

**BEFORE THE SURFACE TRANSPORTATION BOARD
Washington, D.C.**

**Reply To City Motion For Leave To File A Reply - To Replies By Conrail And LLC
Intervenors - To City's Motion To Expedite OFA Proceedings**

- and -

Notice of Status Of State Court Proceedings

**In
Conrail Petition For Exempt Abandonment
Hudson County, New Jersey
STB Docket: AB-167-1189-X
And Related Proceedings
AB-55-686-X
AB-290-306-X**

237717

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ENTERED

Office of Proceedings

February 10, 2015

Part of

Public Record

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DATED: February 9, 2015

The LLC Intervenor respectfully request and submit that the Board should act without further delay concerning the City's OFA and put an end to it; and to all of the bizarre proposals and requests brought on by Jersey City, CNJ Rail and their litigation allies, including Eric Strohmeier and James Riffin. The steps required to do this are simple, straightforward, and mandated by the Board's own regulations and by statute.

As to the present filing by the City, purporting to be an indignant response to a reply, it is nothing of that sort. Rather, it is an additional motion, containing additional statements and information never previously presented that the City wishes to have considered without giving either Conrail or the LLC Intervenor an opportunity to reply. These faults are summarized below, and addressed in further detail herein; but, despite all of the problems with the City's position, and with its so-called reply, it should be made part of the record of these proceedings as the basis for extracting the Board from this non-railroad real estate dispute of 10 years' duration.

Summary of Argument

- No one should be exempt from the stringent requirements set for Offers of Financial Assistance, including the City. LLC Intervenor have not argued that Conrail should be exempt and have made it clear in their papers filed on January 13, 2015 that Conrail should be held to the requirements of the Board's regulations. (January 13, 2015 Reply of Intervenor to Motion to Compel, STB Document ID# 237464 p. 5)
- Nothing that the City has offered to the Board, either currently or previously, has constituted proper support for an OFA. Whether or not any of those materials are proper is not the present issue because the City claims it is unable to file an OFA without certain specific information from Conrail. That appears to be the City's last excuse of any conceivable merit and should be addressed by the Board without making the mistake of prejudging the City's OFA.
- The issue that is raised by the City's filings is the City's ever shifting, vague and uncertain position on where and how it proposes to operate rail freight service. At this point, the City and its litigation allies have shipped a greater amount of paper to Washington than the amount of freight they will ever ship anywhere by rail on the Harsimus Branch. When false and misleading statements are made in proceedings affecting their interests, the LLC Intervenor have both the right and obligation to challenge those statements and assail the credibility of all who make them. When statements shown to be false are replaced with other falsities, those too can and should be challenged. On that basis, the LLC Intervenor demonstrate in this reply that the new and most recent statements offered by counsel are

likewise false and misleading. These are addressed in the portion of this reply filed under seal.

- None of the extraneous material filed by the City should serve to delay its obligations under OFA procedures or to excuse it from compliance in full with those procedures. The City's statement that "... It would like to acquire as much width of the Harsimus Branch per the tax parcel maps in those areas as it can afford" confirms the City's lack of financial responsibility, and improperly burdens Conrail with a never ending guessing game of how much property the City wants, at which locations, and for which kinds of facilities, in a process driven exclusively by the City's willingness or ability to pay, rather than a good faith offer of just compensation to Conrail for the loss and damage to its property interests. The impropriety and vagueness of the City's requests should not lead to further delay. The simple and proper solution is for the Board to require Conrail to comply with 49 CFR 1152.27(a) by providing a statement of the fair market value of those parcels of its property traversed by the Harsimus Branch and any other parcels adversely affected.
- The City's Law Department has now admitted that it did not pay much attention to the state court complaint filed by the LLC Intervenor challenging the ordinance that purportedly authorizes the filing of an OFA, and simply sat on it while the City proceeded to ask the Board to advance its OFA. (Exhibit A , January 21, 2015 Certification of Jason T. Watson in Support of Motion to Vacate in the matter 247 Manila Avenue, LLC et al. v. City of Jersey City et al., Docket No. HUD-L-4954-14 ("247 Manila Avenue Action")). A consent order, proposed by

LLC Intervenor, has been executed and the challenge to the City's ability to actually make a legitimate OFA will now proceed. (Exhibit B, Stipulation and Consent Order Vacating Default etc., as filed in the 247 Manila Avenue Action).

At this point, the City's position appears to be that it is well within its rights to pursue an OFA and that it has a meritorious position in state court. The LLC Intervenor, of course, take the opposite position. For the reasons discussed in greater detail below, the City's lack of authority to proceed is secondary to whether it even has a proper OFA to file with the Board. The pendency of the state court proceedings should not override or delay Conrail's obligation to provide valuation information to the City under the Board's regulations.

- Issues beyond the scope of this reply arise from the new materials submitted by the City, and should not pass without scrutiny. In the interest of a straightforward resolution of these issues, LLC Intervenor will file a separate motion to address those matters, which will provide all parties with a full and fair opportunity to reply.

ARGUMENT

Point I

Conrail Should Submit Valuation Information On Its Entire Parcel.

Casting itself as some sort of victim, the City has complained that Conrail has ignored the Board's May 26, 2009 decision and is seeking a *de facto* exemption from OFA procedures. (City's January 20, 2015 Motion to File a Reply STB Document ID 237549 p. 1). The position of the LLC Intervenors is that no one, including Conrail, is exempt from following the applicable rules. The fact that such a statement needs to be made, repeated, and emphasized underscores how far afield these proceedings have traveled from the strict deadlines set for OFA proceedings. That unconscionable delay should end and Conrail has acknowledged that it can, and, if ordered, will, provide valuation information on its properties. (January 26, 2015 Reply of Consolidated Rail Corporation to City's Motion for Leave to File a Reply STB Document ID 237622 p. 5 n. 1). Thus there is no reason to delay this matter any longer and Conrail should be ordered to provide a good-faith valuation for its properties that would provide it with just compensation in any transfer to the City.

However, it appears that the City is not seeking a good-faith purchase of Conrail's properties, nor is it interested in paying just compensation. Lurking in the City's submissions is the groundwork for further delay by the City. The Board can, and should, reject any further delay by the City once the City receives the specific valuation information it has requested from Conrail. If that is not done, it is likely that the City will have additional excuses for not filing a proper OFA within the statutorily mandated timeframe of 10 days. 49 C.F.R. §1152.27.

Illustrating this point is Point II of the City's proposed Reply (pages 9 through 11 of same) and the Parcel Map attached as the first exhibit thereto. After initially stating that "City's OFA intentions have never been limited to the Harsimus Embankment", ("City's proposed Reply p. 9) the City confesses its lack of specificity with the following: "In addition, the City's OFA intentions all along have indicated a *potential* transload, at least *initially*, adjoining *either* Waldo *or* the intersection with National Docs (or *potentially* both), *or* elsewhere along the line."¹ *Ibid*. Further confusing the matter, the City has never requested, from anyone, any information on the Harsimus Embankment or those properties lying to the east of Marin Boulevard which were also included in its OFA Notice of Intention. Nearly six years after filing its Notice of Intention, the City can't, or won't, disclose its intentions.

None of this is at all clarified by the "Parcel Map" submitted as an exhibit to the City's present motion. If anything, the exhibit may be intended as a smokescreen to mask the fact that the City has had a complete topographic survey of Conrail's property for two and one-half years since September 11, 2012 when Conrail gave it to the City. And it did not go unnoticed by the City, because only five days later it was filed with the US District Court for the District of Columbia in docket 09-CV-01900-ABJ as document 84-1 with a detailed explanatory analysis provided by the City's Senior Transportation Planner, Naomi Hsu. It was filed a second time by the City directly with the Board as an exhibit to document 236077 in STB Docket FD-35825 on May 22, 2014. And additional copy of the Naomi Hsu declaration is attached as Exhibit C.

¹ Emphasis added by bold *italics*. The City offers no fewer than six conditional words in the same sentence to describe its intentions for its OFA. Obviously, none of this can be driven by an existing need for rail freight service; all of it is driven by the City's desire to acquire the LLC Intervenor's properties for parks and open space.

A careful examination of Conrail's survey shows that its property was divided, for survey purposes at least, into seven parcels. The Harsimus Branch traverses parcels one and seven, which appear to be the two largest parcels at the southern end of the property surveyed. From Ms. Hsu's Declaration, one can reasonably assume that Conrail and the City discussed some details of Conrail's property well over two years ago. If those discussions included providing locations for rail freight service, then both the City and Conrail know each other's position. If, as is much more likely, the discussions included the proposed development of Conrail's property for non-rail purposes, then the City is well aware that its proposals to take some of the property will have a significant impact and result in a significant payment of just compensation to Conrail-well beyond the City's ability to pay. But whatever the case may be, there is no reason why this information should not be disclosed pursuant to 49 CFR 1152.27(a).

The value of Conrail's property should not be a mystery to Conrail, particularly since this exempt abandonment proceeding has little or nothing to do with rail service and everything to do with developing highly valuable real estate for commercial purposes. Conrail, in 2012, spent a significant amount of money on a detailed survey of its property. It is not likely that it did that to continue freight operations on the National Docks Line, but rather as but one of many steps leading toward commercial real estate development. At this point it is quite likely that Conrail has a good idea what its property is worth. The fact that that value may be unrelated to railroad operations simply underscores the hallmark of this case - property disputes concerning the development of highly valuable commercial real estate.

Nor should the value of the property be a mystery to the City, which assesses all

of the property within its borders for purposes of *ad valorem* taxation under the laws and constitution of the state of New Jersey. It has the ability to inform itself as to the value of real estate lying within its borders, and it is particularly aware of the very high value of land that can be put into commercial development in this area of Jersey City.² That knowledge, coupled with the City's inability and/or unwillingness to pay fair market value, makes these proceedings a sham on the basis of value alone. It is a thinly transparent attempt to acquire highly valuable property through a taking by the United States government, under the guise of an OFA.³ Despite this painfully obvious improper purpose, and its ultimate futility under applicable law and Board regulations, in order to avoid arguments on appeal by the City that it did not have a full and fair opportunity to present its OFA, the Board must comply with its own regulations and move forward by requiring Conrail to provide full valuation information.

Point II

Jersey City Continues To Rely Upon False Statements And Misrepresentations To The Board.

Counsel for the City has submitted our letter of January 14, 2015, which speaks for itself. In response, the City has not withdrawn the verified statement, (filed under seal in this matter on December 23, 2014) has not submitted any further verified statement,

² That knowledge includes the value of the Embankment properties held by the LLC Intervenor which the City has repeatedly said it can acquire for a presumed price of \$3 million pursuant to an OFA, well below the fair market value required to provide just compensation.

³ The City also suggests by its exhibit drawing showing tax blocks and lots that it wants only critical parts of Conrail's properties, while hedging on which ones it will use and for what purposes. This suggests that the City's real purpose here is to get title to critical pieces of Conrail's larger tract so that it can play a significant role in the future development of Conrail's properties in which those segmented pieces and strips are needed for cohesive development and site access.

but instead has offered unsupported statements of counsel and hearsay opinions as to what may happen in the future. There is no factual basis for any of the City's arguments. The specifics of the LLC Intervenor's argument on these points will be made under seal as Exhibit D hereto.

Point III

The Board Should Prohibit The City From Pursuing Arbitrary And Piecemeal Acquisition Of Conrail Property As Proposed In The City Parcel Map

The approach to an OFA proposed by the City in its reply has been soundly rejected by the Board as improper in a proceeding involving a number of the same parties and strikingly similar circumstances. (See Decision Released March 14, 2012 in In re Consolidated Rail Corp. Abandonment Exemption-In Philadelphia PA, STB Docket No. AB 167 Sub No. 1191X). Since 2009 when both the City and CNJ Rail simultaneously filed Notices of Intent to make OFAs on March 27, 2009, neither CNJ Rail, nor the City has demonstrated the requisite financial ability to reinstitute rail service anywhere along the Harsimus Branch. CNJ Rail confessed its lack of financing in its notice. (See Id. at pp. 3-4 and the disposition of the appeal of same to the United States District Court of Appeals for the District of Columbia in Riffin v. Surface Transportation Board, USCA Case #12-1487 (D.C. Cir. December 11, 2013)). The City now says as much by adopting the procedures of CNJ Rail in attempting to peel off small portions of Conrail's properties, but only to the extent that the City can afford them. Neither of these two proponents of an OFA has shown any ability or willingness to finance any of the infrastructure that would be required for any of the City's speculative proposals. By

contrast, the Verified Statement of the alleged shipper (filed under seal) indicates that the City has offered to pay for multiple transload facilities. But begging the question of where the money for any infrastructure would come from, the City has disclaimed and disavowed any willingness to purchase Conrail's property for constitutionally mandated just compensation. (City's proposed Reply Point II of the City's pages 9 through 11 of same).

Further begging the question raised by the fact that the City's pursuit of an OFA may be without legal authority and in violation of state and federal law and regulation, the City has nonetheless asked the Board to require Conrail to comply with the Board's own regulations and provide valuation information to the City so that the City can determine whether it can or cannot afford to purchase some or all of Conrail's property. The LLC Intervenors respectfully submit that there is no alternative, especially in the context of this unusual case, to deny the City its request. Among the results of granting the request would be the following:

1. Everyone would be forced to recognize the "Elephant-in-the Room" that the City cannot afford to pay just compensation to Conrail for the value of Conrail's property.
2. Concurrently, the Board would have the opportunity to address itself to the appeal filed by the City from the 2009 decision by the Director of Proceedings, requiring the City to comply with the Board's OFA regulations and precedents, and requiring that the City file its OFA within 10 days after Conrail provides valuation information. The decision by the Board is long overdue. (See May 26, 2009 decision of Director of Proceedings in this matter, STB Document ID

39951).

3. The City and CNJ Rail would be required to file specific proposals to acquire Conrail's property, and any other property actually needed for rail freight service, and to meet the requirements previously set by the Director of Proceedings. (See Ibid). Since the LLC Intervenors have repeatedly pointed out that the City's OFA is a sham, the City would be given a full opportunity to prove them wrong.
4. The Director of Proceedings would have the obligation to rule (within five days) on any OFA filed. These OFA's have been talked about for over five years. During that time they have manifested all of the quirks and shortcomings that caused the Director of Proceedings, the Board, and the Court of Appeals to soundly reject the CNJ Rail OFA, on which they appear to be modeled. (See Decision Released March 14, 2012 in In re Consolidated Rail Corp. Abandonment Exemption-In Philadelphia PA, STB Docket No. AB 167 Sub No. 1191X).
5. If the City and CNJ Rail were somehow unable, unwilling, or not permitted to confiscate Conrail's property, or a significant part of it, for any reason, then the City would be unable to reach along the Harsimus Branch to the property of the LLC Intervenors and, but for the inevitable City appeals, this nightmare would come to an end.

The foregoing process would be greatly aided and brought under the control of the Board by a present ruling that the City cannot meet the OFA requirements, particularly the requirements of just compensation to Conrail, by proposing an OFA

based on the arbitrary fragmentation of Conrail's property and an open-ended process of back-and-forth negotiations that would produce only further delay. (See page 11 of the City's proposed Reply). Conrail should be ordered to provide valuation information by parcel and to demonstrate which parcels would need to be acquired, at what costs, and what damages to remaining parcels would arise by acquiring less than all of the property. Conrail has indicated that it can do this within a period of 30 days. (January 26, 2015 Reply of Consolidated Rail Corporation to City's Motion for Leave to File a Reply STB Document ID 237622 p. 5 n. 1).

Point IV

The City's OFA Authority Is Being Challenged In State Court

By way of notice to all parties, the LLC Intervenors had proposed a Consent Order lifting the previously entered default against the City for its failure to file in answer to a complaint filed in the Superior Court, Hudson County, Law Division in November, 2014. A copy of the Consent Order signed by the parties and submitted to the Court is attached as Exhibit B. The resolution of that matter was based on a certification by the First Assistant Corporation Counsel of the City that he had overlooked the matter and neglected to send the summons and complaint served on the City to assigned outside counsel. That state court proceeding should not serve the City as an excuse for further delay.

As the foregoing arguments illustrate, there are numerous and serious problems with the City's OFA, at least as it has been put forth in pleadings filed with the Board. LLC Intervenors have suggested that it would be inappropriate to prejudge an OFA

before it is filed, and the City has argued the same in its proposed reply. That is not to contradict the 2009 decision by the Director of Proceedings, or the suggestion by the LLC Intervenors in these papers, that the Board can and should issue decisions with respect to the materials that the City has already filed. The City has offered those to the Board in relation to its OFA and of those submissions are subject to comment and Board action. The City should not be allowed to ask they be considered favorably only for its purposes, but object to unfavorable treatment on the merits of those submissions, when warranted.

Just as an OFA should not be prejudged or vetted before the fact, the ability of the City to follow through on any proposal that it wishes to make by way of offering financial assistance should not be second-guessed either. To do so because of pending state court proceedings would surrender the Board's proceedings and jurisdiction to prior state court review on any number of issues, delay the proceedings beyond the control of the Board, and thereby violate the Board's mandate from Congress to deal with OFAs promptly. While the City may make the suggestion that the Board stand idly by, pending a resolution of state court proceedings, in order to further delay its day of reckoning on its OFA, the Board should not accede to such a request. If the City lacks the authority to perform under an OFA, but nonetheless wishes to risk violations of state and federal law in the process, the Board should not be in the business of protecting the City from itself. Furthermore, the City itself has argued that it has a pressing need to move forward with its OFA and must now do so. If the City is unsure of its position, unsure of its shipper, unsure of its finances, or unsure of its representations to the Board in these proceedings, it has the option to withdraw its Notice of Intent to file an OFA. The Board should

require the City to make that determination by requiring prompt disclosure of valuation information from Conrail and set a prompt filing deadline for OFAs from the City and CNJ Rail. Anything less leaves the City and, to some degree Conrail, free to manipulate these proceedings as they see fit, to the detriment of LLC Intervenors.

ADDITIONAL MATTERS

As indicated above, in order to give all parties a full and fair opportunity to respond to certain issues raised by the City's proposed reply, the LLC Intervenor intend to file a subsequent motion, or motions, based upon issues arising from the City's submissions. Those motions are not intended to be supplements to replies, replies to replies, or anything of that sort. The LLC Intervenor stand on the present submission as and for their reply to the City's present motion. The focus of such proposed motions is envisioned to be the denial of procedural due process to the LLC Intervenor as a result of the inordinate delays and the excessive number of undecided matters, which have effectively ground these proceedings to a halt.

Respectfully submitted,

s/ Daniel E. Horgan

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DATED: February 9, 2015

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CERTIFICATE OF SERVICE

I, Daniel E. Horgan, hereby certify that I caused a copy of the foregoing to be served by First Class mail upon those on the attached Service List by depositing same with the U.S. Postal Service on February 9, 2015.

s/Daniel E. Horgan

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415 BRUNSWICK STREET, LLC; and
446 NEWARK AVENUE, LLC,

Plaintiffs,

v.

CITY OF JERSEY CITY and DONNA
MAUER, in her official capacity as
Chief Financial Officer of the City of
Jersey City,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY

Docket No. HUD-L-4954-14

CIVIL ACTION

**CERTIFICATION
OF JASON T. WATSON
IN SUPPORT OF MOTION
TO VACATE DEFAULT**

1. I am the First Assistant Corporation Counsel for the City of Jersey City. I am familiar with the facts stated in this Certification.

2. This action in lieu of prerogative writ is one of a series of lawsuits and administrative proceedings concerning a rail line commonly known as the 6th Street Embankment which runs through the downtown area of Jersey City.

3. It has been established in litigation that reached the District of Columbia Circuit Court of Appeals that the 6th Street Embankment is a line of railroad subject to the jurisdiction of the federal Surface Transportation Board ("STB").

4. This controversy dates back to well before July 12, 2005, when the plaintiffs accepted quit claim deeds from Conrail without first obtaining abandonment of the federal regulatory interest in the rail line.

5. John J. Curley, an attorney at law of the State of New Jersey, has continuously represented the City of Jersey City as outside counsel with respect to litigation involving this controversy in the Superior Court of New Jersey.

6. This action in lieu of prerogative writs challenges Ordinance 14.103 adopted by the Jersey City Council on September 23, 2014. The ordinance authorizes the expenditure of funds by the City and the use of a federal remedy known as an Offer of Financial Assistance ("OFA") in administrative proceedings pending before the STB under docket number AB 167(sub no. 1189X).

7. On November 25, 2014, a summons and a copy of the complaint commencing this action were served upon the City of Jersey City and upon Donna Mauer in her capacity as Chief Financial Officer. The summons and complaint were brought to the attention of the Law Department. After some discussion internally as to the nature of the claims, the Corporation Counsel directed that the complaint be sent to Mr. Curley as outside counsel for the purpose of his preparing an answer and defending the defendants.

8. It was my responsibility to forward the summons and complaint to Mr. Curley for defense. As a result of inadvertence and miscommunication within the Law Department, the papers were never sent to Mr. Curley and no answer was filed.

9. The time within which the defendants were required to serve and file an answer expired on December 30, 2014. The plaintiffs thereafter moved ex parte in accordance with R.

4:43-1 to enter a default against the City and its Chief Financial Officer. The default was entered on January 13, 2015.

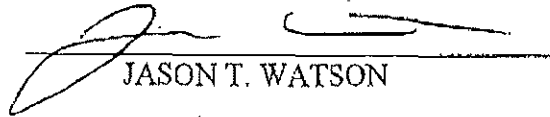
10. The failure to file an answer was due to excusable neglect.

11. I have consulted with Mr. Curley as the City's outside counsel with respect to defenses to the claims set forth in the complaint. Mr. Curley has assured me that the City has defenses to the claims as set forth in the answer he prepared and as will otherwise be developed during the course of the litigation of the case. I agree with his assessment of the case that the defendants have meritorious defenses.

12. I point out that the challenged ordinance is entitled to a presumption of validity and that plaintiffs therefore have a heavy burden in attempting to challenge its validity.

13. The challenged ordinance is essential to the City's interest in acquiring title to the 6th Street Embankment for public purposes that are consistent with the OFA remedy available before the STB.

I certify that the foregoing statements are true. I am aware if any of the statements are willfully false I am subject to punishment.


JASON T. WATSON

Dated: January 21, 2015

EXHIBIT B

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Plaintiffs,

v.

CITY OF JERSEY CITY and DONNA
MAUER, In Her Official Capacity as Chief
Financial Officer of the City of Jersey City

Defendant(s)

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, HUDSON COUNTY

Docket Number: HUD-L-4954-14

Civil Action

**STIPULATION AND CONSENT ORDER
VACATING DEFAULT AND PERMITTING
FILING OF ANSWER, AND SCHEDULING CASE
MANAGEMENT CONFERENCE**

This matter having been opened to the Court on behalf of defendants City of Jersey City and Donna Mauer, by and through their attorneys John J. Curley, LLC, for entry of an order vacating the default entered on January 13, 2015 on notice to Plaintiffs by and through their attorneys Waters, McPherson, McNeill, P.C.; and

The parties having reached an agreement for the vacating of the default and filing of an answer on behalf of the Defendants, and having executed this Stipulation and Consent Order Vacating Default and Permitting Filing of Answer, and Scheduling Case Management Conference,

It is, on this _____ day of _____, 2015 ORDERED:

1. The default entered against Defendants City of Jersey City and Donna Mauer on January 13, 2015 is hereby vacated and set aside.

2. The Answer to the Complaint and the Case Information Statement that accompanied Defendants' Notice of Motion shall be promptly filed by the Clerk and entered in the Automated Case Management System.

3. The case management conference pursuant to R. 4:69-4 shall be scheduled for _____, 2015 at _____. The case management conference shall be conducted in person. The parties shall file and exchange their statements of factual and legal issues and exhibit lists on _____, 2015.

4. The execution of this Stipulation and Consent Order Vacating Default and Permitting Filing of Answer, and Scheduling Case Management Conference on behalf of the Plaintiffs shall be without prejudice of their claims and positions, and shall not constitute a waiver of any claim.

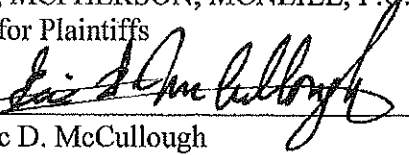
5. This Stipulation and Consent Order may be executed by counsel to the parties in counterparts.

6. A copy of this order shall be served on Plaintiff's counsel by counsel for the Defendants within five (5) days from the date of entry.

HON. KIMBERLY ESPINALES-MALONEY,
J.S.C.

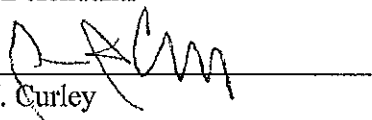
We stipulate to the entry of this Order.

WATERS, MCPHERSON, MCNEILL, P.C.
Attorneys for Plaintiffs

By: 
Eric D. McCullough

Dated: February 3, 2015

JOHN J. CURLEY, LLC
Attorneys for Defendants

By: 
John J. Curley

Dated: January 29, 2015

839872.1

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CITY OF JERSEY CITY,	)	
RAILS TO TRAILS CONSERVANCY, and	)	
PENNSYLVANIA RAILROAD HARSIMUS	)	
STEM EMBANKMENT PRESERVATION	)	
COALITION,	)	
Plaintiffs	)	
	)	C.A. No. 09-1900 (CKK)
v.	)	
	)	
CONSOLIDATED RAIL CORPORATION,	)	
Defendant,	)	
and	)	
212 MARIN BOULEVARD, LLC, et al.,	)	
Intervenor-defendants.	)	

REPLY MEMORANDUM IN SUPPORT OF RENEWED
MOTION FOR SUMMARY JUDGMENT
ON BEHALF OF
CITY OF JERSEY CITY,
RAILS TO TRAILS CONSERVANCY, and
PENNSYLVANIA RAILROAD HARSIMUS STEM
EMBANKMENT PRESERVATION COALITION

Exhibit A: Declaration of Naomi Hsu

In the United States District Court
for the District of Columbia

City of Jersey City,	)	
Rails to Trails Conservancy, and	)	
Pennsylvania Railroad Harsimus Stem	)	
Embankment Preservation Coalition,	)	
Plaintiffs	)	1:09-cv-01900-CKK
v.	)	
Consolidated Rail Corporation,	)	
Defendant.	)	

DECLARATION of NAOMI HSU

I, NAOMI HSU, make this Declaration under penalties of perjury in support of the Renewed Motion for Summary Judgment filed by plaintiffs Jersey City, et al, in the above referenced Proceeding, and in particular in reply to suggestions that the Harsimus Branch is somehow "severed" from Conrail's lines at or east of Waldo by reason of lack of ownership of underlying properties.

1. I am the Senior Transportation Planner within the Division of City Planning of the government of the City of Jersey City. I earned a Master of City Planning from the University of Pennsylvania in 2004. I am a certified planner by the American Institute of Certified Planners and a licensed Professional Planner by the State of New Jersey.

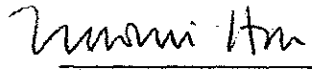
2. The gravamen of my job for the City of Jersey City is to manage and participate in the development and implementation of transportation plans for the City of Jersey City. In this role, I assist in identifying necessary or prudent improvements to transportation facilities, including pedestrian, bicycle, rail transit, bus transit, and road infrastructure, to increase mobility for residents and visitors to Jersey City and to eliminate or alleviate congestion and/or safety hazards. On September 11, 2012, as part of my job, I received at a meeting from representatives of

Consolidated Rail Corporation (Conrail) a survey prepared by James C. Weed for Conrail for Conrail's so-called Palisades property, which includes the extension of the so-called Harsimus Branch from where it goes under the New Jersey Turnpike Extension (represented in the survey as the "New Jersey Turnpike") westerly to a terminus with the Conrail mainline. This property also includes a segment of the National Docks Secondary rail line, which is currently in active rail operation. This property also includes a segment of the former River Line. A true and correct copy, reduced in size only, of that survey is attached hereto in three pages.

3. The first page (inscribed in the lower right hand corner as 1 of 3) shows the location of the old abutments for the trestle that carried the trackage of the Harsimus Branch under the Turnpike Extension from the Sixth Street (or Harsimus) Embankment up to grade near Waldo. The survey shows where the Harsimus Branch crosses the active National Docks Secondary trackage (the rail line indicated by track symbology running horizontally) and a remnant of the connection of Conrail's former River Line to Waldo, which also crossed the National Docks Secondary on a bridge still in place. As indicated in the survey and by such other information as is available to me, the final configuration of the connection of the River Line to the Conrail trackage at Waldo appears to converge with the Harsimus Branch in the vicinity of Waldo, where both lines would presumably have joined with other Conrail trackage, still in place. On the basis of Mr. Weed's survey for Conrail, Conrail's representations to the City, and all other relevant information available to me, Conrail continues to own all the property necessary for railroad purposes between (a) Waldo and (b) that property beginning at approximately the Turnpike Extension that Conrail purported to sell to certain Limited Liability Corporations in 2005 without abandonment or other authorization from the Surface Transportation Board and concerning which City of Jersey City has been pursuing federal railroad law remedies basically since that sale. In particular, page one of

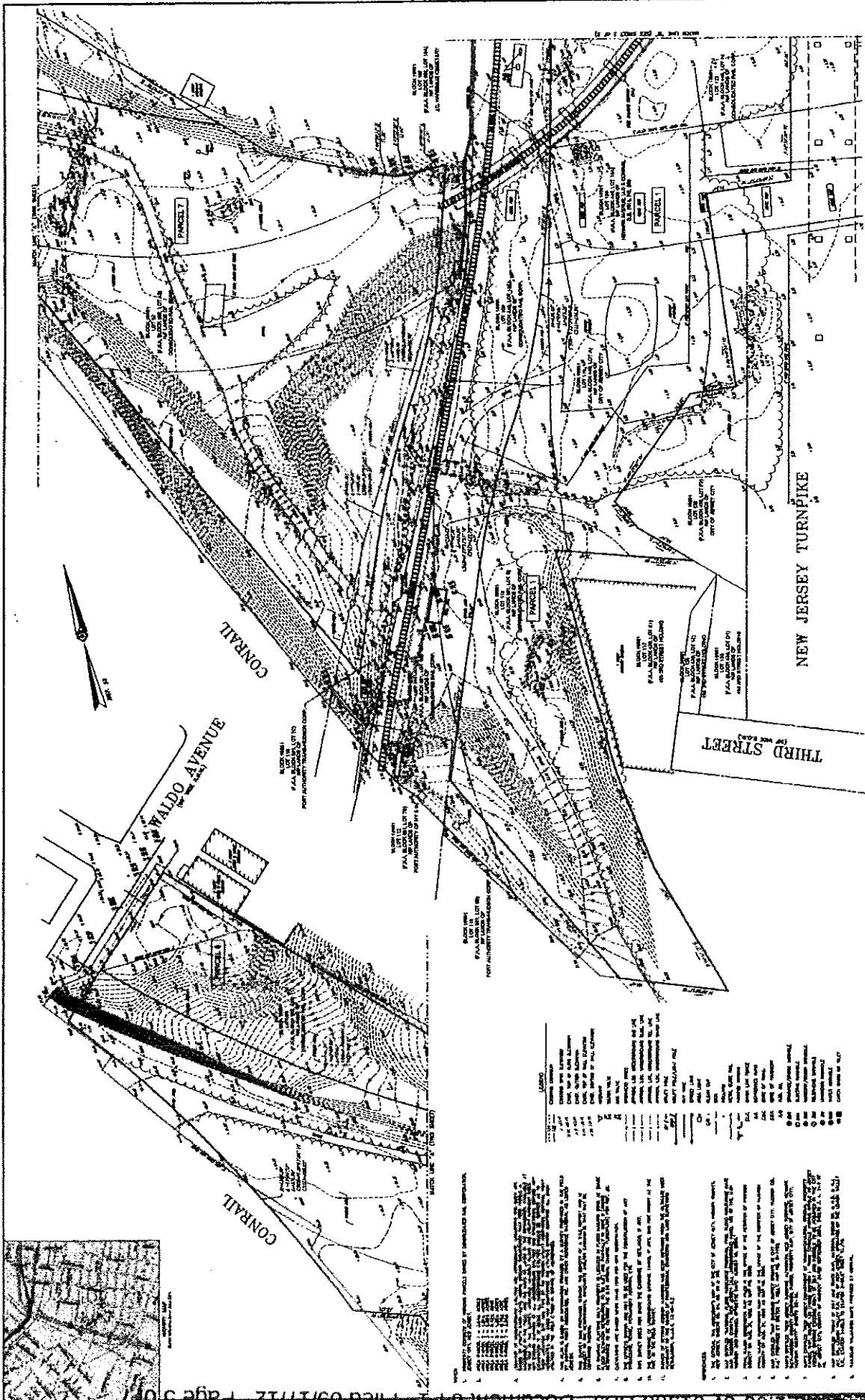
three of the survey indicates that Conrail continues to own the portion of the former River Line which is parallel to (or in any sense overlaps) the Harsimus Branch. The survey thus shows no discontinuities in ownership by Conrail of the relevant parcels from Waldo up to the properties on the Harsimus Branch purportedly sold to the Limited Liability Corporations in 2005.

I declare under penalty of perjury that the foregoing is true and correct.

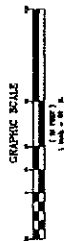


Executed on 9/12/12.

Attachment (true and correct copy of referenced survey)



MAINTENANCE & TOPOGRAPHIC SURVEY CONSOLIDATED RAIL CORPORATION NEW JERSEY TURNPIKE NEW JERSEY CONTROL POINT ALLEGHENY, PA. 1910	
NAME JAMES C. WEED TITLE SURVEYOR DATE 1910	SCALE 1" = 100'



NO.	DESCRIPTION	DATE	BY
1	CONRAD	1910	J. C. WEED
2	WALDO AVENUE	1910	J. C. WEED
3	NEW JERSEY TURNPIKE	1910	J. C. WEED
4	THIRD STREET	1910	J. C. WEED
5	CONRAD	1910	J. C. WEED
6	WALDO AVENUE	1910	J. C. WEED
7	NEW JERSEY TURNPIKE	1910	J. C. WEED
8	THIRD STREET	1910	J. C. WEED
9	CONRAD	1910	J. C. WEED
10	WALDO AVENUE	1910	J. C. WEED
11	NEW JERSEY TURNPIKE	1910	J. C. WEED
12	THIRD STREET	1910	J. C. WEED
13	CONRAD	1910	J. C. WEED
14	WALDO AVENUE	1910	J. C. WEED
15	NEW JERSEY TURNPIKE	1910	J. C. WEED
16	THIRD STREET	1910	J. C. WEED
17	CONRAD	1910	J. C. WEED
18	WALDO AVENUE	1910	J. C. WEED
19	NEW JERSEY TURNPIKE	1910	J. C. WEED
20	THIRD STREET	1910	J. C. WEED

1. CONRAD
 2. WALDO AVENUE
 3. NEW JERSEY TURNPIKE
 4. THIRD STREET
 5. CONRAD
 6. WALDO AVENUE
 7. NEW JERSEY TURNPIKE
 8. THIRD STREET
 9. CONRAD
 10. WALDO AVENUE
 11. NEW JERSEY TURNPIKE
 12. THIRD STREET
 13. CONRAD
 14. WALDO AVENUE
 15. NEW JERSEY TURNPIKE
 16. THIRD STREET
 17. CONRAD
 18. WALDO AVENUE
 19. NEW JERSEY TURNPIKE
 20. THIRD STREET

