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October 8, 2002

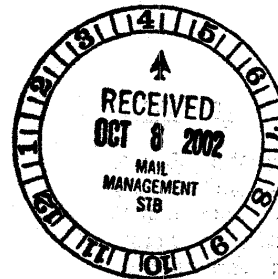
BY HAND

Honorable Vernon A. Williams, Secretary
Surface Transportation Board
Office of the Secretary
Case Control Unit
1925 K Street, N.W.
Washington, DC 20423-0001

ENTERED
Office of Proceedings

OCT 9 2002

Part of
Public Record



Re: Finance Docket No. 34040— Riverview Trenton Railroad Company - Petition for an Exemption from 49 U.S.C. 10901 to Acquire and Operate a Rail Line in Wayne County, MI

Dear Secretary Williams:

Enclosed for filing in the above-referenced docket please find an original and ten copies of the Reply of Wayne County to Status Report of Riverview Trenton Railroad Company.

Very truly yours,

FINK, ZAUSMER & KAUFMAN, P.C.

Mark J. Zausmer/jmg
Mark J. Zausmer

Enclosures

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 34040



**RIVERVIEW TRENTON RAILROAD COMPANY - PETITION FOR AN EXEMPTION
FROM 49 U.S.C. 10901 TO ACQUIRE AND OPERATE
A RAIL LINE IN WAYNE COUNTY, MI**

**REPLY OF WAYNE COUNTY TO STATUS REPORT OF
RIVERVIEW TRENTON RAILROAD COMPANY**

**ENTERED
Office of Proceedings**

OCT 9 2002

**Part of
Public Record**

Mark J. Zausmer (P 31721)
FINK, ZAUSMER & KAUFMAN, P.C.
31700 Middlebelt Road, Suite 150
Farmington Hills, MI 48334
(248) 851-4111

Dated: October 8, 2002

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 34040

**RIVERVIEW TRENTON RAILROAD COMPANY - PETITION FOR AN EXEMPTION
FROM 49 U.S.C. 10901 TO ACQUIRE AND OPERATE
A RAIL LINE IN WAYNE COUNTY, MI**

**REPLY OF WAYNE COUNTY TO STATUS REPORT OF
RIVERVIEW TRENTON RAILROAD COMPANY**

INTRODUCTION

Riverview Trenton Railroad Company ("RTR") has demonstrated that it will say and do almost anything in an effort to persuade the Board to grant the pending Petition for Exemption. The latest submissions by RTR concerning its plans for acquiring additional adjacent property underscore this fact. With this Reply, we are submitting affidavits of various city and county officials who attended the negotiating sessions with RTR attesting to the fact that RTR has misrepresented its plans to the Board during the environmental review process conducted to date and in its last pleading. As discussed below, RTR has every intention of acquiring 60 acres adjacent to its current property, thereby almost doubling the scope of the project that has been the subject of environmental review. If the Board does not simply dismiss or deny RTR's petition

for exemption, Wayne County respectfully suggests that in accordance with the National Environmental Policy Act ("NEPA") the Board must expand its review of the environmental consequences associated with its decision concerning RTR's Petition for Exemption to include RTR's reasonably foreseeable acquisition of substantial additional acreage for its planned intermodal operations.

RTR has also misrepresented important issues regarding the negotiations with Wayne County, the City of Trenton, and the City of Riverview (collectively "the Communities") ordered by the Board. RTR's lack of candor in this proceeding is critically important because a core issue is RTR's contention that it needs jurisdictional rail carrier status in order to fulfill its business objectives. A careful review of the record demonstrates that the Petition for Exemption should be denied both for lack of jurisdiction and, in the alternative, because it is contrary to the Rail Transportation Policy (49 U.S.C. § 10101) ("RTP").

I. RTR'S PLANNED ACQUISITION OF ADDITIONAL PROPERTY REQUIRES ENVIRONMENTAL ANALYSIS

The issue of whether impacts of RTR's future acquisitions should be considered in an environmental analysis will turn on whether these purchases are "speculative" and "beyond reasonable forecasts."¹ In that context, it is not surprising that RTR has characterized its plans to

¹See Post Environmental Assessment, at 18 (January 22, 2002). See also Illinois Cent. R.R. -- Construction & Operation Exemption -- In East Baton Rouge, LA, STB Finance Docket No. 33877, at 6 (served Feb. 20, 2002) ("The EA thoroughly analyzed all direct, indirect, and cumulative environmental impacts that are reasonably foreseeable actions of the IC proposal, as required by the CEQ regulations implementing NEPA and the Board's environmental rules. See 40 CFR 1508.7 and 1508.8.").

buy additional acreage in this area as “entirely uncertain” and “irrelevant to this proceeding” (RTR Reply to Status Reports at 8 (October 1, 2002) (“RTR Reply to Status Reports”).

Unfortunately for RTR, its effort to finesse this issue is contradicted by disclosures made during the negotiations ordered by the Board. In Wayne County’s status reported dated June 21, 2002, the County raised the issue of RTR’s future plans and offered to provide affidavits in the event that RTR denied to the Board statements that were made during the negotiations. Now that RTR has attempted to portray its additional acquisition efforts as speculative, the Communities are submitting as Exhibit A to this filing eight (8) affidavits of the participants, other than RTR representatives, in the August and September negotiating sessions. These affidavits provide compelling evidence of RTR’s current plans and intention to acquire additional property related to the intermodal facility for which it has sought Board approval. Indeed, in the last negotiating session on September 6, 2002, RTR was so intent on acquiring an additional 60 acres to “square off” its existing 76-acre site, that it sought the Communities’ agreement not to take any steps that would interfere with RTR’s attempt to purchase the additional acreage. The fact that RTR proposed to trade concessions in the course of its negotiations in order to further its plans to acquire these additional 60 acres shows quite clearly that RTR’s intentions to acquire this parcel are not merely speculative.²

²Additional proof of RTR’s plans to acquire substantial additional property is evident from its insistence during negotiations that any alternative site be able to accommodate 1.5 miles of “straight track,” which it represented as necessary to assemble trains as part of its planned operations. RTR’s existing 76-acre site does not have 1.5 miles of straight track, and is apparently inadequate to accommodate the construction of 1.5 miles of straight track, which, in any event, RTR has never proposed as practical for the site. It appears that at some indeterminate point in time RTR determined that 1.5 miles of straight track is critical to its operations and that the only way it can obtain the necessary land for such track is through the acquisition of

Importantly, in discussing its plans for the area during the negotiation process, RTR had no difficulty distinguishing between plans that were speculative and those that were not. When the issue of water access was discussed, RTR repeatedly stated that it had no imminent plans to use water as part of its business plans. When the Communities suggested that this disclosure meant that sites not on the water should be considered, RTR responded by stating that it wished to preserve its options to utilize the river notwithstanding its lack of current plans. The position on its plans to possibly utilize water at one point in the future was in stark contrast to its plans for the acquisition of additional land, which are plainly on the foreseeable horizon.

The smallest and clearest land acquisition plan conveyed by RTR during these negotiating sessions involved an additional 60 acres, which would nearly double the size of the site that was the subject of the Environmental Assessment. A more substantial site discussed by RTR involved up to 1000 acres. The acquisition of this larger parcel may also be considered sufficiently foreseeable to require its inclusion in a further environmental analysis. But whatever the appropriate scope of a further environmental analysis, it is evident that under NEPA, a further analysis is required, unless, of course, the instant Petition is simply denied for lack of jurisdiction or on the merits.

II. CONTRARY TO RTR'S CLAIMS, THE COMMUNITIES' ARE NOT WILLING TO ACCEPT RTR'S EFFORTS TO LOCATE AN INTERMODAL TERMINAL ALONG THE DETROIT RIVER WITHOUT APPROPRIATE LOCAL LAND USE REGULATION.

significant additional property adjacent to its existing site. In its October 1, 2002 Reply to Status Reports (at page 9), RTR states that it "can fulfill its rail plans" on track to which it has existing rights. Notably, however, it never claims to have access on its current site to the 1.5 miles of straight track that RTR made clear during negotiations it actually requires for its rail plans.

RTR told the Board that the Communities “are prepared to accept RTR’s presence” at the subject property as an intermodal terminal operation not subject to their land use regulation. RTR Status Report at 3 (Sept. 19, 2002) (“RTR Status Report”). This statement is not accurate. The settlement discussions ordered by the Board began with RTR insisting that all negotiations proceed on the premise that none of the alternative sites proposed by the Communities were acceptable and the Communities must support RTR’s Petition for Exemption. After exhausting a number of possibilities outside of the immediate area of RTR’s existing site, in a last ditch attempt to continue potentially productive negotiations, the Mayor of Trenton proposed the DTE site as an alternative for discussion. Even assuming that the DTE site could provide the basis for a compromise solution, many of the problems envisioned by the Communities would still exist. Thus, the DTE site was only reluctantly proposed and by no means represented an acknowledgment that RTR’s presence was accepted.³

Further, RTR’s claim (RTR Status Report at 6) that it can “meet most of the Local Governments’ concerns with RTR’s proposed operations” is specious. It has offered nothing new of any substance. In effect, it has simply agreed (1) to abide by the environmental

³RTR’s conduct during negotiations has prevented further meaningful exploration regarding the viability of the DTE site. Despite having promised on September 4, to provide a document listing remaining conditions for relocation to the DTE site, RTR has still not delivered a list. Additionally, RTR’s unilateral imposition of September 13, as a deadline for a final deal inhibited the efforts of the Communities to reach an agreement with DTE concerning the alternative DTE site. DTE has stated that it is supportive of the local efforts in this area, but raised impediments to the proposed property swap. Discussions were ongoing with DTE in an effort to resolve some of the issues raised by DTE when RTR unilaterally terminated discussions. The Communities believe that, given time, these obstacles could be overcome and the DTE site may still be a viable alternative.

conditions that might be imposed by the Board, as it must do anyway, (2) to notify truckers of any preferred routes for their use identified by the Cities, without suggesting any means to enforce routing preferences, (3) to abide by federal laws concerning hazardous materials, as it must do anyway, and (4) vaguely, to “cooperate” on public access to the waterfront and options for public funding, and then only if “its petition [is] granted and rail operations [are] allowed to commence without further Local Government opposition.” RTR Status Report at 7-8. In short, RTR has offered the Communities nothing of substance. Despite their best efforts to reach a negotiated resolution of this matter with RTR, as things currently stand, the local communities and its citizens have both a continuing need and a right to have the Board reject RTR’s cynical effort to improperly invoke federal preemption to avoid the appropriate application of local land use regulation to its proposed intermodal terminal activities. Its proposed activities are neither within the Board’s jurisdiction nor in the public interest.

III. WITH RTR’S LATEST MISREPRESENTATIONS LAID BARE, IT IS NOW MORE EVIDENT THAN EVER THAT ITS PETITION FOR EXEMPTION SHOULD BE DENIED

RTR apparently hopes – despite the Board’s dismissing its notice of exemption, and despite the Board’s recognition of the legitimate interests of local governments and citizens in providing for negotiations – that when it comes to a final decision, the Board will rubber stamp RTR’s petition as if this were a run-of-the-mill exemption request. The Board, however, is not a rubber stamp, and RTR’s petition is anything but a standard exemption request. Based on the facts of record, including the newest revelations concerning RTR’s misrepresentations to the Board, its petition should be denied.

RTR belittles the widespread opposition to its proposal as misdirected efforts by uninformed persons to treat this proceeding as if it were "a land use case" (RTR Reply To Status Reports at 11). But the scope and depth of opposition to RTR's proposal has been unprecedented. Well over 1,500 individuals have written in themselves and thousands more are represented by resolutions expressing opposition or concern over RTR's proposed project, including the County and both Cities in which the project would be located, virtually every surrounding political subdivision, U.S. Senator Carl Levin, U.S. Representatives John D. Dingell and Lynn N. Rivers, the Michigan House of Representatives, Governor Engler, as well as numerous other members of Michigan's state government.

Far from being irrelevant, this opposition – from those who know RTR and its owners best – goes to the heart of whether or not RTR's request for an exemption is contrary to the RTP. This opposition, and other evidence of record demonstrating that there is no federal interest in the construction of the proposed intermodal terminal by and for an entity that is not a rail common carrier, shows that RTR has tried to invoke unnecessary and counterproductive Board regulation (inconsistent with 49 U.S.C. § 10101, Subsections (1) and (2)), and that its proposed project is also contrary to the "development and continuation of sound rail transportation system" (Subsection (4)), the policy "to foster sound economic conditions in transportation and to ensure effective competition and coordination between rail carriers and other modes" (Subsection 5), the policy "to operate transportation facilities and equipment without detriment to the public health and safety (Subsection 8), and the policy "to encourage honest and efficient management of railroads" (Subsection 9). RTR's apparent view that the RTP should be read so narrowly as to exclude all considerations beyond RTR's own business interests is contrary to the statute.

In the face of this massive opposition, RTR makes and relies upon a number of claims concerning the jurisdictional nature of its intended operations and supposed transportation benefits in an effort to convince the Board that it must assert jurisdiction and exempt its project from regulatory requirements. The Board should reject those claims as insufficient and unsupported.

First, RTR would be a railroad to nowhere, and the services it claims it wishes to perform would be solely incidental to its intermodal terminal operations and thus be beyond the Board's jurisdiction. See Reply of Wayne County, at 3 n.2 (March 21, 2002).

Second, none of the specific railroad-related services RTR claims it wishes to perform qualify RTR for jurisdictional rail common carrier status. Id. at 4-9. Consequently, RTR has not shown that its operations would be within the Board's jurisdiction or that any public benefits support its request for exemption. Indeed, conferring rail common carrier status on RTR would actually harm prospective shippers, rather than bringing the benefits RTR glibly claims.⁴

Third, whatever else the Board thinks of RTR's claims concerning its future operations, in the circumstances of this proceeding, where those claims rest entirely on RTR's own highly unreliable post hoc representations, the Board should not accept those representations at face value. As discussed below, this case stands apart from run-of-the-mill Board exemption proceedings because RTR (1) has repeatedly and blatantly violated the Board's and the public's trust, (2) has made and continues to rely on claims and representations that do not comport with the facts, and (3) has asked the Board to make the unprecedented and dangerous decision to

⁴See id. at 15 ("Shippers would likely receive two bills instead of one from RTR - one for its terminal services and one for its supposed rail common carrier services.") (citing Reply of Wayne County and GTW to New Issues, 5 n.8 (Feb. 8, 2002)).

assert its jurisdiction so that RTR will avoid potential land use regulation despite RTR's having no history of providing jurisdictional rail services and no plans to purchase a jurisdictional line of rail or a jurisdictional carrier.

As to credibility, despite its mighty efforts to obfuscate and "spin" the facts, the issues, and the nature of the opposition to its petition for exemption, the record in this proceeding demonstrates beyond question that RTR has repeatedly and arrogantly made serious misrepresentations and acted to deceive the Board, local officials, and the public. RTR's outright misrepresentation concerning its plans to acquire additional property is but the latest example of RTR's failure to be truthful in this proceeding. Earlier examples have been documented in the record.⁵ RTR would have the Board nonetheless rely on its representations. At a minimum, given this extraordinary record, the Board should cast a doubting eye on RTR's self-serving claims, and look beyond them to the facts, which in this case tell a very different story.

As to the facts, they show:

- RTR was unable to produce evidence that its claim to need Board authority was anything other than a post hoc effort (needless as it turned out) to avoid the possible taking of its property through eminent domain.⁶ In fact, RTR is

⁵See the Supplemental Evidence and Argument of Wayne County, City of Trenton, and Grand Trunk Western Railroad, at pages 5-10, for a discussion of and other references to the record demonstrating that RTR misrepresented its motives in coming to the Board, including its attempts to manipulate the progress of condemnation proceedings, and the list of other examples of RTR's misrepresentations in the course of this proceeding.

⁶The record shows that prior to RTR's concerns about a possible eminent domain action it variously denied any intent to have any rail operations at all, or made only vague references to rail operations that were entirely consistent with RTR remaining a non-jurisdictional entity. The fact that RTR was incorporated as a railroad subsidiary under Michigan law has no bearing on the issue, since jurisdictional status was not a prerequisite. Moreover, the record shows that RTR acted inconsistently with its later efforts to seek Board authority, by actively engaging in various planning processes with local authorities that would be preempted if its activities were within the Board's jurisdiction. These issues were discussed in the Joint Reply Comments of Wayne

controlled by the same people who control Jefferson Terminal Railroad, which tried a similar ploy (shortly before RTR did so) and had its Petition for Exemption revoked.⁷

- RTR filed a Notice of Exemption and a Petition for Exemption as if it were acquiring an operating railroad, when, in fact, there are only out-of-service non-jurisdictional industry tracks on RTR's property, which in no way support RTR's jurisdictional claim.
- RTR is not itself a rail common carrier, it has no history of providing railroad service, and it doesn't own any railroad equipment.
- The property acquired by RTR has no existing facilities or tracks that would allow RTR to provide rail service outside of its own terminal facility or other than as incidental to its planned intermodal terminal services.⁸
- Despite repeated invitations, RTR has failed to cite a single precedent for any other intermodal facility (other than Jefferson Terminal Railroad Company, for which the notice of exemption was revoked) whose structure required it to seek authority under 49 U.S.C. § 10901 to operate as a separate Board-regulated rail common carrier. Indeed, RTR's parent acknowledged during discovery in the related federal court proceeding that it owns thousands of acres of property around the United States, including approximately 75 to 100 separate sites which have

County and GTW, filed February 8, 2002, at pages 6 through 8.

⁷Jefferson Terminal R.R. – Acquisition and Operation Exemption – Crown Enterprises, Inc., STB Finance Docket No. 33950 (STB served Mar. 19, 2001 ("Jefferson Terminal"). As noted by the Board in its decision served on February 15, 2002 in the instant proceeding, the Board revoked the class exemption in Jefferson Terminal "out of concern" in part that "the notice had omitted essential information concerning a condemnation action that had been brought before the notice was filed." February 15, 2002 Decision at 4, n. 9.

⁸The one shipper RTR might have been able to serve is Detroit Steel Company ("DSC"), but DSC opposes RTR's petition (see Letter from Michael Wilkinson, President and CEO of Detroit Steel Company and Detroit Cold Rolling Company, to Secretary Williams, dated March 20, 2002) and, in any event, as discussed above, RTR has now revealed that its plans to attempt to acquire DSC's facility. Remarkably, as noted in Wayne County's status report, in responding to DSC's concerns that RTR might try to acquire its property, RTR wrote to DSC disclaiming any such intention. See Wayne County Status Report, at 6-7 & Exhibits A and B (Sept. 19, 2002). This stands as yet another stark example of RTR's lack of candor.

rail access, but it had only attempted to form federal rail common carriers at two sites – Jefferson Terminal Railroad's and RTR's.⁹

- Stripped of its self-serving, post hoc claims, RTR is in the same position as other non-carrier companies providing intermodal storage and loading services, including with attendant rail services, without the need for Board authority.
- RTR did not provide evidence responsive to the Board's February 15, 2002 decision, which solicited evidence of the supposed benefits of RTR's proposed services from "those who would benefit." The materials submitted by RTR consisted primarily of its own testimony, and that of its affiliates and hired consultants. The mostly form letters it submitted from supposed potential beneficiaries provided no useful information or explanations concerning possible benefits attributable to RTR becoming a railroad. Most simply said that additional intermodal capacity in the area would be welcome.

The facts of record in this proceeding simply do not square with RTR's late-found, self-serving claims that there is a legitimate transportation need for it to be treated as a jurisdictional carrier, or that conferring such status on RTR will result in significant transportation benefits for the public. Especially given RTR's well-deserved lack of credibility, it is well within the Board's discretion to reject RTR's claims concerning Board jurisdiction and transportation benefits as unsupported and inconsistent with the facts, and to dismiss RTR's petition for lack of jurisdiction and as contrary to the RTP.

Finally, strong policy reasons in this proceeding support the Board doing so. If the Board were to preempt local land use regulation whenever RTR or a similar non-carrier developer claimed that it wishes or desires to begin operations as a rail common carrier – without so much as demonstrating that it plans to construct or purchase a jurisdictional rail line or carrier – that new precedent would invite all non-carriers wishing to preempt local land use regulation

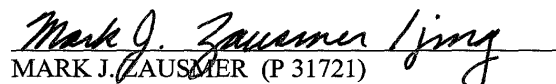
⁹See Exhibit B, Mistura Deposition Transcript, at 31-36 (March 7, 2001). RTR's predictable response to these facts has been to claim that its plans are a brand new cutting edge effort to provide integrated rail and truck intermodal services. As noted above, however, apart from its self-serving claims, the hard evidence of record shows that this is nothing more than post hoc rationale.

similarly to posit unsupported claims about their future intent to operate on such land as rail common carriers.¹⁰ The Board need not and should not make the unprecedented decision to expand its jurisdiction in this fashion, which would allow future parties to follow RTR's example and attempt to misuse the Board's authority and jurisdiction.

CONCLUSION

The record in this matter is replete with half truths and outright misrepresentations by RTR. Under these circumstances, RTR is not entitled to the slightest benefit of the doubt when it tells the Board that it has no plans to expand its operations and that even if there were such plans there is no need for environmental scrutiny. Based upon this record, Wayne County respectfully requests that RTR's Petition for Exemption be denied or, in the alternative, that the Board expand the environmental review in this proceeding to include the potential environmental impacts of RTR acquiring significant additional land for its proposed intermodal terminal operation.

FINK, ZAUSMER & KAUFMAN, P.C.


MARK J. ZAUSMER (P 31721)
Special Assistant Corporation Counsel
for Wayne County
31700 Middlebelt Road, Suite 150
Farmington Hills, Michigan 48334
(248) 851-4111

Dated: October 8, 2002

¹⁰The flawed logic of RTR's proposal does not even require the existence of rail tracks on the property at issue (or elsewhere) or any other indicia that an entity is willing and able to provide meaningful jurisdictional rail service. See Opponents' Supplemental Evidence and Argument at 9 n.8 (March 7, 2002).

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of October, 2002, a copy of the Reply of Wayne County to Supplemental Brief of Riverview Trenton Railroad Company was served by first class mail, postage prepaid, upon counsel for all parties of record.

Joanne Hickey/sw
JOANNE HICKEY

Exhibit A

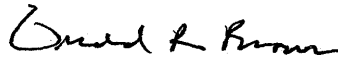
**AFFIDAVIT
TO SURFACE TRANSPORTATION BOARD**

STATE OF MICHIGAN)
COUNTY OF WAYNE)ss.

The undersigned, being first duly sworn, states as follows:

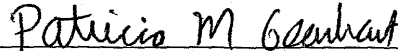
1. That I am the duly elected Mayor of the City of Trenton, with offices at 2800 Third Street, Trenton, Michigan 48183-2992.
2. That in that capacity I participated, along with my staff, in STB ordered negotiations with representatives of the Riverview-Trenton Railroad (RTRR) during the period from June 22, 2002 through September 13, 2002.
3. That during the course of the negotiations RTRR officials stated that RTRR intended to acquire acreage in addition to the 76 it had already purchased from DSC, for the operation of its intermodal transportation business. On more than one occasion I was advised by RTRR that it had actually offered to purchase the entire DSC Ltd site for its operations.
4. Specifically, at a meeting with RTRR representatives, on September 3, 2002 at the Riverview City Offices those RTRR representatives stated that RTRR would like to acquire as much as 1,000 acres in the area to complete its business plan which would include all of the balance of the DSC Ltd. Property (150 acres), additional properties to the south of DSC Ltd., as well as properties to the north of the RTRR site in the City of Riverview, which include that owned by BASF.
5. That the City of Trenton was specifically asked by RTRR, to include as part of a proposed stipulated settlement agreement before the STB, a provision whereby the City would give RTRR a window period to exclusively pursue the purchase of an additional 60 acres of DSC property adjacent to the RTRR site, without interference from the City.
6. That I have personal knowledge of the assertions contained in this Affidavit and am prepared to testify to these facts as a witness in open court.

Further, Affiant Sayeth Not.



Gerald R. Brown, Mayor

Subscribed and sworn to before me
this 7th day of October, 2002.



Notary Public, Wayne County, MI

My Commission Expires: _____

**PATRICIA M. GEARHART
NOTARY PUBLIC WAYNE CO., MI
MY COMMISSION EXPIRES Dec 6, 2004**

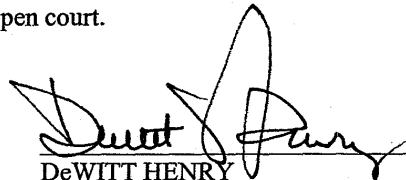
AFFIDAVIT
TO SURFACE TRANSPORTATION BOARD

STATE OF MICHIGAN)
COUNTY OF WAYNE) ss.

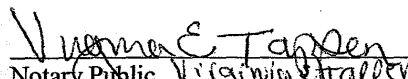
The undersigned, being first duly sworn, states as follows:

1. That I am the Director of the Jobs & Economic Development Department for the County of Wayne.
2. That in that capacity I participated in STB ordered negotiations with representatives of the Riverview-Trenton Railroad (RTRR).
3. That during the course of the negotiations, RTRR officials stated that RTRR intends to acquire acreage in addition to the 76 it had already purchased from DSC, for the operation of its intermodal transportation business.
4. Specifically, at a meeting with RTRR representatives, on August 27, 2002, at the Riverview City Offices, these RTRR representatives stated that RTRR's business plan for the immediate area adjacent to the 76 acres included 250 acres.
5. Specifically, at a meeting with RTRR representatives, on September 3, 2002, at the Riverview City Offices, these RTRR representatives stated that RTRR would like to acquire as much as 1,000 acres in the area to complete its broader business plan. This would include all of the balance of the DSC Ltd. Property (149 acres), additional properties to the south of DSC Ltd., as well as properties currently owned by BASF to the north of the RTRR site in the City of Riverview.
6. During a meeting with RTRR officials on September 6, 2002, Wayne County was asked by RTRR to include as part of a proposed stipulated settlement agreement before the STB, a provision whereby Wayne County would give RTRR a window period to exclusively pursue the purchase of an additional 60 acres of DSC property adjacent to the RTRR site, without clearance from the County.
7. That I have personal knowledge of the assertions contained in this Affidavit and am prepared to testify to these facts as a witness in open court.

Further, Affiant sayeth not.


DeWITT HENRY
Director, Jobs & Economic Development Dept.

Subscribed and sworn to before me
this 7th day of October, 2002


Notary Public Virginia E. Tappen
County of Oakland, MI
My Commission Expires: 3/9/04

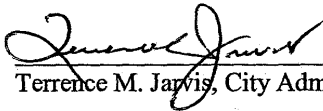
**AFFIDAVIT
TO SURFACE TRANSPORTATION BOARD**

STATE OF MICHIGAN)
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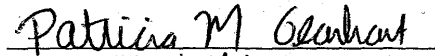
The undersigned, being first duly sworn, states as follows:

1. That I am the appointed City Administrator of the City of Trenton, with offices at 2800 Third Street, Trenton, Michigan 48183-2992.
2. That in that capacity I participated, along with my staff, in STB ordered negotiations with representatives of the Riverview-Trenton Railroad (RTRR) during the period from June 22, 2002 through September 13, 2002
3. That during the course of the negotiations RTRR officials stated that RTRR intended to acquire acreage in addition to the 76 it had already purchased from DSC, for the operation of its intermodal transportation business. On more than one occasion I was advised by RTRR that it had actually offered to purchase the entire DSC Ltd site for its operations.
4. Specifically, at a meeting with RTRR representatives, on September 3, 2002 at the Riverview City Offices those RTRR representatives stated that RTRR would like to acquire as much as 1,000 acres in the area to complete its business plan which would include all of the balance of the DSC Ltd. Property (150 acres), additional properties to the south of DSC Ltd., as well as properties to the north of the RTRR site in the City of Riverview, which include that owned by BASF.
5. That the City of Trenton was specifically asked by RTRR, to include as part of a proposed stipulated settlement agreement before the STB, a provision whereby the City would give RTRR a window period to exclusively pursue the purchase of an additional 60 acres of DSC property adjacent to the RTRR site, without interference from the City.
6. That I have personal knowledge of the assertions contained in this Affidavit and am prepared to testify to these facts as a witness in open court.

Further, Affiant Sayeth Not.


Terrence M. Jarvis, City Administrator

Subscribed and sworn to before me
this 7th day of October, 2002.


Notary Public, WAYNE County, MI
My Commission Expires: _____

PATRICIA M. GEARHART
NOTARY PUBLIC WAYNE CO., MI
MY COMMISSION EXPIRES Dec 8, 2004

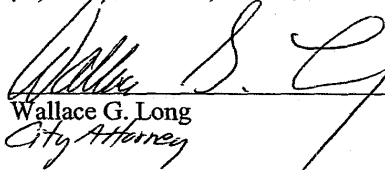
**AFFIDAVIT
TO SURFACE TRANSPORTATION BOARD**

STATE OF MICHIGAN)
COUNTY OF WAYNE)ss.

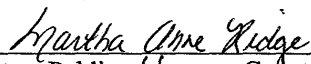
The undersigned, being first duly sworn, states as follows:

1. That I am the duly appointed City Attorney of the City of Trenton, with offices at 2800 Third Street, Trenton, Michigan 48183-2992.
2. That in that capacity I participated in STB ordered negotiations with representatives of the Riverview-Trenton Railroad (RTRR) during the period from June 22, 2002 through September 13, 2002
3. That during the course of the negotiations RTRR officials state that RTRR intends to acquire acreage in addition to the 76 it had already purchased from DSC, for the operation of its intermodal transportation business. On more than one occasion I was advised by RTRR that it had actually offered to purchase the entire DSC Ltd site for its operations.
4. Specifically, at a meeting with RTRR representatives, on September 3, 2002 at the Riverview City Offices those RTRR representatives stated that RTRR would like to acquire as much as 1,000 acres in the area to complete its business plan which would include all of the balance of the DSC Ltd. Property (150 acres), additional properties to the south of DSC Ltd., as well as properties to the north of the RTRR site in the City of Riverview, which include that owned by BASF.
5. That the City of Trenton was specifically asked by RTRR, to include as part of a proposed stipulated settlement agreement before the STB, a provision whereby the City would refrain from making competing offers for the DSC property to allow RTRR an opportunity to exclusively pursue the purchase of an additional 60 acres of DSC property adjacent to the RTRR site, without interference from the City.
6. That I have personal knowledge of the assertions contained in this Affidavit and am prepared to testify to these facts as a witness in open court.

Further, Affiant Sayeth Not.

Howard + Howard Attorneys P.C.

Wallace G. Long
City Attorney

Subscribed and sworn to before me
this 7th day of October, 2002.


Notary Public, Wayne County, MI
My Commission Expires: 5-22-06

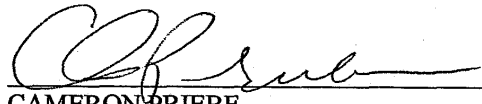
AFFIDAVIT
TO SURFACE TRANSPORTATION BOARD

STATE OF MICHIGAN)
COUNTY OF WAYNE) ss.

The undersigned, being first duly sworn, states as follows:

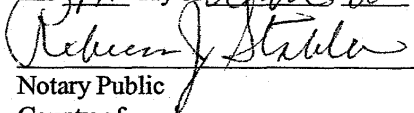
1. That I am the Assistant County Executive and Director of Department of Public Services for the County of Wayne.
2. That in that capacity I participated in STB ordered negotiations with representatives of the Riverview-Trenton Railroad (RTRR).
3. That during the course of the negotiations, RTRR officials stated that RTRR intends to acquire acreage in addition to the 76 it had already purchased from DSC, for the operation of its intermodal transportation business.
4. Specifically, at a meeting with RTRR representatives, on August 27, 2002, at the Riverview City Offices, these RTRR representatives stated that RTRR's business plan for the immediate area adjacent to the 76 acres included 250 acres.
5. That I have personal knowledge of the assertions contained in this Affidavit and am prepared to testify to these facts as a witness in open court.

Further, Affiant sayeth not.



CAMERON PRIEBE
Assistant County Executive and
Director, Dept. of Public Services

Subscribed and sworn to before me
this 5th day of October, 2002



Notary Public
County of

My Commission Expires:

REBECCA J. STABLER
NOTARY PUBLIC WAYNE CO., MI
MY COMMISSION EXPIRES Jun 5, 2004

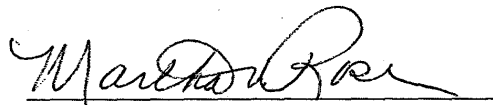
AFFIDAVIT
TO SURFACE TRANSPORTATION BOARD

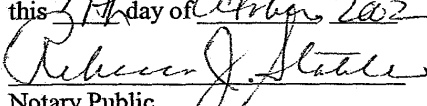
STATE OF MICHIGAN)
COUNTY OF WAYNE) ss.

The undersigned, being first duly sworn, states as follows:

1. That I am the Director of Administration for the County of Wayne, *DPS*
2. That in that capacity I participated in STB ordered negotiations with representatives of the Riverview-Trenton Railroad (RTRR).
3. That during the course of the negotiations, RTRR officials stated that RTRR intends to acquire acreage in addition to the 76 it had already purchased from DSC, for the operation of its intermodal transportation business.
4. Specifically, at a meeting with RTRR representatives, on August 27, 2002, at the Riverview City Offices, these RTRR representatives stated that RTRR's business plan for the immediate area adjacent to the 76 acres included 250 acres.
5. Specifically, at a meeting with RTRR representatives, on September 3, 2002, at the Riverview City Offices, these RTRR representatives stated that RTRR would like to acquire as much as 1,000 acres in the area to complete its broader business plan. This would include all of the balance of the DSC Ltd. Property (149 acres), additional properties to the south of DSC Ltd., as well as properties currently owned by BASF to the north of the RTRR site in the City of Riverview.
6. During a meeting with RTRR officials on September 6, 2002, Wayne County was asked by RTRR to include as part of a proposed stipulated settlement agreement before the STB, a provision whereby Wayne County would give RTRR a window period to exclusively pursue the purchase of an additional 60 acres of DSC property adjacent to the RTRR site, without clearance from the County.
7. That I have personal knowledge of the assertions contained in this Affidavit and am prepared to testify to these facts as a witness in open court.

Further, Affiant sayeth not.


MARTHA ROSE
Director of Administration

Subscribed and sworn to before me
this 5th day of October, 2002

Notary Public
County of _____
My Commission Expires: _____

REBECCA J. STABLER
NOTARY PUBLIC WAYNE CO., MI
MY COMMISSION EXPIRES JUN 5, 2006

AFFIDAVIT
TO SURFACE TRANSPORTATION BOARD

STATE OF MICHIGAN)
COUNTY OF WAYNE) ss.

The undersigned, being first duly sworn, states as follows:

1. That I am the Assistant Wayne County Corporation Counsel for the County of Wayne.
2. That in that capacity I participated in STB ordered negotiations with representatives of the Riverview-Trenton Railroad (RTRR).
3. That during the course of the negotiations, RTRR officials stated that RTRR intends to acquire acreage in addition to the 76 it had already purchased from DSC, for the operation of its intermodal transportation business.
4. Specifically, at a meeting with RTRR representatives, on August 27, 2002, at the Riverview City Offices, these RTRR representatives stated that RTRR's business plan for the immediate area adjacent to the 76 acres included 250 acres.
5. Specifically, at a meeting with RTRR representatives, on September 3, 2002, at the Riverview City Offices, these RTRR representatives stated that RTRR would like to acquire as much as 1,000 acres in the area to complete its broader business plan. This would include all of the balance of the DSC Ltd. Property (149 acres), additional properties to the south of DSC Ltd., as well as properties currently owned by BASF to the north of the RTRR site in the City of Riverview.
6. During a meeting with RTRR officials on September 6, 2002, Wayne County was asked by RTRR to include as part of a proposed stipulated settlement agreement before the STB, a provision whereby Wayne County would give RTRR a window period to exclusively pursue the purchase of an additional 60 acres of DSC property adjacent to the RTRR site, without clearance from the County.
7. That I have personal knowledge of the assertions contained in this Affidavit and am prepared to testify to these facts as a witness in open court.

Further, Affiant sayeth not.

Therese A. Shaw
THERESE A. SHAW
Assistant Wayne County Corporation Counsel

Subscribed and sworn to before me
this 8th day of October, 2002
Lenore A. Donnelly
Notary Public Lenore A. Donnelly
County of Oakland
My Commission Expires: 11/04/02

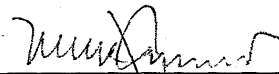
**AFFIDAVIT
TO SURFACE TRANSPORTATION BOARD**

STATE OF MICHIGAN)
COUNTY OF WAYNE) ss.

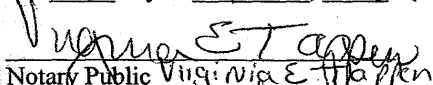
The undersigned, being first duly sworn, states as follows:

1. That I am outside counsel for the County of Wayne.
2. That in that capacity I participated in STB ordered negotiations with representatives of the Riverview-Trenton Railroad (RTRR).
3. That during the course of the negotiations, RTRR officials stated that RTRR intends to acquire acreage in addition to the 76 it had already purchased from DSC, for the operation of its intermodal transportation business.
4. Specifically, at a meeting with RTRR representatives, on August 27, 2002, at the Riverview City Offices, these RTRR representatives stated that RTRR's business plan for the immediate area adjacent to the 76 acres included 250 acres.
5. Specifically, at a meeting with RTRR representatives, on September 3, 2002, at the Riverview City Offices, these RTRR representatives stated that RTRR would like to acquire as much as 1,000 acres in the area to complete its broader business plan. This would include all of the balance of the DSC Ltd. Property (149 acres), additional properties to the south of DSC Ltd., as well as properties currently owned by BASF to the north of the RTRR site in the City of Riverview.
6. During a meeting with RTRR officials on September 4, 2002, RTRR asserted that a precondition to any further negotiations was having Wayne County, Trenton and Riverview consent to RTRR's acquisition of 60 acres necessary to "square off" its existing 76 acre parcel.
7. During a meeting with RTRR officials on September 6, 2002, Wayne County was asked by RTRR to include as part of a proposed stipulated settlement agreement before the STB, a provision whereby Wayne County would give RTRR a window period to exclusively pursue the purchase of an additional 60 acres of DSC property adjacent to the RTRR site, without clearance from the County.
8. That I have personal knowledge of the assertions contained in this Affidavit and am prepared to testify to these facts as a witness in open court.

Further, Affiant sayeth not.



MARK J. ZAUSMER
Outside Counsel for Wayne County

Subscribed and sworn to before me
this 7th day of October, 2002


Notary Public Virginia E. Hapken
County of Oakland, Mich
My Commission Expires: 3/9/04

Exhibit B

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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RIVERVIEW TRENTON
RAILROAD COMPANY,
Plaintiff,

-vs- No. 01-70078

COUNTY OF WAYNE, a Michigan
municipal corporation,
Defendant,

_____ /

The deposition of ARNOLD M.
MISTURA, a witness of lawful age, taken in the
above-entitled cause, wherein RIVERVIEW TRENTON
RAILROAD is the Plaintiff and WAYNE COUNTY is the
Defendant, pending in the District Court of the United
States for the Eastern District of Michigan, Southern
Division, pursuant to the Federal Rules of Civil
Procedure, before Jennifer A. Makelke, CSR-3666,
Registered Professional Reporter, and Notary Public in
and for Oakland County, Michigan, at 1900 Buhl
Building, Detroit, Michigan, on Wednesday, March 7,
2001, commencing at 11:20 o'clock a.m.

* * * *

MEADOWCROOK COURT REPORTING
10 West Square Lake Road, Suite 221
Bloomfield Hills, Michigan 48302
(248) 334-6300

- 1 A. The documents were prepared to form the company.
- 2 Q. Who's decision was it to form a railroad company?
- 3 A. Was partly my decision.
- 4 Q. And why did you decide to form a railroad company?
- 5 A. In order to get access to the rail service to come out
- 6 to the site, we needed to have that.
- 7 Q. I'm sorry, say that again now?
- 8 A. It's my understanding that in order to get rail access
- 9 coming off the site it was necessary for us to have
- 10 the railroad established.
- 11 Q. There is an another railroad company that Centra, that
- 12 is an affiliate of Centra. Are you familiar with that
- 13 company?
- 14 A. What company?
- 15 Q. The Jefferson Railroad Company?
- 16 A. Yes.
- 17 Q. Were you involved in the decision to form that
- 18 railroad company?
- 19 A. Yes.
- 20 Q. And are there any other railroad companies in Centra's
- 21 corporate group that is affiliated, subsidiaries
- 22 beside the Jefferson Railroad Company and the
- 23 Riverview Trenton Railroad Company?
- 24 A. Not at this time.
- 25 Q. How much property would you say in acreage that Centra

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- 1 owns around the country, just roughly? I mean, is it
2 thousands, tens of thousands?
- 3 A. Thousands.
- 4 Q. How many sites would you estimate that Crown or Centra
5 owns throughout the country?
- 6 A. How many sites?
- 7 Q. Correct, how many different parcels?
- 8 A. Several thousand.
- 9 Q. How many intermodal yards does Crown or Centra or an
10 affiliate own or operate?
- 11 A. The two that you mentioned.
- 12 Q. And why is it that despite owning thousands of
13 parcels, thousands of acres, that you only have
14 railroad companies on these two sites?
- 15 A. Intermodal operations is a new venture for us.
- 16 Q. Do you have rail access at other sites around the
17 country?
- 18 A. Yes.
- 19 Q. Sites that you own?
- 20 A. Yes.
- 21 Q. And how many sites are there that Crown or Centra or
22 an affiliate of either of them own throughout the
23 country that have rail access?
- 24 A. 75 to 100.
- 25 Q. And at that 75 to 100 sites, as I understand the

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(248) 334-6300

1 ownership of the property remains in Crown; is that
2 correct?

3 A. Yes.

4 Q. And at those 75 to 100 -- strike that.

5 What is the range of acres in the 75 to
6 100 sites, what's the smallest, what's the largest, if
7 you know?

8 A. Smallest would be as small as a couple acres.

9 Q. And the largest?

10 A. Several, five, 600 acres.

11 Q. And I think you told me these are sites with rail;
12 correct?

13 A. Not all with rail.

14 Q. How many of these -- I'm sorry, I guess I understood
15 that we were talking about 75 to 100 sites with rail
16 and if I misunderstood -- let's see if we can clarify
17 it.

18 How many sites does Crown or Centra or an
19 affiliate of either of them own that have some kind of
20 rail either on the site or connect to rail?

21 A. I'd have to check the exact number, but roughly around
22 75 sites I would say.

23 Q. 75?

24 A. Right.

25 Q. And of those roughly 75 sites do they range from a

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1 couple of acres to five or 600 acres?

2 A. No.

3 Q. What is the acreage on those 75 sites?

4 A. Any site that have rail access would be larger.

5 Q. Larger than what, larger than 20, larger than 50?

6 A. Roughly in the 20 acre plus category.

7 Q. Ranging up to how high?

8 A. Don't know. Shouldn't say don't know. Could be, we
9 have sites up to five, 600 acres or so.

10 Q. Of these roughly 75 parcels, I assume they're
11 dispersed throughout the United States; is that
12 correct?

13 A. Yes.

14 Q. How many are in the Detroit area?

15 A. Now specifically you're asking for parcels that are
16 serviced by rail?

17 Q. That have some kind of rail service either within the
18 site or connect to rail outside the site.

19 A. I'd say about a dozen.

20 Q. A dozen are in the Detroit area?

21 A. Correct, 10 to 12.

22 Q. And at least as I understand of these 75 parcels, the
23 only ones that Crown has seen the need to form a
24 railroad company are the Jefferson Railroad Company
25 and the Riverview Trenton Railroad Company; is that

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(248) 334-6300

1 correct?

2 A. At this time, yes.

3 Q. Are there any parcels of these roughly 75 or so that
4 have rail on them where a local governmental agency
5 has made any overtures toward acquisition by eminent
6 domain?

7 MR. FLASKA: If you know.

8 A. Don't know.

9 Q. (BY MR. ZAUSMER): You're aware that there was a
10 condemnation action with respect to the property that
11 that is now owned by -- is it Jefferson Railroad
12 Company, is that what it's called?

13 A. Yes.

14 Q. All right. And you're aware obviously that there were
15 some overtures toward eminent domain with respect to
16 this 76-acre parcel; right?

17 A. Yes.

18 Q. Are you aware of any eminent domain overtures as we
19 sit here today on any of the other approximately 75
20 parcels on, that Crown owns that has some rail
21 involvement?

22 A. No, not that I know.

23 Q. Is it just a coincidence that these are the two
24 parcels that have had some eminent domain activity and
25 that Crown has sought or made the decision to form a

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Bloomfield Hills, Michigan 48302
(248) 334-6300

1 railroad company?

2 A. Read the question.

3 Q. I'll rephrase it for you, sir. Is it simply a
4 coincidence that these are two parcels that eminent
5 domain activities have been commenced and that Crown
6 has decided to form a railroad company?

7 MR. FLASKA: I'll object to the question.
8 I didn't realize that eminent domain proceedings had
9 been commenced against the parcels downriver. I
10 thought the initial letter had been sent out, but I
11 didn't realized they'd been commenced. Are you saying
12 commenced or inquiries from government officials?

13 MR. ZAUSMER: Commenced in my mind -- I
14 will withdraw the question.

15 Q. (BY MR. ZAUSMER): There is an evaluation of
16 suitability to take the property by the Uniform
17 Condemnation Procedures as referenced in the letter to
18 you. In any event, sure, I will rephrase it again.

19 My question to you, sir, is, is it merely
20 a coincidence that Crown transferred these two parcels
21 to a railroad company and that these two parcels are
22 the only ones that you're aware of where eminent
23 domain activities have been either threatened or
24 commenced?

25 A. It's not a coincidence.

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(248) 334-6300