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2/19226
MAY 2 2007
U.S. DEPT. OF TRANSPORTATION

THOMAS F. MCFARLAND

May 1, 2007

By UPS overnight mail

Vernon A. Williams, Secretary
Surface Transportation Board
395 E Street, S.W., Suite 1149
Washington, DC 20024

FILED

MAY 2 - 2007

**SURFACE
TRANSPORTATION BOARD**

Re Docket No. AB-1012, *The Shops at Kingsbury Square, LLC -- Adverse
Abandonment -- Chicago Terminal Railroad in Chicago, Illinois*

Dear Mr. Williams:

Enclosed please find an original and 10 copies of Petition For Partial Waiver Of
Abandonment Regulations And For Exemptions, for filing with the Board in the above
referenced matter

Also enclosed is The Shops at Kingsbury Square's check #114 in the amount of \$1,500
for the filing fee

FEE RECEIVED

MAY 2 - 2007

**SURFACE
TRANSPORTATION BOARD**

Very truly yours,

Thomas F. McFarland

Thomas F. McFarland
Attorney for Applicant

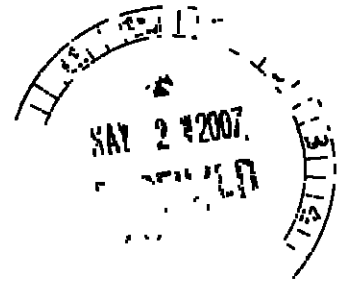
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**ENTERED
Office of Proceedings**

MAY 02 2007

**Part of
Public Record**

BEFORE THE
SURFACE TRANSPORTATION BOARD



THE SHOPS AT KINGSBURY SQUARE,)
LLC -- ADVERSE ABANDONMENT --) DOCKET NO
CHICAGO TERMINAL RAILROAD IN) AB-1012
CHICAGO, ILLINOIS)

PETITION FOR PARTIAL WAIVER
OF ABANDONMENT REGULATIONS
AND FOR EXEMPTIONS

FILED
MAY 2 - 2007
SURFACE
TRANSPORTATION BOARD

THE SHOPS AT KINGSBURY SQUARE, LLC
740 Waukegan Road, Suite 400
Deerfield, IL 60015

Applicant

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
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(312) 236-0204
(312) 201-9695 fax
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Attorney for Applicant

DATE FILED. May 2, 2007

CONTAINS COLOR IMAGE

BEFORE THE
SURFACE TRANSPORTATION BOARD

THE SHOPS AT KINGSBURY SQUARE.	)	
L.L.C. -- ADVERSE ABANDONMENT --	)	DOCKET NO
CHICAGO TERMINAL RAILROAD IN	)	AB-1012
CHICAGO, ILLINOIS	)	

**PETITION FOR PARTIAL WAIVER
OF ABANDONMENT REGULATIONS
AND FOR EXEMPTIONS**

Pursuant to 49 C.F.R. § 1152.24(e)(5) and 49 U.S.C. § 10502(a), The Shops at Kingsbury Square, L.L.C. (Kingsbury Square) hereby seeks a waiver of specified regulations in 49 C.F.R. § 1152. Subpart C, and exemptions from the offer-of-financial-assistance (OFA) provisions of 49 U.S.C. § 10904 and the public use provisions of 49 U.S.C. § 10905, in conjunction with an application that Kingsbury Square intends to file for adverse abandonment of the authority of Chicago Terminal Railroad (CTR) to operate over a segment of rail line between the north edge of North Avenue and the terminus of the line near the intersection of Division and Halsted Streets, a distance of approximately one-half of a mile (0.5-mile), in Chicago, Cook County, Illinois. For convenience, that line segment will be referred to as the "North-Division Segment."

I.

BACKGROUND

The North-Division Segment is part of a 4.5-mile rail line in Chicago commonly known as the "C&E Line." Attached to this Petition as Appendix 1 is a copy of a map that was included

in CTR's Notice of Exemption when it acquired the C&E Line. The C&E Line is shown in dark shading on that map. The North-Division Segment is highlighted on that map in yellow shading

CTR recently acquired an interest in the C&E Line from Soo Line Railroad Company, d b a Canadian Pacific Railway (Soo) and authority to operate that Line. See Finance Docket No 34968, *Chicago Terminal Railroad -- Acq & Oper Exempt -- Soo Line R Co, d b a Canadian Pacific Ry*, Notice served Dec 22, 2006. Soo had acquired its interest in the C&E Line in conjunction with the bankruptcy of the Chicago, Milwaukee, St Paul & Pacific Railroad Company (Milwaukee Road). Milwaukee Road had operated the Line for many years.

Kingsbury Square is a property developer. Kingsbury Square is currently developing property at 1500 N. Kingsbury Street, known as Kingsbury Square. As can be seen on the map, Appendix 1, CTR's tracks go in the same northwest-southeast direction as Kingsbury Street between North Avenue and Division Street. In fact, CTR's tracks are located in the middle of Kingsbury Street between those points. The proposed Kingsbury Square development is located a short distance south of North Avenue (which corresponds to 1600 North).

CTR's tracks in Kingsbury Street are located adjacent to the site of the proposed Kingsbury Square development at 1500 North. A portion of a sidetrack from the main track at that location would be located within the site of the proposed development. That sidetrack was constructed pursuant to a 1923 easement granted by a long-defunct lumber company to Milwaukee Road. Kingsbury Square is the ultimate successor of the lumber company that granted that easement. CTR is the successor of Milwaukee Road.

Kingsbury Square has negotiated for release of that easement and removal of the sidetrack. Prior to CTR's recent acquisition of the C&E Line, Kingsbury Square had reached a

tentative agreement with Canadian Pacific-Soo Line for such a release and removal in exchange for a reasonable payment. However, CTR has demanded an exorbitant amount for such release and removal.

Kingsbury Square has reviewed its legal rights in relation to release of the easement and removal of the trackage under Illinois law. However, before Illinois law can come into play, Kingsbury Square must obtain an abandonment of CTR's Federal authority to operate over the sidetrack under consideration. It may be that such sidetrack is excepted from the Board's abandonment jurisdiction by virtue of 49 U.S.C. § 10906. In light of that possibility, Kingsbury Square has decided to seek abandonment of CTR's operating authority over the adjacent main track. If CTR's operating authority over that main track were to be abandoned, there would be no connection between the sidetrack and the national rail system. That would remove any Federal interest in the sidetrack under consideration.

In order to obtain abandonment of the main track at 1500 North Kingsbury, it is necessary to seek abandonment of the main track southeast of that location because if the track at 1500 North Kingsbury were to be abandoned, shippers southeast of that location would not be able to reach the C&E Line (see the map, Appendix 1). Therefore, the proposed adverse abandonment will encompass all trackage southeast of 1500 North Kingsbury to terminus of the Line near Division and Halsted Streets.^{1/}

There has been no rail traffic on the North-Division Segment for many years. Kingsbury Square is informed and believes that CTR recently convinced a wood company located near

^{1/} The abandonment begins at North Avenue (1600 North) in order to encompass a heavily-traveled railroad-street crossing at that location.

Division and Halsted Streets to ship a carload of firewood by rail over the North-Division Segment in an effort to be in a better position to oppose an anticipated adverse abandonment application by Kingsbury Square. Kingsbury Square's application will show that a contrived rail shipment of that nature does not establish a legitimate need for rail transportation that would defeat an adverse abandonment application of a long-unused rail line.

The City of Chicago is strongly in favor of Kingsbury Square's proposed development at Kingsbury Square, and, in addition, from a traffic standpoint, the City would very much like to see CTR's trackage removed from the middle of Kingsbury Street. The City may decide to join in the application for adverse abandonment for those reasons. At a minimum, the City of Chicago is likely to actively support the application.

II.

WAIVERS REQUESTED

As the Board and its predecessor, the Interstate Commerce Commission ("ICC") have consistently found, much of the information that the Board's regulations otherwise require in an abandonment proceeding is largely inapplicable or irrelevant to an application for adverse discontinuance or abandonment. *Seminole Gulf Railway, L P -- Adverse Abandonment -- in Lee County, FL*, STB Docket No. AB-400 (Sub-No. 4), served June 9, 2004 ("*Seminole Gulf*") (citing, *Napa Valley Wine Train, Inc. -- Adverse Abandonment -- in Napa Valley, CA*, STB Docket No. AB-582, served Mar. 30, 2001 ("*Napa Valley*")), *Chelsea Property Owners -- Abandonment -- Portion of Consolidated Rail Corporation's West 30th Street Secondary Track in New York, NY*, Docket No. AB-167 (Sub-No. 1094), served July 19, 1989. Consistent with that precedent, Kingsbury Square requests waivers from the following provisions:

A. Notice of Intent Kingsbury Square intends to file and publish a notice of the proposed adverse abandonment, as required by 49 C.F.R. § 1152.21 Kingsbury Square believes, however, that the form of the notice prescribed in § 1152.21 is inappropriate for use in this proceeding Therefore, Kingsbury Square requests a waiver of the prescribed form for the notice, and proposes instead to use the form of notice set forth in Appendix 2 Such relief is consistent with the Board's decisions in *Seminole Gulf* and in *Norfolk Southern Railway Company -- Adverse Abandonment -- St Joseph County, IN*, STB Docket No AB-290 (Sub-No 286), served Oct. 26, 2006 ("*St Joseph County*").

Kingsbury Square requests a waiver of 49 C.F.R. § 1152.20(a)(2)(i), which requires service of the notice upon all significant users of the line Because there are no users of the line, significant or otherwise, this provision is inapplicable or irrelevant Petitioner proposes to serve the notice on CTR

Kingsbury Square requests a waiver of 49 C.F.R. § 1152.20(a)(2)(xi), which requires service of the notice upon the headquarters of all duly certified labor organizations that represent employees on the affected rail line Because no rail service has been provided on this line for many years, there are no known railroad employees who would be affected by an adverse abandonment of the line

Kingsbury Square requests a waiver of 49 C.F.R. § 1152.20(a)(3), which requires the notice to be posted at each station and terminal along the line Kingsbury Square seeks this waiver because there are no stations or terminals along the affected rail line.

B. System Diagram Map Kingsbury Square seeks a waiver of all requirements in 49 C.F.R. §§ 1152.10 to 1152.14, and 49 C.F.R. § 1152.24(e)(1). These provisions require the

carrier to maintain, file and publish a System Diagram Map ("SDM"), and requires a line to appear on the SDM for at least 60 days before an abandonment application can be filed for the specific line. Waiver of this requirement is appropriate because Kingsbury Square does not own the affected line and cannot amend, file or publish the SDM. Furthermore, waiver of this requirement is consistent with the Board's decision in *St. Joseph County*. See, also, *Salt Lake City Corp. -- Adverse Abandonment -- in Salt Lake City, UT*, STB Docket No. AB-33 (Sub-No 183) (served Oct. 5, 2001) ("*Salt Lake*").

C. Contents of the Abandonment Application Kingsbury Square requests a waiver of the requirements of 49 C.F.R. § 1152.22(a)(4), which requires the carrier to submit with the application a detailed map of the subject line, and § 1152.22(a)(5), which requires inclusion of the rail line on the carrier's SDM, the date upon which the line was first listed on the SDM, and a copy of the line description which accompanies the carrier's SDM. Waiver of these requirements is appropriate because Kingsbury Square, as a third party applicant, does not have access to a detailed map^{2/} or to CTR's current SDM, if any, and it does not possess, nor is it able to obtain this information. In recognition of these facts, the Board has granted waivers of these requirements in prior adverse abandonment proceedings. See *Yakima Interurban Lines Assn. -- Adverse Abandonment -- in Yakima County, WA*, STB Docket No. AB-600 (served Feb. 6, 2004) *Cf. St. Joseph County*.

Kingsbury Square requests a waiver of the requirements of 49 C.F.R. § 1152.22(b)-(d), which requires a description of the present physical condition of the line, estimated deferred maintenance and rehabilitation costs, a description of service performed on the line during the

^{2/} But see the map of the North-Division Segment attached as Appendix 1

prior year, and a computation of the revenues attributable and avoidable costs for the line to be abandoned. No rail service has been provided over the line for many years. As a third party applicant, Kingsbury Square is unable to provide any further description of the line condition, service performed on the line, or revenue and cost data associated with the line. Waiver of these requirements is consistent with prior Board decisions in adverse abandonment cases. *St. Joseph County*, at 5. See, also, *Seminole Gulf and East St. Louis Jct. R.R. Co. -- Adverse Abandonment - in St. Clair County, IL*, STB Docket No. AB-838, served June 30, 2003 ("St. Clair County").

In view of the waiver requests contained herein, Kingsbury Square further requests that the form of the draft Federal Register notice, as required by 49 C.F.R. § 1152.22(i), be waived. Kingsbury Square proposes instead to utilize the form of draft Federal Register notice set forth in Appendix 3.

D. Notice of Consummation Kingsbury Square requests a waiver of the abandonment consummation notice requirement in 49 C.F.R. § 1152.24(f) and the one-year authorization limit in § 1152.29(e)(2). As the Board has held in prior adverse abandonment proceedings, these waivers are not appropriate because the applicant does not have control over consummation, since it must invoke state law to obtain control of the property. See *Salt Lake and Napu Valley*.

F. Environmental and Historic Regulations Kingsbury Square seeks waiver of the Board's regulations requiring environmental and historic reporting in this matter. The North-Division Segment has not been used for rail transportation in many years (except for CILR's recent contrived shipment). The tracks in that Segment are located in the middle of a busy Chicago Street. Abandonment of the Federal interest in those tracks, leading to their removal

under Illinois law, would have minimal environmental and historic effect, and any such effect would be decidedly positive. Environmental and historic reporting are unnecessary in that situation, so they should be waived

III.

EXEMPTIONS REQUESTED

Public Use, Trails, and OFA Conditions. Kingsbury Square seeks a waiver of the provisions for offers of financial assistance ("OFA"), public use procedures, and interim trail use and rail banking requirements of 49 C.F.R. §§ 1152.27 through 1152.29. In connection therewith, Kingsbury Square also seeks an exemption from the requirements of 49 U.S.C. §§ 10904 and 10905.

These procedures will serve no useful purpose and are not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101. If the Board were to grant Kingsbury Square's application for adverse abandonment, the Board would withdraw its exclusive jurisdiction over the right-of-way to permit the application of state, local, or other federal laws because there is no overriding federal interest in interstate commerce. In this situation, the Board has noted that, absent an exemption, Sections 10904 and 10905 "could provide a vehicle for someone to invoke agency processes that the Board has determined are not necessary or appropriate." *St. Joseph County*, at 6 (citing, *Kansas City Pub. Ser. Frgt. Operations - Abandonment Exemption*, 7 I.C.C.2d 216, 225 (1990)). See, also, *St. Clair County*

WHEREFORE, Kingsbury Square respectfully requests that the Board grant the waivers and exemptions sought herein.

Respectfully submitted,

THE SHOPS AT KINGSBURY SQUARE, LLC
740 Waukegan Road, Suite 400
Deerfield, IL 60015

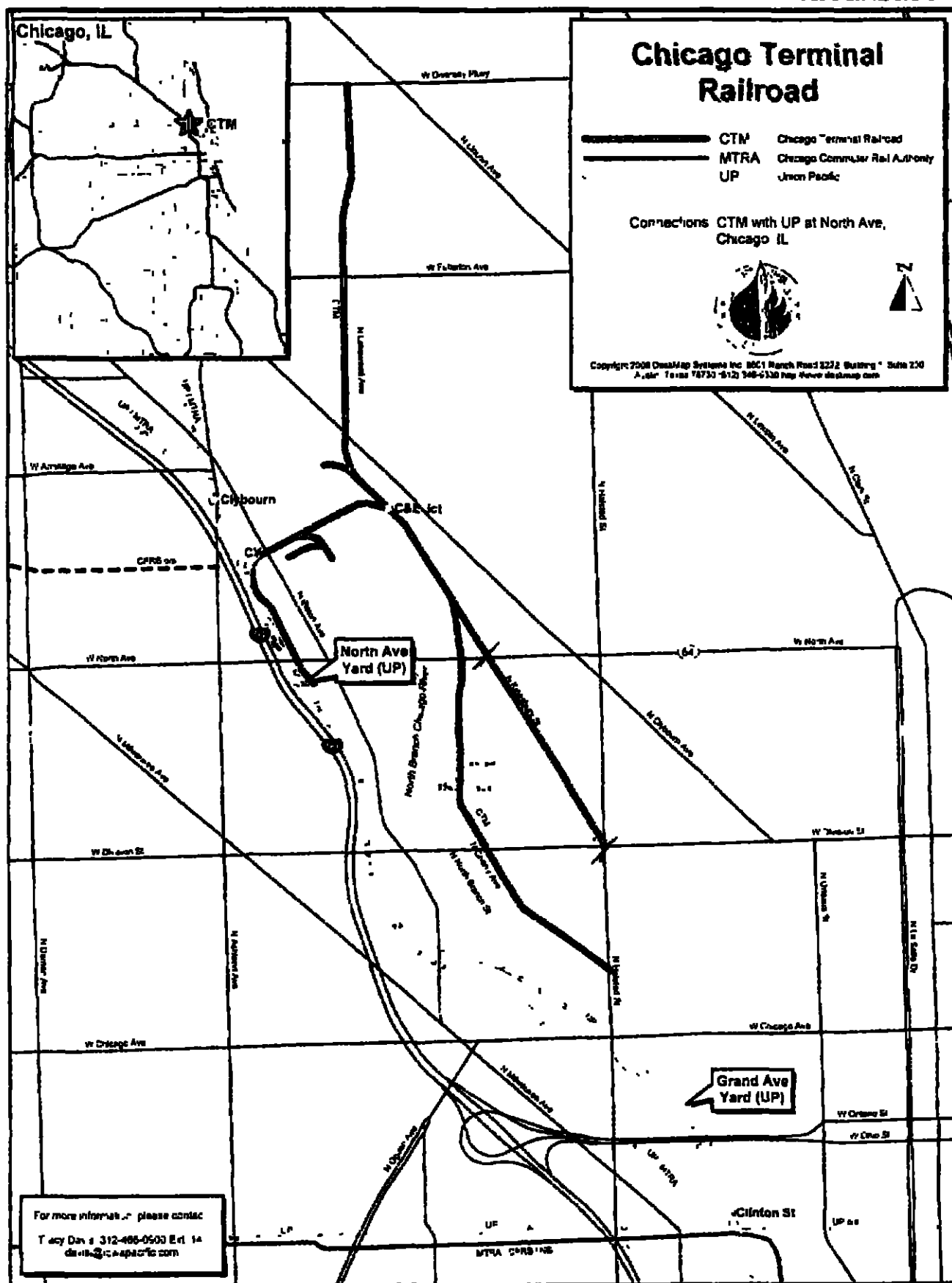
Applicant

Thomas F McFarland

THOMAS F McFARLAND
THOMAS F McFARLAND, P C
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1112
(312) 236-0204
(312) 201-9695 fax
mcfarland@aol.com

Attorney for Applicant

DATE FILED, May 2, 2007



Draft Notice of Intent

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423**

STB Docket No AB-1012

**THE SHOPS AT KINGSBURY SQUARE, LLC
-- ADVERSE ABANDONMENT --
CHICAGO TERMINAL RAILROAD
IN CHICAGO, ILLINOIS**

The Shops at Kingsbury Square, LLC (Kingsbury Square) (hereinafter "Applicant") gives notice that on or about _____, it intends to file with the Surface Transportation Board ("the Board"), Washington, D.C. 20423, an application seeking adverse abandonment of the authority of Chicago Terminal Railroad (CTR) to operate over a segment of rail line between the north edge of North Avenue and the terminus of the line near the intersection of Division and Halsted Streets, a distance of approximately one-half of a mile (0.5-mile), in Chicago, Cook County, Illinois. The affected railroad line is situated in U.S. Postal Zip Code 60661. The line includes no stations. The reasons for the proposed abandonment include (i) the *de facto* abandonment of the line, (ii) the lack of any foreseeable future need for rail service, and (iii) the prospect for beneficial nonrail use of the property. In addition, there are significant safety concerns.

APPENDIX 2

Based on information in Kingsbury Square's possession, the line does not contain federally granted rights-of-way. Any documentation relating to this abandonment in the Kingsbury Square's possession will be made available promptly to those requesting it.

The application, when filed, can be viewed following its filing on the Board's webpage, www.stb.dot.gov, or a copy can be secured from Kingsbury Square's counsel, whose name and address appear below. The application will include Kingsbury Square's entire case for abandonment. Any interested person, after the application is filed on or about _____, may file with the Surface Transportation Board its protest of, or written comments concerning, the proposed abandonment identifying it by the proceeding's docket number. These filings are due 45 days from the date of filing of the application. Persons who may oppose the abandonment, but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses containing detailed evidence, should file comments. Persons opposing the proposed abandonment that do wish to participate actively and fully in the process should file a protest. Protests must contain that party's entire case in opposition including the following: (1) the protestant's name, address and business, (2) the protestant's interest in the proceeding, including their use of the line or the public interest represented, (3) the protestant's reasons for protesting or commenting on the proposed abandonment, including their reliance on the involved service, and (4) any rebuttal of material submitted in the application. Protests or comments need to be notarized or verified, and an unbound original and ten copies are required to be filed with the Secretary of the Board, at 395 E Street, S.W., Suite 1149, Washington, DC 20024, together with a certificate of service attesting

APPENDIX 2

that copies of the comments or protests have been served on Applicant's counsel in this matter, Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604-1112, phone 312-236-0204, fax 312-201-9695, mcfarland@aol.com. Except as otherwise set forth in 49 C.F.R. § 1152, each document filed with the Board must be served on all parties to the abandonment proceeding. Protests and comments will be considered by the Board in determining what disposition to make of the application. A commenting party or protestant may participate in the proceeding as its interests may appear.

If an oral hearing is desired, the requester must make a request for an oral hearing and provide reasons why an oral hearing is necessary. Oral hearing requests must be filed with the Board no later than 10 days after that application is filed.

Those parties filing protests to the proposed abandonment should be prepared to participate actively either in an oral hearing or through the submission of their entire opposition case in the form of verified statements and arguments at the time they file a protest. Parties seeking information concerning the filing of protests should refer to 49 C.F.R. § 1152.25.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Service at (202) 245-0230 or refer to the text of the abandonment regulations at 49 C.F.R. § 1152.1, *et seq.* An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Section of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Section of Environmental Analysis. EAs in these abandonment proceedings normally

APPENDIX 2

will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

Draft Federal Register Notice

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D C. 20423**

STB Docket No. AB-1012

**THE SHOPS AT KINGSBURY SQUARE, LLC
-- ADVERSE ABANDONMENT --
CHICAGO TERMINAL RAILROAD
IN CHICAGO, ILLINOIS**

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Based on information in the possession of the Applicant, the line does not contain federally granted rights-of-way. Any documentation relating to this abandonment in the Applicant's possession will be made available promptly to those requesting it. The application can be viewed on the Board's webpage, www.stb.dot.gov, or a copy can be secured from Applicant's counsel, whose name and address appear below. The Applicant's entire case for abandonment was filed with the application.

APPENDIX 3

Any interested person may file with the Surface Transportation Board its protest of, or written comments concerning, the proposed abandonment identifying it by the proceeding's docket number. These filings are due 45 days after the application is filed. Persons who may oppose the abandonment, but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses containing detailed evidence, should file comments. Persons opposing the proposed abandonment that do wish to participate actively and fully in the process should file a protest. Protests must contain that party's entire case in opposition including the following: (1) the protestant's name, address and business, (2) the protestant's interest in the proceeding, including their use of the line or the public interest represented, (3) the protestant's reasons for protesting or commenting on the proposed abandonment, including their reliance on the involved service, and (4) any rebuttal of material submitted in the application.

Protests or comments need to be notarized or verified, and an unbound original and ten copies are required to be filed with the Secretary of the Board, at 395 F Street, S W , Suite 1149, Washington, DC 20024, together with a certificate of service attesting that copies of the comments or protests have been served on Applicant's counsel in this matter, Thomas F McFarland, Thomas F McFarland, P C , 208 South LaSalle Street, Suite 1890, Chicago, IL 60604-1112, phone 312-236-0204, fax 312-201-9695, mcfarlandt@aol.com. Written comments and protests must indicate the proceeding designation STB AB-1012.

Except as otherwise set forth in 49 C.F.R. § 1152, each document filed with the Board must be served on all parties to the abandonment proceeding. Protests and comments will be

APPENDIX 3

considered by the Board in determining what disposition to make of the application. A commenting party or protestant may participate in the proceeding as its interest may appear

If an oral hearing is desired, the requester must make a request for an oral hearing and provide reasons why an oral hearing is necessary. Oral hearing requests must be filed with the Board no later than 10 days after that application is filed.

Those parties filing protests to the proposed abandonment should be prepared to participate actively either in an oral hearing or through the submission of their entire opposition case in the form of verified statements and arguments at the time they file a protest. Parties seeking information concerning the filing of protests should refer to 49 C F R. § 1152.25

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Service at (202) 245-0230 or refer to the text of the abandonment regulations at 49 C F R. § 1152.1, *et seq*. An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Section of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Section of Environmental Analysis. EAs in these abandonment proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

CERTIFICATE OF SERVICE

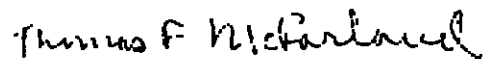
I hereby certify that on this 2nd day of May, 2007, I served the foregoing document.

Petition For Partial Waiver Of Abandonment Regulations And For Exemptions, by UPS
overnight mail, upon representatives of CIR

Mr Edwin Ellis
Chicago Terminal Railroad
118 South Clinton Street
Room 300
Chicago, IL 60618

Fritz R Kahn, Esq
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Thomas F McFarland