



April 27, 2016

240554

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

ENTERED
Office of Proceedings
April 27, 2016
Part of
Public Record

RE: **STB Finance Docket No. 36016** – Petition for Declaratory Order by Angeles A. Zorzi, Trustee of the Angeles A. Zorzi Living Trust and Antonio Aja Jr. and Virginia C. Aja, Trustees of the Antonio Aja Jr. Trust and the Virginia D. Aja Trust

Dear Ms. Brown:

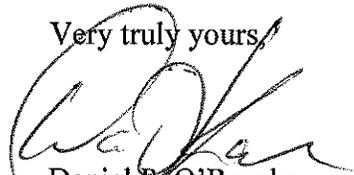
On April 18, 2016, we filed a Petition for Declaratory Order in the above-referenced matter. It has since come to my attention that the petition contained three (3) typographical errors on pages 6 and 7 wherein Exhibit 12 was incorrectly cited; the correct references should have been to Exhibit 13.

I have attached hereto a copy of pages 6 and 7 with the error and correction highlighted for your reference. Clean copies of pages 6 and 7 with just the corrected information are also enclosed for filing.

Also enclosed is a Certificate of Service indicating that this letter and attachments have been mailed today to the other interested parties in this matter.

Please accept our apologies for this mistake and don't hesitate to contact me if you have any questions or concerns regarding this matter. Thank you.

Very truly yours,



Daniel P. O'Rourke

DPO/rb

Enclosures

CC: State of Vermont Agency of Transportation
Washington County Railroad

Attorneys and Advisors

abandon its 14 mile line from Graniteville, Vermont, to Montpelier Junction, Vermont. The portion of the line that ran along the Zorzi frontage was not included in the Montpelier & Barre abandonment submission to the ICC. Montpelier & Barre submitted its petition to the ICC and attached as Exhibit 1, a map of the line to be abandoned. The map does not appear to delineate the *de facto* abandoned line. (See Exhibit 3 - map of line to be abandoned).

More significantly, the State of Vermont opposed Montpelier & Barre's petition for abandonment. As part of its opposition, the State submitted an appraisal of the Montpelier & Barre property. The appraisal included a "Breakdown for Subdivision of Montpelier-Barre Railroad Real Estate". (Exhibit 13 at p.8 -11). This breakdown included a list of the parcels to be included in the estimate of value for Montpelier & Barre. The parcels were identified with reference to their track map numbers and railroad stations. (Exhibit 1213 at pp. 8-11). By way of orientation, the Zorzi parcel is located within the City of Montpelier. The portion of the *de facto* abandoned line crossing the Zorzi parcel is on track map no. V52.1/2 and is labeled "Sabin Estate". (See Exhibit 14 – Map V52.1/2). This track map represents the operation of the line of the former Montpelier and Wells River Railroad. This is the portion of the parallel line from which the Montpelier & Barre removed its rails and hardware in the late 1950s. This track map number is NOT included in the State of Vermont's appraisal of the Montpelier & Barre property. Certainly, if the State of Vermont did not believe that this portion of the line had been abandoned, they would have included it in its appraisal.

Conversely, the State of Vermont' appraisal did include the portion of the Montpelier & Barre that it had obtained from Central Vermont. The line obtained from Central Vermont is identified on track map V-8A/3 (See Exhibit 15 – Map V-8A/3). This line and track reference is specifically identified in the "Breakdown for Subdivision of Montpelier-Barre Railroad Real

Estate". (Exhibit 12 13 at p. 8, parcel nos. 16-21). Additionally, the narrative for the State of Vermont's appraisal references only one corridor, not two, in its general property description. (See Exhibit 12 13 at p.2)

Subsequently, the State of Vermont Agency of Transportation filed a petition seeking to condemn the entire line of the Montpelier & Barre Railroad. The State's petition included the portion of the line that crosses the Zorzi parcel. Ultimately, the State successfully condemned the entire Montpelier & Barre line. The Condemnation Order included a description of the abandoned line that crosses the Zorzi's land. (See Exhibit 16 – Condemnation Order). Zorzi was not compensated for the 1980 taking by the State of Vermont for their property, which had reverted to them upon the *de facto* abandonment of the line. Despite their exclusive use of the area of the abandoned line since the rails were removed 55 years ago, and their reversionary rights, the State of Vermont disputes the ownership of the property.

More recently, the uncertainty and controversy arose after Zorzi received partial approval to subdivide the property into 145 residential units. Following that partial approval, the State of Vermont Agency of Transportation asserted control over the *de facto* abandoned line and denied Zorzi the right to cross the line to access its property and their proposed residential development. Zorzi is before this Board seeking to terminate the controversy with the State of Vermont or remove uncertainty as to the *de facto* abandoned line so that they may pursue their reversionary rights in state court.

ARGUMENT

Pursuant to 5 U. S. C. §554 (e) and 49 U. S. C. §721, the Surface Transportation Board may issue a declaratory order to terminate a controversy or remove uncertainty. The Board has

abandon its 14 mile line from Graniteville, Vermont, to Montpelier Junction, Vermont. The portion of the line that ran along the Zorzi frontage was not included in the Montpelier & Barre abandonment submission to the ICC. Montpelier & Barre submitted its petition to the ICC and attached as Exhibit 1, a map of the line to be abandoned. The map does not appear to delineate the *de facto* abandoned line. (See Exhibit 3 - map of line to be abandoned).

More significantly, the State of Vermont opposed Montpelier & Barre's petition for abandonment. As part of its opposition, the State submitted an appraisal of the Montpelier & Barre property. The appraisal included a "Breakdown for Subdivision of Montpelier-Barre Railroad Real Estate". (Exhibit 13 at p.8 -11). This breakdown included a list of the parcels to be included in the estimate of value for Montpelier & Barre. The parcels were identified with reference to their track map numbers and railroad stations. (Exhibit 13 at pp. 8-11). By way of orientation, the Zorzi parcel is located within the City of Montpelier. The portion of the *de facto* abandoned line crossing the Zorzi parcel is on track map no. V52.1/2 and is labeled "Sabin Estate". (See Exhibit 14 – Map V52.1/2). This track map represents the operation of the line of the former Montpelier and Wells River Railroad. This is the portion of the parallel line from which the Montpelier & Barre removed its rails and hardware in the late 1950s. This track map number is NOT included in the State of Vermont's appraisal of the Montpelier & Barre property. Certainly, if the State of Vermont did not believe that this portion of the line had been abandoned, they would have included it in its appraisal.

Conversely, the State of Vermont' appraisal did include the portion of the Montpelier & Barre that it had obtained from Central Vermont. The line obtained from Central Vermont is identified on track map V-8A/3 (See Exhibit 15 – Map V-8A/3). This line and track reference is specifically identified in the "Breakdown for Subdivision of Montpelier-Barre Railroad Real

Estate”. (Exhibit 13 at p. 8, parcel nos. 16-21). Additionally, the narrative for the State of Vermont’s appraisal references only one corridor, not two, in its general property description. (See Exhibit 13 at p.2)

Subsequently, the State of Vermont Agency of Transportation filed a petition seeking to condemn the entire line of the Montpelier & Barre Railroad. The State’s petition included the portion of the line that crosses the Zorzi parcel. Ultimately, the State successfully condemned the entire Montpelier & Barre line. The Condemnation Order included a description of the abandoned line that crosses the Zorzi’s land. (See Exhibit 16 – Condemnation Order). Zorzi was not compensated for the 1980 taking by the State of Vermont for their property, which had reverted to them upon the *de facto* abandonment of the line. Despite their exclusive use of the area of the abandoned line since the rails were removed 55 years ago, and their reversionary rights, the State of Vermont disputes the ownership of the property.

More recently, the uncertainty and controversy arose after Zorzi received partial approval to subdivide the property into 145 residential units. Following that partial approval, the State of Vermont Agency of Transportation asserted control over the *de facto* abandoned line and denied Zorzi the right to cross the line to access its property and their proposed residential development. Zorzi is before this Board seeking to terminate the controversy with the State of Vermont or remove uncertainty as to the *de facto* abandoned line so that they may pursue their reversionary rights in state court.

ARGUMENT

Pursuant to 5 U. S. C. §554 (e) and 49 U. S. C. §721, the Surface Transportation Board may issue a declaratory order to terminate a controversy or remove uncertainty. The Board has

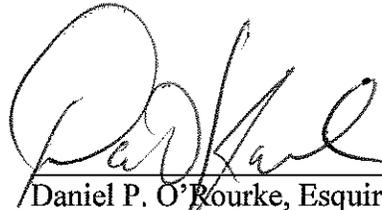
CERTIFICATE OF SERVICE

I hereby certify that on April 27, 2016, I caused a copy of my letter to the Surface Transportation Board dated April 27, 2016, with attached revisions to the Petition for Declaratory Order, to be served by United States Mail, first class postage thereon prepaid, upon the following parties:

State of Vermont
Agency of Transportation
1 National Life Drive
Montpelier, VT 05633-5001

Washington County Railroad
c/o Vermont Rail System
One Railway Lane
Burlington, VT 05401

Dated: April 27, 2016



Daniel P. O'Rourke, Esquire
Bergeron, Paradis & Fitzpatrick, LLP
34 Pearl Street, PO Box 174
Essex Jct., VT 05453-0174
(802) 879-6304
dorourke@bpfllegal.com