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VIA UPS OVERNIGHT AND ELECTRONIC MAIL

Jeffrey Irwin
Environmental Protection Specialist and Archaeologist
Office of Environmental Analysis
Service Transportation Board
395 E St. SW
Washington, DC 20423
IrwinJ@stb.dot.gov

December 7, 2015

**LLC Interveners' Response to Director of
Environmental Analysis Victoria Rutson's
Correspondence and Request of September 17, 2015**

**STB DOCKET: AB-167-1189-X and related matters
CONRAIL ABANDONMENT IN HUDSON COUNTY, N.J.**

Dear Mr. Irwin:

We are writing to you following a letter from Victoria Rutson, Director of the Office of Environmental Analysis, dated September 17, 2015. That letter indicated that your office is undertaking limited consideration of reasonably foreseeable land use in your analysis of the proposed abandonment of the Harsimus Branch in Jersey City to determine the potential direct and indirect effects of abandonment to historic properties in and adjacent to the Harsimus Branch right of way. As a consulting party in these proceedings, we are providing you with the information available to us that is relevant in these proceedings.

This matter is not about providing rail service to any former, present, or potential future freight customer. It is a real estate dispute between, our clients and the City of Jersey City over who will develop the approximately six-plus acres of property that our client Limited Liability Companies ("LLCs") purchased from Conrail in 2005. Nor is the dispute about historic preservation of six of the eight blocks that contain stone embankments, built long ago by the Pennsylvania Railroad. We have given this matter substantial and careful consideration in an effort to provide a well-documented and honest answer to the question raised in the September letter.

The answer to the question is that the property will be developed primarily, or exclusively for residential real estate purposes with multifamily, luxury housing. It will not be developed as a passive open space, an active park, or some other public use. Nor will it be developed as a corridor for passenger rail, or light rail services. None of those uses are practical, nor is the City of Jersey City at all interested in pursuing any of them, despite repeated assertion to the STB to the contrary.

Our development analysis for the property is based upon overwhelming trends in the downtown Jersey City area and very strong market demand for luxury residential housing. Also virtually all other suitable parcels in this area have been, or are being, developed for such use. The area is home to most of the tallest and most densely occupied residential buildings in New Jersey.^{1,2} Your most recent visit to the area with the consultant contracted for the purposes of assessing historic sites should have confirmed this. Most currently, the property to the immediate east, also along the Harsimus Branch, is under development at a residential density of at least 200 units per acre of land. The first and easternmost block of the Embankment property along Marin Boulevard has been rezoned by Jersey City for 400 residential units and 200 hotel units, a total of 600 on a site approximately 1 acre in size, thereby establishing the physical capacity of the land, and the neighborhood, to absorb high density residential development.

The economics of such development would command a property value approximating \$100 million for the 6+ acres owned by the LLCs. Six acres, at a density of 200 dwelling units per acre, produce a development potential of 1,200 dwelling units. Land sales for luxury residential development have exceeded \$120,000 per unit in a number of cases, which would produce a potential land value of \$144 million. Substantially discounting that number for obstacles and delays caused by improper actions by Jersey City, objections by neighbors, and other extraordinary costs, by one-third still produces an approximate value of \$96 million for the entire property.

As noted, repeatedly throughout these STB proceedings that have gone on for over 10 years now, nothing is likely to happen on the property immediately after abandonment of the line by Conrail until the continued litigation between the LLCs and the City is concluded. However, the ultimate value of the land, the demand for luxury housing, and the economics of the situation dictate the end

¹ Indeed the City was willing in 2012 to rezone the easternmost block of the Embankment for high density development. See **Exhibit A**, Transcript of September 8, 2014, Jersey City City Council Closed Caucus, P.39-L.21 to P.40-L.4.

² See also **Exhibit B**, Council on Tall Building and Urban Habitat Research Paper "Jersey City on the Rise", by Robert Cotter, Planning Directory, Jersey City and Jeff Wegener, Principle Planner, Jersey City, 2015.

result will be multifamily residential development. This is already underway immediately to the east of Marin Boulevard on an area that is within the area of the Conrail abandonment.

The City of Jersey City has acknowledged this reality-albeit not publicly-but in a secret and improper closed session of the City Council at which these abandonment proceedings were discussed. The LLCs were able to obtain, through court action, a copy of the transcript of those proceedings, ultimately with only limited redactions. These proceedings, conducted in secret, show the following statements by City Officials:

- The LLCs' properties are worth between \$50 and \$100 million, presumably in their present condition and circumstances. (Exhibit A, P.41-L.23-24).
- The City lacks the money to acquire the LLCs' properties or to develop them in any way. (Exhibit A, P.41-L16 to P.41-L.18).
- The City has no plans or intention to use the LLCs' properties for rail freight service. (Exhibit A, P.38-L.25 to P.39-L.4; P.40-L.16 to 20; P.41-L.7; P.48-L.1 to P.49-L.5).
- The City may sell some of the property for development in order to recoup its costs and otherwise raise funds. This establishes the suitability of the properties for residential development and their substantial value as such. (Exhibit A, P.40-L21 to P.41-L.7).

A copy of the transcript cited is attached as Exhibit A to this letter in the form that was ultimately released, by order of the Superior Court, Law Division, Hudson County having concluded that only the matter still shown as redacted was properly within the scope of attorney-client privilege between the City's STB counsel, its Corporation Counsel, the Mayor, City Council members, and staff. This secret City Council session was held to discuss Jersey City's OFA plans outside of, and shielded from, public view.

The Court has struck down City Ordinance 14.103 for exactly those reasons. See attached Order, **Exhibit C**.

By planning in secret to seize the LLCs' properties ostensibly for railway uses that it has no intention of pursuing, while acknowledging the development potential and value of those properties, the City also acknowledges that all of its public statements, STB filings, and protestations that it seeks to preserve history by keeping the Embankment undeveloped deserve no credibility whatsoever. The Embankment will be developed as neighboring properties of similar commercial value have been, and are being, developed.

Having acknowledged the value of the property, and its inability (or unwillingness) to acquire it by paying the LLCs just compensation as

constitutionally mandated, the City also acknowledges the reality that high-end residential multifamily development will take place, unless the STB provides the City and its litigation allies with their "federal remedies." The latest iteration of this plea is the City's December 1, 2015 letter in which the City abandons its prior OFA arguments, attached as **Exhibit D**.

Lest there be any doubt that the City's argument is that luxury residential development on a stone railroad embankment would be an adverse impact on an adjacent historic district, the City has permitted exactly that kind of development only four blocks away on what is commonly referred to as the Tenth Street Embankment. You may have observed this with your consultants on the recent visit. Current pictures of that mid-rise (six story) residential building, taken in the vicinity of 10th St., between Jersey Avenue and Coles Street, are attached as **Exhibit E**.

As your office is well aware, the National Historic Preservation Act requires consideration of direct regulatory impacts upon historic structures and districts. If any adverse impacts would arise from abandonment of the LLCs' properties because they will thereafter be developed with luxury, multi-family residential apartments, such impacts would now be manifest in the surrounding area. No such impacts exist, and none can be found. The contrary is more likely the case with the owners of older residences in the historic districts benefitting substantially from better neighborhoods, increased property values allowing for the funding of historic restoration and maintenance, better mass transit, more restaurants and other services for local residents, and on and on in a long litany of benefits, not burdens.

Further, the argument that some particular individual owner may not benefit, or feel that they don't benefit for whatever subjective reason, is of no moment. The subject of historic preservation is history, not the wants or desires of the present owners or residents, and therefore, the current subjective opinions or preferences of some residents as to the character of "their neighborhood" have no historical significance, as such.

Finally, we are compelled to repeat that historic preservation must give way to the constitutional rights of property owners to just compensation for the taking of their properties for use as parks, open space, or preservation without any viable use to the property owner. The City has acknowledged its inability to pay such just compensation, and we have previously advised General Counsel of the STB that the agency should be careful to avoid the imposition of conditions that would amount to a taking, or excessive delays that would result in a partial or temporary taking.³ However, the sensitive treatment of the Harsimus Embankment in the context of future development rights is not a matter for the

³ Letter from Daniel E. Horgan, Esq. to Craig M. Keats, General Counsel of the Surface Transportation Board, dated March 3, 2015.

STB, but for the City. And the City is the only obstacle to any rational compromise that would accommodate the interests of both the LLCs and historic preservation. Present (and prior) City officials are the ones that have taken the improper position that no compromise with the present owners of the LLCs should be considered, particularly with respect to the City's position before the STB.⁴ Substantial deference to the history of the Embankment is possible, and is only precluded by the personal motives of City officials for improper reasons.

In sum, we believe that abandonment authorization in this matter will have no adverse impact upon historic resources, assuming that the property will be developed for luxury residential multi-family use at an overall density of one thousand or more units on over six total acres. Arguments to the contrary are without merit and contradicted by the un-redacted statements of City officials and their counsel, made in a context related to these proceedings.

We stand ready to respond to any questions or issues raised by this submission and welcome any inquiries by your office. Thank you for your attention to this matter and we hope that this submission will advance a deliberate and timely resolution of the pending abandonment proceedings.

Very truly yours,
WATERS, McPHERSON, McNEILL, P.C.

BY: 
DANIEL E. HORGAN

CC: Charles H. Montange, Esq.
Andrea Ferster, Esq.
Robert M. Jenkins, III, Esq.
Adam Sloane, Esq.

⁴ See Exhibit A. P. 38 P.38-L.6 to 12: "MR. FULOP: I would just say that if that's the logic, that we can't take care of something, so to take that - - because you believe that we can't take care of something we should just give a gift to Steve Hyman, [manager of the LLCs] well we are gifting a \$3 million property he has acquired with a value of [\$]50 [million] to - -"

EXHIBIT

“A”

STATE OF NEW JERSEY

CITY OF JERSEY CITY

MUNICIPAL COUNCIL

CLOSED CAUCUS

TRANSCRIPT OF
PROCEEDINGS

ORIGINAL

City of Jersey City Municipal Council

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Jersey City, New Jersey 07302

September 8, 2014

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2 MUNICIPAL COUNCIL

3 ROLANDO R. LAVARRO, Council President

4 JOYCE E. WATTERMAN, Councilman-At-Large

5 DANIEL RIVERA, Councilman-At-Large

6 FRANK GAJEWSKI, Councilman Ward A

7 RICHARD BOGGIANO, Councilman Ward C

8 MICHAEL YUN, Councilman Ward D

9 CANDICE OSBORNE, Councilwoman Ward E

10 DIANE F. COLEMAN, Councilwoman Ward F

11

12 ROBERT BYRNE, City Clerk

13 MAYOR FULOP

14 JEREMY FARRELL, ESQ., Corporation

15 Counsel

16 ROBERT KAKOLESKI, Business Administrator

17 DIANA JEFFREY, ESQ., Assistant Corporation.

18 Counsel

19 MICHAEL DOUGHERTY, ESQ., Assistant Corporation.

20 Counsel

21 ROBERT COTTER, Planning

22 JEFFREY WENGER, Planning

23 MARYANN BUCCI-CARTER, Planning

24

25 TRACEY R. SZCZUBELEK, C.C.R.

1 A L S O P R E S E N T :

2 Charles Montange, Esq.

3 John Jack Curley, Esq.

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Confidential

1 MR. BYRNE: Okay. Good afternoon,
2 Everyone. This is a closed session of the Jersey
3 City Municipal Council. It is 5:12 p.m. This
4 closed session was authorized by a resolution just
5 approved out in the Council chambers by the City
6 Council by an eight-zero vote, a resolution
7 authorizing a closed caucus of the Municipal Council
8 on Monday, September 8th, 2014 at 5 p.m. to discuss
9 pending litigations in matters within
10 attorney-client privilege, the South Street
11 Embankment and Bright and Varick litigation.

12 MR. RAMCHAL: Council President.

13 MR. BYRNE: We have all nine members.

14 MR. RAMCHAL: Now Robert, Council
15 President, I would like to excuse myself from this
16 whole session because - I didn't really miss a
17 meeting because I can't sit in this because I have a
18 personal issue with this.

19 MR. LAVARRO: You are excused, but
20 you did miss a meeting.

21 MR. RAMCHAL: I am going to excuse
22 myself from this closed session.

23 MR. BYRNE: Okay. We will hang out
24 together, Chico.

25 MR. RAMCHAL: For personal reason.

1 So I don't want to be in here.

2 MR. BYRNE: I am just going to say
3 you recuse yourself. Okay.

4 MR. FARRELL: You can leave your
5 paperwork.

6 MR. BYRNE: Councilperson Boggiano,
7 you are present.

8 MS. COLEMAN: [REDACTED]
9 [REDACTED]

10 MR. BYRNE: He has a reason.

11 MS. COLEMAN: So do I.

12 MR. FARRELL: [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 MS. COLEMAN: Okay. I'm going to
19 stay.

20 MR. BYRNE: Councilperson Yun, you're
21 present.

22 MR. YUN: Here.

23 MR. BYRNE: Councilperson Osborne is
24 present, as is Councilperson Coleman, Councilperson
25 Rivera, Councilperson Watterman, Council President.

1 We also have our Business Administrator, Robert
2 Kakoleski. We have special counsel --

3 Why don't you introduce yourself,
4 Jack, to everybody.

5 MR. CURLEY: John Jack Curley,
6 representing the City on the embankment State Court
7 cases.

8 MR. FARRELL: You are correct; he
9 goes by Jack.

10 MR. BYRNE: I know that.
11 Charles Montange. M-o-n-t-a-n-g-

12 MR. MONTANGE: E.

13 MR. BYRNE: E.

14 MR. MONTANGE: Yeah, Montange.

15 MR. BYRNE: And we have, for staff,
16 Mr. Robert Cotter, Diana Jeffrey and Mike Dougherty.
17 D-o-u-g-h-e-r-t-y, correct?

18 MR. DOUGHERTY: Correct.

19 MR. BYRNE: Thank you. Okay. If you
20 need me, holler or call me.

21 (Whereupon, Robert Byrne and
22 Councilman Ramchal leave the closed
23 caucus.)

24 MR. FARRELL: All right, guys, before
25 we start I just want to explain -- I wanted to

1 explain a few things, as this is our first executive
2 session.

3 The first thing is that there will be
4 minutes taken at this meeting and that at some later
5 date, when the context or the discussion that takes
6 place here today is no longer deemed to be within
7 the attorney-client privilege, the minutes will be
8 made public.

9 All the rules that govern a normal
10 meeting of this body still govern our Council
11 President will run the meeting. And I do encourage
12 you to ask any questions you have but to remember
13 that whatever is said here will eventually become
14 public. So all the rules of decorum and respect
15 should still apply.

16 I also want to make clear to this
17 body that we're not taking a vote on anything today;
18 but, rather, this session is for informational
19 purposes and that any actual actions will be taken
20 at the regular meeting on Wednesday.

21 MS. COLEMAN: Regarding both matters?

22 MR. FARRELL: Regarding both
23 matters - regarding this matter. We are not
24 actually voting on anything on Bright and Varick.

25 And with that being said I want to

1 introduce you guys to Charles Montange, who has
2 flown in for this meeting.. Charles will be
3 discussing with us the posture of the case right now
4 and our options as to how to best pursue the relief
5 sought.

6 Yes.

7 MR. BOGGIANO: What law firm is he
8 from?

9 MR. FARRELL: Charles Montange is
10 from his own law firm.

11 MR. MONTANGE: Law offices of.

12 MR. FARRELL: Charles Montange. He
13 is a solo.

14 MR. BOGGIANO: And you are from?

15 MR. CURLEY: John J. Curley, LLC on
16 Harborside Financial Center.

17 MR. FARRELL: Jack Curley is our
18 local counsel. Charles Montange is our special
19 counsel representing in railway law.

20 MR. LAVARRO: Resulting in what?

21 MR. FARRELL: Railway law.

22 MS. OSBORNE: Just so we know, we
23 share this attorney with the Embankment Preservation
24 Coalition.

25 MR. MONTANGE: And Conservancy.

1 MR. FARRELL: With that, Charles, go
2 ahead.

3 MR. MONTANGE: Again, I am Charles
4 Montange. I have actually been representing the
5 City since 2006 in this matter. This is not the
6 first time I have been in the room; however, for
7 many of you, this is the first time you have seen or
8 heard me, so I will try to start at the very
9 beginning and try to go very quickly. And if there
10 are questions, feel free.

11 I will try to get to the heart of
12 things. They have asked me to discuss the character
13 of the things and why we are considering a
14 particular ordinance, which is a recommendation that
15 I am making for the next steps in this case.

16 First of all, I do railroad law
17 before the Service Transportation Board. Although I
18 am located in Seattle, which is 3,000 and 2,000
19 miles from you, I do this stuff across the country
20 for cities and county governments and groups that
21 are interested in main -- keeping a railroad
22 corridor intact, usually for light rail or trail but
23 sometimes even for actual freight rail or passenger
24 services. And I represent other local -- usually
25 smaller governments and lot of nonprofit groups.

1 In this particular matter I was
2 retained by the City, along with Rails To Trails
3 Conservancy Embankment Coalition. You guys are
4 getting a reduced rate as part of that deal.

5 The whole matter starts in -- well,
6 really starts last -- well, over a century ago. The
7 Harsimus branch, which is called the Sixth Street
8 Embankment, was the main line for freight for
9 Pennsylvania Railroad to get product from the middle
10 West down to the East Coast, into the harbor for
11 international trade. This line was -- ultimately
12 ended up in the hands of Penn Central, and there was
13 bankruptcy. And under a reorganization, which
14 formed ConRail, the property was transferred to
15 ConRail as a line of railroad.

16 MS. COLEMAN: As what?

17 MR. MONTANGE: A line of railroad.

18 MS. COLEMAN: Okay.

19 MR. MONTANGE: When I start to use
20 the stuff, realize there is going to be jargon; and
21 it's going to have legal significance beyond what a
22 normal lawyer is going to call for.

23 So it's a line of railroad. And what
24 happened was ConRail in the late 1960 -- 1990's
25 ceased all use of it, tore out the bridges or

1 suffered them to be torn out, took out the track,
2 took out the rail structure and began to look for a
3 market to sell it for non-rail purposes, all without
4 any abandonment authorization.

5 Any line of railroad that the United
6 States -- anything that's a line of railroad in the
7 United States has to receive exit permission --
8 that's a license from the Service Transportation
9 Board -- before it's dismantled and sold off. If it
10 is not done in accordance with law, Federal law,
11 then the sale is unlawful or the action of doing the
12 sale and the tearing out of the material is
13 unlawful. And one can seek to have the railroad put
14 back together again.

15 So in 2005 this property -- by 2005
16 the City was interested in acquiring this property
17 for alternative public use, historic preservation,
18 park trail, open space; and there was some glimmer
19 maybe for light rail. And it was viewed by the
20 Planning Department, I think, as an underused
21 transportation corridor, the last one into Downtown,
22 maybe prudent to keep it intact for future use.
23 That's where things stood in 2005.

24 The Council at that point -- 2004, I
25 think, even started to document an ordinance of

1 imminent domain against this line, so you take it
2 under State law. If you look at the title practice
3 manual, as the gentleman on my right did, it says if
4 you are going to acquire ConRail property, you must
5 receive -- you must ask the railroad first for proof
6 of abandonment at the Service Transportation Board
7 or proof that no abandonment authorization is
8 required.

9 He made an inquiry along those lines
10 to ConRail and got a less than affirmative response.
11 They essentially admitted no abandonment
12 authorization, and they asserted that they
13 designated the line to be a spur.

14 MS. COLEMAN: They did what?

15 MR. MONTAGNE: They designated the
16 line to be a spur. They classified it as a spur.
17 That has a technical meaning in railroad law. It
18 means you don't have to have an abandonment
19 authorization. However, it's also the law that you
20 cannot just claim the line of railroad as a spur and
21 get out of it. It's like saying, "I don't have to
22 have a driver's license because I don't have to have
23 a driver's license." They can't just excuse
24 themselves from compliance by relabeling the thing.
25 Once it's a line, it's a line. They can't alter its

1 status. It can be unused. They can even try to
2 dismantle it. But it's still a line.

3 So the manner -- while all this was
4 going on, at the same time they were kind of
5 postponing things with Mr. Curley and holding him
6 off. They sold the line to SLH Properties, and in
7 particular, eight LLC's in common control of
8 Mr. Steve Hyman?

9 At that point --

10 MS. COLEMAN: Is that mic working?

11 MR. FARRELL: These mics don't
12 amplify; they just record.

13 MR. MONTANGE: Okay. Can you hear me
14 okay?

15 MS. COLEMAN: When you get down to
16 the ending of your --

17 MR. MONTANGE: I am tapering off. I
18 will do my best. There is an air condition --

19 MR. RIVERA: Which property? You
20 said they sold it to what?

21 MR. MONTANGE: SLH Property -- eight
22 LLC's, limited liability corporations, owned by --
23 controlled by Mr. Steve Hyman.

24 MR. BOGGIANO: Isn't it true that the
25 City decided not to purchase this because the cost

1 of the railroad was too much money?

2 MR. FARRELL: No. And let's hold off
3 on the questions because there is a lot of
4 background to get through and it's going to take
5 some time.

6 MR. MONTANGE: Yeah, you can -- maybe
7 the best way is do that and hold off your questions
8 at the end. I will try to answer any questions you
9 have, at least give my best estimate of the answer.

10 So we get the eight -- own it.
11 Negotiations went on at the time because the City
12 was interested in acquiring it. They authorized
13 eminent domain. Nothing happened. And finally
14 Mr. Hyman's companies began to take out stanchions
15 adjoining the embankment. And I think they were
16 applying for demo permits at the same time. And the
17 City decided it would have to pursue relief at the
18 Federal level.

19 And the Federal action -- I called up
20 the Service Transportation Board December 2005. And
21 honestly, Gang, they said they have been receiving
22 lots of cards and letters on this saying -- and they
23 were waiting for somebody to petition them for
24 relief. And they were the ones to first mention the
25 words "OPA" to me. They expected someone would try

1 to do that. And I will get into that in a moment.

2 But suffice -- in January 2006 we
3 filed Rail -- City of Jersey City, Rails To Trails
4 Conservancy Embankment Coalition filed a motion for
5 declaratory order of Transportation Board for
6 determination this was a line of railroad. We won.
7 In 2007 -- took a long time for STB to get its order
8 out because they have no time deadlines in most
9 proceedings. In 2007 they got an order out saying
10 it was a line of railroad at one point.

11 The LLC's, told by Conrail, took an
12 appeal to the D.C. Circuit. And they argued for the
13 first time that the only tribunal that can determine
14 whether this was a line of railroad was a U.S.
15 District Court in the District of Columbia. The
16 D.C. Circuit case of first impressions said, yeah,
17 you don't have to go to this U.S. District Court.

18 This sent us in a round of
19 litigation, which, as of February 2014, we won.
20 This is a line of railroad. It just clearly is
21 because it was the Penn Central -- Pennsylvania,
22 rather, Railroad line of freight to the East Coast.
23 There was no doubt about what it was. And Mr.
24 Hyman's companies even stipulated that there was a
25 line of railroad by that time and asserted -- I

1 don't know whether -- well, they have asserted in
2 pleadings filed in U.S. District Court ConRail
3 fraudulently misrepresented to them it was not a
4 line of railroad, but they say now clearly was
5 line of railroad. Anyway, that's what they said in
6 court and upheld the appeals of court.

7 It's back to Transportation Board
8 now, where we should have been much earlier. But we
9 got chased around by ConRail, and the LLC's caused a
10 lot of litigation and turmoil. We are finally back
11 to where we should have been in 2006 -- where we
12 should have been before the sale was made.

13 MS. COLEMAN: Shouldn't have sold in
14 the first place.

15 MR. MONTAGNE: No, shouldn't have
16 sold it in the first place. It was unlawful.
17 That's what the STB has said in orders relating to
18 things like this. The sale was unlawful.

19

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21

22

23 I have taken you through sort of the
24 history of where we're at to now.

25 MS. OSBORNE: Just -- sorry, just to

1 make sure I am understanding everything you say, so
2 this Transportation Board said the sale was never
3 legal because they didn't do this abandonment; and
4 that was basically upheld through the U.S. Court of
5 Appeals?

6 MR. MONTANGE: Yeah, it's a line of
7 railroad now. We won; you were right.

8 MR. FARRELL: So our options going
9 forward are?

10 MR. MONTANGE: Yeah, the options
11 going forward -- let me, before -- I have talked
12 about the Federal litigation. And I should make
13 sure you guys are aware of the whole context first.
14 And then I will give you the options and why the
15 options become very important to you because that
16 helps set this up.

17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]

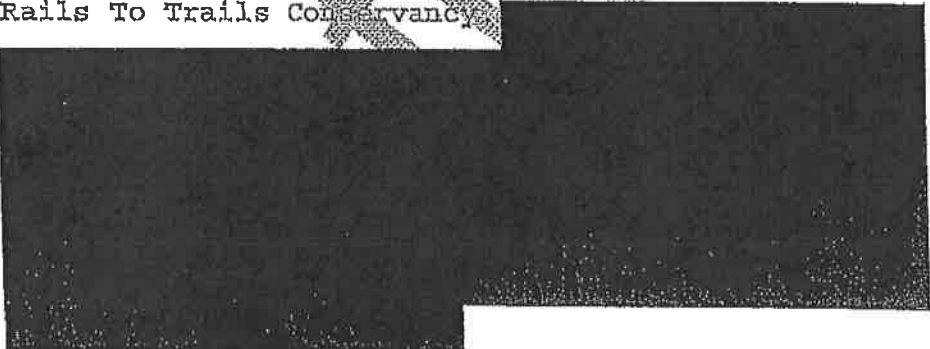
the LLC's,
22 sometimes joined by ConRail, were filing, I recall
23 from my vantage point, waves of State Court and
24 administrative tribunal litigation, perceived waves
25 against the City appealing this designation of the

1 Harsimus branch, appealing the refusal to grant demo
2 permits. Finally a Federal Civil Rights --

3 MR. FARRELL: Closed session; Sue.
4 This is a closed session.

5 MR. MONTANGE: Finally a Federal
6 Civil Rights action against the City alleging an
7 unconstitutional -- basically an unconstitutional
8 deprivation of property rights and threatening
9 inverse condemnation suit against the City for an
10 alleged taking of the property.

11 And there is additional suits that
12 have been filed, including suits against individual
13 officers of City Government. And they even filed a
14 suit against me at one point and general counsel of
15 Rails To Trails Conservancy.



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21 At this point I think I can safely
22 say essentially all of the State Court proceedings
23 have been stayed pending a resolution of the Federal
24 case. So we finally got all the State stuff held in
25 abeyance pending an outcome of the Federal level.

1 It's now back at the Service
2 Transportation Board finally, as of roughly
3 February. And then with the exhaustion -- so now
4 the STB has to consider relief. And they are
5 restarting an abandonment proceeding for ConRail.
6 So our -- what we ask at this point becomes really
7 germane.

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13 MS. COLEMAN: That's what I'm waiting
14 for.

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21 MS. COLEMAN:
22 MR. MONTANGE:

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MS. COLEMAN:

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[REDACTED]

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MR. MONTANGE: Yes.

3

MS. COLEMAN:

[REDACTED]

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[REDACTED]

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[REDACTED]

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MR. MONTANGE: Yeah.

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MS. COLEMAN:

[REDACTED]

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[REDACTED]

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[REDACTED]

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MR. MONTANGE:

[REDACTED]

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[REDACTED]

MR. FARRELL: I don't want to get too bogged down with this because we have a lot to get through and a lot of questions that are going to be coming.

MR. MONTANGE:

[REDACTED]

[REDACTED]

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MS. COLEMAN:

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[REDACTED]

[REDACTED]

MR. FARRELL: Can we just add to the
record Mayor Fulop has joined the meeting.

MR. MONTANGE: Should I start at the

1 beginning?

2 MR. FARRELL: No.

3 MR. FULOP: I haven't seen you in a
4 long time.

5 MR. MONTANGE: Anyway, that leads us
6 to the OFA. The OFA stands for offer of financial
7 assistance.

8 [REDACTED]
9 [REDACTED] That's where OFA comes
10 from.

11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
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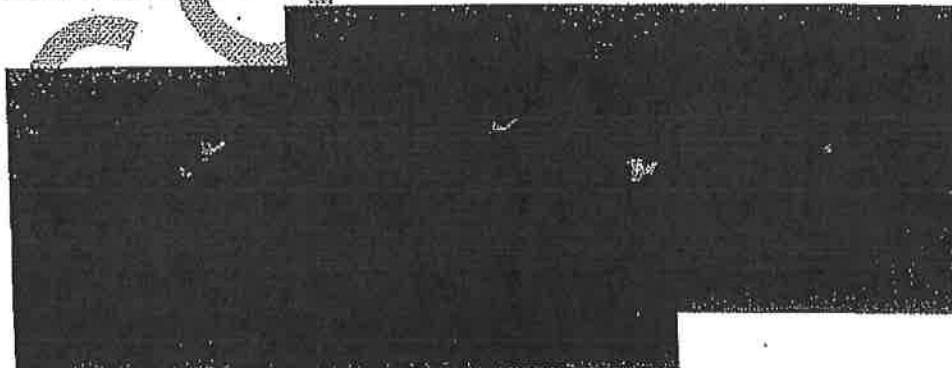
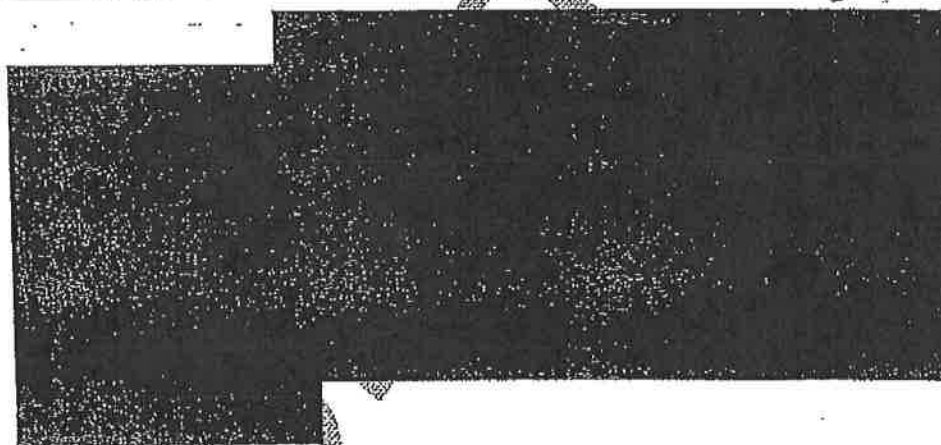
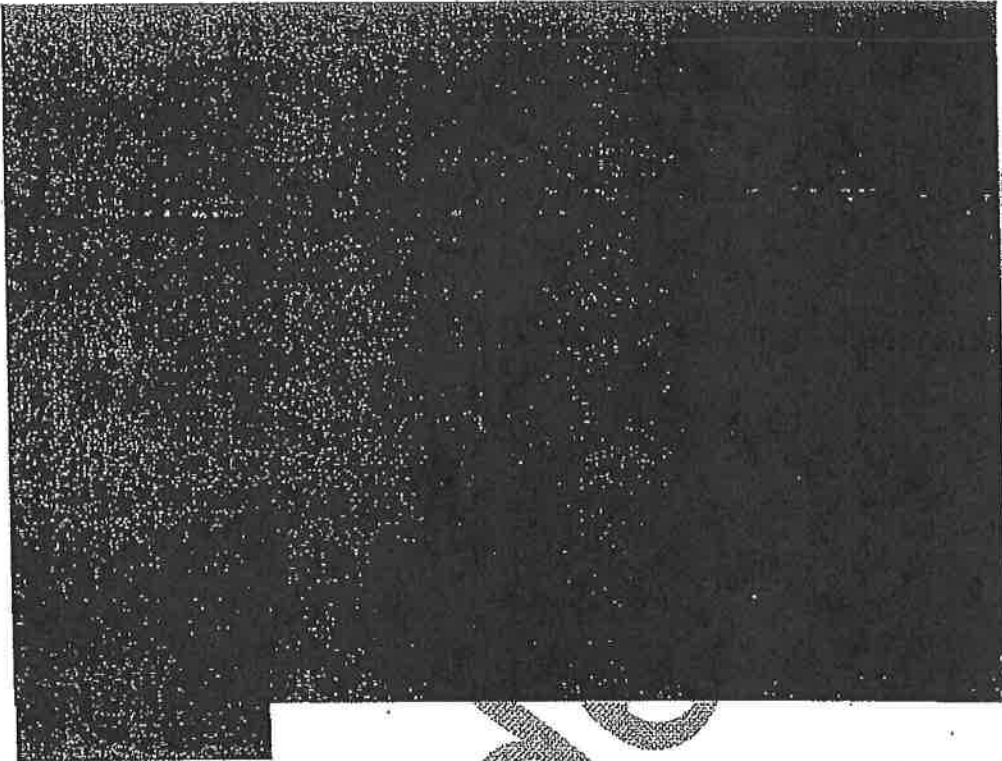
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MR. FARRELL:

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MR. MONTAGNE:

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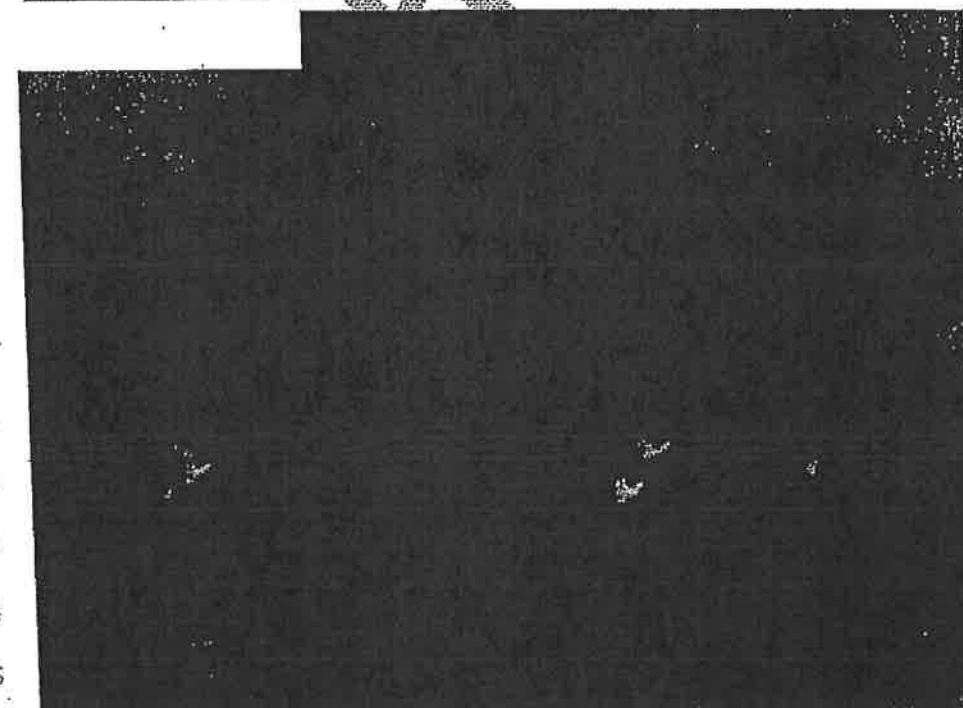
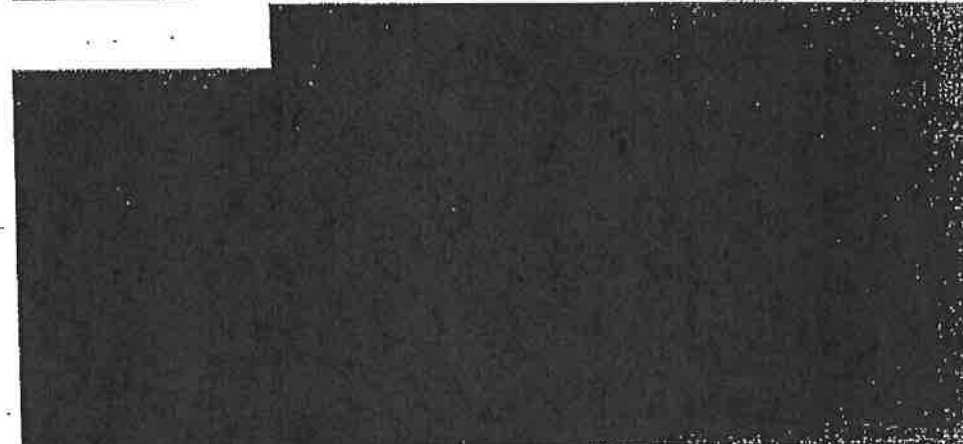
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[REDACTED]

MR. FARRELL: Charles, with all that being said, let's open it up to the Council for questions.

MR. BOGGIANO: I would like to ask first how much does it cost us, the taxpayers, since 2006?

MR. FARRELL: That's a really hard number for us to put together. I will try to put something together for you.

MR. BOGGIANO: I want to ask another question. Who has been paying bills for this group Downtown to fight this?

MR. FARRELL: The litigation is financed primarily through the monies bonded to realize the vision of a open space.

MR. BOGGIANO: You are telling me no City money has been used?

MR. FULOP: No, that's City money. This has gone through four -- three mayors, just to put it in -- and three City Councils, Cunningham, Harvey Smith, Jerry Healy. And everybody has kind of found it prudent to move forward, despite these same questions that have come up.

We were very close to a settlement

1 three years ago --

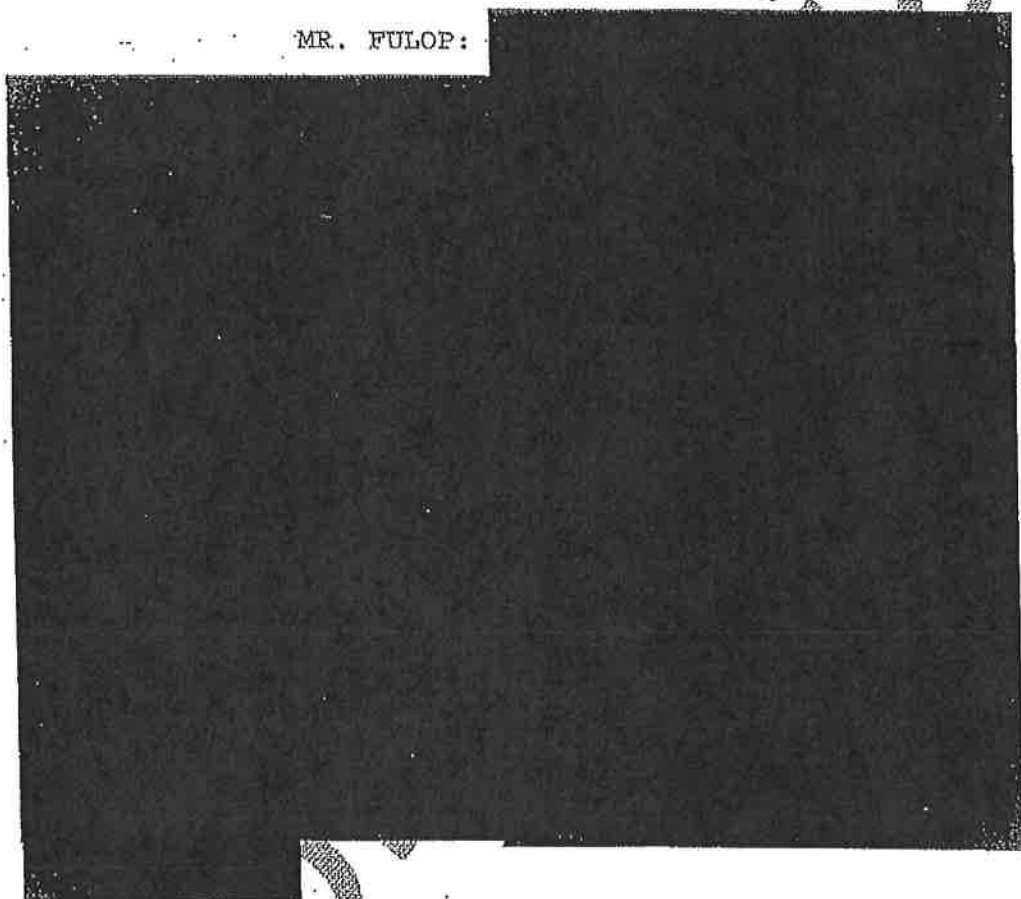
2 MR. MONTANGE: Yeah, several times.

3 MR. FULOP: -- but -- we bonded --

4 was it two years ago or three years ago?

5 MR. MONTANGE: Two years ago.

6 MR. FULOP:



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23 indicated, at least, is saying that whereas two

24 years ago we were ready to -- we put \$7 million that

25 we bonded for that we've said -- we have won the

1 last two court cases, right? [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 MR. FARRELL: To litigate.

7 MR. FULOP: -- in order to

8 litigation.

9 MR. BOGGIANO: You know --

10 MR. LAVARRO: Councilperson Coleman.

11 MR. BOGGIANO: I'm not finished with

12 questions yet.

13 MR. LAVARRO: In fairness, she was

14 trying to get her questions in.

15 MS. COLEMAN: I raised my hand, and

16 you started talking. I follow the rules. Raise

17 your hand. But you finish.

18 MR. BOGGIANO: I look at this this

19 way: You are picking this up. It's going to cost

20 us a fortune to maintain. It's contaminated land,

21 and we can't even take care of Pershing Field.

22 Can't take care of Van Weganen Park. Can't take

23 care of all the other parks in the City. Now we are

24 going to spend all this money on this entities? I

25 think it's ridiculous. It's been going on for

1 years.

2 I was also told by couple Council
3 people that when the opportunity came back in 2006,
4 the City Council did not want to buy it because it
5 was too much money at that time. Now, you know --

6 MR. FULOP: I would just say that if
7 that's the logic, that we can't take care of
8 something, so to take that -- because you believe
9 that we can't take care of something we should just
10 give a gift to Steve Hyman, well, we are gifting a
11 \$3 million property he has acquired with a value of
12 50 to --

13 MR. BOGGIANO: I would like to --

14 MR. LAVARRO: Which we are entitled
15 to. It's our property.

16 MR. FULOP: So you're giving him a
17 gift.

18 MR. BOGGIANO: It's worth nothing.

19 MR. FULOP: What are you saying; we
20 are basically giving Hyman --

21 MR. BOGGIANO: I don't want to give
22 Hyman anything. I don't care who it is.

23 MR. FULOP: Well, the developer, you
24 know him. He says you know him.

25 MR. BOGGIANO: What, are you going to

1 put the bridges back, rebuild them? It's going to
2 be a horror show. We can't take care of what we
3 have right now. I can't see getting involved
4 spending money on anything else right now.

5 MR. FARRELL: Guys, I think this
6 conversation is valuable, but we only have a limited
7 amount of time with our attorney, so I would love to
8 have --

9 MR. BOGGIANO: Are you part of --
10 were you from Newark Avenue?

11 MR. CURLEY: Yes.

12 MR. BOGGIANO: Jack Curley of Leviss
13 & Leviss?

14 MR. CURLEY: Yes.

15 MR. LAVARRO: Councilperson Coleman.

16 MS. COLEMAN: My question is: What
17 is the recommendation here? In other words, do
18 we -- the recommendation is for us to take the
19 property and then sell it or take the property and
20 develop it or -- what is the recommendation.

21 MR. FULOP: Can I -- the original
22 plan was -- with the settlement was that we would
23 take the five properties, okay, and that the first
24 one on the settlement would go to the developer.
25 And to think about the value, we would have zoned

1 that one for four 500 units. From his standpoint,
2 that one parcel would have compensated enough for
3 everything. That's how valuable you are talking
4 about the land is what you're talking about here.

5 The Embankment Coalition out there
6 was comfortable with that proposal. They were
7 willing at the time to say, You could take that one
8 piece of property; the other five will be open.

9 So, look, I'm just -- I would defer
10 to Jeremy and Chaz on -- I don't know how I feel
11 about the freight and all that and all the legal
12 stuff; but to walk away from literally 12 years
13 of -- of work, I mean, we are so far down the road
14 at this point and winning now, I mean, what choice
15 do we have. You know?

16 MR. FARRELL: I would add to that
17 answer that the idea is still to create some sort of
18 open space and to create a preserved line, which
19 could be for use for trails all the way out,
20 hopefully out to green space.

21 But what the Mayor highlights, which
22 is important, is a lot of money is going to be
23 involved in making that happen. There is also
24 embedded in this property value. So we could
25 preserve a line and still bring some of the value

1 out of one of these blocks to resell to a developer
2 to pay for all the rest of it, as long as we
3 maintain an easement so that the trails continue
4 through that property.

5 So there is options here, but the
6 idea is still to preserve an open space along that
7 line.

8 MR. FULOP: Bob Cotter came in front
9 of the Council probably four years ago and made a
10 very, very compelling argument about the
11 right-of-way and that these don't surface every so
12 often. So even if you want to believe what Rich
13 says, that we don't take care of our parks, well,
14 even if you want to believe what he says -- and you
15 said -- wait a second. I want to figure --

16 MR. BOGGIANO: Just take a look.

17 MR. FULOP: Let's say that's true.
18 Nobody is it advocating today to put a dollar into
19 building the park today okay. Like -- but it would
20 be foolish not to preserve the option, right? You
21 don't have to do anything. Nobody is going up there
22 cleaning today, cutting the weeds today. Nobody is
23 doing anything. So you could acquire the property
24 valued 50 to a hundred million dollars, and you are
25 leaving the City with an asset, when all of us are

1 one in four, eight, 12 years. Maybe another Council
2 could say, "We have the money today." But if you
3 don't make the decision today to actually try and
4 protect that, you're giving a gift to Steve Hyman,
5 50 to a hundred million dollar property for
6 \$3 million.

7 MR. FARRELL: Candice has a question.

8 MR. LAVARRO: I'm sorry, Candice.

9 MS. OSBORNE: I completely agree with
10 you. We are a City. We are growing. We are not
11 getting more space. This is it. And to -- to give
12 it up would be foolish. And I'm sure when Roosevelt
13 said we need to have national park space and need to
14 preserve areas like had been happening all across
15 the United States, I am sure there are people that
16 said, "We don't have the money for it." But it is a
17 once-in-a-lifetime chance. I don't think we should
18 give it away.

19 MR. FULOP: There is \$3 million still
20 earmarked that Senator Menendez, then Congressman
21 Menendez, has sitting there for us to draw on
22 when -- when we acquire it. That is their -- you
23 would be walking away from that, as well. That is
24 earmarked money in Washington for this property.

25 MR. FARRELL: There is actually also

1 Green Acres money that is about to expire but is
2 currently still available for us for this project.

3 MR. LAVARRO: Councilperson Coleman,
4 then Yun.

5 MS. COLEMAN: My last question was I
6 heard it in the -- that at some point in time the
7 settlement was going to pay a certain amount,
8 ConRail was going to pay a certain amount and that
9 amount was to represent making the -- the owner
10 whole. Is that correct? But they changed that now
11 since that time?

12 MR. FARRELL: Yes.

13 MR. MONTANGE: [REDACTED]

14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]

22 MS. COLEMAN: All of a sudden they --

23 MR. MONTANGE: [REDACTED]

24 MR. FARRELL: I want to bring it in

25 [REDACTED]

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[REDACTED]

MS. OSBORNE:

[REDACTED]

MS. WATTERMAN:

[REDACTED]

MR. FARRELL:

[REDACTED]

[REDACTED]