

BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-303 (SUB-No. 40X)

WISCONSIN CENTRAL LTD.
- ABANDONMENT EXEMPTION -
IN OUTAGAMIE COUNTY, WISCONSIN

**CITY OF KAUKAUNA, WISCONSIN (CKW)
PETITION FOR NOTICE OF INTERIM TRAIL USE**

238006
ENTERED
Office of Proceedings
March 19, 2015
Part of
Public Record

BACKGROUND

Wisconsin Central Ltd., ("WCL") filed with the Surface Transportation Board (Board) a Verified Notice of Exemption under 49 C.F.R. § 1152 Subpart F – Exempt Abandonments to abandon a portion of its railroad line known as the Fox River Sub, from milepost 112.9 to milepost 114.0, a distance of 1.10 miles, all within the City of Kaukauna, Outagamie County, Wisconsin. This line traverses United States Postal Service Zip Code 54130.

On March 19, 2013, the Common Council of the City of Kaukauna voted to approve, and the Mayor of the City of Kaukauna signed a Statement of Willingness to Accept Financial Responsibility for the railroad line portion pursuant to 49 CFR § 1152.29. This statement is for the entire portion of WCL railroad line referenced in WCL's Verified Notice, extending from milepost 112.9 to milepost 114.0, a distance of 1.10 miles, all within the City of Kaukauna, Outagamie County, Wisconsin.

FILING FEE WAIVED

PURPOSE

Wisconsin Department of Transportation (WisDOT) filed a Petition for Interim Trail Use on behalf of the City of Kaukauna, Wisconsin (“KAU”) pursuant to 49 C.F.R. § 1152.29(a) and 49 C.F.R. § 1152.29(b)(3) on or near March 28, 2013. WisDOT petitioned to obtain a notice of interim trail use for interim highway, bicycle, pedestrian and other trail purposes and railbanking pursuant to 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29 for CKW for the full right of way involved in this proceeding. WisDOT and KAU will use or preserve the land corridor and related real property for interim public transportation and recreational purposes (including highway, pedestrian and other trail), subject to restoration for railroad purposes. KAU currently owns the abutting abandoned railroad corridor trail, which connects to a multi-county trail system. KAU intends to connect the instant corridor with the multi-county trail system. WisDOT supports KAU efforts to acquire and utilize the right of way for public purposes.

STATE AND MUNICIPAL RESPONSIBILITIES

KAU is a city chartered by the State of Wisconsin, pursuant to Chapter 66 of the Wisconsin statutes. Cities are statutorily authorized to acquire real property, and are empowered and required to promote the general welfare of its inhabitants. Secs. 62.04 and 62.22, Wis. Stats.

WisDOT is the designated state agency in rail matters in the State of Wisconsin. 49 CFR §1152.2(g), 49 C.F.R. § 266.1 and Ch. 85, Wis. Stats. WisDOT is responsible for all state and federally-aided highway construction and all state and federally-aided airport construction in Wisconsin. Secs. 84.01(2) and 114.32(1) and (5), Wis. Stats. WisDOT has the statutory first right to acquire for present or future transportation, recreational or scenic purposes any property used in operating a railroad that is abandoned in Wisconsin. Sec. 85.09(2), Wis. Stats.

Pursuant to their respective duties and powers, WisDOT and KAU are working collaboratively to use the corridor for recreational trail use.

REQUEST FOR EXTENSION OF NEGOTIATING PERIOD

On or near March 28, 2013, WisDOT requested that the Board grant KAU a notice of interim bicycle, pedestrian and other trail use and rail banking condition to accomplish the above public purposes. WisDOT was and remains interested in having KAU acquire and use the right of way of the rail line being abandoned for interim bicycle, pedestrian or other trail use and rail banking. The petition included a Statement of Willingness to Assume Financial Responsibility, executed by the Mayor of the City of Kaukauna.

KAU's acquisition of the corridor for present and future transportation purposes as stated above is consistent with all Congressional purposes and neither this alternative to abandonment nor discontinuance permitted by the Board conditioned as requested by KAU would be inconsistent with or disruptive of potential future rail use.

In response to the WisDOT petition, on service date April 18, 2013, the Board did grant the request for NITU, under 16 U.S.C. Sec. 1247(d) and 49 C.F.R. Sec. 1152.29, with a deadline of October 15, 2013 to reach an agreement.

KAU and WCL continued good faith, productive negotiations for KAU to acquire the property. KAU completed the acquisition of adjoining properties for the purpose of a trail extension, and remains interested in acquiring this property for future trail use. KAU sought an extension of the negotiation period by petition dated December 18, 2013. The Board granted an extension until April 14, 2014, by decision, service date December 24, 2013. Based on continuing work, including mapping and surveying the property to identify exactly what portion of the corridor may be needed for switching, and what portion may be sold to KAU, KAU filed a petition to extend the negotiation

period for 180 days with the Board on March 18, 2014. On service date March 27, 2014, the Board did extend the negotiation period for 180 days until October 11, 2014.

Since then, based upon successful negotiations, the City of Kaukauna Common Council approved the acquisition proposal for the property with the closing expected on or before April 30, 2015.

The transaction is close to complete, but the parties need more time to complete the transaction. KAU therefore, respectfully requests that the Board grant an extension of the negotiation period for 180 days, in which time KAU hopes to close the deal.

CONCLUSION

For the foregoing reasons, and because KAU is negotiating in good faith with WCL to acquire this property for NITU, respectfully requests the Board extend for 180 days the negotiation period to execute a trail use agreement for the land corridor and related real property referenced in this proceeding, that WCL railroad line from milepost 112.9 to milepost 114.0, a distance of 1.10 miles, all within the City of Kaukauna, Outagamie County, Wisconsin. This project will allow all forms of transportation to be developed and utilized in a unified, interconnected, economically efficient and environmentally sound manner.

Respectfully Submitted,

Kathleen Chung

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March 19, 2015

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing Petition for NITU in regards to AB303 40, by electronic mail, or regular mail pursuant to 49 C.F.R. §1104.12, this 19th day of March, 2015, on all parties of record on the service list.

A handwritten signature in cursive script, reading "Kathleen Chung", is written over a horizontal line.

Kathleen Chung, Attorney
State Bar no. 1032802
Wisconsin Department of Transportation
Office of General Counsel