

February 5, 2026

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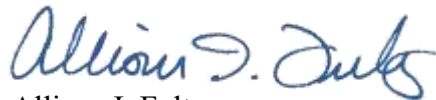
Re: *Lampwrights LLC—Petition for Exemption to Construct and Operate a Line of Railroad
in Elk and Jefferson Counties, PA, STB FD No. 36833*

Dear Sir or Madam:

I have attached for e-filing the Reply of First Apostles' Doctrine Church to Lampwrights LLC's Petition for Exemption in the above-referenced proceeding.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Allison I. Fultz

Enclosure

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36833

**LAMPWRIGHTS LLC –
PETITION FOR EXEMPTION TO
CONSTRUCT AND OPERATE A LINE OF RAILROAD
IN ELK AND JEFFERSON COUNTIES, PA**

REPLY OF FIRST APOSTLES' DOCTRINE CHURCH

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Dated: February 5, 2026

This document contains color images.

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**LAMPWRIGHTS LLC –
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REPLY OF FIRST APOSTLES’ DOCTRINE CHURCH

The First Apostles’ Doctrine Church (the “Church”) hereby submits this Reply opposing Lampwrights LLC’s (“Lampwrights”) Petition for Exemption (“Lampwrights Petition”). The Church requests that the Board deny the Lampwrights Petition for two reasons. First, there is no purpose served in granting the exemption because Lampwrights does not own or control the right-of-way necessary to exercise the authority granted by the Board, and it is unlikely that it ever will. Lampwrights plans to acquire the necessary land pursuant to condemnation authority, but it is unclear whether it has or can obtain such authority under state law. Likewise, it is unclear how Lampwrights intends to condemn property for a rail spur to serve only one customer when it is not permitted under the Pennsylvania Constitution.

Second, Lampwrights’ proposal does not qualify for an exemption because further regulation is necessary to carry out federal Rail Transportation Policy. As demonstrated by the comments made and evidence submitted thus far in this docket, Lampwrights’ controversial proposal to build a new railroad spur (the “Spur”) within a right-of-way that was abandoned decades ago and has been ecologically rehabilitated and converted to residential and other uses constitutes a threat to public health and safety. The Spur’s significant environmental and public

health and safety impacts do not outweigh the benefits to the one single customer that could ever be served by the Spur, and the Board should therefore follow applicable precedent and deny Lampwrights' request for an exemption.

BACKGROUND

I. The Parties

The Church is a religious congregation devoted to worship, spiritual leadership, and charitable service, located at 5413 Rte. 219, Brockport, PA 15823. V.S. Wisor ¶¶ 1, 4–7 (“**Attachment A**”). The Church’s place of worship is situated on the property of its founder, Bishop Jack Wisor, allowing for the close integration of religious worship, pastoral residence, and ministry operations. *Id.* The Church operates a faith-based homeless outreach founded by its Bishop as an expression of its religious mission to serve those in need. *Id.* “The quiet, peace, and accessibility of this location are essential to the [B]ishop’s ability to pray, prepare sermons, conduct services, and organize ministry and outreach activities.” *Id.* ¶ 7.

Lampwrights states that it is a non-carrier subsidiary owned by Noble Environmental, Inc. (“Noble”). Lampwrights Pet. at 1. Noble also owns Greentree Landfill, located at 635 Toby Road, Kersey, in Elk County, Pennsylvania. *Id.*; *Greentree Landfill*, Noble Env’t, <https://nobleenviro.com/greentree-landfill/> (last visited Feb. 1, 2026).

II. The Proposed Spur

Lampwrights petitioned the Board for an exemption to construct the Spur on September 29, 2025. Lampwrights proposes constructing a “new common carrier rail line . . . in Elk and Jefferson Counties, PA, extending from the terminus of an active Buffalo & Pittsburgh Railroad, Inc. . . . rail line located at the O-I Crenshaw Glass Plant to the Noble owned, Greentree Landfill.” Lampwrights Pet. at 1. Lampwrights asserts that the purpose of the Spur will be to

transport waste to Greentree Landfill, *id.* at 2, a facility that currently accepts, among other things, municipal solid waste; hydro fracking waste; contaminated soil; sludge; wastewater biosolids; friable and non-friable asbestos; industrial, construction, and demolition materials; and ash. *Greentree Landfill, supra.* Lampwrights states that it “anticipates that it will ship one in-bound train and one empty out-bound train per week,” and that “each train will be comprised of 75 cars per train totaling approximately 6,675–7,000 feet in total length.” Lampwrights Pet. at 4. Lampwrights asserts that even though it is seeking both construction and operation authority for the Spur, it “does not intend to operate the [Spur].” *Id.* at 1.

Lampwrights asserts that it will construct the Spur along an abandoned railroad right-of-way formerly known as the Toby Branch, whose last known operator was Conrail. *Id.* at 3. Historic records regarding the creation of Conrail suggest that the Spur has been out of service since the 1970s. 2 U.S. Ry. Ass’n, *Final System Plan* 504 (1975) (describing the condition of U.S.R.A. Line No. 1269 between Crenshaw and Hydes). Court records reflect that after the Spur was adjudged abandoned pursuant to a court order in 1990, property constituting the former right-of-way reverted to adjacent property owners, including the Church’s predecessors in interest. *See Cherubini v. Brosky*, No. 89-163, slip op. at 4 (Ct. C.P. 59th Jud. Dist. May 7, 1990), *aff’d*, 590 A.2d 370 (Pa. Super. Ct. 1991) (“**Attachment B**”); **Attachment A** ¶ 3 (V.S. Wisor).

While Lampwrights characterizes its construction of the Spur as occurring within an “existing roadbed,” Letter from Justin Marks, Couns. to Lampwrights LLC, to Danielle Gosselin, Surface Transp. Bd., STB FD 35833, EI-34125 at 2, 3 (filed Sep. 19, 2025) (“EI-34125”), in places along the long-abandoned right-of-way there is no “existing roadbed” to speak of, **Attachment A** ¶ 5 (V.S. Wisor). The path of the Spur as represented by Lampwrights traverses

directly through the community of Brockport, which has developed over the abandoned right-of-way. **Attachment A** ¶ 5 (V.S. Wisor). In some places buildings and other development would be directly in the pathway of the rail tracks or within a few feet of them. *Id.*

Lampwrights states that the Spur “will provide significant commercial benefits to Greentree Landfill by enabling it to handle greater volumes than are currently feasible by truck.” Lampwrights Pet., Ex. B at 6 (V.S. Sulkowski). Lampwrights argues that construction and operation of the Spur are in the public interest and that it is “likely to improve public health and safety by potentially removing commercial motor vehicles that currently travel from states such as Connecticut, Massachusetts, New York, and New Jersey to the Greentree Landfill.” *Id.* at 8. Lampwrights notes that the Greentree Landfill currently receives “approximately 50% of its maximum daily limit.” *Id.* at 2. Lampwrights asserts that, of the current waste being accepted, 45–50% originates from out of state. *Id.*

Lampwrights does not directly address in the body of the petition the question of whether it has the requisite property, possessory or contracting rights to operate the Spur over the long-abandoned Toby Branch. The verified statement accompanying the Lampwrights Petition states that “[t]he Company is actively working with a land assembly and acquisition company to secure control of the remaining parcels.” *Id.* Ex. B at 4. In response to additional requests for information from the Board regarding required property acquisition, Lampwrights has stated simply that it “has retained Keystone Acquisition Services to acquire the necessary property.” EI-34125 at 3. Keystone Acquisition Services Corporation (“Keystone”) represents itself on its website as a “right-of-way acquisition firm” that provides “condemnation support” among other services. *Who We Are*, Keystone Acquisition Services Corporation, <https://keystoneacquisitions.com/who-we-are/> (last visited Feb. 2, 2026).

Keystone has approached the Church to “inquire about selling property in order to re-assemble the right-of-way for the Spur.” **Attachment A** ¶ 11 (V.S. Wisor). The Church has indicated it has “no intention of selling its property to Lampwrights.” *Id.* The record in this proceeding reflects that other property owners have also been approached, and likewise have declined to sell their property. *See, e.g.*, Protest/Opposition Statement of Jarret Faulk, STB FD 36833, ID-310381 (filed Nov. 28, 2025) (“ID-310381”).

III. The Spur’s Impact on the Church and the Community

The right-of-way for the proposed Spur traverses the Church’s property and would use land currently used by the Church, as well as restrict access to the Church’s property.

Attachment A ¶¶ 5, 9 (V.S. Wisor). Were an active rail line to be constructed across the Church’s property, it would bisect the parcel and interfere with its religious and charitable functions. *Id.* “It would hinder access to the Bishop’s residence and Church property . . . [,] disrupt worship services and Bible studies, and obstruct revivals and fellowship events.” *Id.* ¶ 9. “Daily ministry activities—including outreach efforts and trade opportunities designed to assist the homeless—would be compromised by the proximity of rail operations.” *Id.*; *see also* Comments of First Apostles’ Doctrine Church, STB FD 36833, ID-310483 (filed Dec. 10, 2025) (“ID-310483”).

The Church and other members of the community have identified specific environmental and operational concerns associated with the anticipated rail activity, including noise, commotion, environmental blow-off, odors, pests, rodents, and dust. “These conditions would diminish the peace, calm, and beauty of the church property and interfere with . . . [the Bishop’s] ability to carry out pastoral duties that require quiet reflection and preparation.” **Attachment A** ¶ 10 (V.S. Wisor); *see also* ID-310483.

“The impacts of building and operating the Spur would disrupt both the Church’s internal religious practices and its outward-facing charitable ministry.” **Attachment A** ¶ 9 (V.S. Wisor). Preserving the functional integrity and tranquility of its property is necessary for the continued provision of spiritual leadership to its congregation and the organization of aid and assistance to the broader community it serves. *Id.*

In response to the Lampwrights Petition, a number of community members and local officials filed responses highlighting the concern about Lampwrights’ proposal. These comments indicate the serious environmental issues implicated in the Lampwrights Petition. For example, comments have highlighted potential significant floodplain impacts, indicating that the proposed alignment would cross FEMA-designated Zone A floodplains at multiple locations and that certain segments of the rail line would be located entirely within such flood-prone areas. ID-310381; Comments of Thomas Parolari, STB FD 36833, EI-34107 (filed Aug. 14, 2025).¹

Other comments reflect wide-ranging concerns about public health and safety. In comments filed on December 9, 2025, the Horton Township Board of Supervisors stated that the proposed Lampwrights rail extension would pose serious public safety and emergency-response risks to the Township. Comments of Horton Township Board of Supervisors, STB FD 36833, ID-310468, at 2 (filed Dec. 9, 2025) (“ID-310468”). The Supervisors explained that the project would involve operation of a “waste-by-rail” train consisting of approximately seventy-five 89-foot long sealed intermodal cars, spanning more than one mile in length. *Id.* at 1–2. According to the Township, the proposed rail line would cross State Route 219 at a location separating the homes of volunteer firefighters from the Township fire station, such that the

¹ See also *FEMA Flood Map Service Center: Search by Address*, FEMA, <https://msc.fema.gov/portal/search?AddressQuery=Brockport%2C%20PA> (last visited Feb. 3, 2026).

presence of a train of this length could block the crossing for extended periods. *Id.* at 2. The Supervisors asserted that blocked crossings would impair the ability of emergency responders to reach emergencies in a timely manner, and that delays caused by stopped or passing trains could exacerbate fires and other emergency situations, potentially resulting in loss of property or life. *Id.* The Spur would upend the community, half of which resides in or adjacent to its proposed route. *Id.* The Spur would also run directly over the community's sewer line, through buildings, and across or next to rehabilitated streams and wetlands. *Id.* at 2–3.

On December 22, 2025, the Board's Chief Counsel issued a decision ordering replies to the Lampwrights Petition to be filed by January 22, 2026. On January 15, 2026, immediately after engaging the undersigned outside counsel, the Church filed a motion to extend the deadline to reply to the Lampwrights Petition. The Board granted an extension to February 5, 2026. The Church hereby files this timely Reply opposing the Lampwrights Petition.

ARGUMENT

I. The Petition Should Be Rejected Because Lampwrights Is Improperly Attempting to Use the Board's Processes to Obtain Property Rights

Lampwrights' request for regulatory authority to construct and operate a rail line cannot obscure a fundamental legal principle: the Board's authority to grant or exempt construction or operation of a rail line does not confer property rights. Yet Lampwrights appears to be leveraging the Board's grant of an exemption to qualify for condemnation authority that apparently cannot currently assert and may not be entitled to assert. The Board should not permit its procedures to be used in such a manner, and should instead follow its precedent of permitting state law processes—*i.e.*, a condemnation action—to play out before issuing authority that is unlikely to be exercised.

A. Lampwrights Does Not Own the Property Rights It Needs to Exercise the Board's Authority

The Lampwrights Petition itself does not include a statement regarding the ownership or acquisition of necessary property for the Spur, an omission that is relevant because Lampwrights in fact does not possess the necessary property rights to construct or operate the Spur. Although the Board's authority to construct and operate a rail line is distinct from state property law, obtaining the requisite property or contractual rights to operate common carrier service is necessary to exercise the Board's grant of authority. *See MVC Transp., LLC—Acquis. Exemption—P&LE Props., Inc.*, FD 34462, slip op. at 6 (STB served Oct. 20, 2004); *Tongue River R.R. Co., Inc.—Constr. & Operation—W. Alignment*, FD 30186 (Sub-No. 3), slip op. at 16 n.50 (STB served Oct. 9, 2007); *The Great Walton R.R. Co.—Pet. for Declaratory Ord.*, AB 1242 (Sub-No. 1), slip op. at 6 (STB served June 9, 2020).

If there is no possibility of obtaining the requisite property rights, there is no possibility of exercising authority granted by the Board and thus no purpose in granting the authority. Thus, while the Board's approval of an exemption is generally not conditioned on a filer already having obtained the necessary property or contractual rights to exercise the Board's authority, the likelihood of the acquisition of such rights is relevant to the Board's consideration of the exemption. This is why the Board's notice of exemption procedures require a filing party to include "[a] statement that an agreement has been reached or details about when an agreement will be reached" regarding acquisition of the property necessary to complete the transaction. 49 C.F.R. § 1150.43(c). Failure to provide this information can be grounds for rejection of a notice of exemption where the filer does not provide "enough information to support the conclusion that some understanding exists between the parties." *James Riffin d/b/a the N. Centr. R.R.—Acquis. & Operation Exemption—in Balt. City, MD*, FD 34982, slip op. at 3 (STB served Oct. 9, 2007).

This is particularly so “where the parties who might be involved in such agreements, or at least impacted by the transaction, have raised strong concerns about the accuracy of [a filer’s] assertions.” *Id.*

Lampwrights identifies the Spur as “utiliz[ing] a segment of right-of-way once used by the Lake Erie Lackawanna Railroad,” Lampwrights Pet. at 1, which it correctly identifies later as “abandoned,” *id.* at 3, 9. After the Spur was abandoned pursuant to a court order in 1990, property constituting the former right-of-way reverted to adjacent property owners, including the Church’s predecessors in interest. See **Attachment B**, *Cherubini*, slip op. at 4. The Church has no intention of selling its property to Lampwrights. See **Attachment A** ¶ 11 (V.S. Wisor). Nor apparently do others approached by Lampwrights’ consultant Keystone. ID-310381 (“I have already informed Keystone Acquisition Service Corporation, a company hired to acquire the land, that I will not be selling my property. Many of my neighbors have given the same answer.”).

Lampwrights’ omission of this critical information is grounds itself for rejecting the Lampwrights Petition on its face for failure to provide “enough information to support the conclusion that some understanding exists between” Lampwrights, the Church, and numerous other property owners along the proposed right-of-way for acquisition of the Spur property. See *Riffin*, FD 34982, slip op. at 3.²

² While this proceeding concerns a petition for exemption rather than a notice of exemption, the Board’s class exemption requirements, including the requirement to provide information regarding acquisition of property rights, 49 C.F.R. § 1150.43(c), are equally relevant to the Board’s determination regarding an exemption under 49 U.S.C. § 10502 and indicate that the petition is insufficient on its face.

B. Lampwrights Cannot Force Acquisition by Condemnation

To the extent the Lampwrights Petition mentions property ownership in the Spur at all, it indicates that Lampwrights has no viable pathway for acquisition of the Spur property. The single reference to property rights buried in the verified statement attached to the Lampwrights Petition reveals a stark admission: “[t]he Company is actively working with a land assembly and acquisition company to secure control of the remaining parcels.” Lampwrights Pet. Ex. B. at 4. This statement strongly suggests that Lampwrights may seek to acquire the Spur by condemnation if acquisition by agreement is not possible. In response to additional questioning from the Board on the question of property acquisition, Lampwrights has repeated the same opaque response. *See* EI-34125 at 3.

There is just one problem: Lampwrights does not appear to be eligible to obtain the requisite authority to condemn property for this project. This is because (1) Lampwrights apparently has not qualified yet, and arguably may not qualify, as a public utility railroad, and (2) the Spur property is not eligible for condemnation by a railroad under Pennsylvania’s Constitution.

1. Lampwrights Cannot Exercise Condemnation Authority Because It Is Not a Public Utility Railroad

Lampwrights cannot condemn the Spur property because it has not qualified as a public utility railroad for condemnation purposes. Under Pennsylvania law, “[a] public utility corporation shall . . . have the right to take, occupy and condemn property for . . . [t]he transportation of passenger or property or both as a common carrier by means of . . . railroad.” 15 Pa. Cons. Stat. § 1511(a)(1); *see also* 26 Pa. Cons. Stat. § 202 (Eminent Domain Code). In order to assert eminent domain, a proposed public utility must first apply to the Pennsylvania Public Utilities Commission (“PUC”) for approval as a public utility and for a certificate of

public convenience. 66 Pa. Cons. Stat. § 1104. Only upon the issuance of both approvals would it be able to assert eminent domain,. *Id.*; *see also* 26 Pa. Cons. Stat. §§ 301–310 (explaining the procedures for asserting condemnation authority). Notably, Pennsylvania law explicitly excludes from the definition of public utilities entities that provide services only to themselves. 66 Pa. Cons. Stat. § 102 (defining “public utility”) (“The term [public utility] does not include . . . [a]ny person or corporation, not otherwise a public utility, who furnishes service only to himself or itself.”).

Lampwrights has not, as far as the Church can ascertain, applied or been approved to be a public utility for the purposes of establishing a rail line, and certainly does not assert that it has obtained such authority in the Lampwrights Petition. *See Railroad Companies*, Pa. Public Util. Comm’n, <https://www.puc.pa.gov/rail/railroad-companies/> (last visited Feb. 4, 2026) (listing all authorized railroad companies that operate in Pennsylvania). Moreover, the Lampwrights Petition raises questions as to whether Lampwrights would qualify as a public utility, since Lampwrights states that although it is seeking authority to operate the Spur, it “does not intend to operate the [Spur].” Lampwrights Pet. at 1. Instead, Lampwrights will “enter into an agreement for [the Buffalo & Pittsburgh Railroad, Inc.] to operate the [Spur].” *Id.* Moreover, Lampwrights indicates that the Spur will serve a single customer: its own corporate affiliate, Greentree Landfill. *Id.* Because Lampwrights would be serving its own corporate affiliate, it may not qualify as a public utility under 66 Pa. Cons. Stat. § 102.

It is therefore unclear how Lampwrights would expect to exercise eminent domain powers on its own behalf for railroad purposes when it may not qualify as a public utility railroad. Yet Lampwrights provides no explanation about how it is eligible to condemn the property for the Spur. This is a question that could be answered during the course of a PUC or

condemnation proceeding, or future litigation related thereto, but not by the Board, who should wait to have reasonable certainty about Lampwrights' ability to exercise the regulatory authority granted by the Board.

2. The Spur Property Cannot Be Condemned by A Railroad for A Single Customer's Use Under Pennsylvania's Constitution

Even assuming Lampwrights were a public utility qualified to assert condemnation authority generally, it could not condemn the Spur in this case because the Spur's characteristics and use do not qualify it for condemnation. The Pennsylvania Supreme Court has recently held that the State's constitutional limits on eminent domain mean that "a railroad taking private land to service one private company . . . demonstrat[es] the public is not the primary and paramount beneficiary." *Wolfe v. Reading Blue Mountain & N. R.R. Co.*, 320 A.3d 1164, 1179 (Pa. 2024). *Wolfe* concerned a case very similar to this one, in which a railroad sought to condemn a previously abandoned railroad right-of-way over an adjacent property owner's land for the purpose of serving its property. *Id.* at 1166–67. The Pennsylvania Superior Court, Pittsburgh District, upheld a state district court holding that "correctly ruled the condemnation was unlawful because it was intended to benefit a single private business rather than the public." *Id.* at 1166. In doing so it clarified that a "taking by a railroad does not warrant an automatic and conclusive finding of benefit to the public." *Id.* at 1179.

Similarly here, Lampwrights would likely lack condemnation authority because the proposed line would serve only a single customer, Lampwrights' corporate affiliate landfill operation. Lampwrights Pet. at 1–2. As in *Wolfe*, the Spur is a stub-ended spur "intended to benefit a single private business." 320 A.3d at 1166. Nor will the landfill generally support the

public of Pennsylvania, as the Lampwrights Petition makes clear that the “influx of imported waste” which the Spur is intended to facilitate comes from out of state.³ Lampwrights Pet. at 2.

Fundamentally, Lampwrights fails to explain how it will be eligible to seek condemnation for this Spur, a question that cuts to the very heart of whether it may exercise the Board’s authority that it requests. Because of the serious questions regarding Lampwrights’ ability obtain the requisite property interests, the Board should deny the Lampwrights Petition. *See Riffin*, FD 34982, slip op. at 3.

C. The Board Should Deny the Petition and Avoid Allowing Its Procedures to Impermissibly Interfere in State Condemnation Disputes

While the Board’s regulatory authority is permissive, its perceived effect may create the impression that Lampwrights is eligible to condemn the Spur under state law, when its eligibility to do so is questionable at best. Even though the standard for deciding condemnation authority rests in a state law determination of Lampwrights’ and the Spur’s eligibility for condemnation, the Board’s grant of authority may enable Lampwrights to misleadingly represent that it qualifies for condemnation powers as a railroad. The Board should refuse to countenance such a transparent attempt to misuse the Board’s exemption procedures to influence state condemnation proceedings and should reject the Lampwrights Petition.

The Board wisely declines to embroil itself in disputes that properly fall within the exclusive province of the state courts, emphasizing that questions of property ownership and title are matters for state tribunals, not the Board. *Eastside Cmty. Rail—Acquis. & Operation Exemption—GNP RLY Inc.*, FD 35692, slip op. at 3 (STB served Mar. 8, 2022). This includes

³ The question of public benefit for the purposes of asserting condemnation authority under *state* law is a separate question from the formulation of the public convenience and necessity under the Board’s jurisdiction.

instances where disputes over the proposed acquisition of property for operation is disputed by the parties. *See Riffin*, FD 34982, slip op. at 3.

Here, Lampwrights may predictably argue in a condemnation proceeding that it is entitled as a Board-approved common carrier railroad to condemn the Spur—even though it is questionable whether Lampwrights even qualifies as a public utility railroad—or that it can condemn the Spur when it only serves one customer. Lampwrights would in essence be able to capture property in its own name for its own benefit under the guise of being a “common carrier” based not on state law but by inference based on the Board’s separate regulatory approval.

The question of Lampwrights’ ability to condemn property for the purposes it seeks should be assessed on its own merits under state property law, uncolored by the Board’s grant of an exemption under completely different and unrelated standards as a regulated entity for Board purposes. The Board should therefore refrain from allowing its grant of regulatory authority to color state condemnation proceedings by denying the Lampwrights Petition.

II. The Lampwrights Petition Should Also Be Denied Because Further Regulation Is Necessary to Carry Out the Rail Transportation Policy

Apart from its misuse of property law principles, Lampwrights’ request fails under the Rail Transportation Policy (“RTP”), which requires the Board to consider whether further regulatory oversight is necessary to advance the statutory objectives set forth in 49 U.S.C. §§ 10101 and 10501. As the Board has put it, “[t]here are some situations in which approval would be so routine and uncontroversial that there is an expedited ‘class exemption’ procedure allowing the parties to obtain Board authorization subject only to an after-the-fact Board review if objections are received.” *James Riffin d/b/a/ the N. Centr. R.R.—Acquis. & Operation Exemption—in York Cnty., PA*, FD 34501, slip op. at 6 (STB served Feb. 23, 2005). In contrast,

“the class exemption process is not appropriate for controversial cases in which a more detailed record is required than what is produced through a notice invoking a class exemption.” *Id.*

The extensive and varied comments in the record of this proceeding make clear that this is a controversial case because the proposal will attempt to condemn residential and church property, upend sensitive ecological areas located in federally-designated floodplain, and endanger a tranquil residential community by inhibiting emergency response vehicles. *See, e.g.,* Protest/Opposition Statement of Toby Creek Watershed Ass’n, Inc. of Elk and Jefferson Counties, STB FD 36833, ID-310564 (filed Dec. 18, 2025). This is precisely the type of controversial proceeding that requires closer scrutiny by the Board.

In addition, the Church notes that the Board has not yet issued its environmental review of Lampwrights’ proposal. Although public comments to date based solely on the Lampwrights Petition have been detailed and specific, *see, e.g.,* ID-310468; ID-310381, a more detailed analysis of anticipated environmental impacts will likely generate additional responses.

A. The Proposed Line Raises Significant Public Health and Safety Concerns Under the RTP

The RTP includes the policy of ensuring that railroads “operate transportation facilities and equipment without detriment to the public health and safety.” 49 U.S.C. § 10101(8). Lampwrights provides only a cursory discussion of RTP section 10101(8), asserting that the proposed line will divert motor-vehicle traffic, but providing no quantitative analysis of (a) existing truck traffic volumes and their impacts, if any, on local roadways or (b) of the scope and impact of anticipated reductions resulting from operation of the proposed rail line. Lampwrights Pet. at 8. But Lampwrights ignores—or attempts to minimize—the substantial public health and safety risks associated with transporting waste on the proposed new line. Numerous commenters have submitted evidence identifying multiple ways in which construction and operation of the

line will adversely impact public safety and community health. This includes local officials commenting that the proposed length of trains operating on the line will block critical crossings and hinder first responders, *see, e.g.*, ID-310468, and the flooding risk associated with Spur being located in a FEMA-designated floodplain, *see* ID-310381; *FEMA Flood Map Service Center*, *supra* note 1.

Moreover, to the extent the project may involve hazardous materials, the line would be required to transport such materials upon request, regardless of Lampwrights’ present representation that the Greentree Landfill “is not permitted to accept any hazardous waste types.” Lampwrights Pet. at 2.

While the Board often considers public health and safety issues in the NEPA process, NEPA review cannot substitute for the Board’s discrete statutory obligation to consider relevant RTP factors in deciding whether to grant an exemption. *Eagle Cnty. v. STB*, 82 F.4th 1152, 1194 (D.C. Cir. 2023), *rev’d on other grounds*, *Seven Cnty. Infrastructure Coal. v. Eagle Cnty.*, 605 U.S. 168 (2025). Here, the numerous concerns raised in these proceedings reflect that the Board must decline the Lampwrights Petition in order to ensure that federal policy concerning public health and safety are properly upheld.

B. Other RTP Factors Likewise Weigh Against Granting an Exemption

Lampwrights refers to other RTP factors in support of granting the Lampwrights Petition, but review of the facts reflects otherwise. In addition to section 10101(8), Lampwrights cites to RTP factors at sections 10101(2), (4), (5), (7), and (14). Lampwrights Pet. at 7–8. None of these support granting an exemption.

Lampwrights argues that the project supports RTP section 10101(14) by “potentially” displacing truck traffic, Lampwrights Pet. at 8, yet provides no evidence that any such

displacement will occur. The Petition itself indicates that the landfill is operating at only 50% of its permitted capacity, *id.* at 2, strongly suggesting that the rail-borne waste would constitute new traffic, not a substitute for existing truck shipments. Lampwrights also proposes what appears to be a completely redundant transload facility, *id.* Ex. B at 7, offering no assurance that the facility will cease operating after the rail line is built. And Lampwrights’ own description of the waste stream—which it represents as previously going to Waste-to-Energy facilities, *id.* at 2–3—undercuts its claim that the line will promote energy conservation.

Similarly, Lampwrights fails to show that the proposed line will enhance effective competition under RTP sections 10101(4) and (5) as argued. *Id.* at 8–9. Nothing in the Petition demonstrates that waste now moved by truck could realistically shift to rail, nor that rail service would be cost-competitive. Likewise, the Petition contains no evidence regarding the financial stability of Lampwrights or the landfill, raising concerns that the line could become a stranded asset if either entity were to discontinue operations.

Lampwrights’ reliance on RTP sections 10101(2) and (7) is not sufficient by itself to support granting an exemption. *Id.* at 8. As the Board has noted previously, “invocation of these provisions is, in a sense, self-fulfilling, in that any decision to lighten regulation could be viewed as comporting with these deregulatory RTP factors.” *Cal. High-Speed Rail Auth.—Constr. Exemption—in Merced, Madera and Fresno Counties, Cal.*, FD 35724, slip op. at 23 (STB served June 13, 2013).

Finally, Lampwrights’ public-interest showing is tenuous at best. Its argument relies largely on “host payments” to local jurisdictions, Lampwrights Pet. at 7, but compliance with local tax obligations is evidence of obeying the law, not affirmatively promoting the public interest, and these increases may be offset by reductions in property tax values of the parcels

affected by the proposed Spur, *see* ID-310468 at 3. Moreover, the record reflects that local officials and numerous members of the community at large are opposed to, not supportive of, the Lampwrights Petition. *See id.* at 1 (“The Township Supervisors and majority of our community strongly oppose Lampwrights FD 36833 rail extension through Horton Township.”). The benefits of this project, set to accrue to a single landowner’s business, simply do not outweigh the costs to the health, safety, and wellbeing of an entire valley community.

For all of these reasons, the Board should deny Lampwrights’ petition for exemption and require the submission of a full application, ensuring proper consideration of property-law constraints, public health and safety concerns, and the full suite of RTP factors.

Respectfully submitted on February 5, 2026.

/s/ Allison I. Fultz

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*Counsel for First Apostles’ Doctrine
Church*

CERTIFICATE OF SERVICE

I certify that on February 5, 2026, I caused to be served a copy of the foregoing Motion for Extension of Time upon all parties of record in this proceeding by email.

/s/ Allison I. Fultz

Dated: February 5, 2026

ATTACHMENT A

Verified Statement of Bishop Jack Wisor

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36833

**LAMPWRIGHTS LLC –
PETITION FOR EXEMPTION TO
CONSTRUCT AND OPERATE A LINE OF RAILROAD
IN ELK AND JEFFERSON COUNTIES, PA**

**VERIFIED STATEMENT OF JACK WISOR, BISHOP
FIRST APOSTLES' DOCTRINE CHURCH**

I, Jack L. Wisor, hereby affirm that:

1. I am the Bishop of the First Apostles' Doctrine Church (the Church) located at 5413 Rte. 219, Brockport, PA 15823, the fee owner of the real property on which the Church is located (the Subject Property). The facts set out in this verified statement are based on my personal knowledge and/or my review of documents relating to the Subject Property, and are true to the best of my knowledge, information, and belief.
2. I am over eighteen (18) years of age and if called upon to do so, could testify competently about the facts set forth in this verified statement.
3. I am the son and successor in interest to Roy B. Wisor and Dorothy J. Wisor, the property owners who successfully obtained a judgment from the Pennsylvania Court of Common Pleas of the Fifty-Ninth Judicial District, County Branch – Elk, Civil Case No. 89-163, in 1990 that they owned the Subject Property in fee simple and that any right-of-way for railroad purposes over the Subject Property had been extinguished and abandoned. *See Reply Attachment B, Cherubini v. Brosky*, No. 89-163, slip op. at 4

- (Ct. Com. Pl. of the 59th Jud. Dist. May 7, 1990), *aff'd*, 590 A.2d 370 (Pa. Super. Ct. 1991). A list of all of the plaintiffs prevailing in that action, including Roy B. Wisor and Dorothy J. Wisor, is attached as **Exhibit 1**. The Wisor property, now the Subject Property, is shown on the plat diagram attached as **Exhibit 2**.
4. I established the Church in 2009 on the Subject Property and have served as its Bishop continuously since that time. The Church building burned down in 2021 and we celebrated the completion of the new church in 2025. See **Exhibit 3** attached hereto.
 5. The Church conducts numerous activities on the Subject Property: worship services; community outreach and supportive services such as free clothing distribution; job training in auto mechanics, wood cutting, and lumber manufacturing; forestry, logging, and mill production of lumber and firewood, which job training participants also deliver to area residents; agricultural cultivation and livestock care; and recreational pursuits such as camping, fishing, and hunting. The Bishop's residence and two houses for residents are also located on the Subject Property. In the aerial photograph attached hereto as **Exhibit 4**, the mill is visible in the smaller cleared area in the lower third of the photograph; the proposed rail line would run through and displace this facility and associated storage buildings, would displace the Church's parking area, and would run within feet of the residential buildings on the Subject Property. As **Exhibit 4** illustrates, there is no evidence of an "existing roadbed" to indicate where the former railway line once ran.
 6. The Church operates the Just for Jesus Challenge Homeless Outreach Ministry at a location in neighboring Brockway, PA. This ministry is a comprehensive faith-based outreach program to homeless individuals that includes housing, meals, clothing, life

skills and job training, and counseling in a serene and secure rural setting. The ministry also conducts activities at the Subject Property as described above at Item 4.

7. The Church's location allows for the close integration of religious worship, pastoral residence, and ministry operations. The quiet, peace, and accessibility of this location are essential to the Bishop's ability to pray, prepare sermons, conduct services, and organize ministry and outreach activities.
8. I have reviewed the proposal presented by Lampwrights LLC (Lampwrights) to construct and operate a line of railroad (the Spur) along an abandoned corridor for the purposes of transporting waste to its affiliate's landfill facility, Greentree Landfill. The right-of-way for the proposed Spur traverses the Church's property and would use land currently used by the Church, as well as restrict access to the Church's property.
9. Were an active rail line to be constructed across the Church's property, it would interfere with its religious and charitable functions. It would hinder access to the Bishop's residence and church property. The Spur would disrupt worship services and Bible studies, and obstruct revivals and fellowship events. Daily ministry activities—including outreach efforts, trade and job training opportunities designed to assist the homeless—would be compromised or displaced entirely by the proximity of rail operations. The impacts of building and operating the Spur would disrupt both the Church's internal religious practices and its outward-facing charitable ministry. Preserving the functional integrity and tranquility of its property is necessary for the continued provision of spiritual leadership to its congregation and the organization of aid and assistance to the broader community it serves.

10. Operating a railroad through the Church's property would have a detrimental impact on safety and would create noise, commotion, environmental blow-off, odors, pests, rodents, and dust. These conditions would diminish the peace, calm, and beauty of the church property and interfere with my ability as Bishop to carry out pastoral duties that require quiet reflection and preparation.
11. Keystone Acquisition Services Corporation approached me on behalf of Lampwrights seeking to inquire about selling property in order to re-assemble the right-of-way for the Spur. I indicated firmly that the Church has no intention of selling its property to Lampwrights.
12. The Brockway Area Sewage Authority's sewer main runs beneath the Church property for approximately 500 feet in a 10' wide right-of-way to the utility and is located within the area proposed for the rail right-of-way. I believe the construction of a rail line would involve significant impacts to the sewer line, potentially requiring its relocation. The disruption such excavation and related activities would entail would detrimentally affect the Subject Property even before any work associated with any rail construction would commence.

I solemnly affirm this 5th day of February, 2026, under the penalties of perjury that the contents of this document are true to the best of my knowledge, information, and belief.



Jack L. Wisor

Bishop
First Apostles Doctrine Church

Exhibit 1

**List of Plaintiffs and Deeds – property abutting abandoned right-of-way of the successors
and assigns of New York, Lake Erie and Western Coal and Railroad Company**

Exhibits G and H to Amended Complaint in Ejectment and Declaratory Judgment of Cherubini,
et al. v. Brosky, Court of Common Pleas of the 59th Judicial District of Pennsylvania, Elk County
Branch, Civil Division No. 89-163

July 20, 1989

Interest in Main RR Line - Original Deed Book 32 Page 529

Name	Book	Page	Purchased From	Purchase Date	Recording Date
✓ Brockport Army & Navy Club	141	203	Fred Johnson, R. Johnson & A.E. Johnson	Jun 27 58	Jul 24 58
✓ George & Leo Tamburlin	215	291	Violet & Angelo Jindy	Oct 27 77	Nov 10 77
✓ Richard Buffington	235	808	David & Margorie McLaughlin	Apr 5 83	Apr 29 83
✓ Brockport Water Authority	227	286	Ruth Kennedy Fields, widow	Oct 27 80	Nov 10 80
Lindo Cristini	245	808	Frank & Anita Genevro	Jun 3 85	Oct 7 85
✓ Louis & Betty Vallykeo	202	121	Bernard & Elnora Arnold	May 2 74	May 13 74
✓ John Halko	192	345	Irene Brennan, widow	Feb 18 72	Feb 23 72
✓ Township of Horton	187	382	County of Elk	Jan 28 71	Feb 17 71
✓ Gary & Ann Cristini	221	1015	Galen E. and M. Elizabeth Bish	Jun 5 79	Jun 14 79
✓ Rudolph & Helen Facchine	129	149	George O. and Bruna Dipre	Nov 28 55	Nov 28 55
✓ Hazel E. (Caskey) Courson	251	982	James F. Stahlman	Dec 3 86	Mar 9 87
✓ Gretta Waite	208	369	James U. and Clara Yarity	Jan 31 76	Feb 17 76
✓ Letitia Grant	164	567	Joseph J. and Arlene R. Chase	Oct 10 61	Oct 24 61
✓ Robert & Peggy Cherubini	258 258	450 450	Amadio and Mary Elva Cherubini	Jul 14 86	Jul 15 86
✓ Roy & Dorothy Wison	203	769	Francis D. and Elnora M. Cyone	Sep 20 74	Sep 24 74

EXHIBIT "G"

Interest in Shawmut Line RR - Original Deed Book 228 Page 506

Name	Book	Page	Purchased From	Purchase Date	Recording Date
✓ Roy & Dorothy Wisor	203	769	Francis D. and Elnora M. Cyone	Sep 20 74	Sep 24 74
✓ Robert & Peggy Cherubini	248	942	Amadio and Mary Elva Cherubini	Jul 14 86	Jul 15 86
✓ Fairview Coal (John Buhler)	232	878	Alice Lang, widow	May 18 82	Jul 17 82
✓ Lionel & Alberta Moline	133	488	New Shawmut Mining Co	Sep 12 56	Oct 8 56
✓ Louis & Roberta Galluzzi	194	273	Donald D. and Marie Truesdale	Jul 20 71	Aug 3 72
✓ Robert Barnauskas	198	330	Donald D. and Marie Truesdale	Apr 6 73	Mar 30 73
✓ Theodore & Nellie Carr	100	557	Lottie Belle Olmsted	Dec 12 40	Dec 20 40
✓ Frederico & Angelina Riccadonna	163	707	Romano and Theresia Sottovia	Oct 5 64	Oct 14 64
✓ Angeline Facchine	111	537	Romano and Theresia Sottovia	May 24 49	Jun 16 49
✓ Louis & Albertina Sottovia	178	201	Romano Sottovia and Teresia Sottovia	Sep 4 68	Sep 19 68
✓ William & Catherine Himes	242	137	William & Catherine Himes	Oct 27 84	Nov 2 84

Exhibit 2

Plat Diagram

Exhibit F to Amended Complaint in Ejectment and Declaratory Judgment of Cherubini, et al. v.

Brosky, Court of Common Pleas of the 59th Judicial District of Pennsylvania, Elk County

Branch, Civil Division No. 89-163

July 20, 1989

Exhibit 3

First Apostles' Doctrine Church Building



Exhibit 4

Aerial View – Brockport, PA

Brockport, PA



Google Earth

Image © 2026 Airbus



ATTACHMENT B

***Cherubini v. Brosky*, (Ct. C.P. 59th Jud. Dist. May 7, 1990)
aff'd, 590 A.2d 370 (Pa. Super. Ct. 1991)**

3/5/90

IN THE COURT OF COMMON PLEAS OF THE FIFTY-NINTH
JUDICIAL DISTRICT

ROBERT M. CHERUBINI, PEGGY A.	*	COUNTY BRANCH - ELK
CHERUBINI, ROY B. WISOR, DOROTHY J.	*	
WISOR, GRETTA S. WAITE, GARY CRISTINI,	*	
ANN K. CRISTINI, BROCKPORT ARMY AND	*	
NAVY CLUB, BROCKPORT AREA WATER	*	
ASSOCIATION, THE TOWNSHIP OF HORTON,	*	
FAIRVIEW COAL COMPANY, INC., LEROY I.	*	
GRANT, LETITIA A. GRANT, FREDRICO	*	
RICCADONNA, ANGELINA RICCADONNA, LOUIS	*	
SOTTOVIA, ALBERTINA SOTTOVIA, LOUIS P.	*	
GALLUZZI, ROBERT L. GALLUZZI, WILLIAM	*	
E. HIMES, CATHERINE J. HIMES, ROBERT	*	
BARNAUSKAS, RUDOLPH FACCHINE, HELEN	*	
FACCHINE, ANGELINE FACCHINE, THEODORE	*	
R. CARR, NELLIE A. CARR, HAZEL E.	*	
CASKEY COURSON, JOHN HALKO, IRENE	*	
HALKO, LIONEL MOLINE, ALBERTA MOLINE,	*	
LOUIS P. VALYKEO, BETTY E. VALYKEO,	*	
RICHARD BUFFINGTON, GEORGE TAMBURLIN,	*	
LEO TAMBURLIN, LINDO CRISTINI, and	*	
PRISCILLA J. CRISTINI,	*	
Plaintiffs	*	
	*	
VS.	*	CIVIL ACTION - LAW
	*	
GEORGE BROSKY (Father), GEORGE BROSKY,	*	
(Son), CYNTHIA L. BROSKY ZWACKI and	*	
WILLIAM T. BROSKY,	*	
Defendants	*	NO. 89-163

ORDER OF COURT

NOW, March 2, 1990, after argument on Motions for Summary Judgment filed by both plaintiffs and defendants, involving interpretation of language contained in two deeds, deed from Joseph S. Hyde to the New York, Lake Erie and Western Coal and Railroad Company dated December 14, 1987, and recorded in Elk County Deed Book 32, Page 529, and deed of William H. Hyde and Lizzie Hyde, his wife, and K.P. Hall, et ux., to the New York, Lake Erie and Western Coal and Railroad Company, dated July 20, 1890, and recorded in Elk County Deed Book 46 at Page 191, and after consideration of briefs, law memoranda of the parties, and the Court's own research, it is determined that each deed conveyed a right-of-way and not a fee.

A. J. [Signature]

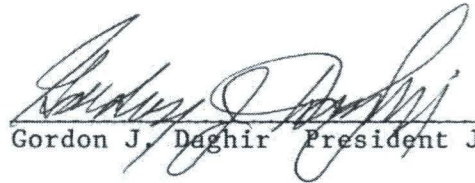
Consequently, these plaintiffs' Motion for Summary Judgment is granted as to Counts 1 and 2 of their complaint, and as to Counts 3 and 4 of the complaint defendants' claim to the subject premises being denied, said counts are sustained and plaintiffs are awarded judgments in ejectment on both counts.

Defendants are ordered ejected from subject properties.

Defendants' Motion for Summary Judgment as to both subject parcels is denied.

Costs upon defendants.

BY THE COURT:


Gordon J. Daghir President Judge

IN THE COURT OF COMMON PLEAS
OF THE 59th JUDICIAL DISTRICT OF PENNSYLVANIA

ROBERT M. CHERUBINI, PEGGY A.	:	ELK COUNTY BRANCH
CHERUBINI, ROY B. WISOR,	:	CIVIL DIVISION
DOROTHY J. WISOR, GRETTA S.	:	
WAITE, GARY CRISTINI, ANN K.	:	No. 89 - 163
CRISTINI, BROCKPORT ARMY AND	:	
NAVY CLUB, BROCKPORT AREA	:	Type of pleading:
WATER ASSOCIATION, THE	:	
TOWNSHIP OF HORTON, FAIRVIEW	:	NOTICE OF APPEAL
COAL COMPANY, INC., LEROY I.	:	
GRANT, LETITIA A. GRANT,	:	Filed on behalf of:
FREDERICO RICCADONNA, ANGELINA	:	
RICCADONNA, LOUIS SOTTOVIA,	:	DEFENDANTS
ALBERTINA SOTTOVIA, LOUIS P.	:	
GALLUZZI, ROBERTA L. GALLUZZI,	:	Counsel of record for these
WILLIAM E. HIMES, CATHERINE J.	:	parties:
HIMES, ROBERT BARNAUSKAS,	:	
RUDOLPH FACCHINE, HELEN	:	Robert M. Hanak
FACCHINE, ANGELINE FACCHINE,	:	Supreme Court No. 05911
THEODORE R. CARR, NELLIE A.	:	311 Main Street
CARR, HAZEL E. CASKEY COURSON,	:	P. O. Box 250
JOHN HALKO, IRENE HALKO, LIONEL	:	Reynoldsville, PA 15851
MOLINE, ALBERTA MOLINE, LOUIS	:	
P. VALYKEO, BETTY E. VALYKEO,	:	814-653-8252
RICHARD BUFFINGTON, GEORGE	:	
TAMBURLIN, LEO TAMBURLIN,	:	
LINDO CRISTINI, and PRISCILLA	:	
J. CRISTINI,	:	
	:	
Plaintiffs	:	
	:	
vs.	:	
	:	
GEORGE BROSKY, CYNTHIA L. BROSKY	:	
ZAWACKI and WILLIAM T. BROSKY,	:	
Defendants	:	

NOTICE OF APPEAL

Notice is hereby given that the above named Defendants hereby appeal to the Superior Court of Pennsylvania from the Order entered in this matter on the 2nd day of March, 1990. This Order has been entered in the docket as evidenced by the attached copy of the docket entries.

A handwritten signature in cursive script, appearing to read "Robert M. Hanak", written over a horizontal line.

Robert M. Hanak
Attorney for Defendants

490. RMH 9.00

IN THE COURT OF COMMON PLEAS OF THE FIFTY-NINTH

JUDICIAL DISTRICT

ROBERT M. CHERUBINI, PEGGY A.	*	COUNTY BRANCH - ELK
CHERUBINI, ROY B. WISOR, DOROTHY J.	*	
WISOR, GRETTE S. WAITE, GARY CRISTINI,	*	
ANN K. CRISTINI, BROCKPORT ARMY AND	*	
NAVY CLUB, BROCKPORT AREA WATER	*	
ASSOCIATION, THE TOWNSHIP OF HORTON,	*	
FAIRVIEW COAL COMPANY, INC., LEROY I.	*	
GRANT, LETITIA A. GRANT, FREDERICO	*	
RICCADONNA, ANGELINA RICCADONNA, LOUIS	*	
SOTTOVIA, ALBERTINA SOTTOVIA, LOUIS P.	*	
GALLUZZI, ROBERT L. GALLUZZI, WILLIAM E.	*	
HIMES, ROBERT BARNAUSKAS, RUDOLPH	*	
FACCHINE, HELEN FACCHINE, ANGLINE	*	
FACCHINE, THEODORE R. CARR, NELLIE A.	*	
CARR, HAZEL E. CASKEY COURSON, JOHN	*	
HALKO, IRENE HALKO, LIONEL MOLINE,	*	
ALBERTA MOLINE, LOUIS P. VALYKEO,	*	
BETTY E. VALYKEO, RICHARD BUFFINGTON,	*	
GEORGE TAMBURLIN, LEO TAMBURLIN, LINDO	*	
CRISTINI, and PRISCILLA J. CRISTINI,	*	
Plaintiffs	*	
	*	
VS.	*	CIVIL ACTION - LAW
	*	
GEORGE BROSKY (Father), GEORGE	*	
BROSKY (Son), CYNTHIA L. BROSKY	*	
ZAWACKI and WILLIAM T. BROSKY,	*	
Defendants	*	NO. 89-163

MEMORANDUM OPINION
AND ORDER OF COURT

Statement of Facts

For brevity purposes, this Court accepts Statement of Facts as set forth in defendants' trial brief submitted before this Court, as follows:

All plaintiffs are abutting landowners to a former railroad track operated by the Erie Lackawanna Railroad. Through various grants and successive conveyances, the Erie Lackawanna Railroad had acquired this property through original conveyances which occurred in 1888 and in 1896. Defendants Brosky claim title to this property by virtue of deeds Broskys acquired from the Erie Lackawanna Railroad. The issue, simply stated, is whether the deeds into the railroad and ultimately to Broskys, conveyed only a right-of-way or whether

such deeds conveyed a greater interest or fee simple. Should the deeds have conveyed a right-of-way, a reversion may have occurred wherein plaintiffs would have title to the subject land area. If a right-of-way is not conveyed, then Brosky defendants would own the subject area in fee.

Both parties filed appropriate Motions for Summary Judgment and after argument, this Court awarded Summary Judgment on all issues to plaintiffs.

In effect, the ruling of this trial court is that the initial two deeds to the defendants conveyed only a right-of-way and that the conveyances to the defendants constituted an abandonment of the railroad right-of-way.

The defendants argued that even if the two applicable deeds to the railroad in 1884 and in 1890 conveyed only a right-of-way then, and in any event, the matter would have to go to trial on the issue of abandonment.

Defendants have appealed from this Court's earlier order of March 2, 1990, which awarded Summary Judgment to plaintiffs on all issues which in effect found that all plaintiffs are abutting landowners (from their original deeds, and as to certain ones, as purchasers from a successor of the original grantor to the railroad) and we also awarded judgments in ejectment ejecting in possession defendants from the subject premises.

We also denied defendants' Motion for Summary Judgment, it being our holding that the applicable original deeds to the railroad conveyed to it only a right-of-way which was abandoned.

Discussion

The issues in this case are whether two particular deeds of conveyance of land to a railroad conveyed a fee simple title or only a right-of-way, and, if the latter, has the right-of-way been abandoned and therefore terminated.

Two deeds are involved, the first from Joseph S. Hyde to the New York, Lake Erie and Western Coal and Railroad Company, a corporation, dated December 14, 1887, and recorded in Elk County Deed Book 32 at Page 529 on

June 20, 1888, the granting clause of which, in pertinent part, reads:

The first deed, (1888), after the recitation of the parties and the consideration, contains a granting clause as follows:

"...has granted, bargained, sold, aliened, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, alien, release, convey, and confirm, unto the said party of the second part its successors, heirs and assigns, all that right-of-way for railroad purposes through, over and across the following properties of the said party of the first part, namely:" (emphasis supplied).

The habendum clause of this document provides:

"Together with all and singular the tenements, hereiditaments and appurtenances to the same belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, property, claim and demand whatsoever, both in law and equity, of the said party of the first part, of, in, to, or out of the said premises and every part and parcel thereof, to have and to hold, the said premises with all and singular the appurtenances unto the said party of the second part, its successors, heirs and assigns, to and for the only proper use and behoof of the said party of the second part, its successors and assigns, forever."

The second deed, bearing date of 1896, after recitation of the parties and the consideration (\$500), provides or contains a granting clause as follows:

"... have granted, bargained, sold, aliened, released and quitclaimed and by these presents do grant, bargain, sell, alien, release and quitclaim unto the said party of the second part, its successors and assigns, a right-of-way over and across all that certain, piece, or parcels of land situate" (emphasis supplied).

The habendum clause of this second deed provides:

"To have and to hold said right-of-way and the rights and privileges herein granted unto the said party of the second part, its successors and assigns forever."

The land described in these two early deeds to the railroad is no longer employed as an area of railroad track. Both sides agree that the only issues before the Court are the legal interpretations to be given the two deeds and whether an abandonment has occurred but defendants do state for record purposes that the land described in the referenced two deeds is no longer

employed as an area of railroad track and is not used as a railroad line so that, defendants state, even if a right-of-way has been conveyed, a trial is necessary on the question of abandonment. Apparently defendants agree that if the conveyances are for a right-of-way and an abandonment has occurred, plaintiffs as abutting landowners would of necessity, by law, prevail.

In reviewing briefs and applicable law, we are persuaded that plaintiffs have sustained their cause and that the two deeds conveyed only rights-of-way and that abandonment has occurred and, there being no genuine issue on any material fact, summary judgment for plaintiffs is appropriate on all accounts.

That the granting clause in both deeds contains the words "grant" and "convey," or one of them, thereby satisfying the statute, 21 P.S. Section 2 so as to be thereby effective to pass to the grantees a fee simple title is nondeterminative, the deeds both predating the statute which was not effective until 1902 and said statute not having any retroactivity, appropriately.

Neither are we satisfied that the cases cited by defendant are applicable, although it is undoubtedly the law that free alienability of land is favored and a deed that conveys a fee simple except for certain words, phrases or clauses, is to be strictly interpreted against the limitation unless intent to limit is clearly expressed or necessarily implied.

Defendants' case of Sapper v. Mathers, 286 Pa. 364 (1926) is distinguishable on the issue of employment of merely words of purpose, rather than grant. This deed expressly stated the conveyance was "for no other purpose whatsoever than a cemetery...." (By subsequent court order the bodies therein interred were removed elsewhere and the cemetery use was then discontinued.)

The question before the court was whether a base or conditional fee only was conveyed, which was answered negatively, a fee being determined. The

limiting language was only as to use, not title, limitation and a mere statement as to the permitted use does not, without more, create a determinable fee.

The case was one of "condition subsequent," which is not our situation at all.

Likewise, Abol v. Gerard Trust Company, 365 Pa. 34, 83 A 682, is not helpful for again the language, in the habendum clause only, was that the addition of the words "for no other use or purpose whatsoever than a public park" was at issue. This was again a statement limiting use and not title. The consideration was substantial for 1925 (\$4,000), indebtedness to purchase was incurred. Other than the "purpose" habendum, fee language was used. Again this was a case of fee versus base fee, which is not the present situation. (There were no words of reversion and the court again held mere words of purpose do not limit title.

The issue in the Abol case was one of "cutting down" a fee, i.e., conditions subsequent.

In T.W. Phillips Gas and Oil Company versus Lingenfelter, 262 Pa. 500, 105 A 888 (1919) the one-half acre conveyance to school directors was "for school purposes only."

Here, by law, school directors at the time of the conveyance could only purchase a lot in fee simple. The "purpose" words had no conditions, alienation restraints, or forfeiture clause. The "purpose" words were held superfluous and the directors could only, in any event, have purchased for school purposes.

"A declaration ...in a grant... that land is conveyed for certain purposes does not necessarily impart a limitation of the fee. ...such a declaration can amount to no more than an explicit assertion of the intended legality of the grant." In no way can this situation be likened to our instant case.

Defendants' final case, Peters v. East Penn Township School District, 118 Pa. Super. 116, 126 A.2d 802 (1956) is another case involving school directors and the question was also raised whether the conveyance to a school district was a fee or a determinable fee (terminated when the use of the land for school purposes ended). Again the limiting language was not in the granting clause, but appeared only in the habendum clause which stated "as long as it is used for public school purposes."

Here the court held a conveyance of a determinable fee, not because of the statement of purpose but because the grantors intent of determinable fee was made clear by use of the words "as long as" it is used for public school purposes. The words "as long as" are technical words limiting a fee.

Defendant's cases simply restate the law that statements of purpose do not debase a fee, but when statements of purpose are used together with technical words a fee is thereupon limited and subject to a reversion.

None of this is presently helpful to the issues in the case sub judice.

The granting clause in the first deed (Joseph Hyde - 1888) admittedly utilized the words of grant and convey but it is expressly and specifically said that a right-of-way is being conveyed. Nowhere does the deed indicate that the land itself was being conveyed. The addition of "for railroad purposes" in the granting clause has nothing to do with an issue of debasing what otherwise would be a fee. The granting clause expressly conveyed a right-of-way over the land thereafter expressly described. Of note also is the granting language of a right-of-way "through, over, and across the following properties...." This is clearly right-of-way language.

In this deed we also note use of the term "right-of-way" on four other occasions, the first when describing the first description; the second after the fifth property description where the grantor reserves "within the limits of the said right-of-way" the right to building stone to quarry, etc. (which

assured the grantor's right of entry onto the right-of-way for such purposes provided that no injury or damage to track or embankment of the railroad or interference with the operation of the railroad occurred, thereby recognizing the dominant nature of the railroad property to which the grantor's remaining interest was acknowledged by the grantor as subservient); the third, also after the fifth description, reserved the right of road and farm crossings on each of the unimproved tracts of land "through which said right-of-way runs; and the fourth, also after the fifth description, where the railroad agrees to pay for fencing and fencing maintenance "so long as said railroad is operated over said right-of-way."

This is overwhelming right-of-way language.

It is true that the habendum clause in this first deed contains no reversion upon termination of railroad use, and that it does provide that the railroad, its successors, heirs and assigns, is to have and to hold the said premises with all and singular the appurtenances forever, and, as defendant argues, this indeed is fee simple language and, additionally, nowhere does the document provide that a reversion occur if the land ceases to be used for railroad purposes.

Nonetheless, we hold that the conveyance created and conveyed a right-of-way and that the language of the habendum is inconsistent therewith.

Turning now to the second deed, W.W. Hyde, et ux, et al, of 1896, the following granting language appears in the granting clause:

"...have granted, bargained, sold, aliened, released and quitclaimed, and by these presents do grant bargain, sell, alien, release and quitclaim... a right of way over and across all those certain pieces or parcels of land situate in..."

Similarly to the first deed involved herein, words of granting conveyance were used but the second deed also expressly and specifically provided that a right-of-way was being conveyed in the granting clause, not the land

itself. The second deed does not use the phrase, in the granting clause, "for railroad purposes"; however, it does expressly and specifically grant the right-of-way "over and across" the land immediately thereafter specifically described. This again is clearly language conveying a right-of-way over the land immediately thereafter specifically described. As such, it is not a conveyance of the land itself.

After the description of the right-of-way (on three lots) a reference appears:

"...right-of-way being a strip of land...over and upon said three above-described lots." (emphasis supplied).

Thereafter the following appears:

"Together with the right unto the said party of the second part to maintain and operate said railroad on said land within the limits of said right-of-way." (emphasis supplied).

The grant specifically and expressly grants the right of maintenance and operation of a railroad

"...on said land within the limits of the right-of-way." (emphasis supplied).

The habendum clause does grant the right-of-way forever by providing:

"To have and to hold said right-of-way, and the rights of privileges herein granted ... forever." (emphasis supplied).

There is no time limitation or reversion on the right-of-way, in any provision of the document, habendum clause or otherwise.

Thereafter, in the second document, reference is made to the grant being pursuant to a recorded 1886 agreement of the parties (through assignment to grantee herein). The agreement, admitted into evidence, is a rental or lease arrangement.

"For the purpose of constructing, maintaining and operating a railroad thereon ..."

The land is thereafter described and a rental of \$200 per year for a term of ten years is set forth, and as much longer "as the grantees, successors

and assigns may require." An option is granted to the lessees to purchase "Said right-of-way (emphasis supplied) for the price of \$500 ten years from date and the lessor obligates himself thereupon to execute a deed."

(Note that the consideration paid of \$500 was only the equivalent of a two-and-one-half-year rental, hardly indicative of the value of a fee, even in 1886 or 1896.)

Clearly, this agreement of lease with option to buy was one of right-of-way.

We agree with defendants' argument in their brief that the grantors had extensive landholdings in Elk County and regularly and customarily dealt in matters involving real estate conveyancing. We can also assume that they jealously guarded and protected their property interests. If they had intended to convey something other than a right-of-way, they would not have used the term right-of-way but would rather simply have used words of conveyance followed by a description of the land conveyed, in the granting clauses.

We are convinced that the plaintiffs have cited in their briefs the applicable law in this case and our reading of plaintiffs' cases and applying the law stated therein to the facts of this case causes us to come to the conclusion that the cases cited in plaintiffs' brief, Fleck v. Universal-Cyclops Steel Corp., 397 Pa. 648 (1959) and Karchner v. Hoy, 151 Pa. 383 (1892) are controlling and we adopt, without repeating, defendants' "DISCUSSION OF LAW ON PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT" as our own.

We also quote from Fleck, supra, statement of law applicable in this case, a right-of-way having been determined in both deeds:

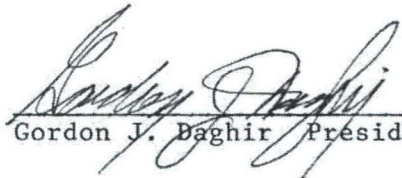
"If the Railway Company acquired by its 1885 deed merely a right-of-way or an easement an abandonment by the railroad of its right-of-way would, in legal effect, merely extinguish this incumbrance upon the land which, we repeat, would be held in fee by defendant." (emphasis supplied). (Sub judice, plaintiffs stand in the shoes of defendant in Fleck).

See also Brookbank v. Benedum-Trees Oil Company, 131 A.2d 103, 389 Pa. 151 (1957).

ORDER

NOW, May 7, 1990, consistent with Memorandum Opinion filed contemporaneously this date, this Court's Order of March 2, 1990, granting plaintiffs' Motion for Summary Judgment on all counts, determining plaintiffs to be the owners in fee simple of the lands described in complaint and awarding judgment in ejectment against defendants on both counts stated in plaintiffs' complaint, and ejecting defendants from the subject properties, and denying defendants' Motion for Summary Judgment as to both subject parcels is restated and reaffirmed.

BY THE COURT:


Gordon J. Baghir President Judge