

LAW OFFICES OF
LOUIS E. GITOMER, LLC

LOUIS E. GITOMER
Lou@lgraillaw.com

600 BALTIMORE AVENUE, SUITE 301
TOWSON, MARYLAND 21204-4022
(410)296-2250
FAX (410) 332-0885

MELANIE B. YASBIN
Melanie@lgraillaw.com

248624

October 18, 2019

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

ENTERED
Office of Proceedings
October 18, 2019
Part of
Public Record

Re: **Docket No. AB-55 (Sub-No. 794X), CSX Transportation, Inc.—Abandonment
Exemption—in Pinellas County, FL**

Dear Ms. Brown:

Attached for efilng is Georgetown and High Line Railway Company, LLC's
Reply to the City of St. Petersburg's Response to CSX Transportation, Inc.'s Letter of intent to
Negotiate with Georgetown and High Line Railway Company, LLC.

Thank you for your assistance. If you have any questions, please contact me.

Sincerely yours,



Melanie B. Yasbin
Attorney for Georgetown and High Line Railway
Company, LLC

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. AB-55 (Sub-No. 794X)

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION–
IN PINELLAS COUNTY, FL

GEORGETOWN AND HIGH LINE RAILWAY COMPANY, LLC REPLY TO THE CITY OF
ST. PETERSBURG’S RESPONSE

Melanie B. Yasbin, Esq.
Law Offices of Louis E. Gitomer, LLC
600 Baltimore Avenue, Suite 301
Towson, MD 21204
(410) 296-2205
Melanie@lgraillaw.com

Attorney for: GEORGETOWN AND HIGH
LINE RAILWAY COMPANY, LLC

Dated: October 18, 2019

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. AB-55 (Sub-No. 794X)

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION–
PINELLAS COUNTY, FL

GEORGETOWN AND HIGH LINE RAILWAY COMPANY, LLC REPLY TO THE CITY OF
ST. PETERSBURG’S RESPONSE

Pursuant to the decision served in this proceeding on October 8, 2019, the Georgetown and High Line Railway Company LLC (“GHL”) responds to the the City of St. Petersburg’s (the “City”) Response filed on September 9, 2019 (the “Response”).

In the October 8, 2019 decision, the Surface Transportation Board (the “Board”), on page 3, stated:

The City filed a response to CSXT on September 9, 2019. The City claims that GHL is not a qualified trail sponsor. According to the City, GHL is comprised entirely of CSXT employees, which, the City asserts, is evidence that CSXT does not intend to actually negotiate for interim trail use with GHL but instead seeks to circumvent Board regulations and “keep the Line in limbo potentially indefinitely.” (City Reply 3-4, Sept. 9, 2019 (filing ID 248450).)

GHL is a qualified private organization and respectfully requests the Board to reject the City’s plea to reject GHL’s request for a Notice of Interim Trail Use (“NITU”) where CSXT has agreed to negotiate interim trail use with GHL pursuant to 49 C.F.R. § 1152.29. GHL adopts CSXT’s recitation of the background of this proceeding in its September 30, 2019 reply.

GHL is a wholly owned subsidiary of CSXT. GHL is not a rail carrier regulated by the Board, as defined at 49 U.S.C. §10101(5) and it does not own or operate any railroad, as defined at 49 U.S.C. §10101(6). GHL may well be a placeholder for another purchaser. However, even if

there were no other potential purchaser, GHL views the approximately 0.86-mile rail line on the Clearwater Subdivision, between milepost ARE 897.57 and milepost ARE 898.43, in St. Petersburg, Pinellas County, FL (the “Line”) as a valuable property for trail use, and is ready, willing, and able to negotiate trail use with CSXT.

ARUGMENT

The City contends that GHL is not qualified to request a NITU because it is a subsidiary of CSXT and is not a “qualified private organization” as that term is used in 49 C.F.R. § 1152.29(a).

The City claims that GHL and CSXT are the same entity. They are not and the City has not even attempted to pierce the corporate veil of GHL. The City relies on a tortured reading of 49 C.F.R. § 1152.29(a) to conclude that GHL is not “qualified” because a railroad, carrier, and applicant are terms defined by the Board and since GHL and CSXT are the same entity it cannot seek a NITU. The City is wrong.

The definition section of the abandonment rules, 49 C.F.R. § 1152.2, only defines the term “carrier” as “a railroad company...subject to regulation under 49 U.S.C. Subtitle IV, chapter 105.” GHL does not hold itself out to provide railroad transportation and is not licensed by the Board to provide transportation for compensation. GHL is not a railroad or applicant, and those terms are not defined in 49 C.F.R. § 1152.2.

Contrary to the unsupported claim by the City, GHL is qualified to negotiate for interim trail use of the Line. The City misinterprets the term “qualified.” The term “qualified” does not appear in 16 U.S.C. § 1247(d). Instead, the language says “shall encourage State and local agencies and private interests to establish appropriate trails....” In proposing the rules governing trail use it was stated that “The only requirements to be met by the user are that it takes full

responsibility for the management of the right-of-way, for any legal liability, and for the payment of taxes on the land. If the user agrees, then the Commission cannot permit abandonment inconsistent with the use as a trail.” *Rail Abandonments – Use of Rights-of-Way as Trails*, ICC Docket No. Ex Parte No. 274 (Sub-No. 13) (ICC served February 20, 1985), slip op. at 1. In adopting the final rules, it was explained that a prospective trail user should demonstrate “its ability to assume full legal and financial responsibility for managing the right-of-way.” *Rail Abandonment-Use of Rights-of-Way as Trails*, 2 I.C.C.2d 591, 592 (1986). These requirements are embodied in the Statement of Willingness to Assume Financial Responsibility (the “SWAFR”) at 49 C.F.R. § 1152.29(a)(3). Other requirements include submitting a map (49 C.F.R. § 1152.29(a)(1)), acknowledging that the trail is subject to possible future reconstruction and reactivation of the right-of-way for rail service (49 C.F.R. § 1152.29(a)(3)), and paying a filing fee (49 C.F.R. §1002.2(f)(27)((i)(a)). Meeting these criteria qualifies a private organization, and not the higher standard proposed by the City. GHL has met the criteria in the August 29, 2019 request for interim trail use and railbanking.

First, GHL submitted a Statement of Willingness to Assume Financial Responsibility (“SWAFR”), which states:

In order to establish interim trail use and rail banking under 16 U.S.C. §1247(d), and 49 CFR §1152.29, GHL is willing to assume full responsibility for management of, for any legal liability arising out of the transfer or use of, and for the payment of any and all taxes that may be levied or assessed against the right-of-way owned and operated by CSXT. The property extends from railroad ARE 897.57 to milepost ARE 898.43, a distance of approximately 0.86 miles in Pinellas County, FL. The right-of-way is part of a line of railroad proposed for abandonment in Docket No. STB AB-55 (Sub-No. 794X).¹

¹ In preparing this reply, GHL noticed that milepost ARE 898.43 was referred to as ARE 898.42 in error. To correct that error, GHL is submitting a corrected SWAFR concurrently with this reply.

Next, GHL submitted an appropriate map.

Third, GHL stated:

GHL acknowledges that use of the right-of-way is subject to the user's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service.

Finally, GHL paid a filing fee of \$300.

GHL has met the requirements to be a qualified private organization and to be granted a Notice of Interim Trail Use.

GHL has requested that a NITU be granted previously in CSXT abandonment proceedings and the Board has granted the NITU.² Being a subsidiary of CSXT did not prevent the conversion of a railroad line into a trail.

The City questions whether there will be arms-length negotiations between CSXT and GHL. As mentioned above, GHL has filed the NITU as a placeholder for a third party that has agreed to purchase the Line as a trail after arms-length negotiations. CSXT and GHL are in compliance with the law and will negotiate.

The City claims that granting a NITU to GHL would create “a new category of rail line – one in a state of quasi-abandonment.” Response at 6. However, any NITU granted to any party prevents the trigger of reversionary interests, permits cessation of rail service, and permits salvage of the line, thereby reducing maintenance costs. See 49 C.F.R. § 1152.29(d)(1).

The City also improperly claims that granting a NITU to GHL will create additional work for the Board and circumvent timetables in the Board’s governing legislation. First, CSXT has

² See, e.g., *CSX Transportation, Inc.-Abandonment Exemption-in Worcester County, MA*, Docket No. AB-55 (Sub-No. 691X) (served December 23, 2010), where GHL was granted a NITU, which was eventually transferred to the Cities of Leominster and Fitchburg (decision served August 3, 2017), who acquired the railroad line for a trail. As is the case here, GHL was a successful placeholder for converting a railroad line into a trail that could be reactivated at a later date as a railroad line.

agreed to enter an agreement with a third party.³ Therefore, the unknown additional burdens on the Board suggested by the City will not occur. And even if the Board must issue a NITU to a substitute trail user that CSXT has agreed to negotiate with, the burden on the Board is ministerial. At present, there is no time limit on the negotiating period for trail use.⁴ Therefore, even in the hypothetical case put forth by the City, there is no timetable to circumvent.

The City also erroneously relies on 49 C.F.R. § 1152.29(b)(1), which governs the issuance of a Certificate of Interim Trail Use when an abandonment application has been filed. Here CSXT filed a Notice of Exemption. Where trail use is sought in an exemption proceeding, which is the case here, the requirements are set forth in 49 C.F.R. § 1152.29(b)(2), which are different than when an application is filed. Even if the requirements of (b)(1) apply, CSXT and GHL have complied. GHL has complied by filing the SWAFR. In the response to GHL filed on September 3, 2019, CSXT stated “CSXT agrees to negotiate with GHL toward a possible interim trail use/rail banking arrangement.” GHL and CSXT have met the requirements of 49 C.F.R. § 1152.29 for the Board to issue a NITU.

The Board’s responsibilities with regard to processing requests for trails in abandonment proceedings has always been ministerial. “The STB’s role under the Trails Act is limited and largely ministerial. *Citizens Against Rails-to-Trails v. STB*, 267 F.3d 1144, 1151-52 (D.C. Cir. 2001)” *National Trails System Act and Railroad Rights-of-Way*, EP 702 (served April 30, 2012).

Under the National Trails System Act and the Board’s implementing rules, if a prospective trail user (here, the City) requests a trail condition and the carrier indicates a willingness to negotiate a trail agreement, the Board has a limited ministerial role and must issue the CITU. *See Goos v. ICC*, 911 F.2d 1283 (8th Cir. 1990); *see also Caddo Valley R.R.—Aban. Exemption—In Clark, Pike, & Montgomery Ctys., Ark.*, AB 1076X (STB served Feb. 27, 2013); *Rutherford R.R.*

³ See CSXT’s Reply September 30, 2019 at 5.

⁴ There is a proposal pending before the Board to impose a limit on the number of extensions of the period to negotiate trail use. *Limiting Extensions of Trail Use Negotiating Periods*, EP 749 (Sub-No. 1) (served June 6, 2019).

Devel. Corp.—Aban. Exemption—In Rutherford Cty., N.C., AB 567 (Sub-No. 1X) (STB served Aug. 25, 2000); Alloy Property Company, LLC-Adverse Abandonment-Chicago Terminal Railroad in Chicago, Ill., AB 1258 (STB served April 30, 2018).

This ruling applies to a NITU as evidenced by the conclusions in the exemption proceedings in *Caddo Valley* and *Rutherford*.

GHL respectfully requests that the Board grant its requested NITU, as it will prove the most efficient and expeditious means of implementing trail use and preserving the Line for future service.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Melanie B. Yasbin".

Melanie B. Yasbin
Law Offices of Louis E. Gitomer, LLC
600 Baltimore Avenue, Suite 301
Towson, MD 21204
(410) 296-2250
Melanie@lgraillaw.com

Attorneys for: GEORGETOWN AND
HIGH LINE RAILWAY COMPANY, LLC

Dated: October 18, 2019

CERTIFICATE OF SERVICE

I certify that I have this day served copies of this document on all parties of record in this proceeding, by email.

A handwritten signature in blue ink, appearing to read "Melonie B. Zuhli".

October 18, 2019