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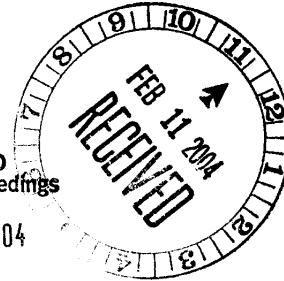
February 3, 2004

Vernon A. Williams, Secretary
Surface Transportation Board
Case Control Unit, Suite 713
1925 K Street, N.W.
Washington, DC 20423-0001

ENTERED
Office of Proceedings

FEB 11 2004

Part of
Public Record



Re: Finance Docket No. 34425, *City of Lincoln - Petition for Declaratory Order*

Dear Mr. Williams:

It was pointed out in Lincoln Lumber Company's (LLC) Reply in Partial Opposition to Petition for Declaratory Order, filed Dec. 29, 2003, at 14-15, that in both cases decided since enactment of 49 U.S.C. § 10501(b) in the ICC Termination Act of 1995 (ICCTA), Federal Courts held that attempts by a municipality and by a county to condemn railroad right-of-way land under authority of State eminent domain law were federally preempted. *Wisconsin Central, Ltd. v. City of Marshfield*, 160 F.Supp.2d 1009, 1013-1015 (W.D., Wisc. 2000), and *Riverview Trenton R. Co. v. County of Wayne*, (USDC, E.D., Mich., No. 01-70078, order filed April 10, 2001).

There is a third Federal Court decision to that effect that was not brought to the Board's attention, i.e., *Columbiana County Port Authority v. Boardman Township Park District*, 154 F.Supp.2d 1165, 1179-1181 (ND, Ohio, E.D. 2001). LLC respectfully requests that the Board take notice of that pertinent decision that involved attempted condemnation of railroad land for a recreational trail. The Court in that case held that to the extent that a State court may have authorized a Park District to condemn land in a railroad right-of-way for recreational trail use, "its action was preempted by the ICCTA and is without effect" (at 1181).

Ten copies accompany the original of this communication. All parties of record are being served. Kindly acknowledge receipt by date stamping the enclosed duplicate copy of this letter and return in the self-addressed stamped envelope.

Very truly yours,

Tom McFarland

Thomas F. McFarland
Attorney for Lincoln Lumber Company

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cc: Charles Montange, Esq.
Daniel LaKemper, Esq.
Mr. Donald L. Hamill