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Via Electronic Filing

Cynthia T. Brown
Chief of the Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, D.C. 20024

ENTERED
Office of Proceedings
May 30, 2018
Part of
Public Record

Re: Docket No. FD 36187
Passaic Street Properties, LLC
Operation Exemption Pursuant to 49 C.F.R. §1150.31
Our File No. 04378-85178

Dear Ms. Brown:

This firm represents the applicant, Passaic Street Properties, LLC, a non-carrier.

Enclosed is Passaic Street Properties LLC Reply to the Petition to reject filed by the New York & Greenwood Lake Railway in the above captioned docket.

If you have any questions regarding this filing please advise. We have today served a copy of this filing on counsel for New York & Greenwood Lake by Email and regular US Mail.

Sincerely,

CAPEHART & SCATCHARD, P.A.



John K. Fiorilla

JKF:cae

Enclosures

cc: Jay Pasternack, Esq. (w/enc.)- Via Email
Fadi Samaan (w/enc.)- Via Email
John D. Heffner, Esq. (w/enc.)- Via Email and Regular Mail

**Before the
Surface Transportation Board**

FD - 36187

**PASSAIC STREET PROPERTIES, LLC
ACQUISITION OF NEW YORK & GREENWOOD LAKE RAILWAY, INC.
OPERATION EXEMPTION**

**REPLY TO PETITION TO REJECT FILED BY
NEW YORK & GREENWOOD LAKE RAILWAY, INC
PURSUANT TO 49 U.S.C. § 10502(D)**

Submitted By:

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Attorneys for Passaic Street Properties, LLC

Dated: May 30, 2018

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**I.
INTRODUCTION**

On May 1, 2018, Passaic Street Properties, LLC, a non-carrier (“PSP”), file a notice of exemption under 49 U.S.C. § 10901 and 49 C.F.R. § 1150.31 from the requirements of 49 U.S.C. § 10902 (the “Notice of Exemption”) for PSP to acquire the rights to operate a line of railroad currently out of service for which the New York & Greenwood Lake Railway, Inc. (hereinafter “NYGL”) has not operated in more than five years. The line is located in the City of Passaic, County of Passaic and City of Garfield, County of Bergen, New Jersey. The line is known as the Dundee Spur and more particularly described in the Notice of Exemption (the “Property”).

On May 10, 2018, NYGL filed a Petition to Reject the Notice of Exemption alleging these circumstances are not eligible for an expedited class exemption. NYGL is requesting that this Board order and direct PSP to re-convey the Property back to the IRS, while NYGL retains the Surplus Proceeds and the benefit of satisfaction of its federal tax liabilities.

**II
REPLY TO STATEMENT OF FACTS**

1. The New York and Greenwood Lake Railway (“NYGL”) is a shortline railroad owned by Jim Wilson and based in Passaic, New Jersey. It operated primarily to service transfer station facilities for a few private companies, with a trans-load facility at its yard in Passaic.¹

¹ Certification of John Fiorilla

2. The Property consists of the following parcels (collectively referred to as the “Property”):²
 - a. Block 5000, Lots 1 consisting of 3.10 Acres with rails in place running from the rail yard northward terminating at the Passaic River for approximately 2,300 feet or almost ½ mile.
 - b. Block 5000.01, Lot 1 consists of 0.004-acre triangular shaped parcel at the intersection of Passaic Street and Wall Street. It functions as a pedestrian island.
 - c. Block 5000.02 Lot 1. Consists of One main structure, the railroad yard, numerous railroad cars and storage containers.
3. The approximately one mile long short line connects the Dundee Yard in Passaic, NJ with a Norfolk Southern interchange along the NJT’s Bergen County Line in Garfield, NJ. Several customer have come and gone, leaving NYGL with nothing to move. Plans for a new business have not been successful.³ Based upon information and belief, the NYGL suspended operations on or about 2012, when its last customer ceased operation⁴.
4. Because NYGL failed to pay its federal income taxes, in 2017 the IRS seized and levied the Property to collect the value to off-set the taxes owed by NYGL.⁵
5. On or about September 13, 2017, the IRS auctioned the Property and PSP was the successful bidder at the IRS levy sale of the Property (the “Sale”) with a bid of \$565,000.00 (the “Proceeds”). A copy of the Certificate of Sale of Seized Property from the IRS to PSP is attached Notice of Exemption which is attached to the Petition as Exhibit “A.”⁶
6. PSP did not acquire any legal right to use or occupy the Property in September 2017 after the Sale due to NYGL’s right to exercise its 180 day right of redemption pursuant 26 U.S.C. § 6337 (b).
7. Because NYGL failed to exercise its 180 day right of redemption pursuant 26 U.S.C. § 6337 (b), the IRS transferred to PSP all rights, title and interests in the Property, including the land and tracks of the Property pursuant to 26 U.S.C. § 6339. Attached to the Notice of Exemption are copies of filed deeds to the property from IRS to PSP which are attached to the Petition as Exhibit “B”.
8. NYGL no longer has any legal title to the Property, nor does NYGL have any right use or occupy the Property.

² Certification of John Fiorilla

³ Certification of John Fiorilla

⁴ Verified Statement of Jim Wilson; certification of John Fiorilla

⁵ Verified state of Jim Wilson, President of NYGL

⁶ Certification of Fadi Samaan, Managing Member of PSP

9. NYGL applied to the IRS for and received surplus proceeds from the Sale in excess of \$400,000. Consequently, NYGL has received consideration for any equity in the Property.⁷
10. In addition to not paying Federal income taxes, NYGL neglected to maintain the building and tracks at the Property over the past years, allowing the overall condition to fall into a state of disrepair. According the Mayor of the City of Passaic,⁸ the condition of the Property has significantly deteriorated in violation of the City Ordinances with homeless occupying the Property. Recently, an investigation of the Property performed by a professional planner retained by the City of Passaic in connection with the City of Passaic redevelopment plan (the “Passaic Redevelopment Investigation Report”) concluded that Passaic City Planning Board should adopt the Passaic Redevelopment Investigation Report and recommend to the Passaic governing body that the Property be designated as an area in need of redevelopment. The City of Passaic Planning Board is scheduled to vote on adopting the Passaic Redevelopment Investigation Report at public meeting scheduled for June 6, 2018. The Passaic City governing body is schedule to vote on adopting the Passaic Redevelopment Investigation Report at public meeting scheduled for June 19, 2018 to designate the Property as an area in need of redevelopment.
11. PSP intends to redevelop the Property consistent with the City of Passaic’s redevelopment plan for the Property.
12. NYGL has failed to offer any credible evidence that it has the legally and financial feasibility to resume operation as a transload facility.
 - a. First and foremost, NYGL has no legal right to use or occupy the Property. As mentioned above, because NYGL waived or failed to timely exercise its right to redeem the Property, the IRS transferred to PSP all rights, title and interest in the Property. Accordingly, NYGL no longer has any facility or tracks to operate a transload operation.
 - b. PSP has failed to demonstrate whether it has taken any steps to locate any alternative facility and tracks or whether it has the financial feasibility to purchase or lease an alternative facility and tracks.
 - c. According the documents attached to the Verified Statement of Jim Wilson, the President of NYGL, between September 13, 2017 (the date of the IRS auction)and March 29, 2018 , (the date the IRS delivered the deed to PSP transferring title to the Property), one empty rail car moved from Wyoming to Passaic, NJ arriving in November 2017. This was the first car which moved on the NJGL in over five years and it would seem that it was moved in an attempt to defeat the effect of applicant’s purchase of the property at auction which had already taken place. The emails appear to indicate a few railcars may have moved in December, 2017 from Wyoming to Passaic, NJ where it was intended that the bulk product be transloaded to truck and sent elsewhere.

⁷Certification of Fadi Samaan, Managing Member of PSP

⁸ See supporting letter from the Mayor of the City of Passaic

Thereafter, no other car has been delivered to Passaic as of the date of this filing.

- d. The documents dated March 20, 2018 attached to Verified Statement of Jim Wilson failed to identify the location where any future the rail car(s) will originate and to where they will be destined stating only the names and addresses of the shipper and consignee. Consequently, it is feasible that the ultimate destination and/or origination of these shipments will be made by truck from outside of Passaic or Garfield New Jersey.

13. NYGL argues at page 5 of its Petition to reject that PSP is “misusing the Board’s procedure” and should have obtained the prior authority from the Board before acquiring title to the Property. Such argument is mistaken for a number of factual and legal reason:⁹

- a. PSP did not know if it would be successful bidder until after the Auction was concluded.
- b. PSP did not acquire title to the Property until after the 180 day redemption period had expired.
- c. PSP (as the successful bidder at the Sale) had no knowledge that NYGL would not exercise its right to redeem the Property.
- d. Since PSP did not have any right to use or occupy the Property until the IRS delivered the deeds, PSP did not have standing to make application to the Board prior to the delivery of the Deeds.
- e. As a practical matter, the PSP, as the successful bidder at the Sale, did not have legal standing or any financial interest to file the within application with the Board for permission to operate and abandon the line of service at the Property until the IRS delivered the deeds to PSP transferring all rights, title and interest to the Property.

14. There is clear support of PSP’s application before this Board at the state, county and municipal government level in the state of New Jersey, given the importance of redevelopment in the City of Passaic. Attached hereto are supporting letters from the following New Jersey governmental officials:

- a. Hector C Lora, the Mayor of the City of Passaic
- b. Anthony J. DeNova, III, Passaic County Administrator
- c. Paul A. Sarlok New Jersey State Senator
- d. Gary S. Schaer, New Jersey State Assemblyman for the 36th District of NJ
- e. Bill Pascrell, Jr. Member of the United States House of Representative

Collectively, these New Jersey legislative representatives support the efforts and intention of PSP to convert the Property from its current unproductive and state of disrepair into a more productive redeveloped site, which will result in attracting new jobs, creating new housing opportunities, improving the health, safety and welfare of the community, enhancing the property values in the community and encouraging redevelopment in the neighborhood.

⁹ See Certification of Fadi Samaan

LEGAL ARGUMENT

A.

SUMMARY

PSP purchased the Property, including the tracks, as a result of a bid made for the Property pursuant to the IRS levy and Sale under Subchapter D, Chapter 64 of the Internal Revenue Code and related regulations. PSP has no intentions of operating the line, but will file a standard abandonment application that meets the requirements of 49 U.S.C. § 10903 upon obtaining the right to operate the railroad. PSP believes these extenuating circumstances allows it to seek an exemption under 49 U.S.C. § 10502.

NYGL has filed a Petition to Reject the PSP petition for exemption for the following alleged reasons: (1) the purchase of the Property by PSP pursuant to the IRS levy and Sale is “ineligible for an expedited class exemption”; (2) the notice of exemption contains false and misleading information; and (3) the Board should order PSP to re-convey the Property back to the IRS. None of this reasons are supported by the submission filed by NYGL.

As more particularly set forth below, PSP will demonstrate that (1) the rail service on this specific Property is not necessary to carry out the transportation policy under 49 U.S.C. § 10101 et seq. and (2) the rail service on the Property was limited in scope and/or the shipping community can be adequately served by existing rail service in New Jersey. Furthermore, the continuation of the line at the Property would impede the Redevelopment Plan for the City of Passaic. More important, PSP intends to convert, rehabilitate and redevelop the majority of the Property into a mix use of retail and residential housing consistent with the Passaic City Redevelopment Plan, transfer a portion of the Property (currently located adjacent the municipal park) to the City of Passaic to be incorporated and use as part of the recreational park system.. Accordingly, PSP can satisfied the conditions necessary for exemption under 49 U.S.C. § 10502.

On the other hand, the Board should deny NYGL’s futile attempt to stop the exemption for self-serving reasons. First and foremost, NYGL’s only real interest in opposing the application is to have this Board rescind the Sale of the Property so to unlawfully extend the 180-day right of redemption period from IRS Sale of the Property under § 6337 of the IRC. As explained below, NYGL is barred from challenging the IRS Sale and transfer of all, rights, title and interest of the Property to PSP.

Second, the Board has no jurisdiction or authority to rescind the IRS levy and Sale – the primary relief requested by NYGL. There is no evidence that the IRS would accept title to the Property back from PSP even if the Board direct it to do so.

Third, NYGL ceased its operations more than 5 years ago and has failed to demonstrate it made serious efforts to reinstitute service. Rather, the record demonstrates NYGL failed to pay its federal taxes, failed to maintain the Property, failed to maintain the rail equipment located at the Property, and allow the IRS to levy and sell the Property. Simply, NYGL has no current right

to use or occupy the Property and, as such, has failed to demonstrate that any proposed service is economically feasible. Currently, NYGL's plans to operate are illusory because its success depends upon a number of factors, especially the need to acquire land and tracks.

Finally, the Board should interpret and enforce its exclusive statutory duty to preserve and promote continued rail service in harmony with the IRS's exclusive right to levy and sell property to collect taxes. When balancing and protecting the needs of the shipping community, with the public policy underlying the IRS's unrestricted right to levy and sell property of a railroad, and without becoming an impediment to state and local government redevelopment projects, the Board should deny the objection filed by NYGL.

B.

THE STB HAS NO JURISDICTION TO EXTEND THE 180 DAY RIGHT OF REDEMPTION UNDER 26 U.S.C. § 6337 (b), NOR THE RIGHT TO RECIPE THE IRS LEVY AS REQUESTED BY NYGL.

The Internal Revenue Code specifically requires that the IRS provide notice to a delinquent taxpayer not less than 30 days before a levy goes into effect. 26 U.S.C. § 6330(a). The notice informs the taxpayer of his right to request an administrative hearing, also known as a Collection Due Process hearing, during the 30-day period prior to the first levy and also of his right to appeal an adverse hearing determination to the United States Tax Court. 26 U.S.C. § 6330(a) (3)(B) and 6330(d). Thus, a tax levy may be challenged through the IRS administrative process with review by the Tax Court.

Here, no claim is made by NYGL that the IRS failed to comply with the publication and posting requirements for the notice of Sale. No claim is made by NYGL it even attempted to request a hearing to delay the levy Sale to allow more time for NYGL to sell the Property and pay the taxes.

NYGL has not demonstrated it made an offer to redeem the Property. Rather, NYGL seeks to have this Board order PSP to re-convey the Property back to the IRS, without citing any legal authority for the Board to do so, or citing any legal authority to compel the IRS to accept title.

26 U.S.C. § 6337 governs the redemption of property sold at tax sale by the IRS. Section 6337(b)(1) afforded NYGL, as the owner of the Property, the right to redeem the Property at any time within 180 days after the date of the sale. Under the IRS sale procedure, the purchaser at the sale does not initially receive the deed to the real property. Instead, the purchaser is issued a "certificate of sale" which the purchaser may surrender if the property is redeemed within the 180 day period. See 26 U.S.C. § 6338. The purchaser only receives the deed to the real property pursuant to 26 U.S.C. § 6338(b) after the 180 day redemption period has expired.

The deed from the IRS to PSP “shall be considered and operate as a conveyance of all the right, title and interest the party delinquent had in and to the real property... at the time the lien of the United States attached thereto.” 26 U.S.C. § 6339(b) (2). The delivery of the deed to the purchaser discharges any “liens, encumbrances and titles” which attached to the real property after the federal tax lien. 26 U.S.C. § 6339(c).

In short, this Board has no statutory authority to undo the IRS Sale, nor authority to compel PSP to transfer title to the Property back to the IRS, nor authority to compel the IRS to accept title. Nor has NYGL voluntarily agreed to return to the IRS the net proceeds that it received from the Sale. Simply, the relief requested by NYGL appears to be an indirect attempt to renew and extend the statutory 180 day right of redemption which has expired.

B.

**THE POLICY GOVERNING THE ACQUISITION EXEMPTION PROCEDURES
SHOULD BE HARMONIZED WITH THE POLICY OF THE IRS TO LEVY AND SELL
RAILROAD PROPERTY.**

Here the Board should balance the complimentary aspects between two federal regulations and apply them both in harmony. This Board should factor the particular needs the two federal regulations addresses, the history surrounding their enactment and the public benefits. See Morton v. Mancari, 417 U.S. 535, 550 (1974) wherein the United State Supreme Court states “the courts are not at liberty to pick and choose among congressional enactments, and when two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective.”.

The Property of this line was the subject of a levy under 26 U.S.C. § 6331 and sale by the Internal Revenue Service (“IRS”) pursuant to 26 U.S.C. § 6335 due the failure by NYGL to pay federal income taxes. The Property does not qualify for exemption from levy under 26 U.S.C. § 6336 (a). Under subpart (c) of Section 6336, the IRS levy upon the Property was lawful and is not barred by any other federal law. Subpart (c) of Section 6336 provides:

Notwithstanding any other law of the United States (including section 207 of the Social Security Act), no property or rights to property shall be exempt from levy other than the property specifically made exempt by subsection (a).

26 U.S.C. § 6336 (c)

Upon notice of the levy upon the Property, NYGL had the right to pay the unpaid federal taxes due, together with the expenses of the Levy proceeding, at any time prior to the sale thereof, and upon such payment to the IRS would have restored such property to NYGL, and all further proceedings in connection with the levy on the Property would have ceased pursuant to 26 U.S.C. § 6337(a). NYGL failed or refused to exercise such rights.

After the Property was sold by the IRS as provided under 26 U.S.C. § 6335, NYGL had the right to redeem the Property sold, or any particular tract of the Property, at any time within 180 days after the sale thereof pursuant to 26 U.S.C. § 6337 (b). NYGL failed or refused to exercise such right of redemption.

On September 13, 2017, PSP was the successful bidder at the IRS levy Sale of the Property with a bid of \$565,000.00 (the "Proceeds"). A copy of the Certificate of Sale of Seized Property from the IRS to PSP is attached to the Notice of Exemption as Exhibit "A." At this time, PSP did not acquire title to the Property and as such, had no legal standing to make application to the STB. Furthermore, PSP did not know whether or not NYGL would exercise its statutory right of redemption. The argument by NYGL to compel a bidder at the levy Sale to make prior application to the STB is impractical, is not supported by any case law and would have a chilling effect on the IRS levy auction.

On March 29, 2018, after the redemption period expired, the IRS delivered deeds to PSP transferring all rights, title and interests in the Property, including the land and tracks of the Property pursuant to 26 U.S.C. § 6339. Attached to the Notice of Exemption are copies of filed deeds to the property from IRS to PSP which are attached as Exhibit "B". At this time, PSP acquire a legal interest in the Property and, accordingly, had legal standing to make the within application to the Board.

The Proceeds from the sale of the Property were used first, to satisfy NYGL's obligations for the expenses of the levy and the sale, and second, to satisfy NYGL's federal tax liabilities under 26 U.S.C. § 6342(a). NYGL requested and receive surplus proceeds in the sum a sum exceeding \$400,000.00 (the "Surplus Proceeds") pursuant to 26 U.S.C. § 6342(b). As such, NYGL has been enriched and benefited by having all of it unpaid federal taxes paid in full and enrich by receiving the equity in the Property in form of the Surplus Proceeds.

The continuance of regular and uniform receipt of public revenue through federal taxes is essential to the federal government policy. The IRS's right to seize and sell property has been around for over 100 years. A version of 26 U.S.C. § 6337 (b) dates back to 1866 when the owner of the property was permitted to redeem within one year after the sale thereof. While the language under section 6337 remain substantially the same, in 1982 the redemption period was expanded from 120 days to its present 180 days. Tax and Equity Fiscal Responsibility Act, Pub.L. No 97-248, Title III, § 349A (a), 96 Stat. 639 (1982). Although section 6337(b) has been in existence for quite some time, only a limited number of cases have construed this section. The Federal courts have held that the courts simply lacks the power to extend the statutory period, even for powerful equitable considerations. See Taylor v. United States, 1993 WL 597379 (D.Arz. Sept. 27, 1993) ("The purpose behind section 6337 is to allow taxpayers whose property has been seized by the IRS to repurchase their property, if they can do so within 180 days"); Howard v. Adle, 538 F. Supp. 504, 509 (E.D. Mich. 1982) citing Anselmo v. James, 449 F. Supp. 922, 926 (D.Mass. 1978) (redemption four days late because travel restricted by state of emergency declared due to blizzard); Keely v. Sanders, 99 U.S. 441, 445-46, 25 L. Ed. 327, 328 (1878) ("Courts cannot extend the time, or make any exceptions not made in the statute. Redemption cannot be had in equity (Mitchell v. Green, 10 Metcalf 101 (Mass. 1845), except as it may be permitted by statute") (citing with approval Finley v. Brown, 22 Iowa 538 (1867),

which held that right to redeem could not be extended even though owner resided in a Confederate state during the Civil War).

Here, there are extenuating circumstances that makes this application unique. PSP should be allowed to proceed under a notice of exemption to acquire the operating rights at the Property and shortly thereafter to file for an abandonment of the Property. PSP has the intention of filing for an abandonment of the Property so that if the abandonment is granted, PSP can develop the Property in conjunction with the redevelopment plan of the City of Passaic, including making a portion of the Property a city park and recreation area. In short, this procedure allows this Board to harmonize its duty to protect the interest of the shipping community while not interfering with the IRS's right to seize and sell railroad property.

C

UNDER THE CURRENT EXTENUATING CIRCUMSTANCES, PSP, AS A NON CARRIER, SHOULD BE ALLOWED TO PROCEED UNDER THE EXPEDITED CLASS EXEMPTION TO ABANDON THE RAIL SERVICE SHORTLY AFTER OBTAINING THE RIGHT TO OPERATE THE LINE.

The Board has exclusive and plenary jurisdiction over abandonments to protect the public from any unnecessary discontinuance, cessation, interruption, or obstruction of available rail service. See Modern Handcraft, Abandonment, 363 I.C.C. 969, 972 (1981) ("Modern Handcraft"). While The Board may preserve and promote continued rail service where a carrier has expressed a desire to continue operations and has taken reasonable steps to acquire traffic, NYGL has not demonstrate that it can meet this criteria. In Modern Handcraft, a non-carrier made application for abandonment under 49 U.S.C. § 10903 and the rail carrier opposed the abandonment. The Board granted the application of Modern Handcraft after finding that the line of service had been out of service for 12 years, the property turned into a parking lot, there had been no serious efforts by the carrier to reinstitute service and the carrier's only interest in opposing the application appeared to be its own financial self-interest.

Here the circumstances are similar as in Modern Handcraft. NYGL, a small short line operating on 1.8 miles of rail starting in 1996, admits it was "modestly profitable" during its good years. On or about 2012, NYGL loss it customers and allowed the building, rail yard and rail line to become inactive for several years. In September 2017, The IRS seized and sold the Property to PSP for non-payment of Federal Taxes and to collect the value to offset the taxes owed by NYGL.

According to the Verified Statement of James Wilson, the President and owner of NYGL, the railroad lost it's customers around 2009 and has not operated the line of service in since on or about 2012. The scope of the rail service by NYGL along the 1.8 miles of track is limited to trans-loading. Prior to 2018, Mr. Wilson described NYGL as "modestly profitable". Except for one customer hired by NYGL since the Sale in September 2017, NYGL has failed to demonstrate any serious efforts made by NYGL to reinstate services. Mr. Wilson stated that it was his intention to sell the railroad prior to the IRS Sale.

Other extenuating circumstances makes this application unique and suitable to proceed under the expedited class exemption to abandon the rail service shortly after obtaining the right to operate the line. According to the Mayor of the City of Passaic “Over the last five years, the railroad has failed to operate or maintain its facilities in accordance with City ordinances. The discontinuance of the use at the site over the past five years has caused it to fall into a state of disrepair. A lack of security at the site has resulted in periodic occupancy by homeless individuals and drug users. There existed an infestation of rodents and raccoons at the site.”

NYGL claims in its filing that after five years it now has a single customer who will transload at the Passaic facility. In reviewing the pleading it is clear that these cars were destined for a location not located in Passaic or Garfield where the NYGL operates, nor in Passaic or Bergen counties in which Passaic and Garfield are located. Instead, the material was to be transloaded to truck to reach another community mentioned in the documents not in Passaic or Bergen Counties. In reviewing the websites of other rail carriers who service northern New Jersey we found that the following all have bulk transload sites in northern New Jersey which could serve to unload bulk materials like clay. These include Norfolk Southern Railroad, CSXT, Morristown & Erie Railway, The New York Susquehanna & Western Railroad and Chesapeake & Delaware LLC through its subsidiaries the Black River & Western Railroad and the Belvidere & Delaware River Railroad.

Clearly, the rail services offered by NYGL provides a service that several other railroads are already providing in Northern New Jersey. It should be noted that the applicant knows of no local shippers who transload this material nor does NYGL claim that there are such shippers or receivers directly located on the NYGL. In addition it should be noted that NYGL does not contend that there is any carload freight of any kind which is handled by NYGL.

Such transportation and trans-loading can be performed by various other New Jersey trans-loading facilities. Nothing is unique about the Property or the line of service performed by NYGL. The ultimate abandonment of the rail service at the Property will not have an adverse impact on the competition, pricing, or the overall shipping community.

PSP has submitted a letter from the mayor of the City of Passaic in support of the PSP application. The Mayor confirms that the Property has not been maintained, the equipment has not been maintained, and the Property is in a state of disrepair and is being considered as an area in need of redevelopment by the City of Passaic. One of the purposes of the Passaic Redevelopment Plan is to foster public/private partnership through redevelopment agreements based on the collaborative redevelopment plan benefiting the City of Passaic. PSP is committed to work with the City of Passaic to redevelop the Property consistent with the goals of the Passaic Redevelopment Plan. Such redevelopment will further the public purposes by creating new jobs, converting deteriorating land into a productive and rehabilitated project, improving the character and property values of the community, promoting the overall development of the community and adding to the City’s tax base.

The proposed redevelopment of the Property will add an additional public benefit by linking two existing public parks currently bisected by the railroad tracks. With one of the highest densities in the New Jersey (70,000 residents in 3.2 sq. mi.) recreation space is crucial to

the quality of life of residents. The Property includes a railroad track segment which bisects two parks located in the City of Passaic (Pulaski Park and Dundee Island Park), creating a barrier to linking these recreational facilities.¹⁰ This severely limits the programming at Dundee Island Park as it limits access. Moreover, NYGL allowed these tracks to fall into a state of disrepair and creates a hazard to children and families using either facility.¹¹ The NJ Department of Environmental Protection recently awarded \$5 million toward the improvement of Dundee Island Park. The County of Passaic matched that amount. The Mayor of the City of Passaic, the Passaic County Administrator and the New Jersey U.S. Congressman collectively believe this \$10 million park improvement would be severely constrained if this track portion of the Property is not converted to a park use. PSP has pledged to work cooperatively with the City of Passaic to make this strip of land part of the park system should the Board approved its application.¹²

The Board should not allow its jurisdiction to be used to impede the legitimate processes of state law where no overriding Federal interest exists. See Kansas City Pub. Ser. Frgt. Operation-Exempt.-Aban., 7 I.C.C.2d 216 (1990) (Kansas City). See also CSX Corporation and CSX Transportation, Inc.-Adverse Abandonment Application-Canadian National Railway Company and Grand Trunk Western Railroad, Inc., STB Docket No. AB-31 (Sub-No. 38) (STB served Feb. 1, 2002) (Grand Trunk). In an adverse abandonment case, if the Board concludes that the PSP does not require or permit continued operation over the line, the decision removes the shield of the Board's jurisdiction, enabling PSP to pursue its redevelopment of the Property.

Acquisitions of rail lines by a non-carrier are subject to the regulatory requirements of 49 U.S.C. § 10901. Under this section, a "person other than a rail carrier" may acquire a railroad line only if the Board issues a certificate authorizing the acquisition. See 49 U.S.C. § 10901(a) (4). A non-carrier may bypass the pre-approval requirements of 49 U.S.C. § 10901 by filing with the Board a notice of exemption under 49 C.F.R. §§ 1150.31–35.

Under 49 U.S.C. § 10502(d), the Board may revoke an exemption when "necessary to carry out the transportation policy of section 10101." Section 10101, the Rail Transportation Policy, sets forth general transportation policy objectives related to promoting competition, efficiency, productive use of resources, and safety. 49 U.S.C. § 10101; See Minnesota Transportation Regulation Board v. United States, 966 F.2d 335, 343 (8th Cir. 1992). The Policy also explicitly states that it is the policy of the United States Government to "minimize the need for Federal regulatory control over the rail transportation system." 49 U.S.C. § 10101(2).

The proper inquiry when evaluating a petition to revoke an exemption is whether regulation of the transaction is necessary to carry out the Transportation Policy, focusing on the sections of the Policy related to the underlying statutory section from which the exemption is sought. See Village of Palestine v. I.C.C., 936 F.2d 1335, 1338–39 (D.C.Cir. 1991); Winter v. I.C.C., 992 F.2d 824, 825–26 (8th Cir. 1993). Village of Palestine and Winter make clear that the Board is not required to review each section of the Policy. Furthermore, the Board is not required to make specific findings on certain sections of the Policy when exempting the entire non-carrier

¹⁰ See supporting letter dated May 29, 2018 from Hector C Lora, the Mayor of City of Passaic

¹¹ See supporting letter dated May 29, 2018 from Anthony J. DeNova, III, Passaic County Administrator

¹² See supporting letter dated May 29, 2018 from Bill Pascrell, Jr, U.S. Congressman from New Jersey

class from the prior approval requirements of 49 U.S.C. § 10901. The Board should find that the proposed class exemption was consistent with the Policy. See Class Exemption—Acq.— & Oper. of R. Lines Under 49 U.S.C. 10901, 1 I.C.C.2d 810 (Dec. 19, 1985) (*Class Exemption*), *aff'd*, Illinois Commerce Com'n v. I.C.C., 817 F.2d 145 (D.C.Cir. 1987); See also Minnesota, 966 F.2d at 341.

Clearly, the service NYGL wishes to provide and which it has not provided in several years is limited to transloading of bulk materials a service provided by several other nearby railroads. With several other railroads providing this service there is no need to protect shippers from the abuse of market powers since several other railroads provide the service and have been providing the service for several years in northern New Jersey. Under the extenuating circumstances as described above, the granting of PSP exemption will not harm competition for rail service in New Jersey. Rather, PSP proposes to redevelop the Property, improving the health, welfare and safety of the community and turning unproductive land into a more productive use consistent with the policies of the Passaic Redevelopment Plan.

CONCLUSION

For the foregoing reason, PSP respectfully requests that the Board reject the Petition to Reject filed by NYGL. The extenuating circumstances surrounding this application makes it unique and suitable to proceed under the expedited class exemption with the objective to abandon the rail service shortly after obtaining the right to operate the line. This way, the PSP plans to redevelop the Property consistent with the Passaic Redevelopment Plan may proceed expeditiously, servicing the general public interest, without harming the shipping community.

Respectfully Submitted,



Dated: May 30, 2018

John K. Fiorilla, Esq.
Capehart & Scatchard, PA
8000 Midlantic Drive Suite 300S
Mount Laurel, N.J. 08054
(856) 914-2054

jfiorilla@capehart.com

*Attorney for Petitioner,
Passaic Street Properties, LLC*

CERTIFICATION

1. My name is Fadi Samaan and I am the Managing Member of the petitioner Passaic Street Properties LLC. (Hereinafter PSP).
2. On or about September 13, 2017, the IRS auctioned the Property of NYGL and PSP was the successful bidder at the IRS levy sale of the Property (the "Sale") with a bid of \$565,000.00 (the "Proceeds"). A copy of the Certificate of Sale of Seized Property from the IRS to PSP is attached Notice of Exemption which is attached to the Petition as Exhibit "A."¹
3. At the time PSP made its bid it did not know whether or not the bid would be successful.
4. After making it successful bid in September, 2017, PSP did not immediately receive title to the Property or the right to use or occupy the Property because of the NYGL's 180 day right of redemption.
5. PSP had no knowledge as to whether or not NYGL would exercise its right of redemption.
6. On March 29, 2018, because NYGL failed to exercise its 180 day right of exemption pursuant to the IRS Code, the IRS transferred to PSP all right, title and interests in the Property including the land and tracks of the Property. The copies of the Deeds for both Bergen and Passaic Counties conveying the property to PSP are attached to the petition as Exhibit "B".
7. NYGL applied to the IRS for and received surplus proceeds from the Sale in excess of \$400,000. Consequently, NYGL has received consideration for any equity in the Property.
8. PSP intends to redevelop the Property consistent with the City of Passaic's redevelopment plan for the Property.
9. One of the purposes of the Passaic Redevelopment Plan is to foster public/private partnership through redevelopment agreements based on the collaborative redevelopment plan benefiting the City of Passaic. PSP is committed to work with the City of Passaic to redevelop the Property consistent with the goals of the Passaic Redevelopment Plan. Such redevelopment will further the public purposes by creating new jobs, converting deteriorating land into a productive and rehabilitated project, improving the character and property values of the community, promoting the overall development of the community and adding to the City's tax base.

I hereby certify that the facts stated above are true to the best of my knowledge. I understand that if these statements are willfully false that I am subject to punishment.

May 30, 2018

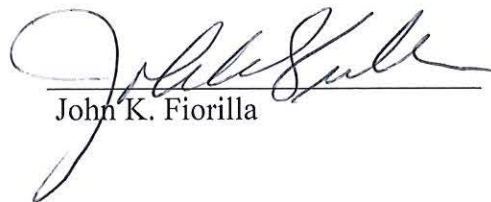


Fadi Samaan

CERTIFICATION

1. My name is John K. Fiorilla and am the attorney for the petitioner Passaic Street Properties LLC.
2. I am familiar with the history of the New York & Greenwood Lake Railway (NYGL) and can certify that NYGL was a shortline owned by James Wilson and based in Passaic, New Jersey. When NYGL operated in the early 2000's its primary service was a transfer station for construction and demolition debris.
3. The property of the NYGL consists of the following parcels(collectively referred to as the "Property"):¹
 - a. Block 5000, Lots 1 consisting of 3.10 Acres with rails in place running from the rail yard northward terminating at the Passaic River for approximately 2,300 feet or almost ½ mile.
 - b. Block 5000.01, Lot 1 consists of 0.004-acre triangular shaped parcel at the intersection of Passaic Street and Wall Street. It functions as a pedestrian island.
 - c. Block 5000.02 Lot 1. Consists of One main structure, the railroad yard, numerous railroad cars and storage containers.
4. The approximately one mile long short line connects the Dundee Yard in Passaic, NJ with a Norfolk Southern interchange along the NJT's Bergen County Line in Garfield, NJ. Based upon information and belief, the NY&GL suspended operations on or about 2012, when its last customer ceased operation.
5. I have investigated the services of several North Jersey rail carriers as to whether or not they offer transloading services from Rail to Truck and/or Truck to Rail for bulk commodities such as clay.
6. My investigations of their websites indicated that Norfolk Southern Railway, CSXT, Morristown & Erie Railway, The New York Susquehanna & Western Railroad and Chesapeake & Delaware LLC through its subsidiaries, Black River & Western Railroad and Belvidere & Delaware River Railway all provide bulk material transload services for bulk materials destined to or destined from points in northern New Jersey.

I hereby certify that the facts stated above are true to the best of my knowledge. I understand that if these statements are willfully false that I am subject to punishment.


John K. Fiorilla

May 30, 2018



CITY OF PASSAIC

330 PASSAIC STREET
PASSAIC, NEW JERSEY 07055

OFFICE OF THE MAYOR
HECTOR C. LORA

TELEPHONE (973) 365-5510
FAX NUMBER (973) 472-2639
hlora@cityofpassaicnj.gov

May 29, 2018

Surface Transportation Board
395 E Street SW
Washington, DC 20423-0001

Dear Surface Transportation Board:

I am writing in support of the petition filed with Surface Transportation Board by Passaic Street Properties, LLC, the owners of the properties at 99-111 Passaic Street, to return the site to a productive use in the City of Passaic. The site, which includes a railroad spur, has had no active rail shippers or receivers in the city in the past five years. The only product, which has moved in the last five years, is clay for transloading to a point other than the City of Passaic or the City of Garfield, which is where the railroad is located. It would appear that throughout North Jersey there are other sites on other railroads which could handle this material.

The discontinuance of the use at the site over the past five years has caused it to fall into a state of disrepair. The generality of the building is substandard, unsafe, unsanitary dilapidated and obsolescent, as to create an unwholesome working condition and an unwholesome condition for the community. The discontinuance to the use of the building, previously used for commercial purposes, has allowed it to fall into so great a state of disrepair as to be untenable. Further, the building and improvements, by reason of dilapidation, obsolescence, faulty arrangement, deleterious land use and obsolete layout, are detrimental to the safety, health, and welfare of the community.

Over the last five years, the railroad has failed to operate or maintain its facilities in accordance with City ordinances. A lack of security at the site has resulted in periodic occupancy by homeless individuals and drug users. There existed an infestation of rodents and raccoons at the site. Only with the transfer of ownership to Passaic Street Properties, LLC have these issues been addressed.

Recently, the City began the process to include the property into the Eastside Redevelopment Plan. That Plan seeks to return older industrial properties, which are abandoned or under-utilized to a productive use. The first step was Resolution 18-04-121 adopted on April 4, 2018 by the Passaic City Council seeking a recommendation from the Planning Board as to whether or not the area meets the criteria for designation. A professional planner is completing a report on the site, which will be considered by the Planning Board a June 6, 2018 meeting. Based on the

conclusions of the report, it is anticipated that the Planning Board will recommend to the Council that the subject property be designated as in need of redevelopment. A City Council action designating the area in need of redevelopment and directing the planning board to create a plan for the area would occur on June 19, 2018. It is anticipated that that plan will be considered at the July 11, 2018 Planning Board. The City has been meeting with Passaic Street Properties LLC in advance of the designation of the site. An application will be submitted to the Passaic Redevelopment Agency and the agency is prepared to consider the application at their June 21st meeting

The City is encouraged by Passaic Street Properties, LLC's intentions to redevelop the site to a more productive use of housing and retail. Such voluntary rehabilitation of the property is consistent with the City's objectives of:

1. Attracting jobs
2. Increasing the tax base
3. Creating housing opportunities
4. Improving the health, safety and welfare of the community
5. Enhancing property values in the community
6. Encouraging and promoting the redevelopment of adjacent properties in the neighborhood.

In addition to these public benefits, one additional very significant benefit would accrue to the City should the petition be granted. With one of the highest densities in the New Jersey (70,000 residents in 3.2 sq. mi.) recreation space is crucial to the quality of life of residents. The property includes a segment which bisects two parks, Pulaski Park and Dundee Island Park. This severely limits the programming at Dundee Island Park as it limits access. The NJ Department of Environmental Protection recently awarded \$ 5 million toward the improvement of Dundee Island Park. The County of Passaic matched that amount. This \$10 million park improvement would be severely constrained if the railroad property is not converted to a park use. The new owner has pledged to work cooperatively with the City to make this strip of land part of the park.

For all of these aforementioned reasons, the City of Passaic strongly supports the petition filed by Passaic Street Properties, LLC and to wholeheartedly encourages the Board to act favorably on their request.

Sincerely,



Hector C. Lora
Mayor



County of Passaic

Administration Building Room 205
401 Grand Street • Paterson, New Jersey 07505-2023

Anthony J. DeNova

County Administrator

TEL: (973) 881-4405

FAX: (973) 881-2853

e-mail: adenova@passaiccountynj.org

May 29, 2018

Federal Railroad Administration
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

RE: Dundee Island Park in the City of Passaic, New Jersey

To Whom It May Concern:

I write on behalf of the County of Passaic (hereafter "County") with respect to the above captioned project currently under development. The Dundee Island Park is a riverfront park in New Jersey on the banks of the Passaic River. Currently, it is in a state of disrepair and in need of extensive improvements. Approximately two years ago, the County partnered with the City of Passaic (hereafter "City") and Trust for Public Land (hereafter "TPL") to remake the riverfront park into a functional and resilient recreational facility that can better serve the community. Together, the parties were able to secure ten million dollars (\$10,000,000) in funding to execute this endeavor, with construction set to break ground in the beginning of 2019.

Adjacent to the Dundee Island Park are railroad tracks owned by the New York and Greenwood Lake Railway. The tracks cut directly between the Dundee Island Park and Pulaski Park – creating a barrier to linking these recreational facilities. Moreover, the railroad tracks are in a state of disrepair and create a hazard to children and families using either facility. I am strongly urging the Federal Railroad Administration to decommission this railroad facility and allow the County, City, and TPL to move forward to transform the property into a recreational facility.

I am available at the number and address listed above if any further information is required. Thank-you for your consideration of the County's concerns regarding this railroad facility.

Sincerely,

A handwritten signature in blue ink, appearing to be "id", is enclosed within a blue oval.

Anthony J. DeNova, III
Passaic County Administrator

cc: Mayor Hector Lora



NEW JERSEY SENATE

PAUL A. SARLO

DEPUTY MAJORITY LEADER

36TH LEGISLATIVE DISTRICT

486 COLUMBIA BOULEVARD, 1ST FLOOR

WOOD-RIDGE, NEW JERSEY 07075

PHONE (201) 804-8118

FAX: (201) 804-8644

COMMITTEES

CHAIRMAN

BUDGET & APPROPRIATIONS

JUDICIARY

HIGHER EDUCATION

LEGISLATIVE OVERSIGHT

May 25, 2018

Surface Transportation Board
395 E Street SW
Washington, DC 20423-0001

Dear Surface Transportation Board:

I am writing to join with the City of Passaic in support of the petition filed with Surface Transportation Board by Passaic Street Properties, LLC, the owners of the properties at 99-111 Passaic Street, to return the site to a productive use in the City of Passaic.

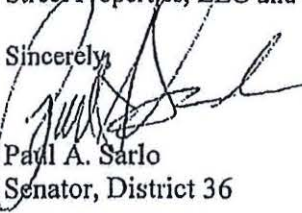
The discontinuance of the use at the site over the past five years has caused it to fall into a state of disrepair. The generality of the building is substandard, unsafe, unsanitary dilapidated and obsolescent, as to create an unwholesome working condition and an unwholesome condition for the community. The discontinuance to the use of the building, previously used for commercial purposes, has allowed it to fall into so great a state of disrepair as to be untenable. Further, the building and improvements, by reason of dilapidation, obsolescence, faulty arrangement, deleterious land use and obsolete layout, are detrimental to the safety, health, and welfare of the community.

The City of Passaic, which is located in the New Jersey 36th Legislative District which I represent, would benefit greatly by the redevelopment of the site. A more productive use will result in:

1. Attracting jobs
2. Increasing the tax base
3. Creating housing opportunities
4. Improving the health, safety and welfare of the community
5. Enhancing property values in the community
6. Encouraging and promoting the redevelopment of adjacent properties in the neighborhood.

For all of these reasons, I join the City of Passaic in strongly supporting the petition filed by Passaic Street Properties, LLC and wholeheartedly encourage the Board to act favorably on their request.

Sincerely,


Paul A. Sarlo
Senator, District 36



NEW JERSEY GENERAL ASSEMBLY

GARY S. SCHAER
DEPUTY SPEAKER
ASSEMBLYMAN, 36TH DISTRICT
REPRESENTING PARTS OF BERGEN
AND PASSAIC COUNTIES
ONE HOWE AVENUE, SUITE 401
PASSAIC, NJ 07055
(973) 249-3665

COMMITTEES
VICE-CHAIR, APPROPRIATIONS
FINANCIAL INSTITUTIONS
EDUCATION

May 25, 2018

Surface Transportation Board
395 E Street SW
Washington, DC 20423-0001

Dear Surface Transportation Board:

This letter is in support of the City of Passaic's petition, filed by Passaic Street Properties, LLC, to return 99-111 Passaic Street to productive use.

The neglect of this site for the past several years has caused both the property and the building to fall into a state of disrepair. The building itself is unsafe, dilapidated, and unsanitary. Previously used for commercial purposes, the building has now deteriorated to the point of becoming a hazard to the community.

The City of Passaic would benefit greatly by the redevelopment of this site, which will result in:

- Attracting jobs
- Increasing the tax base
- Creating housing opportunities
- Improving the health, safety and welfare of the community
- Enhancing property values in the community
- Encouraging and promoting the redevelopment of adjacent properties in the neighborhood

As Assemblyman for the 36th District, as well as Council President in the City of Passaic, I enthusiastically support the petition filed by Passaic Street Properties, LLC. The City of Passaic is committed to improving our community for both businesses and residents and I thank you for your consideration.

Respectfully,

A handwritten signature in black ink, appearing to read "Gary S. Schaer", followed by a long horizontal line.

Gary S. Schaer
Assemblyman, 36th District of New Jersey

BILL PASCRELL, JR.
9TH DISTRICT, NEW JERSEY

2370 RAYBURN HOUSE OFFICE BUILDING
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COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON HEALTH
SUBCOMMITTEE ON TRADE
COMMITTEE ON THE BUDGET

Congress of the United States
House of Representatives

May 29, 2018

Surface Transportation Board
395 E Street SW
Washington, DC 20423-0001

Dear Surface Transportation Board,

As the Congressman in New Jersey's 9th Congressional District, I am pleased to offer my support for the petition submitted by the Passaic Street Properties, LLC regarding the Surface Transportation Board. The owner of the properties at 99-111 Passaic Street is requesting the site to return to a productive use in the City of Passaic. The Passaic Street Properties serves as a community based real estate agency that is well-equipped to sponsor this congressional organization, whose invaluable efforts is a testament to resolving railroad rate and service disputes.

For over a century, the commercial center town has confronted a handful of challenges of bringing new life to dilapidated and obsolete properties which no longer serve a productive use. The vision of the City of Passaic, as described in their Master Plan and other planning documents, could be impacted by the repurposing of the site by: attracting jobs, creating affordable housing, increasing the tax base, improving the healthcare, enforcing safety in the community, enhancing property values and promoting the redevelopment of adjacent properties in the neighborhood.

Working alongside other governmental agencies, this opportunity will open doors to many citizens and will serve as an asset for the improvement of the community. Passaic is one of the highest densities in the area of New Jersey that contains 70,000 residents, and the recreational space is crucial to the quality of life for residents. The NJ Department of Environmental Protection recently awarded \$ 5 million toward the improvement of Dundee Island Park, utilizing funds obtained from a natural resources damage settlement. The pending improvements and the plan of the new owner to make parkland available to the City will benefit thousands of residents.

I ask that you look favorably upon the request from Passaic Street Properties, LLC and to accommodate this request to the greatest extent possible within applicable rules and guidelines. While I recognize and acknowledge that this market requires considerable effort, it is undeniable that the City of Passaic will benefit greatly from this opportunity. If you have any questions, please do not hesitate to contact me.

Sincerely



Bill Pascrell, Jr.
Member of Congress