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ENTERED
Office of Proceedings
September 25, 2014
Part of
Public Record

25 September 2014
By Express Delivery

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, D.C. 20423-0001

Re: AB 167 (Sub-no. 1189X): Conrail - Aban.
Exemption - In Hudson County,
and related proceedings
AB 55 (Sub-no. 686X): CSX- Disc. Exemption,
AB 290 (Sub-no. 306X): NS Rwy - Disc. Exemption

MOTION FOR CLARIFICATION; EXPEDITIOUS TREATMENT
REQUESTED (no later than 2 October 2014)

Dear Ms. Brown:

This is a letter motion for clarification on behalf of City of Jersey City (City) in connection with the protective order issued at the behest of CNJ on 24 September 2014 in this proceeding. The protective order appears to be in standard format, allowing parties to designate commercially sensitive information to be protected from public disclosure. CNJ had sought the protective order on the ground that 212 Marin Boulevard LLC, et al ("the LLCs," a commercial real estate developer) was seeking information relating to an "OFA" from it. The LLCs are seeking broad discovery of potentially highly sensitive commercial information from the City outside of STB discovery procedure under New Jersey's OPRA statute, N.J.S.A. 47-1A-1 to -11. City's compliance with the LLCs' unconventional discovery methods will result in conflict with the protective order or in litigation from the LLCs seeking payments of attorneys' fees under OPRA for failure to respond in seven days to their OPRA request. This is unfair to City and City

accordingly requests a clarification of the protective order. Because City has only seven days to respond to the LLCs' unconventional discovery under OPRA from September 23, City requests expeditious treatment. City's response is due, by City's calculation, on 2 October 2014. A Board clarification even on that date may provide insufficient time for the City to respond in accordance with the protective order, as a result of the LLCs' refusal to use STB discovery in favor of OPRA.

Background. As this Board knows, City of Jersey City takes the position that Consolidated Rail Corporation's ("Conrail's") unlawful sale of a large portion of the Harsimus Branch to the LLCs in 2005 should be voided, and that Conrail should be directed to transfer the property on equivalent terms to the City as a remedy for, inter alia, the violation of NHPA section 110(k) and evasion of STB jurisdiction and remedies that the unlawful sale represents. This Board's "OFA" remedy would result in similar relief. Either form of relief is consistent with N.J.S.A. 48:12-125.1 which is also now applicable that STB has jurisdiction over this matter. City is interested in the most expeditious means to achieve meaningful relief as set forth above from the unlawful 2005 sale and subsequent actions aggravating it taken by Conrail and the LLCs. Rails to Trails Conservancy (RTC) and the Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition (Coalition) support the City's position. Consistent with this end, and an assessment of rail shipper interest, the City Council on Tuesday evening (23 September) adopted an ordinance authorizing an "OFA." The Mayor is expected to sign the Ordinance into law shortly. A copy of the Ordinance is attached as Exhibit A.

LLCs' non-STB discovery of material related to STB proceedings. City specifically requested the LLCs to use STB discovery procedures in relation to STB proceedings, and the LLCs refused to do so. The instead employ state law "OPRA" requests. A copy of the OPRA request received from the LLCs' law firm on September 23, 2014 is attached as Exhibit B. Under OPRA, City has seven days to respond. As is readily apparent from the OPRA request, it demands a number of documents from the City in connection with a possible OFA, which CNJ railroad may deem commercially sensitive and thus covered by the STB protective order entered in AB 167-1189X today. Since the LLCs submit OPRA requests to the City on a regular basis, the September 23 request is almost certainly the first of many more

until the end of this proceeding, and probably beyond. Both City and CNJ filed notices of intent to file OFAs on or by the due date for such requests (March 27, 2009). The OFA matter accordingly has been pending for almost five and one half years. Essentially any information that may have flowed between City and CNJ would relate to the pending OFA notices of intent. City does not wish to act contrary to the protective order. On the other hand, if City does not make available documents on an unrestricted basis and outside the protective order, the LLCs - if they do as they have consistently done in the past -- will contend that the City is in violation of OPRA, sue in state court, and seek attorneys' fees.

As a means to minimize this conflict, City by email late today forwarded the OPRA request filed by the LLCs seeking CNJ information to CNJ. City requested CNJ to respond to the request, and to copy City's attorneys on the response, and, in the future, to send anything that CNJ sends to the City to Mr. Horgan (the LLCs' apparent lead attorney) and the City's attorneys at the same time. City expects that CNJ will respond to the LLCs.

However, City is concerned that CNJ will respond to the LLCs' unconventional discovery as provided under the protective order, now or in response to future OPRA requests, and the LLCs will object on the ground that it is not applicable to their OPRA discovery. The LLCs will then file more state court proceedings against the City, seeking attorneys' fee awards against the City if the City does not disclose information to which the protective order applies without the protective order restrictions and limitations. City does not and should not be placed in the position of being faced with the LLCs demanding attorneys' fee awards in state courts over the protective order and sanctions motions before this Board over compliance with OPRA.

Even if paragraph 9 of the protective order allows the LLCs totally to subvert the intent of the protective order insofar as the City holds information, paragraph 8 of the protective order requires City to provide three "working days" notice to any party in advance of disclosure. It is essentially impossible to comply with a three working day notice provision in connection with a seven day response statute, even with dedicated attorneys working full time to respond to the LLCs' parade of OPRA

requests. It simply takes time to evaluate papers, get in touch with shippers and shortlines, and even minimally coordinate. In addition, certain provisions of the protective order (e.g., paragraphs 3 and 4) require return or destruction of documents. Counsel is informed this conflicts with OPRA. All the provisions regarding filing of briefs under seal that contain information protected under the order would appear to be subject to disclosure under OPRA if the briefs are filed on behalf of the City. Of course, the City could decline to sign the undertaking, so as not to receive any confidential information, but then the LLCs, Conrail and CNJ might avail themselves of the protective order to refuse to make relevant documents available to the City because the City cannot sign the undertaking.¹ If the LLCs, Conrail and CNJ refuse to make unprotected copies of their pleadings available to the City should the City be unable to sign the undertaking (as the protective order appears to envision when no counsel can sign the undertaking without fear of lawsuits), then there would appear to be a denial of due process.

City is unaware of any instance in which non-STB discovery of this nature has ever been sought against potential OFA applicants by developers opposed to STB processes in general and to any use of OFA in particular. The strategy and tactics of the LLCs and Conrail has been to wear down City et al in their effort to acquire the Harsimus Branch, and City fears it will continue to face multiple unconventional discovery and OPRA litigation demands until the matters at issue in AB 167-1189X are resolved. The conflicts between New Jersey's OPRA statute and the protective order are thus a major concern at least until all OFA-related matters are finalized.

Motion to clarify. City therefore requests STB to clarify whether seven day OPRA disclosures pursuant to state law in connection with the pending notices of intent to OFA is

¹ City has document requests pursuant to STB rules pending against all three of these entities. City does not construe its document requests to seek any commercially sensitive information, but fears that the City's inability at this time to execute an "undertaking" will result in a refusal to provide information that cannot be contested because the City is unable to sign the protective order due to conflict between OPRA and the protective order.

preempted under 49 U.S.C. 10501 or other applicable statute, and in particular whether the protections afforded in this Board's protective order served 24 September 2014 in AB 167-1189X apply to the LLCs "OPRA" document demands of the City.

This clarification is important for another reason: it will be more difficult for the City to obtain reliable information from shippers in connection with making showings that this Board may require in order for City be allowed to OFA if the shippers feel their confidential commercial information will be available to the public at large through OPRA requests. In addition, the LLCs since 2005 have maintained a lawsuit for damages under federal civil rights statutes and state tort law against City, a named individual, and various "John Does" for asserting STB remedies against the unlawful 2005 sale of the Harsimus Branch to the LLCs. The manager of the LLCs acknowledges making threats to bankrupt anyone he views as taking a position contrary to his interests in connection with the Harsimus Branch, and specifically references that civil rights/tort damages suit, and he has already sued additional individuals, including the undersigned counsel for the City, for resistance to the unlawful sale.² In light of these threats and actual SLAPP type suits, at least some shippers may be reluctant even to express interest in an OFA for fear of spurious litigation, discovery requests, or other retaliation from the LLCs or those affiliated with the LLCs. City therefore seeks clarification that the protective order applies to all material requested by the LLCs from the City in connection with the pending STB proceeding. If the protective order applies, City can offer some measure of assurance that shippers will not be subject to harassment by the LLCs.

The undersigned apologizes for making this motion for clarification in the form of a letter, but the undersigned is leaving the country on a previously scheduled matter for two weeks, the issue has come to a head with the arrival of the 23 September 2014 OPRA request and the issuance of 24 September 2014 of a protective order. City now would prefer a clarification on whether the protective order applies to

² All these matters are already of record. City et al's most recent quotes and cites are in the Additional Supplemental Comments on the EA filed on 25 September 2014 in this proceeding pp. 9-10 n.5.

litigation with the LLCs over attorneys' fees if we comply with the protective order or this Board's sanctions if we do not. As noted, City attempted to avoid this issue by requesting the LLCs to employ STB discovery procedures the same as all other parties, but they refused as of Friday, 19 September 2014, in an email communication by their attorney (Mr. Horgan) to the undersigned.

City would appreciate clarification as soon as possible, even if the undersigned is out of the country, so City can comply with the protective order without fear of attorneys' fee awards against it under OPRA. However, even if the City is advised that OPRA requests are the way to avoid the protective order, then the City at least will be protected from sanctions under this Board's rules for complying with OPRA.

In addition, City may be able to designate one or more attorneys to execute the undertaking in order to receive allegedly protected information from Conrail, the LLCs and CNJ after clarification of the interface between the protective order and the LLCs' current and future OPRA requests. If the protective order does not apply to OPRA requests, then City's attorneys signing the undertaking cannot be sanctioned when they participate in City's OPRA disclosure of the allegedly protected information and Conrail, the LLCs and CNJ will nonetheless be required to provide the information to the City.

City would prefer to be able to comply with this Board's orders without more lawsuits against City from the LLCs. City would also prefer to be able to prepare to make its OFA without fear that interested parties are unable to cooperate for fear of intimidation or disclosure of commercially sensitive information to individuals in the LLCs other than as provided in the protective order.³

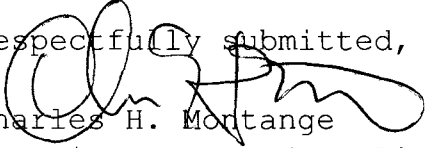
By my signature below, I certify service by US Mail, postage pre-paid first class or equivalent on the date above upon the service list attached. Because City is seeking expeditious treatment, City in addition is supplying this letter

³ Nothing herein waives any attorney-client, work product, or other protection in the nature of privilege for information in the possession of the City.

motion to counsel for Conrail and the LLCs and to the CNJ representative by email attachment.

Thank you for your assistance in this matter.

Respectfully submitted,


Charles H. Montange
for City, RTC and Coalition

Encls. (orig and ten of 23 Sept. Ordinance, 23 Sept. OPRA request, and 24 Sept. email to CNJ)
cc. Service list (w/encl.), J.C. Law Dept. (w/encl.), RTC, Coalition

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Vice President, COO
CNJ Rail Corporation
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Watchung, NJ 07069

Exhibit A

City Clerk File No. Ord. 14.103
Agenda No. 3.A 1st Reading
Agenda No. 4.A 2nd Reading & Final Passage



ORDINANCE OF JERSEY CITY, N.J.

COUNCIL AS A WHOLE
offered and moved adoption of the following ordinance:

CITY ORDINANCE 14.103

TITLE: ORDINANCE AUTHORIZING THE CITY OF JERSEY CITY TO FILE AN OFFER OF FINANCIAL ASSISTANCE [OFA] TO ACQUIRE CERTAIN PROPERTY COLLECTIVELY KNOWN AS THE SIXTH STREET EMBANKMENT FROM CONRAIL AND SUCH OTHER CONRAIL PROPERTIES AS ARE NECESSARY TO CONNECT WITH THE MAIN LINE IN THE VICINITY OF CP WALDO

THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY DOES ORDAIN:

WHEREAS, Consolidated Rail Corporation [Conrail] was the owner of certain property designated as Block 212, Lot M., Block 247, Lot 50A, Block 280, Lot 50A, Block 317.5, Lot 50A, Block 354.1, Lot 50A, Block 389.1, Lot 50 and Block 415, Lots 50 and 50.PL, Block 446, Lot 18A on the City of Jersey City's Official Tax Assessment Map and more commonly known as the Sixth Street Embankment [Property]; and

WHEREAS, the Property is part of a line of railroad known as the Harsimus Branch, which was the former main line of the Pennsylvania Railroad into Jersey City; and

WHEREAS, lines of railroad may not be abandoned and converted into non-rail use without the prior authorization of the Surface Transportation Board [STB], a federal agency, even if the railroad owning the line has ceased to use it for rail purposes; and

WHEREAS, Conrail ceased using the Property in or around 1996; and

WHEREAS, the Property and its extension to CP Waldo (in the vicinity of Chestnut and Waldo Streets) is the last underutilized transportation corridor available to address passenger and freight transportation needs in congested Downtown Jersey City; and

WHEREAS, the property also is part of the preferred route of the East Coast Greenway and is listed on the State Register of Historic Places; and

WHEREAS, in 2004 and 2005, City of Jersey City by adoption of Ordinances 04-096 and 05-064 authorized acquisition of the Property for its own use as open space and for eventual construction of a public park; and

WHEREAS, notwithstanding the City's expression of interest in acquiring the property in 2005 Conrail sold the Property to a private party [Developer] for \$3 million for non-rail purposes without any prior STB rail abandonment authorization; and

WHEREAS, the City of Jersey City along with Embankment Preservation Coalition [Coalition] and Rails to Trails Conservancy [RTC] filed a petition for a declaratory order at STB for a determination that the Harsimus Branch was a line of railroad such that the 2005 sale was illegal, and otherwise objected to the sale and redevelopment of the Property; and

WHEREAS, Conrail and the Developer sought to evade STB regulation (including historic preservation regulation by STB) by claiming that the Harsimus Branch was not a line of railroad; and

ORDINANCE AUTHORIZING THE CITY OF JERSEY CITY TO FILE AN OFFER OF FINANCIAL ASSISTANCE [OFA] TO ACQUIRE CERTAIN PROPERTY COLLECTIVELY KNOWN AS THE SIXTH STREET EMBANKMENT FROM CONRAIL AND SUCH OTHER CONRAIL PROPERTIES AS ARE NECESSARY TO CONNECT WITH THE MAIN LINE IN THE VICINITY OF CP WALDO

WHEREAS, the STB ruled that the Property was part of a line of railroad, but this ruling was appealed by Conrail and the Developer, resulting in litigation in federal courts that ultimately determined in 2013 that the Harsimus Branch in fact was a line of railroad for which STB abandonment authorization was required; and

WHEREAS, the Developer in some cases joined by Conrail filed multiple litigations against the City of Jersey City and its boards, agencies and employees as well as the Coalition and RTC and attorneys for City, Coalition and/or RTC; and

WHEREAS, the STB in a Decision served August 11, 2014, rejected the Developer's most recent efforts to assert that STB lacked jurisdiction over the Harsimus Branch; and

WHEREAS, in another Decision served August 11, 2014, STB reinstituted an abandonment proceeding (AB 167-Sub no. 1189X) for the Harsimus Branch from Marin Boulevard to CP Waldo (vicinity of Chestnut and Waldo Streets) in Jersey City; and

WHEREAS, an important remedy afforded under federal law to communities facing abandonment of lines is the Offer of Financial Assistance [OFA], whereby a community may purchase on terms set by the STB a line or portion thereof interconnecting to the freight rail system for, as construed by STB, continued freight rail and other compatible public purposes; and

WHEREAS, the governing statute (49 U.S.C. 10904) requires that the successful OFA applicant neither transfer nor discontinue service over such line for two years after purchase; and

WHEREAS, the City wishes to use the OFA remedy to secure the corridor for continued freight and passenger rail service in order to relieve congestion and pollution on City streets, especially from trucks, and to employ any surplus property as open space and for other compatible public purposes, all consistent with preservation of the historic Sixth Street Embankment; and

WHEREAS, under STB precedent in OFA proceedings, the presumptive price of fee title to the Property is the price paid by the Developer (\$3 million) and the presumptive price of easement title to the Property is zero; and

WHEREAS, the City under the OFA remedy also will need to acquire additional property to link to the national freight rail network (National Docks Secondary and/or CP Waldo), which will require a corridor of no less than 30 feet width and if otherwise feasible 50 to 60 feet width minimum across property believed owned by Conrail extending as far as the National Docks Secondary and/or by easement over said National Docks Secondary to CP Waldo; and

WHEREAS, the City wishes to comply fully with the requirements of 49 U.S.C. 10904; and

WHEREAS, pursuant to N.J.S.A. 48:12-125.1, City is also authorized to acquire Conrail properties subject to STB abandonment proceedings on terms offered by Conrail to other purchasers; and

WHEREAS, in order to pursue the OFA remedy, City will be required to pay an application fee of \$1,500, and, in order to obtain terms and conditions of purchase from STB, an additional fee of \$23,100; and

WHEREAS, in order to invoke the OFA remedy, City must also be prepared to offer expert evidence on valuation issues and upon other issues pursuant to conditions imposed by STB; and

WHEREAS, STB's terms and conditions ordinarily require conveyance of the property by quitclaim deed, as is where is; and

ORDINANCE AUTHORIZING THE CITY OF JERSEY CITY TO FILE AN OFFER OF FINANCIAL ASSISTANCE [OFA] TO ACQUIRE CERTAIN PROPERTY COLLECTIVELY KNOWN AS THE SIXTH STREET EMBANKMENT FROM CONRAIL AND SUCH OTHER CONRAIL PROPERTIES AS ARE NECESSARY TO CONNECT WITH THE MAIN LINK IN THE VICINITY OF CP WALDO

WHEREAS, once STB sets terms and conditions, the OFA applicant is ordinarily given no less than ten (10) days to accept or to reject the terms and conditions; and

WHEREAS, if the terms and conditions are accepted, they are binding on the applicant; and

WHEREAS, funds are available for all costs to be incurred pursuant to this ordinance in Account No. 04-215-55-887-990.

NOW, THEREFORE, BE IT ORDAINED by the Municipal Council of the City of Jersey City that:

1. The Corporation Counsel or his duly designated agent and the Business Administrator are authorized to file an Offer of Financial Assistance [OFA] to acquire title to the following property for purposes of continued freight rail and other compatible public purposes including passenger rail, open space, trail and historic preservation: Block 212, Lot M., Block 247, Lot 50A, Block 280, Lot 50A, Block 317.5, Lot 50A, Block 354.1, Lot 50A, Block 389.1, Lot 50, Block 415, Lots 50 and 50.PL, and Block 446, Lot 18A, on the City of Jersey City's Official Tax Assessment Map and more commonly known collectively as the Sixth Street Embankment [Property] for the presumptive sum of \$3 million for fee title to the portion of the Property purportedly sold to the Developer for that price in 2005, and for an additional amount such that the total expenditure does not exceed \$5.7 million for the Property and for all remaining property necessary to achieve a connection to the national freight rail network.
2. The Corporation Counsel of the City of Jersey City or his duly designated agent and the Business Administrator are authorized and directed to undertake any actions and execute any documents necessary or appropriate to acquire any property by purchase from Conrail under an Offer of Financial Assistance as provided in paragraph 1. In the event the STB sets terms and conditions exceeding \$5.7 million under the OFA, the Corporation Counsel shall advise the Council immediately so that the Council may accept or reject such terms and conditions within the time period set by STB.
3. The Corporation Counsel or the Business Administrator are authorized and directed to solicit proposals to engage the services of surveyors, title insurance companies, appraisers and any other professionals whose services are necessary or appropriate to pursue an OFA and otherwise to implement the purposes of this ordinance.
4. The Corporation Counsel or the Business Administrator are authorized and directed to take appropriate measures to meet the City's obligation, in the event of a successful OFA, to seek to provide rail service per 49 U.S.C. 10904, including, but not necessarily limited to, (a) to solicit proposals for construction or operation of interim freight rail transload facilities to serve freight rail customers of the Harsimus Branch on suitable property in the event City acquires all or a portion of the Harsimus Branch at issue in AB 167 Sub 1189X pursuant to an OFA, provided that respondents are encouraged to limit subsidization requests for construction of a switch and trackage or for operation in light of the possible interim nature of said transload operations, pending planning for reconstruction and further operation, and (b), in the event City successfully acquires the Harsimus Branch pursuant to STB's OFA procedures, further to solicit proposals from consultants to prepare plans and recommendations (including for contributions to offset reconstruction costs) for restoration of the Harsimus Branch for rail purposes to the extent practicable consistent with other public purposes.

ORDINANCE AUTHORIZING THE CITY OF JERSEY CITY TO FILE AN OFFER OF FINANCIAL ASSISTANCE (OFA) TO ACQUIRE CERTAIN PROPERTY COLLECTIVELY KNOWN AS THE SIXTH STREET EMBANKMENT FROM CONRAIL AND SUCH OTHER CONRAIL PROPERTIES AS ARE NECESSARY TO CONNECT WITH THE MAIN LINE IN THE VICINITY OF CP WALDO

5. In the event STB does not permit City to OFA the Property, or the OFA is unsuccessful, the Corporation Counsel with the cooperation of the Business Administrator are authorized and directed to pursue all other possible remedies that may result in acquisition of the Property, including connections for rail and other public purposes such as trail at the STB and by means of N.J.S.A. 48:12-125.1.
6. This Ordinance shall take effect at the time and in the manner as provided by law.
7. This Ordinance shall not rescind Ordinance 04-096 or 05-064 which authorized the acquisition of the Embankment solely for open space and a park by purchase or condemnation.
8. The City Clerk and the Corporation Counsel be and they are hereby authorized and directed to change any chapter numbers, article numbers and section numbers in the event that the codification of this Ordinance reveals that there is a conflict between those numbers and the existing code, in order to avoid confusion and possible accidental repealers of existing provisions.

NOTE: All material is new; therefore, underlining has been omitted.
For purposes of advertising only, new matter is indicated by bold face
and repealed matter by *italic*.

APPROVED AS TO LEGAL FORM

Corporation Counsel

Certification Required ☐

Not Required ☐

APPROVED: _____

APPROVED: _____

Business Administrator

Ordinance of the City of Jersey City, N.J.



ORDINANCE NO. Ord. 14.103
TITLE: J.A. SEP 10 2014 4 A

Ordinance authorizing the City of Jersey City to file an Offer of Financial Assistance (OFA) to acquire certain property collectively known as the Sixth Street Embankment from Conrail and such other Conrail properties as are necessary to connect with the main line in the vicinity of CP Waldo.

RECORD OF COUNCIL VOTE ON INTRODUCTION SEP 10 2014 7-0-2											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
GAJEWSKI	✓			YUN	✓			RIVERA	✓		
RAMCHAL	ABSTAIN			OSBORNE	✓			WATTERMAN	✓		
BOGGIANO	ABSTAIN			COLEMAN	✓			LAVARRO, PRES.	✓		

RECORD OF COUNCIL VOTE TO CLOSE PUBLIC HEARING											
Councilperson				moved, seconded by Councilperson				to close P.H.			
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
GAJEWSKI				YUN				RIVERA			
RAMCHAL				OSBORNE				WATTERMAN			
BOGGIANO				COLEMAN				LAVARRO, PRES.			

✓ Indicates Vote

N.V.--Not Voting (Abstain)

SPEAKERS:

RECORD OF COUNCIL VOTE ON AMENDMENTS, IF ANY											
Councilperson				moved to amend Ordinance, seconded by Councilperson				& adopted			
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
GAJEWSKI				YUN				RIVERA			
RAMCHAL				OSBORNE				WATTERMAN			
BOGGIANO				COLEMAN				LAVARRO, PRES.			

RECORD OF FINAL COUNCIL VOTE											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
GAJEWSKI				YUN				RIVERA			
RAMCHAL				OSBORNE				WATTERMAN			
BOGGIANO				COLEMAN				LAVARRO, PRES.			

✓ Indicates Vote

N.V.--Not Voting (Abstain)

Adopted on first reading of the Council of Jersey City, N.J. on SEP 10 2014

Adopted on second and final reading after hearing on _____

This is to certify that the foregoing Ordinance was adopted by the Municipal Council at its meeting on _____

Robert Byrne, City Clerk

*Amendment(s):

APPROVED:

Rolando R. Lavarro, Jr., Council President

Date _____

APPROVED:

Steven M. Fulop, Mayor

Date _____

Date to Mayor _____

3.A. Ord. 14.103

RESOLUTION FACT SHEET - NON-CONTRACTUAL

This summary sheet is to be attached to the front of any resolution that is submitted for Council consideration. Incomplete or vague fact sheets will be returned with the resolution.

Full Title of Ordinance/Resolution

ORDINANCE AUTHORIZING THE CITY OF JERSEY CITY TO FILE AN OFFER OF FINANCIAL ASSISTANCE [OFA] TO ACQUIRE CERTAIN PROPERTY COLLECTIVELY KNOWN AS THE SIXTH STREET EMBANKMENT FROM CONRAIL AND SUCH OTHER CONRAIL PROPERTIES AS ARE NECESSARY TO CONNECT WITH THE MAIN LINE IN THE VICINITY OF CP WALDO

Initiator

Department/Division	Law	Law
Name/Title	Jeremy Farrell	Corporation Counsel
Phone/email	(201) 547-4667	JFarrell@icnj.org

Note: Initiator must be available by phone during agenda meeting (Wednesday prior to council meeting @ 4:00 p.m.)

Resolution Purpose

(Part I)

This ordinance authorizes the relevant City departments to file for, and to pursue, a federal eminent domain remedy (49 USC 10904, called the "OFA" remedy) as administered by the federal Surface Transportation Board (STB) to acquire an unused portion of a line or railroad called the Harsimus Branch (Marin Blvd. to CP Waldo) which contains the Sixth Street Embankment, a City Historic Landmark. City has sought to acquire at least portions of this property since before Conrail in 2005 illegally sold the Embankment parcels to a developer without the required STB abandonment authorization. Conrail and the developer for years sought to prevent STB from exercising its jurisdiction. Now, an abandonment proceeding is finally pending, in which STB affords an OFA remedy. As a condition for invoking the remedy, the City must continue efforts to provide freight rail service on the line for two years before it may seek discontinuance authority.

I certify that all the facts presented herein are accurate.

Signature of Department Director

Date

RESOLUTION FACT SHEET - NON-CONTRACTUAL

This summary sheet is to be attached to the front of any resolution that is submitted for Council consideration. Incomplete or vague fact sheets will be returned with the resolution.

Full Title of Ordinance/Resolution

ORDINANCE AUTHORIZING THE CITY OF JERSEY CITY TO FILE AN OFFER OF FINANCIAL ASSISTANCE [OFA] TO ACQUIRE CERTAIN PROPERTY COLLECTIVELY KNOWN AS THE SIXTH STREET EMBANKMENT FROM CONRAIL AND SUCH OTHER CONRAIL PROPERTIES AS ARE NECESSARY TO CONNECT WITH THE MAIN LINE IN THE VICINITY OF CP WALDO

Initiator

Department/Division	Law	Law
Name/Title	Jeremy Farrell	Corporation Counsel
Phone/email	(201) 547-4667	JFarrell@jcnj.org

Note: Initiator must be available by phone during agenda meeting (Wednesday prior to council meeting @ 4:00 p.m.)

Resolution Purpose**(Part II)**

The OFA remedy affords an efficient means to acquire the last underutilized transportation corridor into downtown for continued transportation (including rail) use, as well as open space uses, all consistent with historic preservation, all the way from Marin to CP Waldo (roughly Waldo or Chestnut Streets). If City is allowed to file for the remedy, STB will set the terms and conditions of sale, including price, based on the price paid by the developer to Conrail for the Embankment parcels (\$3 million), and appraisals for any portions remaining under Conrail ownership. City is expected to have only a brief period (expected to be approximately 10 days) to accept the terms. If the terms are accepted, City ordinarily would be required to close within 60 days. The ordinance also contains provisions to equip the City to make the OFA, and to be in a position to accept terms and to close on a transaction within time periods set by STB.

I certify that all the facts presented herein are accurate.

Signature of Department Director

Date

Exhibit B

Robert Byrne

From: DeArmas, Jorge [jdearmas@lawwmm.com]
Sent: Tuesday, September 23, 2014 11:29 AM
To: Robert Byrne
Cc: Daniel E. Horgan
Subject: OPRA Request - 247 Manila Avenue LLC

Dear Mr. Byrne:

We represent 247 Manila Avenue, LLC, who owns land the City contends is part of a regulated line of rail known as the Harsimus Branch, the Harsimus Rail Line, or the Sixth Street Embankment.

Pursuant to the Common Law Right of Access and the Open Public Records Act the following documents in the possession or control of the City of Jersey City dated, sent or received after January 1, 2014 through the present we are requesting the following records be provided to 247 Manila Avenue, LLC, via e-mail to my attention:

1. Any "Proposal(s)" by CNJ Rail Corporation to the City of Jersey City, NJ regarding a line of freight railroad that ran from the vicinity of Waldo Avenue in Jersey City, across Newark Avenue, and then parallel to the south side of Sixth Street on raised stone structures otherwise commonly known as the "Sixth Street Embankment" or "Harsimus Rail Line" including but not limited to any proposal regarding an "Offer of Financial Assistance."
2. Any document sent to CNJ Rail Corporation by the City during 2014 that requested or solicited submission of any proposal(s) as described and limited in item #1, above (i.e. request or solicitation for proposal)
3. Any document received by the City from CNJ Rail Corporation during 2014 that transmitted any proposal(s) as described and limited in item #1, above, to the City.
4. If not otherwise provided in response to Items 1, 2 or 3, any written or electronic document sent to CNJ Rail Corporation by the City during 2014 that responded to the submission of any proposal(s) as described and limited in item #1, above. This request is for documents addressed or sent to CNJ Rail with respect to any document described in item #1, above that:
 - a. Acknowledges receipt of CNJ Rail's document.
 - b. Responds to CNJ Rail's document.
 - c. Requests CNJ Rail to submit any additional information with respect to the subject of CNJ Rail's document.

Likely Location of Requested Documents

Documents requested are most likely in the possession of the following persons, and/or such persons have knowledge of the location of requested documents. Those persons are: Charles Montange, Esq., and John J. Curley, Esq. (both outside counsel to the City), Jeremy Farrell, Corporation Counsel for Jersey City (who prepared and proposed City Ordinance 14.103 concerning rail freight service on the Harsimus Branch), David, Donnelly, JCHPC member Stephen Gucciardo, the Chief Financial Officer, the Business Administrator, Robert Cotter, Joanne Monahan, Esq., a member of the City's Law Department, Councilwoman Candice Osborne (in whose Ward E the Harsimus Branch is Located), and Maureen Crowley, who is the coordinator of the Embankment Acquisition Steering Committee (Embankment Steering Committee). This listing is provided as an aid to the Custodian of Documents in securing compliance with this request. It is not intended as a limitation of the request, or a limitation on the City's searches and inquiries for requested documents.

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Exhibit C

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Inbox (69)

Drafts (24)

Sent

Spam (11)

Trash (28)

Folders (1)

Bhutan

boulder condo

cave paintings (1)

Chats

deleted

H branch bridge est

H branch ofa

H branch title

H branch video

hr

Humboldt township

india

Jersey -- CNJ discovery..

Kossuth County

Matterhorn

Ojai - Hannah wedding..

Rock Island in Missouri

SentMail

TAHITI

tickets

travel voucher

united cle

virginia bridge

Virginia pipeline

Recent

Disclosure of documents to D. Horgan for the LLCs

Me

Sep 24 at 3:45 PM

To: Eric Strohmeyer

CC: John McKinney

BCC: jfarrell@cnj.org, MDougherty@cnj.org, Andrea Ferster

Mr. Strohmeyer, City of Jersey City received the attached OPRA request on 23 September 2014 from the law firm (Mr. Horgan) for the 212 Marin Boulevard LLC, et al (Steven Hyman) group. That request speaks for itself, but seems to ask for any "proposals" CNJ and others may have submitted to the City bearing on or associated with or being in the nature of an "OFA." I have never understood the relationship of Mr. Riffin to CNJ. I am told that he claimed to the City Council last night that he was a major stockholder in CNJ. If he has sent any documents responsive to the OPRA requests to the City, then those should be dealt with as if from CNJ. I personally choose to have no business with Mr. Riffin and do not receive any communication from him, but return it without reviewing it. But if Mr. Riffin speaks for CNJ, then what he has responsive should be furnished the LLCs' lawfirm as well. City requests that you forward directly to Mr. Horgan's firm any documents you (CNJ and its reps) may have provided to the City or me responsive to this request. Please simultaneously send a copy of all those documents as well to

John McKinney

Assistant Corporation Counsel

City of Jersey City

Department of Law

280 Grove Street

Jersey City, New Jersey 07302

Telephone: 201-547-5179

Fax: 201-547-5230

The OPRA request from Mr. Horgan's firm indicates that CNJ's documents responsive be sent to jdearmas@lawwmm.com

Mr. McKinney would doubtless accept the documents in a similar fashion.

Until future notice, CNJ is requested by the City to not send the City (including any representative of the City) anything associated with the Harsimus Branch unless you simultaneously supply it to Mr. McKinney and to Mr. Horgan. Please send any thing you send to Mr. McKinney or to Mr. Horgan to me as well.

It is my understanding that CNJ has extensive contacts with Mr. Horgan, Mr. Hyman, and possibly other representatives of the LLCs, and from time to time CNJ has been requested to give, or has given, advice on how to satisfy STB regulatory requirements to them. Please forward to Mr. McKinney and myself all copies of any proposals or communications from CNJ to the LLCs or their representatives.

OPRA from Mr. Ho... .pdf

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Send



Tt



Robert Byrne

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