRA Line No. 714), for interim trail use, subject to reactivation of rail service.

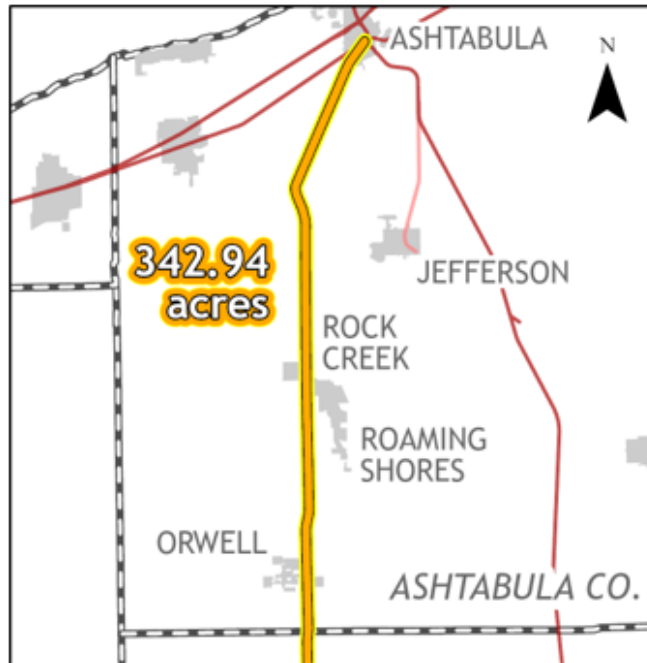
² ORDC correctly asserts that the Line was railbanked under federal law consistent with the general requirements of the National Trails System Act, 16 U.S.C. § 1247(d) prior to the Interstate Commerce Commission (“ICC”) establishing its interim trail use regulations, which are currently set forth at 49 C.F.R. § 1152.29 (“Railbanking Regulations”). See FN 2 of the Petition.

³ See Petition at 3-4, 10-12.

⁴ Id. at 15-16.

⁵ Since 1997, ORDC (or its predecessor) has had long-term leases with Ashtabula County Metropolitan Parks District and Trumbull County Metropolitan Park Board to allow for interim trail use over the former USRA Line No. 714.

⁶ Neighboring Trumbull County Metropolitan Park Board has leased the connecting portion of the Line that formerly comprised USRA Line No. 714



Specifically, Ashtabula Park District has utilized the Line as a bicycle/multipurpose trail. The Line is part of the Western Reserve Greenway Trail,⁷ a paved rail trail in Northeast Ohio, 33 miles of which are in Ashtabula County. Consistent with the requirements of 49 CFR 1152.29(h), Ashtabula Park District has since 1997, assumed full responsibility for: (1) management of the right-of-way, (2) legal liability arising out of the transfer or use of the right-of-way (the Line), and (3) the payment of any and all taxes that may be levied or assessed against the right-of-way (the Line). In short, ORDC and Ashtabula Park District have, in good faith, fulfilled the modern Board requirements of a trails proponent and the rail carrier holding the right to reactivate rail service for decades. The Ashtabula Park District has also maintained the property with lawn, tree, and shrub maintenance during this lease term and has done so in an open and notorious manner in collaboration with the beautification and maintenance standards for park districts under the revised code.

For decades, the Ashtabula Park District has dedicated significant public funds to maintaining and utilizing the Line as a trail, fully aware that the Line would have to yield to reactivation of rail service, if necessary, in the future. This decades-long arrangement balanced regional economic and public interest goals by allowing interim use of the corridor to benefit one public interest (alternative transportation and recreation needs), while ensuring that the corridor remained available if the Line was needed for economic development. Whereas, allowing Mr. Supplee's adverse possession claims to lie against the Line would be contrary to all public interests,

⁷ The Western Reserve Greenway Trail starts in Ashtabula and continues for 17 miles into Trumbull County. A bike patrol provides information, assistance, safety, maintenance, and ensures that the trail, which was awarded and constructed using a Transportation Equity Act for the 21st Century ("TEA-21") grant funds, remains in a state of good repair. TEA-21 was a predecessor to other modern-day federal grants (RAISE (formerly BUILD), Transportation Alternatives Program, and the Reconnecting Communities and Neighborhood Program). Historically, TEA and matching funds were utilized to build trails on corridors railbanked pursuant to Section 8(d) of the National Trails System Act.

while benefiting only Mr. Supplee. Mr. Supplee has also been a constant subject of harassment to the Ashtabula Park District over matters associated with his own doing, has made threatening comments, and has otherwise trespassed on lands of the Ashtabula Park District by attempting to assert possession claims of this property. The Ashtabula Park District has notified local authorities regarding the same and directed numerous correspondence to Mr. Supplee when needed over his continued behavior towards the Ashtabula Park District and its employees.

Ashtabula Park District understands that adverse possession and eviction claims against rail lines are preempted because such a remedy under state law would interfere with current and or future activation and rail use. In 2015, the Board in Pinelawn Cemetery⁸ rejected Pinelawn Cemetery's efforts to evict New York and Atlantic Railway Company and The Long Island Rail Road Company from 10906 rail lines (a portion of a rail yard) under state law. The Board held that regulated rail lines and tracks, even if used by a non-carrier lessee, remain subject to the Board's jurisdiction and as such even if a state court were to determine that an underlying lease had terminated, plaintiffs could not force the railroads (or lessees) off the property unless a ruling from the Board first concluded that the property is not needed as part of the national rail system. Id.

Even more relevant here, the Board affirmed in a declaratory order proceeding that state law adverse possession claims against rail-banked property are likewise preempted because such a seizure of railroad property could interfere with possible future reactivation and rail use. In the AO-Zhou case, two landowners, Jie Ao and Xin Zhou, asked the Board to rule that federal preemption does not apply in a dispute over the ownership and use of certain property in King County, Wash., that was currently railbanked. See Jie Ao & Xin Zhou – Pet. for Declaratory Order, FD 35539 (STB served June 6, 2012). (“AO-Zhou”). The Board held:

Petitioners' state law adverse possession claim is federally preempted, regardless of whether this case is analyzed as “categorical” preemption (preemption that occurs when a state or local regulation is preempted on its face), or as “as applied” preemption (based on the degree of interference that a particular action would have on railroad transportation). As discussed below, Petitioners here seek to gain exclusive control of a 35-foot by 135-foot strip of railroad ROW in the national rail network, over the objections of the entities that are maintaining the ROW, that hold the right to reactivate freight rail service over it, and that assert that continued access to the entire ROW is required for rail-related activities.

See AO-Zhou, slip op. at 1.

As applied to the Line that is subject to Mr. Supplee's claims, this Board precedent fully supports the ORDC's request in this case. Based on the record before the state court, the court concluded that Mr. Supplee's proposed exercise of the state's adverse possession laws to this property is preempted and would unreasonably interfere with railroad transportation. As the Board is aware, Mr. Supplee has appealed that decision, and the appellate court has asked the Board to weigh in on the issue.

⁸ Pinelawn Cemetery – Petition for Declaratory Order, FD 35468 (STB served April 21, 2015) (“Pinelawn Cemetery”).

Ashtabula Park District respectfully requests that the Board protect the interests of taxpayers, users, and community members of the Western Reserve Greenway Trail that today utilize the Line for interim trail use, and further protect the interests of the public at large in continuing to preserve the corridor for potential reactivation of rail service. Ashtabula Park District requests that the Board take all actions necessary to preserve this important railbanked corridor.

Sincerely,

/s/ Christopher M. Newcomb, Esq.

Christopher M. Newcomb, Esq.
Attorney for Ashtabula County Park District

Enclosures

cc: Parties of Record
Alan Klodell
Matt Dietrich
Charles Supplee
Brett Bellas