

205 323

BEFORE THE SURFACE TRANSPORTATION BOARD

1411 Corporation --)
Abandonment Exemption --) AB-581X (consolidated
in Lancaster County, PA) with AB-524X)

Joinder in Appeal and Petition

205 324



Shawnee Run Greenway, Inc. ("Shawnee"), hereby confirms that it joins in the Appeal and Petition filed on behalf of Columbia Borough from this Board's decision served April 12, 2002, in the above-captioned proceeding.¹ For the reasons stated in the Borough's appeal, and by 1411 Corporation and Shawnee in their pleadings responding to the alleged clarification petition filed by Frank Sahd Salvage Center, Inc. ("Sahd Salvage"), the Board's decision is ultra vires, contrary to transportation policy, violative of the Fifth Amendment, and otherwise contrary to law.

Anyone familiar with railroad economics would be compelled to conclude that the Borough of Columbia has offered Sahd Salvage a wonderful opportunity, if Sahd Salvage is genuinely interested in acquiring the rail corridor at issue in this proceeding for rail purposes, and if Sahd Salvage is, as it professes, not opposed to a trail project and greenway. In particular, the Borough has offered to pay all acquisition costs, to acquire the property under the railbanking statute,

¹ Shawnee contracted to acquire the property at issue in this proceeding for \$125,000, subject to issuance of appropriate authority from this Board. Shawnee wishes to ensure that the property is developed for public trail and greenway purposes consistent with the applicable local Master Plan and all other local planning documents.

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and to allow rail operations without any recovery of the Borough's acquisition costs, under this Board's program for otherwise to be abandoned lines, 49 C.F.R. Part 1150, Subpart C. Under the Borough's approach, Sahd Salvage need not fear additional environmental liability (which supposedly precipitated Sahd's motion that precipitated the April 12 decision under appeal in the first place), and the rail service Sahd Salvage claims to seek would enjoy an enormous subsidy, in terms of free acquisition of the existing assets. Moreover, the Borough and Sahd Salvage (or the rail operator Sahd designates) can specify contractual terms and conditions under Subpart C. Such terms and conditions, properly negotiated, and then implemented by STB, as is STB's practice, will protect Sahd Salvage (and the Borough for that matter) from downside risks from unrecovered operating costs and rehabilitation.²

If the approach proposed by Columbia Borough is not accepted by Sahd Salvage, then the motivation for the Sahd Salvage OFA is clearly something other than rail use. This would itself demonstrate the unlawful nature of the invocation of the OFA provisions of the ICC Termination Act here.

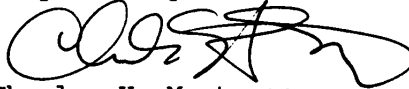
If Sahd Salvage does not voluntarily resolve this matter as proposed by Columbia Borough, then the Board at the very least

² Columbia Borough is to be commended for developing so reasonable approach notwithstanding the refusal of Sahd Salvage to provide any information, and notwithstanding the stringent time deadlines in this OFA proceeding, which STB, aside than for purposes of facilitating relief for Sahd in connection with the April 12 decision, has declined to waive.

should either order Columbia's proposed solution (as Columbia petitions), or otherwise dismiss the OFA as now demonstrably employed by Sahd Salvage for private ends rather than public purposes, and certainly not for any bona fide rail purposes that could remotely comport with the requirements of the Fifth Amendment of the United States Constitution. In all events, the lengthy extension the Board has provided subverts transportation policy set forth in 49 C.F.R. § 10101, is unprecedented, and is an inexplicable departure from past practice under 49 U.S.C. § 10904.

If the Borough's proposal is implemented, either voluntarily by Sahd Salvage or by Order of this Board, Shawnee will assign its contract for purchase to the Borough, provided the Borough assume Shawnee's obligations under the contract.³

Respectfully submitted,



Charles H. Montange
426 NW 162d St.
Seattle, WA 98177
(206) 546-1936
Counsel for Shawnee Run Greenway

³ Shawnee otherwise reserves its positions, and nothing herein should be deemed an admission against any position Shawnee has heretofore set forth, either for purposes of this administrative proceeding or judicial review.

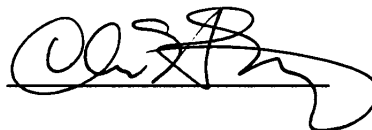
Certificate of Service

I hereby certify service of the foregoing by US Mail postage prepaid first class this 2d day of May, 2002, upon the following counsel:

Andrew Goldstein, Esq.
McCarthy, Sweeney & Harkaway P.C.
2175 K Street, N.W., Suite 600
Washington, D.C. 20037 (for M&H/1411)

Jeffery O. Moreno, Esq.
Thomson Hine & Flory
1920 N Street, N.W.
Washington, D.C. 20037 (for Sahd)

Robert Pfannebecker, Esq.
Zimmerman, Pfannebecker, Nuffort & Albert
22 South Duke St.
Lancaster, PA 17602 (for Columbia)

A handwritten signature in black ink, appearing to read "R. Pfannebecker", written over a horizontal line.